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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

**MOTION TO RESCIND ORDER FOR
FAILURE TO PROVIDE DUE PROCESS**

COMES NOW, Bryan C. Kohberger, by and through his counsel of record, and hereby moves this Court to rescind the Order issued on March 22, 2024 without providing Due Process.

On March 22, 2024, late on a Friday afternoon the State filed its Motion to Prevent Contact with Potential Jurors. The motion included attachments. The late Friday afternoon filing was a

strategic action by the State. The State was well aware of the survey taking place long before its late filing on March 22, 2024; reading the State's filing it is clear the State was aware of the survey process by March 8, 2024. The State reached out to the Defense Counsel on March 19, 2024 and scheduled a meeting for March 21, 2024. By the time the parties met on March 21, 2024 the State had at least one transcript of the survey and knew the **questions** that were asked. At no time during the 13 days between March 8th and March 21st did the State determine an emergency existed that must be brought to the Court's attention. On March 21, 2024 counsel for the State and Defense met. The Defense provided a Curriculum Vitae for its expert and discussed the survey and its content. The Defense informed the State surveys such as these were common practice. The State could have easily, and likely did, find that this very expert did similar survey work in Idaho on at least two other occasions.

Surveys such as these meet the standard of care required of the defense in a capital case; yet the State told the Defense it wanted to tell the Judge about this. The Defense agreed to attend an on the record, in chambers meeting to discuss the Defense work being done. The State chose not to wait. Counsel asked the State to refrain from giving the attachments to the Court prior to a meeting where the Defense could be heard **because** the Court may take an action thus prohibiting Mr. Kohberger an opportunity to be heard. Unfortunately, through its letter writing to the Court, the State has achieved previous action from the Court without Mr. Kohberger receiving Due Process. The State knew what it was doing when it filed a late afternoon motion with attachments.

Mr. Kohberger quickly filed an Objection and stated further information would be coming. The Court issued an order, halting defense work without giving Mr. Kohberger any opportunity to be heard. This is a violation of Mr. Kohberger's constitutional rights pursuant to

the Fourteenth Amendment of the United States Constitution and Article 1, Section 13 of the Idaho State Constitution:

The right to procedural due process requires that, when a constitutionally protected interest is at stake, a person involved in the judicial process be given meaningful notice and a meaningful opportunity to be heard and that judicial proceedings be fundamentally fair.

State v. Blair, 149 Idaho 720, 722, 239 P.3d 825, 827 (Ct. App. 2010). *State v. Slaninka*, 171 Idaho 949, 528 P.3d 552, 556 (Ct. App. 2023), *review denied* (May 16, 2023).

The opportunity to be heard must occur “at a meaningful time and in a meaningful manner” in order to satisfy the due process requirement.” *Aberdeen–Springfield Canal Co.*, 133 Idaho at 91, 982 P.2d 917, 926 (1999), *citing Castaneda v. Brighton Corp.*, 130 Idaho 923, 927, 950 P.2d 1262, 1266 (1998); *see also City of Boise v. Industrial Comm'n*, 129 Idaho 906, 935 P.2d 169 (1997) and *Bradbury v. Idaho Jud. Council*, 136 Idaho 63, 72, 28 P.3d 1006, 1015 (2001).

At a bare minimum “there must be some process to ensure that the individual is not arbitrarily deprived of his rights in violation of the state or federal constitutions. This requirement is met when the defendant is provided with notice and an opportunity to be heard.” *Aberdeen–Springfield Canal Co.* at 926, *citing State v. Rhoades*, 121 Idaho 63, 72, 822 P.2d 960, 969 (1991); *see also A.E. “Ed” Fridenstine v. Idaho Dep't of Administration*, 133 Idaho 188, 983 P.2d 842 (1999).

For the Court to take action, without ensuring Mr. Kohberger has an opportunity to be heard, stops the Defense from preparing to meet its deadline for filings in support of its Motion for Change of Venue. The Order damages Mr. Kohberger in carrying out his work to ensure a properly prepared defense and ensuring a fair trial by an impartial jury. The Order also prejudices the State

because the survey work is complete for Latah County but it is not complete in other counties for comparison. No court order should be entered without procedural due process or unless the parties stipulate.

DATED this 26 day of March, 2024.

ANNE C. TAYLOR, PUBLIC DEFENDER
KOOTENAI COUNTY PUBLIC DEFENDER



BY: _____

ANNE TAYLOR
PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served as indicated below on the 26 day of March, 2024 addressed to:

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

Elisa Massoth – via Email: legalassistant@kmrs.net


