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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,
Plaintiff,

V.

BRYAN C. KOHBERGER,
Defendant.

Case No. CR01-24-31665

SEALED
STATE'S OBJECTION TO
"DEFENDANT'S OFFER OF
PROOF RE: ALTERNATE
PERPETRATORS" AND
"DEFENDANT'S EVIDENCE IN
SUPPORT OF OFFER OF PROOF
RE: ALTERNATE
PERPETRATOR"

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and objects to the Defendant's May 14, 2025, "Offer of Proof RE: Alternate Perpetrators" and May 23, 2025, "Evidence in Support of Offer of Proof RE: Alternate Perpetrators."

On April 18, 2025, this Court entered its "Order Memorializing Oral Rulings on Motions in Limine" which included the State's Motions in Limine to prohibit the Defense from offering

STATE'S OBJECTION TO "DEFENDANT'S OFFER OF PROOF RE: ALTERNATE
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alternate perpetrator evidence. In that order (at p. 6), the Court directed that the Defendant must present offers of proof “no later than May 14, 2025 so the matter can be addressed at the pre-trial conference” (which was scheduled for May 15, 2025). The Court recognized the Idaho Supreme Court’s decision in *State v. Meister*, 148 Idaho 236 (2009), which held that “mere inferences that another person *could* have committed the crime will most likely not be relevant, and if relevant will still be subject to the limitation provisions of I.R.E. 403.” *Meister* at 241. The Court correctly noted that “after all, Defendant cannot merely show another person could have committed the crime; rather, there must be ‘evidence (direct or circumstantial) linking the third person to the actual perpetration of the crime’.” Order at p. 6 (citing to *Jones on Evidence*).

The Defendant subsequently filed his “Offer of Proof RE: Alternate Perpetrators” on May 14, 2025. At the pre-trial conference held on May 15, 2025, the Court directed the Defendant to submit actual evidence to support his alternative perpetrator allegations, stating that the Defendant’s May 14 proffer contained allegations that were “fairly objectionable.”

The Defendant subsequently filed his “Evidence in Support of Offer of Proof RE: Alternate Perpetrators” on May 23, 2025, yet the Defendant’s proffered evidence is substantively no different than what the Defendant alleged in his May 14, 2025, “Offer of Proof RE: Alternate Perpetrators” with the exception of an [REDACTED]

It appears that, in reality, the Defendant merely wants to cross-examine various State’s witnesses as opposed to trying to make a case of an alternative perpetrator. While the Defendant certainly has the prerogative to cross-examine State’s witnesses, he cannot speculate that a third party committed the crimes with which the Defendant is charged. This is the essence of the limitations and requirements related to alternate perpetrators. It remains the State’s position that

any attempt by the Defendant to offer or argue an alternate perpetrator theory without evidence specifically connecting person(s) other than the Defendant to the homicides would do nothing more than mislead and confuse the jury and would also result in undue delay, waste of time, needless presentation of cumulative evidence, and unfair prejudice to the State. I.R.E. 403

Turning next to the four individuals the Defendant wishes to argue as alternate perpetrators, the State addresses each in turn. As discussed below, the Court should preclude alternate perpetrator evidence as to each because the Defendant has not provided admissible evidence linking them to the homicides as required under *Meister*.

[REDACTED]

The Defendant first proffers [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] proximity to two of the victims hours before the homicides, without something else later that night, is not probative evidence and is excludable under Idaho Rules of Evidence 403. Particularly looking at

[REDACTED]

[REDACTED]

The Defendant next points to three lab reports which merely reflect that as part of [REDACTED] cooperation with the investigators, he voluntarily submitted a DNA sample and fingerprints. Tellingly, the Defendant fails to note that the ISP Forensic Lab eliminated [REDACTED] DNA from the crime scene:

- [REDACTED] DNA was not found on the knife sheath strap (on which DNA was found that was matched to the Defendant) or in the DNA mixture found on the back of the sheath. See State's Exhibit S-1, ISP Forensic DNA Lab Report 4.

- ISP Lab Report 7 excludes [REDACTED] DNA from the swab taken in Xana Kernodle's bedroom, and from the DNA found under Ms. Mogen's fingernails. See State's Exhibit S-2, ISP Lab Report 7.
- ISP Lab Report 13 excludes [REDACTED] DNA from the samples from the fingernails of all the other victims as well as swabs taken above the stairwell at the residence, the upper floor banister, and the bottom of the handrail, at the scene of the crime. See State's Exhibit S-3, ISP Lab Report 13.
- ISP Lab Report 26 excludes [REDACTED] DNA from a sample taken on the north wall of the stairwell at the residence and another sample taken from the half-wall at the residence. See State's Exhibit S-4, ISP Lab Report 26.
- ISP Lab Report 31 excludes [REDACTED] DNA from the sample taken from the door of Ms. Mogen's bedroom. See State's Exhibit S-5, ISP Lab Report 31.

The Defendant next submits three law enforcement investigation reports [REDACTED]. First, these reports and their contents are hearsay. That said, all they demonstrate is that [REDACTED] [REDACTED] affirmatively reached out to law enforcement investigators and voluntarily cooperated with them including providing his DNA. Defendant's speculation that this somehow suggests culpability is without foundation.

The balance of the Defendant's submissions are comprised of references [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

In sum, the State respectfully submits that the Defendant's submissions regarding [REDACTED] do not even rise to the level of "mere inferences" that he "could" have committed the crimes, much less "evidence (direct or circumstantial) linking him to the actual perpetration of the crime." April 18, 2025, Order at p. 6.

[REDACTED]

The Defendant's submissions continue with regard to [REDACTED] and are inadequate in the same ways as discussed with respect to [REDACTED]. [REDACTED] DNA was excluded (i) from the mixture on the back of the sheath, (ii) from the sample from Xana Kernodle's bedroom, (iii) from the samples found under Ms. Mogen's fingernails, (iv) from the fingernails of all the other victims, and (iv) from swabs taken above the stairwell at the residence, the upper floor banister, and the bottom of the handrail at the scene of the crime. See State's Exhibit S-3, ISP Lab Report 13.

[REDACTED] DNA was also excluded from the swabs of the north stairwell wall and half-wall, see State's Exhibit S-4, ISP Lab Report 26; and from Ms. Mogen's bedroom door, see State's Exhibit S-5, ISP Lab Report 31.

Defendant next alleges that [REDACTED] "alibi" as to his whereabouts and activities on the early morning of November 13 "cannot be corroborated." Offer of Proof at p. 4. This is incorrect. [REDACTED]

¹ [REDACTED]

3. [REDACTED]

[REDACTED]

Defendant next suggests that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This is not probative of a connection between [REDACTED] and the crimes.

As he did with [REDACTED], Defendant then cites “many tips that [REDACTED] should be considered a suspect” (Offer of Proof RE: Alternate Perpetrators, p. 4.). Yet there is no evidence of any “tip” (which would be hearsay anyway) in the Defendant’s filings other than statements attributed to [REDACTED] (Offer of Proof RE: Alternate Perpetrator, p. 5.). The balance of the Defendant’s submissions regarding [REDACTED] as with the others, are largely hearsay and are, at best, “mere inferences” that [REDACTED] “could” have committed the crimes – there is no “evidence (direct or circumstantial) linking [REDACTED] to the actual perpetration of the crime.”

[REDACTED]

Defendant next refers to [REDACTED]. As with [REDACTED]

[REDACTED] DNA was excluded from the strap at the back of the knife sheath. See State’s Exhibit S-1, ISP Forensic DNA Lab Report 4. In addition, [REDACTED] [REDACTED] was excluded from the samples taken from the victims’ fingernails [REDACTED]

[REDACTED]

[REDACTED] from the swabs above the stairwell, the upper floor banister, and

the bottom of the handrail. See State's Exhibit S-3, ISP Lab Report 13. ISP Lab Report 26 excludes [REDACTED] from the swab taken of the north wall stairwell of the crime scene and the half wall of the crime scene. See State's Exhibit S-4, ISP Lab Report 26. ISP Lab Report 31 excludes [REDACTED] DNA from the sample taken from Ms. Mogen's bedroom door. See State's Exhibit S-5, ISP Lab Report 31.

The Defendant notes that [REDACTED] was familiar with the victim and their residence and lived nearby. Aside from the fact that [REDACTED], the other observations of proximity are not unique to [REDACTED]. Indeed, it appears that there were numerous people who were familiar not only with the victims but also the 1122 King Road residence.

Defendant also makes note that [REDACTED]

[REDACTED] This too, is not suspicious. [REDACTED]

The Defendant also alleges [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] was fully cooperative with the investigators, providing DNA and consenting [REDACTED]
[REDACTED]

Again, the Defendant's allegations do not rise to the level of even an inference that [REDACTED] committed the murders, much less constitute "evidence (direct or circumstantial) linking [REDACTED] to the actual perpetration of the crime."
[REDACTED]

Finally, the Defendant submits [REDACTED] as a "alternative perpetrator." The Defendant's attachments clearly reflect that [REDACTED] was cooperative and voluntarily submitted a DNA sample. ISP Lab Reports 13 and 31 exclude [REDACTED] DNA from any of the samples from the crime scene or the victims (inconclusive as to the sample from Ms. Mogen's fingernails). See State's Exhibit S-3, ISP Lab Report 13 and Exhibit S-5, ISP Lab Report 31. ISP Lab Report 26 also excluded [REDACTED] DNA from the samples from the north wall of the stairwell at the scene as well as the half wall at the scene. See State's Exhibit S-4, ISP Lab Report 26.

[REDACTED] only possible connection to any of the victims was [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] This behavior is not probative of any role in the homicides and is also excludable under Rule 404.

Defendant also alleges that [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Regardless, even if [REDACTED], this act does not provide any evidence of a connection to the crime, much less the type of evidence required under *Meister*. The balance of Defendant's proffers regarding [REDACTED] are largely hearsay and some would be also precluded by I.R.E. 403 and 404 [REDACTED]

[REDACTED]
[REDACTED]

Perhaps the most obvious failure of Defendant's proof is the fact that [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Once again, the Defendant's submissions do not even rise to the level of a "mere inference" that [REDACTED] "could" have committed the homicides, much less "evidence (direct or circumstantial) linking [REDACTED] to the actual perpetration of the crime."

**DEFENDANT'S SUBMISSION DOES NOT CONNECT THE NAMED ALTERNATE
PERPETRATORS TO THE CRIME SCENE**

In addition to the foregoing, none of the Defendant's submissions even hint at any connection between these four individuals and the Defendant himself. Based on the undisputed evidence and what appears to be his theory of the case, the Defendant likely will argue that the true killer or killers committed these crimes and *also* framed the Defendant by placing his Ka Bar knife/sheath at the scene. But nothing in the Defendant's submission points to any of the "alternate perpetrators" accomplishing this or having the motive or means to do it. Nor does the Defendant connect any of them to a Ka Bar knife, whether the one the Defendant purchased in March 2022, or another Ka Bar.


Defendant's submissions also do not connect any of the individuals to a Hyundai Elantra.

[REDACTED]

CONCLUSION

Based on the above, the State respectfully prays for an order from this Court prohibiting the Defendant from arguing an alternate perpetrator theory. The Defendant is free to cross-examine these individuals if they are called by the State but, again, should be barred from suggesting or arguing that any of them are alternative perpetrators of the homicides.

RESPECTFULLY SUBMITTED this 6th day of June 2025.



William W. Thompson, Jr.
Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the STATE'S OBJECTION TO "DEFENDANT'S OFFER OF PROOF RE: ALTERNATE PERPETRATORS" AND "DEFENDANT'S EVIDENCE IN SUPPORT OF OFFER OF PROOF RE: ALTERNATE PERPETRATOR" were served on the following in the manner indicated below:

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

Dated this 6th day of June 2025.

