

LATAH COUNTY PROSECUTOR'S OFFICE
WILLIAM W. THOMPSON, JR., ISB 2613
PROSECUTING ATTORNEY
JEFF NYE, ISB 9238
SPECIAL ASSISTANT ATTORNEY GENERAL
Latah County Courthouse
P.O. Box 8068
Moscow, ID 83843
Phone: (208) 883-2246
paservice@latah.id.us

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,
Plaintiff,

V.

BRYAN C. KOHBERGER
Defendant.

Case No. CR29-22-2805

REPLY IN SUPPORT OF MOTION
FOR ORDER PROHIBITING
CONTACT WITH PROSPECTIVE
JURORS ABSENT LEAVE OF
COURT

The State submits this reply to address two major flaws in Defendant's memorandum in support of his objection.

First, Defendant's explanation of how the survey complies with the Nondissemination Order does not withstand even the slightest scrutiny. Defendant argues that hiring a professional firm to contact prospective jurors in Latah County and ask questions embedded with specific facts from the case does not violate the Nondissemination Order because the embedded facts were already "disclosed" by the media. (Def. Mem. p.2.) But, with respect to both attorneys and their agents, the Nondissemination Order prohibits "*any out-of-court statement*, which a

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reasonable person would expect to be disseminated by means of public communication, that relates” to several categories of information, including “[t]he identity or nature of evidence expected to be presented at trial or any sentencing phase of the proceedings.” (Order, p.2 (emphasis added).) Defendant’s interpretation that his attorneys and their agents can discuss with prospective jurors anything the media is already discussing would eviscerate the Nondissemination Order.

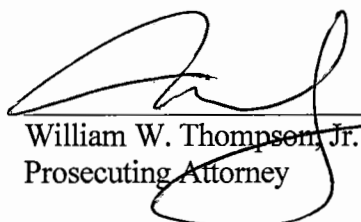
Nor can Defendant credibly use as cover that the survey is asking questions rather than making statements. (*See* Def. Mem., p.2.) The mere fact that “[t]he identity or nature of evidence” is being presented to the prospective jurors in the form of a question does not bring the survey into compliance with the Nondissemination Order. (Order, p.2.) The specificity of the facts included in the questions implies to the prospective juror that there is ‘something to see here.’ Undoubtedly, such questions would draw quick objections in the voir dire process.

Defendant also baldly asserts that the Nondissemination Order expressly allows the conduct in which his attorneys and agents have engaged, but he fails to quote or even cite to the portion of the Nondissemination Order he believes authorizes this conduct. (Def. Mem., p.2 (“Further the Revised Order for Non-Dissemination allows for Counsel to ask questions of the public to do its work.”).) The State’s best guess is that Defendant is referencing paragraph 2 and subparagraph e, which allows the attorneys and their agents to “request assistance from the public in obtaining evidence and information necessary to the State’s case or the defense’s case.” (Order, p.3.) Clearly, however, that subparagraph is a reference to general requests made to the public to “*obtain*” (i.e., not reveal) “evidence or information” about the case. For

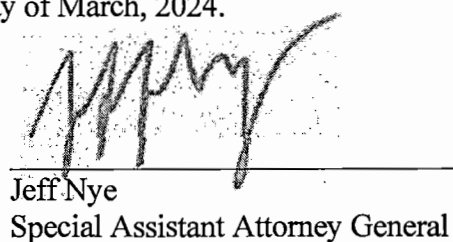
example, the attorneys or their agents could put out a statement indicating they are looking for any persons who were present at X location on Y date. Nothing in subparagraph e authorizes the attorneys and their agents to target prospective jurors and share with them specific facts about the case.

Second, much of Defendant's memorandum and the entirety of the affidavit submitted with the memorandum are an attack on an argument the State has not made. The memorandum and affidavit go to great lengths to explain to this Court that, as a general matter, jury surveys are not inherently improper for the purposes of a change of venue motion. The State has not taken a contrary position.¹ Instead, the sole legal basis for the State's motion is that in *this* particular case, *this* Court's Nondissemination Order prohibits certain questions Defendant's attorneys and agents chose to include in the survey. (State's Mot., pp.1-4.) Given the State's, this Court's, and—at least up until this point—Defendant's agreement that the Nondissemination Order plays a vital role in protecting the integrity of the trial, the State filed its motion to bring this matter to the Court's attention.

RESPECTFULLY SUBMITTED this 29th day of March, 2024.



William W. Thompson, Jr.
Prosecuting Attorney



Jeff Nye
Special Assistant Attorney General

¹ The State questions the usefulness of such surveys. But the weight, if any, that should be given to the survey is not at issue here and will instead be addressed during the change of venue briefing.

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the REPLY IN SUPPORT OF
MOTION FOR ORDER PROHIBITING CONTACT WITH PROSPECTIVE JURORS
ABSENT LEAVE OF COURT were served on the following in the manner indicated
below:

Anne Taylor
Attorney at Law
PO Box 9000
Coeur D Alene, ID 83816-9000

- Mailed
- E-filed & Served / E-mailed
- Faxed
- Hand Delivered

Dated this 29th day of March , 2024.



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JURORS ABSENT LEAVE OF COURT