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Second Judicial District, Latah County
Julie Fry, Clerk of the Court
By: Deputy Clerk - Reeves, Tamzen

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, vs. BRYAN C. KOHBERGER, Defendant.	Case No. CR29-22-2805 **ORDER ADDRESSING IGG DNA AND ORDER FOR *IN CAMERA* REVIEW**

I. INTRODUCTION

On November 13, 2022, four University of Idaho students were found murdered. As part of law enforcement's investigation into the homicides, the FBI employed the use of investigative genetic genealogy ("IGG") using DNA located on a Ka-Bar knife sheath found at the crime scene. Through the IGG process, the FBI constructed a family tree of individuals whose DNA matched with the DNA found on the knife sheath. The FBI then sent local law enforcement a tip to investigate Defendant Bryan Kohberger ("Kohberger"). Kohberger was arrested on December 30, 2022, and charged with four counts of Murder in the First Degree and one count of Burglary. Nothing about law enforcement's use of IGG was used to obtain the arrest warrant for Kohberger or to obtain the search warrant for his DNA.

The State has now filed a motion to prevent the disclosure of the IGG information to the defense. The defense opposes the motion and filed a motion to compel requesting discovery of everything pertaining to the IGG investigation, including the family tree built by the FBI.

Disclosure of information gathered from an IGG investigation is an issue of first impression in Idaho. The State claims that the IGG information was not used to obtain any warrant and will not be used at trial. For the reasons set forth below, the Court finds that the defense is likely entitled to see at least some of the information from the IGG investigation, even if it may ultimately be found to have no relevance to Kohberger's defense. However, because the Court has not seen exactly what information pertaining to the use of IGG is available, the Court cannot say precisely what should and what should not be disclosed at this time. Because of this uncertainty, the Court grants the State's request for an *in camera* review of the IGG information. After such review, the Court will enter the appropriate discovery and protective orders.

II. BACKGROUND

On November 13, 2022, four University of Idaho students, Kaylee Goncalves, Madison Mogen, Xana Kernodle, and Ethan Chapin, were found deceased in Goncalves, Mogen, and Kernodle's off-campus home on King Road in Moscow, Idaho. The cause of death for each was ruled a homicide.

While investigating the murders, law enforcement discovered "a tan leather knife sheath laying on the bed next to Mogen." Aff. of Probable Cause, Statement of Brett Payne. "The Idaho State Lab later located a single source of male DNA (Suspect Profile) left on the button snap of the knife sheath." *Id.*

"Once law enforcement had single-source DNA from the Ka-Bar knife sheath, they conducted what is called a short tandem repeat ("STR") analysis. STR DNA analysis involves looking at 20 regions within human DNA and allows law enforcement to make a direct comparison between two STR DNA profiles. Law enforcement submitted the STR DNA profile obtained from the Ka-Bar knife sheath to the Combined DNA Index System ("CODIS"), a database of STR DNA

profiles from convicted offenders, arrestees, and crime scene evidence, to identify the source of the DNA. No match was found." Mot. for Protective Order at 2.

Meanwhile, law enforcement continued to investigate the homicides. They conducted a "video canvass" "in the area of the King Road Residence." Aff. of Probable Cause, Statement of Brett Payne. The "video canvass" revealed a white sedan that piqued the interest of investigators. *Id.* The video footage was provided to a forensic examiner with the FBI who initially identified the sedan as a "2011-2013 Hyundai Elantra," but later "indicated it could be a 2011-2016 Hyundai Elantra." *Id.* On November 29, 2022, after reviewing video footage and asking law enforcement agencies to be on the lookout for a white Hyundai Elantra in the area, a 2015 white Elantra registered to Defendant Bryan Kohberger ("Kohberger") was located in Pullman, Washington. *Id.*

The State's case alleges that with this information, law enforcement determined that Kohberger's "physical description" matched that given to investigators by a surviving roommate of the victims, and that Kohberger's cellphone "travel [was] consistent with that of the white Elantra" in the early morning hours of November 13, 2022. *Id.* Based on this information, law enforcement believed Kohberger to be the driver of the white Elantra that was seen on video surveillance around the King Road residence at the time of the homicides. *Id.* Law enforcement also obtained cell phone records indicating that prior to the homicides, Kohberger's cellphone had "utilize[ed] cellular resources that provide coverage to the area of 1122 King Road on at least twelve occasions prior to November 13, 2022." *Id.*

"On December 27, 2022, Pennsylvania Agents recovered the trash from the Kohberger family residence located in Albrightsville, PA. That evidence was sent to the Idaho State Lab for testing. On December 28, 2022, the Idaho State Lab reported that a DNA profile obtained from the

trash and the DNA profile obtained from the sheath, identified a male as not being excluded as the biological father of Suspect Profile." *Id.*

On December 30, 2022, Kohberger was arrested and charged with four counts of Murder in the First Degree and one count of Burglary. A search warrant for Kohberger's DNA was issued on January 5, 2023. "A traditional STR DNA comparison was done between the STR profile found on the Ka-Bar knife sheath and Defendant's DNA. The comparison showed a statistical match – specifically, the STR profile is at least 5.37 octillion times more likely to be seen if Defendant is the source than if an unrelated individual randomly selected from the general population is the source." Mot. for Protective Oder at 5-6.

III. INVESTIGATIVE GENETIC GENEALOGY

On June 16, 2023, the State filed a Motion for Protective Order. In its Motion, the State brings to light law enforcement's use of IGG "to find a lead" after the STR DNA profile from the knife sheath did not return a match in CODIS. It is unknown to this Court when exactly law enforcement employed the use of IGG.

A brief discussion on what IGG entails is necessary to better understand the significance, or insignificance, of its use in this case.

> Consumer genetics has exploded, driven by the second-most popular hobby in the United States: genealogy. This hobby has been co-opted by law enforcement to solve cold cases, by linking crime-scene DNA with the DNA of a suspect's relative, which is contained in a direct-to-consumer (DTC) genetic database. The relative's genetic data acts as a silent witness, or genetic informant, wordlessly guiding law enforcement to a handful of potential suspects.
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> . . .
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> Driven mostly by genealogical hobbyists, the majority of the DTC ancestry genetic testing services rely on single nucleotide polymorphisms (SNPs), which are mutations at the level of the individual nucleotides. . . .
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> SNP data can also reveal whether users share segments of their genome with other users, predicting relatedness through a common ancestor. This works by analyzing

> the percentage of overlapping bits of genetic code, so-called "identical by descent" sections, that one shares with relatives. Assuming no historical inbreeding, one likely shares roughly 12% of their genome with first cousins, about 3% with second cousins, and less than 1% with third cousins. Thus, by finding and quantifying overlapping genetic regions, DTC companies can predict genetic familial relationships. . . .
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> The leading consumer genetics companies, 23andMe and Ancestry, allow consumers to download their raw genetic data in plain-text format, which can then be uploaded to third-party websites. These websites provide a range of additional services, including interpreting the clinical relevance of mutations and allowing individuals to expand the reach of their genealogical search. Up to 62% of DTC customers will upload their genetic data to third-party websites for free or for a small fee. One such third-party website is GEDMatch, an open-access service that is free for the most basic searches.
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> GEDMatch users can connect with even more distant relatives who used different testing services like FamilyTreeDNA or My Heritage. They do so by uploading their SNP profile, generated elsewhere, onto GEDMatch. The raw SNP data is analyzed using a simple algorithm, and the site then produces a list of likely relatives automatically, without the need to share any underlying genetic information with the putative relative. In just a few years, GEDMatch has cultivated a large community of hundreds of thousands of users. . . .
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> . . .
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> Because the identity of the person from whom the crime-scene sample came is often unknown, law enforcement uses a false name--"John Doe," for example--and submits it to GEDMatch. Then, when their "John Doe" matches someone in the database, they use genealogical data to determine a common ancestor who might be a great-great grandfather or grandmother. They then triangulate other data, such as birth, voting, and military records, to build out the pedigrees from that common ancestor, identifying all of the potential individuals who may be suspects. As we each have about 1,000 fourth cousins and 5,000 fifth cousins, depending on the degree of relation, this process can be quite time-consuming. The methodology is known by different names. In the forensic genetics research community, it is referred to as "long-range familial searches" (LRFS). Law enforcement sometimes refers to this as Forensic Genetic Genealogy (FGG).

Teneille R. Brown, JD, Why We Fear Genetic Informants: Using Genetic Genealogy to Catch Serial Killers, 21 Colum. Sci. & Tech. L. Rev. 1 (2019).

It is worth recognizing that the information above comes from an article published in 2019. It is fair to assume that since 2019 DTC testing and law enforcement's use of IGG/FGG have

increased exponentially. Bicka Barlow, one of the witnesses who testified on behalf of Kohberger, explained the process of IGG.

> [T]he use of these databases [like GEDmatch] does not necessarily lead to a single individual as a potential suspect. . . .
>
> . . . The determination of who is or is not a relative is subjective and based on the length of DNA shared between two individuals. The comparisons in such a database do not yield an identification of someone identical [to] the uploaded SNP data; rather it would identify possible relatives who might be in the database.
>
> Once a putative relative has been identified, a family tree is created, working backwards to grandparents and possible great-great-grandparents. The family tree is then build [sic] down. The construction of these family trees is highly subjective and is based on the use of public records such as marriage and birth certificates. . . . In some instances, contacting individuals for further family information [like out of wedlock births, name changes, or adoptions]. This process leads to a pool of individuals rather than one specific individual.

Decl. of Bicka Barlow at 3-4.

The State describes law enforcement's use of IGG in this case as follows:

> [I]nvestigators used IGG to begin the process of developing a lead to the individual who left DNA on the Ka-Bar knife sheath. The Idaho State Police utilized a private laboratory to develop a SNP [single nucleotide polymorphism] profile from the DNA on the Ka-Bar knife sheath. The private laboratory started using genetic genealogy to develop a family tree, but after law enforcement decided the FBI would take over, the private laboratory ceased its efforts and sent the SNP profile to the FBI.
>
> The FBI uploaded the SNP profile to one or more publicly available genetic genealogy services to identify possible family members of the suspect based on shared genetic data. The FBI could then view through the genetic genealogy service's portal information regarding potential relatives of the suspect who left DNA on the Ka-Bar knife sheath. Based on information the FBI could see on the genetic genealogy service's portal, the FBI went to work building family trees of the genetic relatives to the suspect DNA left at the crime scene in an attempt to identify the contributor of the unknown DNA. The FBI built the family tree using the same tools and methods used by members of the public who wish to learn more about their ancestors. For example, the FBI consulted social media, viewed vital records such as birth and death certificates, and viewed other information already contained in the user portal for the genetic genealogy service, including unverified information submitted by other users of the genetic genealogy service. The FBI also consulted subscription-based databases available to law enforcement for information on individual people. The product of the genealogy conducted by the FBI was a family

> tree that contained the name, birthdate, and death date (if applicable) of hundreds of relatives as well as their familial connections between each other and the suspect: Bryan C. Kohberger. The FBI then sent to local law enforcement a tip to investigate Defendant.
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> The IGG process pointed law enforcement toward Defendant, but it did not provide law enforcement with substantive evidence of guilt. The FBI did not, for example, conduct a direct comparison between the SNP profile from the Ka-Bar knife sheath and Defendant's SNP profile. That type of direct comparison required the more traditional STR DNA analysis, which was conducted by the Idaho State Police, not the FBI.

Mot. for Protective Order at 4-5.

Notably, nothing about the SNP profile, the use of IGG, or a family tree was used by law enforcement in obtaining the arrest warrant for Kohberger, the January 5, 2023, search warrant for Kohberger's DNA, or any other search warrant in the case.[1]

The State now seeks a protective order for "information related to the use of IGG in this case." Mot. for Protective Order at 6-7. Specifically, the State wishes to protect and not disclose to the defense the following:

1. The raw data related to the SNP profile and the underlying laboratory documentation related to the development of the profile, such as chain of custody forms, laboratory standard operating procedures analyst notes, etc.

2. All information related to IGG efforts in creating a family tree and identifying Defendant's potential relatives, including the identities of the genetic genealogy service(s) and the personally identifying information of Defendant's relatives.

Id. at 7-8.

While the FBI no longer has access to view much of the information it used to create the family tree, the State acknowledges that the FBI does possess "the family tree itself, notes jotted down by FBI agents as they constructed the family tree, and any records created to document the

[1] At oral argument on August 18, 2023, the Court asked the State directly if any information obtained from the SNP profile, the use of IGG, or the family tree created was used to obtain any warrant in the case. The State represented that it was not. The Court has confirmed that nothing about the use of IGG or a family tree was used in the affidavit to obtain the arrest warrant for Kohberger or in the affidavit to obtain the search warrant for Kohberger's DNA.

removal of the SNP profile from the genetic genealogy service(s) pursuant to the DOJ Policy."[2] Mot. for Protective Order at 6. The State has represented that it has already disclosed the suspect SNP profile to the defense. Reply in Supp. of Mot. for Protective Order at 2.

The defense opposes the State's Motion for Protective Order, and on June 22, 2023, filed Defendant's Third Motion to Compel Discovery. A portion of that Motion to Compel asks that the State be required to turn over the following information related to the use of IGG:

1. All reports generated by any lab that conducted SNP testing on any sample in this case, including from samples where "unknown" males, not the defendant, were identified.

2. Copies of all communications between laboratory personnel and any other person or organization, with regard to the instant case, including letters, memos, emails, internet posts, press releases, and records of other communications (including communications with regard to any DNA profile uploaded to any public or private DNA database).

3. All documentation associated with any database search, including, but not limited to, CODIS, NDIS, GEDMatch, Family Tree DNA, and/or felon databases, case sample databases, missing persons databases, and internal quality assurance databases. The documentation should include, but is not limited to, the input profile, the input search parameters, the search output, all reports, all correspondence, and any follow-up actions.

4. Add documents related to any genetic genealogy search, including, but not limited to, the creation of a user profile(s), account(s) information, automated search results, uploading of data, all queries and search results from any private or public databank(s), family tree information, and all other documents, reports, notes or other communications pertaining to genealogy DNA database searches.

5. All documents related to any genetic genealogy investigations, including but not limited to additional collection and/or testing of DNA samples, notes of any interviews, documents obtained related to ancestry, and/or recommendation for further testing.

6. All documents related to comparison of any DNA samples collected during the genealogy investigation to crime scene evidence.

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[2] DOJ policy required that Kohberger's SNP DNA profile be removed from the genetic genealogy service(s).

7. The name and address of all persons found to have sufficient sharing centimorgams with the "subject" profile to be identified as a match in the report created in this case.

Def.'s Third Mot. to Compel Discovery at 3-4.

In support of its Motion to Compel and in opposition to the State's Motion for Protective Order, the defense submitted the Declaration of Anne C. Taylor (defense counsel), Declaration of Bicka Barlow, Declaration of Stephen B. Mercer, Affidavit of Leah Larkin, and the Declaration of Gabriella Vargas.

On July 14, 2023, the State filed its Reply in Support of Motion for Protective Order and the Affidavit of Rylene L. Nowlin.

On August 18, 2023, a hearing on the State's Motion for Protective Order and Defendant's Third Motion to Compel was conducted. The State was represented by William W. Thompson, Jr., Ashley S. Jennings, Jeff Nye, and Ingrid Batey. Kohberger was present and represented by Anne C. Taylor, Jay Logsdon, and Elisa Massoth. Following the defense's presentation of evidence, the State reserved cross-examination of Leah Larkin and Gabriella Vargas.

On August 29, 2023, the State filed a Notice of Intent not to Cross-Examine Defense Witnesses, District Court Decision, and Records to Explain Witness Contact. On August 30, 2023, the State filed State's Supplemental Response to Defendant's Third Motion to Compel Discovery. On September 1, 2023, the defense filed a Response to State's Notice of Intent not to Cross-Examine Defense Witnesses, District Court Decision, and Records to Explain Witness Contact. On September 12, 2023, the State filed a Supplement to State's Notice of Intent not to Cross-Examine Defense Witnesses, District Court Decision, and Records to Explain Witness Contact. The issue is now fully submitted and ready for a decision.

IV. CASE LAW

The issue of disclosure of information gathered from an IGG investigation is an issue of first impression in Idaho. The State claims that the IGG information will not be used at trial and was not used to obtain any warrant. While there is no precedent in Idaho, what limited cases are available from other jurisdictions are worth discussing.

1. In the Matter of: Michael Green

First, in support of its position, the State submitted a Ruling on Motion to Compel Production of Discovery authored by a California trial court in the case of In the Matter of: Michael Green. Ex. A attached to Mot. for Protective Order. There, law enforcement found DNA on the victim's nightgown. A private laboratory created an SNP DNA profile of an unidentified male suspect. Law enforcement submitted that profile to GEDmatch and received information about individuals who shared DNA with the suspect's profile. Law enforcement then identified Michael Green as a suspect. Law enforcement collected garbage discarded by Green, tested it for DNA, and compared that STR DNA profile to the DNA located on the victim's nightgown. The DNA matched. Law enforcement then got a search warrant for Green's DNA, which also matched.

Green argued he was entitled to the genetic genealogy information including the family tree. Green asserted the information was necessary to ascertain the following: details of what, when, where, and how the investigation into him occurred; the identity of other possible DNA matches that surfaced so these individuals could be interviewed (since such evidence could be exculpatory if their DNA matched to the DNA on the nightgown); and possible violations of the Fourth Amendment.

The trial court held that the prosecution was not "obligated to discover to Green the requested Match Detail Reports, long-form Candidate Match Reports, family tree information, lists

of people identified through the FGG investigation as being related by DNA to Green, or any other information from its FGG investigation." The court reasoned,

> [T]he evidence that is material to Green's guilt or innocence is the testing that followed the FGG investigation, which directly compared a fresh swab of Green's DNA with the DNA profile collected from the victim's nightgown. It is only this evidence that the People intend to present at trial. The People are not obligated to provide its preliminary search of the genealogy databases for possible matches, which is investigatory in nature and is not exculpatory or material to Green's defense. Green has presented no evidence as a part of his motion or supplemental filings that tend to show that the persons identified through GEDmatch who share DNA with Green can otherwise be linked to the crime he is accused of committing. A mere possibility that the information might help the defense does not establish that this evidence is material.

While the IGG information was not found to be discoverable in *In re: Michael Green*, this Court located three opinions that suggest discovery of such information may, at times, be appropriate.

2. State v. Bortree

State v. Bortree, 2021 WL 3716803, rev'd and remanded on other grounds by *State v. Bortree*, 170 Ohio St. 3d 310, 212 N.E.3d 874 (2022), involved a sexual assault and an attempted aggravated murder. In 1993, the victim, Anita, was taken at gunpoint and then forced to perform sexual acts on the perpetrator. The perpetrator then cut Anita's throat and left her in a ditch. Anita survived and was able to provide law enforcement with a description of her attacker and his vehicle. Her clothing was collected for evidence, but at that time "DNA testing was in its infancy" and only blood-type testing was done. No suspect was identified.

In 2015, a suspect DNA profile from the semen/saliva mixture left on Atina's clothing was extracted. The DNA profile was submitted to CODIS and matched to another "as-yet unidentified assailant." Without a suspect, law enforcement turned to forensic genetic genealogy ("FGG"). First,

a private lab analyzed the DNA and generated an SNP DNA profile. AdvanceDNA then uploaded the "DNA file" to GEDmatch.

After uploading the file to GEDmatch, AdvanceDNA found a woman who shared approximately 3% of her DNA with the suspect sample, leading AdvanceDNA to believe the woman was possibly a second cousin of the unknown suspect. AdvanceDNA then built out a family tree for the woman using public information on GEDmatch and other public records like marriage certificates and birth records. Once its work was completed, AdvanceDNA provided law enforcement with a "leads summary report" that focused on four brothers.

Law enforcement began investigating Ralph Bortree, one of the brothers identified by AdvanceDNA, because he fit the physical description given by the Anita in 1993, owned a vehicle that matched the description given by Anita, and lived near Anita when the crime was committed. Law enforcement collected discarded cigarettes from Bortree. The cigarettes were tested for DNA and the DNA was consistent with the suspect DNA profile obtained from Anita's clothing. A warrant for Bortree's DNA was then obtained and his DNA matched the DNA on Anita's clothing.

Distinguishable from this case, the affidavit for a search warrant of Bortree's home contained a detailed description of the DNA process, including the use of FGG. It is unclear if the affidavit for a search warrant for Bortree's DNA also included FGG information.

Prior to trial, Bortree filed a motion to suppress the testimony of the owner of AdvanceDNA, Amanda Reno, arguing that 1) the state failed to establish that Reno had complied with GEDmatch's terms of service; 2) Reno did not preserve all her research to show how the Bortree family was identified as a lead; and 3) Reno relied, in part, upon unverified family trees uploaded on public ancestry websites by unknown individuals. The trial court denied Bortree's

motion. At trial, the state called Reno to explain how the FGG process created new leads in Anita's case.

On appeal, Bortree argued the decision denying his motion to suppress was error. The Court of Appeals of Ohio disagreed, noting that 1) Reno testified that she had complied with GEDmatch's terms of service and there was no evidence to the contrary; 2) Bortree was able to cross-examine Reno at both the suppression hearing and at trial about the process she used; and 3) it was inconsequential that Reno used unverified information from unknown individuals in narrowing the focus to the Bortree family because "the information provided by AdvanceDNA was merely a tool to provide leads to law enforcement. Law enforcement was then able to check the vehicles Bortree owned, etc., to find if he would be a good possible suspect." *State v. Bortree*, 2021 WL 3716803, rev'd and remanded on other grounds by *State v. Bortree*, 170 Ohio St. 3d 310, 212 N.E.3d 874 (2022).

The Court of Appeals concluded that:

> In this case the trial court found that the evidence did not establish any illegal activity by engaging in forensic genetic genealogy research, and the research did not, in fact, yield any substantive evidence that Bortree had engaged in any criminal activity. Rather, '[i]t merely narrowed the focus of law enforcement.' We agree with the trial court's conclusion that the research merely narrowed the focus of law enforcement, and consequently we can find no error with the trial court's determination to allow the testimony related to forensic genetic genealogy in this matter.

Id.

3. State v. Burns

In March 2023, the Supreme Court of Iowa released a decision wherein the facts discuss law enforcement's use of IGG. *State v. Burns*, 988 N.W.2d 352, 357 (Iowa 2023). In 1979 the victim, Martinko, was murdered. Years passed with no leads. In 2018, law enforcement employed the services of a private lab, Parabon, to perform "kinship analysis and genetic genealogy" on a suspect

DNA profile recovered from the crime scene. Parabon uploaded the DNA profile to GEDmatch. Based on the information obtained, Parabon directed law enforcement to investigate the descendants of four sets of great-great grandparents.

Based on the information for Parabon and further investigation by law enforcement, police contacted an individual named Janice Burns and obtained her DNA. Parabon determined that the suspect DNA profile was likely from Janice's first cousin. Janice had three first cousins, all brothers. Police collected DNA from two of the brothers via their trash. The DNA did not match that of the suspect profile. Police then collected DNA from a straw the third brother, Jerry Burns, discarded. The DNA on the straw could not be eliminated as the major contributor to the DNA found at the crime scene. Police then obtained a search warrant for Burn's DNA, which matched the suspect sample.

The opinion does not discuss any discovery issues or suppression issues surrounding the use of IGG; however, the facts of the case suggest at least some information concerning the IGG was discovered to Burns such as the private lab used (Parabon), the genetic genealogy service used (GEDmatch), and how the information obtained led back to Burns (i.e., law enforcement contact with Janice). Without this information in the record, there would presumably be no mention of it on appeal.

4. State v. Hartman

The Court of Appeals of Washington recently addressed whether a defendant had standing to challenge the DNA comparison of DNA collected at a crime scene with DNA in the GEDmatch database (i.e., the "analysis of the GEDmatch database"). *State v. Hartman*, 534 P.3d 423, 432 (Wash. Ct. App. 2023).

In 1986, 12-year-old MW was raped and murdered. Semen was found on MW's body, but over the next 30 years the DNA found did not match any suspect and did not match any profile in CODIS. In 2017, law enforcement sent the DNA found on MW's body to a genealogy consultant, Barbara Rae-Venter, and to a genetic genealogist at Parabon. Both Rae-Venter and Parabon uploaded the DNA sample to nongovernment consumer DNA databases, including GEDmatch, FamilyTree DNA, and MyHeritage. Through this, two second cousins of the unknown suspect were identified. Parabon then used information from GEDmatch and other publicly available sources, like census records, vital records, social media, and newspaper archives, to build out a family tree. Parabon also contacted at least one family member to get additional information about the family tree.

Based on the IGG work, it was suggested that law enforcement investigate Gary Hartman and his brother. Police then collected garbage from each brother to test for DNA. The DNA located on Hartman's garbage matched that found of MW's body. A warrant was then obtained for Hartman's DNA and that also matched.

Prior to trial, Hartman moved to suppress Parabon's analysis and DNA evidence later collected or analyzed because of Parabon's IGG work, including the analysis of DNA from Hartman's discarded garbage. "Hartman argued that analyzing the consumer databases for 'the DNA he shared with his close relatives was a warrantless, suspicionless search by a state actor that disturbed his private affairs in violation of the state and federal constitutions." *Hartman*, 534 P.3d at 429. Hartman "reasoned that the trial court should suppress 'all evidence obtained' because of Parabon's analysis, including the tests that directly matched his DNA to the killer's, as fruit of the poisonous tree." *Id.*

The trial court found that Hartman "did not have standing to challenge the analysis of his relative's DNA profile, which his relatives volunteered to have analyzed and posted on an open-source, unrestricted website. The court concluded that Hartman did not have dominion or control over the item seized (his relative's raw data DNA) nor the public database where the DNA profiles were compared (GEDmatch). Hartman had no authority to exclude others from accessing his relatives' DNA profiles on GEDmatch." *Id.* at 430 (internal quotation marks omitted). Further, the court found that "Hartman failed to show that the State intruded on his private affairs because any individual or entity could have directly accessed this voluntarily published and public information. Thus, Hartman had no standing to challenge the comparison with his relatives' DNA profiles in the GEDmatch database. As a result, the trial court ruled that the State did not need a search warrant or court order to access GEDmatch due to the public and unrestricted availability of the GEDmatch data." *Id.* Hartman was convicted of first-degree murder after a bench trial. He then appealed the trial court's ruling on his suppression motion.

Notably, Hartman did not assert a Fourth Amendment violation, only a violation of Washington State's constitution, which provides greater protections than the Fourth Amendment. On appeal, Hartman asserted that he had "a reasonable expectation of privacy in the segments of his DNA that he had in common with relatives that those relatives voluntarily uploaded to GEDmatch." *Id.* at 431. The Court of Appeals stated that "without the GEDmatch analysis, there would not have been a later warrant for Hartman's DNA – just as there was not for the preceding three decades. It is undisputed that Hartman never supplied a DNA sample voluntarily to any source. Thus, if the trial court had concluded that the GEDmatch investigation was unconstitutional, it would have inevitably suppressed the other DNA evidence as the fruit of the poisonous tree. . . . In sum, if Hartman is successful in his challenge to the GEDmatch comparison, the later DNA comparisons of Hartman's

DNA to the crime scene DNA would also be excluded because they would not have occurred absent the alleged [constitutional violation]." *Id.*

The Court concluded that "there is [no] privacy interest in common DNA that a relative has voluntarily uploaded to a public database." *Id.* at 437. Thus, Hartman did not have a valid privacy interest in the segments of his DNA that he had in common with his cousins when his cousins voluntarily posted the genetic information on a public website. Therefore, Parabon's investigation of GEDmatch's database did not violate Washington's constitution because it did not disturb Hartman's private affairs. "Because there was no intrusion on Hartman's private affairs, he had no standing to challenge the DNA comparison of DNA collected at the crime scene with the GEDmatch database." *Id.* at 437–438.

While the case does not include specific information about what information was contained in the search warrant for Hartman's DNA or what evidence the State intended to use at trial, it is clear that Hartman was provided discovery on the genetic genealogy investigation and prepared a suppression motion as a result of that information.

V. ANALYSIS

In Idaho, "Idaho Criminal Rule 16 governs discovery in criminal proceedings." *State v. Ish*, 166 Idaho 492, 510, 461 P.3d 774, 792 (2020). "Supervision of discovery is a discretionary power of the trial court. Trial courts have broad discretion . . . in determining whether or not to grant a motion to compel." *State v. Pendleton*, No. 50078, 2023 WL 6133219, at *4 (Idaho Sept. 20, 2023). While "[d]ue process requires all material exculpatory evidence known to the State or in its possession be disclosed to the defendant," "[t]here is no constitutional requirement that the prosecutor make a complete and detailed accounting to defense of all police investigatory work on a

case." *Dunlap v. State*, 141 Idaho 50, 64, 106 P.3d 376, 390 (2004) (citations and quotation marks omitted).

The State's argument is that 1) the IGG information is not discoverable under Idaho Criminal Rule 16, and 2) if the information is discoverable, good cause exists for the Court to issue a protective order denying discovery of the IGG information. State's Resp. to Def.'s Third Mot. to Compel Discovery at 2. "If the Court finds that the IGG information is relevant to guilt or punishment, the State is simply asking for an opportunity to provide additional information to the Court *in camera*, so the Court can decide whether the information the State seeks to protect contains exculpatory information." Reply in Supp. of Mot. for Protective Order at 8.

The defense argues that the IGG information it seeks "falls within the ambit of Rule 16(b)(4) and (5)," and that Kohberger "has a right to discover and question the investigation that led to him." Objection to State's Mot. for Protective Order at 3, 7.

1. **Rule 16(b)(4): Material to the preparation of the defense**

In support of its argument that the IGG information is not discoverable, the State argues that "the IGG information is not material to the preparation of the defense" because "Defendant is charged with killing four people, not with being related to a particular person. The mere fact that uploading the completed SNP profile into a publicly available genetic genealogy service led law enforcement to relatives of Defendant does not affect the strength of the evidence against him." Mot. for Protective Order at 10-11. "The family tree built by the FBI merely pointed law enforcement to Defendant, and law enforcement followed that lead to develop the substantive evidence of guilt that was used for his arrest and that will be used at trial." Reply in Supp. of Mot. for Protective Order at 7. The State contends that the only relevant DNA evidence is the

DNA found on the knife sheath and the DNA taken directly from Kohberger because those DNA profiles can be directly compared, and, according to the State, matched.

The defense argues that the IGG information sought is material to the preparation of the defense because the defense must have an opportunity to challenge "*how* the IGG profile was created and *how many* other people the FBI chose to ignore during their investigation." Objection to State's Mot. for Protective Order at 4. "The possibility of other relatives who might be similar to Mr. Kohberger is extremely important to the Defense in this case. The processes used in this method of identification may be extremely important to Mr. Kohberger's defense. The timing and steps utilized are extremely important to Mr. Kohberger's case investigation and defense." Decl. of Anne C. Taylor in Supp. of 3rd Mot. to Compel at 3. Additionally, the "defense team has discussed the use of statistics in this type of case with experts who have informed [defense counsel] that the manner of identifying Mr. Kohberger via this type of search may have significant impacts on the statistical analysis of the CODIS profile generated by the Idaho State Police Lab. Without access to the actual genetic genealogy search methods and results, it is impossible for qualified experts to address these issues." *Id.* at 4.

Idaho Criminal Rule 16(b)(4) requires that on written request of the defendant, the prosecuting attorney must produce information that is "material to the preparation of the defense."

As the Idaho Supreme Court recently explained,

> Materiality in this context has not been defined by the Idaho Criminal Rules, nor by Idaho's case law. However, the Federal Rules of Criminal Procedure provide a similar right to the defendant for the discovery of documents that are "material to preparing the defense." Fed. R. Crim. P. 16(a)(1)(E). Where a federal rule is identical in material respects to an analogous Idaho rule, this Court may look to decisions on the scope of the federal rule for guidance on interpreting our Idaho rule.

Pendleton, No. 50078, 2023 WL 6133219, at *5.

Federal court decisions have described "materiality" as follows:

> *'[M]ateriality' is a low threshold ... satisfied so long as the information ... would have helped to prepare a defense.* To show materiality under the federal rules the defendant must demonstrate that *the requested evidence bears some abstract logical relationship to the issues in the case.* ... There must be some indication that the pretrial disclosure of the *disputed evidence would [enable] the defendant significantly to alter the quantum of proof in his favor.* The evidence is material as long as there is a strong indication that it will *play an important role in uncovering admissible evidence, aiding witness preparation, corroborating testimony, or assisting impeachment or rebuttal.*

Id. at *6 (internal citations and quotation marks omitted) (emphasis added).

Kohberger has presented enough evidence to meet the "low threshold" required to show at least some of the IGG information sought is material to the preparation of the defense.

First, the defense presented the Declaration of Bicka Barlow as well as testimony from Barlow at the August 18, 2023, hearing. Barlow is a licensed attorney in California who also has a B.S. in Genetics, an M.S. in Developmental Genetics, and a minor in Cellular Biology, and has worked on numerous DNA cases. Barlow opined that "[i]t is imperative to the defense in this case to know how Mr. Kohberger was identified and who else in his family tree might have been identified as a subject of investigation. . . . it is unknown to the defense in this case, whether every lead or possible suspect was further investigated and ruled out by genetic testing. . . . It is not possible for any defendant to investigate family relatives who are unknown to him and may in fact have been in the area of the crime." Decl. of Barlow at 6-7. Essentially, the defense would like to know whose DNA matched the suspect SNP DNA profile uploaded to the genetic genealogy service(s) and who else was then identified on the family tree. The defense could then investigate individuals who share DNA with Kohberger: to determine if these individuals were around the King Road residence at the time of the murders and if law enforcement obtained these

individuals' DNA and tested it against the DNA found on the knife sheath. The defense seeks this information to determine whether Kohberger was or is the sole suspect.

Next, Barlow asserts that "an IGG search can impact the statistical rarity of a profile in a manner similar to a cold hit search, meaning that the statistic that is generated by an analysis of a IGG search could yield a relevant and admissible statistic. . . . Research in the area of the impact of an IGG search on the statistical weight of a DNA comparison, using standard STR DNA profiles, is ongoing." *Id.* This idea was also echoed by defense expert Stephen Mercer, a defense attorney with experience litigating DNA cases including work on two IGG matters. Mercer testified that an SNP profile can shed light on the reliability of an STR profile, but first one needs to know how the SNP profile was obtained, the lab process, the family tree, and who on the family tree was not tested for STR purposes. Essentially, according to Barlow and Mercer, the SNP profile and the information gathered from it can be used to attack the rarity and reliability of the STR profile, which the State will present at trial. This information would potentially challenge the State's statistic, based on the STR analysis, that "the comparison [between Kohberger's DNA and the DNA on the knife sheath] showed a statistical match – specifically, the STR profile is at least 5.37 octillion times more likely to be seen if Defendant is the source than if an unrelated individual randomly selected from the general population is the source." Mot. for Protective Oder at 5-6.

Additionally, like in *Hartman* and *Bortree*, it is plausible that Kohberger may use the IGG information obtained in discovery to challenge the admissibility of other evidence. While such a challenge seems futile since the IGG information was not used to obtain the search warrant for Kohberger's DNA and will not be presented at trial by the State, the Court cannot say

with certainty that the defense team could not make a successful challenge if given the information they seek.

At least some of the IGG information the defense requests "bears some abstract logical relationship to the issues in the case," and, based on the defense experts and the limited case law on the use of IGG, there is "some indication that the pretrial disclosure of the disputed evidence would [enable] the defendant significantly to alter the quantum of proof in his favor." *Pendleton*, No. 50078, 2023 WL 6133219, at *6. The Court cannot say that the material sought will not "play an important role in uncovering admissible evidence, aiding witness preparation, corroborating testimony, or assisting impeachment or rebuttal." *Id.* For these reasons, Kohberger has met the "low threshold" required to show at least some of the IGG information is material to the preparation of the defense.

2. Rule 16(b)(5): Scientific tests or experiments

The State also argues that "the family tree created by the FBI [and notes made by the FBI during the genealogy investigation] cannot accurately be described as the 'results or reports' of 'scientific tests or experiments' and falls outside of Rule 16(b)(5)." Mot. for Protective Order at 15. Rule 16(b)(5) "does not require the State to disclose what investigators do with the results or reports from scientific experiments." Reply in Supp. of Mot. for Protective Order at 4. According to the State, the rule only requires the disclosure of the results or reports themselves, in this case the STR DNA profile and the SNP DNA profile created from the Ka-Bar knife.

Rule 16(b)(5) requires the following:

> [o]n written request of the defendant, the prosecuting attorney must permit the defendant to inspect and copy *any results or reports* of physical or mental examinations, and *of scientific tests or experiments, made in connection with the particular case*, that are in the possession, custody or control of the prosecuting attorney or the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence.

(emphasis added).

It is undisputed that the SNP profile itself is the result of a scientific test done on evidence in the case. Thus, the question becomes is the family tree and notes related to building the family tree results or reports of scientific tests or experiments made in connection with the case. Arguably, although computer generated, the comparison of the suspect's SNP profile to other SNP profiles uploaded by individuals to genealogy services like GEDmatch is a scientific process. "SNP data can also reveal whether users share segments of their genome with other users, predicting relatedness through a common ancestor. This works by analyzing the percentage of overlapping bits of genetic code, so-called 'identical by descent' sections, that one shares with relatives." Teneille R. Brown, JD, Why We Fear Genetic Informants: Using Genetic Genealogy to Catch Serial Killers, 21 Colum. Sci. & Tech. L. Rev. 1, 12 (2019). "FGG employs the GEDmatch algorithm to find a percentage of shared genetic material, which in turn predicts relationship." *Id.* at 36. Thus, the results from that comparison process, i.e., what SNP profiles matched with the suspect's SNP profile, are results of scientific tests made in connection with the case that must be disclosed to Defendant. These results would not encompass the whole family tree that was likely built using publicly available sources or notes taken by agents working on the investigation. But these results would include the list of SNP profiles generated from the genealogy service(s) that connected with the suspect's SNP profile and the percentage of DNA those profiles shared with the suspect profile.

3. Rule 16(b)(8): Police Reports

The State argues "the records related to IGG" do not fit the description of police "reports or memoranda." Reply in Supp. of Mot. for Protective Order at 5. The State further argues that "[e]ven if the records constituted reports or memoranda, this subsection only applies to records

'in the possession of the prosecuting attorney,' I.C.R. 16(b)(8), and the State does not possess the FBI's records related to IGG." *Id.* at 6. Again, the State acknowledges that the FBI has "the family tree itself, notes jotted down by FBI agents as they constructed the family tree, and any records created to document the removal of the SNP profile from the genetic genealogy service(s) pursuant to the DOJ Policy." Mot. for Protective Order at 6.

Rule 16(b)(8) requires that "[o]n written request of the defendant, the prosecuting attorney must furnish to the defendant *reports and memoranda* in possession of the prosecuting attorney that were *made by a police officer or investigator in connection with the investigation or prosecution of the case*." (emphasis added).

Black's Law Dictionary defines "report" as "[a] formal oral or written presentation of facts or a recommendation for action." REPORT, Black's Law Dictionary (11th ed. 2019). "Memorandum" is defined as "[a]n informal written communication used esp. in offices." MEMORANDUM, Black's Law Dictionary (11th ed. 2019). Given the broad definitions of "report" and "memorandum," the family tree and notes taken by FBI agents during their investigation arguably qualify as "reports and memoranda . . . made by a police officer or investigator in connection with the investigation . . . of the case." The same would be true of any reports or memoranda made by the private laboratory that developed the SNP profile from the DNA on the Ka-Bar knife sheath and started using genetic genealogy to develop a family tree since the lab employees were working as investigators in connection with the investigation of the case. However, without first viewing the IGG material, the Court cannot say with certainty what does and what does not fall within the scope of Rule 16(b)(8).

4. Possession, custody, or control of the prosecuting attorney

As noted above, the State argued in its reply that information in possession of the FBI is not within the "possession of the prosecuting attorney." In a footnote in its Motion for Protective Order, the State made the same argument: "Even if the notes jotted down by the FBI agents or the family tree constituted reports or memoranda, as explained above, those records are not 'in the possession of the prosecuting attorney.'" Mot. for Protective Order at 15. The State echoed this argument on August 18, 2023, asserting that the State and the Court had no authority to require the FBI to turn over the materials it possesses related to its investigative work on this case.

Rule 16(b)(4) and Rule 16(b)(5) require discovery of materials "that are in the possession, custody or control of the prosecuting attorney." Similarly, Rule 16(b)(8) only requires disclosure of reports or memoranda within the "possession of the prosecuting attorney." Rule 16(b)(5) further requires disclosure of material if "the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence."

In interpreting "in the possession, custody or control of the prosecuting attorney," the Idaho Supreme Court recently held that "if a law enforcement agency is involved in the prosecution of a defendant, then that agency's records—which are material to that defendant's guilt or innocence—are effectively within the possession, custody, or control of the prosecutor. While the prosecutor is not required to comb the files of every ... agency, the prosecutor's possession, custody, or control of the evidence may be presumed if the agency participates in the investigation of the defendant. Or . . . the investigating police agency holding relevant and material evidence acts as an 'arm of the prosecution' for the purposes of criminal discovery statutes." *Pendleton*, No. 50078, 2023 WL 6133219, at *11.

Here, the FBI was working in conjunction with the Moscow Police Department and the Idaho State Police to investigate the homicides. From the Court's understanding, the FBI set up a public tip line, conducted the IGG analysis, identified the suspect car as a 2011-2016 Hyundai Elantra, and possibly aided in interviewing witnesses outside of Idaho. The FBI was indeed a law enforcement agency acting as an arm of the prosecution to investigate this case. Thus, the FBI's records pertaining to its work on this case are records within the possession, custody, or control of the prosecutor for the purposes of discovery. *But see* Professor Matthew Steffey, Mississippi Criminal Procedure: Proposed Rules and Comments, 31 Miss. C. L. Rev. 1, 118 (2013) (discussing Mississippi Criminal Rule 17.2(e), which discusses the prosecuting attorney's disclosure obligations under Rule 17.2 that is like Rule 16. "The prosecuting attorney is not generally deemed responsible for disclosure of information and material held by federal law enforcement agencies.").

5. Disclosure by Order of the Court 16(b)(10)

Rule 16 also contains a broad provision allowing for the disclosure of material by court order:

> On motion of the defendant showing *substantial need in the preparation of the defendant's case* for additional material or information not otherwise covered by this Rule, and that *the defendant is unable without undue hardship to obtain the substantial equivalent by other means*, the court may order the additional material or information to be made available to the defendant. The court may, on the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

I.C.R. 16(b)(10) (emphasis added).

There is limited case law in Idaho discussing what constitutes a "substantial need in the preparation of the defendant's case." However, in *State v. Foldesi*, an unpublished opinion from the Idaho Court of Appeal, Foldesi filed a motion pursuant to Rule 16(b)(8), now Rule 16(b)(10),

to obtain a copy of the Boise drug task force unit's policies and procedures. *State v. Foldesi*, No. 34519, 2009 WL 9146255, at *2 (Idaho Ct. App. Feb. 6, 2009), Foldesi was charged with delivery of a controlled substance after a detective with the Boise drug task force purchased methamphetamine from Foldesi as part of a controlled buy set up by a confidential informant. Foldesi's lawyer explained he needed the information sought so that he could "cross-examine, intelligently, the officer that was involved" in Foldesi's case. Defense counsel further argued that a violation of the task force's policies and procedures could "go to the alibi defense." The district court held that Foldesi had not shown a substantial need for the policies and denied his request for disclosure. During trial, Foldesi's lawyer was able to cross-examine the officers about what policies and procedures were in place at the time of the controlled buy and was able to establish that they were not "followed verbatim." Nonetheless, a jury found Foldesi guilty.

On appeal, the Court of Appeals held that "even if we assume, without deciding, that the district court abused its discretion in determining not to compel production of the information sought in advance of the trial, we also conclude that the error was harmless." *State v. Foldesi*, No. 34519, 2009 WL 9146255, at *3 (Idaho Ct. App. Feb. 6, 2009). "Because Foldesi was able to demonstrate the officers' noncompliance with their policies and procedure by cross-examination of the officers during the trial, we conclude that he has not shown prejudice from the district court's ruling not to compel production of the policies and procedures before the trial." *Id.*

Here, the State has made clear that it does not intend to produce any evidence or witness testimony at trial regarding the IGG information. Thus, unlike in *Foldesi*, Kohberger will not have the opportunity to cross-examine anyone involved in the IGG investigation to challenge anything done during or learned from the IGG investigation. For the reasons articulated above in

discussing Rule 16(b)(4), Kohberger has established there is "substantial need" for at least some of the IGG information sought so that he can potentially challenge various parts of the State's case against him. Although it is feasible that with the SNP profile the defense may be able to conduct their own IGG investigation and learn what the State learned, such work would be time consuming and expensive and would constitute an undue hardship on the defense.

6. Rule 16(g)(2): Informants

The State argues that the genetic genealogy service(s) and the individuals related to Kohberger whose profiles matched Defendant's SNP profile are "informants" whose identities are protected from disclosure under Idaho Criminal Rule 16(g)(2) and Idaho Rule of Evidence 509(a).

"Disclosure must not be required of an informant's identity unless the informant is to be produced as a witness at a hearing or trial, subject to any protective order under subsection (l) of this rule or a disclosure order under subsection (b)(6) of this rule." I.C.R. 16(g)(2).

> It is well settled that an informer's identity need not always be disclosed in a criminal trial nor in a preliminary proceeding to determine probable cause for an arrest or a search. The nondisclosure policy exists to preserve anonymity and to encourage citizens to communicate their knowledge of crime to law enforcement officials. However, the extent of informer privilege is not absolute and must give way [w]here the disclosure of an informer's identity, or of the contents of his communication, *is relevant and helpful to the defense of the accused*, or is essential to a fair determination of cause. The decision to require disclosure of the confidential informer's identity is left to the discretion of the trial court. To determine the extent of the informer privilege, the trial court must conduct an in camera examination of the evidence pursuant to I.R.E. 509. Idaho Rule of Evidence 509(c)(3) provides that in a criminal trial where the State invokes the privilege, if it appears "that an informer may be able to give testimony relevant to any issue in a criminal case ... the court shall give the public entity the opportunity to show in camera facts relevant to determining whether the informer, can, in fact, supply that testimony."

> The in camera hearing provides the trial court with an opportunity to determine the nature and extent of the benefit to the defendant from disclosure of a confidential informer's identity; it is desirable and proper to hold such a hearing before ordering or denying disclosure. The decision whether to hold an in camera hearing is discretionary and shall not be disturbed on appeal absent a clear showing of abuse. The subsequent decision whether to require disclosure of the identity of the confidential informer is also left to the discretion of the trial court.

State v. Hosey, 132 Idaho 117, 119, 968 P.2d 212, 214 (1998) (emphasis added).

While the individuals whose DNA matched with the suspect SNP DNA profile are not informants in the traditional sense, the Court understands the State's desire to protect the individuals from unnecessary exposure, who likely do not even know their DNA was used in this case. An *in camera* review of the family tree and other information used in the IGG investigation will help the Court better determine the benefit to Kohberger's defense in this case from disclosure of the identities of these individuals, which in turn will help the Court to put in place the appropriate protective orders.

7. Rule 16(l): Protective Order

The State argues that good cause exists for the issuance of a protective order barring even the defense from seeing or knowing the information "to protect hundreds of innocent civilians from having their personal information, including their names, birthdates, and familial connections to the defendant in a high-profile quadruple homicide from being disclosed. The disclosure of the IGG information risks harm not only to these indirect informants but also to the genetic genealogy service(s) used by the FBI and the IGG investigative technique." Further, the State contends that if the court requires disclosure of the IGG information, both the genetic genealogy services and customers of those services would be less likely to make their information available for law enforcement use.

"At any time the court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief. The court may permit a party to show good cause by a written statement that the court will inspect ex parte. If relief is granted, the court must preserve and seal the entire text of the party's statement." I.C.R. 16(l).

While the Court has determined the discovery of at least some of the IGG information in the FBI's possession is warranted under Rule 16, the Court, as discussed above, will conduct an *in camera* review of the information to better understand the information and more precisely determine what exactly needs to be turned over and the scope of any protective orders that are necessary.

VI. CONCLUSION

For the reasons articulated above, the Court finds that Kohberger has made the requisite showing that at least some of the sought-after evidence 1) is "material to the preparation of the defense," I.C.R. 16(b)(4); 2) encompasses "results or reports . . . of scientific tests or experiments" made in connection with the case, I.C.R. 16(b)(5); 3) may include "reports and memoranda . . . that were made by a police officer or investigator in connection with the investigation," I.C.R. 16(b)(8)(2); and 4) may be of "substantial need in the preparation of the defendant's case."

However, the Court understands the State's concerns with the identities of unknown relatives being made public and acknowledges the need for the issuance of protective orders. The State's argument that the IGG investigation is wholly irrelevant since it was not used in obtaining any warrants and will not be used at trial is well supported. Nonetheless, Kohberger is entitled to view at least some of the IGG information in preparing his defense even if it may ultimately be found to be irrelevant. In balancing these interests, the Court will conduct an *in camera* review of

all the IGG information in the possession, custody, or control of the State, including the FBI, to determine precisely what needs to be disclosed and what does not need to be disclosed, and issue any protective orders necessary.

SO ORDERED this 25th day of October 2023.

John C. Judge
District Judge

CERTIFICATE OF SERVICE

I certify that copies of the Order Addressing IGG DNA and Order for *In Camera* Review were delivered by email to:

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on this 25th day of October 2023.

County Clerk of the Court

By: _____
Deputy Clerk