Filed: 04/25/2025 09:10:57
Fourth Judicial District, Ada County
Trent Tripple, Clerk of the Court
By: Deputy Clerk - Waters, Renee

LATAH COUNTY PROSECUTOR'S OFFICE
WILLIAM W. THOMPSON, JR., ISB No, 2613
PROSECUTING ATTORNEY
ASHLEY S. JENNINGS, ISB No. 8491
SENIOR DEPUTY PROSECUTING ATTORNEY
JOSHUA D. HURWIT, ISB No. 9527
SPECIAL DEPUTY PROSECUTING ATTORNEY
Latah County Courthouse
P.O. Box 8068
Moscow, ID 83843
Phone: (208) 883-2246
ISB No. 2613
paservice@latahcountyid.gov

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO, Plaintiff, V. BRYAN C. KOHBERGER, Defendant.	Case No. CR01-24-31665 DECLARATION OF JOSHUA D. HURWIT ***Filed Under Seal***

COMES NOW the undersigned Special Deputy Prosecuting Attorney for Latah County, Idaho, and as an officer of the Court, declares and represents the following in support of the State's Motion for an Examination of Defendant Pursuant to Idaho Code § 18-207 and Motion for Extension of Time to Complete Rebuttal Penalty Phase Expert Disclosures:

1. Attached hereto as Exhibit S-1 is an email chain between myself and counsel for defendant with dates ranging from April 2, 2025 through April 7, 2025.

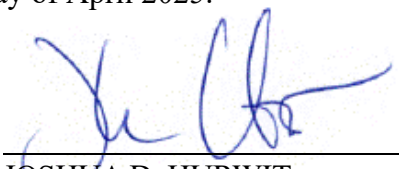
2. Attached hereto as Exhibit S-2 is an email chain between myself and counsel for

defendant with dates ranging from April 10, 2025 to April 22, 2025.

3. Attached hereto as Exhibit S-3 is the Phase Two Expert Report of Eileen Ryan, D.O., DFAPA, disclosed by defendant as part of his penalty phase expert disclosures.

4. Attached hereto as Exhibit S-4 is the Declaration of Jeffrey David Lewine, Ph.D., disclosed by defendant as part of his penalty phase expert disclosures.

RESPECTFULLY SUBMITTED this 25th day of April 2025.



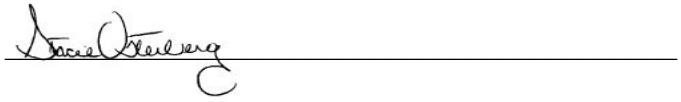
JOSHUA D. HURWIT
Special Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the DECLARATION OF JOSHUA D. HURWIT were served on the following in the manner indicated below:

Anne Taylor Attorney at Law PO Box 9000 Coeur D Alene, ID 83816-9000	☐ Mailed ☒ E-filed & Served / E-mailed ☐ Faxed ☐ Hand Delivered

Dated this 25th day of April 2025.



Joshua Hurwit

From: Joshua Hurwit
Sent: Monday, April 7, 2025 4:39 PM
To: Anne Taylor; bickabarlow@sbcglobal.net; emassoth@kmrs.net
Cc: Bill Thompson; Ashley Jennings; Stacie Osterberg; Doris Lunceford; Jen Jenquine
Subject: RE: Motion for Examination Pursuant to Idaho Code 18-207

Anne,

Thank you for your patience as we evaluated your concerns regarding our requested examination under I.C. 18-207. Our positions are as follows:

First, our expert, [redacted], intends to include personality assessments in order to perform an evaluation consistent with forensic standards for psychology. Such tests—such as the Minnesota Multiphasic Personality Inventory-3 (MMPI-3), Personality Assessment Inventory (PAI), or Millon Clinical Multiaxial Inventory-IV (MCMI-IV)—are standard tools in his field. Given that the defendant has opened the door to his mental condition and has identified specific diagnoses, the State is entitled to have its experts conduct complete evaluations to test those diagnoses. You would have the opportunity to object to the admissibility of the State's experts' analysis, but we disagree that our experts' examination is limited by the parameters that the defense experts selected.

Second, [redacted] also believes it is contrary to standard practice to have third party—counsel or otherwise—present at an evaluation. I don't read the *Santistevan* case as authority supporting your request to be present. While the court's order permitted counsel to be present in that case, that specific issue does not appear to have been litigated, and I have not found another Idaho case in which the parties litigated whether counsel has a right to be present. Indeed, *Idaho v. Payne*, 199 P.3d 123, suggests counsel need not be present. *Id*. at 152 ("[A] defendant has the right to the assistance of counsel, as opposed to the presence of counsel, during a compelled mental examination."). If I am missing something in the case law, please let us know.

Nevertheless, we are amenable to a procedure that would allow you to be present in the same facility as your client to observe the examination in real time. Our preference would be to find a facility where you could be in a separate room to observe the examination through a two-way mirror (or video feed). If that is not possible, we would agree to you being in the room but seated behind the defendant such that he cannot make eye contact with you. To be clear, we are not concerned that you would intentionally interfere with the examination. Rather, our expert believes that even the presence of a third-party observer introduces a variable that can affect the reliability of testing and results.

Please let us know if you will alter your positions. If not, we would intend to file our motion indicating that the defense does not object to an examination in principle, but that the parties disagree regarding its scope and whether defendant has a right to have his counsel present in the room.

Thank you,
Josh

Joshua D. Hurwit
Special Deputy Prosecuting Attorney
Latah County
(208) 883-2246 ext. 3416

From: Joshua Hurwit
Sent: Friday, April 4, 2025 9:26 AM
To: Anne Taylor <anne@annetaylorlaw.com>; bickabarlow@sbcglobal.net; emassoth@kmrs.net
Cc: Bill Thompson <bthompson@latahcountyid.gov>; Ashley Jennings <ajennings@latahcountyid.gov>; Stacie Osterberg <sosterberg@latahcountyid.gov>; Doris Lunceford <doris@annetaylorlaw.com>; Jen Jenquine <jennifer@annetaylorlaw.com>
Subject: RE: Motion for Examination Pursuant to Idaho Code 18-207

Anne,

We agree that you may provide your additional responses under the existing protective order.

We will get back to you as soon as possible regarding the scope of the examination and whether we object to you being present.

Thanks,
Josh

Joshua D. Hurwit
Special Deputy Prosecuting Attorney
Latah County
(208) 883-2246 ext. 3416

From: Anne Taylor <anne@annetaylorlaw.com>
Sent: Thursday, April 3, 2025 1:37 PM
To: Joshua Hurwit <jhurwit@latahcountyid.gov>; bickabarlow@sbcglobal.net; emassoth@kmrs.net
Cc: Bill Thompson <bthompson@latahcountyid.gov>; Ashley Jennings <ajennings@latahcountyid.gov>; Stacie Osterberg <sosterberg@latahcountyid.gov>; Doris Lunceford <doris@annetaylorlaw.com>; Jen Jenquine <jennifer@annetaylorlaw.com>
Subject: RE: Motion for Examination Pursuant to Idaho Code 18-207

[Warning: External Email]

Good Afternoon –
Thank you for providing information for our consideration; we have had a chance to meet and discuss your request. We want to agree to the extent possible given the April 24, 2025 deadline for the State's mitigation rebuttal.

Regarding the nature and scope of examination our position is that testing within the scope of that done by our expert makes sense. We object specifically to personality testing and any test outside of what has been done. Along these lines you will receive a pleading to clarify testing done by Dr. Orr. We recently learned two tests

were not named in the list of tests but were referred to in the body of her January 23, 2025 report. The tests are Brief Visuospatial Memory Test, Revised (BVMT-R) and Rey Complex Figure Test and Recognition Trial (RCFT). Will you provide us with a list of tests anticipated and leave out personality testing?

Regarding counsel being present; there is caselaw precedent for counsel being present (attached here for convenience). I, personally, have been present in past cases where clients sat for an evaluation with an expert for the State. The purpose of my presence is to ensure the case is not discussed during evaluation and examination and for client comfort. We are not claiming any right that would prevent Mr. Kohberger's evaluation, just a basis for counsel to be present. In the past, clients have been more comfortable with my presence, I do not participate or offer information. In effort to move this along, will you reconsider your position?

We have reviewed the discovery request as it relates to our experts. We disagree that our disclosure was incomplete at the time of filing. Your request for further information, pursuant to ICR 16, is the first request for additional information. Understanding ICR 16 (c)(2), we will obtain and provide testing data and results conducted by our experts as well as notes as requested in your exhibit S-1. While the Rule allows 14 days we are actively working to provide information as soon as possible, again, because of the short time frame. Our responses will likely come in more than one disclosure to prevent delay. We would like these supplemental discovery responses subject to protective order like we agreed to with portions of our discovery. May we add responses under our existing protective order?

Thanks,
Anne

From: Joshua Hurwit <jhurwit@latahcountyid.gov>
Sent: Thursday, April 3, 2025 9:40 AM
To: Anne Taylor <anne@annetaylorlaw.com>; bickabarlow@sbcglobal.net; emassoth@kmrs.net
Cc: Bill Thompson <bthompson@latahcountyid.gov>; Ashley Jennings <ajennings@latahcountyid.gov>; Stacie Osterberg <sosterberg@latahcountyid.gov>; Doris Lunceford <doris@annetaylorlaw.com>; Jen Jenquine <jennifer@annetaylorlaw.com>
Subject: RE: Motion for Examination Pursuant to Idaho Code 18-207

Anne,

We appreciate your quick response. We can provide the following in response to your questions:

1. While we reserve the right to disclose additional experts, our expert is [redacted], Psy.D, of [redacted]
2. Nature of the examination: the examination would consist of a comprehensive forensic psychological assessment, which typically includes a clinical interview, mental status examination, review of relevant records, and administration of standardized psychological instruments to assess cognitive functioning, personality structure, and potential psychopathology.
3. [redacted] would be available at the end of April to conduct his examination.
4. We do object to the presence of counsel during the examination as counsel's presence could interfere with the validity and reliability of the assessment process.
5. In terms of the written motion, we would rely on *State v. Samuel*, 452 P.3d 768 (Idaho 2019); *State v Hall*, 419 P.3d 1042 (Idaho 2018); *State v Payne*, 199 P.3d 123 (Idaho 2008).

Thanks,
Josh

From: Anne Taylor <anne@annetaylorlaw.com>
Sent: Wednesday, April 2, 2025 5:23 PM
To: Joshua Hurwit <jhurwit@latahcountyid.gov>; bickabarlow@sbcglobal.net; emassoth@kmrs.net
Cc: Bill Thompson <bthompson@latahcountyid.gov>; Ashley Jennings <ajennings@latahcountyid.gov>; Stacie Osterberg <sosterberg@latahcountyid.gov>; Doris Lunceford <doris@annetaylorlaw.com>; Jen Jenquine <jennifer@annetaylorlaw.com>
Subject: RE: Motion for Examination Pursuant to Idaho Code 18-207

[Warning: External Email]

Good Evening,
We are seeking additional information in aid of making a decision. Please advise of who your experts are, when they want to examine Mr. Kohberger and the nature of any testing planned. If you have a written motion for us to consider, please send that for our review as well. And last, let us know your position on one of Mr. Kohberger's counsel being present for the examination.

Thanks,
Anne

From: Joshua Hurwit <jhurwit@latahcountyid.gov>
Sent: Wednesday, April 2, 2025 2:16 PM
To: Anne Taylor <anne@annetaylorlaw.com>; bickabarlow@sbcglobal.net; emassoth@kmrs.net
Cc: Bill Thompson <bthompson@latahcountyid.gov>; Ashley Jennings <ajennings@latahcountyid.gov>; Stacie Osterberg <sosterberg@latahcountyid.gov>
Subject: Motion for Examination Pursuant to Idaho Code 18-207

Counsel,

Given the defendant's expert disclosures, we intend to file a motion with the Court for an order pursuant to Idaho Code 18-207 allowing the State to have its expert(s) examine the defendant regarding his mental condition.

Please let us know if you consent or object to this motion by Friday 12:00 pm Pacific so that we can promptly get our motion before the Court.

Thank you,
Josh

Joshua D. Hurwit
Special Deputy Prosecuting Attorney
Latah County

This message is confidential and may be legally privileged. Unless you are the intended recipient, you may not use, copy or disclose this message or any information herein. If you have received this message in error, please immediately delete it and any attachments, and notify the sender.

Joshua Hurwit

From: Anne Taylor <anne@annetaylorlaw.com>
Sent: Tuesday, April 22, 2025 9:13 AM
To: Joshua Hurwit; Ashley Jennings; Bill Thompson
Cc: Doris Lunceford; Stacie Osterberg; Bicka Barlow; Elisa Massoth
Subject: Re: DISC - D's Resp to PA's 1st Supp Request - BK

[Warning: External Email]

Hi Josh,
We will object to personality testing, we will object to being excluded from the room and we will object to any extension of time.
Thank you for update.
Anne

From: Joshua Hurwit <jhurwit@latahcountyid.gov>
Sent: Tuesday, April 22, 2025 8:59:56 AM
To: Anne Taylor <anne@annetaylorlaw.com>; Ashley Jennings <ajennings@latahcountyid.gov>; Bill Thompson <bthompson@latahcountyid.gov>
Cc: Doris Lunceford <doris@annetaylorlaw.com>; Stacie Osterberg <sosterberg@latahcountyid.gov>; Bicka Barlow <bickabarlow@sbcglobal.net>; Elisa Massoth <emassoth@kmrs.net>
Subject: RE: DISC - D's Resp to PA's 1st Supp Request - BK

Anne,

We wanted to follow up again about the mental condition examination under 18-207. I have attached Dr. Gage's CV, which was produced yesterday.

We intend to file a motion with the Court to seek an order for the 18-207 examination and for an extension of time to make our rebuttal penalty phase expert disclosures so that Dr. Gage can complete the examination and prepare his report. In our motion, we will address:

1. Dr. Gage believes that personality testing is appropriate in his professional judgment. The scope of the exam would be consistent with what Dr. Christensen contemplated as was discussed previously.

2. Dr. Gage's position is that counsel should not be present in the room. So we will take that position. As an alternative if the Court does not grant our request, we will request an arrangement in which counsel is in the room but seated behind the defendant out of his line of sight.

From our prior communications, I understand that defendant opposes psychological testing and wants an attorney present in the room. If anything has changed, please let us know.

STATE'S EXHIBIT
S-2
CR01-24-31665
exhibitsticker.com

Will you also please let us know if you object to an extension of time? We propose a deadline of 21 days after the examination is completed. Dr. Gage can conduct the examination as soon as the Court resolves our disputes, and he believes it would take two days.

Thanks,
Josh

Joshua D. Hurwit
Special Deputy Prosecuting Attorney
Latah County
(208) 883-2246 ext. 3416

From: Joshua Hurwit
Sent: Thursday, April 17, 2025 12:32 PM
To: Anne Taylor <anne@annetaylorlaw.com>; Ashley Jennings <ajennings@latahcountyid.gov>; Bill Thompson <bthompson@latahcountyid.gov>
Cc: Doris Lunceford <doris@annetaylorlaw.com>; Stacie Osterberg <sosterberg@latahcountyid.gov>; Bicka Barlow <bickabarlow@sbcglobal.net>; Elisa Massoth <emassoth@kmrs.net>
Subject: RE: DISC - D's Resp to PA's 1st Supp Request - BK

Anne,

Following up, we have engaged Dr. Jason Gage as a prosecution expert, and he will conduct the 18-207 mental health examination of the defendant. Dr. Gage is ready to receive Dr. Orr's testing data and notes. Here is his website for contact information: https://mscps.us/

Once we have had the chance to talk further with Dr. Gage, we will be back in touch about setting up the examination.

Thanks,
Josh

Joshua D. Hurwit
Special Deputy Prosecuting Attorney
Latah County
(208) 883-2246 ext. 3416

From: Joshua Hurwit
Sent: Wednesday, April 16, 2025 8:44 AM
To: Anne Taylor <anne@annetaylorlaw.com>; Ashley Jennings <ajennings@latahcountyid.gov>; Bill Thompson <bthompson@latahcountyid.gov>
Cc: Doris Lunceford <doris@annetaylorlaw.com>; Stacie Osterberg <sosterberg@latahcountyid.gov>; Bicka Barlow <bickabarlow@sbcglobal.net>; Elisa Massoth <emassoth@kmrs.net>
Subject: RE: DISC - D's Resp to PA's 1st Supp Request - BK

Anne,

I wanted to respond to your email below to clarify that we are in the process of interviewing and retaining a new mental health expert(s) and we do not yet know what their position will be as to your presence in the room. We hope to find a mutually agreeable arrangement and will reach back out when we have retained our expert(s).

-Josh

Joshua D. Hurwit
Special Deputy Prosecuting Attorney
Latah County
(208) 883-2246 ext. 3416

From: Anne Taylor <anne@annetaylorlaw.com>
Sent: Monday, April 14, 2025 11:26 AM
To: Joshua Hurwit <jhurwit@latahcountyid.gov>; Ashley Jennings <ajennings@latahcountyid.gov>; Bill Thompson <bthompson@latahcountyid.gov>
Cc: Doris Lunceford <doris@annetaylorlaw.com>; Stacie Osterberg <sosterberg@latahcountyid.gov>; Bicka Barlow <bickabarlow@sbcglobal.net>; Elisa Massoth <emassoth@kmrs.net>
Subject: Re: DISC - D's Resp to PA's 1st Supp Request - BK

[Warning: External Email]

Thank you for letting us know. I will make sure Dr. Orr is aware and does not send testing data.

I also want to update you that Mr. Kohberger requests I be present for the State's evaluation and understands I may be seated behind him. So the procedure you suggested works for us.

Thank you,
Anne

From: Joshua Hurwit <jhurwit@latahcountyid.gov>
Sent: Monday, April 14, 2025 11:19:52 AM
To: Anne Taylor <anne@annetaylorlaw.com>; Ashley Jennings <ajennings@latahcountyid.gov>; Bill Thompson <bthompson@latahcountyid.gov>
Cc: Doris Lunceford <doris@annetaylorlaw.com>; Stacie Osterberg <sosterberg@latahcountyid.gov>; Bicka Barlow <bickabarlow@sbcglobal.net>; Elisa Massoth <emassoth@kmrs.net>
Subject: RE: DISC - D's Resp to PA's 1st Supp Request - BK

Anne,

We wanted to alert you that [redacted] is no longer able to work on this case. So, to the extent she hasn't already, Dr. Orr does not need to provide him with her data.

We will be back in touch when we have engaged a new forensic psychologist in order to discuss the 18-207 mental evaluation.

Thanks,
Josh

Joshua D. Hurwit
Special Deputy Prosecuting Attorney
Latah County
(208) 883-2246 ext. 3416

From: Joshua Hurwit
Sent: Thursday, April 10, 2025 4:29 PM
To: Anne Taylor <anne@annetaylorlaw.com>; Ashley Jennings <ajennings@latahcountyid.gov>; Bill Thompson <bthompson@latahcountyid.gov>
Cc: Doris Lunceford <doris@annetaylorlaw.com>
Subject: RE: DISC - D's Resp to PA's 1st Supp Request - BK

Anne,

We stipulate and do ask you to redact (or not refer to [redacted]) as he hasn't been publicly disclosed.

We also have a couple requests for you to consider:

1. We will ask the Court to take down the video livestream during the testimony of the surviving housemates (D.M. and B.F.) to protect their privacy. We don't object to keeping the audio going (if that is technologically possible).
2. For similar privacy reasons, we will ask the Court to take down the video livestream when graphic/disturbing crime scene, victim, or autopsy photos are shown.

Please let us know if you will stipulate to these requests. We plan to raise these issues in our Trial Brief rather than by formal motion.

Thanks,
Josh

Joshua D. Hurwit
Special Deputy Prosecuting Attorney
Latah County
(208) 883-2246 ext. 3416

From: Anne Taylor <anne@annetaylorlaw.com>
Sent: Thursday, April 10, 2025 4:03 PM
To: Ashley Jennings <ajennings@latahcountyid.gov>; Bill Thompson <bthompson@latahcountyid.gov>; Joshua Hurwit <jhurwit@latahcountyid.gov>

Cc: Doris Lunceford <doris@annetaylorlaw.com>
Subject: DISC - D's Resp to PA's 1st Supp Request - BK

[Warning: External Email]

Good Afternoon –
This is what we intend to file for our first response – we can redact [redacted] name since he is not publicly disclosed if you prefer. If so may we have a stipulation?
Thanks,
Anne

This message is confidential and may be legally privileged. Unless you are the intended recipient, you may not use, copy or disclose this message or any information herein. If you have received this message in error, please immediately delete it and any attachments, and notify the sender.

STATE'S EXHIBIT

S-3

CR01-24-31665

exhibitsticker.com

STATE'S EXHIBIT

S-4

CR01-24-31665

exhibitsticker.com