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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 NUMBER CR01-24-31665**

**SEALED**

**DEFENDANT'S REPLY TO 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, Bryan C. Kohberger, by and through his attorneys of record, and hereby responds to the State's Objection to "Defendant's Offer of Proof Re: Alternate Perpetrators" and

“Defendant’s Evidence in Support of Offer of Proof of Alternate Perpetrator,” filed on June 6, 2025 (“State’s Objection”).

“Whether rooted directly in the Due Process Clause of the Fourteenth Amendment, or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants ‘a meaningful opportunity to present a complete defense.’” *Crane v. Kentucky*, 476 U.S. 683, 690, 106 S. Ct. 2142, 2146 (1986) (citations omitted). The error excluding such evidence is reviewed de novo on appeal. *U.S. v. Shryock*, 342 F.3d 948, 983 (2003). Due process rules trump evidentiary rules. *U.S. v. Lopez-Alvarez*, 970 F.2d 583, 588 (9<sup>th</sup> Cir. 1992).

When reserving its’ ruling on the State’s Motion in Limine Re: Alternative Perpetrator Evidence, the Court stated “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.’” 2 Clifford S. Fishman and Anne Toomey McKenna, Jones on Evidence §13:38.50 (7th ed.) (Dec. 2024 update). *See* Order Memorializing Oral Rulings on Motions in Limine, p. 6. (4/18/2025). The State has listed [REDACTED]

[REDACTED] as trial witnesses. The State has also disclosed and labeled exhibits that it intends to use at trial, which include the names or actual video of these witnesses. These exhibits include [REDACTED]

[REDACTED] Each of these alternative perpetrators identified by Defendant and listed as witnesses by the State, are more closely tied in knowledge, opportunity, and possible motive to the crime than Mr. Kohberger. All four of the alternate perpetrators are linked circumstantially or directly to the crime. Moreover, given Mr. Kohberger’s expert disclosures that more than one person committed the crimes, other evidence supports the defense theory that Mr. Kohberger is not the person and the crimes were committed by more than one person.

Defendant's offer of proof in part, arises from the State's Motion in *Limine* Re: Alternative Perpetrator Evidence filed on February 21, 2025. On page 2 of that motion, the State argued "In this case, during the course of the investigation, literally thousands of tips regarding possible perpetrators were received by law enforcement...[w]ith the exception of information regarding the Defendant, none of these tips were substantiated." While it is true that there are thousands of tips (somewhere in the range of 45,000 to 75,000 tips and they continue daily), the State has chosen to present evidence of investigations into the specific named individuals and the conclusion that the State has ruled out these possible perpetrators. The State's purported diligence in ruling out possible perpetrators, especially those with close connections to the victims is an issue that State is putting front and center at trial in its own case in chief.<sup>1</sup> Mr. Kohberger has the right to confront this evidence.

The State argues that the evidence submitted in the offer of proof is inadmissible, as explained above, much of it the State seeks to admit in its case in chief. More importantly, in *Chambers v. Mississippi*, the United States Supreme Court held that a defendant's constitutional rights to a fair trial and to present a defense sometimes require admission of evidence of third-person culpability even in the face of evidence rules that would exclude it. Hearsay may be admissible in such cases because the Sixth and Fourteenth Amendment rights to due process, to confront and cross-examine witnesses, and to call witnesses is never precluded. *Id.* 410 U.S. 284, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973). Fairness and trustworthiness of the evidence are important. Mr. Kohberger's proffer includes details that allow this Court to see that there is trustworthiness to his basis for naming four alternate perpetrators.

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<sup>1</sup> The Court cannot consider or weigh the strength of the State's "conclusion" that a suspect has been cleared in deciding if the Defendant's evidence is admissible. *Holmes v. South Carolina*, 547 U.S. 319 (2006) (Forensic evidence existed but could still be refuted by third party perpetrator evidence of a person in the neighborhood. It was reversible error to exclude it.)

The police reports and tips submitted as exhibits in the offer of proof are documents that provide basis to show a link to the case that is more than speculation and grounds that explain the subject of cross examination or direct examination of witnesses. While the tips themselves may be inadmissible, they are evidence that this Court must consider in determining if there is a link and more than mere speculation.

When evaluating alternate perpetrator evidence for case link or nexus, some courts demonstrate a willingness to admit purely circumstantial evidence that a third party committed the crime. *U.S. v. Stever*, 603 F.3d 747, 757 (9th Cir. 2010). Some courts hold that even when the state's evidence is purely circumstantial, the third-party culpability must clearly point to a specific third party, i.e. "Some act connecting the alternate suspect to the crime." *People v. Salazar*, 272 P.3d 1067, 1073 ¶ 22 (Colo. 2012); *State v. Clark*, 78 Wash. App. 471, 898 P.2d 854, 858 (Div. 2 1995). In *Jones v. Wood*, 207 F.3d 557 (9th Cir. 2000) the Ninth Circuit, noted that the evidence at Jones' murder trial was primarily circumstantial in nature, and concluded that the state trial judge erred in excluding Jones' circumstantial evidence that an alternate suspect committed the crime. Whether direct or circumstantial, all of the alternate perpetrator evidence proffered by Mr. Kohberger has both specificity of person and connection to the crime.

With respect to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

That is not a thorough investigation. That is not suspect elimination as the State argues.

Mr. Kohberger did not produce these suspects. The State did and, in some instances, continue to investigate them or simply stopped their investigation, ignoring evidence that there was more than one perpetrator. Prosecutor Bill Thompson said he could not rule out two

perpetrators from the very beginning. <https://www.nbcnews.com/news/us-news/police-may-looking-one-suspect-idaho-college-slayings-prosecutor-says-rcna57654> (Last Reviewed June 6, 2025). Mr. Kohberger's offer of proof was not an exhaustive list of all the evidence disclosed in this case that points to the four alternate perpetrators. In fact, the State's opposition disclosed [REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] By listing these alternative perpetrator names on their witness list and by listing various exhibits on their exhibit list which pertain to these individuals, the State has opened the door for Mr. Kohberger to confront this evidence and cross examine State witnesses. Mr. Kohberger suspects that the State has listed the four alternate suspects as a ruse, to make it look as if they will put the four males on the stand to deny their involvement. These witnesses must be confronted and therefore if the State seeks not to call them to the stand, but instead uses lab reports to portray elimination, the door is opened to confront that evidence and Mr. Kohberger should be allowed to call the alternate perpetrators and other witnesses to show their connection to the crime. How each piece of evidence becomes admissible at trial depends on how the State offers it, triggering Mr. Kohberger's right to confront such evidence. Mr. Kohberger must be allowed to develop this evidence and a ruling excluding or limiting this area of inquiry at this point would be premature. The United State's Supreme Court ruling in *Chambers* allows for

[REDACTED]

[REDACTED]

the admission of the evidence. The State agrees, at a minimum to this confrontation in its' objection. This Court should allow Mr. Kohberger to present alternate perpetrator evidence.

DATED this 13 day of June, 2025.



ELISA G. MASSOTH

ELISA G. MASSOTH, PLLC ATTORNEY

### CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served as indicated below on the 13 day of June, 2025 addressed to:

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