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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

RESPONSE TO "NOTICE OF
DEFENDANT'S
SUPPLEMENTAL RESPONSE
TO STATE'S ALIBI DEMAND"

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and submits the following initial response to the "Notice of Defendant's Supplemental Response to State's Alibi Demand" filed herein on April 17, 2024.

At the outset, the State incorporates by reference as if fully set forth at this point those portions of the State's July 27, 2023, "Motion to Compel 'Notice of Defense of Alibi' or, Alternatively, to Bar Certain Evidence" to the extent that it relates to the adequacy and timeliness of defendant's alibi notice.

The State respectfully submits that the defendant's supplemental alibi response continues

to lack the specificity required by Idaho Code 19-519 which provides that the defense “shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi (emphasis added).” The defendant’s April 17, 2024, submission minimally adds to the alibi notice dated July 24, 2023. The defendant states that he was driving around during the early morning hours of November 13, 2022, and drove “throughout the area south of Pullman, Washington west of Moscow, Idaho including Wawawai Park.” With the exception of the reference to Wawawai Park (which is new), the defendant is offering nothing new to his initial “alibi” that he was simply driving around during the morning hours of November 13, 2022. As the State noted during the August 2023 hearing, the State is aware that the defendant was driving around rural areas of Whitman County, Washington, and Latah County, Idaho, during the early morning hours of November 13, 2022. In fact, the defendant’s travels during that time are described in the original Probable Cause Affidavit supporting the Criminal Complaint in this case.

As to the Defendant’s reference to potential testimony about the location of Defendant’s cell phone on the morning of November 13, 2022, this information does not rise to the level of an alibi at the time of the homicides because the Defendant’s cell phone stopped reporting to the cellular network before the homicides and continued to not report until after the homicides. The location of Defendant’s cell phone at times other than the time of the homicides is not proof of or relevant to the Defendant’s specific location at the time of the homicides (approximately 4:00 – 4:30 a.m. on November 13, 2022).

It is the State’s position that the Defendant’s continued failure to adequately comply with Idaho Code 19-519(1) does not trigger a response under Idaho Code 19-519(2). If the Court

deems the defendant's supplemental response to be in compliance with the requirements of Idaho Code 19-519, the State requests additional time pursuant to Idaho Code 19-519(5) to prepare a list of witnesses to establish the Defendant's presence at the scene of the homicides. As to witnesses to rebut a claim of alibi, the Defendant's failure to adequately comply with Idaho Code 19-519 means the State does not know what specific assertions it needs to rebut. If the Court allows the defense to offer further witnesses or information regarding alibi (which the State opposes as described below) and bring it into compliance with Idaho Code 19-519, the State will then respond accordingly pursuant to Idaho Code 19-519(2).

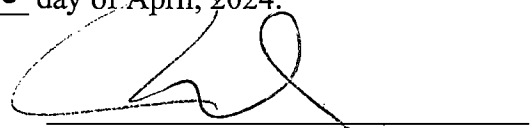
It has now been approximately 11 months since the State filed its "Request for Discovery Disclosure; Alibi Demand" on May 23, 2023, and almost a year and a half since the homicides occurred. The defendant has been given more time than he is legally entitled in order to provide his alibi. The State is substantially prejudiced and compromised in its ability to investigate and respond to new or additional alibi-related disclosures.

As the Idaho Court of Appeals noted in *State v. Juarez*, 196 Idaho 274, 277 (Ct. App. 2021) "The State has a legitimate interest in obtaining timely and complete discovery response from the defendant." The State respectfully submits that we essentially remain in the same position as in July and August of 2023, and that, like *Juarez*, "(w)e don't know how this is an alibi at all." *Id.* at 278. As the State further noted in its July 27, 2023, "Motion to Compel 'Notice of Defense of Alibi' or, Alternatively, to Bar Certain Evidence" the United States Supreme Court has observed in *Taylor v. Illinois* the "ease with which an alibi can be fabricated" and "the State's interest in protecting itself against an 11th hour defense is both obvious and legitimate." *Taylor*, 484 U.S. 400, 410 (1988), citing to *Williams v. Florida*, 399 U.S. 78 (1970).

Based on the above, the State respectfully requests that the Court enter an order denying

the defendant any further opportunity to add to any purported claim of alibi and preclude testimony by anyone other than the Defendant "as to the defendant's absence from or presence at the scene of the (homicide)". IC 19-519(4).

RESPECTFULLY SUBMITTED this 26 day of April, 2024.



William W. Thompson, Jr.
Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the RESPONSE TO "NOTICE OF DEFENDANT'S SUPPLEMENTAL RESPONSE TO STATE'S ALIBI DEMAND" 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

Dated this 26th day of April, 2024.

