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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**

BRYAN KOHBERGER,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No.: CV01-26-15094

**AFFIDAVIT OF GREGORY R. RAUCH
IN SUPPORT OF MOTION TO
DISQUALIFY JUDGE FOR CAUSE**

STATE OF IDAHO)
) ss.
County of Latah)

I, Gregory R. Rauch, being first duly sworn upon my oath, depose and say:

1. I am counsel of record for Petitioner Bryan C. Kohberger in this post-conviction proceeding. I make this Declaration pursuant to I.R.C.P. 40(b)(2) in support of Petitioner's Motion to Disqualify Judge for Cause.

2. The specific ground for disqualification is I.R.C.P. 40(b)(1)(D). Petitioner contends that the circumstances identified below, considered cumulatively, support disqualification for cause and/or voluntary disqualification for the reasons explained in the accompanying memorandum.

3. Attached as **Exhibit 1** is a true and correct copy of the *unsealed* portions of the June 18, 2025, transcript of proceedings concerning Defendant's Motion to Continue and alternative-perpetrator matters.

4. Attached as **Exhibit 2** is a true and correct copy of the relevant portions of the July 2, 2025, change-of-plea hearing and July 23, 2025, sentencing transcript.

5. Attached as **Exhibit 3** is a true and correct copy of Defendant's May 20, 2025, Motion to Continue.

6. Attached as **Exhibit 4** is a true and correct copy of the June 26, 2025, public Memorandum Decision and Order denying Defendant's Motion to Continue.

7. Before entry of Kohberger's guilty pleas, trial counsel represented to the Court that substantial discovery review and investigation remained incomplete and that additional time was necessary to provide constitutionally adequate representation.

8. On June 26, 2025, the Court denied the requested continuance and made the findings and statements reflected in Exhibit 4.

9. Six days later, on July 2, 2025, Kohberger entered guilty pleas before Judge Hippler.

10. At sentencing on July 23, 2025, Judge Hippler made the statements concerning Kohberger's capacity for truthfulness and general character reflected in Exhibit 2.

I declare under penalty of perjury pursuant to the laws of the State of Idaho that the foregoing is true and correct.

DATED this 27th Day of August 2026.



Gregory Rauch
Attorney for Petitioner

SWORN AND SUBSCRIBED to before me on this 27th Day of August 2026





NOTARY PUBLIC in and for the State
of Idaho, residing in Moscow.
My commission expires: 10-01-2026.

CERTIFICATE OF SERVICE

I hereby certify that on the 27th Day of August 2026 I caused a true and correct copy of the foregoing to be served on the following in the manner indicated below:

Prosecutor:
Latah County Prosecutor's Office
Email: paservice@latahcountyid.gov

- ☐ U.S. Mail
- ☐ Overnight Mail
- ☒ Odyssey
- ☐ e-mail
- ☐ Courthouse Mail

MAGYAR, RAUCH & ASSOCIATES, PLLC

By: /s/ Matt Ruck
Matt Ruck,
Paralegal to Mr. Rauch

EXHIBIT 1

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.	)	Case No: CR01-24-31665
	)	
BRYAN C. KOHBERGER,	)	
	)	
Defendants.	)	

TRANSCRIPT OF OPEN/CLOSED PROCEEDINGS
BEFORE THE HONORABLE STEVEN HIPPLER
June 18, 2025
12:40 P.M.

CERTIFIED TRANSCRIPT

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A P P E A R A N C E S

FOR THE STATE:

William W. Thompson, Jr.
Ashley S. Jennings
Joshua D. Hurwit
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FOR THE DEFENDANT:

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Bicka Barlow (Pro Hac Vice)
2358 Market Street
San Francisco, CA 94114

1 WEDNESDAY, JUNE 18, 2025

2 BOISE, IDAHO

3
4 THE COURT: This is CR01-24-31665,
5 State v. Kohberger. For the State, we have Mr. Thompson
6 and Mr. Hurwit. The defendant is present with counsel,
7 Ms. Taylor, Ms. Massoth, and Ms. Barlow.

8 This is the time set for -- or at least
9 the public portion of today's hearing is set for the
10 motion to continue the trial filed by the defense.

11 So we'll start with that.

12 MS. TAYLOR: Good afternoon, Your Honor.

13 Your Honor, our motion to continue has
14 been filed and is necessary to protect Bryan
15 Kohberger's rights under the United States
16 Constitution and the Constitution of the State of
17 Idaho. Specifically, a continuance is necessary to
18 protect his due process rights, his rights to a fair
19 trial, his rights to effective assistance of counsel,
20 his rights to confrontation, Mr. Kohberger's right to
21 present a full defense, and, if it should come to it,
22 a fair sentencing hearing and to be free from cruel
23 and unusual punishment.

24 The record of this case spans two and a
25 half years, and it shows that this request does not

1 come as a surprise. Looking through the history of
2 this case shows that the defense has met challenges
3 and difficulties along the way but has been dedicated
4 in meeting all of the deadlines.

5 We have talked about the discovery
6 issues in this courtroom before, and that, in large
7 part, brings us to need a continuance. 68 terabytes
8 of information is a huge amount of information. There
9 have been three requests for additional discovery over
10 the span of two and a half years and seven motions to
11 compel.

12 When I say that this doesn't come as a
13 surprise, that this comes from the record, I would
14 direct the Court to look back to May of 2023 and June
15 of 2023 and our second motion to compel. Included in
16 that was what was known as Exhibit A from the Defense,
17 and that depicted how we were receiving discovery.

18 So this is not a new issue. This is
19 something that has been coming up for a long time. We
20 were receiving discovery, but it was such that you
21 would get a file that would say hundreds of
22 photographs, hundreds of pages of reports, each having
23 to be looked at individually to know what was there
24 and then organized.

25 This case has also faced unique issues,

1 starting with the media coverage of this high-profile
2 case, non-dissemination orders that were addressed in
3 court, and then the grand jury materials we had to
4 fight to get access to before we could properly
5 challenge the grand jury indictment.

6 We faced issues with discovery,
7 particularly with the IGG materials. We spent a great
8 deal of time trying to get access to those materials.
9 Ultimately, what we could get was ultimately presented
10 in a motion to suppress, and that's preserved should
11 there be a conviction in this case.

12 We faced venue issues in this case,
13 culminating in the change of venue bringing us to Ada
14 County. At the first hearing in this courtroom, we
15 discussed the discovery issues and not having read
16 everything and being ready with a full investigation
17 in this case. That was apparent through our motions
18 to strike the death penalty, our motions to compel
19 expert disclosures filed in September and December of
20 2024, and requests for more time to file our motions
21 in limine that was granted in January of 2025.

22 Throughout the course of the motions in
23 limine and then a motion to strike death based on
24 discovery issues in February and March of this year,
25 the record is replete with notice that we are not

1 prepared to go to trial in this case. The discovery
2 is vast, and we have not had a chance to review it
3 all.

4 That we met deadlines for experts shows
5 our dedication to comply with the Court's orders; it
6 does not depict effective counsel ready to go to trial
7 on this case.

8 We'd submit it's the Court's
9 responsibility to assess this motion to continue with
10 heightened due process that's required in death
11 penalty cases.

12 Death penalty case is different. That
13 comes from *Ford v. Wainwright*, 477 U.S. 399, at 411.
14 The Court must be sensitive to safeguard every avenue
15 of due process. The Idaho Supreme Court said, "The
16 qualitative difference between death and other
17 penalties calls for a greater degree of reliability
18 when death is imposed." And that comes from *State v.*
19 *Creech*, 105 Idaho 362, at 383.

20 Looking at all of the constitutional
21 rights Mr. Kohberger has, effective assistance of
22 counsel really becomes the crux of how all of these
23 other rights are covered for Mr. Kohberger. Effective
24 assistance of counsel applies both to the merits phase
25 and the penalty phase of a death penalty case. Courts

1 are guided and counsel is guided by the American Bar
2 Association guidelines on capital cases. Wiggins v.
3 Smith, 558 U.S. 510, at 524, says, "The ABA guidelines
4 are guides to determine what is reasonable," and that
5 is talking about reasonable performance by defense
6 counsel in a capital case. The Ninth Circuit in
7 Andrews v. Davis at 944 F.3d 1092, at 1109, relies on
8 the ABA guidelines as the proper measure to test an
9 attorney's investigation.

10 In Idaho, our public defender statutes
11 reference the ABA guidelines as applying to indigent
12 defense. These apply to the full investigation of the
13 merits phase and require us to raise all legal claims.
14 They require us to perform a background on all
15 witnesses that might be called, especially those being
16 called by the State.

17 That means that we have to review all
18 discovery to be able to present a full defense for
19 Mr. Kohberger. We cannot present what we are not
20 aware of. I would note for the Court that discovery
21 has been ongoing. I received discovery just this
22 week. It is discovery that I have not reviewed yet.

23 Considering what is required at a
24 penalty phase in a capital case, we're required to
25 perform in a way that the jury can carry out their

1 function of individualized sentencing. That means
2 that Mr. Kohberger's background has to be known and
3 investigated and ready to present to the jurors;
4 evidence of his character has to be known and ready to
5 present to the jurors; and his circumstances have to
6 be known and ready to present to the jurors.

7 That is addressed in the Woodson case
8 and in the Lockett case. The jury must have the
9 opportunity to consider all evidence that may weigh
10 against the death penalty, and that means anything
11 from his life history. It is the duty of the defense
12 to find and investigate all mitigating information.

13 We do have several experts that would
14 be ready for the mitigation portion of the case should
15 the case reach that phase, and they rely on
16 understanding the family history and Mr. Kohberger's
17 own history. They can only understand what they have
18 been presented, and the investigation to fully
19 evaluate needs to be thorough. That means that
20 records have to be collected, that means that
21 interviews, collateral interviews have to be done, and
22 those have not all been completed. And it's not
23 because of the lack of diligence in this case.

24 Further, when things that are noted as
25 red flags arise, those things must be investigated.

1 Red flags aren't fanciful ideas of what else could we
2 do in this case; they're real things that come up in
3 the course of the investigation, and whether or not
4 they're important to mitigation and presentation for a
5 jury's consideration requires time to investigate and
6 collect records. Documentation is very important.

7 The Court is aware that red flags have
8 come up and they require further investigation. Those
9 are issues that may mean a lot to the experts that
10 would be ready to testify, but they can't be presented
11 until there's a full investigation. They are things
12 that might change the course of the evaluation or
13 might require us to have an additional expert to help
14 explain certain circumstances, and that is important
15 for the individualized sentencing that's required by
16 the Constitution.

17 Your Honor, there have been numerous
18 challenges with gathering records and interviewing
19 collateral witnesses. I know the Court is aware of
20 some of those particular issues, I'm not going to
21 highlight them now, but it's imperative that we be
22 able to collect records and conduct interviews from
23 other family members besides just Mr. Kohberger and
24 his parents. And it is also imperative that his
25 history be complete with educational records, medical

1 records, and those things are still being done to this
2 day.

3 The other reason that a continuance is
4 appropriate in this case is based on the media
5 coverage, the Dateline issue that has been talked
6 about in this courtroom before, and what is yet to
7 come. The Dateline episode wasn't just a one-time
8 deal back in May. That continues to be talked about.
9 Everything that happens in this case continues to be
10 talked about, and this Court has a duty, a
11 responsibility to make sure that Mr. Kohberger
12 receives a fair trial. That comes from Sheppard v.
13 Maxwell, 384 U.S. 333. And a continuance may be the
14 way that the Court can best protect Mr. Kohberger.
15 That comes from Patton v. Yount, 467 U.S. 1025.

16 In addition to what is going on with
17 what happened with the Dateline episode, that's not
18 all. There's a book set to be released a few weeks
19 from now, to be followed by a docuseries on Amazon
20 Prime. There's a claim that there's inside sources
21 that provide information in this case.

22 At the very least, the moment we start
23 attempting to select a jury in this case, those things
24 are going to be on everybody's TV, everybody's social
25 media feed, and some of the very witnesses that will

1 be expected to testify will be taking part, in the
2 docuseries at least, and may be noted in the book.
3 That is, in and of itself, an exceptional reason for
4 us to have a continuance to let those things play out
5 for a while.

6 I would also note, Your Honor, that
7 jury selection is going to be particularly challenged
8 and we'll need a great deal of time based on what has
9 happened in the media and continues to happen.

10 Your Honor, our request is for a
11 continuance in this matter to allow us to be effective
12 and perform our constitutional duty for Mr. Kohberger
13 to protect his constitutional rights, to make sure
14 that we have fully investigated all mitigating
15 circumstances so the jury, if it comes to it, can
16 perform their individualized sentencing, judgment and
17 function and to allow some space between what has
18 recently happened in the media.

19 Thank you.

20 MR. HURWIT: May I, Your Honor?

21 THE COURT: Of course.

22 MR. HURWIT: Thank you, Your Honor.

23 I will, I think, address Ms. Taylor's
24 argument sort of in the reverse order in which she
25 raised the issues she raised. I want to begin,

1 though, by bringing us and the Court back to what the
2 standard is for this motion to continue, as opposed to
3 what may happen after a conviction with respect to
4 ineffective assistance of counsel.

5 Right now the standard is whether
6 denying a continuance would violate the defendant's
7 rights by causing unfair prejudice. That is the
8 objective standard the Court has, and the Court has
9 discretion on all motions to continue, including
10 motions to continue in a case such as this that
11 involves the death penalty.

12 What the defendant and counsel are
13 asking the Court to do is delay this trial because of
14 their subjective prospective beliefs about how an
15 ineffective assistance of counsel evaluation would
16 happen by an appeals court if there were a conviction.

17 What this Court should do is use its
18 discretion and look at the objective record. The
19 record supports denying the motion based on what the
20 Defense has been doing, continues to do, and will
21 continue to do through the mitigation phase until the
22 penalty phase, including presenting mitigation
23 evidence that the jury will ultimately decide about if
24 there's a conviction. The lens through which the
25 Court should look at this motion is well stated in

1 some Idaho case law and others.

2 If I can turn on the Elmo. Do I need
3 to hit this button, Your Honor?

4 THE COURT: The clerk needs to switch it over.

5 MR. HURWIT: These are cases we cited in our
6 brief, and I wanted to start my discussion with them.
7 I'll read the top case, which is an Idaho Supreme Court
8 case evaluating whether counsel is effective in a death
9 penalty case.

10 "Counsel is not required to investigate
11 Defendant's entire life in order to objectively and
12 reasonably present mitigation evidence."

13 And then I like the way that the
14 Seventh Circuit sort of rephrased the same principle
15 by saying -- and I won't read the entire quote, Your
16 Honor, but a scorch-the-earth strategy is not
17 required. We are in a standard of reasonableness, and
18 the record that is before the Court -- and I'll
19 acknowledge we have not seen what specifics, if any,
20 the Defense has put forward in its ex parte filing --

21 THE COURT: It makes it kind of hard for you, I
22 recognize.

23 MR. HURWIT: It does. We have not seen
24 specifics. I did not hear any specifics from counsel
25 just now about these witnesses need to be contacted,

1 these records need to be obtained. And then the Court,
2 I think, mentioned at a prior hearing it had when this
3 motion to continue was first raised that the Court would
4 be looking at what admissible evidence the Defense needs
5 to obtain and what strategies would actually be used to
6 fruitfully obtain that evidence. And we don't have
7 anything that we can respond to about that, so I'm at a
8 bit of a disadvantage, Your Honor. But I think the
9 record we do have shows that the Court can use its
10 discretion to deny this motion to continue.

11 What we did in our response brief,
12 Your Honor, was to cite the fact that the Defense has
13 identified 55 defense witnesses for mitigation -- and
14 I think one was recently added, so we're up to 56 --
15 and 132 exhibits to use at the mitigation phase. And
16 with respect to the ABA standards, we're not saying
17 the Court should completely ignore them, but what we
18 are saying is that the Court should look at them for
19 what they are, which is a retrospective tool for
20 appellate courts to look at the performance of counsel
21 after a conviction, not some checklist that needs to
22 be religiously adhered to in order to actually get to
23 trial.

24 Even if the Court were to rely on them
25 heavily, though, the charts that we put together show

1 that for each of the ABA guideline's categories the
2 Defense has raised, we have seen evidence in the
3 record that shows that they have witnesses to talk
4 about those issues, and they have discovery on those
5 issues themselves. Now, the defense has called that
6 superficial, but we would ask the Court to look at the
7 tables and look at the witnesses that we've been able
8 to identify for each category and also the discovery
9 in the record.

10 So, Your Honor, again, we think that
11 given legal standards here on a motion to continue,
12 given the Court's discretion, given that we are in a
13 world where the Court needs to satisfy itself that the
14 Defense has done a reasonable job to prepare for
15 trial, there's no basis for a motion to continue.

16 Let me turn to some of the specific
17 arguments -- and I can take this down, Your Honor --
18 that Ms. Taylor raised. With respect to the media
19 coverage, we acknowledge, as the Court has, that it
20 will pose challenges for jury selection. The issue,
21 though, is not whether there is a lot of publicity; we
22 know there's going to be a lot of publicity.
23 Regardless of when this trial happens, as Ms. Taylor
24 said, people will continue to talk about this case.
25 The issue is whether the Court, using the procedures

1 it has established, or maybe even modifying them as
2 the Court wants to, can seek a panel of impartial
3 jurors. The Supreme Court of Idaho has found that
4 despite widespread publicity, even on the day of jury
5 selection, that is possible. That is possible in this
6 case despite the challenges.

7 The other thing I would mention with
8 respect to the publicity is that it puts us at the
9 whim of the media. Every time there's a breaking
10 story, every time there's a new book or a new
11 documentary, are we going to continue the trial
12 indefinitely? And that seems to be the danger in what
13 the Defense is asking for. We call it a perpetual
14 continuance. We haven't seen a proposal about when
15 this trial could take place if there is a continuance.
16 What seems to be the strategy here is just to delay.

17 And that leads me to the other point
18 Ms. Taylor raised, which was to say that this
19 shouldn't be a surprise. It is a surprise to us that
20 a motion to continue was made so late in the game,
21 after, by the way, the trial date was used to oppose
22 an extension that we filed with respect to our mental
23 health expert. At that point, the Defense said we
24 can't possibly go down this road or give the
25 government what -- the State what it wants because of

1 the trial date. Once that issue was resolved, then we
2 get a motion to continue.

3 So I think what we have seen from the
4 Defense is that they tried to use the massive amount
5 of discovery to remove the death penalty from the
6 table. When that failed, now we have a motion to
7 continue.

8 So I do think timing is relevant here.
9 Again, it's not just that Defense waited so long, it's
10 that we now have a very substantial record on which
11 the Court can deny this motion based on everything
12 that's been put in front of the State and the Court.

13 In terms of the mitigation
14 investigation, Your Honor, we believed, but did not
15 have confirmation, that the Defense had a mitigation
16 specialist until the reply brief on this motion
17 alluded to an affidavit that that mitigation
18 specialist submitted. I don't know what that says, I
19 don't know what the mitigation specialist has said,
20 but the fact that there is a mitigation specialist,
21 apart from the three attorneys and two investigators
22 that are part of the defense team, that person has one
23 role, as I understand it, which is to prepare for the
24 penalty phase if we get there, and that specialist has
25 still time to continue doing whatever work they told

1 the Court they need to do.

2 Your Honor, again, I would try to get
3 back to the record and ask the Court to look at the
4 objective record when evaluating this motion: 55
5 mitigation witnesses, over 130 exhibits, a very robust
6 team on the Defense side, which includes their
7 retained experts. Ms. Taylor, in the briefing, really
8 honed in on this idea of a social life history for the
9 defendant.

10 I don't know if the Court has read the
11 expert reports of the defendant's forensic
12 psychiatrist and the licensed psychologist -- I won't
13 discuss the details in open court -- but our position
14 is that both of those specialists, well-trained, very
15 experienced specialists, conducted significant,
16 fulsome life history investigations. They weren't
17 just looking at records, they were talking to people
18 from the defendant's past, from his present, his
19 family, and developed parallel life histories. And in
20 their reports, as I read them, no red flags that
21 needed further investigation were noted, nothing about
22 those reports appeared to be incomplete, and the
23 experts didn't say we are unable to reach the
24 conclusions we need to reach for lack of
25 investigation.

1 So I think that is sort of proof in the
2 pudding. We have a life history for the defendant,
3 the Defense has amassed significant materials, and I
4 thought we were going to be solely talking about the
5 mitigation case that still needs to be developed.
6 That is not a basis for a continuance.

7 And to the extent there is ongoing
8 discovery from the State that Ms. Taylor alluded to, I
9 can represent that most of what was just turned over
10 is our investigators speaking with witnesses that the
11 Defense has disclosed. That is the nature of that
12 discovery is us responding to discovery from the
13 Defense. And that will continue, of course, to occur
14 as we head to trial and witnesses make statements that
15 we need to disclose to the Defense.

16 With that, Your Honor, I would, again,
17 rest on the case law holding that a scorch-the-earth
18 investigation is not what is required, and on the
19 record before the Court, the Court should exercise its
20 discretion to deny the motion.

21 If the Court has any questions, I'm
22 happy to answer those. Otherwise, we would submit on
23 the record before the Court.

24 THE COURT: Thank you.

25 MR. HURWIT: Thank you.

1 THE COURT: Any reply?

2 MS. TAYLOR: Yes, thank you.

3 I would start with noting that if the
4 new discovery is the State's contact of witnesses
5 we've listed, the State knows that there are
6 mitigation witnesses that we've listed because we had
7 to disclose them, but they are people that have
8 refused to speak with us.

9 That presents a challenge in the case.
10 A lot of the witnesses that refused to speak with us
11 have to do with records, medical records of Bryan
12 Kohberger, past treatment records of Bryan Kohberger.
13 Those are important things that the gravity of what
14 they have to say can't be known to our experts until
15 we have the opportunity to fully understand those
16 things. And we continue to work on access to
17 witnesses and access to additional information.

18 Your Honor, I want to touch on just a
19 couple of points. One, when the Court considers a
20 continuance, it considers whether Bryan Kohberger's
21 rights are violated. His right to a fair trial, his
22 right to confront witnesses and evidence against him,
23 his right to present a full defense, and his right to
24 effective assistance of counsel are implicated and
25 laid out in our motion to continue.

1 The ABA guidelines require us to do a
2 full investigation. It's not going scorched earth to
3 understand Bryan Kohberger's full life history. These
4 are things that are required. And we have done
5 everything that we can. We have had a mitigation
6 expert on the case. This is two and a half years into
7 a case, and the average for capital cases is three and
8 a half years.

9 THE COURT: In federal court.

10 MS. TAYLOR: In federal court.

11 THE COURT: Which moves at a snail's pace, in
12 its best day, in regular cases.

13 MS. TAYLOR: I'm not a practitioner in federal
14 court, so I don't have any basis to talk to the Court
15 about that, but what I can tell you is that a capital
16 case where we have a client and we need to investigate
17 both the merits phase and a penalty phase at the same
18 time, takes time. In any case it takes time to do that.
19 In this case, with the high-profile nature and having
20 people decline to talk to us, presents a whole set of
21 challenges that we have to find a way to work through.

22 As the Court knows, a lot of mitigation
23 information is very sensitive information. It takes
24 some time to be able to get people to talk about
25 things. Realities exist, too. Not all of the family

1 members are in the same place, so there's travel
2 that's required. And all of those things take time to
3 do in a case like this.

4 Two and a half years is excessively
5 fast to put all of that together. There was no delay
6 in having a mitigation expert on board. There was no
7 delay in getting investigators to work on the case.
8 And as soon as issues became apparent, Mr. Kohberger's
9 team did not delay in getting experts to help us
10 understand specific areas of the case.

11 Looking over the entire record, the
12 Court can see that the Defense team has been diligent
13 about discovery, about motion practice, about
14 litigating issues in the case. There just still is a
15 lot left to do. There's still a lot left that is not
16 known. And Mr. Kohberger has a right to go to trial
17 with prepared counsel that have conducted a full
18 investigation in both phases of the case.

19 When you have a certain amount of
20 information, and there's this other stuff that's out
21 there that's a red flag that's real that you need to
22 investigate, your experts can only do what's here,
23 what's been investigated, what's been produced for
24 them to assess. This whole other area, that land
25 between the red flags and the investigation, that's an

1 unknown area, that's where there's ineffective
2 assistance of counsel, that's where there's not a fair
3 trial, that's where there's not an individualized
4 sentencing proceeding, and it's that area that
5 requires a continuance in this case.

6 THE COURT: I'll take the matter under
7 advisement and get an opinion out in short order. In
8 the meantime, I fully encourage everyone to continue as
9 if the trial is going to take place when it is
10 scheduled. Again, I reserve the right to write the
11 decision that I come to, but as of now, I would tell you
12 it's likely you're going to trial on the date indicated.

13 All right. Are there any other matters
14 that we need to take up in the public session before
15 we break to go to the private session?

16 MS. TAYLOR: Nothing further for the public
17 session, Your Honor.

18 MR. THOMPSON: No, Your Honor, I don't believe
19 so.

20 THE COURT: All right. We'll take a ten-minute
21 break while the bailiffs clear the courtroom and set up
22 for the private session.

23 (Recess.)

24 (Closed Session.)

25 THE COURT: We are, for the record, now in the

EXHIBIT 2

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.	)	Case No: CR01-24-31665
	)	
BRYAN C. KOHBERGER,	)	
	)	
Defendant.	)	

TRANSCRIPT OF **OPEN/STREAMED** PROCEEDINGS

BEFORE THE HONORABLE STEVEN HIPPLER

July 2, 2025

July 23, 2025

CERTIFIED TRANSCRIPT

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Stenographer: Christie Valcich, CSR-RPR

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A P P E A R A N C E S

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I N D E X

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1 WEDNESDAY, JULY 2, 2025

2 BOISE, IDAHO

3
4
5 THE COURT: This is CR01-24-31665. The
6 defendant is present in custody with counsel,
7 Mr. Thompson -- sorry, Ms. Taylor and Ms. Massoth and
8 Ms. Barlow. The State is present with Mr. Thompson,
9 Mr. Hurwit, Ms. Jennings. And Mr. Nye is here as well.

10 Did I miss anybody?

11 MR. THOMPSON: Ms. Allen is here as well.

12 THE COURT: We are here today to entertain a
13 change of plea.

14 Before I start, I want to address some
15 issues of concern and otherwise. First, I appreciate
16 everybody in attendance today being on their best
17 behavior. Please, no outbursts or demonstrations.
18 Any such conduct will result in immediate removal and
19 may result in an inability to attend further court
20 proceedings in this case.

21 I want to point out there have been
22 calls by some for the public to contact me and my
23 office in an attempt to influence my decision-making
24 in this case. This has been extraordinarily
25 disruptive for court staff and the ability for them to

1 get work done, not only in this case but in other
2 cases where defendants are entitled to have their
3 cases processed, and, frankly, as important, if not
4 more so, for victims to have their cases processed in
5 those cases.

6 It's also highly inappropriate. The
7 Court is not supposed to, and this Court will never,
8 take into account public sentiment in making an
9 opinion regarding its judicial decisions in cases.
10 Courts should, and I always will, make decisions based
11 on where the facts and the law lead me. Period.

12 I have not read any of the numerous
13 messages nor listened to any of the numerous
14 voicemails that have been sent to me and my staff.
15 Those have all been forwarded to security and, where
16 appropriate, to law enforcement. I ask that you not
17 continue to mount such campaigns or to send me
18 information like this because, again, it is not
19 appropriate and, frankly, not something I would take
20 into account when deciding a matter in a case like
21 this.

22 I also want people to understand some
23 very basic concepts about the idea of separation of
24 powers; what the Court's duties are, and what the
25 duties and the rights of the executive, or in this

1 case the prosecuting attorney, is.

2 The executive, the elected prosecutor,
3 is the sole authority in deciding what charges to
4 pursue, as well as what penalties to ask for and what
5 penalties to pursue, including the death penalty.

6 This Court cannot require the
7 prosecutor to seek the death penalty, nor would it be
8 appropriate for this Court to attempt to do that.

9 This Court, in considering a plea
10 agreement, if it were to reject this plea agreement,
11 cannot force the State to seek the death penalty. My
12 role and power in considering a plea agreement is
13 extremely limited. My role is to ensure that the
14 defendant's plea is given freely and voluntarily and
15 intelligently. If those things are met, I can only
16 reject a plea -- such as the one in this case, where
17 I'm not being asked to agree to the sentence in
18 advance -- I can only reject it, for example, if the
19 defendant does not meet or admit to all the elements
20 of the crime; that is, I can ensure what is called a
21 "factual basis" to the plea.

22 Finally, I want to offer my apologies
23 to all the families, including the victims' families,
24 the families of the defendant, for the short notice
25 for today's hearing and I'm sure what must have been

1 the hurried efforts to get here. I, like most
2 everybody else, learned of this plea agreement Monday
3 afternoon and had no inkling of it beforehand. Prior
4 to that time, I was under the belief this case was
5 proceeding to trial, as had been indicated, and my
6 staff and I were busy continuing to work on
7 preparations to have potentially 10,000 citizens of
8 Ada County come to jury duty starting in mid-July --
9 with the questionnaire process in mid-July.

10 Once I learned of the defendant's
11 decision to change his plea in this case, it was
12 important that I take the plea as soon as possible
13 because of the extraordinary administrative efforts
14 that were otherwise attendant to the process of
15 getting this trial potentially underway on time,
16 including the significant process of bringing, again,
17 potentially up to 10,000 jurors to come in and fill
18 out juror questionnaires prior to the beginning of the
19 voir dire process. And so it was important that we,
20 if we are going to go down this road, do so
21 expeditiously so that we can avoid those costs and
22 expenses associated with that.

23 Otherwise, if it was not going to
24 result in a plea or for some reason the plea were to
25 fall through today, we can continue diligently towards

1 trial at the time specified. That obviously required
2 that we act quickly, and so some folks may have not
3 had the amount of time that we would otherwise allow
4 for them to travel here, and so, again, I apologize
5 for that.

6 I want to make people aware that during
7 the hearing, if you are to leave the courtroom for any
8 reason, you will not be readmitted during the hearing.
9 Also, when we finish the hearing this morning, I ask
10 the public and media to wait in their seats until the
11 victims' families and the defendant's family and
12 others are escorted out of the courtroom before you
13 start to leave.

14 Finally, I want to acknowledge the
15 Trial Court Administrator and her staff, the Ada
16 County Sheriff, and the Ada County Fourth District
17 Marshal's service for the huge lift that they have
18 accomplished in preparing for and orchestrating this
19 hearing today, as well as to all the security
20 attendant today that you see, and many of whom you
21 don't see, with less than 48-hours notice. I
22 appreciate the hard work that they've been doing,
23 frankly, some of them while they were on vacation
24 prior to the trial starting and had to call that
25 short. So I appreciate very much their

1 professionalism and dedication.

2 All right. With that said, let's move
3 to the business of today. I understand the State and
4 the Defense have reached a plea agreement in this
5 case. For the record, I have a written plea agreement
6 which indicates, in sum, the defendant will plead
7 guilty to all five counts in the indictment; burglary,
8 felony, and first-degree murder, four counts. The
9 State and the Defendant stipulate that the Defense is
10 not free to argue for a lesser sentence at sentencing,
11 to the following:

12 The defendant, on the burglary charge,
13 will be sentenced to 10-years fixed. And that the
14 defendant on Count II through V, the four counts of
15 first-degree homicide, on each count would receive a
16 fixed life sentence, all five of those counts to run
17 consecutive to one another.

18 The defendant, as part of the plea
19 agreement, waives his right to appeal, as well as his
20 right to appeal the sentence and his right to seek
21 leniency or reconsideration of the sentence under
22 Idaho Criminal Rule 35.

23 This is not a Rule 11 agreement,
24 meaning the Court is not bound by the plea agreement
25 and could impose a different lawful sentence at

1 sentencing. The stipulated agreement between the
2 parties is the maximum on each count, so
3 theoretically, the only thing the Court could do would
4 be a lesser sentence at sentencing, but the defendant
5 is not free to ask the Court to do so under the plea
6 agreement.

7 Are there any other material terms of
8 the plea agreement that the parties would like to
9 make? Obviously, the plea agreement -- the written
10 plea agreement will speak for itself and be part of
11 the court record.

12 MR. THOMPSON: Not from the State, Your Honor.
13 Thank you.

14 MS. TAYLOR: No, Your Honor. Thank you.

15 THE COURT: Very well.

16 Ms. Taylor, have you had sufficient
17 time to discuss this case and all of its ramifications
18 with your client?

19 MS. TAYLOR: I have, Your Honor.

20 THE COURT: Have you discussed fully with him
21 his rights, defenses, and the possible consequences to
22 him of the guilty plea?

23 MS. TAYLOR: Yes, Your Honor.

24 THE COURT: Have you been able to do all the
25 discovery you feel necessary?

1 MS. TAYLOR: Yes, Your Honor.

2 THE COURT: And have you informed your client
3 of the importance of providing the Court truthful and
4 accurate answers in taking this plea today?

5 MS. TAYLOR: I have.

6 THE COURT: Have you apprised your client of
7 any and all offers and counter-offers and answered his
8 questions about those?

9 MS. TAYLOR: Yes.

10 THE COURT: Do you consent to the entry of the
11 plea today?

12 MS. TAYLOR: I do.

13 THE COURT: Mr. Kohberger, I need to ask you
14 some questions this afternoon -- I guess it's this
15 morning still. I do this to ensure that you -- so that
16 I am assured that you understand the nature of the
17 charges to which I understand you're going to plead
18 guilty, as well as the possible consequences to you of
19 your guilty pleas. I want to make sure your plea is
20 given voluntarily, and I want to make sure that you
21 actually committed the crimes to which you're pleading
22 guilty because I don't want you to plead guilty to a
23 crime you didn't commit. If you attempt to plead guilty
24 today but for some reason I don't accept your plea, then
25 it is possible that your statements today could be used

1 against you later at trial.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: All right. Thank you.

5 While you're standing, actually, why
6 don't you take the oath from the clerk.

7 THE CLERK: Please raise your right hand.

8 Do you solemnly swear or affirm that
9 the testimony you shall give in the matter now before
10 this Court shall be the truth, the whole truth, and
11 nothing but the truth?

12 THE DEFENDANT: Yes.

13 THE CLERK: You may be seated.

14 THE COURT: Mr. Kohberger, just to make it
15 easier, you don't need to stand when you speak to me. I
16 appreciate the sign of respect, but for convenience, you
17 can remain seated.

18 Before I start asking you questions
19 today, have you consumed -- substantive questions, let
20 me ask you: Have you consumed any alcohol, drug, or
21 other intoxicating substance that would impair your
22 ability to understand or exercise reasonable judgment?

23 THE DEFENDANT: No.

24 THE COURT: Do you feel like you are thinking
25 clearly today?

1 THE DEFENDANT: Yes.

2 THE COURT: I want you to understand what the
3 possible penalties are for each of the crimes to which I
4 understand you're going to offer a guilty plea today.
5 They include, on Count I, the burglary, a fine of up to
6 \$50,000, and a period of incarceration of up to 10 years
7 in the state penitentiary. You may be required to pay
8 restitution to any victims of the crime.

9 Count II, III, IV and V for
10 first-degree murder, the consequences include a fine
11 of up to \$50,000, a period of incarceration of life
12 imprisonment, which is a requirement of the sentence
13 that it be a life sentence, with a mandatory minimum
14 sentence of at least 10 years on each of those counts.

15 In addition, you will be potentially
16 responsible for a fine of up to \$5,000 to each of the
17 victims of your crime to be enforced in the form of a
18 civil judgment, to operate as additional punishment.
19 This is in excess of any restitution or fines that the
20 Court could order. And, again, you may be required to
21 pay restitution to the victims of the crime.

22 You would be required to provide, as to
23 Counts I, II, III, IV and V, a DNA sample and a right
24 thumbprint impression and potentially pay for analysis
25 of those samples. You would lose any right to

1 possess, purchase, or carry a firearm, the right to
2 serve on jury duty, the right to hold public office,
3 and the right to vote.

4 Do you understand the charges and all
5 those possible consequences?

6 THE DEFENDANT: Yes.

7 THE COURT: You've heard the plea agreement
8 that I talked about today. Do you agree with that plea
9 agreement?

10 THE DEFENDANT: Yes.

11 THE COURT: And do you understand the nature of
12 the charges that are -- that you've been charged with
13 that I understand you're going to plead guilty today to?

14 THE DEFENDANT: Yes.

15 THE COURT: As I indicated, I'm not bound by
16 the plea agreement, but the plea agreement is for the
17 maximum on each count. Do you understand that I'm not
18 bound by the plea agreement?

19 THE DEFENDANT: Yes.

20 THE COURT: Has anyone promised you that I
21 would be lenient or easy on you if you pled guilty?

22 THE DEFENDANT: No.

23 THE COURT: Has anyone threatened you or anyone
24 close to you to get you to plead guilty?

25 THE DEFENDANT: No.

1 THE COURT: Has anyone -- other than the
2 State's agreements with respect to the plea agreement,
3 has anyone promised you anything in exchange for your
4 plea agreement?

5 THE DEFENDANT: No.

6 THE COURT: Has anyone told you to be
7 untruthful in answering my questions today?

8 THE DEFENDANT: No.

9 THE COURT: Has anyone offered you a reward of
10 any kind, other than the plea agreement, in order to get
11 you to plead guilty today?

12 THE DEFENDANT: No.

13 THE COURT: Are you pleading guilty because you
14 are guilty?

15 THE DEFENDANT: Yes.

16 THE COURT: And, counsel, obviously there have
17 been a number of motions filed to suppress evidence in
18 this case.

19 MS. TAYLOR: (Indicates by nodding head up and
20 down).

21 THE COURT: Other than those filed, are there
22 any other motions that you felt were available with
23 respect to Rule 12?

24 MS. TAYLOR: No, Your Honor.

25 THE COURT: Mr. Kohberger, you understand by

1 entering the guilty plea in this case, you would be
2 giving up your right to appeal any decision this Court
3 made, as well as your sentence?

4 THE DEFENDANT: Yes.

5 THE COURT: Have you had enough time to decide
6 whether or not to plead guilty?

7 THE DEFENDANT: Yes.

8 THE COURT: Are you pleading freely and
9 voluntarily?

10 THE DEFENDANT: Yes.

11 THE COURT: Given your choices, do you believe
12 it's in your best interest to plead guilty?

13 THE DEFENDANT: Yes.

14 THE COURT: Have you discussed fully the matter
15 of pleading guilty with your attorney, and are you
16 satisfied with the advice you've received?

17 THE DEFENDANT: Yes.

18 THE COURT: Has your attorney advised you, to
19 your satisfaction, about what your rights are, what your
20 defenses may be, and what the possible consequences to
21 you of your guilty plea are?

22 THE DEFENDANT: Yes.

23 THE COURT: Has your attorney done everything
24 you've asked them to do?

25 THE DEFENDANT: Yes.

1 THE COURT: Are you satisfied with their
2 representation of you?

3 THE DEFENDANT: Yes.

4 THE COURT: I have received a written Guilty
5 Plea Advisory questionnaire that is purported to be
6 filled out by you. Did you fill that document out?

7 THE DEFENDANT: Yes.

8 THE COURT: Did you understand the questions
9 that you answered in this document?

10 THE DEFENDANT: Yes.

11 THE COURT: And are the answers that are
12 outlined in this document your answers?

13 THE DEFENDANT: Yes.

14 THE COURT: Are those answers truthful?

15 THE DEFENDANT: Yes.

16 THE COURT: Did you sign the document?

17 THE DEFENDANT: Yes.

18 THE COURT: This document outlines many of the
19 rights that you have in this case, should you not plead
20 guilty. Did you understand those rights?

21 THE DEFENDANT: Yes.

22 THE COURT: They include a right to a jury
23 trial. Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: They include a right to the

1 presumption of innocence. Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: You have the right to require the
4 State to prove your guilt as to each element beyond a
5 reasonable doubt. Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: They include a right to confront
8 your accusers and cross-examine witnesses presented by
9 the State, including by utilizing the subpoena power of
10 the court to accomplish that. Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand you would have a
13 privilege against self-incrimination and a right to
14 remain silent, meaning you could not be compelled to
15 testify if you did not wish to had you not pled guilty?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand you're giving up
18 that privilege and the rights I just outlined by
19 pleading guilty?

20 THE DEFENDANT: Yes.

21 THE COURT: I want you to understand what the
22 State would have had to have proven at trial had you --
23 to the crimes that you're pleading guilty to, if you
24 didn't plead guilty.

25 As to Count I, burglary, the State

1 would have had to have proven that or about
2 November 13th, 2022, in Latah County, Idaho, you
3 unlawfully entered a residence located at 1122 King
4 Road, in Moscow, Idaho, with the intent to commit the
5 felony crime of murder.

6 As to Count II, the State would have
7 had to have proven that on or about that same date, in
8 Latah County, Idaho, you did willfully, unlawfully,
9 deliberately, with premeditation and malice
10 aforethought, kill and murder Madison Mogen, a human
11 being, by stabbing Madison Mogen, from which she died.

12 As to Count III, the State would have
13 had to have proven on that same date in Latah County,
14 at that same address, you did willfully and
15 unlawfully, deliberately, with premeditation and
16 malice aforethought, kill and murder Kaylee Goncalves,
17 a human being, by stabbing her, from which she died.

18 As to Count IV, the State would have
19 had to have proven that on or about that same date in
20 Latah County, Idaho, you did willfully, unlawfully,
21 deliberately, with premeditation and malice
22 aforethought, kill and murder Xana Kernodle, a human
23 being, by stabbing her, from which she died.

24 As to Count V, also murder in the first
25 degree, that on or about November 13th, 2022, in Latah

1 County, Idaho, you did willfully, unlawfully,
2 deliberately, with premeditation and malice
3 aforethought, kill and murder Ethan Chapin, a human
4 being, by stabbing him, from which he died.

5 Do you understand those things the
6 State would have had to have proven?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand that by pleading
9 guilty, the State no longer has to prove those things
10 because you're admitting those things are true?

11 THE DEFENDANT: Yes.

12 THE COURT: I want to also state, for the
13 record, the defendant has provided, with the guilty plea
14 advisory form, a document entitled "Written Factual
15 Basis" that purports to have the defendant's signature
16 dated 1 July 2025.

17 Did you sign that document?

18 THE DEFENDANT: Yes.

19 THE COURT: Did you agree with the written
20 factual basis that is included there?

21 THE DEFENDANT: Yes.

22 THE COURT: Let me ask you, did you, on
23 November 13th, 2022, enter the residence at 1122 King
24 Road, in Moscow, Idaho, with the intent to commit the
25 felony crime of murder?

1 THE DEFENDANT: Yes.

2 THE COURT: Did you, on November 13th, 2022, in
3 Latah County, State of Idaho, kill and murder Madison
4 Mogen, a human being?

5 THE DEFENDANT: Yes.

6 THE COURT: Did you do that willfully,
7 unlawfully, deliberately, and with premeditation and
8 malice aforethought?

9 THE DEFENDANT: Yes.

10 THE COURT: Did you, on or about that same
11 date, in Moscow, Idaho, kill and murder Kaylee
12 Goncalves, a human being?

13 THE DEFENDANT: Yes.

14 THE COURT: Did you do that willfully,
15 unlawfully, deliberately, and with premeditation and
16 malice aforethought?

17 THE DEFENDANT: Yes.

18 THE COURT: Did you on that same date in
19 Moscow, Idaho, kill and murder Xana Kernodle, a human
20 being?

21 THE DEFENDANT: Yes.

22 THE COURT: Did you do that willfully,
23 unlawfully, deliberately with premeditation and malice
24 aforethought?

25 THE DEFENDANT: Yes.

1 THE COURT: And then on or about November 13th,
2 2022, again in Latah County, Idaho, did you kill and
3 murder Ethan Chapin, a human being?

4 THE DEFENDANT: Yes.

5 THE COURT: Did you do that willfully,
6 unlawfully, deliberately with premeditation and malice
7 aforethought?

8 THE DEFENDANT: Yes.

9 THE COURT: I would ask the State at this time
10 to provide its recitation of its factual basis had this
11 case gone to trial.

12 MR. THOMPSON: Thank you, Your Honor.

13 Your Honor, the organization of the
14 recitation is different than what I think the Court
15 and the public may be familiar with from the probable
16 cause affidavits and other documents.

17 The State's evidence, as an overview,
18 would show that back in March of 2022, when the
19 defendant was residing at his parents' residence, or
20 was residing back in Pennsylvania in his home state,
21 he purchased online a Ka-Bar knife and sheath with an
22 Amazon gift card that he had purchased shortly prior
23 to the purchase of the knife, sheath and sharpener.

24 Jumping ahead. At the end of June of
25 that year, the defendant, Mr. Kohberger, moved from

1 Pennsylvania to Pullman, Washington, which is right
2 across the state line from Moscow, Idaho, for the
3 purpose of pursuing a Ph.D in criminal justice at
4 Washington State University.

5 The State's evidence would indicate
6 that beginning July 9th of 2022, Mr. Kohberger's phone
7 began connecting to a cell tower that serves the area
8 of the 1122 King Road residence in Moscow, Idaho.
9 Now, I will acknowledge for the Court and all present
10 that there are many residences in that area. It is a
11 dense population of mostly college-related occupants.

12 Between July 9th of 2022 and
13 November 7th, the defendant's phone connected to that
14 particular tower during late-night, early-morning
15 hours, 10:00 p.m. to 4:00 a.m., on approximately 23
16 times. Now, I will acknowledge also we do not have
17 evidence that the defendant had direct contact with
18 1122 or with residents of 1122, but we can put his
19 phone in that area on those times.

20 In the interim, on August 22, 2022,
21 Latah County Sheriff's Deputy, Darin Duke, conducted a
22 traffic stop in the late evening hours, about
23 11:00 p.m., on the west side of Moscow on
24 Moscow-Pullman Road. This was a traffic stop of
25 Mr. Kohberger's car, which turned out to be a 2015

1 white Hyundai Elantra with Pennsylvania plates.

2 During the course of the traffic stop, Deputy Duke was
3 able to obtain Mr. Kohberger's name, Bryan Kohberger,
4 his phone number and address, which at that point was
5 an apartment address in Pullman.

6 We then move to the early morning hours
7 of November 13th, 2022. The State's evidence would
8 show that early morning hours on that date,
9 Mr. Kohberger's phone left his Pullman residence,
10 which is an apartment in kind of the central northwest
11 part of Pullman. That phone was then subsequently
12 turned off at approximately 2:54 a.m. and remained off
13 until approximately 4:48 a.m. on Sunday the 13th of
14 November.

15 The State's evidence would include at
16 trial, video surveillance of a business on the
17 Moscow-Pullman Highway, just across the State line
18 from Moscow, that would show a vehicle matching the
19 description of the defendant's Hyundai Elantra
20 entering Moscow at approximately 3:02 a.m.

21 Compiled surveillance that the
22 investigators put together from businesses and
23 residents then show the defendant's car, the white
24 Elantra, as I've described, circling the 1122 King
25 Road area, that neighborhood, starting around 3:30 or

1 so in the morning, comes into the immediate area of
2 1122 King Road, which is actually on a dead end, and
3 leaves several times. At approximately 4:05 that
4 morning, the defendant's car had entered that area,
5 was leaving, stopped at the intersection of King and
6 Queen Road, did a U-turn, and the State's evidence
7 would show that the defendant's car came back and
8 parked behind and above the 1122 King Road residence.

9 The State believes that its evidence
10 would then show that the defendant entered the
11 residence of 1122 through the kitchen sliding door on
12 the back side of the residence, which is the side of
13 the residence that would face the area above where the
14 defendant's car was parked.

15 The defendant entered the residence,
16 went to the third floor, and with a knife killed
17 Madison Mogen and Kaylee Goncalves. The defendant, as
18 he left that room, for whatever reason, ended up
19 leaving -- or the sheath for a Ka-Bar knife was left
20 on the bed next to Madison Mogen's body.

21 And I can jump ahead. That sheath was
22 tested by the Idaho State Police Forensic Lab, and
23 single-source male DNA was found on the snap of that
24 sheath, as well as blood from both Kaylee and Madison
25 and other trace evidence. But it's important to note

1 single-source male DNA was on the snap of that sheath.

2 The State's evidence would show that
3 Xana Kernodle was still awake at this time. In fact,
4 had taken a DoorDash order not long before this
5 started. Her room was not on the third floor, it was
6 on the second floor on the west side.

7 As the defendant was either coming down
8 the stairs or leaving, he encountered Xana, and he
9 ended up killing her also with a large knife. Ethan
10 Chapin, Xana's boyfriend, was asleep in their
11 bedroom -- in her bedroom, and the defendant killed
12 him as well with a large fixed-blade knife.

13 Each victim suffered multiple wounds.
14 I will state for the record that there is no evidence
15 there was any sexual component or sexual assault on
16 any of the victims. I want to make that clear so
17 there's no speculation.

18 There were two other roommates in the
19 house, and they were already asleep. During the
20 course of this, one of those roommates awoke, looked
21 out her door, not knowing what was going on, and saw
22 the defendant, who was dressed in black with a black
23 balaclava on, holding some sort of container in his
24 hand, and she saw him leave the house through the
25 direction of the kitchen where that sliding door is

1 that I mentioned before.

2 At approximately 4:20 that morning, so
3 this would have been 15 minutes or so later, the
4 defendant's car is seen on a surveillance camera for
5 1112 King Road, which is immediately next door to the
6 west of 1122, leaving the area at a high rate of
7 speed. And if the Court were to see that or anybody
8 in this courtroom were to see that, you can see the
9 car almost loses control as it makes the corner, heads
10 north, and then turns to go south on Walenta, which is
11 one of the only ways to get out of that part of town.

12 The evidence would show that following
13 that, the defendant, in his Elantra, drove south of
14 Moscow. We know that he drove on the back roads
15 because there are surveillance cameras on the main
16 highways, Highway 95, that would have picked up the
17 defendant's car if he had gone that route, and they
18 did not show the defendant's car on that route during
19 the time. So we know he went through a variety of
20 back roads in a very rural and isolated part of Latah
21 County.

22 About 4:48 that morning, Defendant's
23 phone comes back on, and the evidence will show that
24 that phone was located south of Moscow, likely at a
25 side road intersection with Highway 95. From there,

1 the defendant's phone activity tracks him back north
2 towards Pullman, Washington, where the defendant
3 lived.

4 About 5:26 -- starting at approximately
5 5:26, various surveillance cameras in Pullman,
6 Washington, pick up the defendant's vehicle as he
7 enters Pullman from the south and heads north and
8 slightly west towards his apartment, where he arrived
9 at approximately 5:30 in the morning.

10 Later that morning, still on Sunday,
11 the 13th of November of 2022, Mr. Kohberger's phone
12 returned to the area of King Road. We don't know
13 exactly what he did, but it returned to that area, it
14 was about 9:00 in the morning, was there for about ten
15 minutes, and then returned to his Pullman residence.

16 About 9:30, the State's evidence will
17 show, evidence taken from the defendant's phone, that
18 he took a selfie of himself on his phone in what
19 appears to be the bathroom of his Pullman apartment
20 with a thumbs up.

21 The defendant's phone then went to the
22 Lewiston Clarkston Valley, approximately 30 miles
23 south of Moscow and Pullman, and the defendant is
24 actually seen with his car at various businesses down
25 there. This area is the confluence of the Clearwater

1 River and the Snake River. Lewiston is Idaho's
2 seaport; large bodies of moving water down there.

3 In addition to tracing the defendant's
4 activities, as I've just outlined, on the 13th and
5 leading up to the 13th, the State's evidence will show
6 that following Sunday, November 13th, 2022, business
7 records show that the defendant begins searching for a
8 Ka-Bar knife and a Ka-Bar knife sheath, as the State
9 believes, to replace the one that was left at the
10 scene of the murders. The evidence also will suggest
11 that there were at least attempts by the defendant to
12 delete or alter his purchase history on Amazon, where
13 all these transactions had occurred.

14 Later that week, the State's evidence
15 will show that Mr. Kohberger went to what we would
16 call DMV, motor vehicle licensing here in Idaho, in
17 Pullman to change his car registration from
18 Pennsylvania to Washington. That is of note because
19 Pennsylvania cars do not require a front license
20 plate. The vehicle seen on the surveillance cameras
21 of the defendant's car showed it didn't have a front
22 license plate on it. At the time of the traffic stop
23 by Deputy Duke in August, it was a Pennsylvania plate,
24 no front license plate.

25 Mr. Kohberger proceeded to finish his

1 semester of studies at Washington State University and
2 returned to Pennsylvania for the holidays. Law
3 enforcement at this point were aware of Mr. Kohberger,
4 had been accessing information about him, were trying
5 to find him. They located him in Pennsylvania, and
6 they conducted what is called a "trash pull". During
7 the nighttime hours, agents of the FBI, who assisted
8 immensely with this case, working with the sanitation
9 department back in this neighborhood in Pennsylvania,
10 took trash that had been set out on the street for
11 collection, sent the contents of that from the
12 Pennsylvania residence of the defendant's parents to
13 the Idaho State Forensic Laboratory where the lab
14 experts there were able to identify DNA on a Q-tip as
15 coming from the father of the person whose DNA was
16 found on the knife sheath that was next to Madison
17 Mogen's body in the bed.

18 Subsequently, an arrest warrant was
19 issued here in Idaho, and a search warrant was issued
20 in the state of Pennsylvania. With the assistance not
21 only of the FBI but the Pennsylvania State Police,
22 Mr. Kohberger was arrested at his parents' home and
23 returned to Idaho.

24 Upon his return to Idaho, a DNA sample
25 was taken from him, and it matched the DNA found on

1 the knife sheath next to Maddie's body at the crime
2 scene.

3 I can tell the Court and the public,
4 the weapon itself, the knife, has not yet been
5 recovered. I can tell the Court that the defendant's
6 apartment in Pullman was searched, as well as his
7 office. "Spartan" would be a kind characterization.
8 There was virtually nothing there. Nothing of
9 evidentiary value was found. And of course, we're now
10 talking six, eight weeks after the time of the
11 killings.

12 In Pennsylvania, the defendant's car
13 was seized, and it was pretty much disassembled
14 internally. And it also had been cleaned; there was a
15 bucket of cleaner right beside it. I think we can all
16 look to our own cars and know in those compartments in
17 the doors, we try to keep them clean where you put
18 stuff, there is always some degree of crud in there.
19 They were spotless. The defendant's car had been
20 meticulously cleaned inside.

21 And the State would present to the jury
22 that that was part of the defendant's plan in covering
23 up this. The defendant has studied crime. In fact,
24 he did a detailed paper on crime scene processing when
25 he was working on his pre-doctorate degrees, and he

1 had that knowledge and skill.

2 Your Honor, at the end, the State
3 submits that the evidence that I've given just a quick
4 overview of and if presented in court would consume
5 weeks, which the State is prepared to do and has been
6 prepared to do, would show, as the defendant has just
7 admitted and pleaded guilty, that on November 13th,
8 2022, Mr. Kohberger entered the residence at 1122 King
9 Road in Moscow, Idaho, he did that with the intent to
10 kill -- we will not represent that he intended to
11 commit all of murders that he did that night, but we
12 know that that is what resulted -- and that he then
13 killed, intentionally, willfully, deliberately, with
14 premeditation and with malice aforethought, Maddie
15 Mogen, Kaylee Goncalves, Ethan Chapin and Xana
16 Kernodle.

17 Thank you, Your Honor.

18 THE COURT: Thank you.

19 Based on the State's proffer and,
20 importantly, based on the defendant's explicit
21 admission to committing these crimes, the Court finds
22 there is a factual basis.

23 Therefore, with respect to Count I,
24 burglary, a felony, how do you plead, Mr. Kohberger,
25 guilty or not guilty?

1 THE DEFENDANT: Guilty.

2 THE COURT: As to Count II, murder in the first
3 degree, as it relates to the murder of Madison Mogen,
4 how do you plead, guilty or not guilty?

5 THE DEFENDANT: Guilty.

6 THE COURT: As to Count III, as it relates to
7 murder in the first degree for the murder of Kaylee
8 Goncalves, how do you plead, guilty or not guilty?

9 THE DEFENDANT: Guilty.

10 THE COURT: As to Count IV, the first-degree
11 murder of Xana Kernodle, a human being, how do you
12 plead, guilty or not guilty?

13 THE DEFENDANT: Guilty.

14 THE COURT: As to Count V, first-degree murder
15 of Ethan Chapin, a human being, how do you plead, guilty
16 or not guilty?

17 THE DEFENDANT: Guilty.

18 THE COURT: The Court will find that the
19 defendant understands the nature of the charges in each
20 offense and the possible consequences to him of his
21 guilty plea. The Court finds there is a factual basis
22 for the plea and finds the defendant believes the plea
23 to be in his best interest. I find the plea was given
24 freely, voluntarily and was intelligently made. I
25 accept the plea. I direct that it be entered.

1 I'll continue the matter for sentencing
2 in this case.

3 I think it was mentioned on the call
4 Monday afternoon that Defense wishes to waive a
5 pretrial investigation. Is that accurate?

6 MS. TAYLOR: Yes, Your Honor.

7 THE COURT: The State also?

8 MR. THOMPSON: Yes, Your Honor. The State does
9 not believe a presentence investigation is needed, given
10 the evidence that is available. We want to make sure
11 that all of victims have the opportunity to make
12 statements to the Court at sentencing.

13 THE COURT: Absolutely. Certainly both the
14 State and the Defense may present whatever sentencing
15 memorandum and other documents you wish me to consider.
16 The victims will be given an opportunity to provide the
17 statements they wish to at sentencing.

18 Do we need more than one full day for
19 sentencing?

20 MR. THOMPSON: I do not believe so, Your Honor.

21 Obviously, we have numerous victims,
22 and we have victims who share unique perspectives on
23 this, and we want to make sure they all have time to
24 express their feelings to the Court, but I believe if
25 we can start perhaps at 8:30 or so in the morning, we

1 should be able to complete it all in one day.

2 THE COURT: Does Defense agree with that in
3 terms of the timeframe?

4 MS. TAYLOR: Yes, Your Honor.

5 THE COURT: So as it happens, we have some time
6 reserved in this case in July and August. The week of
7 July 22nd is available. I don't know if that is too
8 soon for the parties or the next week, the week of
9 August 4th, is available. Any preference?

10 MS. TAYLOR: Your Honor, we are prepared as
11 soon as the Court wants to schedule it.

12 MR. THOMPSON: The State, I believe, would be
13 prepared on the 22nd. We've told the victims' families
14 that we are looking at approximately those dates.

15 THE COURT: So because of the plan to bring in
16 so many jurors to fill out questionnaires, I had ordered
17 that no other trials could take place in this courthouse
18 the week of July 22nd, and so we will use that in terms
19 of a sentencing date because of what I'm sure will be
20 the significant interest of the media and public and the
21 logistics that will be required to make that happen.

22 Without trials going, it will be a lot
23 easier to do that. Let's pick that week. Why don't
24 we pick July 23rd with the idea if for some reason we
25 don't finish, we can continue to the 24th. We will

1 start at 9:00 in the morning.

2 Does that give your team enough time,
3 Sandra, 9:00 in the morning?

4 All right. Any concerns with that
5 date?

6 MS. TAYLOR: No, Your Honor. Thank you.

7 MR. THOMPSON: No, sir.

8 THE COURT: All right. Any reason why I should
9 not rescind a non-dissemination order at this time?

10 MR. THOMPSON: I think given the history of
11 this case, it would be best that that remain in place
12 through sentencing so we have time to make sure there's
13 the ability to completely answer questions. That would
14 be the State's preference and recommendation.

15 MS. TAYLOR: We have no objection for the order
16 to remain in place through sentencing.

17 THE COURT: I will at this point keep it until
18 sentencing, at which time it will be withdrawn in order
19 to give the parties the space and time to prepare for
20 what I'm sure will be a deluge of media requests.
21 That's at least my preliminary decision at this point.
22 We can always revisit it if it seems, for some reason, I
23 should.

24 Obviously, I don't think the
25 defendant -- bond was ever set for the defendant.

1 Were it, it would be revoked. The prior order
2 allowing him to come in civilian clothes is revoked,
3 given his plea, no longer the presumption of innocence
4 and in fact now the actual conviction for the crimes.
5 He will continue to be held at the jail pending
6 sentencing.

7 Is there anything else today?

8 MS. TAYLOR: No, Your Honor. Thank you.

9 MR. THOMPSON: I assume the trial date will be
10 vacated and those poor jurors will be released.

11 THE COURT: The trial will be vacated, and I'm
12 sure the jury commissioner will get word to those that
13 have received their summons that they won't be required
14 to attend.

15 That said, again, if you would all
16 please wait for the parties and the victims' families
17 and others to leave the courtroom before you do, I
18 would appreciate it.

19 And with that, we're adjourned.

20 (Proceedings concluded.)

21 --oOo--

1 WEDNESDAY, JULY 23, 2025

2 BOISE, IDAHO

3
4
5 THE COURT: All right. This is CR01-24-31665,
6 State of Idaho vs. Bryan Kohberger. The defendant is
7 present in custody with counsel, Ms. Taylor,
8 Ms. Massoth, Ms. Barlow. The State is represented by
9 Mr. Thompson, Ms. Jennings, Mr. Hurwit, Mr. Nye and
10 Ms. Allen.

11 This is the time set for sentencing in
12 this case. The defendant previously entered a plea of
13 guilty to four counts of first-degree murder and one
14 count of felony burglary. In exchange, the parties
15 stipulated to recommend a sentence consisting of, on
16 the burglary, 10-years fixed; on each of the four
17 counts of first-degree murder, life fixed. The
18 parties waived pre-sentence investigation.

19 To my understanding, neither party
20 submitted a sentencing memorandum or other materials
21 for the Court. The Court is familiar with the file
22 and the evidence submitted previously by the parties,
23 as it has reviewed them throughout the case and in
24 anticipation of trial.

25 Is there any legal cause why sentence

1 should not be imposed at this time?

2 MR. THOMPSON: No, Your Honor.

3 MS. TAYLOR: No, Your Honor.

4 THE COURT: Does the State, before impact
5 statements and argument, wish to present evidence today?

6 MR. THOMPSON: Your Honor, the State does not
7 intend to present evidence in a documentary sense. We
8 have provided the Court, through the clerk, with
9 photographs we would like to use during the course of
10 our sentencing argument.

11 THE COURT: Sure. All right.

12 MR. THOMPSON: Thank you.

13 THE COURT: But no testimony other than impact
14 statements?

15 MR. THOMPSON: That's correct, Your Honor.

16 THE COURT: So with that, let's start with
17 impact statements.

18 MR. THOMPSON: Ms. Jennings will be
19 introducing --

20 THE COURT: My understanding, just so I'm
21 clear, I indicated through the trial court administrator
22 that we needed to see if any of the victims wish to have
23 the camera not running and audio only. My understanding
24 is all of them indicated they are fine with the video.

25 Is that correct?

1 MS. JENNINGS: Yes, Your Honor, that's correct.

2 THE COURT: Very well. Go ahead.

3 MS. JENNINGS: Your Honor, the first -- and
4 we're taking these in the order -- victim impact
5 statements in the order that the charges were listed in
6 the indictment, the first charge being burglary. So we
7 would have Bethany Funke's statement, and she has asked
8 that her friend, Emily Alandt, read that statement.

9 THE COURT: Any objection to that?

10 MS. TAYLOR: No objection.

11 THE COURT: Very well.

12 EMILY ALANDT: Thank you, Your Honor.

13 I'll be speaking on behalf of Bethany
14 and so, yeah, here it reads:

15 "My name is Bethany Funke, and I was
16 roommates with Maddie, Kaylee, Xana and Ethan. I
17 not only lost some of my best friends, but I also
18 lost a sister. Never in a million years would I
19 have thought that something like this would have
20 happened to my closest friends. I thought that we
21 were going to wake up and go upstairs, see them,
22 and tell them how they had scared us and that they
23 were going to tease us about how we were constantly
24 scaredy-cats and make jokes about it as we would go
25 to Taco Bell, like always.

1 "But, sadly, that was not what happened
2 and what turned out to be my worst nightmare. When
3 I first woke up that morning, I had no idea what
4 happened. I woke up around 7:00 with a terrible
5 toothache, so I called my dad, who was a dentist,
6 and I asked what I should do. He told me to take
7 Advil, so I did, and I went back to sleep. I was
8 still out of it and still didn't know what
9 happened.

10 "If I had known, I, of course, would have
11 called 911 right away. I still carry so much
12 regret and guilt for not knowing what had happened
13 and not calling right away, even though I
14 understand it wouldn't have changed anything, not
15 even if the paramedics had been right outside the
16 door.

17 "I was so frantic that morning and scared
18 to death not knowing what had happened, and when I
19 made the 911 call, I couldn't even get out the
20 words. And from then on, I don't remember a thing.
21 It was like my brain wiped that whole memory. That
22 was the worst day of my life, and I know it always
23 will be.

24 "While I was still in shock, trying to
25 process the fact that my friends were truly gone, I

1 had been attacked by the public. I was grieving,
2 numb and unsure if what had happened was even real,
3 and at the same time, I was getting flooded with
4 death threats and hateful messages from people who
5 did not know me at all or know the dynamic of our
6 friendship.

7 "Social media made it so much worse, and
8 strangers made up stories to entertain themselves.
9 The media harassed not just me but my family.
10 People showed up at our house, they called my
11 phone, my parents' phones, other family members'
12 phones, and we were chased while I was still trying
13 to survive emotionally and grieve the loss of my
14 friends.

15 "I hated and still hate that they are
16 gone, but for some reason I am still here and I got
17 to live. I still think about this every day. Why
18 me? Why did I get to live and not them? For the
19 longest time, I could not even look at their
20 families without feeling sick with guilt. I did
21 not know what to say or what to do. I was
22 terrified that my presence made their pain worse,
23 and I was still here when their kid, their siblings
24 and their friends, their loved ones should have
25 been here instead.

1 "After everything happened, I was afraid
2 to go into my own backyard or be alone in my house.
3 I was scared that the person who did this would
4 come for me next. I was always scared the media
5 would try to catch me at any moment of any day,
6 even when I was just walking around my house. I
7 made my parents close all the blinds during the day
8 so no one could see me even in the slightest
9 chance. I barely left the house, and when I did, I
10 made sure I was never alone.

11 "I slept in my parents' room for almost a
12 year. I made them double lock every door, set an
13 alarm, and still check everywhere in the room just
14 in case someone was hiding. And I still check my
15 room every night before, and I double lock it. I
16 have not slept through a single night since this
17 happened. I constantly wake up in a panic,
18 terrified someone is breaking in or someone is here
19 to hurt me or I'm about to lose someone else I
20 love. The fear never really leaves.

21 "For a long time, I could barely get out
22 of bed. But one day I realized I have to live for
23 them. They did not get the chance to keep living,
24 but I do, and I will not take that for granted. So
25 now every day I remind myself to live for them, and

1 everything I do, I do it with them in mind. I am
2 still scared to go out in public, but I force
3 myself to do things because I know that they would
4 want me to keep living my life to the fullest. I
5 am beyond blessed to still be here, and I refuse to
6 take that for granted when they did not get a
7 chance.

8 "Our house was not just a house; it was a
9 home. It was where we laughed until we couldn't
10 breathe, made meals, did crafts, binge-watched
11 reality shows, played games and spent lazy days on
12 the couch. It was movie nights, wine nights,
13 morning debriefs, pranks, hot chocolate, cookies,
14 and warmth. I will cherish those memories forever,
15 and I will not let what happened erase how special
16 our home was or how much those memories meant to
17 me.

18 "Now I would like to share some bits and
19 pieces of who they were as people and some of the
20 memories we shared. One of my favorite memories
21 was Halloween when we all went to Sigma Chi, but
22 instead of partying, we just sat in an apartment
23 talking and laughing all night long. I do not
24 think I've ever laughed that hard in my life. We
25 did not care about the party; we were just happy to

1 be with each other.

2 "Xana was one in a million. She was the
3 life of the party, but she was also the kindest and
4 funnest person I knew. Everyone loved her because
5 she made everyone feel so loved. She was just
6 someone you always wanted to be around, no matter
7 the circumstance. One of my favorite days with
8 Xana was when we laid on the couch together all day
9 watching movies and snacking. Or when she, Maddie,
10 and I would go get margaritas, chips and salsa.
11 She would light up the room with her presence
12 alone.

13 "Kaylee had the most beautiful, radiant
14 smile, and she was also so kind but also one of the
15 funnest people I've ever known. She loved playing
16 little pranks. She always had us laughing so hard
17 we could not breathe. She was full of energy and
18 life. I fully believe that she could have ruled
19 the world if she wanted to, and she would have been
20 America's sweetheart.

21 "Ethan was the sweetest, most genuine
22 guy. He was always smiling and always making other
23 people smile too. Ethan was the kind of person you
24 wanted around. He was so kind and easy to talk to
25 and just so fun. And the way he cared for Xana was

1 truly something to admire and really was proof that
2 storybook love and true romances really do exist.
3 I was not only -- it was not only obvious to me but
4 everybody that was around Ethan and Xana that they
5 were absolute soulmates.

6 "Maddie was not only one of my best
7 friends, but she was the older sister I would have
8 always wanted. There was no one I looked up to or
9 admired more than Maddie. She was truly a ray of
10 sunshine, and everyone was drawn to her. She was
11 so kind, loving, funny, fun, and passionate. She
12 had the sweetest soul and wanted nothing but the
13 best for everyone and to love and show up for
14 everyone. She took me under her wing and always
15 made me feel so safe and included, and, above all,
16 loved and valued. She never failed to make me
17 laugh or put a smile on my face. Still to this
18 day, I am beyond grateful that she chose me to be
19 her sorority little, and I thank God every day that
20 I not only got to know her but had her as one of my
21 best friends.

22 "Honestly, I cannot pinpoint one favorite
23 memory with Maddie because I have so many, and this
24 would be a very long read if I did. But some
25 little memories with her that I cherish is when the

1 two of us made a nice dinner and split some wine,
2 or when we would binge-watch Jersey Shore or Summer
3 House, when we came up with a whole dance routine
4 on Halloween and danced and sang all night like no
5 one was watching, all the late night walks home
6 from going out and just little shopping trips and
7 so much more.

8 "I am beyond blessed I had the chance to
9 know each and every one of them. They changed my
10 life in ways I could have never put into words. I
11 hope they are remembered for who they are and not
12 what happened to them, because who they are was so
13 beautiful, and they deserve to be remembered in the
14 highest way.

15 "My heart breaks every time I go to text
16 one of them, or how badly I wish I could see and
17 hang out with them. Then I remember I cannot, I
18 will never be able to again. But I still talk to
19 them in my prayers every single night, and I always
20 will.

21 "I wish more than anything I could hug
22 them one last time and tell them how much I love
23 them, and even though I cannot, I still tell them
24 every night. I will keep living for them as long
25 as I am lucky enough to still be here. They were

1 all truly of a kind, and they will be in our hearts
2 forever and always."

3 THE COURT: Thank you. Please convey to
4 Bethany my appreciation for her courage, and I hope she
5 heals.

6 MS. JENNINGS: Next is Dylan Mortensen. We are
7 asking for some accommodation for Ms. Mortensen and that
8 she be allowed to sit in my seat.

9 THE COURT: Sure.

10 Dylan, just take your time, all right?

11 DYLAN MORTENSEN: Thank you, Your Honor.

12 What happened that night changed
13 everything. Because of him, four beautiful, genuine,
14 compassionate people were taken from this world for no
15 reason. He didn't just take their lives, he took the
16 light they created into every room. He took away how
17 they made everyone feel safe, loved, and full of joy.
18 He took away the ability for me to tell them that I
19 love them and I'm so proud of them. He took away who
20 they were becoming and the futures they were going to
21 have. He took away birthdays, graduations,
22 celebrations, and all the memories we were supposed to
23 make. All of it is gone, and all the people who loved
24 them are just left to carry that weight forever.

25 He didn't just take them from the

1 world; he took them from me. My friends. My people
2 who felt like my home. The people I looked up to and
3 adored more than anyone. He took away my ability to
4 trust the world around me. What he did shattered me
5 in places I didn't know could break. I was barely 19
6 when he did this. We had just celebrated my birthday
7 at the end of September. I should have been figuring
8 out who I was. I should have been having the college
9 experience and starting to establish my future.
10 Instead, I was forced to learn how to survive the
11 unimaginable. I couldn't be alone. I had to sleep in
12 my mom's bed because I was too terrified to close my
13 eyes, terrified if I blinked, someone might be there.
14 I made escape plans everywhere I went. If something
15 happens, how do I get out? What can I use to defend
16 myself? Who can help?

17 Then there are the panic attacks, the
18 kind that slam into me like a tsunami out of nowhere.
19 I can't breathe, I can't think, I can't stop shaking.
20 All I can do is scream because the emotional pain and
21 the grief is too much to handle. My chest feels like
22 it's caving in. Sometimes I drop to the floor with my
23 heart racing, convinced something is very wrong. It's
24 far beyond anxiety; it's my body reliving everything
25 over and over again. My nervous system never got the

1 message that it is over, and it won't let me forget
2 what he did to them.

3 People call me strong. They say I'm a
4 survivor. But they don't see what my new reality
5 looks like. They don't see the panic attacks, the
6 hypervigilance, the exhaustion, the way I scan every
7 room I enter, the way I flinch at sudden sounds. They
8 don't know how heavy it is to carry so much pain and
9 still be expected to keep going. And that's because
10 of him. He stole parts of me I may never get back.
11 He took the version of me that didn't constantly ask,
12 What if it happens again? What if next time I don't
13 survive?

14 He may have shattered parts of me, but
15 I'm still putting myself back together. Piece by
16 piece, I'm learning how to live in this new version of
17 life. It is not easy, it hurts, but I'm still trying.
18 Still trying. And I'm not trying just for me, I'm
19 trying for them, my friends. About a year ago, I had
20 a dream about them. I got to say goodbye. I told
21 them I won't be able to see you again, so I need to
22 tell you goodbye. They all kept asking why, and all I
23 could say is I can't tell you, but I have to. When I
24 woke up, I felt shattered and heartbroken, but also
25 strangely grateful, like maybe in some way that dream

1 gave us the goodbye we never got. Still, no dream can
2 replace them and no goodbye will ever feel finished.

3 He is a hollow vessel, something less
4 than human; a body without empathy, without remorse.
5 He chose destruction. He chose evil. He feels
6 nothing. He tried to take everything from me; my
7 friends, my safety, my identity, my future. He took
8 their lives, but I will continue trying to be like
9 them to make them proud.

10 Living is how I honor them. Speaking
11 today is to help me find some sort of justice for
12 them, and I will never let him take that from me. He
13 may have taken so much from me, but he will never get
14 to take my voice. He will never take the memories I
15 have with them. He will never erase the love we
16 shared, the laughs we had, or the way they made me
17 feel seen and whole. Those things are mine, they are
18 sacred, and he will never touch them. I get to feel
19 sadness. I get to feel rage. I get to feel joy even
20 when it's hard. I get to feel love even when it
21 hurts. I get to live. And while I will still live
22 with this pain, at least I get to live my life. He
23 will stay here, empty, forgotten, and powerless.

24 THE COURT: Thank you so much for your courage.
25 I appreciate it.

1 MS. JENNINGS: Next, we have members from the
2 Madison Mogen family. First would be Scott Laramie,
3 Madison Mogen's stepfather. Standing by him is Karen
4 Laramie, Madison's mother.

5 SCOTT LARAMIE: Thank you, Your Honor.

6 My name is Scott Laramie. I'm Maddie
7 Mogen's stepfather and the husband of Maddie's mother,
8 Karen Laramie. I will read this victim impact
9 statement on behalf of Karen and myself.

10 "Maddie was our gift, life, our purpose
11 and our hope. Maddie quickly became Karen's joy,
12 identity, and purpose in life. I joined Maddie's
13 life when she was two-and-a-half years old. The
14 experience transformed me into a life of joy, love
15 and family.

16 "Maddie was bright, beautiful, kind,
17 empathic. She listened carefully to others and was
18 observant, seeing and caring about the hearts and
19 the minds of all she encountered. She loved music
20 and music festivals; she had a wonderful sense of
21 humor; she excelled in school. She was an easy
22 child to raise, almost never requiring discipline
23 and almost always giving us parental joy.

24 "One time Karen remembers disciplining
25 Maddie as a little girl, Maddie responded, "You

1 broke my heart," which, of course, melted ours.
2 She had a keen wit, even at that young age. As she
3 transitioned into teenage years, she prioritized us
4 and extended family over many of the distractions
5 that capture teenagers. She showered us with her
6 presence and love at family events, barbecues,
7 picnics, birthdays, holidays and others. She spent
8 countless hours with her papa, her uncle David,
9 aunt Nadine, and her other close family and
10 friends. This world was a better place with her in
11 it.

12 "As she reached adulthood, Maddie applied
13 her studies to be a marketing professional,
14 entering into an internship at Payne West and
15 started planning her professional future. As with
16 all things, she involved Karen and myself in the
17 joy of her journey. As she transitioned into
18 womanhood, Karen and I continued to be astounded at
19 this wonderful, accomplished person we had created.
20 All parents dream of their children accomplishing
21 more than them. We realized this dream. All we
22 had not become, she was becoming. Karen and I are
23 ordinary people but lived extraordinary lives
24 because we had Maddie.

25 "Maddie was taken senselessly and

1 brutally in a sudden act of evil. She was taken,
2 along with the young, promising, and bright lives
3 of Kaylee, Xana and Ethan. First, we felt
4 disbelief. Next, we felt disorientation. Then we
5 felt the grief overcome us. Our grief has
6 compounded even more with the Goncalves, Kernodle
7 and Chapin families.

8 "We speak of hope and healing, and we do
9 have some hope and healing, but the vast emotional
10 wound will never fully heal. Since Maddie's loss,
11 there is emptiness in our hearts, home and family;
12 an endless void.

13 "After losing her mother in a car crash,
14 Karen took to grieve -- Karen took years to grieve
15 and recover. The feeling that her life with Maddie
16 and me was perfect helped her start to heal. Now,
17 this is no longer perfect. After Maddie's loss,
18 Karen felt like she was spinning out, emotionally
19 collapsing into anxiety and depression. She
20 sometimes asks, 'How am I supposed to go on when
21 I've lost my favorite person in the world?' I felt
22 the same, and we continue to struggle.

23 "The loss of Maddie has impacted so many
24 beyond our family. Her second family is her
25 sorority sisters who grieve alongside us. She has

1 so many close friends who suffer from her loss. We
2 will continue to be -- her loss will continue to be
3 felt by the Vandal community, including Vandal
4 Solutions on campus, where she volunteered her time
5 for others.

6 "It helps us to know Maddie is in heaven
7 now, freed from the trials of this earth. We,
8 however, continue to live on without the grace and
9 support of her presence. We will grow old without
10 our only child; our bright, beautiful friend and
11 daughter. In the end, there are no words that can
12 accurately capture the devastation of losing
13 Maddie.

14 "We will endure and we will go on. For
15 Maddie, we will not let our grief consume us. For
16 Maddie, we will continue to love and care for our
17 family and friends, including the families of
18 Kaylee, Xana, and Ethan. We will remain united
19 with them. We can only hope that others out there
20 suffering similar losses can look to us and see
21 that we can overcome hatred, darkness and evil.

22 "We know the law allows us to comment on
23 the defendant and the sentence. As for the
24 sentence, we support the plea agreement. Society
25 needs to be protected against this evil. As for

1 the defendant, we will not waste the words, nor
2 will we fall into hatred and bitterness. Evil has
3 many faces, and we now know this, but evil does not
4 deserve our time and attention.

5 "We are done being victims. We are
6 taking back our lives. We will turn our time,
7 talents and attention to hope, healing and helping
8 others and to the future. We invite all those who
9 have suffered with us on this to join us in our
10 journey. We can make this world a better place.
11 We can move on from tragedy. Adversity will visit
12 us, evil will visit us, but we will overcome. We
13 can and will endure."

14 Karen and I express our gratitude to
15 Your Honor and to the prosecution team for allowing us
16 the opportunity to make this statement.

17 Thank you.

18 THE COURT: Thank you so much for your courage,
19 and I am so sorry for your loss.

20 SCOTT LARAMIE: Thank you, Your Honor.

21 MS. JENNINGS: Your Honor, this is Leander
22 James. He's the attorney for the Mogen family, victim
23 advocate. He will be reading a statement for Karen
24 Laramie.

25 MR. JAMES: May it please the Court, counsel.

1 My name is Leander James. I am the
2 pro bono counsel for Karen and Scott Laramie. Karen
3 has asked me to read this statement into the record.

4 "I thank my husband, Scott, for his
5 statement, his courage, and his unending love and
6 support during this dark time. While words are
7 inadequate to capture the impact of this horrific
8 crime on our family, he expressed it as best anyone
9 could.

10 "For Maddie's sake, I will add my
11 supplement statement that incorporates additional
12 impact in the context of my extended family. I am
13 grateful to Maddie's great uncle, Brian Caufield,
14 for assisting me with the difficult, difficult task
15 of putting our pain into words. For me and my
16 extended family, Maddie was our hope and our light.
17 Her beauty, both outside and in, shone its light
18 upon everyone with whom she came in contact. Her
19 beauty both -- pardon me. She carried that hope
20 and light into the future for our entire family.

21 "We have memories of our Maddie and grief
22 and pain at her being taken from our presence. Any
23 one of us would have given our own light to have
24 been outshone by hers. We now look to our creator
25 to know that her light continues where we look to

1 see her in his presence.

2 "Those who commit evil for their own
3 twisted gains and purposes truly defile the efforts
4 and sacrifices of mothers, fathers, families,
5 teachers, clergy, public servants, service members,
6 and all those who commit themselves to the greater
7 good, freedoms, and the future light of our nation.

8 "Condemnation falls heavily upon those
9 who squandered the lives of our future hopes and
10 dreams. Some may offer forgiveness for what the
11 defendant has done. However, we cannot at this
12 time or perhaps ever, nor will we ask for mercy for
13 what he has done. His acts are too heinous, the
14 agony and grief he has caused too great. But we
15 will waste no further words or thoughts on him.
16 For Maddie's sake, we will move on. We will do our
17 best to carry Maddie's light into this world and
18 make it a better place.

19 "I thank the Court and the prosecution
20 for allowing me the opportunity to make my
21 statement, and I thank all those who have and will
22 support my families and the families of Kaylee,
23 Xana and Ethan."

24 Thank you.

25 THE COURT: Thank you.

1 Thank you, Ms. Laramie. I appreciate
2 it.

3 MS. JENNINGS: Next is Ben Mogen, the father of
4 Maddie Mogen -- actually, Your Honor, it will be Kim
5 Cheeley, the grandmother of Maddie Mogen.

6 KIM CHEELEY: My name is Kim Cheeley. I was
7 Maddie Mogen's paternal grandmother, as Ben Mogen, her
8 father, is my son. I'm here today with my sister, Lori
9 Cheeley, Maddie's great aunt, and my son, Ben Mogen, and
10 my daughter-in-law, Corey Hatrock.

11 I'd like to begin by thanking a number
12 of people involved in bringing this case to closure.
13 In my daughter's words, the plea deal the prosecution
14 team reached this month is one that punishes the
15 perpetrator of this horrendous crime, protects the
16 public from further harm, and allows all of us who
17 knew and loved these kids the time to grieve without
18 the anxiety of the long and gruesome trial, the years
19 of appeals, and potential for mistrials along the way.

20 My family and I are so grateful to Bill
21 Thompson and his prosecution team for their dedication
22 and painstaking work that forced the perpetrator to
23 admit his guilt. We want to thank the Idaho State
24 Police, the Moscow Police Department, the FBI, and
25 Judge Hippler. We'd also like to thank the University

1 of Idaho officials who have treated the families of
2 the victims with such dignity and kindness and who
3 have honored the four victims beautifully.

4 Maddie was my first grandchild, so when
5 she was born, all her grandparents had the distinct
6 pleasure of deciding what we'd like to be called. I
7 chose Nana, pretty original. But when Maddie was
8 about a year and a half old, her papa, Ben's dad, and
9 I were planning to visit the new little family in
10 Oregon. Maddie didn't have an extensive vocabulary at
11 the time, but for some unknown reason, she called
12 bananas "Ba-Deedle-Deedles."

13 When Karen and Ben told her Nana was
14 coming to visit, she figured I say deedle-deedle for
15 that word, so I became Deedle Deedle, shortened to
16 Deedle when she was about six or seven. And I was
17 Deedle all her life. I don't think her stepdad,
18 Scotty, ever knew my given name was Kim.

19 Maddie's and my birthdays were one day
20 apart, and a couple of years before she was killed,
21 she gave me this necklace with "Deedle" and "Maddie"
22 engraved on it. I added an angel wing, and it's one
23 of my treasured possessions. I also got an angel wing
24 tattoo -- never thought I'd see the day -- along with
25 many members of our family, replicating the one that

1 Maddie and her sorority sisters had. I wanted mine
2 where I could see and touch it often.

3 From preschool through grade school, I
4 stopped teaching piano lessons early on Wednesdays and
5 picked Maddie up for bubble baths, brownies, and
6 books. It was our special time together, and she went
7 home those nights in her jammies with a pan of warm
8 brownies for her family.

9 Although Karen and Scotty raised Maddie
10 and did such a lovely job of parenting, we Mogens were
11 lucky to have her for holidays and many other family
12 gatherings. We'll always have our treasured memories
13 of Maddie growing up in our big, extended, cooperative
14 family, and I thank Karen and Scotty Laramie for being
15 so generous and open and sharing Maddie with her Mogen
16 side of the family.

17 When the four kids were murdered, the
18 foundation fell out of our world. Initially, the fear
19 was truly debilitating. The first six weeks were
20 excruciating, despite the vigils, memorials,
21 candlelight gatherings of students, friends, family,
22 community members.

23 After the arrest, in the past two and a
24 half years, my family has lived with grief, with the
25 effects of traumatic grief, of which I was blissfully

1 unaware before all of this. I now have a stack of
2 books on grief. I've attended grief classes at
3 hospice. I've tried EMDR, a technique that helps
4 replace disturbing visions with something more
5 comforting. My son, Ben, his two sisters, Maddie's
6 aunts, and I have all experienced depression and
7 anxiety and sleep disturbance requiring medical
8 intervention at times. We've all sought counseling
9 off and on.

10 The struggle with media attention was
11 extremely difficult, especially for Ben. No one
12 should live through the violent murder of one's child.
13 Some days, it's beyond me how the parents of these
14 kids are still upright. I am thankful for the strong
15 families and communities that are supporting the
16 survivors.

17 At the time, I could think of only two
18 blessings surrounding the horrific murders. One was
19 that Ben was living with my partner, Tom, and me at
20 the time and that we could support each other
21 emotionally through it all. Sadly, Tom died a year
22 ago of a rare brain cancer, and he won't be here to
23 see justice served. He was our family's rock, and we
24 all miss him every day. A second blessing is that my
25 mother died of COVID several months before the kids

1 were killed, and she didn't have to live through the
2 horror. It was difficult to identify blessings.

3 So we've all lost our dear child and a
4 future with her. I ache for the loss of the dreams
5 that she and her true love, Jake, held, and my heart
6 goes out to Karen and Scotty and your side of Maddie's
7 family. You've had more than your share of loss. My
8 heart aches for the kids' roommates and the families
9 of the other victims and also the family of the
10 perpetrator.

11 Going forward, we Mogens are choosing
12 to put our energy and focus into honoring Maddie's
13 too-short life and sweet spirit by celebrating Maddie
14 May Day, which my two daughters established. On May
15 25th each year, Maddie's birthday, we encourage folks
16 to do random acts of kindness in Maddie's name.

17 In my daughter, Katie's, words: May we
18 all protect our peace in whatever way possible, unite
19 in community, and focus on joy. Please do an act of
20 kindness in Maddie's honor during this week, so a
21 glimmer of Maddie's light may live on.

22 Thank you.

23 THE COURT: Thank you. I appreciate your
24 courage and bless you and your family.

25 MS. JENNINGS: Now, Ben Mogen, Maddie Mogen's

1 father.

2 BEN MOGEN: I'm Benjamin Mogen and Maddie's
3 dad. First, I just want to say thanks to all the people
4 that helped bring this all to a close. I know it's not
5 the resolution that everyone wanted, but I think that
6 everyone worked so hard, and we really appreciate all
7 their efforts. It was such a hard thing to go through
8 for everybody.

9 Maddie was my only child that I ever
10 had. She was the only great thing I ever really did
11 and the only thing I was really ever proud of. And I
12 thought we would have the rest of our lives together
13 to be together and know each other, and I really took
14 for granted the times, you know, she was in college,
15 and I thought, oh, well, we'll have the rest of our
16 lives to -- to do all the stuff that we're supposed to
17 do. And she was just about done. She actually earned
18 all of her credits for her college degree, and Karen
19 and Scotty, and I got to go and get her diploma that
20 she actually earned. She deserved every bit of that.
21 I thought that was going to be just the beginning of a
22 long life together, and we never got that.

23 Karen and Scotty did such a great job
24 raising her after Karen and I split up, and I'm so
25 thankful for Scotty and the role that he played in her

1 life when I wasn't able to.

2 But we got to spend a lot of great
3 times together, Maddie and I. She was my favorite
4 person to go to a concert with. We got to see some
5 fun shows together, and I told her if there's ever a
6 show that you want to go to, let me know, and I'll get
7 tickets for you and your friend, or if you want to go
8 together, we'll make it happen.

9 My favorite memory with her was when
10 the Mac Miller show sold out here in Spokane.
11 Everyone wanted tickets, no one could get them, and on
12 the last day before the show, they did a radio thing,
13 and I got four meet-and-greet tickets for Maddie and
14 her friends and me to go and see the show. That was
15 her favorite artist at the time was Mac Miller. He's
16 gone now, too. And my little cousin, Zach, drove us
17 all there that night, and he's gone too, tragically,
18 you know.

19 Anyway, the last thing that she ever
20 wrote to me was this Father's Day card, and I'm so
21 glad I still have it. I'm just gonna read what she
22 said. It says:

23 "Happy Father's Day. I hope you have the
24 best day. I can't wait till we can hang out again
25 soon. I'll be in Coeur d'Alene 6/24 to 7/4.

1 Hopefully, we can find time then. I loved your
2 birthday card that you sent me, by the way. Maybe
3 we can see a concert sometime soon. I'd love to
4 see the Gorge when it's not so smoky out. I hope
5 you're doing well. I'm proud of how far you've
6 come. Thank you for always encouraging me to do my
7 best. Love you lots and lots. Love, Maddie May."

8 She did encourage me to -- not just to
9 do my best but to live on. I went through a lot of
10 issues with addiction and with substance abuse, and
11 when I wasn't wanting to live anymore, she was what
12 would keep me from just not caring anymore. And
13 knowing that she was out there and that she was just
14 such a beautiful person kept me alive a lot. A lot of
15 rough moments.

16 I'm so glad that she was able to meet
17 Jake. He was the only one that actually ever got to
18 take her to the Gorge. They went and saw Watershed
19 together and, yeah, they had a heck of a time. I'm
20 glad she got to -- that's a really special place for
21 me, and she always wanted to work out there with me in
22 the summer sometime. Man, she never got to, but at
23 least she got to see it once with Jake. He was such a
24 great guy -- he is such a good guy, and I really
25 wanted to see what a future with them would have

1 looked like.

2 I'll never -- I'll never be able to
3 replace her, you know. I wrote a bunch of stuff, I
4 don't -- I just don't know what to say right now. I
5 just miss her so much, and I just love her more than
6 anything.

7 This shouldn't have happened. And, you
8 know, a death sentence is one thing; you know when
9 it's going to happen and it's gonna be all gentle and
10 stuff. A life without parole with a room in a
11 building full of people that all just want you to not
12 be around anymore, waking up every morning not knowing
13 if that's the day they're gonna pull your card, I
14 mean, that's not a very nice sentence either. You
15 know, I don't know. I just love you, Maddie, and I
16 wish you were still here.

17 THE COURT: Thank you so much.

18 MS. JENNINGS: Your Honor, next are the members
19 from the Kaylee Goncalves family. First will be her
20 father, Steve Goncalves.

21 STEVE GONCALVES: Today, we are here to finish
22 what you started. Today, you've lost control. Today,
23 we are here to prove to the world that you picked the
24 wrong families, the wrong state, the wrong police
25 officers, the wrong community.

1 You tried to break our community apart.
2 You tried to plant fear. You tried to divide us. You
3 failed. Instead, your actions have united everyone in
4 their disgust for you. I just learned from these lead
5 investigators, to their shock, they worked in an
6 investigation and actually worked with the
7 Pennsylvania police officers and the federal FBI. You
8 united everyone. Everyone was united after you. None
9 of us are divided. We are united in our disgust and
10 our love for these children.

11 Today, you have no name because when
12 this all started, we all came together and we said,
13 let's stop even talking about his name and just use
14 initials, so even the media just called you BK.
15 That's all you are.

16 Looking back, when the police officers
17 knocked on my door and told me what happened to my
18 child, told me what happened to Maddie May, I don't
19 think he was even out of the driveway before my kids
20 turned around, looked at me, and said, "What do we do,
21 Dad?"

22 I told them, "You get to work. You get
23 your ass to work." And we started calling, we started
24 texting, we started emailing. And you know what?
25 Within hours, within hours, we had your white car on

1 the camera. We knew from the very beginning we had
2 you.

3 Police officers tell us within minutes
4 they had your DNA. Like a calling card. You were
5 that careless, that foolish, that stupid. Master's
6 degree? You're a joke, a complete joke.

7 But we took this disaster, and we did
8 what we could. We put everything online. We took our
9 kids, we took our images, we took everything that they
10 did, their videos, their photos, the girls' pranks,
11 Ethan singing. We put it out there. We shared it
12 with the world. And the world united. And all they
13 ended up, when they talked about this case, is they
14 talked about Kaylee Jade, Maddie May, Xana and Ethan.

15 Everything that these people meant to
16 us, a father, a mother, a brother, a sister, we shared
17 that with our community. Then we shared it with our
18 state. We shared it with the country. And
19 eventually, we shared it with the world. The world's
20 watching because of the kids, not because of you.
21 Nobody cares about you.

22 You're not worth the time, the effort
23 to be remembered. In time, you will be nothing but
24 two initials, forgotten to the wind. No visitors,
25 nothing more than initials on an otherwise unmarked

1 tombstone. From this moment, we will forget you.

2 I'll leave in closing with one last
3 thing: You picked the wrong family, and we're
4 laughing at you on your trip to the Pen, that will be
5 today or tomorrow.

6 I'll close with God bless all the men
7 and women that worked on this case and all the hard
8 work that you guys did. You guys allowed us to grieve
9 and allowed us to get through this. The amount of
10 work that you guys put together and the way that you
11 put it together was beautiful. There was hard times
12 to be expected, but thank you all and God bless.

13 THE COURT: Thank you.

14 MS. JENNINGS: Your Honor, next is Steven
15 Goncalves, Kaylee's brother.

16 ALIVEA GONCALVES: Steven is going to pass.
17 I'm going to go.

18 MS. JENNINGS: Alivea Goncalves, Kaylee's
19 sister.

20 ALIVEA GONCALVES: Hello. I'd like to start by
21 thanking the Court for allowing me the time and
22 opportunity to speak today. My name is Alivea, and I'm
23 the big sister of Kaylee Goncalves, and I was blessed to
24 love Madison Mogen as a sister too.

25 I'm not here today to speak in grief.

1 I'm here to speak the truth. Because the truth is, my
2 sister Kaylee and her best friend, Maddie, were not
3 yours to take. They were not yours to study, to stalk
4 or to silence. They were two pieces of a whole, the
5 perfect Yin and Yang. They are everything that you
6 could never be; loved, accepted, vibrant,
7 accomplished, brave and powerful.

8 Because the truth about Kaylee and
9 Maddie is they would have been kind to you. If you
10 had approached them in their everyday lives, they
11 would have given you directions, thanked you for the
12 compliment, or awkwardly giggled to make your own
13 words less uncomfortable for you. In a world that
14 rejected you, they would have shown mercy.

15 Because the truth is, I'm angry. Every
16 day I'm angry. I'm left shouting at the inside of my
17 own head everything I wish I could say to you. The
18 truth about me is when I heard the news, I didn't cry.
19 I listened for them. I promised them I would. That I
20 would fight for them, that I would show up no matter
21 what it cost me. I swore I'd never let them feel
22 alone, because you see, I've always been their
23 heavyweight. I've been the one to fight the battles
24 they didn't feel ready to fight themselves. All it
25 ever took was a call, and they knew I would handle it

1 for them no matter the time, no matter the cost. They
2 could wave their white flag because they knew I would
3 never back down, not for them. And not even death
4 could change that.

5 Somewhere along the line, I started to
6 think about what I would say to them if I was given
7 just one last chance. If I could gather enough
8 heartbreak or love or sacrifice or whatever it took to
9 get just one message across, what would I say?

10 Throughout this entire process, I've
11 written my feelings down at every moment; my wishes,
12 my love, my denial, my anger. And as one final act of
13 love, I plan to read these thoughts, even jarring and
14 discombobulating and not even making sense, because,
15 for me, that was true love, as bare and as naked as it
16 could be, not laced in pretty words or dressed for the
17 occasion, but written through bleary eyes at 2:00 a.m
18 with clenched fists, angry at this reality.

19 My true final act of love was to
20 continue on without them, for them. That dream to
21 read aloud my love to them, to bring meaning through
22 pain was the latest blow in realizing you don't
23 deserve it.

24 And Kaylee and Maddie don't need it.
25 Kaylee and Maddie have always known my love, and they

1 would never ask me to prove it by further victimizing
2 myself to a defendant who has shown no guilt, no
3 remorse, no apprehension. They would say to me, "Why
4 would you give him the satisfaction of showing
5 vulnerability now? You promised you would never back
6 down." And for that clarity, I'm thankful.

7 I won't stand here and give you what
8 you want. I won't offer you tears, I won't offer you
9 trembling. Disappointments like you thrive on pain,
10 on fear, and on the illusion of power, and I won't
11 feed your beast.

12 Instead, I will call you what you are:
13 Sociopath, psychopath, murderer. I will ask the
14 questions that reverberate violently in my own head so
15 loudly that I can't think straight most any day. Some
16 of these might be familiar, so sit up straight when I
17 talk to you.

18 How was your life right before you
19 murdered my sisters?

20 Did you prepare for the crime before
21 leaving your apartment? Please detail what you were
22 thinking and feeling at this time.

23 Why did you choose my sisters?

24 Before making your move, did you
25 approach my sisters? Detail what you were thinking

1 and feeling.

2 Before leaving their home, is there
3 anything else you did?

4 How does it feel to know the only thing
5 you failed more miserably at than being a murderer is
6 trying to be a rapper?

7 Did you recently start shaving or
8 manually pulling out your eyebrows?

9 Why November 13th?

10 Did you truly think your Amazon
11 purchase was untraceable because you used a gift card?

12 How do you find it enjoyable to
13 stargaze with such a severe case of visual snow?

14 Where is the murder weapon, the clothes
15 you wore that night?

16 What did you bring into the house with
17 you?

18 What was the second weapon you used on
19 Kaylee?

20 What were Kaylee's last words?

21 Please describe in detail the level of
22 anxiety you must have felt when you heard the BearCat
23 pull up to your family home on December 30, 2022?

24 Which do you regret more, returning to
25 the crime scene five hours later or never, ever going

1 back to Moscow, not even once, after stalking them
2 there for months?

3 If you were really smart, do you think
4 you'd be here right now?

5 What's it like needing this much
6 attention just to feel real?

7 You're terrified of being ordinary,
8 aren't you?

9 Do you feel anything at all or are you
10 exactly what you've always feared: Nothing?

11 If you're so powerful, then why are you
12 still hiding, defendant?

13 You see, I'm here today as me, but who
14 are you? Let's try to take off your mask and see.
15 You didn't create devastation, you revealed it in
16 yourself. And that darkness you carry, that
17 emptiness, you'll sit with it long after this is over.
18 That is your sentence, and it was written on the wall
19 long before you ever pled guilty.

20 You didn't win, you just exposed
21 yourself as the coward you are. You're a delusional,
22 pathetic, hypochondriac loser who thought you were so
23 much smarter than everybody else. Constantly
24 scolding, turning your nose up to grammar mistakes,
25 nitpicking and criticizing others.

1 You wanted so badly to be different, to
2 be special, to be better, to be deep, to be
3 mysterious. You found yourself thinking you were
4 better than everyone else, and you thought you could
5 figure out the human psyche and see through it, all
6 while tweaked out on heroin.

7 Lurking in the shadows made you feel
8 powerful because no one ever paid you any attention in
9 the light. You thought you were exceptional, all
10 because of a grade on a paper. You thought that you
11 were elite because your online IQ test from 2010 told
12 you so. All of that effort just to seem important.
13 It's desperate. There is a name for your condition,
14 though, your inflated ego just didn't allow you to see
15 it: Wannabe.

16 You act like no one could ever
17 understand your mind, but the truth is, you're basic.
18 You're a textbook case of insecurity disguised as
19 control. Your patterns are predictable, your motives
20 are shallow. You are not profound, you're pathetic.
21 You aren't special or deep, not mysterious or
22 exceptional. Don't ever get it twisted again.

23 No one is scared of you today. No one
24 is intimidated by you. No one is impressed by you.
25 No one thinks that you are important. You

1 orchestrated this like you thought you were God. Now
2 look at you, begging a courtroom for scraps. You
3 spent months preparing and still all it took was my
4 sister and a sheath. You work so hard to seem
5 dangerous, but real control doesn't have to prove
6 itself.

7 The truth is, the scariest part about
8 you is how painfully average you turned out to be.
9 The truth is, you're as dumb as they come; stupid,
10 clumsy, slow, sloppy, weak, dirty. Let me be very
11 clear, don't ever try to convince yourself you matter
12 just because someone finally said your name out loud.
13 I see through you.

14 You want the truth? Here's the one
15 you'll hate the most. If you hadn't attacked them in
16 their sleep in the middle of the night, like a
17 pedophile, Kaylee would have kicked your fucking ass.

18 Thank you.

19 THE COURT: Thank you.

20 MS. JENNINGS: Next is Kristi Goncalves, Kaylee
21 Goncalves' mother.

22 KRISTI GONCALVES: Thank you, Your Honor.

23 I never imagined having to speak to
24 someone so devoid of humanity. For a long time, I
25 didn't think I'd find the words low enough to meet you

1 where you are. But now I realize this isn't about
2 you. It's about what you've done to me, and I need
3 you to hear it.

4 When you murdered my daughter, Kaylee
5 Jade Goncalves, you didn't just take her life, you
6 shattered others. You attacked what you could never
7 be, and in doing so, you left a trail of devastation
8 far beyond that house.

9 You stole my peace. You've altered my
10 every waking moment. Every sleepless night, the way I
11 view the world, people, safety, trust, it's all been
12 changed by your cruelty.

13 I no longer recognize parts of myself.
14 Joy is harder to find. Laughter feels foreign. The
15 world moves forward, but I'm suspended in places of
16 sorrow and rage.

17 You've taken from me something that can
18 never be restored. The grief sits with me every day;
19 some days quietly, and other days so loud it drowns
20 out everything else. The emotional toll you've
21 inflicted on me is immeasurable. I live with a
22 constant ache with birthdays that are now memorials,
23 with holidays that feel hollow, with empty chairs that
24 scream louder than words ever could. I am forever
25 changed.

1 But for you, as a person working on a
2 Ph.D. in criminal justice, you really didn't think
3 this one through. You're not that good. In fact,
4 you're not good at anything. You couldn't secure a
5 job. You couldn't get along with others. You
6 couldn't even get a female to look in your direction.
7 All because you are pathetic.

8 Now, you're a joke in this courtroom.
9 I wish I could crown you with a jester hat to complete
10 your orange jumpsuit clown look. A dead killer
11 doesn't kill again, so while I'm disappointed the
12 firing squad won't get to take their shots at you, I'm
13 confident that the men in prison will have their way
14 with you in more ways than one. You will finally get
15 what you wanted: Physical touch. Just probably not
16 how you were expecting it.

17 See, you haven't beat the system.
18 You've simply entered a new one where the rules are
19 cruel, and the consequences will never end. You are
20 entering a place where no one will care who you are
21 and no one ever will respect you. You will be
22 forgotten, discarded, used, and erased.

23 You will always be remembered as a
24 loser, an absolute failure. And when those prison
25 doors slam shut behind you, I hope that sound echoes

1 in your heart for the rest of your meaningless days.

2 I hope it reminds you of what we all already know:

3 You're nothing.

4 May you continue to live your life in
5 misery. You are officially the property of the state
6 of Idaho, where your fellow inmates are anxiously
7 awaiting your arrival. But it's okay, because they're
8 there to help you. Hell will be waiting.

9 A quick message from our youngest
10 daughter. Aubrey wanted to say: You may have
11 received A's in high school and college, but you're
12 gonna be getting the big D's in prison.

13 THE COURT: Thank you.

14 Do we have more from the Goncalves
15 family?

16 MS. JENNINGS: Yes. Next would be Shanon Gray,
17 the Goncalves family's attorney, who will be reading
18 statements from Kaylee Goncalves' grandmothers.

19 MR. GRAY: Shanon Gray, the attorney for the
20 Goncalves family. I have three statements, one from her
21 aunt and two from grandparents. This is from her aunt,
22 Tami Buttz.

23 "You, in the cloak of darkness, made a
24 decision to turn our whole family's world upside
25 down forever. You, in the cloak of darkness, took

1 our Kaylee Jade Goncalves away from us all without
2 hesitation.

3 "Never have you shown any remorse or
4 regret. We just get creepy, non-expressive stares
5 as you have your team of women defend you. Kaylee
6 was a strong, kind, fun-loving, caring person, and
7 she will greatly be missed by all her family and
8 friends for the rest of our lives.

9 "She had goals in life that you took
10 from her and us. We lose on watching her enjoying
11 her life, working hard and building the future she
12 wanted. She was ready to start that after college
13 life.

14 "You, in the cloak of darkness, took it
15 all away. You left us without her future wedding,
16 her future children that she would have added to
17 our family. No more talking to her on the phone,
18 going for a coffee, celebrating holidays. It's all
19 gone.

20 "You, in the cloak of darkness, gave each
21 and every one of Kaylee's family members their own
22 lifetime sentence.

23 "You, in the cloak of darkness, also took
24 our Maddie May from all of us. She was so genuine,
25 caring, polite. She was part of our family. You

1 came in and harmed our children that were younger
2 women than you in their own beds. You're nothing.
3 You're a coward. It's not right that you have
4 received life.

5 "I pray that you meet your end in the
6 cloak of darkness. Burn in hell."

7 I have two other statements, Your
8 Honor. This is Linda Lukens' statement. This is
9 Kaylee's grandmother.

10 "I really don't know how to address
11 something so inhumane, but I will try. Nothing in
12 the past two and a half years has made any sense.
13 All I get is you cowardly went into a home at
14 night, filled with what I'm sure you thought was
15 all sleeping girls, and went on a vicious killing
16 spree for no other reason but to appease your
17 demonic urges.

18 "You took my granddaughter, Kaylee, from
19 us, plus three other beautiful lives. You took my
20 granddaughter, Kaylee -- beautiful, sweet-souled
21 doll-faced Kaylee -- who was getting ready to start
22 her amazing life, who had such a bright future, who
23 was loved by so many, who you were so envious of.
24 She had a life you could never have.

25 "You are so beyond human. You're

1 definitely a demon from hell. I truly wish your
2 punishment would be the same death you inflicted on
3 our kids, but I think you will meet some new
4 friends in prison who will be there just to help
5 you. Thumbs up."

6 I have one last statement, Your Honor.
7 This is from Cheryl Goncalves, Kaylee's other
8 grandmother.

9 "John 1:5 says, light shines in the
10 darkness, and the darkness overcomes it not.
11 Somewhere in your life, something, some jealousy,
12 envy, ego, something went dark. It pushed out all
13 light until you became dark and evil. And when you
14 saw my granddaughter and her friends, their light,
15 because they have such a light, you couldn't stand
16 it, because the darkness in you could not stand the
17 light in them, and so you decided to destroy it.

18 "Cowardly, you walked into their rooms in
19 the dark and took their lives, hoping to get rid of
20 your darkness. But you didn't. You failed.
21 Because what was once a light shone only to their
22 friends, families and loved ones is now all over
23 the world. Everyone sees it: Their smile, their
24 beauty, their plans, everything they were and had.

25 "And you think you put a close to it,

1 even that, but you didn't because they still exist.
2 They are still light. They are still beautiful.
3 You can never take that away. They will always be
4 in the light of all eternity.

5 "And you will be in the darkness because
6 you could not overcome it. You failed. I want you
7 to be gone. More than gone, I want you to be cast
8 out; cast out from my life, from my family, from
9 this earth.

10 "I will not allow your hatred to
11 penetrate into my own soul. You do not get that
12 power. You are evil, and in the end, evil is
13 eradicated. You didn't take Kaylee's light. You
14 spread it into the world."

15 Thank you, Your Honor.

16 THE COURT: Thank you. Are you moving to a
17 different family now?

18 MS. JENNINGS: Yes, Your Honor.

19 THE COURT: Why don't we take a ten-minute
20 recess.

21 (Recess.)

22 THE COURT: All right, Ms. Jennings.

23 MS. JENNINGS: The next family is the family of
24 Xana Kernodle. And the first will be Jazzmin Kernodle,
25 Xana's sister.

1 JAZZMIN KERNODLE: First, I just want to say
2 thank you to everyone who's been involved in this and
3 for all the hard work and dedication you guys have put
4 into this. I also want to thank everyone for the
5 support and just my family and friends who have been
6 around through this time.

7 I went back and forth on whether to
8 speak today because the truth is you don't deserve
9 power over my feelings, my words, or me. In the end,
10 I realized this moment isn't about you, it's about
11 justice for Xana, Ethan, Kaylee, and Maddie. It's
12 about honoring the beautiful people they were, and
13 still are, in God's eyes.

14 On November 13th, 2022, a piece of my
15 heart was ripped away. There's no way to ever fully
16 describe the weight of losing my sister and my best
17 friend. No sentence or punishment will ever come
18 close to the justice Xana, Ethan, Kaylee, and Maddie
19 deserve.

20 Xana was everyone's best friend. She
21 was kind. She was funny. She was a gift to each
22 person she was able to make an impact on. Xana was
23 someone I turned to when I needed direction or advice.

24 Although I am her older sister, I often
25 found myself looking up to her. She had a radiant

1 energy that everyone loved, and she always knew the
2 right way to approach a problem. She knew how
3 precious and special life was, and she truly did live
4 every day to the fullest. Yet, her story was cut
5 short by an act of evil.

6 I believe in a God whose justice is not
7 bound by this courtroom. I find peace knowing that
8 judgment ultimately belongs to Him. For your sake, I
9 hope one day you feel the full weight of what you did.
10 I hope you take accountability. I hope that you truly
11 experience the guilt, and you surrender yourself to
12 Jesus Christ because no punishment on this earth can
13 ever compare to the isolation and pain of eternal
14 separation from God. Xana deserved more. They all
15 did.

16 But I come here to say this. I am
17 strong. I am brave. I'm a fighter just like Xana.
18 And you don't get to control how I move forward or
19 what I believe. I walk with the comfort of knowing I
20 will see my sister again.

21 Xana didn't get the future she
22 deserved. She won't be the maid of honor at my
23 wedding, the cool aunt to my future children. I'll
24 never hear her laugh or see her light up a room ever
25 again, but I will carry her with me for the rest of my

1 life. I will live in her honor, fight to be the best
2 kind of woman and someone she's proud of to make sure
3 the world never forgets who she was.

4 Xana's story doesn't end with what was
5 taken from her. It lives through the love she gave,
6 the people she touched, and the legacy our family will
7 protect. Her light still shines, and her voice will
8 echo louder than this pain. You didn't take that from
9 us, and you never will.

10 THE COURT: Thank you.

11 JEFF KERNODLE: I just want to say, before I
12 start, I'm Xana's dad, Jeff Kernodle.

13 It's been a hard road down, you know,
14 because she's gone. I want to thank everybody. The
15 other families that have spoken so far spoke about
16 things. I agree with everything they have to say. It
17 all comes back to a lot of the same things that I've
18 had to deal with and we, as a family, have had to deal
19 with.

20 And that brings me to the basis of what
21 I'm gonna talk about a little bit. On my way up here,
22 flying up here on the plane, and about halfway through
23 the flight this little girl was calling out for her
24 dad. "Hey dad, dad, dad." And then in my mind -- I
25 was kind of half asleep, it was dark on the plane -- I

1 heard Xana calling out for me like she did, you know,
2 back when she was a little five-year old. Those times
3 were hard, it was chaotic, but we always had something
4 to work towards that was in a positive direction,
5 compared to right now, which is necessarily not as
6 positive as that for sure.

7 And I miss Xana a lot. My life's been
8 changed. Xana had a great impact on me, and the
9 impact was when she was gone, I realized how important
10 she was and what she really did for me, influenced me,
11 was way beyond what I ever thought. She'd call me up
12 on the weekends, check on me, see who's with me.
13 She's like, accountability to your youngest daughter.
14 And that really made a big difference. It made me
15 really think about things and what it's all about, you
16 know?

17 That's the things that I miss the most
18 is those calls on the weekends, the calls at 11:00 at
19 night, "What's going on? You wanna meet my friend?"
20 You know, whoever she was with, a couple of her
21 friends, I'd meet them, talk to them. She always did
22 that, and it's pretty cool, pretty cool. I really
23 miss that.

24 She made a big impact on me, on other
25 people, her family, but the impact that she made is so

1 extensive on what happened here, and it goes so far.
2 People from everywhere in the world are following
3 things, and Xana has made a difference in their lives.
4 Countless people told me that. They might not even
5 know her, they never knew anything about her, it's
6 what they see. And they just -- they just love her
7 and say how they wish she could have been their
8 friend, you know -- could have been their friend,
9 could have hung out. And it's like, this is just a
10 blessing, this is who the kid was and definitely was a
11 big blessing in my life. And so is Jazzmin.

12 And, basically, you know, we worked
13 hard to do the things we did, you know, through the
14 times they were growing up. And through those times,
15 I realized that I wanted both of them to graduate
16 college, and that would be the ultimate thing for them
17 to do to prepare for the world.

18 Then it came back to me, Xana didn't
19 get to finish college. She had it all figured out.
20 And this all came back to me when I was there and that
21 little girl was on the plane doing that. It's like,
22 where I was going, what I was going here for. And
23 then I just realized and thought to myself about the
24 wonderful life that she had and we had together and,
25 you know, I still get to have with Jazzmin.

1 But that's the part that really
2 counted, it's the part that really counted, those
3 memories. And those are what I have left, the
4 memories with her and the ones I can make with her,
5 and the life I can go on with now, which is what she
6 wants. And I say that in present tense, because
7 that's what she wants, because I've been told that,
8 you know, countless ways that she's out there and has
9 a way to communicate, which I'm very grateful for.

10 That goes to say, the impact of what
11 happened to them, all four kids, goes so much further
12 than just me, the parents, the families, the
13 community. It goes so far because a lot of kids in
14 the colleges, just for an example, they lock their
15 doors now. The door wasn't locked in the back. Penn
16 State or wherever it was, all the colleges I know that
17 I've heard they all locked their doors now. So maybe
18 the impact that it's gonna make, it's gonna help out
19 and maybe protect some people. Having this outreach
20 and having the influence of what these kids -- what
21 happened to these kids did.

22 All I know is I was seven miles away
23 when it happened, and she wasn't feeling that good.
24 It was 11:30, and I almost went over to Xana's, and I
25 would have been sitting right there on that couch and

1 you would've had to deal with me, so they would have
2 had a chance. And I regret that, and I regret not
3 going. But the reason why I didn't is because Xana
4 said, don't be drinking and driving. You have the
5 rental car, don't be drinking and driving, you know,
6 the week before that. She would have been mad at me
7 to do that. But I really wish I would have drunk and
8 drove, you know, because they would have had a chance,
9 all four of them.

10 At this point, I just have to go on.
11 We're going to go on with everything and make things
12 better in my life because that's what it's all about.
13 I've got closure in things. And the part that we miss
14 is Xana, her influence, her smile, the things that she
15 did. And we have the memories left, the great
16 memories. And she just wants us to make more memories
17 and not be sad or upset or shocked or taken for that.

18 And that's what we're going to do. We
19 just have to. That's all I got.

20 THE COURT: Thank you for your words and your
21 courage. Bless you.

22 MS. JENNINGS: Next Kim Kernodle would like to
23 address the Court.

24 KIM KERNODLE: Thank you, Your Honor.

25 My name is Kim Kernodle. I am Xana's

1 aunt. I was very blessed to have her in my life in
2 our family. And I thought I had everything in my head
3 what I wanted to say, but it kind of went out. I'm
4 always looking for the positive thing because evil,
5 hate, can destroy people, and that's what it started
6 doing with our family. It created anger with our
7 family members.

8 And then I had to look, because Xana
9 was everything that the media, her friends said. She
10 was that fun, loving, high-spirited, beautiful person.
11 And I no longer get to get my nails done with her,
12 have lunch with her. Sorry. But how I look at it now
13 is this tragedy, this horrible tragedy on all of the
14 four children has brought us closer. You united us
15 with your actions. We're united now and we're
16 stronger than ever. We have family and friends now
17 that we never knew we had.

18 And it's probably going to bother
19 everybody, but Bryan, I'm here today to tell you I
20 have forgiven you because I no longer could live with
21 that hate in my heart, and for me to become a better
22 person, I have forgiven you. And any time you want to
23 talk and tell me what happened, get my number. I'm
24 here, no judgment because I do have questions I want
25 you to answer. And I am here. I'll be that one that

1 will listen to you. Okay?

2 Thank you, Your Honor.

3 THE COURT: Thank you very much.

4 STRATTON KERNODLE: My name is Stratton
5 Kernodle, and I'm Xana's uncle, Jeff's brother. Sitting
6 here today listening to all the stories and feelings,
7 and feeling the pain from everybody is a pretty powerful
8 thing. Each time a statement was read, it sort of would
9 tug into my center core as I felt everybody's anguish.

10 Xana meant a lot to us, and we loved
11 her very much. I started thinking about instead of
12 rehashing everything that everybody else has talked
13 about, I wanted to direct it another direction towards
14 Bryan and what he's done to his family, his parents,
15 his siblings, his friends, his universe. He has
16 contaminated, tainted their family name, and pretty
17 much made a horrible, miserable, thing to be ever
18 related to him. And I know that's what he has to live
19 with, and that has to be his pain.

20 And that's all I have to say.

21 THE COURT: Thank you.

22 MS. JENNINGS: Next Your Honor, I believe Randy
23 Davis, stepfather to Xana Kernodle, would like to
24 address the Court.

25 RANDY DAVIS: Hi. My name is Randy, stepdad of

1 Xana. I feel the same way we all do. All of us are
2 united because of something that happened, and I am
3 grateful to know and have met some new family because of
4 this awful event. But this is probably the last time
5 we're all going to be in the same room together, that's
6 real, so I can say I love you all and I feel your pain,
7 just God bless us all, you know, just get through it.

8 I had stuff wrote up. It's probably
9 best I didn't read it out, probably get kicked out of
10 here. I'll share one thing to you guys, not to you,
11 with Xana. So I was working in North Dakota and came
12 home and Jazzie and Xana had taken our son, Elijah,
13 and put him in a dress, make up. It was awful. I was
14 like -- I just -- I don't know. She was funny. I
15 told her she'd be in the movies and be somebody great
16 some day like that, and now she is just above us as an
17 angle with all the other beautiful kids.

18 So let's hold that to our hearts,
19 because this evil thing is not going to take nothing
20 from us.

21 You, man, I don't know what my limits
22 are here, but I'm really struggling, dude. I am
23 struggling. I want to just be out in the woods with
24 you just so I can teach you about loss and pain. I
25 love God, I wouldn't take your life, that's up to him,

1 but I guarantee you, you are weak. God, I would just
2 give a moment, man, five minutes out in the woods.
3 Oh, man, you're going to go to hell. I know people
4 believe in other stuff. You're evil. There's no
5 place for you in heaven. You took our children. You
6 are going to suffer, man. I'm shaking because I want
7 to reach out to you, but I hope you feel my energy.
8 Okay. Go to hell.

9 MS. JENNINGS: Next is Cara Northington, Xana's
10 mother.

11 CARA NORTHINGTON: I'm Cara Northington. I am
12 Xana Kernodle's mother. This letter is to you, really,
13 but it's for my daughter who was murdered by you.

14 Today I stand before you, the man who
15 is responsible for murdering my beautiful daughter,
16 Xana Kernodle. My daughter was beautiful both inside
17 and out. She possessed love for those around her.
18 And had a light so bright it will live on forever in
19 our hearts.

20 She brought joy and laughter to her
21 friends, her family and anyone in her presence. Our
22 Lord and Savior, Jesus Christ, now has her in his
23 loving arms in heaven where she can never be harmed
24 ever again for eternity.

25 Because of her, I came to know my Lord

1 and Savior, Jesus Christ. Because of her, many will
2 come to Christ. It is Christ who lives in me that has
3 given me the strength to forgive you. It was of no
4 power of my own. In return, the Lord has filled me
5 with joy, hope, and peace that surpasses all
6 understanding.

7 Jesus has allowed me to forgive you for
8 murdering my daughter without you even being sorry or
9 asking for this. This is only possible because he who
10 lives in me is greater than any evil in this world.
11 For God has not given us the spirit of fear but of
12 power and of love and of a sound mind. I do not fear
13 you or even let you rent space in my head anymore.
14 This forgiveness has released me from any and all evil
15 you have inflicted on me and my family. It is allowed
16 me to let our Lord deal with you.

17 You have accepted a deal that will
18 prevent you from receiving the death penalty. Nothing
19 man can do to you can ever compare to the wrath of
20 God. Inevitably, you will stand before our Lord and
21 will have to answer to him over the sins you have
22 committed in murdering our children.

23 I pray you come to the end of yourself
24 before that day. Whether you like it or not, heaven
25 is for real and so is hell. The innocent life of Xana

1 that you stole from myself and my family and the
2 destruction it has caused, I am washing my hands of
3 you and turning you over to my Lord and Savior Jesus
4 Christ whom vengeance belongs to.

5 In closing, I want to read a passage
6 from the Bible. Ephesians 6, King James version:

7 "Finally, my brethren, be strong in the
8 Lord and in the power of His might.

9 "Put on the whole armor of God, that ye
10 may be able to withstand the wiles of the devil.

11 "For we wrestle not against flesh and
12 blood, but against principalities, against powers,
13 against the rulers of the darkness of this world,
14 against spiritual wickedness in high places.

15 "Therefore, take unto you the whole armor
16 of God, that ye may be able to withstand in the
17 evil day."

18 I am not going to share memories of
19 Xana or any more of the goodness of her with you
20 because I do not want that to be in your head. I
21 don't want it to in your head, you don't deserve that.
22 You don't deserve our good memories that we have.

23 I do pray for you. I pray you come to
24 the end of yourself. I pray that before this life is
25 over, that you ask our Lord and Savior in your heart

1 to forgive you. I do pray for that. But after today,
2 I wash my hands of you and you are no longer a thing.

3 Thank you.

4 THE COURT: Thank you.

5 MS. JENNINGS: I don't believe the State has
6 any other victim impact statements.

7 THE COURT: All right. The State can argue.

8 MR. THOMPSON: Thank you, Your Honor.

9 Just as a housekeeping matter, there
10 will be the issue of restitution. The documentation
11 is being gathered. We ask the Court to defer that for
12 30 days so we can present it in an orderly fashion and
13 make sure it's comprehensive for everyone.

14 THE COURT: Any objection to leaving
15 restitution open 60 days?

16 MS. TAYLOR: No, Your Honor.

17 MR. THOMPSON: Thank you, Your Honor.

18 I think it's necessary and appropriate
19 to share for everyone here, including the Court, the
20 background that brings us in front of Your Honor today
21 for these proceedings.

22 As the record reflects, and as
23 everybody in this courtroom knows, the defendant has
24 pleaded guilty to all five counts charged in the
25 indictment. Under oath before Your Honor, he has

1 admitted that the charges against him are true. He
2 has reassured the Court that he has not been coerced
3 or threatened to make those admissions, and Your Honor
4 did an extraordinary job in taking the pleas back on
5 July 2nd. We appreciate the Court's discipline and
6 insight.

7 The defendant has also waived appeal on
8 the multitude of rulings from this Court and
9 Your Honor's predecessor in Latah County on literally
10 dozen of motions seeking to dismiss the case, seeking
11 to control or limit evidence, seeking to offer
12 evidence that would not be appropriate. And we
13 appreciate the Court's consistent rulings based on the
14 law, based on the facts.

15 As Your Honor will recall on June 18th,
16 just really not that long ago, we appeared before this
17 Court for arguments on what became the defendant's
18 final motions to this Court; the motion where they
19 wanted to offer evidence suggesting that other people
20 were responsible for the defendant's actions, and the
21 motion seeking essentially an indefinite continuance
22 of the trial.

23 It was readily apparent to all of us in
24 the courtroom from Your Honor's comments that those
25 motions were not going to be granted, so we returned

1 to Moscow and continued with what we'd been working on
2 for months in preparation for trial. We had no qualms
3 about going to trial, if trial is what was necessary
4 and appropriate.

5 The following week after we were in
6 court, we were approached by the defense with an
7 inquiry about a possible plea. And I can tell the
8 Court this is the first suggestion ever that there was
9 any consideration because, indeed, the Defense had
10 maintained from beginning that Mr. Kohberger, the
11 defendant, was factually innocent. It's clear that
12 the reality of the evidence and the case that had been
13 investigated and prepared and that we were ready to
14 present in court became a reality.

15 Our reaction, among other things, was
16 to reach out to all of the families. And, in fact,
17 later that week, on Thursday and Friday of that last
18 week of June, we met with representatives -- by Teams,
19 virtual meetings -- representatives of all the
20 families, and we talked about the status of the case
21 and upcoming trial and things that related to the
22 trial. And we also let them know that there had been
23 an inquiry about whether there might be an offer for a
24 plea, and we asked the family members for their
25 thoughts and feelings.

1 And they were candid and they have been
2 candid since, and we respect that. We understand,
3 recognize and acknowledge that there was a difference
4 of opinion among representatives of the different
5 families. We understand that.

6 One of the challenges of this case, one
7 of the unique things about this case, is we have
8 multiple victims, each unique unto themselves, their
9 families and friends unique unto themselves, and all
10 of them entitled to their opinions, all of them
11 entitled to their thoughts.

12 Over the following weekend our
13 prosecution team, very skilled attorneys who were
14 personally as well as professionally deeply invested
15 in this case, met and we talked, and the decision was
16 reached -- well, to start with, were there to be any
17 sort of plea offer and discussion, there's only one
18 possibility and that would be for the defendant to
19 plead guilty straight up to all charges. There would
20 be no bargaining about counts, there would be no
21 bargaining about reduced sentences. And so we made
22 the proposal to the Defense that if the defendant was
23 willing to plead guilty upfront to all five counts as
24 charged and waive appeal of the Court's myriad
25 decisions during the past two-and-a-half plus years on

1 all of his motions that would have consumed years, if
2 not decades, of time in the future. By the end of the
3 weekend, we were notified the defendant was prepared
4 to plead guilty as charged and factually acknowledge
5 his responsibility in court for these horrible crimes.

6 Obviously, those discussions and
7 negotiations were confidential. And as, Your Honor,
8 noted, I believe, that was necessarily so, because if
9 the defendant had decided not to plead guilty, it
10 would have been devastating to our jury pool for there
11 to be public information that there had been even
12 consideration by either party to a plea resolution,
13 and protecting the prospective integrity of trial
14 after so many years was paramount.

15 So the end of the weekend came. We
16 notified the victims' families of what had occurred.
17 We recognize -- I recognize and acknowledge
18 personally, and I with respect the fact that of these
19 fine suffering people here, not everybody agreed with
20 the decision we made. I accept that. It's my
21 responsibility in the end. I recognize that's the
22 duty of the office that I hold.

23 So now it is time for the judicial
24 system to impose final judgment and close the door on
25 this chapter of these tragedies. As the Court is

1 aware, by the agreement of the parties, it is the
2 State's prayer -- perhaps if we can have the Elmo,
3 please, turned on -- that on Count I, felony burglary,
4 the Court sentence the defendant to the maximum period
5 of 10-years fixed in the custody of the Idaho
6 Department of Correction.

7 Count II, that the Court sentence the
8 defendant to fixed life for the murder of Maddie
9 Mogen.

10 On Count III, that the Court sentence
11 the defendant to fixed life for the murder of Kaylee
12 Goncalves.

13 On Count IV, that the Court sentence
14 the defendant to fixed life for the murder of Xana
15 Kernodle.

16 On Count V, that the Court sentence the
17 defendant to fixed life for the murder of Ethan
18 Chapin.

19 And the State further prays that these
20 sentences be ordered to run consecutively, back to
21 back, not at the same time, to recognize and respect
22 the unique individuality of each of these beautiful
23 young people whose lives were taken brutally and for
24 no reason.

25 And hopefully now, as we have heard

1 earlier this morning, it is time to afford the
2 families and the friends and the community and the
3 State of Idaho and the nation and the world to move
4 forward.

5 We can't undo. We can never undo the
6 horror of what occurred on the early morning hours of
7 November 13th, 2022, at 1122 King Street, in Moscow,
8 Idaho.

9 For a long time the presiding district
10 judge in Latah County was Judge Stegner, who
11 eventually became a justice of the Idaho Supreme
12 Court. And Justice Stegner often observed that even
13 God cannot change the past, but everyone in this room
14 has the ability to take themselves forward, and we
15 want the judicial system to afford them the
16 opportunity today to do that.

17 From today forward, our memories should
18 be focused on these innocent victims whose lives were
19 taken, on their families, on their friends, on the
20 community. The Court has heard discussion talk today,
21 reminisces today about a special family that our
22 victims shared; not just their natural, legal and
23 biological families, not just their university family
24 within their sorority, for example, but this family.

25 This is the picture taken on

1 November 12th, 2022, of the special family, 1122 King
2 Road. And you can see all six of these dynamic,
3 vibrant, loving, special innocent faces taken together
4 just across the street from their residence and barely
5 12 hours before four of them would be brutally
6 murdered in their sleep. They've been described
7 consistently as being bright, caring, vivacious, with
8 futures we can only imagine now. But they were, and
9 they remain, a special family that I think we should
10 all recognize and appreciate.

11 So, it's time to move forward. There
12 have been a number of statements directed specifically
13 at the defendant today. I have one last thought.
14 After Your Honor imposes judgment and sentences the
15 defendant to die in prison, he's going to stand up in
16 the belly chains and leg irons that he's wearing
17 today, and he is going to be escorted into the custody
18 of the Idaho Department of Correction, and the door
19 will close behind him forever. That is the closure
20 that we seek, that all of these people, these loving
21 friends and family deserve, so that we can move
22 forward.

23 Thank you, Your Honor.

24 THE COURT: Thank you.

25 Does Defense have evidence to present

1 today?

2 MS. TAYLOR: No evidence, Your Honor.

3 THE COURT: Does Defense wish to make argument
4 today?

5 MS. TAYLOR: Your Honor, we do not wish to make
6 argument. Mr. Kohberger, along with his legal team, is
7 prepared for the Court to enter judgment and sentence.

8 THE COURT: Mr. Kohberger, you have an
9 opportunity to make a statement, if you wish to. I take
10 it you are declining?

11 THE DEFENDANT: I respectfully decline.

12 THE COURT: Very well.

13 [UNITENTIFIED]: Coward.

14 THE COURT: All right. Let me start this
15 morning by acknowledging and thanking those that have
16 come here today in support of their loved ones. I
17 appreciate your courage and your strength, and I hope
18 that you are able to move on as best as possible. I
19 thank counsel for the professionalism exhibited
20 throughout the case. It has been my great honor to
21 preside in this case and to help bring, to the extent
22 possible, some resolution and hopefully justice to this
23 case.

24 During the quiet morning hours of
25 November 13, 2022, a faceless coward breached the

1 tranquility of six beautiful young people and
2 senselessly slaughtered them, four of them. Who
3 committed this unspeakable evil was unknown for
4 several weeks, but due to the killer's incompetence
5 and outstanding police work by numerous local, state
6 and federal law enforcement agencies, the person that
7 slithered through that sliding glass door at 1122 King
8 Road now stands before the world and this court
9 unmasked.

10 This unfathomable and senseless act of
11 evil has caused immeasurable pain and loss. No parent
12 should ever have to bury their child. This is the
13 greatest tragedy that can be inflicted upon a person.
14 Parents who took their children to college in a truck
15 filled with moving boxes had to bring them home in
16 hearses lined with coffins. The loss this killer
17 inflicted was not just the death of these people's
18 children, siblings, grandchildren, as we've heard
19 today, it has ripped a hole in their soul, destroying
20 a special part of their very essence.

21 Any person who is a parent defines
22 themselves, foremost, as such. It is their existence
23 and purposes of being. And it has been stolen from
24 these parents. None of us have experienced the loss
25 these victims have in the unspeakable way they have,

1 and, therefore, none of us can, or should we, question
2 the way in which they have handled their loss, whether
3 that be in private mourning, removed as far as
4 possible from this media circus or in front of a
5 camera demanding retribution with the loudest
6 megaphone.

7 I've listened intently to the stories
8 and pain that have been shared today, with great awe
9 at the courage and resilience of the surviving family
10 members of those wonderful children. I've listened
11 also to the surviving roommates, both in person and
12 through their friends, and I can't think of how,
13 frankly, courageous they have been despite the hell
14 they have faced by uncaring people who have come up
15 with all kinds of crazy theories about two kids simply
16 being kids.

17 The parents, siblings and other family
18 members who have spoken today are designated as
19 victims in our legal system, but going forward I hope
20 that they can shed that label, as it gives too much
21 power of the evil that condemned them to that role.
22 They are and should be known as survivors, fighters
23 and foremost as witnesses to the tremendous lives of
24 value and unbounded promise of these four young
25 people.

1 But those speaking today and those who
2 did not speak but who carry the same burden, the same
3 loss, now carry forth memories of these now
4 perpetually young people, these forever children.
5 These survivors carry the responsibility of ensuring
6 that the voices of these children -- Maddie, Kaylee,
7 Xana and Ethan -- are never forgotten, and the
8 positive impacts they have had on so many lives are
9 never minimized, and that the love they shared, the
10 light they shined onto others is forever celebrated.

11 As we sit here today, this case is
12 ending, and we are now certain who committed these
13 unspeakable acts of evil. But what we don't know and
14 what we may never know is why.

15 I share the desire expressed by others
16 to understand the why, but upon reflection, it seems
17 to me -- and this is just my own opinion -- that by
18 continuing to focus on why, we continue to give
19 Mr. Kohberger relevance, we give him agency, and we
20 give him power. The need to know what is inherently
21 not understandable makes us dependent upon the
22 defendant to provide us with a reason, and that gives
23 him the spotlight, the attention, and the power he
24 appears to crave.

25 Yet, even if I could force him to

1 speak, which legally I cannot, how could anyone ever
2 be assured that what he speaks is the truth. Do we
3 really believe, after all of this, he is capable of
4 speaking the truth or giving up something of himself
5 to help the very people whose lives he destroyed?
6 Rather, I suspect the so-called reason would be dished
7 out in enticing self-serving and aggrandizing
8 untruthful bits, leaving people wanting more
9 information, more insight, and thus enhancing further
10 the power he seeks to hold.

11 Even if we can get truthful insight
12 into his why, I suspect it would not in any way quench
13 one's thirst for understanding why in the first
14 instance, because there is no reason for these crimes
15 that could approach anything resembling rationality,
16 no conceivable reason would make any sense. And in
17 the end, the more we struggle to seek explanation for
18 the unexplainable, the more we try to extract a
19 reason, the more power and control we give to him.

20 In my view, the time has now come to
21 end Mr. Kohberger's 15 minutes of fame. It's time he
22 be consigned to the ignominy and isolation of
23 perpetual incarceration. I know there has been
24 concern about him collaborating on books or movies or
25 other media projects, and I truly hope that someone

1 does not stoop to affording him this spotlight that he
2 desires in the name of clicks, royalties or profits.

3 While criminal behavioralists should
4 study him, away from the spotlight, in an attempt to
5 prevent other would-be killers from acting on their
6 worst impulses, there should be no need for that to
7 spill over into the public eye.

8 The great Idaho jurist, Edward Lodge,
9 was known for trying to find something positive about
10 every person he ever sentenced, and with over a half a
11 century as a trial judge, that was lot of people.
12 This was often challenging, and I recall in one case
13 he said that the best he could come up with was that
14 the defendant had good penmanship. Truth be told, I'm
15 unable to come up with anything redeeming about
16 Mr. Kohberger because his grotesque acts of evil have
17 buried and hidden anything that might have been good
18 or intrinsically human about him. His actions have
19 made him the worst of the worst. Even in pleading
20 guilty, he's given nothing hinting of remorse or
21 redemption, nothing suggesting even a recognition or
22 understanding, let alone regret, for the pain he has
23 caused, and, therefore, I will not attempt to speak
24 about him further other than to simply sentence him so
25 that he is forever removed from civilized society.

1 Accordingly, based on his conduct and
2 based on the record before this Court, recognizing the
3 standards that govern this Court's sentencing
4 decisions as set forth in State v. Toohill, I hereby
5 sentence Mr. Kohberger as follows:

6 On Count I, burglary, 10-years fixed,
7 zero years indeterminate. I also impose a fine of
8 \$50,000.

9 Count II, for the first-degree murder
10 of Madison Mogen, I sentence the defendant to a fixed
11 term of life imprisonment without the possibility of
12 parole, a fine of \$50,000, and a civil penalty of
13 \$5,000 payable to the family of the victim.

14 On Count III, for the first degree
15 murder of Kaylee Goncalves, I sentence the defendant
16 to a fixed term of life imprisonment without the
17 possibility of parole, a fine of \$50,000, and a civil
18 penalty of \$5,000 payable to the victim of the
19 family -- or to the family of the victim, pardon.

20 On count IV, for the first degree
21 murder of Xana Kernodle, I sentence the defendant to a
22 fixed term of life imprisonment without the
23 possibility of parole, a fine of \$50,000, and a civil
24 penalty of \$5,000 payable to the family of the victim.

25 On Count V, for the first murder of

1 Ethan Chapin, I sentence the defendant to a fixed term
2 of life imprisonment without the possibility of
3 parole, a fine of \$50,000, and a civil penalty of
4 \$5,000 payable to the family of the victim.

5 The sentences on Counts I, II, III, IV
6 and V shall run consecutively to one another.

7 Restitution shall be left open for 60
8 days.

9 The defendant will be required to
10 submit a DNA sample and a right thumbprint impression
11 to the Department of Correction and comply with the
12 DNA Database Act.

13 I remand the defendant to the custody
14 of the Idaho State Board of Correction to be
15 imprisoned in an appropriate facility in execution of
16 the sentence where he will remain until he dies.

17 Though you have waived your right to
18 appeal, you do have a right to file a notice of
19 appeal, and any such appeal must be filed within 42
20 days of the date of the written judgment, which will
21 be entered shortly hereafter; though the appeal, you
22 should be aware, may be deemed a violation of the plea
23 agreement, so I certainly suggest you discuss that
24 with counsel if that is your desire.

25 I ask the media and public present to

1 allow the families to be escorted out first before
2 they leave.

3 Again, thank you to everyone for your
4 stories today. I am strengthened by them and
5 encouraged by your community and strength.

6 God bless you.

7 We're adjourned.

8 For the record, I did enter the
9 no-contact order for a period of 99 years.

10 (Proceedings concluded.)

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REPORTER'S CERTIFICATE

STATE OF IDAHO)
)
COUNTY OF ADA)

I, CHRISTIE VALCICH, Certified Court
Reporter of the County of Ada, State of Idaho, hereby
certify:

That I am the reporter who transcribed
the proceedings had in the above-entitled action in
machine shorthand and thereafter the same was reduced
into typewriting under my direct supervision; and that
the foregoing transcript contains a full, true, and
accurate record of the proceedings had in the above
and foregoing cause, which was heard at Boise, Idaho.

IN WITNESS WHEREOF, I have hereunto set
my hand this 15th day of October, 2025.

Christie Valcich

CHRISTIE VALCICH, CSR-RPR
Ada County Courthouse
200 West Front Street
Boise, Idaho

EXHIBIT 3

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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

MOTION TO CONTINUE

COMES NOW, Bryan C. Kohberger, by and through his attorneys of record, and hereby respectfully submits the following Motion to Continue due to the substantial amount of trial investigation and preparation still outstanding, as well as recent and forthcoming publicity that is highly prejudicial to the defense. Any conviction and sentence resulting from a capital trial

beginning in August 2025 will be unconstitutionally imposed and, therefore, vulnerable to reversal on direct or collateral review. In making this Motion, Mr. Kohberger relies on his right to be free from cruel and unusual punishment, his right to due process, his right to a fair trial, his right to counsel, his right to present a defense, his right to confront witnesses, his right to a fair and reliable sentencing determination, and other rights safeguarded by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article I, Sections 6, 7, 8, and 13 of the Idaho State Constitution.

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ARGUMENT

I. This Court Has an Obligation to Uphold Mr. Kohberger’s Constitutional Rights by Vacating the Trial Date because Defense Counsel Needs Additional Time to Review Discovery and Prepare for the Complex Merits and Sentencing Phases Unique to Death Penalty Cases.

This Court has an “obligation to ‘enforce the constitutional rights of all ‘persons,’ including prisoners.” *Brown v. Plata*, 563 U.S. 491, 511 (2011); *see also Robb v. Connolly*, 111 U.S. 624, 637 (1884) (“Upon the State courts, equally with the courts of the Union, rests the obligation to guard, enforce, and protect every right granted or secured by the Constitution of the United States and the laws made in pursuance thereof. . . .”).

As detailed in this Motion, moving forward with a capital trial in August will infringe upon Mr. Kohberger’s constitutional rights, as counsel requires more time to review discovery, complete investigations, and prepare for trial. When considering this request for a continuance, the Court must weigh the issues against the heightened need for reliability in death penalty cases. *See Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). This elevated standard is essential because

execution is the most irreversible and profound penalty; indeed, “**death is different.**” *Ford v. Wainwright*, 477 U.S. 399, 411 (1986) (emphasis added).

When the State seeks the death penalty, it imposes an extraordinary burden upon the Court, itself, and defense counsel to ensure the fairness, accuracy, and reliability of the trial and any subsequent sentencing proceeding. With a defendant’s life stake, the trial court must be “particularly sensitive to insure that every safeguard is observed,” *Gregg v. Georgia*, 428 U.S. 153, 187 (1976), and must take “extraordinary measures” to ensure that a death sentence is reliably imposed, rather than “imposed out of whim, passion, prejudice, or mistake,” *Eddings v. Oklahoma*, 455 U.S. 104, 118 (1982) (O’Connor, J., concurring).

Justice O’Connor’s concurrence in *Thompson v. Oklahoma*, 487 U.S. 815 (1988), reinforces the idea that trial courts must apply heightened scrutiny to decisions potentially leading to a death sentence. 487 U.S. 815, 856 (1988) (“Among the most important and consistent themes in this Court’s death penalty jurisprudence is the need for special care and deliberation in decisions that may lead to the imposition of [the death penalty]”). The Idaho Supreme Court, too, has emphasized the special safeguards and stringent due process protections that must be afforded in capital cases. *See, e.g., State v. Creech*, 105 Idaho 362, 383 (1983) (“The ‘qualitative difference between death and other penalties calls for a greater degree of *reliability* when the death sentence is imposed.’”) (emphasis in original) (citing *Lockett v. Ohio*, 438 U.S. 586, 604 (1978)).

Because proceeding to a capital trial prematurely is a decision that may lead to the erroneous imposition of the ultimate sanction, this Court must consider and assess this Motion under a heightened standard of due process.

II. Mr. Kohberger Has Myriad Constitutional Rights during These Proceedings, All of Which Are Dependent on Counsel Having the Time and Resources to Prepare for a Capital Trial in Accordance with Established Professional Norms.

A. In Capital Cases, the Rights to Effective Assistance of Counsel and a Complete Defense Are Amplified.

The Sixth Amendment entitles Mr. Kohberger to the effective assistance of counsel at both the merits and penalty phases of this capital case. *See, e.g., Andrus v. Texas*, 590 U.S. ____ (June 15, 2020) (per curiam); *Strickland v. Washington*, 466 U.S. 668, 686 (1984). Additionally, and concomitantly, as part of this Sixth Amendment guarantee, as well as his right to Due Process as protected by the Fourteenth Amendment, Mr. Kohberger is entitled to a sufficient amount of time to allow counsel to adequately prepare for trial and sentencing. *See Powell v. Alabama*, 287 U.S. 45, 59 (1932) (“[A] defendant, charged with a serious crime, must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense”); *United States v. Ash*, 413 U.S. 300, 340-41 (1973) (“*Powell* made clear that, in order to preserve the accused’s right to a fair trial and to ‘effective and substantial’ assistance of counsel at the trial, the Sixth Amendment guarantee necessarily encompasses a reasonable period of time before trial during which counsel might prepare the defense.”). The Supreme Court has recognized that “depriv[ing] a person of counsel during the period prior to trial may be more damaging than denial of counsel during the trial itself.” *Maine v. Moulton*, 474 U.S. 159, 170 (1985).

In a capital case, counsel must meet specific professional obligations to be constitutionally effective. The ABA Guidelines outline the professional expectations and obligations for counsel in death penalty cases. These Guidelines are not merely aspirational; they represent the current consensus on what is necessary for effective representation in capital cases. The Supreme Court has consistently referred to the ABA Guidelines to determine the prevailing professional norms for counsel’s performance. For example, in *Wiggins v. Smith*, 539 U.S. 510, 524 (2003), the Court explained that the ABA Guidelines for capital defense serve as “guides to determining what is reasonable” and represent “well-defined norms.” Similarly, in *Rompilla v. Beard*, 545 U.S. 374, 387 (2005), the Court emphasized that it is the lawyer’s duty to conduct a thorough investigation of the case’s circumstances and explore all avenues leading to facts relevant to the case’s merits and the penalty if convicted, citing the ABA Standards for Criminal Justice 4-4.1 (2nd ed. 1982).

The Ninth Circuit, which would review any death sentence arising out of Idaho state courts, has also repeatedly relied on the ABA Guidelines and expressly recognized the Guidelines as a “proper measure of the adequacy of an attorney’s investigation.” *Andrews v. Davis*, 944 F.3d 1092, 1109 (9th Cir. 2019) (“American Bar Association (ABA) standards and the like are evidence of those norms and guides to determining what is reasonable”) (internal quotations omitted). The Ninth Circuit is not an anomaly; more than 700 capital case opinions cite the ABA Guidelines. *See American Bar Association, Death Penalty Representation Project, List of Opinions Citing the ABA Guidelines for Capital Defense.*¹

In addition to the effective assistance of counsel, Mr. Kohberger has the right to a “meaningful opportunity to present a complete defense.” *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006); *see also Crane v. Kentucky*, 476 U.S. 683, 687 (1986) (noting the existence of a “fundamental constitutional right to a fair opportunity to present a defense”); *California v. Trombetta*, 467 U.S. 479, 485 (1984) (“Under the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness. We have long interpreted this standard of fairness to require that criminal defendants be afforded a meaningful opportunity to present a complete defense.”). This right has a number of sources, including the Due Process Clause of the Fourteenth Amendment, as well as the Compulsory Process and Confrontation Clauses of the Sixth Amendment. *Holmes*, 547 U.S. at 324.

This right takes on special significance in capital cases; the right to present a meaningful defense must take precedent over any countervailing state evidentiary rules or other procedures that might be acceptable in the context of non-capital criminal cases. *See, e.g., Holmes*, 547 U.S. at 330 (finding that South Carolina state rule, which had been in place for more than 60 years, unconstitutionally infringed upon capital defendant’s right to present a complete defense); *Caspari*

¹ Available at https://www.americanbar.org/content/dam/aba/administrative/death_penalty_representation/allcites.pdf (last visited April 22, 2025).

v. Bolden, 510 U.S. 383, 393 (1994) (“[T]ime and again the [Supreme] Court has condemned procedures in capital cases that might be completely acceptable in an ordinary case.”).

B. Mr. Kohberger Is also Entitled to an Individualized Sentencing Determination, a Constitutional Right that Is Uniquely Reserved for Defendants Facing the Death Penalty.

Because the prosecution is seeking to execute him, Mr. Kohberger also has additional constitutional rights in this proceeding. The Eighth Amendment requires that a capital sentencing proceeding permit individualized consideration of the defendant and the circumstances of the offense. *Woodson*, 428 U.S. at 304 (holding that consideration of the character of the defendant is “a constitutionally indispensable part of the process of inflicting the penalty of death”); *Roberts v. Louisiana*, 428 U.S. 325, 332-36 (1976) (holding that the state’s mandatory death sentencing statute was unconstitutional because it did not permit the sentencer to make individualized determinations or assess degrees of culpability); *Parker v. Dugger*, 498 U.S. 308, 321-23 (1991) (holding that petitioner was deprived of his Due Process and Eighth Amendment rights to individualized sentencing where the appellate court failed to consider all mitigating evidence). As the Supreme Court noted in *Enmund v. Florida*, 458 U.S. 782 (1982), “we insist on ‘individualized consideration as a constitutional requirement in imposing the death sentence,’ which means that we must focus on ‘relevant facets of the character and record of the individual offender.’” *Id.* at 798 (citations omitted).

The U.S. Supreme Court has repeatedly emphasized that, in a capital case, a jury must be given the opportunity to consider all evidence that may weigh against a death sentence for any particular offender. This evidence includes anything at all from the defendant’s life history and cannot be limited. *See, e.g., Lockett*, 438 U.S. at 604-09 (explaining that a sentencer may not be precluded from considering, as a mitigating factor, any aspect of the defendant’s character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death); *Bell v. Ohio*, 438 U.S. 637 (1978) (reversing death sentence because

statute precluded consideration of facts and circumstances proffered as mitigating circumstances); *Green v. Georgia*, 442 U.S. 95 (1979) (finding unconstitutional the exclusion of evidence at sentencing phase based upon Georgia's hearsay rule); *Eddings v. Oklahoma*, 455 U.S. 104 (1982) (finding that it was constitutional error for sentencing court to conclude that it could not consider the defendant's turbulent family history as a mitigating factor in deciding punishment); *Skipper v. South Carolina*, 476 U.S. 1 (1986) (holding that it was unconstitutional violation of *Lockett* for trial court to exclude evidence that defendant had adjusted well to incarceration between arrest and trial); *Penry v. Lynaugh*, 492 U.S. 302 (1989) (vacating death sentence because trial court's instructions to the jury did not allow jury to consider as a mitigating factor evidence of the defendant's mental retardation and childhood abuse); *Penry v. Johnson*, 532 U.S. 782 (2001) (finding that Texas' three-question sentencing format, in light of jury instructions and all circumstances of case, did not adequately allow the jury to consider mitigating evidence of mental retardation); *Tennard v. Dretke*, 542 U.S. 274, 287 (2004) ("Relevant mitigating evidence is evidence which tends logically to prove or disprove some fact or circumstance which a fact-finder could reasonably deem to have mitigating value. Thus, a State cannot bar the consideration of . . . evidence if the sentencer could reasonably find that it warrants a sentence less than death.") (internal citations and quotations omitted).

When a jury is denied relevant mitigating evidence, either because counsel independently fails to conduct a complete investigation or because the court denies defense counsel adequate time or resources to conduct such an investigation, the defendant's rights under the Sixth, Eighth, and Fourteenth Amendments of the U.S. Constitution, as well as the corollary guarantees in the Idaho Constitution, are violated, and any resulting death sentence cannot stand. Thus, individualized sentencing requires the presentation of mitigation evidence that is properly investigated, documented, and presented with the help of appropriate experts. As detailed further below, this

process is a comprehensive, time-consuming, and expensive undertaking, but it is also what our Constitution demands when the government seeks to extinguish human life.

C. The Right to Qualified Expert Assistance as Part of the Guarantees to Effective Assistance of Counsel and an Individualized Sentencing Proceeding.

In line with the heightened protections afforded to capital defendants, and stemming from both the rights to “a meaningful opportunity to present a complete defense,” *Holmes*, 547 U.S. at 324, and to due process, *Ake v. Oklahoma*, 470 U.S. 68, 70 (1985), capital defendants are entitled to necessary expert assistance. Indeed, expert assistance is needed in all homicide cases, given that “investigating a homicide is uniquely complex and often involves evidence of many different types. Analyzing and interpreting such evidence is impossible without consulting experts—whether pathologists, serologists, microanalysts, DNA analysts, ballistics specialists, translators, or others.” ABA Guidelines, 31 HOFSTRA L. REV. at 955. However, in a case where the prosecution elects to seek the death penalty, the right to access competent expert assistance is particularly important, given that “the prosecution and the defense rely more extensively on experts in death penalty cases than in [other types of] criminal cases.” Subcom. On Federal Death Penalty Cases, Comm. On Defender Services, Judicial Conference of the United States, *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (1998), pp. 21-22.² Because prosecutors rely extensively on experts in death penalty cases, capital defendants cannot “present their claims fairly within the adversary system” if they have not also obtained competent expert assistance. *See Woodson*, 428 U.S. at 77 (quoting *Ross v. Moffitt*, 417 U.S. 600, 612 (1974)).

Beyond the frequently complex merits-phase issues, conducting an adequate investigation into sentencing-phase issues in a capital case almost always requires the assistance of multiple experts. *See McWilliams v. Dunn*, 137 S.Ct. 1790, 1793-94 (2017) (explaining that, when a capital

² Available at: https://www.uscourts.gov/sites/default/files/original_spencer_report.pdf

defendant's "mental condition" is "seriously in question" and is relevant to "the punishment he might suffer[.]" a state must provide a mental health professional capable of conducting an appropriate examination and assisting in evaluation, preparation, and presentation of the defense); ABA Guidelines, 31 HOFSTRA L. REV. at 1004 (noting that "because mental health issues pervade capital cases, a psychologist or other mental health expert may well be a needed member of the defense team[, and] additional expert assistance specific to the case will almost always be necessary for an effective defense").

As discussed further below in Section III.E., defense counsel cannot know the full range of experts that may be necessary until *after* the extensive social history investigation has been completed. Both the identification of a mental health professional's necessary area of expertise, and the accuracy of the expert's diagnosis, is dependent on having accurate and comprehensive social history information.

III. Counsel's Professional and Ethical Obligations in a Capital Case.

A. Counsel's Duty to Provide Effective Assistance of Counsel in Accordance with the Prevailing Professional Norms.

In order to effectuate Mr. Kohberger's constitutional rights as described above, counsel must at least meet the minimum professional obligations for counsel on a capital case as outlined in the ABA Guidelines. The ABA Guidelines require "high quality legal representation for all persons facing the possible imposition or execution of a death sentence by any jurisdiction." 31 HOFSTRA L. REV. at 919. Among many other things, the ABA Guidelines recognize that "[e]very task ordinarily performed in the representation of a criminal defendant is more difficult and time-consuming when the defendant is facing execution . . . Due to the extraordinary and irrevocable nature of the penalty, at every stage of the proceedings counsel must make extraordinary efforts on behalf of the accused." *Id.* at 923 (emphasis added); *see also id.* at 988 (recognizing the "extraordinary responsibilities and commitment required of counsel in death penalty cases").

B. The Minimum Requirements Counsel Must Meet in Investigating for the Merits Phase of a Capital Case.

With respect to investigation for the merits phase, the ABA Guidelines are clear that **counsel must thoroughly investigate and challenge every minute piece of the evidence the state purports to have.** “To assume the accuracy of whatever information the client may initially offer or the prosecutor may choose or be compelled to disclose is to render ineffective assistance of counsel . . . **the defense lawyer’s obligation includes not only finding, interviewing, and scrutinizing the backgrounds of potential prosecution witnesses, but also searching for any other potential witnesses who might challenge the prosecution’s version of events, and subjecting all forensic evidence to rigorous independent scrutiny.**” *Id.* at 926.

In addition to a complete investigation of every piece of the State’s case, counsel is then responsible for identifying and considering all legal claims potentially available, even if those claims have consistently lost in that jurisdiction. *See id.* at 1032 (“Counsel should object to anything that appears unfair or unjust even if it involves challenging well-accepted practices.”). This is necessary because counsel in a capital case has a duty to preserve “any and all conceivable errors for each stage of appellate and post-conviction review.” *Id.* at 1030. Non-preservation of an issue at the trial level may result in waiver, and ultimately in a defendant’s execution, even if reversible error occurred. *See id.* at 1030 (describing a case in which, from a joint capital trial, one co-defendant was eventually executed because his counsel failed to object to women being excluded from the jury, while the other co-defendant’s case was reversed and he is now serving life in prison because his attorneys preserved the issue).

This obligation places a significantly higher burden on defense counsel than in a non-capital case. In an ordinary criminal case, counsel could strategically forgo some aspects of the exhaustive investigation outlined step-by-step in the ABA Guidelines and would not be required to preserve every possible legal error for potential review. Furthermore, there would be

significantly fewer legal issues to address because the unique issues related to capital sentencing would be irrelevant.

C. Counsel Must Conduct an Exhaustive, Unparalleled Life History Investigation, Analyze Hundreds of Documents and Interviews, and Compile All of this Information into a Cohesive Narrative for the Sentencing Phase.

1. What a Constitutionally Adequate Investigation Entails

A constitutionally adequate investigation for the sentencing phase of a capital case requires a comprehensive investigation into the client's entire life history in order to present a complete picture of the client's mitigating life circumstances to the jury. "Because the sentencer in a capital case must consider in mitigation anything in the life of the defendant which might militate against the appropriateness of the death penalty for the defendant, penalty phase preparation requires extensive and generally unparalleled investigation into personal and family history." *Id.* at 1022 (internal citations omitted).

The life history investigation is so central to death penalty cases that there is a supplementary set of Guidelines specifically outlining counsel's responsibility in this piece of case preparation. *See* Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases, 36 HOFSTRA L. REV 677 (2008) [hereinafter "Supplementary Guidelines"].

The defense "must conduct an ongoing, exhaustive and independent investigation of every aspect of the client's character, history, record and any circumstances of the offense, or other factors, which may provide a basis for a sentence less than death" in order to meet their constitutional obligations. *Supplementary Guidelines*, 36 HOFSTRA L. REV. at 689. Dozens of cases confirm this as a fundamental obligation of defense counsel in a capital case:

Without conducting a reasonable investigation, counsel's choice of strategy will be arbitrary, as the strength of each potential strategic choice is contingent on the outcome of the initial investigation. *Hooper*, 314 F.3d at 1170-71; *Bouchillon v. Collins*, 907 F.2d 589, 597 (5th Cir. 1990). *Wiggins* makes clear that to be reasonably diligent, counsel must "conduct a *thorough* investigation of the defendant's background" for "*all reasonably available* mitigating evidence." *Id.* at 522, 524, 123 S.Ct. 2527 (quoting *Williams*, 529

U.S. at 396, 120 S.Ct. 1495, and ABA Guideline 11.4. 1) (first emphasis added).

Wilson v. Sirmons, 536 F.3d 1064, 1089 (10th Cir. 2008), opinion reinstated sub nom. *Wilson v. Workman*, 577 F.3d 1284 (10th Cir. 2009).

Compiling a comprehensive life history for a capital sentencing phase requires two primary responsibilities, which are dependent upon each other, as further explained below. These responsibilities are: (1) collecting and analyzing records from the client and the client's family's life history, and (2) interviewing individuals who have touched the client's life or who may be able to shed light on circumstances shaping the client's life.

It is well-established that life history records that must be collected "include[], but [are] not limited to" all records that may be in existence and which bear on any of the following subjects:

- medical history;
- complete prenatal, pediatric and adult health information;
- exposure to harmful substances in utero and in the environment;
- substance abuse history;
- mental health history;
- history of maltreatment and neglect;
- trauma history;
- educational history;
- employment and training history;
- military experience;
- multi-generational family history, genetic disorders and vulnerabilities, as well as multi-generational patterns of behavior;
- prior adult and juvenile correctional experience;
- religious, gender, sexual orientation, ethnic, racial, cultural and community influences;
- socio-economic, historical, and political factors

Supplementary Guidelines, 36 HOFSTRA L. REV. at 682. Contemporaneous records are intrinsically credible and may document events which the client and other family members were too young to remember, too impaired to understand and record in memory, too traumatized, ashamed, or biased

to articulate, or events which the client knows nothing about, but which may document significant events or conditions in the client's life.³ See ABA Guidelines, 31 HOFSTRA L. REV. at 1025-26.

In addition to collecting and analyzing those life history records, the defense team must identify, locate, and interview life history witnesses in a culturally competent manner in order to produce confidential, relevant, and reliable information. *Id.* Lay witnesses that must be interviewed include people such as:

- (a) The client's family, extending three generations back, and those familiar with the client,
- (b) The client's friends, teachers, classmates, co-workers, employers, and those who served in the military with the client, as well as others who are familiar with the client's early and current development and functioning, medical history, environmental history, mental health history, educational history, employment and training history, military experience and religious, racial, and cultural experiences and influences upon the client or the client's family;
- (c) Social service and treatment providers to the client and the client's family members, including doctors, nurses, other medical staff, social workers, and housing or welfare officials;
- (d) Witnesses familiar with the client's prior juvenile and criminal justice and correctional experiences;
- (e) Former and current neighbors of the client and the client's family, community members, and others familiar with the neighborhoods in which the client lived, including the type of housing, the economic status of the community, the availability of employment and the prevalence of violence;
- (f) Witnesses who can testify about the applicable alternative to a death sentence and/or the conditions under which the alternative sentence would be served;
- (g) Witnesses who can testify about the adverse impact of the client's execution on the client's family and loved ones.

³ Most individuals who are the subject of a forensic evaluation are not able to remember their life histories completely, will remember events inaccurately, and will omit critical facts such as occurrences of head trauma. Certain important areas of information, such as prenatal history, whether their mother drank or took drugs during the pregnancy, early developmental issues, injuries, illness, exposure to environmental toxins, and genetic predispositions to illnesses, are not likely known by the defendant. Only through thorough gathering of records, repeated interviews with people who had contact with the client throughout his life, and the analysis of all this information can a complete life history be developed.

Supplementary Guidelines, 36 HOFSTRA L. REV. at 691-92. It is vital that the interviewer conduct these interviews in person, face-to-face, and one-on-one, and that multiple interviews be conducted to establish trust and rapport in order to elicit sensitive information. *Id.* at 689.

As the mitigation investigation develops, “red flags” will become apparent; *i.e.*, indications that a particular mitigating circumstance or theme may be present in the defendant’s life history. When counsel discovers a red flag, it cannot be ignored, as to do so would be to “abandon the [] investigation at an unreasonable juncture.” *Wiggins*, 539 U.S. at 527-28 (2003).

The development of the mitigation investigation, including the identification of and subsequent follow-up on “red flags”, is dependent on both the life history records and interviews of witnesses. These two parts function together in order to produce a reliable life history narrative. For example, records from a client’s visit to the emergency room might be evidence of physical maltreatment by a parent or care taker, and may establish relevant dates and identify potential witnesses. The authors of reports and documents are themselves potential mitigation witnesses unknown to the client and the family. Alternatively, a family member recalling that the client or his family received services from a community organization when the client was young may aid counsel in finding records that would have otherwise not been known to exist, and which will offer third-party and contemporaneously recorded insight into what life was like for the client at a very young age. In this way, the investigation necessarily expands as new information is learned, because “[e]ach record obtained will refer to other records and reports which must be obtained, and individuals who must be located and interviewed. . .” Lee Norton, *Capital Cases: Mitigation Investigations*, *The Champion* (May 1992) at 45. This cyclical investigation is also important because it leads to confirmation from multiple sources—both objective records and corroborating witnesses who can testify—producing a persuasive mitigation case that can withstand adversarial testing. Thus, mitigation investigations develop in stages, as explained in this example:

[R]ecords indicating that the client’s mother drank alcohol during her early teenage years would lead the mitigation specialist to

question the mother, her family, and friends regarding her history of alcohol use, particularly whether she drank during pregnancy. To test and corroborate the responses, the mitigation specialist would gather the mother's school records, medical records, especially pre-natal and post-natal health care records, all mental health and substance abuse treatment records, the client's birth records, pediatric records (which may reflect slow growth and development of the client during childhood), school records (which may indicate social and academic problems as well as psychological evaluations), and social service or child protection agency records (which may contain references to the mother's drinking). Additional interviews would follow, focusing on family members, neighbors, coworkers, caregivers of the mother and the client who might have information about the mother's use of alcohol during pregnancy and the effects this had on the client. All of this information might give rise to a theory that the client suffers from Fetal Alcohol Syndrome, which, in turn, would lead to further evaluation by an appropriate mental health expert. All these steps are absolutely necessary for an accurate and reliable diagnosis by the expert evaluator.

Richard Dudley, Jr. and Pamela Leonard, *Getting It Right: Life History Investigation as the Foundation for a Reliable Mental Health Assessment*, 36 HOFSTRA L. REV. 963, 973 (2008) [hereinafter "Getting it Right"].

Unsurprisingly, this process takes time, especially because many witnesses must be interviewed multiple times even after rapport has been established:

It is insufficient to talk to witnesses only once because each new individual recalls different facts and anecdotes; if an aunt provides an account of a head injury which the mother forgot to mention, it is necessary to go back to the mother and ask about it. Similarly, an interview may reveal records that must be obtained which in turn raise new questions, questions which necessitate interviewing several witnesses again.

Id.

Adding to the complexity, it has long been recognized that a competent mitigation investigation must include the family history **going back at least three generations**, and must document genetic history, patterns, and effects of familial medical conditions. *See Supplementary Guidelines*, 36 HOFSTRA L. REV. at 691; *see also* ABA Guidelines, 31 HOFSTRA L. REV. at 1025 n.216. Because it is well-established that many major psychotic illnesses have strong genetic components, the existence of mental illnesses or related conditions in the family tree is vital

information for mental health experts evaluating the client, and the absence of such can lead to incorrect diagnoses. *See* ABA Guidelines, 31 HOFSTRA L. REV. at 1025; *see also* Daniel J. Wattendorf & Donald W. Hadley, *Family History: The Three-Generation Pedigree*, 72 AM. FAM. PHYSICIAN 441, 447 (2005); *Rompilla*, 545 U.S. at 392-93 (finding constitutional error after three mental health experts erroneously concluded there was nothing helpful to the defendant's case, but a background social history would have alerted them to organic brain damage, extreme mental disturbance, and fetal alcohol syndrome). The ABA Guidelines are clear that this exhaustive investigation is constitutionally required, despite the fact that it is a time-consuming and expensive undertaking:

A multi-generational investigation extending as far as possible vertically and horizontally frequently discloses significant patterns of family dysfunction and may help establish or strengthen a diagnosis or underscore the hereditary nature of a particular impairment. The collection of corroborating information from multiple sources—a **time-consuming task**—is important wherever possible to ensure the reliability and thus the persuasiveness of the evidence.

ABA Guidelines, 31 HOFSTRA L. REV. at 1025 (emphasis added).

2. A Full Investigation Is Likely to Lead to Discovery of Numerous Mitigating Factors that Would Not Be Readily Apparent from a Cursory Investigation.

Records, interviews, and other psychosocial research collected during the mitigation investigation process may reveal the following types of information, all of which has been considered mitigating in the modern era of capital punishment:

- a. Fetal and birth trauma, including prenatal malnutrition, prenatal exposure to alcohol, drugs and toxins, maternal medical conditions, such as diabetes, liver and thyroid problems and toxemia, and complications of delivery, such as anoxia;
- b. Problems in early physical, emotional, mental and social development;
- c. Physical illnesses and impairments, such as chronic infections, high fevers that compromise organic function, traumatic injuries,

infectious diseases, nutritional deficiencies and/or imbalances, inadequate medical attention;

- d. Evidence of early or adolescent signs of mental illness or deficiencies, including mental retardation, pervasive developmental disorders and major mental illnesses, such as major depression, schizophrenia and bipolar disorder; evidence of the onset and course of childhood, adolescent or adult mental illnesses; interventions prescribed and/or obtained; and subtle signs of disturbance, including self-medication;
- e. Educational history, including when and where the client attended school; how many times the client changed schools; patterns of tardiness and absences; indications of learning disorders, such as low performance, low intelligence and/or performance testing; special education referrals and/or programs; individualized educational plans; referrals for psychological and/or psychiatric evaluations;
- f. Patterns of social behavior, including acting out in anxiety and/or tendencies toward isolation; changes in mood and behavior; problems with hygiene and incontinence; self-destructive behaviors; impulse control problems; low self-esteem; poor verbal skills; unusual fears and phobias;
- g. The history, nature and extent of psychological, physical, and sexual abuse, including molestation and rape, premature exposure to sexual behaviors, isolation, degradation, rejection, abandonment, shunning, terrorization, and exposure to criminal activities; failure to help the child develop age-appropriate skills and competencies; failure to provide appropriate evaluations and treatment; destruction of treasured objects or ideals; prevention and/or destruction of important nurturing relationships; emotional and financial exploitation; exposure to consistently high levels of stimuli and anxiety; failure to soothe the child and teach the child to self soothe;
- h. A history and course of self-medicating behaviors and subsequent drug and alcohol dependence, including the presence of traumatic experiences, exposure to older individuals who introduced and/or encouraged the child to use drugs and alcohol; patterns of self-medication to regulate undiagnosed mental illnesses, such as paranoia and hallucinations; information regarding all treatment facilities, diagnoses offered, interventions prescribed, the degree of support of family members and others; a history of overdoses and suicide attempts;
- i. The nature of relationships with parents, nuclear family and extended family, including whether or not a client knew both parents, whether she later learned someone that she thought was a biological parent was in fact not, or whether the client's true heritage

was learned in the course of the investigation; the degree of consistency and support provided by caring adults in the home; whether parents or caretakers were physically or mentally impaired and the effects of these conditions on the child's development; traumatic losses through death, divorce, incarcerations or other disruptions involving important caretakers;

- j. Residential history, including housing projects, foster homes, juvenile settings, patterns of evictions, institutional settings and community violence;
- k. Presence or absence of social and community support systems, including social groups such as Boy/Girl Scouts, little league, summer camp and/or vacations, religious and/or spiritual activities, extended family relationships, neighborhood associations, and access to medical, psychological, legal and law enforcement assistance;
- l. Nature and extent of poverty, including substandard living conditions, presence and quantity of environmental toxins, lack of proper nutrition, medical and dental care, inadequate heat and air conditioning, overcrowding, inadequate clothing and other basic needs, and infestations of rodents and insects;
- m. The number and nature of traumatic events, including the death, illness or injury of loved ones or important caretakers, being a victim or witness of violence, loss of home and/or possessions, acute or prolonged illnesses and/or hospitalizations, experience of accidents or natural disasters;
- n. Employment history, including childhood jobs and/or quitting school to help support the family, patterns of job skills and/or lack of skills, job-related injuries and/or illnesses, traumatic loss of employment, and exposure to toxins;
- o. Juvenile and adult criminal history, including the influence of co-defendants, experiences with law enforcement, juvenile detention centers, courts, parole and probation offices, prisons and work release programs, rapes and assaults during incarceration; adequacy of care while institutionalized, including violence, gang tensions, overcrowding, lack of appropriate educational, vocational and recreational activities, diagnoses and medications provided while incarcerated, and/or failure by institutions to provide adequate mental and physical care and/or medication;
- p. Military history, including the location and nature of combat experiences, illnesses and accidents, evaluations, interventions and medications prescribed, nature of job assignments, special commendations, promotions and training, Article 15s and other disciplinary actions, patterns of alcohol and drug abuse, any

indications of untreated mental illness including traumatic stress reactions;

- q. Patterns of all significant relationships and any indications of attachment disorders, continuity and quality of relationships with family, friends, spouses, co-workers, military cohort, effects of loss or perceived loss of these relationships on the client's mood and judgment; and
- r. Physical and mental health, substance abuse, social, education and employment histories of parents, caretakers, siblings, and other significant individuals.

Declaration of Elizabeth Vartkessian, Ph.D., *United States v. Chukwudi Ofomata*, Case 2:17-cr-00201 (filed 11/09/2018).⁴

3. Mere Identification of Mitigating Information Is Not the Conclusion of the Investigation.

Though it requires many hundreds or thousands of hours to complete the interviews and records collection in a constitutionally adequate manner, the mere identification of mitigation themes, such as those listed above, is not the conclusion of the investigation. Counsel must then analyze each theme in accordance with available empirical and social science, usually with the help of experts, and must decipher how each mitigating theme played a role in the client's life.

For example, childhood poverty is a common mitigating theme in capital cases. Simply knowing that a client's family was very poor is insufficient. Social science has extensively documented how poverty can snowball into other major problems, such as increased likelihood of physical and psychological abuse; antisocial behaviors; long-lasting psychological effects such as depression, poor impulse control, and high levels of dependency; increased likelihood of diagnosable psychiatric conditions; increased likelihood of trauma, which can result in serious long-term consequences both physically and psychologically; parental abandonment or neglect; increased exposure to environmental toxins and pollutants; dangerous living conditions; poor

⁴ Dr. Vartkessian is the founder and director of Advancing Real Change, Inc., a non-profit organization that conducts capital mitigation investigations nationally.

quality schools, and so on. See Craig Haney, *Supplementary Guidelines For The Mitigation Function Of Defense Teams In Death Penalty Cases, Imagining Mitigation: Evolving Standards Of Decency*, 36 HOFSTRA L. REV. 835, 864-875 (2008); see also Scharlette Holdman, *The Nature and Role of Mitigation Evidence in Capital Cases*, Report for the Center for Capital Assistance (2002) at 5 (explaining many negative outcomes of extreme poverty, including that it has medical consequences, such as brain damage, and psychiatric implications).

It is incumbent on the defense team, therefore, to investigate beyond the mere surface-level identification of mitigation factors. The contextualization and integration of mitigating life history information is an essential part of the capital sentencing decision, because jurors ultimately are looking for an answer to the question “why?”.⁵ For example,

The long-term consequences of poverty can be empirically documented . . . That documentation can serve as the solid, factual, scientific basis for the penalty-phase contention that childhood poverty—**over which virtually no capital defendant has had any control—helped to shape his life course, drastically limited his available choices, and contributed directly to the criminal behavior and lifestyle in which he engaged.** And it also is usually possible to identify with some precision the various factors that help to explain why some people’s lives are more profoundly affected by poverty than others.

See Haney, 36 HOFSTRA L. REV. at 865.

In sum, compiling a life history is not merely a checklist of tasks. It is a complex and rich endeavor that focuses on a person’s identity, and goes to the heart of the human experience:

Compiling a life history includes understanding the broader environment that affects the client and this requires gathering records and asking questions regarding **culture, class, race and ethnicity, national origin, gender identity, sexuality, spirituality, and other factors that affect the client’s individual identity and group allegiances.** This is not a tangential inquiry. Rather, **how a person perceives himself and his place in the world affects his motivation and understanding of his own conduct, status, interpersonal relationships, safety, honor, and obligations.**

⁵ Of course, a sentencing phase only occurs if the jury has already found the defendant guilty of capital murder beyond a reasonable doubt in the merits phase. Counsel does not suggest that conviction is a foregone conclusion of this trial.

Identity profoundly affects how medical and mental illnesses are described and experienced by an individual and his community. It is necessary to understand what the client, his family, and his community considers behavioral norms in order to accurately interpret data that is gathered through observation, records, and interviews. **How others perceive an individual and his place in the world adds an additional layer of complexity to understanding the nature and magnitude of psychosocial stressors he encounters.** The failure of mental health systems to accommodate cultural needs and responses helps explain why many capital clients have medical and mental conditions that were not identified prior to their arrest.

Getting It Right, 36 Hofstra L. Rev. at 967. Without this information, properly investigated and contextualized, it is impossible that a jury will be able to conduct an “individualized sentencing” of the defendant and his circumstances that the Eighth Amendment requires.

D. The Alleged Aggravating Circumstances of this Crime Heighten Counsel’s Obligation to Conduct a Full and Complete Investigation and Prepare a Presentation that can Withstand Adversarial Testing.

It should be noted that an integrated, comprehensive life history is not a luxury to be afforded to only some capital defendants, nor is it offered as an “excuse” that stands no chance in the face of an aggravated crime. Rather, it is a vehicle that confronts and challenges the stereotypes of the “natural born killer,” offering instead “an examination of the structure of the lives of those who commit [capital violence].” Craig Haney, *The Social Context of Capital Murder: Social Histories and the Logic of Mitigation*, 35 SANTA CLARA L. REV. 547, 559 (1995). The U.S. Supreme Court has recognized this as a fundamental and mandatory part of the capital punishment system:

A process that accords no significance to relevant facets of the character and record of the individual offender or the circumstances of the particular offense excludes from consideration in fixing the ultimate punishment of death the possibility of compassionate or mitigating factors stemming from the diverse frailties of humankind. It treats all persons convicted of a designated offense not as uniquely individual human beings, but as members of a faceless, undifferentiated mass to be subjected to the blind infliction of the death penalty.

Woodson, 42 U.S. at 303.

Moreover, there are many examples of capital cases in which the presentation of a comprehensive life history and mitigating circumstances overcame aggravated crimes, including cases with multiple victims. Indeed, **juries have rejected the death penalty in at least 400 cases involving multiple victims**, demonstrating that the outcome of this case, even in the event of conviction, is anything but a foregone conclusion. *See* Russell Stetler, Maria McLaughlin, & Dana Cook, *Mitigation Works: Empirical Evidence of Highly Aggravated Cases Where the Death Penalty Was Rejected at Sentencing*, 51 HOFSTRA L. REV. 89, 149-206 (2021) (listing more than 400 cases in which juries rejected the death penalty in highly aggravated cases with multiple victims).

For example, Ricky Abeyta killed a state police officer, a sheriff's deputy, his ex-girlfriend along with her 18-year-old daughter and adult sister, another teenager, and a 6-month-old baby in a small New Mexico town of 2,500 residents; a jury sentenced him to life after deliberating for 11 days. *Id.* at 150; Lou Mattei, "Looking Back at the Chimayó Massacre," SUN News (Jan. 27, 2011).⁶ Jason Burkett and a co-defendant killed three people, including a 16- and 18-year old, in two separate episodes; a Texas jury sentenced him to life. *Id.* at 155. Andre Cooper was a gang leader convicted of killing four people, including eliminating a witness against him; a Pennsylvania jury rejected the death penalty. *Id.* at 159. The list goes on.

A death sentence is not a guaranteed outcome upon conviction of an aggravated capital murder case. And in a case where the allegations are sensational in nature and have been the subject of intense media and public scrutiny, *see* Part V, *infra*, a comprehensive and accurate life history presentation is even more crucial to the constitutional imperative of an individualized sentencing

⁶ Available at https://www.riograndesun.com/news/looking-back-at-the-chimay-massacre/article_87123eb5-c507-5273-9a76-6d99893d0ba4.html.

determination, to ensure the aggravated nature of the crime and the public outcry does not overcome the jury's ability to weigh both options.

Thus, capital defense teams have a complex and time-consuming job in identifying and interviewing life history witnesses, collecting numerous life history records from the client and his family, and then analyzing and contextualizing all of the information into a cohesive narrative for the jury, should the case proceed to a sentencing phase. And as discussed in the following section, it is only *after* the mitigation investigation nears completion that counsel can identify all of the behavioral, cultural, scientific, and mental health experts that may be necessary to develop the mitigation presentation and allow for individualized sentencing as required by the U.S. Constitution.

E. Counsel Cannot Identify All Necessary Experts Without Completing the Comprehensive Life History Investigation.

In addition to frequently complex merits-phase issues that are likely to require expert assistance, adequate investigation into sentencing-phase issues almost always requires the assistance of multiple experts. In particular, the defendant's mental health and cognitive functioning throughout life—as well as that of his family and caretakers—is essential information during the sentencing phase and also often pertains to merits phase issues. ABA Guidelines, 31 HOFSTRA L. REV. at 956 (emphasis added) (explaining that neurological and psychiatric impairment, combined with a history of physical and sexual abuse, are common amongst persons on death row, and how this can impact several aspects of the case other than sentencing).

Like other mitigating circumstances, merely identifying mental health diagnoses is insufficient to tell the client's story. “[U]nderstanding *how* mental disorders, impairments, and trauma affect a client's *childhood, adolescent, and adult functioning* are core responsibilities of the capital defense function.” Russell Stetler, *Mental Health Evidence and the Capital Defense Function: Prevailing Norms*, 82 UMKC L. REV. 407, 407 (2014) (emphasis added).

Reliable mental health assessments depend on extensive life history information, including information about family and genetic histories:

Because psychiatrically disordered or cognitively impaired individuals are by definition likely to be poor historians, a reliable evaluation requires historical data from sources independent of the client (for clinical reasons, although the point has additional significance in forensic applications). Additional components of a reliable evaluation include a thorough physical examination (including neurological examination) and appropriate diagnostic testing. The standard mental status examination cannot be relied upon in isolation for reliable clinical assessments any more than an expert can be relied upon in isolation in the courtroom context.

Id. at 417 (noting further that a complete retrospective social history has been recognized as a vital tool for accurate diagnosis since at least the 1980s); *see also Getting It Right*, 36 HOFSTRA L. REV. at 974-75 (“As a general rule, it is never appropriate to expect a mental health expert to deliver a comprehensive mental health assessment of the client until the life history investigation is complete.”).

Moreover, in addition to basing evaluations on reliable and complete life history information, experts must be selected on the basis of specific red flags in the client’s history and each expert’s speciality—they cannot be generalized forensic practitioners brought in to look for any variety of potential diagnoses. *See ABA Guidelines*, 31 HOFSTRA L. REV. at 1008 (“[C]ounsel should choose experts who are tailored specifically to the needs of the case, rather than relying on an ‘all-purpose’ expert who may have insufficient knowledge or experience to testify persuasively.”).

Experts that may be necessary in a capital case come from a variety of specialties and may include medical doctors, psychologists, psychiatrists, neuropsychologists, neuropsychiatrists, endocrinologists, toxicologists, pharmacologists, and various Ph.Ds, such as Ph.Ds in childhood development or early childhood education. Within each of those professions there are a host of specialties that must be tailored to the case, such as childhood abandonment and neglect, complex trauma, intellectual disability, traumatic brain injuries, fetal alcohol syndrome, in-utero exposure

to substances, effects of specific drugs or substances in combination with existing disorders or mental illness, and so on. *See, e.g.*, Supplementary Guidelines, 36 HOFSTRA L. REV. at 690 (describing types of expert witnesses that may be necessary); *Getting it Right*, 36 HOFSTRA L. REV. at 979 (explaining that multi-disciplinary expert teams are often necessary and listing examples).

In light of the fact that experts with different specialities will be necessary for each case, decades of caselaw confirms that “[i]t is simply ineffective assistance for counsel to permit a mental health assessment of the client to occur before having made a reasoned decision about the purpose of the examination and having provided the examiner with the data necessary to reach a professionally competent conclusion respecting the question presented.” Stetler, 82 UMKC L. REV. at 420.

Experts are often essential to telling the client’s story in a way that answers the all-important “why” question, *see* Section III.D., *supra*, and connecting the client’s life circumstances to the commission of the crime:

A deeper understanding of the subject is rendered through a psychodynamic formulation, which takes into account influences in a subject’s life that contributed to his mental state, considers how environmental and personality factors are relevant to analyzing the subject’s symptoms, and considers how all these influences interacted with the person’s genetic, temperamental, and biological makeup. For example, using attachment theory, a commonly accepted theory of human behavior, a mental health expert might describe the long-term consequences of being raised by a parent who was psychologically and emotionally unavailable to the defendant as a result of the parent’s severe depression or drug addiction. A mental health expert might also employ research on the impact of various factors on human growth and development to explain how certain traumatic injuries to the defendant’s brain, or exposure to certain chemical toxins, or certain chronic medical conditions resulted in cognitive deficits or behavioral difficulties. In another case, a mental health expert might use research that has clearly demonstrated the effects of a particular drug of abuse on human behavior to explain the behavior of a defendant who was addicted to the drug, or had ingested large quantities of the drug, or both. Conversely, a mental health expert might explain how a defendant’s inability to comply with a prescribed medication regimen resulted in a recurrence of the hallucinations, delusions and/or other thought process difficulties that led to his criminal behavior.

There are numerous examples of capital case reversals because counsel failed to complete the social history investigation, even when competent experts have been hired, because the evaluations resulted in inaccurate and/or incomplete information presented to the sentencer. *See, e.g., Caro v. Calderon*, 165 F.3d 1223, 1226-27 (9th Cir. 1999) (holding counsel ineffective where they “consulted four experts, including a medical doctor, a psychologist, and a psychiatrist, [but] failed to consult a neurologist or toxicologist who could have explained neurological effects of defendant’s exposure to pesticides”); *Jacobs v. Horn*, 395 F.3d 92 (3d Cir. 2005) (overturning conviction and death sentence because counsel was ineffective for failing to provide the hired mental health expert with a social history, “necessary information to conduct a proper evaluation,” and the expert erroneously concluded that defendant suffered no major mental illness, when in fact defendant suffered from “mild mental retardation, organic brain damage, and schizoid personality disorder;” conviction reversed because this information would have also been relevant to a diminished capacity defense); *Jells v. Mitchell*, 538 F.3d 478 (6th Cir. 2008) (finding counsel ineffective for failing to investigate the defendant’s social history and to provide the mental health expert with “personal history records—records that would have been collected had they used a mitigation specialist—that were necessary for the evaluation”); *Haliym v. Mitchell*, 492 F.3d 680 (6th Cir. 2007) (finding counsel ineffective in 1987 trial for failing to investigate defendant’s social history, and failing to provide expert psychiatrist with such information; expert erroneously concluded that defendant had a diagnosis of “adjustment disorder with depressed moods” and was malingering, when in fact he had a brain injury); *Commonwealth v. Collins*, 888 A.2d 564 (Pa. 2005) (finding counsel ineffective in several ways in sentencing phase of 1991 trial, including by failure to provide defense psychiatrist with relevant social history information; counsel should have found information indicating that client suffered a head injury, and the expert would have recommended neurological and neuropsychological testing).

Therefore, the investigation into the individual's life history must be completed before counsel can know the full spectrum of necessary experts for the penalty phase. This is essential because the accuracy of the evaluation relies on precise background information, and counsel must identify the appropriate type of expert to engage. *See Getting it Right*, 36 Hofstra L. Rev. at 980-87 (explaining the forensic mental health evaluation process). Forensic neuropsychologist George Woods emphasizes that the accuracy of a diagnosis is contingent on the social history, and cognitive deficits are likely to be overlooked if a comprehensive social history is not complete. This is because **“cognitive deficits often present as a series of defective links in an action, particularly in new, novel or stressful circumstances, rather than discrete symptoms, like hallucinations or delusions.”** *See* George Woods, *Neurobehavioral Assessment In Forensic Practice*, Int'l J. L. & Psych. at 2 (2012) (explaining how a comprehensive social history connects a person's deficits to their behavior in ways that testing and a diagnosis alone cannot). This information cannot be obtained solely through a face-to-face evaluation in a jail setting.

The ABA Guidelines highlight the complexity of this process and acknowledge that “[c]reating a competent and reliable mental health evaluation consistent with prevailing standards of practice is a **time-consuming and expensive process.**” ABA Guidelines, 31 Hofstra L. Rev. at 956 (emphasis added).

IV. Counsel Requires Additional Time to Fulfill the Minimum Requirements Described Above.

A. Counsel Cannot Review All of the Relevant Discovery and Complete the Necessary Investigations Prior to Trial.

As counsel explained in recent filings and in oral argument—which are hereby incorporated in full for brevity's sake—it is impossible for the defense team to review the necessary and relevant discovery in a manner that allows the evidence to be integrated into the comprehensive defense case, to pursue all necessary investigations arising from review of the discovery, including into alternative perpetrators, and to address the myriad issues that continue to

arise from the State’s failure to fully abide by this Court’s discovery and expert disclosure deadlines. Counsel requested that this Court alleviate these problems by precluding the death penalty as a possibility, freeing up counsel’s time to focus only on the merits phase preparation and removing the heightened standard of reliability that governs death penalty proceedings. Because the Court denied that motion,⁷ counsel is obligated to seek a continuance to continue reviewing discovery, complete investigations relating to the merits phase—including into alternative perpetrators—and complete investigations into “red flags” that have arisen in the life history investigation.

Courts have recognized that the prosecution has an advantage in investigation and discovery issues because of the resources at their disposal, and this is particularly true here, where the prosecution has had the assistance of the federal government. As the Sixth Circuit has explained,

The Supreme Court's rejection of the idea that the “prisoner still has the burden to discover the evidence” is based in part on the fact that the **prosecution has the advantage of a large staff of investigators, prosecutors and grand jurors, as well as new technology such as wiretaps of cell phones.** That is one of the reasons that these investigators must assist the defendant who normally lacks this assistance and may wrongfully lose his liberty for years if the information they uncover remains undisclosed. **The superior prosecutorial investigatory apparatus must turn over exculpatory information.** The *Brady* rule imposes an independent duty to act on the government, like the duty to notify the defendant of the charges against him.

United States v. Tavera, 719 F.3d 705, 712 (6th Cir. 2013). The prosecution has not provided defense counsel with a list of potentially exculpatory or impeaching evidence within the vast tranches of discovery in this case, and the Court declined to order them to do so. During oral argument on that motion, the Court identified a practical problem with relying on prosecutors to identify and list all exculpatory and impeaching information: prosecutors are advocates of their

⁷ See Order on Defendant’s Motion to Strike Death Penalty and Adopt Other Necessary Procedures (April 29, 2025).

side, and see the case through the lens of trying to secure a conviction. Thus, what may appear exculpatory to a defense attorney—or lead to the discovery of exculpatory evidence through additional investigation—may appear only tangentially relevant to a prosecutor. Given the heightened standards of due process afforded to a capitally accused defendant, it is imperative that counsel has time to review the relevant discovery and conduct any necessary follow-up investigations.

Cutting off this review before counsel can complete it would significantly prejudice Mr. Kohberger. The State's case is circumstantial. Mr. Kohberger was not identified as a person of interest until weeks after the crime, and after he was identified, law enforcement ceased investigating all other possibilities. While counsel can explain this in trial, every experienced trial lawyer knows that trials are essentially “story battles”—high-stakes duels where the prosecution and defense each tell competing narratives about the same set of events. Ultimately, the jury decides which story feels more true and more coherent. Even though the burden of proof rests with the prosecution, and the defense bears no burden at all, humans are driven by narratives; that reality forces the defense to counteract the State's narrative with another compelling story. *See, e.g.,* David Schwartz and Chelsey Metcalf, *Disfavored Treatment of Third-Party Guilt Evidence*, 2016 Wis. L. Rev 337, 341-42 (summarizing other scholars). As scholars explain, “[w]here the central issue is the identify of the perpetrator, even a reasonable doubt case implies a story that someone else did it. But it is a story with a huge hole, and one likely to be ineffective. The jury might speculate that, if this defendant did not do it, there should be at least some evidence suggesting that someone else did.” *Id.* at 342. And it is especially incumbent on counsel to become aware of all existing evidence, because alternate perpetrator evidence may be deemed inadmissible under Idaho law if it “merely tends to mislead the jury that another person committed the crime.” *State v. Meister*, 148 Idaho 236, 241 (2009).

Thus, defense counsel’s review of the discovery is not merely checking a box—it goes to the very heart of the ability to prepare and present a defense. Reviewing and integrating all of the evidence in order to tell the jury a coherent counternarrative is essential to defending Mr. Kohberger’s life. The State and its “superior investigatory apparatus,” *Tavera, supra*, has spent years honing in on one specific story—that of Mr. Kohberger’s guilt—and ignoring all other possibilities. Defense counsel has a bigger job in not only reviewing their case for guilt, but figuring out what the State missed, and exploring other alternative possibilities. The inability to review the discovery and incorporate all of the information into a cohesive defense prior to trial would nearly guarantee that counsel cannot mount an effective defense on Mr. Kohberger’s behalf. Because his life is on the line and due process must be given its highest regard, this Court should grant counsel the time necessary to ensure a fair trial.

B. The Life History Investigation is Ongoing and Requires Additional Time and Expert Assistance.

As more fully discussed in the *ex parte* supplement to this Motion,⁸ the life history investigation remains ongoing. Counsel is reviewing and digesting significant new records that have been received in the past couple of months; addressing ongoing barriers to receiving important life history records; and continuing to build rapport with several key life history witnesses. As explained in the accompanying *ex parte* filing, the investigation to date has revealed “red flags” for a number of mitigating themes and issues, and counsel must fully investigate these avenues before making strategic decisions related to sentencing.

As discussed in Section III.E., only after a more thorough life history investigation will counsel know the range of experts that will be necessary to contextualize Mr. Kohberger’s life story.

⁸ Mr. Kohberger is entitled to maintain the confidentiality of the defense team’s ongoing investigation.

V. A Continuance is Also Necessary to Investigate and Remedy the Prejudice of Highly Inflammatory Publicity Released just Weeks Before the Current Trial Date, Including the Recent Dateline NBC Special and a Forthcoming Book.

This case has garnered substantial public interest, and the Court previously issued a non-dissemination order restricting the release of certain information to the public in order to preserve the integrity of the proceedings and safeguard Mr. Kohberger’s right to a fair trial.

On May 9, 2025, just weeks before this capital trial is set to begin, Dateline NBC aired a two-hour episode about this case titled “The Terrible Night on King Road.” The program includes details and materials, including video footage, cell phone records, and photographs of documents, that are not publicly available through official channels. The show repeatedly emphasizes the non-public nature of this information, stating it was obtained from unnamed sources who are close to the investigation, and that the materials were obtained exclusively by Dateline. Much of the “investigative” material presented by Dateline was taken out of context and will not be admissible at trial because it lacks reliability.

The leaked materials appear carefully curated to promote a narrative of guilt. As this Court acknowledged in its May 15, 2025, Document and Records Hold Order, the source of the leak is most likely someone currently or formerly associated with law enforcement or the prosecution team. If that is the case, it raises urgent and serious questions about the objectivity, judgment, and credibility of the individuals tasked with investigating and presenting the State’s evidence—particularly those who may be called as witnesses. The identity of those involved, their motives, and any efforts to conceal their conduct go directly to the heart of witness credibility and the integrity of the State’s case.

The apparent leak is not only an egregious violation of the Court’s non-dissemination order; it enabled Dateline to gild rampant speculation with a veneer of credibility. When purportedly “exclusive” information surfaces through a media broadcast shortly before trial—particularly information attributed to unnamed sources with access to the investigation—it carries a heightened

aura of credibility and secrecy that can deeply influence public perception. Unlike official disclosures, which are typically accompanied by context and procedural safeguards, leaks framed as exclusives are perceived as uncensored truths that the public was not meant to see. This “insider” framing enhances the material’s persuasive power, suggesting that it is both authentic and revealing of the case’s hidden realities.

The episode includes things such as:

- Repeated speculative assertions regarding the assailant’s motives, including unfounded allegations of sexual motivation.
- Dramatic reenactments and animations depicting the alleged crime, created by the show’s producers without basis in the evidentiary record.
- Emotional interviews with individuals connected to the alleged victims, accompanied by evocative music, photos, and videos designed to elicit strong emotional responses.

The broadcast repeatedly bolstered its speculative claims through the use of so-called expert commentary, including individuals identified as law enforcement professionals and academics. These commentators were permitted to make sweeping assertions about the defendant’s alleged motives, psychological state, and personal history—none of which are grounded in evidence before the Court—while the program repeatedly emphasized their “training,” “research,” and “years of experience” to lend undue credibility to their conjecture. This type of testimonial mimicry improperly mirrors expert witness testimony in a trial setting without the safeguard of cross-examination or evidentiary standards, effectively presenting the public with a one-sided, unvetted narrative that shapes juror perception before any admissible evidence has been presented.

While the program occasionally inserts disclaimers such as “we don’t know what happened,” these brief caveats do little to mitigate the cumulative impact of an extended narrative constructed through selective imagery, emotionally charged reenactments, and detailed speculative

descriptions of the crime. When viewers are presented with a cohesive, visually reinforced sequence of events—especially when paired with commentary from individuals styled as experts—the overall presentation fosters a sense of authenticity and truthfulness that is difficult for viewers to disregard. An occasional, passing verbal disclaimer functions more as a legal formality than a meaningful check on prejudicial perception, and most viewers will leave with the impression that they have seen a reliable reconstruction of events.

The Dateline special, which aired just weeks before the trial date, will not even be the last pretrial media “bombshell.” Best-selling crime author James Patterson has written a book about the murders titled, “The Idaho Four: An American Tragedy,” scheduled for release on July 14, 2025—just **sixteen days** before jury selection is slated to begin. AMAZON, <https://www.amazon.com/Idaho-Four-American-Tragedy/dp/0316572853> (last visited March 16, 2025). The blurb for the book describes Mr. Kohberger as a “brilliant grad student, loner, apparent incel,” and explicitly tells the reader: “Now you are the jury. The evidence is in.” *Id.* The publisher boasts of “unmatched access” to the investigation, including interviews with “local law enforcement.” *Id.* This suggests that the apparent Dateline leak was not the only violation of this Court’s non-dissemination order.

The Sixth and Fourteenth Amendments guarantee the right to a fair trial by an impartial jury. A continuance is necessary to fully investigate the leaks and to mitigate the prejudicial effects of such inflammatory pretrial publicity occurring so close to the current trial date.

In *Sheppard v. Maxwell*, 384 U.S. 333 (1966), the Supreme Court held that a defendant was denied a fair trial due to “massive, pervasive and prejudicial publicity” that the trial court failed to mitigate. The Court emphasized the trial judge’s responsibility to ensure that the defendant receives a fair trial, free from the influence of prejudicial media coverage. The Court explicitly noted that a continuance may be required to protect the defendant’s rights. *Id.* at 363 (“But where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should

continue the case until the threat abates or transfer it to another county not so permeated with publicity.”).

The Supreme Court has likewise recognized that the passage of time can significantly reduce the taint of media exposure, holding in *Patton v. Yount* that even in a case involving extensive coverage of a confession, the delay between media saturation and trial reduced its prejudicial impact. 467 U.S. 1025, 1033–35 (1984). *See also Beck v. Washington*, 369 U.S. 541, 556 (1962) (pretrial publicity did not impair juror impartiality where, by the time of trial, “[t]he news value of the original ‘disclosures’ was diminished, and the [newspaper] items were often relegated to the inner pages”). The Court has recognized that while “pretrial publicity—even pervasive, adverse publicity—does not inevitably lead to an unfair trial . . . [t]he trial judge has a major responsibility . . . [T]he measures a judge takes or fails to take to mitigate the effects of pretrial publicity [] may well determine whether the defendant receives a trial consistent with the requirements of due process.” *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 554–55 (1976). The timing of the trial is a key factor in ensuring juror impartiality, as emotional intensity and memory of prejudicial material tend to fade over time.

Social science research supports this position. A comprehensive meta-analysis found that pretrial publicity significantly increases the likelihood of conviction, but that the effect is diminished when there is a temporal delay between media exposure and trial. Lori A. Hoetger et. al., *The Impact of Pretrial Publicity on Mock Juror and Jury Verdicts: A Meta-Analysis*, 46 Law & Hum. Behav. 121, 133 (2022).

In sum, the two-hour Dateline episode is uniquely prejudicial in both tone and content: it constructs a speculative narrative around motive and guilt, features emotionally manipulative production elements, and amplifies unsupported theories through self-styled “expert” commentary — all timed to air just weeks before trial, when juror impressions are most vulnerable and voir dire least equipped to neutralize such deep-seated bias. The forthcoming book by James Patterson,

which will arrive in the hands of potential jurors just two weeks before voir dire begins, promises to set off a new round of inflammatory, negative coverage and to deepen the pervasive bias against Mr. Kohberger on the eve of trial. The Court has already acknowledged that the Dateline special exposes a likely violation of the non-dissemination order, and Mr. Patterson's purported "unmatched access" to sources including "local law enforcement" suggests that multiple unauthorized disclosures have occurred. Depending on the results of the investigation into the leaks, a continuance may be inadequate. Once the source(s) of the leaks are identified and the full extent of misconduct revealed, the violations could warrant remedies more serious than delay. At the very least, however, a continuance is essential to allow the extremely prejudicial impact to partially subside, and to give the Court and the defense time to fully investigate and address the scope of the violations. Only then can the conditions necessary for selecting an impartial jury and ensuring a fair trial under the Sixth and Fourteenth Amendments be meaningfully restored.

VI. Reversal is More Likely Than Not in Any Case Resulting in a Death Sentence.

Statistically, almost two-thirds of death penalty cases are eventually overturned due to errors, often many years or even decades after the initial conviction.⁹ A frequent cause is reversal on ineffectiveness grounds due to the lack of an exhaustive investigation and complete presentation to the sentencer.¹⁰ Hundreds of cases could serve as examples, but for brevity, the following are

⁹ In the only study of its kind, researchers conducted a comprehensive 23-year study, including 5,500 judicial decisions, reviewing outcomes of death sentences that had been fully reviewed through the appellate and post-conviction process and thus were final. Reversible error was found in 68 percent of the cases. See Columbia University News, *Landmark Study Finds Capital Punishment System Fraught with Error: Serious, Reversible Error Found in Nearly 7 out of 10 Capital Cases in 23 Year Period* (June 12, 2000), available at <http://www.columbia.edu/cu/pr/00/06/lawStudy.html#footnote1>.

¹⁰ Federal habeas proceedings, which occur only after a conviction has been upheld in state appellate and post-conviction proceedings, account for at least 40 percent of reversals in death penalty cases. See, e.g., Andrew Gelman, et al., *A Broken System: The Persistent Patterns of Reversals of Death Sentences in the United States*, J. of Empirical Legal Studies 209, 2013 (2005) (reviewing all state death sentences over more than a 20 year period and finding that 40 percent of reversals occurred in federal habeas proceedings, after multiple state courts had upheld the conviction and sentence); Howard Mintz, *Death Sentence Reversals Cast Doubt on System*,

examples from the United States Supreme Court and the Ninth Circuit—courts that will have jurisdiction over the review of this case in the event of a death sentence:¹¹

- *Andrus v. Texas*, 590 U.S. ____ (June 15, 2020) (per curiam) (counsel provided deficient performance by “overlooking vast tranches of mitigating evidence” including the fact that his client suffered “very pronounced trauma” and suffered from “affective psychosis” by the time he was eleven years old and by failing to adequately investigate and rebut the State’s case in aggravation; remanded to lower court to address prejudice prong of *Strickland*)
- *Porter v. McCollum*, 558 U.S. 30 (2009) (per curiam) (counsel provided ineffective assistance by failing to investigate mitigating evidence regarding defendant’s mental capacity, family background, or military service)
- *Rompilla v. Beard*, 545 U.S. 374 (2005) (even when a capital defendant and his family members have said that no mitigating evidence is available, his lawyer is bound to conduct a social history investigation and adequately follow up on ‘red flags’; hiring three well-reputed mental health experts without conducting the proper life history investigation still constituted ineffective assistance of counsel)
- *Wiggins v. Smith*, 539 U.S. 510 (2003) (counsel’s failure to fully investigate Wiggins’ background and present mitigating evidence of his “excruciating life history” violated his Sixth Amendment right to counsel)
- *Williams v. Taylor*, 529 U.S. 362 (2000) (counsel ineffective for failing to uncover and present evidence of defendant’s “nightmarish childhood,” borderline mental retardation, and good conduct in prison)
- *Bemore v. Chappell*, 788 F.3d 1151 (9th Cir. 2015) (defendant prejudiced by counsel’s failure to further investigate mental health evidence after initial evaluation suggested further testing, choosing instead to go with “good guy with a drug problem” defense in sentencing, which was not only incomplete but opened the door to harmful rebuttal evidence)
- *Doe v. Ayers*, 782 F.3d 425 (9th Cir. 2015) (defendant prejudiced by counsel’s failure to investigate and present mitigating evidence including child abuse and neglect, mental illness including PTSD and depression that he self-medicated for, and that defendant was sexually abused while previously incarcerated)
- *Stankewitz v. Wong*, 698 F.3d 1163 (9th Cir. 2012) (counsel failed to conduct adequate mitigation investigation that would have uncovered a traumatic childhood of abuse and

Mercury News (April 13, 2002) (study on California death sentences found that the state Supreme Court overturns 10 percent of capital cases, but the 9th Circuit overturns 62 percent of cases affirmed by the state Supreme Court, for a total reversal rate matching the national average, two out of three), available at <https://deathpenaltyinfo.org/stories/death-sentence-reversals-cast-doubt-on-system>.

¹¹ Cases resulting in the death penalty undergo a unique, extensive appellate and post-conviction process through both the state and federal courts, and this process generally last decades. It is not uncommon that cases are reversed 5, 10, or even 20 years into the future, resulting in both new trial or sentencing proceedings in the district court, and then beginning anew the appellate process.

neglect, a history of mental illness, and substance abuse combined with lack of sleep prior to the murder)

- *Libberton v. Ryan*, 583 F.3d 1147 (9th Cir. 2009) (counsel failed to adequately investigate and present mitigating evidence, including that the co-defendant instigated the crimes and Libberton was “merely a follower,” and that he was seriously physically abused by his father and step-father growing up)
- *Correll v. Ryan*, 539 F.3d 938 (9th Cir. 2008) (counsel failed to adequately investigate and present mitigating and mental health evidence, which would have shown that the defendant endured an abusive childhood and was neglected, family history of incest, a serious head injury, and self-medication with drugs and alcohol from childhood)
- *Lambright v. Schriro*, 490 F.3d 1103 (9th Cir. 2007) (counsel failed to adequately investigate and present in sentencing the mitigating evidence of defendant’s trauma from serving in Vietnam, his long history of mental illness including suicide attempts and psychiatric hospitalizations, and his upbringing in an abusive, unstable family living in extreme poverty)
- *Frierson v. Woodford*, 463 F.3d 982 (9th Cir. 2006) (counsel failed to uncover and present mitigating evidence including extensive history of drug use, organic brain dysfunction, significant head injuries, an IQ of 71, and a learning disability)
- *Hovey v. Ayers*, 458 F.3d 892 (9th Cir. 2006) (counsel ineffective for failing to adequately prepare and present mental health evidence; though the hired psychiatrist testified that defendant had schizophrenia, he had not been provided with relevant social history documents which would have significantly bolstered the diagnosis under scrutiny by prosecutors, who portrayed the doctor as uninformed and not credible)
- *Summerlin v. Schriro*, 427 F.3d 623 (9th Cir. 2005) (counsel failed to investigate and present mitigating evidence of a tortured childhood, a diagnosis of paranoid schizophrenia, organic brain damage, and a temporal lobe seizure disorder, and also failed to investigate and rebut the state’s evidence underlying the aggravating factors)
- *Daniels v. Woodford*, 428 F.3d 1181 (9th Cir. 2005) (finding counsel ineffective and reversing the sentence due to counsel’s failure to pursue further mental health experts, instead relying on a psychologist “who was not qualified to testify in a capital case,” which resulted in counsel not pursuing viable mental health defenses at trial due to the lack of qualified experts)

Mr. Kohberger deserves a fair trial from the outset to prevent an arbitrary or wrongful conviction and potential death sentence. These cases underscore the critical importance of thorough investigation before trial. This diligence is essential to avoid the costly and time-consuming process of reversing a conviction and death sentence years or even decades later.

VII. A Continuance is Reasonable and Necessary under the Circumstances.

While there is no mechanical test for determining whether a continuance should be granted, a trial court cannot deny a continuance based on “a myopic insistence upon expeditiousness in the face of a justifiable request for delay.” *Ungar v. Sarafite*, 376 U.S. 575, 589 (1964). In determining whether denial of a continuance request resulted in a violation of due process, the reviewing court looks to the circumstances of the case, “particularly [] the reasons presented to the trial judge at the time the request [was] denied.” *Id.* at 590.

This request is not made lightly. Defense counsel has worked around the clock actively preparing for trial since appointment to this case, filed all motions in a timely manner, complied with expert disclosure deadlines, and had expected to proceed on schedule. However, it has become clear that without additional time, the defense cannot complete review of the necessary discovery, meaningfully respond to all of the State’s amended expert disclosures and incorporate the information into an effective defense, and finish critical sentencing phase investigations. While prompt administration of justice is important—to both the State and Mr. Kohberger—the constitutional guarantee of a fair trial outweighs modest delay. And, because the majority of cases ending in the death penalty are later overturned for error, the public interest lies in ensuring a fair trial in the first instance. A continuance will ensure that Mr. Kohberger’s fundamental constitutional rights are honored, and that any verdict rendered rests on a fair and complete presentation of the facts, not on forced haste.

DATED this 20 day of May, 2025.



ANNE C. TAYLOR
ANNE TAYLOR LAW, PLLC

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served as indicated below on the 20 day of May, 2025 addressed to:

Latah County Prosecuting Attorney –via Email: paservice@latahcountyid.gov

Elisa Massoth – via Email: legalassistant@kmrs.net

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EXHIBIT 4

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.

Ada County Case No. CR01-24-31665

**REDACTED MEMORANDUM
DECISION AND ORDER ON
DEFENDANT'S MOTION TO
CONTINUE**

I. INTRODUCTION

Before the Court is Defendant's motion to continue the trial in this matter. The basis for the motion is three-fold. First, he asserts that the volume of discovery continues to pose a challenge to his counsel's ability to timely and meaningfully review all of it. Second, he asserts that there is penalty-phase investigation and preparation that still needs to be done. Third, he asserts that recent and forthcoming publicity on the case is highly prejudicial. Maintaining the current trial setting under these circumstances, he argues, will render any conviction and sentence unconstitutional. The State responds that Defendant's motion is untimely and he has failed to show either good cause for continuing the trial or prejudice that would result from maintaining the current trial setting.

Oral argument on the motion was held on June 18, 2025, after which the Court took the matter under advisement. The Court finds a continuance is not warranted as Defendant has not made a showing that there is good cause to continue the trial or that his substantial rights will be prejudiced by proceeding to trial as scheduled.¹

II. STANDARD

A motion for a continuance of trial is addressed to the sound discretion of the trial court. *State v. Ochoa*, 169 Idaho 903, 912, 505 P.3d 689, 698 (2022). On discretionary matters, the trial

¹ Defendant filed some of his supporting materials *ex-parte*. While the Court is not convinced that much of his filing is necessary or appropriate to be treated as *ex parte*, the Court will nevertheless, in an abundance of caution, issue a redacted and unredacted version of this Order, with the State only receiving the redacted version, given that the Court is denying Defendant's motion.

court must: 1) correctly perceive the issue as one of discretion; 2) act within the outer boundaries of its discretion; 3) act consistently with the legal standards applicable to the specific choice available to it, and; 4) reach its decision by the exercise of reason.” *Lunneborg v. My Fun Life*, 163 Idaho 856, 867, 421 P.3d 187, 198 (2018).

III. ANALYSIS

Under Idaho law, a criminal defendant seeking a continuance of trial must demonstrate that his or her “substantial rights” will be prejudiced absent a continuance. *State v. Cagle*, 126 Idaho 794, 797, 891 P.2d 1054, 1057 (Ct.App.1995) (“Unless an appellant shows that his or her substantial rights have been prejudiced by reason of a denial of his or her motion for continuance, appellate courts can only conclude that there was no abuse of discretion.”) “Trial judges necessarily require a great deal of latitude in scheduling trials.” *Id.* The burden of assembling the witnesses, lawyers, and jurors at the place and time for trial “counsels against continuances except for compelling reasons.” *Id.* “There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied.” *Matter of Doe I*, 170 Idaho 581, 588, 514 P.3d 991, 998 (2022) (quoting *Ungar v. Sarafite*, 376 U.S. 575, 589 (1964)).

Where a continuance is sought based on the late disclosure or discovery of evidence, the alleged tardiness of the discovery must be “shown to so prejudice the defendant’s case preparation that a fair trial [will be] denied.” *State v. Tapia*, 127 Idaho 249, 255, 899 P.2d 959, 965 (1995). “[T]he bare claim that additional investigation could have been conducted is not sufficient to demonstrate unfair prejudice so as to support a motion for a continuance.” *Id.* Additionally, where a continuance is sought for the “potential receipt of evidence” from further investigation, the motion is properly denied if based on speculation. *Rowe v. Katavich*, 2014 WL 4244336, at *2 (C.D. Cal. Aug. 26, 2014) (citations omitted).

Defendant argues a continuance is necessary for him to sufficiently review relevant discovery, conduct a full and complete investigation of mitigation evidence—particularly claimed newly revealed evidence that allegedly raises “red flags”—and remedy the prejudice caused by recent and upcoming inflammatory publicity and the alleged leak of information to the media. Moving forward with trial, he warns, will violate his rights under the United States and

Idaho Constitutions² to due process, to be free from cruel and unusual punishment, to a fair trial, to effective assistance of counsel, to present a defense and confront witnesses and to a fair and reliable sentencing determination. Absent from Defendant's materials, however, is any good cause for the continuance or legitimate showing of prejudice should the trial proceed as scheduled.

A. Defendant Has Not Demonstrated a Continuance is Warranted to Review Discovery.

Defendant first contends that the vast amount of discovery in this case renders it impossible for the defense team to review the necessary and relevant discovery in a manner that allows for it to be comprehensively integrated into his defense. He further argues, without any support or explanation, that there are a "myriad of issues" that continue to arise from the State failing to comply with discovery and expert disclosure deadlines.³ A continuance, he argues, is necessary for counsel to mount an effective defense.

The Court, however, rejected this same argument two months ago when Defendant sought to strike the death penalty and impose discovery obligations upon the State.⁴ In its Order, the Court observed the utter lack of any proof supporting Defendant's accusations of discovery violations by the State. More importantly, the Court found Defendant's complaints of being unable to meaningfully review discovery entirely unconvincing, pointing out that counsel struggled to articulate in any meaningful way what evidence—let alone relevant evidence—counsel had been unable to review over the past two-plus years and why efforts to facilitate discovery review were not made long ago through this Court and/or the resource judge.⁵

² Defendant specifically cites to the Fifth, Sixth, Eighth and Fourteenth Amendments to the U.S. Constitution and Article I, §§ 6, 7, 8 and 13 of the Idaho Constitution. Notably, Defendant does not argue that the Idaho Constitution provides any heightened protection than the U.S. Constitution with regard to the rights cited. Thus, the Court will not engage in a separate analysis under the Idaho Constitution.

³ Defendant continues to complain of the State's "discovery violations" but to be clear, this Court has found no such violations by the State.

⁴ See, Order on Defendant's Motion to Strike Death Penalty and Adopt Other Necessary Procedures (April 29, 2025).

⁵ Defendant's continual reference to the number of terabytes of discovery produced in this case is not helpful without providing a meaningful explanation of what that data primarily consists of and its particular relevance and importance. Indeed, as was discussed at the April 9, 2025, hearing in this case, it appears that most of those terabytes consists of extensive video surveillance from local businesses and residences that show nothing of significance. In fact, the State indicated at that hearing that much of that discovery is "completely irrelevant" and stipulated that it is unaware of any *Brady* material in the video surveillance footage other than that specifically identified in motion practice. Given that the State has identified all its trial exhibits, the Defense cannot be unaware

Defendant's second round of this argument fares no better. He again fails to identify any relevant discovery that his counsel has yet to review.⁶ He also fails to identify any steps his counsel has taken, particularly since the Court's prior order, to aid in processing the yet-unreviewed discovery.⁷ Moreover, he does not explain why he waited to seek a continuance until after discovery closed, expert disclosure deadlines passed and the pretrial conference occurred.

If defense counsel was truly struggling with discovery review, this motion should have been made when the claimed problem became apparent, and certainly should have been brought prior to the expiration of discovery, all expert deadlines and the final pretrial conference. Instead, defense counsel has robustly litigated this case, retaining approximately two dozen experts and a full mitigation team, engaging in extensive motion practice and disclosing witness and exhibits lists with nary a whisper that a continuance would be sought. These actions belie his counsel's ongoing—and ultimately empty—discovery complaints.⁸ Without more, the Court can only conclude that defense counsel is using the volume of discovery measured in terabytes as a tactic to delay the proceeding at the eleventh hour simply for the sake of delay rather than a legitimate threat of prejudice to Defendant's substantial rights.

Perhaps even more problematic, and more telling, is the utter failure of defense counsel now, or at any time, to specify not only what needs to be reviewed but, importantly, when that review would be complete and Defendant ready for trial. Instead, Defendant seeks an unbounded

of all the incriminating evidence in the discovery. Finally, it should be noted that it was Defendant who, early on, demanded that the State provide all investigative materials, no matter how irrelevant or unhelpful.

⁶ The only discovery counsel claims that have not fully been reviewed are all of the thousands of tips provided to law enforcement. She argues these tips may lead to the discovery of evidence of an alternate perpetrator. The deadline for presenting alternate perpetrator evidence has come and gone, with no motion by the defense to extend it. Further, to offer alternate perpetrator evidence, Defendant needs far more than an unsubstantiated hearsay tip that another person *could have* committed the crime. *State v. Meister*, 148 Idaho 236, 220 P.3d 1055 (2009).

⁷ At the hearing on Defendant's motion to strike the death penalty based on his counsel's alleged inability to process discovery, the Court suggested several options counsel had to obtain assistance in discovery review. There is no evidence that defense counsel has exercised any of these options, nor has there been any good explanation of why counsel had not sought additional resources to process and review discovery, such as the tips and security videos. The failure to do so suggests a recognition that this discovery was extremely unlikely to bear fruit.

⁸ Relevant here, too, is the fact that defense counsel did not argue for a continuance as an alternate remedy to Defendant's attempt to strike the death penalty because of counsel's alleged inability to get through the discovery. This highlights that his claims regarding the volume of discovery were used as a tactical sword, untethered to a seriously legitimate concern about the ability to be prepared.

continuance with no apparent plan to complete the review of unspecified evidence that counsel claims it has yet to review. This is not sufficient to warrant a continuance.

B. Defendant Has Not Established a Continuance is Necessary to Conduct A More Thorough “Life History” Investigation and Identify Necessary Experts.

Defendant next argues he needs additional time to investigate and prepare mitigation evidence, which he contends is necessary to uphold his constitutional rights, particularly those under the Eighth and Sixth Amendments. Specifically, the defense team claims that, to be effective, counsel must conduct an “exhaustive” and “comprehensive” dive into Defendant’s “life history” for additional mitigation evidence, analyze the information into a cohesive narrative for the jury and identify any additional behavioral, cultural, scientific and/or mental health experts that may be necessary to develop the mitigation presentation. Despite having hired a mitigation team two years ago, defense counsel contends that recently discovered [REDACTED] [REDACTED] have raised “red flags” that Defendant may have [REDACTED]

[REDACTED] According to Defendant’s primary mitigation investigator, attorney [REDACTED] [REDACTED] her team of four have been diligent in their investigation into Defendant’s life history, but there have been [REDACTED] [REDACTED] She believes that with time, she will be able to overcome these barriers by [REDACTED] [REDACTED] Ex-Parte Decl. [REDACTED] p. 3 (May 20, 2025).

Defendant has not demonstrated a continuance to accommodate further investigation is constitutionally required. The Eighth Amendment requires that a capital defendant be allowed to present all relevant evidence in mitigation. *State v. Payne*, 146 Idaho 548, 570, 199 P.3d 123, 145 (2008); *see also, Eddings v. Oklahoma*, 455 U.S. 104 (1982) (jury must be allowed to consider all of a capital defendant's mitigating character evidence). In addition, a capital defendant has a Sixth Amendment right to a fair trial and effective assistance of counsel in both the guilt and penalty phases of a capital case. *Strickland v. Washington*, 466 U.S. 668, 691–92 (1984). As Defendant points out, defense counsel is constitutionally required to “to conduct a thorough investigation in preparation for the penalty phase of a capital case.” *State v. Dunlap*, 155 Idaho 345, 388, 313 P.3d 1, 44 (2013) (citing *Porter v. McCollum*, 558 U.S. 30, 38–41

(2009)). “Presentation of some mitigating evidence, even if strong, is insufficient if other mitigating evidence is available upon reasonable investigation.” *Id.* (citing *Rompilla v. Beard*, 545 U.S. 374, 387–93 (2005)).

The assertion that counsel needs the continuance to conduct an “exhaustive” and “comprehensive” dive into Defendant’s “life history” for additional mitigation evidence overstates the extent of his counsel’s constitutional obligations. Counsel’s investigation into mitigation evidence must be “reasonable.” *Id.* The Idaho Supreme Court and the United States Supreme Court hold that defense counsel is “not required to investigate a defendant’s entire life in order to present constitutionally sufficient mitigation evidence.” *State v. Row*, 131 Idaho 303, 313, 955 P.2d 1082, 1092 (1998);⁹ *Wiggins v. Smith*, 539 U.S. 510, 533 (2003) (“[W]e emphasize that *Strickland* does not require counsel to investigate every conceivable line of mitigating evidence no matter how unlikely the effort would be to assist the defendant at sentencing.”) While Defendant notes that the ABA Guidelines for Mitigation Function of Defense Teams in Death Penalty Cases urge counsel in death penalty cases to conduct an “ongoing, exhaustive and independent investigation of every aspect of the client’s character, history, records and any circumstances of the offense” to meet their constitutional obligations, courts look not to what is “prudent or appropriate, but only what is constitutionally compelled.” *State v. Dunlap*, 155 Idaho 345, 388, 313 P.3d 1, 44 (2013) (quoting *Burger v. Kemp*, 483 U.S. 776, 794 (1987)); *Hall v. State*, 151 Idaho 42, 53, 253 P.3d 716, 727 (2011) (rejecting argument that “heightened procedural safeguards should be employed at discovery in capital cases.”)¹⁰

Row, a capital case, is instructive here. On post-conviction, Row argued her counsel was deficient because they failed to perform an adequate investigation into Row’s background in search of mitigating evidence. 131 Idaho at 313, 955 P.2d at 1092. Specifically, Row argued

⁹ The Idaho Supreme Court reiterated this principle in *State v. Dunlap*, 155 Idaho 345, 388, 313 P.3d 1, 44 (2013) and *State v. Hall*, 163 Idaho 744, 823, 419 P.3d 1042, 1121 (2018).

¹⁰ Although, as the State points out, the Idaho Supreme Court has declined the “invitation to adopt these guidelines,” *State v. Porter*, 130 Idaho 772, 782, 948 P.2d 127, 137 (1997), the Idaho Public Defender Statutes, adopted in 2023, requires the State Public Defender to implement to ABA Guidelines for defendant attorneys delivering indigent defense services. I.C. § 19-6005(4). Further, the U.S. Supreme Court has recognized that ABA Guidelines for defending attorneys are “guides to determining what is reasonable.” *Wiggins v. Smith*, 539 U.S. 510, 522 (2003); see also, *Cullen v. Pinholster*, 563 U.S. 170, 195 (2011) (“Beyond the general requirement of reasonableness, ‘specific guidelines are not appropriate.’”). In other words, the ABA Guidelines are not dogmatic code; they are simply roadmaps to aid counsel in complying with their obligations of representation.

counsel “should have investigated her life from birth to the sentencing hearing, that counsel were deficient in presenting her mental health workup[.]” *Id.* The Court rejected this claim, holding that counsel “was not required to investigate Row's entire life in order to objectively and reasonably present Row's mitigation evidence.” *Id.* The Court further noted the “great lengths” counsel underwent to investigate and present mitigating evidence from several of Row's friends, Health and Welfare records, letters from friends and family, and Veteran's Administration records concerning Row's husband's previous injuries and the couple's relationship. *Id.*

The investigation Defendant's experts have undertaken over the past two-plus years far exceeds that in *Row* and, in fact, readily appears to satisfy the relevant ABA Guidelines cited by Defendant.¹¹ It includes, but is not limited to:

- Defendant's K-PhD education records, including coursework, interviews and correspondence;
- Defendant's mental health and medical records, including [REDACTED]
- Records related to a childhood car accident;
- Defendant's employment records;
- Mental health, education and employment records of Defendant's sisters;
- Mental health records of Defendant's parents;
- Father's military records and social security records;
- Court records from multiple generations of Kohberger family (paternal side)
- VA records and death certificates from maternal and paternal uncles;
- Multiple interviews with Defendant and each immediate family member;
- Interviews of two of Defendant's fourth grade teachers, former boxing coach, and psychologist who evaluated Defendant in 2005;
- Interviews with multiple members of Defendant's extended family on maternal and paternal side;
- Interviews with Defendant's professor and advisor at DeSales University;
- Interviews of Defendant's former co-worker;
- Interviews of at least one family friend, and;
- Letters and jail calls between Defendant and his family.¹²

It is evident from the reports of Defendant's mitigation experts, Dr. Orr, Dr. Ryan and Dr. Brams, that they have developed an expansive understanding of Defendant's family

¹¹ In its Opposition to Defendant's current motion, the State appended two tables that cross-reference the list of tasks Defendant has identified from the ABA Guidelines with the actual record in this case. These tables demonstrate that the guidelines have been amply satisfied.

¹²These topics of investigation were obtained from Defendant's disclosed penalty-phase expert reports.

environment, social development history, family history (both nuclear and extended over multiple generations), educational history and mental health and medical history. From this evidence, these experts have rendered several current diagnoses and identified other diagnoses for which Defendant “met criteria” at some point in his life.

Despite such an extensive investigation, Defendant claims additional investigation is warranted to identify: 1) [REDACTED]

[REDACTED] and; 2) [REDACTED]

[REDACTED] However, Defendant has not established that such investigation is constitutionally compelled, particularly given the extensive work already completed. Rather, the claimed need is based on unqualified speculation by [REDACTED]

[REDACTED]. Defendant has not offered any declaration by any of his disclosed mitigation experts opining the same, nor has he pointed to anything in their expert reports that would support [REDACTED] speculation. As noted, a continuance of trial is not warranted to chase down mere speculation that potential evidence exists. *Rowe*, 2014 WL 4244336, at *2. Further, Defendant has not set forth a plan for continued investigation, how much time it will take, what his team expects the investigation will reveal, why it is necessary to uphold his constitutional rights and why these matters are only now being raised with the Court. Additionally, assuming guilt is found, the penalty phase of the case will not begin until late October or early November. Thus, there remains significant time for [REDACTED] and her team to continue their investigation and to supplement expert disclosures if warranted.

1. [REDACTED]

[REDACTED] speculation that Defendant [REDACTED] is simply that – speculation built on circumstantial evidence. [REDACTED]

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

¹³ In a second declaration submitted June 16, 2025, [REDACTED]
[REDACTED]

conditions—which are currently attributed by his own mitigation experts to his ASD, OCD and/or ADHD—are consistent with childhood trauma, and; 5) there is evidence of poverty, both generational and familial.

According to [REDACTED]

[REDACTED]¹⁴ [REDACTED]

Notably missing from [REDACTED] declaration is any indication as to how she intends to confirm her suspicions or how long she expects it to take, be that months, years or even decades.¹⁵ Defendant has been subjected to multiple lengthy interviews by several different experts over the past two years. Based on the expert reports reviewed by this Court, [REDACTED]

[REDACTED]¹⁶ Defendant's family has likewise been extensively interviewed and there has

[REDACTED]

¹⁴ [REDACTED]

¹⁵ [REDACTED]

¹⁶ [REDACTED]

been no report that [REDACTED] None of Defendant's [REDACTED] have raised the alarm that [REDACTED] [REDACTED] despite having the same information [REDACTED] relies upon. [REDACTED]

[REDACTED] 17

[REDACTED] Instead, it is an invitation for a perpetual continuance.

More importantly, aside from the [REDACTED] [REDACTED]—all of this information has been available and documented in the record for months.¹⁸ Yet again, that Defendant is only now moving for a continuance for further investigation into [REDACTED] unsupported suspicions smacks of tactical gamesmanship and delay. Absent more compelling evidence that [REDACTED] [REDACTED] plan for

¹⁷ [REDACTED]

[REDACTED] It is unreasonable for the Court to continue the trial indefinitely for [REDACTED]—a plan that is temporally unbounded, substantively undefined, and unlikely to result in any relevant mitigation evidence in the foreseeable future.

¹⁸ [REDACTED]

uncovering it, and a reasonable timeline to do so, there is no constitutional basis for further investigation, particularly on an open-ended basis with no plan to bring the matter home.

2. [REDACTED]

Counsel's argument that more time is needed to investigate whether [REDACTED]

[REDACTED] likewise squarely unsupported.

[REDACTED] Defendant has never moved for an extension to his disclosure deadline for penalty-phase experts so as to allow further opinions in this regard.

Nevertheless, [REDACTED]—who, again, is not even marginally qualified to opine [REDACTED]

[REDACTED] believes that there is evidence that [REDACTED] and seeks additional time to unearth it. Her support—which she has not provided to the Court—[REDACTED]

Again, not one of Defendant's [REDACTED] experts—who have had the same information [REDACTED] has identified—has submitted a declaration stating that they may change their diagnoses based on further investigation [REDACTED] Rather, it is based on [REDACTED] speculation that further investigation *might* change [REDACTED] Such speculation is not grounds for a continuance. [REDACTED]

[REDACTED]

[REDACTED]

FN 30 [REDACTED]

[REDACTED]

Not only is there a lack of support in the record for [REDACTED] anticipation that more investigation into [REDACTED] to change their minds, [REDACTED] and her team and defense counsel have known since November of 2024 that [REDACTED] [REDACTED] Neither the defense team nor [REDACTED] have articulated what efforts they have made, if any, since that time to understand the basis of [REDACTED] Further, they have not indicated what plan they have to obtain this information if a continuance is granted or how long it will take. [REDACTED] [REDACTED]

In sum, Defendant has not demonstrated that a continuance for further investigation into potential mitigation evidence is necessary to uphold his constitutional rights. The right to present mitigation evidence and the right to effective assistance of counsel do not necessitate an investigation of his entire history; they simply require that the investigation be reasonable. While “easily available mitigation evidence cannot be ignored,” Defendant’s briefing demonstrates that the evidence they are attempted to obtain is far from “easily available” and, in fact, may not even exist. *Dunlap*, 155 Idaho at 388, 313 P.3d at 44. Further, the evidence prompting the need for further investigation has, [REDACTED] been available for months yet it is only now that Defendant seeks a continuance. This tactic seems geared toward achieving delay rather than a good faith effort to obtain meaningful mitigation evidence.

Moreover, Defendant provides absolutely no plan for how further investigation will proceed, who will be interviewed or how long it will take. The Constitution does not demand and this Court is not willing to continue the trial indefinitely to allow the defense team to embark on a fishing expedition, pulling at every conceivable thread in Defendant's familial tapestry. Counsel's assertion that they will be better prepared with more time and more evidence is an assertion shared by every lawyer involved in a trial. At some point—and particularly after two and one-half years of investigation—the defense team must be satisfied with what they have which, in this case, is extensive.¹⁹ In addition, while the crime victims' rights to a "timely disposition" under Article I, § 22 of the Idaho Constitution and I.C. § 19-5306 do not trump Defendant's federal constitutional rights,²⁰ they provide an additional justification for proceeding with trial as scheduled. For these reasons, a continuance is not warranted.

C. A Continuance Is Not Warranted Due to Pretrial Publicity.

Defendant next seeks a continuance due to recent, inflammatory pretrial publicity. On May 9, 2025, approximately three months before trial is set to begin, Dateline NBC aired a two-hour episode about this case. The episode included details and materials about the case which, if true, are not publicly available and which promote a narrative of guilt. Defendant also advises that on July 9, 2025, Amazon Prime Video is planning to release a four-part docuseries about the homicides and on July 14, 2025, crime author James Patterson is set to release a book he wrote about the same. Defendant contends that this media coverage so close to trial threatens his right to a fair trial by an impartial jury, which can only be ameliorated by a continuance. In addition, Defendant argues that a continuance is necessary to investigate the source of the leaks to the media and impose accountability. The Court does not agree that either argument compels a continuance.

¹⁹ [REDACTED]

[REDACTED] However, this does not mean that the investigation into mitigation evidence has been unreasonable. It simply means that the investigation as it regards [REDACTED] did not bear all the fruit [REDACTED] or defense counsel speculated it might bear. Further, [REDACTED] has provided no basis to believe that [REDACTED] with more time or that they may be the source of yet-uncovered mitigation evidence.

²⁰ Federal constitutional rights trump state constitutional and statutory rights. U.S. Const. art. VI ("This Constitution, and the Laws of the United States which shall be made ... under the Authority of the United States, shall be the supreme Law of the Land")

1. Defendant's right to a fair trial is not denied by the pretrial publicity, which is not likely to subside with time.

The Sixth Amendment to the U.S. Constitution affords all criminal defendants, the “fundamental right to a fair trial.” *Strickland v. Washington*, 466 U.S. 668, 684 (1984). This includes the right to have “impartial jurors, who know as little as possible of the case” decide the defendant's guilt based on material admitted into evidence before them in a court proceeding, uninfluenced by extrajudicial statements. *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1070 (1991). A trial judge has an affirmative duty to minimize the effects of pretrial publicity. *Sheppard v. Maxwell*, 384 U.S. 333 (1966).

In *Sheppard*, relied upon by Defendant, the United States Supreme Court recognized the adverse effect inflammatory publicity has on the ability to obtain an impartial jury and strongly urged trial courts to act quickly and forcefully in addressing such publicity. 384 U.S. at 335, 361. The Court further advised that “where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue the case until the threat abates, or transfer it to another county not so permeated with publicity.” *Id.* at 363.

This statement from *Sheppard*, however, must be read in context. The media coverage in that case is far different from that present here. In *Sheppard*, news reporters extensively covered the story of Sam Sheppard, who was accused of bludgeoning his pregnant wife to death. The Court examined the extensive media fanfare surrounding the case, noting:

Sheppard was not granted a change of venue to a locale away from where the publicity originated[,] nor was his jury sequestered...For months the virulent publicity about Sheppard and the murder had made the case notorious. Charges and countercharges were aired in the news media besides those for which Sheppard was called to trial. In addition, only three months before trial, Sheppard was examined for more than five hours without counsel during a three-day inquest which ended in a public brawl. The inquest was televised live from a high school gymnasium seating hundreds of people. Furthermore, the trial began two weeks before a hotly contested election at which both Chief Prosecutor Mahon and Judge Blythin were candidates for judgeships.

Id. at 352–54.

The Court found there was no “doubt that this deluge of publicity reached at least some of the jury,” given that when the jury was questioned for the only time, “two jurors admitted in open court to hearing the highly inflammatory charge that a prison inmate claimed Sheppard was the father of her illegitimate child.” *Id.* at 357. Nevertheless, the trial judge rejected requests by

defense counsel for the jurors to be asked “whether they had read or heard specific prejudicial comment[s] about the case.” *Id.* Further, the jurors “were subjected to newspaper, radio and television coverage of the trial while not taking part in the proceedings” and “were allowed to go their separate ways outside of the courtroom, without adequate directions not to read or listen to anything concerning the case.” *Id.* at 353. The judge gave “suggestions” and “requests” to the jurors “[a]t intervals during the trial” to refrain from commenting upon the case, but “the jurors were thrust into the role of celebrities by the judge's failure to insulate them from reporters and photographers.” *Id.* “[B]edlam reigned at the courthouse during the trial and newsmen took over practically the entire courtroom[.]” *Id.* at 355.

The Court reversed Sheppard's murder conviction. Crucially, the Court stated that although the pretrial publicity alone was not sufficient to warrant relief, when combined with the “carnival atmosphere” the press created at trial and the judge's inability or lack of desire to control courtroom proceedings, Sheppard's right to a fair trial was denied. 384 U.S. at 354–58. *See also, Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 554 (1976) (“[P]retrial publicity—even pervasive, adverse publicity—does not inevitably lead to an unfair trial[.]”); *Skilling v. United States*, 561 U.S. 358, 384 (2010) (same).

If “months [of] virulent pretrial media coverage” was not enough to deny due process in *Sheppard*, it is certainly not enough in this case, where the media coverage has been far less pervasive. In addition, this Court is employing the measures recommended in *Sheppard* to protect a defendant from prejudicial pretrial publicity, to wit: 1) limiting the number of reporters in the courtroom during trial; 2) insulating prospective witnesses from interviews with the media about their prospective testimony, and; 3) making an effort to “control the release of leads, information, and gossip to the press by police officers, witnesses, and the counsel for both sides” to avoid the disclosure of inaccurate and/or inadmissible information to the public. *Id.* at 358–361.

Ultimately, whether Defendant can receive a fair trial depends on whether a fair and impartial jury can be seated. As the United States Supreme Court has said:

To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.

Irvin v. Dowd, 366 U.S. 717, 723 (1961).

Accordingly, the Idaho Supreme Court has long recognized that trial courts can successfully select an “impartial jury” despite “widespread publicity.” *State v. Windsor*, 110 Idaho 410, 415–16, 716 P.2d 1182, 1187–88 (1985). In *State v. Fetterly*, a capital case, the Idaho Supreme Court disagreed with the defendant’s claim that “extensive publicity prior to trial deprived him of the opportunity to be tried before an impartial jury.” 109 Idaho 766, 769, 710 P.2d 1202, 1205 (1985). Because “each juror was extensively questioned to determine the degree of their exposure to the pretrial publicity[,]” the Court found the defendant’s rights were preserved. *Id.* In the defendant’s subsequent habeas case, the Ninth Circuit examined at length the entire voir dire process and found no prejudice even though, on the day of jury selection, the case was covered on the front page of the local newspaper as well as on T.V. and the radio. *Fetterly v. Paskett*, 163 F.3d 1144, 1148 (9th Cir. 1998).

With the measures the Court has already put in place to protect Defendant against the pretrial media coverage and the Court’s carefully crafted jury selection process, there is no reason to think that an impartial jury cannot be selected through a searching and robust voir dire.²¹ In addition, while continuances may be appropriate if pretrial scrutiny is reasonably expected to fade with time, it is an ineffective tool where publicity is such that there is no reason anticipate that it would subside by any delay which would not put off the trial indefinitely. In *United States v. Moreno Morales*, the Court of Appeals for the First Circuit noted:

The denial of a motion for an indefinite or substantial continuance predicated upon widespread adverse pretrial publicity about a defendant is all the more warranted when, as here, there is sound reason to believe that the defendant will continue to be a controversial, publicity-invoking figure and, hence, that there is little assurance that the passage of time will result in an abatement or subsidence of critical publicity in the foreseeable future.

815 F.2d 725, 737 (1st Cir. 1987) (internal citation omitted).

The court observed that the Sixth Amendment’s guarantee of a speedy trial is one to which the government and society, as well as the accused, has a claim, and stated that society “cannot be utterly deprived of the right to prosecute and try someone for a crime within a reasonable time merely because of widespread community knowledge.” *Id.* at 739. *See also*;

²¹ In his reply, Defendant argues that the allotted time is not sufficient for voir dire given the “vast media coverage.” The Court recognizes that more time may be needed and has built in additional days for voir dire for this purpose.

Gilday v. Callahan, 866 F. Supp. 611, 627 (D. Mass. 1994), *aff'd*, 59 F.3d 257 (1st Cir. 1995) (denying continuance upon finding no reason the intense public interest in the case would abate); *United States v. Dennis*, 183 F.2d 201, 226 (2d Cir. 1950), *aff'd*, 341 U.S. 494 (1951) (concluding that where pretrial publicity and “heated” public opinion was ongoing; there was no “reasonable hope” that it would fade with a continuance).²²

Here, there is no assurance that the pretrial publicity will fade with time. The murders occurred over two and one-half years ago. The circumstances of the murders were provocative – four college students in a small Idaho college town were brutally stabbed to death by an unknown perpetrator. It was an immediate media sensation and garnered widespread attention that not only continues to persist, but continues to grow.

Eighteen months ago, Defendant moved for a change of venue from Latah County due, in part, to the “extensive, inflammatory pretrial publicity” and “allegations made about Mr. Kohberger to the public by media that will be inadmissible at trial.” Mtn. for Change of Venue (Jan. 30, 2024). He argued that Latah County was not large enough to “avoid the bias” caused by the “pervasive prejudicial publicity.” *Id.* Defendant’s motion was granted and, as a result, the trial date was continued by approximately ten weeks.

Those additional ten weeks have not resulted in fading media attention; it has only given the media more time and opportunity to provide coverage to a public audience which is clamoring for answers. The longer the public is made to sit and wait for the facts to come out at trial, the more time there is for inflammatory, speculative stories, movies and books to circulate and more time for prior ones to be rebroadcast, purchased, viewed and consumed by the public. Proceeding with trial as scheduled will likely avoid negative consequences from future publicity. Thus, the Court finds a continuance is not warranted based on the medial coverage. Rather, careful and patient voir dire is prescribed.

2. A continuance is not warranted to investigate the leak of information.

Defendant also asserts that a continuance is necessary to accommodate the special prosecutor’s investigation into the source of the leaks to the media and to impose accountability.

²² In fact, long ago the Idaho Supreme Court recognized that “the existence of popular excitement and prejudice against the defendant is not ground for a postponement of trial in a criminal case, but may be grounds for change of venue.” *State v. Rice*, 7 Idaho 762, 66 P. 87 (1901). Defendant has already moved for and received a change of venue.

With regard to the Dateline episode, Defendant points out that Dateline represented that the material came from sources “close to the investigation.” He notes that Patterson’s upcoming book on the crime promises claims to be “the most comprehensive narrative” of the “investigation and evidence to date” and is based on over 300 interviews several individuals, including the victims’ families and “local law enforcement.”²³ He also notes that the Amazon Prime docuseries promises to be told in “captivating, tense, and emotionally wrenching detail” by “only those involved in and affected by the crime[.]”²⁴ He argues that if any of the leaks came from witnesses the State intends to call or from others involved in the investigation, the information is *Brady* material because it would serve to impeach the leaker’s credibility and may be exculpatory in nature.²⁵ He adds that if the investigation reveals that other State agents had information about the leaks but failed to disclose it, this omission would constitute a *Brady* violation.

As noted, a continuance is not warranted where the information sought thereby is mere speculation. *Rowe*, 2014 WL 4244336, at *2. Defendant’s *Brady* argument is built on a house of speculative assumptions – an assumption that there was a leak by persons bound by the non-dissemination order, an assumption the leaker(s) will be found, an assumption that the leaker(s) were law enforcement,²⁶ an assumption that the leaker(s) (or others who may be were complicit) will be testifying as a government witness, and an assumption that these witnesses will likely be material. Such assumptions are not grounds for a continuance, particularly given that there is no guarantee if and when they will be confirmed or debunked. This trial cannot be held hostage indefinitely to the outcome of the investigation, particularly given the very significant chance the

²³ James Patterson, “The Idaho Four: An American Tragedy,” <https://www.amazon.com/Idaho-Four-American-Tragedy/dp/0316572853>

²⁴ Amazon MGM Studios, “Prime Video Debuts Trailer for One Night in Idaho: The College Murders (June 12, 2025), <https://press.amazonmgmstudios.com/us/en/press-release/prime-video-debuts-trailer-for-one-night-in-idaho>

²⁵ Pursuant to *Brady v. Maryland*, a prosecutor has a constitutional duty to disclose favorable evidence to the accused where such evidence is “material” either to guilt or to punishment. 373 U.S. 83, 87 (1963). This duty covers not only exculpatory material, but also information that could be used to impeach the credibility of a key government witness. *Giglio v. United States*, 405 U.S. 150, 154 (1972).

²⁶ While the Court observed in its Document and Records Hold Order (May 15, 2025) that it “appear[ed] likely that someone currently or [formerly] associated with law enforcement, or the prosecution team, violated this Court’s non-dissemination order,” it could have been someone from the defense team or someone not subject to the non-dissemination order. The Court has not made and was not, by this statement, making a finding or otherwise accusing law enforcement or the prosecution of such.

leaker(s) may never be discovered.²⁷ Thus, the Court will not continue the trial pending the results of an investigation based on speculation that it will be successful and the hope that impeachment evidence may be uncovered as a result.

IV. ORDER

Based on the foregoing, Defendant's Motion to Continue is DENIED.

IT IS SO ORDERED.

DATED this 26th day of June, 2025.


Steven Hippler
District Judge

²⁷ In addition, even assuming it was law enforcement who leaked the information, the FBI played a preeminent role in the investigation of this case. If the leak(s) were from the FBI, a state court's ability to further investigate is highly circumscribed and limited if not altogether foreclosed. In addition, law enforcement in Pennsylvania and Washington may have had formal or informal access to some of the evidence, yet an Idaho state court may have significant limitations on the ability to investigate them.

CERTIFICATE OF SERVICE

I hereby certify that on 6/26/2025, I served a true and correct copy of the REDACTED MEMORANDUM DECISION AND ORDER ON DEFENDANT'S MOTION TO CONTINUE to:

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Clerk of the Court

By: 
Deputy Clerk 6/26/2025 2:09:21 PM

CERTIFICATE OF SERVICE