

CASE NO. CR 29-22-2805  
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**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH**

**STATE OF IDAHO**

**Plaintiff,**

**V.**

**BRYAN C. KOHBERGER,**

**Defendant.**

**CASE NUMBER CR29-22-2805**

**OBJECTION TO STATE'S MOTION  
FOR PROTECTIVE ORDER**

COMES NOW, Bryan C. Kohberger, by and through his attorney, Jay Weston Logsdon, Chief Deputy Litigation, and hereby objects to the State's Motion for Protective Order filed June 16, 2023 on the grounds that the material the State seeks to hide is discoverable and must be provided to Mr. Kohberger.

## **FACTUAL BACKGROUND**

On November 13, 2022, law enforcement, responding to a 911 call found Madison Mogen, Kaylee Goncalves, Xana Kernodle, and Ethan Chapin deceased. Law enforcement later found a Ka-Bar knife sheath placed next to Ms. Mogen on her bed. The sheath was placed button side down and partially under Ms. Mogen and the comforter. On November 20, 2022, the Idaho State Police Lab in Meridian, Idaho located DNA on the button of the sheath and performed STR analysis that led nowhere when ran through CODIS (Combined DNA Index System), other than to show the provider was a male.

By December 17, 2022, lab analysts were aware of two additional males' DNA within the house where the deceased were located, and another unknown male DNA on a glove found outside the residence on November 20, 2022. To this date, the Defense is unaware of what sort of testing, if any, was conducted on these samples other than the STR DNA profiles. Further, these three separate and distinct male DNA profiles were not identified through CODIS leading to the conclusion that the profiles do not belong to Mr. Kohberger.

While this was ongoing, police were investigating many various possible suspects. Many of them provided DNA. At least one had his DNA surreptitiously taken from a discarded cigarette. Many also had their phones taken and downloaded.

One area of the investigation had to do with a white sedan seen on a camera located at 1112 King Road first glimpsed by officers on November 18, 2022. By November 25, 2022, police believed the car to be a white Elantra and asked law enforcement to be on the lookout for one. Precisely how the police came to believe the car was an Elantra is still unknown. A report from an analyst for the FBI dated March 21, 2023 shows the analyst heavily relying on a video of a car heading in the wrong direction and at the wrong time on Ridge Rd.

The State's latest filing admits that somewhere within all of this they engaged in "Investigative Genetic Genealogy" using the DNA taken from the button on the sheath, and now claims that it was due to the use of this technique that it "tip[ed]" local law enforcement to investigate Mr. Kohberger. It remains unclear what the police first relied on in focusing their investigation on Mr. Kohberger.

No matter what came first, the car or the genetic genealogy, the investigation has provided precious little. There is no connection between Mr. Kohberger and the victims. There is no explanation for the total lack of DNA evidence from the victims in Mr. Kohberger's apartment, office, home, or vehicle.

In essence, through the lack of disclosure and their motion to protect the genetic genealogy investigation, the State is hiding its entire case.

### **ARGUMENT**

The State apparently thinks that they need not explain how they came to think that it was Mr. Kohberger's DNA on the sheath. Presumably, the Defense is expected to accept at face value that the sheath had touch DNA just waiting for testing by all the FBI's myriad resources. Additionally, the Defense is to guess whether the State focused its investigation on Mr. Kohberger via a bizarrely complex DNA tree experiment or through its faulty identification of the vehicle involved in this case.

Perhaps unsurprisingly, Mr. Kohberger does not accept that his defense does not need this information. It rather obviously falls within the ambit of Rule 16(b)(4) and (5), a fact the State's briefing makes clear in its kitchen sink approach to their briefing. The State begins their argument claiming Rule 16 has no interest in IGG testing and then ends their argument claiming

that somehow people will stop sharing their genetics if they were to realize the government is watching. Both arguments must fail.

To begin with, the State apparently only wants to prevent Mr. Kohberger from seeing *how* the IGG profile was created and *how many* other people the FBI chose to ignore during their investigation. In essence, the State argues that if the later STR testing is accurate then there is no reason to concern ourselves with how the State came to investigate Mr. Kohberger. State's brief at 9. What the State's argument asks this Court and Mr. Kohberger to assume is that the DNA on the sheath was placed there by Mr. Kohberger, and not someone else during an investigation that spans hundreds of members of law enforcement and apparently at least one lab the State refuses to name.

Perhaps most puzzling is the State's argument that while Rule 16(b)(5) requires them to turn over the results or reports from scientific investigations, it does not require "the State to disclose what law enforcement does with the results or reports." State's brief at 14. First of all, that sounds like an admission that the information as to how the IGG was carried out should be disclosed. Second, what law enforcement does with results or reports is covered by Rule 16(b)(6) (statements of prosecution witnesses) and (8) (police reports). Frankly, the fact that members of the FBI are so concerned about permitting Mr. Kohberger to know what they were up to with what was supposedly his DNA, does not give one the impression that there is "nothing to see here" as the State seems to imply.

Finally, the State's claim that I.C.R. 16(g)(2) applies to this matter is quite bizarre. Presumably, the independent company the government relied on was paid for its work and would stand by it in a court. The State provides no real argument as to why the company needs to be protected. Mr. Kohberger is left to suspect they wish to keep their methods from being







