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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** **REPLY TO STATE'S OBJECTION TO DEFENDANT'S MOTION FOR CHANGE OF VENUE**

COMES NOW, Bryan C. Kohberger, by and through his attorneys of record, hereby submits this Reply to the State's Objection to his Motion for Change of Venue.

The pressure to convict Bryan Kohberger is so severe that Latah County survey respondents said if he wasn't convicted:

"They'd burn the courthouse down. Outrage would be a mild description."

"They would probably find him and kill him."

"There would likely be a riot and he wouldn't last long outside because someone would do the good ole' boy justice."

"Enraged strong opinions. Firing of officers."

"Riots, parents would take care of him."

The mob mentality within the community is the exact reason that statutory grounds, prior to selecting the jury, exist to move venue[1]. Given these responses from potential jurors in Moscow and the State's acknowledgment that a remedy is needed for a jury to be selected, the state recognizes the obvious: an enormous venue problem exists. The State brings forth no experts to counter Mr. Kohberger's who are all clear, venue must be changed in this case. The State does, however, acknowledge that Bryan Kohberger has a Constitutional right to a fair trial with an impartial jury.

Mr. Kohberger's Motion to Change Venue is supported with a memorandum, expert affidavits, declarations and exhibits that preview the testimonial evidence the Court will hear on August 29, 2024. A rebuttal declaration of Dr. Dahir is submitted with this reply.

On June 28, 2024, the Idaho Supreme Court pointed out that a change of venue "is not an unreasonably high hurdle for a defendant to clear, but it does require proof of prejudice or a showing of a "reasonable likelihood" of prejudice. The court is also:

[1] *Moore v. Dempsey*, 261 U.S. 86 (1923).. At a minimum the defendant has a right to be free from physical violence or threat thereof. See, e.g., *People v. Arthur*, 314 Ill. 296, 145 N.E. 413 (1924); *State v. Dryman*, 269 P.2d 796 (Mont. 1954); *State v. BeBee*, 110 Utah 484, 175 P.2d 478 (1946) (by implication); *Blevins v. State*, 108 Ga. App. 738, 134 S.E.2d 496 (1963), rev'd on other grounds, 220 Ga. 720, 141 S.E.2d 426 '(1965). Some cases indicate that the defendant's right to present his case in a calm and dignified atmosphere, without interference, is the right being protected. *See*, e.g., *Yancey v. State*, 98 Ga. App. 797, 107 S.E.2d 265 (1959); *State v. BeBee*, supra Cf., *Sheppard v. Maxwell*, 384 U.S. 333 (1966); *Estes v. Texas*, 381 U.S. 532 (1965). A third group of cases suggests the defendant is being protected from the prejudicial atmosphere of which the mob domination is indicative. *See*, e.g., *Seals v. State*, 208 Miss. 236, 44 So. 2d 61 (1950). Cf., *People v. McKay*, 37 Cal. 2d 792, 236 P.2d 145 (1951).

> concerned with the accuracy of the pretrial publicity, the extent to which the articles are inflammatory, inaccurate, or beyond the scope of admissible evidence, the number of articles, *and whether the jurors were so incessantly exposed to such articles that they had subtly become conditioned to accept a particular version of the facts at trial.*" (emphasis added and citations omitted).
>
> *State v. Ish*, 551 P.3d 746 (2024)

I. The Amount of media coverage in Latah County is the highest in the state and does not wane.

There are more than 1,300 specific media stories covering Latah County. These stories are in print, digitally, and on radio and television. Media coverage continues and the coverage is often inaccurate and inflammatory. The coverage conditions the potential venire panel to think of Mr. Kohberger as guilty and that various bits of information are factual and support guilt. The media coverage inundating Latah County does not tell citizens that no evidence has been presented at this time; that there are no facts on the record at this time; that Bryan Kohberger is innocent; that only a jury decides what the facts are and whether the facts show beyond a reasonable doubt a person is guilty.

Publicity regarding Mr. Kohberger has been ongoing since December 30, 2022. It rises and falls but does not wane. The media measured and presented by Truescope in Exhibit C of the Memorandum in Support of Change of Venu focused on traceable media. That means that media in a particular location was measured. As is pointed out by the State in footnote 1 found on page 2 of it's objection, publicity regarding Mr. Kohberger generating from YouTube, Facebook, Tik Tok, Podcasts, streaming services like Hulu and Netflix were not included in Truescope's report. Those highly inflammatory, and prejudicial and inaccurate media forms have reached Idaho's citizens, but measuring them specific to location is not possible. *Hadden* directs the Court to consider media coverage in the current venue and logically, venues considered as alternates. Truescope cannot measure the location of who reads Facebook (especially private

groups), nor can it determine the location of who follows certain podcasts. These limitations do not change the data. Latah County, making up only 2.75 percent of Idaho's population has received 36 percent of the media coverage. This is the highest ratio in the entire state. Ada County, with the largest population in the state, has significantly less coverage per person.

II. Unrefuted Survey Data Justifies a Change of Venue

The State's claims about the survey are wrong. Dr. Edelman designed the survey questions and how, depending on the participant's answer, the order of questions would flow. The survey report lays out the questions and responses for all four counties and demonstrates that the survey was conducted exactly the same way in each county surveyed. The only difference is the number of participants[2].

The survey report shows the impact of the media coverage. The more media items a potential juror knew, the higher the prejudgment for guilt. Latah County participants knew more media items than the other counties. The State criticized the content of the survey, complaining that not enough of the surveyed items were false[3]. Inadmissible or false statements are the information that this Court must consider. *See Ish* at 764.

The State further criticized the survey, asking the court to disregard it entirely, alleging the survey did not include record of citizens in Latah County who did not want to participate in the survey. That assertion is incorrect. The last page of the survey report provides a table depicting the total amount of numbers dialed and what happened. In support of its argument, the State cites the Court to a study done by Pew Research Center, however, only a partial statement from the study was included. Dr. Veronica Dahir has reviewed the survey done in this case as

[2] The defense made a decision about where to focus time and money on a full 400 surveys. While Mr. Kohberger will gladly agree to venue changed to any of Ada, Canyon or Bannock counties, Ada County is the most rational due to factors of population size, courtroom security and layout, cost/convenience and prior precedent of other district courts in Idaho.

[3] The State complained about the survey containing items that were false or inadmissible in a previous hearing. Now they complain that we should have put in more of these items.

well as the Objection filed by the State. She opines that any non-response rate does not create a bias or invalidate the survey. Exhibit F-1, Dr. Dahir declaration. The survey conducted in Mr. Kohberger's case is unrefuted and is reliable.

III. The State's Proposed Remedies: Expanding to Nez Perce County, vetting, or sequestration are not valid remedies supported by experts.

Expanding the jury pool to Nez Perce County is not a remedy because the residents of Lewiston and Nez Perce are in the same designated market area as Latah County[4]. They have been exposed to the same excessive media coverage, have proximity and share the same pressure to convict that exists in Latah County. Even the two counties combined do not reach even a third of the size of the available jury pool in Ada County. The residents of Nez Perce County have been exposed to 36 percent of the total media coverage and are more than 10 times more likely to encounter coverage as compared to residents of Ada County.

Vetting, as proposed by these State does not work. For decades, the courts have recognized that simply because a jury of 12 can be selected, does not mean that the jury is impartial:

> The requirement of the law is not satisfied by the mere empaneling of 12 men against whom no legal complaint can be made. The defendant is entitled to be tried in a county where a fair proportion of the people qualified for jury service may be used as a venire from which a jury may be secured to try his case fairly and impartially, and uninfluenced by a preponderant sentiment that he should be flung to the lions.
>
> *State v. Seal*, 208 Miss. 236, 248, 44 So. 2d 61,67 (1950). *See also* cases cited in footnote 1.

This is why attempts to mitigate juror bias are best done "where there has been less emotional investment and less publicity exposure regarding the case. "Dr. El Alayli, Def. Ex.E. pg. 12 Answers to the jury surveys in Ada County showed less emotional connection in total

[4] *See* Exhibit B, Dr. Edelman's Survey Report, 370 pages of Lewiston Tribune news stories about Bryan Kohberger.

contravention of Latah County. When asked how the community would react to a not guilty verdict, surveyors answered:

"They would go on with life as always."

"I think they would take it well."

"I don't know if there would be super strong feelings. "

"That's what the jury is for, to decide based on the evidence. If a jury finds him not guilty, then he wasn't guilty. Because they hear the evidence at the trial."

"I think they would accept it."

Rather than produce an expert who refutes the studies and opinions of Dr. El Alayli and Dr. Veronica Dahir, the state points to cases that have not analyzed such research. Judge Boyce in *State v. Daybell* explains well how the case law dating back 50 years doesn't address the concerns of today. For example:

> Once can only imagine what the Justices who decided [*Irvin v. Dowd*] 50 years ago would have thought about that concern today, when every potential jury has instant access to limitless media, literally at their fingertips, on a handheld device.[5]

Sequestration of 18 jurors for three months is unnecessary and untenable. Determination of sequestration is not timely as no motion for such is pending before this Court. Nor does the state produce details regarding costs to support the validity of its assertion that sequestering jurors from Ada County in Latah County is more cost effective than moving the trial to Ada County. Idaho Criminal Rule 21(a) and Idaho Code §19-1801 were implement for a reason. This case is that very reason.

IV. Precedent in Idaho supports a change of venue

[5] *See State v. Daybell*, Cr22-21-1623 "Memorandum Decision on Defendant's Motion to Change Venue" Dated 10/8/21, pg. 6.

Three capital cases in Idaho have recently had a venue change: State v. Lori Vallow, State v. Chad Daybell[6] and State v. Brian Dripps. All cases stem from Southeastern Idaho. The courts in these cases all granted a change a venue with a motion supported by evidence of extensive media coverage. None of the cases presented extensive expert surveys and none of these cases presented experts specializing in the science behind juror decision making. Of the three cases, two went to trial and as the state points out, there were lines of spectators outside of the courthouse Ada County. Jurors in both cases provided in depth media interviews post-trial and expressed that the Ada County court staff and marshals' provided great infrastructure that made a big difference in their ability to withstand the significant commitment.[7] This infrastructure includes: room for jurors to spread out during lunch breaks into jury assembly room, many bathrooms to make short breaks efficient, travel to and from the courthouse with security, ability to avoid the press and spectators by being bused underneath the courthouse, and experience of the courtroom deputies to provide security.

Such accommodations are not possible in Moscow. The facilities do not exist to accommodate a jury of 18 for three months in a case where the public and press will be lined up outside of the exterior of the building. The precedent of courts changing venue in Idaho and the experience of Ada County having handled high profile cases should be followed and used in this case.

Conclusion

Mr. Kohberger provided this Court with extensive and unrefuted evidence. The evidence includes proof of excessive media coverage in Latah County that is both prejudicial and false, along with declarations of experts explaining why remedies other than a change of venue are not

[6] *See State v. Daybell*, Cr22-21-1623 "Memorandum Decision on Defendant's Motion to Change Venue" Dated 10/8/21.
[7] https://www.youtube.com/watch?v=8xrHrD1ZOhA, begging at minute 19:00 jurors discussion regarding logistics; https://www.youtube.com/watch?v=92rrkKNkUm8&t=2273s, 3:00 – 6:30 minutes

enough. This evidence will be further developed at the change of venue hearing. The traumatized town of Moscow is understandably filled with deeply held prejudgment opinions of guilt. The surrounding area of Nez Perce County and Lewiston are not situated differently. The issue of venue reaches finality with a change to Ada County because the Latah County mob mentality will never produce a venire that results in a cross section of the community.

DATED:

_/s/ Elisa G. Massoth
Elisa G. Massoth

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served as indicated below on the ___19____ day of August, 2024 addressed to:

Latah County Prosecuting Attorney –via Email: paservice@latahcountyid.gov
Elisa Massoth – via Email: legalassistant@kmrs.net

State of Idaho v. Jonathan Renfro

	Kootenai County	Ada County
Recognize the case	88.8%	33%
Do not recognize the case	11.2%	67%

	Kootenai County	Ada County
Guilty	81%	60%%
Not guilty	3%	5%
Don't know; Refused; Other	16%	35%

State of Tennessee v. Andrew Delke

	Davidson County	Hamilton County
Recognize the case	67%	16%
Do not recognize the case	33%	84%

	Davidson County	Hamilton County
Guilty	48%	53%
Not guilty	34%	13%%
No opinion	8%	15%
Don't know; Refused; Other	11%	20%

United States v. Jairo Saenz

	Eastern District	Southern District
Recognize the case	63%	49%
Do not recognize the case	37%	51%

	Eastern District	Southern District
Guilty	54%	39%
Not guilty	1%	2%
No opinion	7%	14%
Don't know; Refused; Other	30%	46%

United States v. James Cloud

	Yakima	Richland	Spokane
Recognize the case	55%	18%	10%
Do not recognize the case	45%	82%	90%

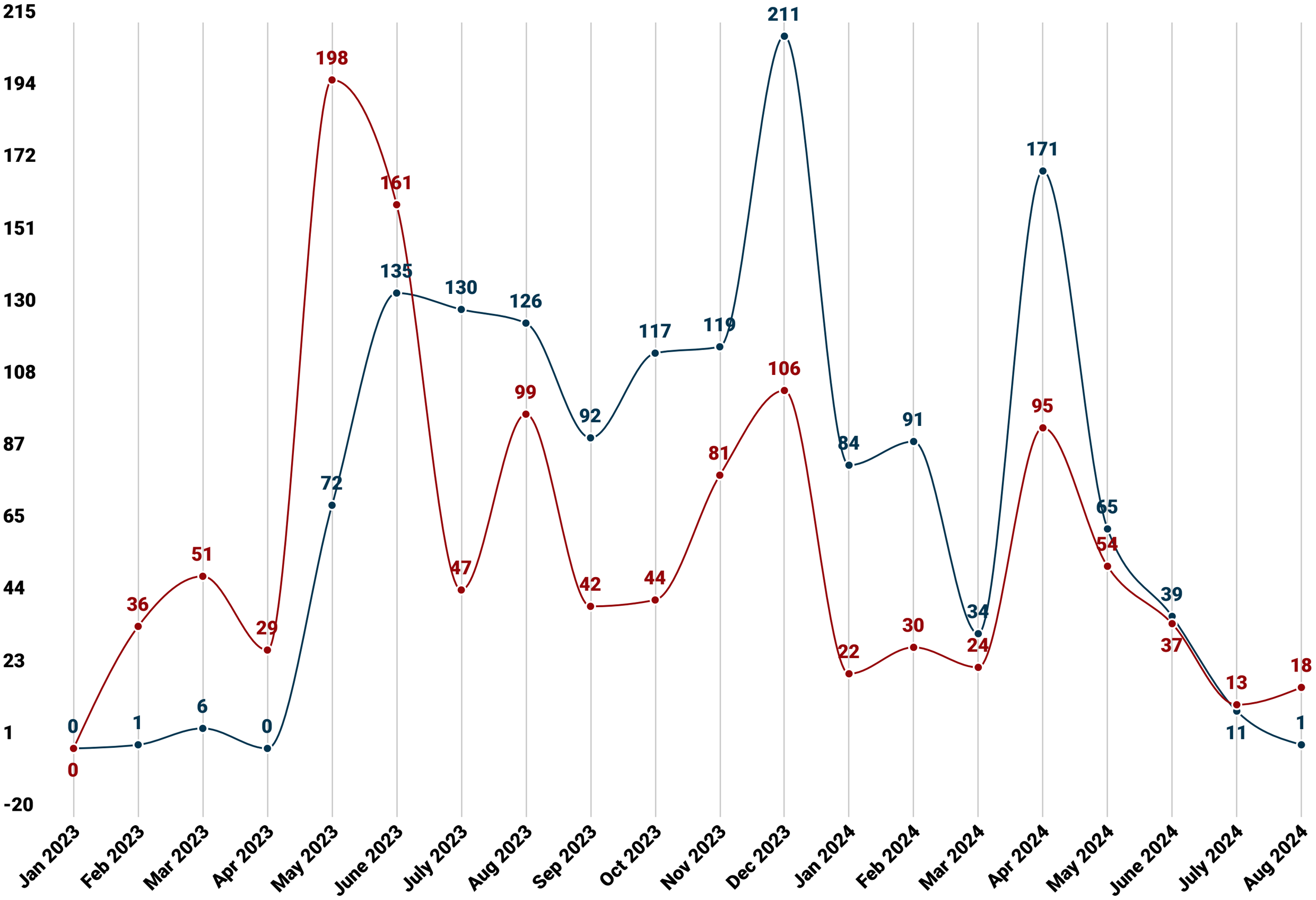
	Yakima	Richland	Spokane
Guilty	66%	40%	40%
Not guilty	.9%	-	-
No opinion	8%	26%	25%
Don't know; Refused; Other	25%	34%	35%

State of Minnesota v. Alexander Kueng, et al. (George Floyd case)

	Hennepin	Dakota	Olmsted
Recognize the case	99%	100%	97%
Do not recognize the case	1%	0%	3%

	Hennepin	Dakota	Olmsted
Guilty	60%	47%	49%
Not guilty	22%	30%	29%
No opinion	8%	7%	9%
Don't know; Refused; Other	11%	17%	14%

Volume of Media Coverage over Time
Latah & Ada Counties
1/1/23 – 8/19/24



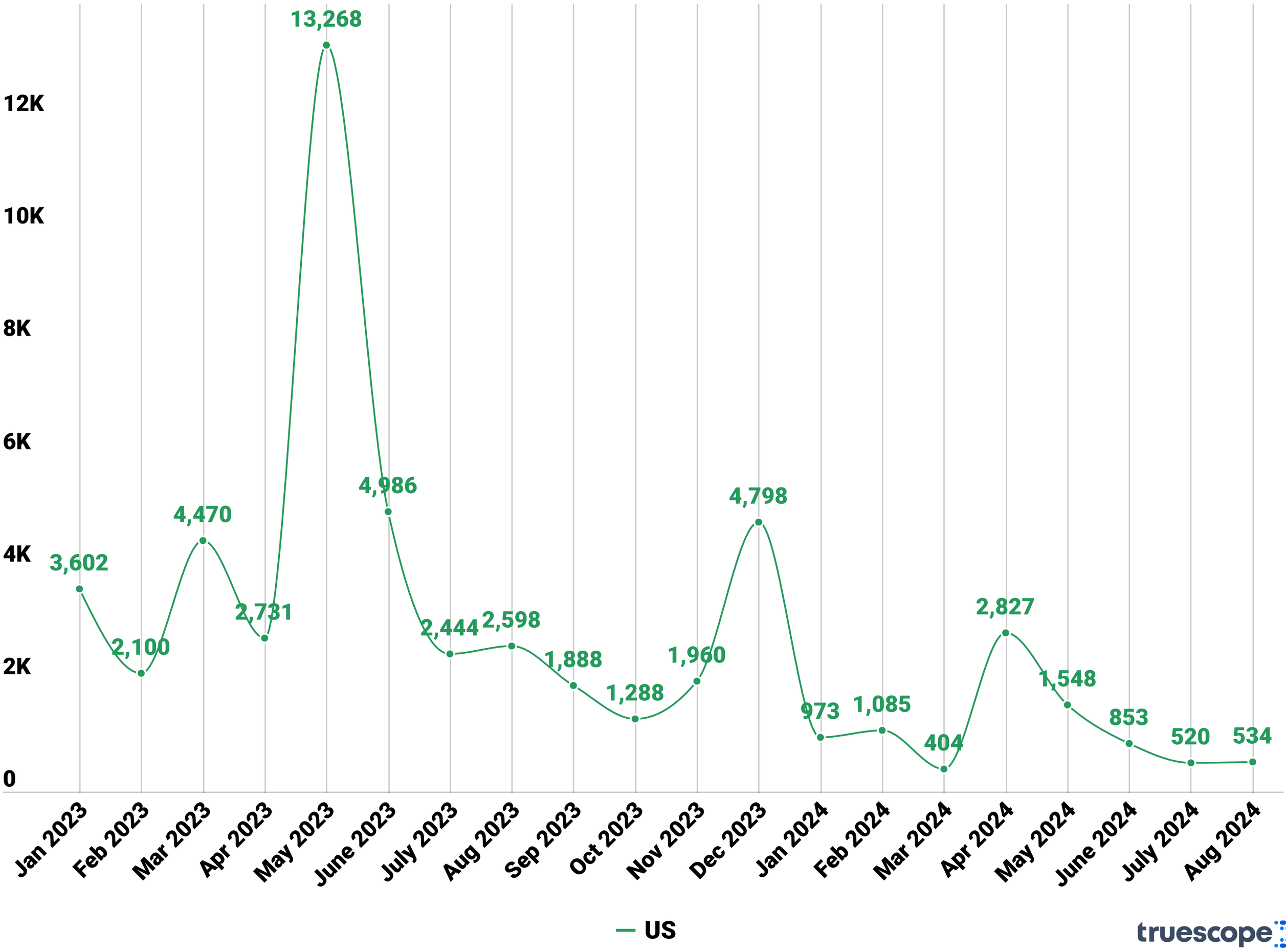
DEFENDANT'S
EXHIBIT NO. C-1
IDENTIFICATION / EVIDENCE
CASE NO. CR29-22-2805
DATE: 8/19/24

truescope

Volume of Media Coverage over Time

US Coverage

1/1/23 – 8/19/24



DECLARATION OF VERONICA DAHIR, PH.D.

I, Veronica Dahir, solemnly, sincerely, and truly declare and affirm as follows:

I. EXPERIENCE AND QUALIFICATIONS

I am the Director of Survey Operations for the Nevada Center for Surveys, Evaluation, and Statistics and the Director of the Grant Sawyer Center for Justice Studies at the University of Nevada, Reno (UNR). I received my Ph.D. from the University of Nevada, Reno in Interdisciplinary Social Psychology. I have over 20 years of experience with survey research, and I have conducted over 100 surveys during my career, including the Behavioral Risk Factor Surveillance System (BRFSS) Survey sponsored by the Centers for Disease Control and Prevention (CDC) in Atlanta, Georgia since 2006. I also teach a graduate level course for the Judicial Studies Program at UNR entitled, "JS 718: Scientific Research Methods for Judges," which includes an entire section on Survey Methodology. I have also served as a guest lecturer for other UNR faculty for their graduate-level courses on topics related to Survey Methodology. My full Curriculum Vitae was previously provided to the Court in Defendant Kohberger's *Memorandum in Support of a Motion to Change Venue*.

II. INTRODUCTION

Counsel for the defendant in *State of Idaho v. Bryan C. Kohberger,* as part of my duties previously stated in my original export report, requested I consider the prosecution's survey critiques of a community attitude survey conducted by Dr. Bryan Edelman and Research Strategies, Inc., and to give my opinion about the merit of those claims as they relate to the survey. I was provided with the defendant's motion for a change of venue, the prosecution's response to that motion, Dr. Edelman's declaration related to the survey results, the report written by Dr. Edelman related to the survey results, and a copy of the survey that was used for data collection. My declaration is based on my educational background and expertise in the field of social psychology and survey research and is independent of my employment at the University of Nevada, Reno.

I give my opinion based on previous research in the field of survey research, the facts I know to be true based on the information in the Survey Report by Trial Innovations, Inc. and the Defense's *Memorandum in Support of a Motion to Change Venue*. My explanations are stated below.

III. TELEPHONE SURVEY

The community attitude survey presented to me by the defendant's attorney was conducted to assess whether or not the media coverage had any effect on the potential jury pool prior to trial. The RDD (Random Digit Dialing) survey was conducted in Latah County, Idaho and in three other counties in Idaho: Ada, Canyon, and Bannock. The questions on the survey included: general questions regarding respondents' attitudes toward the criminal justice system as well as specific, detailed questions about the defendant's case, including the crime and the surrounding community, and questions related to their media and pretrial publicity exposure. According to Dr. Edelman's declaration,

> A telephone survey was conducted in Latah County. Comparison surveys were conducted in Ada, Canyon, and Bannock counties. *Research Strategies Inc,* which is based in Mobile, Alabama, was hired to field the telephone survey. Standard methodological practices related to the development of the instrument, interviewer training, sampling, and callbacks were closely followed. The survey instrument and methodology adhere to the professional standards and guidelines put forth by the *American Society of Trial Consultants.* All recognition questions were designed to describe the case using the language found in the media coverage. The surveys were in the field between March 5th and July 6th of 2024. Ultimately, 400 jury-eligible residents in Latah County, 400 in Ada County, 200 from Canyon County, and 202 from Bannock County completed the survey.

IV. RESPONSE TO STATE'S OBJECTION TO DEFENDANT'S MOTION TO CHANGE VENUE

I will address each item in order as enumerated in *State's Objection to Defendant's Motion to Change Venue.*

A. The survey data provided by Dr. Edelman is inadequate to justify a change of venue

i. It is not reported how many individuals declined to take the survey, raising serious concerns about non-response bias.

The prosecution states:

> A glaring omission in the data provided by Dr. Edelman is the lack of any information about the number of individuals who were contacted but chose not to respond to the survey. This is important because non-participation bias can change the outcome of such a survey. *See, e.g.,* Scott Keeter et al., "What Low Response Rates Mean for Telephone Surveys," Pew Research Center, *available at* https://www.pewresearch.org/methods/2017/05/15/what-low-response-rates-mean-for-telephone-surveys/.

Calling attention to the number of individuals declining to take the survey by the prosecution is a referral to the survey's response rate. On page 315 of Dr. Edelman's report, "Telephone Survey Results: Descriptive Statistics, *State of Idaho v. Bryan Kohberger"*, he provides a table indicating how many individuals declined to take the survey:

Call Performance Categories	Latah County	Ada County	Canyon County	Bannock County
Won't Participate	1417	1778	1085	1047

Non-response bias occurs when those non-responders to a survey differ systematically on the nature of the source error from those who respond to the survey. In other words, bias only exists if there are statistically significant differences between those responders and non-responders in a systematic way. For the most part, non-response bias is measured based on those characteristics of the survey takers as compared to those characteristics of the non-survey takers, such as based on age, race, or gender. Research Strategies, Inc. and Dr. Edelman used the appropriate survey methodology mitigation strategies to counter-act non-response bias, which I explain further below. Regardless, prosecution is claiming that the non-response bias

has more to do with those who did *not* take the survey and states that the main and *only* reason the non-survey takers would have refused to take the survey is because they had no knowledge of *any* upcoming jury trial. Prosecution claims even goes so far as to state that the reason there is non-response bias in the survey is because if they did *not* have knowledge about an upcoming jury trial, they would have refused to take the survey. This hypothesis posed by the prosecution is called the "leverage-salience" theory and results about this theory are mixed with respect to its impact on non-response bias[1].

Groves (2006)[2] reviewed 30 different studies estimating different variables that could contribute to non-response bias. After examining over 319 bias estimates from these studies, he concluded that non-response, by itself, is a poor predictor of bias magnitudes and "non-response rates 'explain' only about 11% of the variation in different estimates of non-response bias." Additionally, I would like to point out that response rate is not a simple calculation of the total number of surveys completed divided by the total calls made. There are many other items that go into the calculation of a response rate, including known and unknown eligible sample numbers (e.g., completes, refusals, answering machines for known eligible households, no answer, always busy) and ineligible sample numbers (e.g., businesses, fax machines, fast busy signals, disconnected numbers).

The prosecution's own citation to research conducted by the Pew Research Center[3] and other research conducted by their own organization[4] found that "Pew Research Center studies conducted in 1997, 2003, 2012 and 2016 **found little relationship between response rates and accuracy**, and other researchers have

[1] Groves, R.M., Singer, E., & Corning, A. (2000) Leverage-salience theory of survey participation. Description and an Illustration. *Public Opinion Quarterly 64*(3), 299-308.

[2] Groves and Peytcheva, 2008, citing Groves, 2006 (Groves, R.M. & Peytcheva, E. (2008). The impact of non-response rates on non-response bias. *Public Opinion Quarterly, 72*(2), 167-189. Groves, R.M. (2006). Nonresponse rates and nonresponse bias in household surveys. *Public Opinion Quarterly 70*, 646-675.)

[3] https://www.pewresearch.org/methods/2017/05/15/what-low-response-rates-mean-for-telephone-surveys/ (Keeter, S., Hatley, N., Kennedy, C. & Lau, A. (2017). What low response rates mean for telephone surveys. *Pew Research Center Report,* May 15, 2017)

[4] https://www.pewresearch.org/fact-tank/2019/02/27/response-rates-in-telephone-surveys-have-resumed-their-decline/

found similar results." In addition, according to Groves (2006) as reported in Fowler et al., 2016, **response rate is not a good predictor of nonresponse error**, and recent research by the Pew Organization has shown that there are no statistical differences between surveys with lower response rates compared to studies with higher response rates[5] (as reported in Fowler, Roman, Mahmood, & Cosenza, 2016), and that **"such reports can make researchers more comfortable reporting data from surveys with low response rates."**

Finally, the prosecution uses direct quotes from the Pew Research Center 2017 article by Keeter, et al., "What Low Response Rates Mean for Telephone Surveys", but conveniently omits other direct quotes from the article.

> As the Pew article explains, "[t]elephone polls greatly overstate civic engagement, probably because of non-response bias. As has been established in previous work, the people who answer surveys are likely to be the same people that are involved in their community's public life – they are joiners." *Id*. Such a phenomenon could easily play a role here, where at the very outset of the survey, respondents were told that they were being asked for "opinions about an upcoming jury trial." Def. Ex. B, App. B.

Here is the exact quote from the article:

> **Telephone polls greatly overstate civic engagement, probably because of nonresponse bias.** As has been established in previous work, the people who answer surveys are likely to be the same people that are involved in their community's public life –they are joiners. Fortunately for pollsters, civic engagement is not strongly correlated with political attitudes or most other measures researchers attempt to study with surveys.

It is clear that the prosecution quoted all but the very last line in the above quote, which is **"Fortunately for pollsters, civic engagement is <u>not</u> [emphasis mine] strongly correlated with political attitudes or most other measures researchers attempt to study with surveys."**

Prosecution also *ignores* two related (and contradictory) important quotes and the *main conclusion* of this same article, which is that *"…***the current study and prior**

[5] Reducing nonresponse and non-response error in a telephone survey: An informative case study (2016). Fowler, F.J., Roman, A.M., Mahmood, R., & Cosenza, C.A., in *Journal of Survey Statistics and Methodology*, vol. 4, pp. 246-262.

research suggest that response rate is an unreliable indicator of bias." And "despite low response rates, well-designed and carefully weighted telephone surveys still produce accurate information about the political profile of the American public…..". The authors come to that conclusion regardless of a respondent's greater likelihood of being a "joiner" (Keeter et al., 2017) as the prosecution suggests.

Prosecution concedes that non-response bias can be mitigated by conducting follow-ups, incentives, and training, but also states that these strategies only apply to individuals who would not participate in *any* survey, and it does nothing to mitigate non-response to a survey for someone that declines to take the survey because they have no opinion on the "specific subject matter of the survey"[6] (as in an upcoming jury trial).

Prosecution Claims:

> Defendant's flawed hypothesis is that if 98% of a self-selecting group who voluntarily chose to share opinions about an upcoming jury trial have heard about this particular upcoming jury trial, then 98% of all citizens who are summoned for jury duty will have also heard about it. The Court should reject this illogical leap of faith and embrace a more practical inference: it is more likely that a voluntary survey that begins by asking individuals to opine about an upcoming jury trial will overrepresent individuals with knowledge about an upcoming jury trial.

The position by the prosecution that those who have no opinion about an upcoming jury trial will not respond undermines the validity of all research. Surveys are conducted daily all over the world about important political, economic, health-related topics, among others [7] and by Courts and a number of large government agencies to make decisions and to create policy.[8] These surveys include respondents who may have no opinion whatsoever about the subject matter of the survey. If respondents who took the survey were only those interested in the topic and those who did not respond to the survey were only those not interested in the topic, all survey research would be considered completely invalid. While it is true that the salience of the topic of the survey may increase participation in a particular phone survey, as mentioned above, the name of

[6] See footnote 2 of page 6 of the *State's Objection to Defendant's Motion to Change Venue*
[7] See *Expert Report on Survey Research* provided in defendant's *Memorandum in Support of Motion to Change Venue* that was provided earlier to the Court.
[8] Centers for Disease Control and Prevention, World Health Organization, National Immunization Survey, U.S. Census Bureau, Office of Personnel Management, etc.

the specific jury trial was not mentioned in the introduction of the survey conducted by the defense. If this statement by the prosecution were true, recognition rates and percentage of survey responders within each survey across all comparison venues would be equal to each other. That is, only those who knew about an "upcoming trial" would also take the survey. In reality, the salience of the survey topic can also decrease response rates or increase non-response bias (more on this below).

However, following on the same line of reasoning as the prosecution, a respondent with no opinion on a topic would never be included in survey data, when in fact, the opposite is true. Many survey response options in survey design are written with the idea that the respondent will answer with exactly a "no opinion" response so that response option is offered to the respondent as a possible choice, as was the case in the telephone survey that was conducted by Research Strategies, Inc. for defendant Kohberger. Just because a respondent has no opinion on the survey topic does not mean that can't or won't take the survey at all or won't or can't answer other questions. For example, in the telephone survey used specifically in this case, respondents were asked approximately eight questions before they were ever asked a single specific question about this case, and if they had not read, heard, or seen anything about this case, they were then asked general questions about their media habits, and all case-specific questions were skipped (see survey in Appendix B, page 74 in Bryan Edelman's Declaration provided in Defendant's Memorandum in Support of Motion to Change Venue). There was no need for a respondent to quit or terminate the survey *just because* they did not have any opinion about the Kohberger case. In fact, the skip pattern in the survey allows for a respondent to skip to Question #17 if they state "no" on the two questions about recognition of the case. Therefore, the prosecution's argument is flawed in stating that there is non-response bias for those people who refused to take the survey just because they did not know anything about the case (or because they were not told the interview would be recorded). There are many reasons why a person could have refused to take the survey unrelated to the case at all (e.g., too busy, making dinner, not interested, driving right now, working, giving kids a bath, in the middle of a doctor's appointment, at the store), and there are many reasons why a person would terminate the survey in the middle of taking it. The non-response mitigation strategies

that are used by competent survey organizations (such as good survey design and interviewer training to include good refusal conversion strategies, incentives, follow-up calls, and statistical weighting) are used on all non-responders (not just those individuals who would *never take any survey*), as the entire point of refusal conversion strategies and other strategies is to mitigate non-response bias.

The prosecution argues that survey respondents should have been told exactly who was calling and asking these questions and why. Doing so would have created bias. Those who would not want a survey to be conducted related to this crime because they would not agree to a change of venue for the defendant for example (because they have pre-judgment and believe the defendant is guilty or who believe he should face justice in their county only because it is their community and it directly effects them), would lead not only greater non-response bias and lower response rates, but it could also lead to greater biased responses to specific survey items. For example, a respondent who is told in the introduction to the survey that its purpose is to help the defense move Mr. Kohberger's trial out of Latah County, may now refuse to take the survey completely because they do not want to "help" Mr. Kohberger, or possibly lie and say that they really did not know anything about the case, basically minimizing their knowledge.[9] Telling them about the case could create a "placebo effect" as in clinical trials, where a person is told they are in the clinical condition where a new drug is being administered when in fact they are in the placebo group. Telling a respondent exactly why you are doing a research study (e.g., the hypothesis) is the opposite of scientific research protocol in a research trial due to the demand characteristics[10] generated when such knowledge is given to the participant. If a participant knows exactly why the study is being conducted, that knowledge may influence their behavior. That is, the respondent may change their behavior or respond in a way that would give the

[9] Bronson, E. (1989). The effectiveness of *voir dire* in Discovering Prejudice in High Publicity Cases: An archival Study of The Minimization Effect.

[10] Demand characteristics are cues that can indicate the purpose of a study to participants and can influence their behavior. These cues can come from many sources, including the study's title, the study's sponsor, gossip about the study, the researcher's behavior or demeanor with the participants, the study methods, the study setting, and the tools used. Demand characteristics can be problematic because they can bias research findings.

researcher the outcome the respondent thinks the researcher is looking for due to social desirability to be a “good” research participant.

The Prosecution also states:

> This Court must ask itself: would an individual who was asked for their opinion about an upcoming jury trial continue a survey if they had no opinions about any upcoming jury trials? And once the survey started, would a prudent, thoughtful, and conscientious person who is reluctant to pass judgment with limited information opine to a stranger whether they believe a criminally accused is guilty of murder?

I respond to this comment with the same reasons I provide above. Specifically, respondents may refuse to continue the survey for the same reason they might refuse to start the survey in the first place, and those reasons may have nothing at all to do with the subject matter of the survey (see examples I provided above).

To reiterate the quote above, prosecution states, “Defendant’s flawed hypothesis is that if 98% of a self-selecting group who voluntarily chose to share opinions about an upcoming jury trial have heard about this particular upcoming jury trial, then 98% of all citizens who are summoned for jury duty will have also heard about it. The prosecution claims that Dr. Edelman’s statements, and therefore, Mr. Kohberger’s claims, cannot be generalized to the entire jury pool. The prosecution is stating that the defendant can only state that 98% of the *survey respondents* (a self-selecting group even though they were randomly sampled) can claim such familiarity with the case and its related events and not 98% of those summoned for jury duty (even though the entire point of a random sample of participants is to be able to generalize to the entire jury pool, from which those summoned for jury are ultimately drawn).

Based on the report of the survey results provided by Dr. Edelman, which includes the survey methodology employed, I find the prosecution’s statement to be flawed. Dr. Edelman and Research Strategies Inc. used the appropriate method of sampling telephone numbers from the community in a random manner in order to achieve 400 completed surveys in Latah County, 400 in Ada County and 200 in each of the other two comparison venues (202 in Bannock County). Research Strategies, Inc.

also employed the appropriate survey methodology to minimize response bias (training interviewers) and non-response bias (following appropriate sampling and calling protocol). In survey research, it is customary practice to order an X number of sample pieces (i.e., replicates of telephone numbers) based on a formula that includes the incidence rate of the phenomenon of interest. It is also proper calling protocol to call sample replicates up to 3 or more times, at different times of the day, and on different days of the week, in order to reach an eligible respondent until those replicates are called to completion. The number of completed surveys needed to represent an entire county or district (i.e., the jury pool) is calculated via a power analysis, often conducted using a sample size calculator widely available for free use on the Internet (see for example http://www.raosoft.com/samplesize.html). The number 400 was the target sample size used in Latah and Ada counties, and when a sample size calculator is used, 400 is the typical number used to generalize to a population of over 20,000 people, with a 95% confidence interval[11] (+ or – 5%), and a 5% margin of error when a binary outcome (e.g., 50% yes or 50% no) is expected or the outcome is unknown. The most conservative response distribution that can be used in the sample calculator is 50% and will yield the largest sample size regardless of response format (i.e., yes/no, 5 point Likert Scales such as "strongly agree to strongly disagree"). The random sampling that was used to achieve the target number of completed surveys allows for the ability to generalize the survey results to the entire jury pool. Research organizations such as the Rand Corporation and the Pew Research Center often predict (with accuracy) political poll results across the entire nation based on a random sampling of only 1000 completed household surveys (see for example, Frequently Asked Questions and "How can a small sample of 1,000 (or even 10,000) accurately represent the views of 250,000,000+ Americans?" at https://www.pewresearch.org/our-methods/u-s-surveys/frequently-asked-questions/).

The 200 randomly sampled completed surveys in the other counties could possibly be weighted to represent the larger populations in those districts in order to

[11] Confidence Interval = The points (range) between which the *true* population parameter (population estimate) will fall 95% of the time, if statistical assumptions regarding sampling are met.

reduce the non-response bias, but the 200 completed surveys, even without this weighting, can still be statistically analyzed to provide meaningful information about those sampled in order to describe the community attitudes likely to be found in those jury pools, there will just be a slightly larger margin of error.

V. CONCLUSION

In conclusion, I do not find any supporting evidence for the prosecution's claim that the "Defendant has failed to meet his burden of showing that change of venue in this case is necessary" based on the community attitudes survey conducted by Dr. Bryan Edelman and Research Strategies, Inc. on behalf of the defendant. In fact, in my opinion, I find the opposite to be true.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing facts are true and correct, except as to facts stated upon information and belief, which facts I believe to be true.

August 19, 2024

Veronica Dahir, Ph.D.