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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO, Plaintiff, V. BRYAN C. KOHBERGER, Defendant.	Case No. CR01-24-31665 STATE'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE #11 RE: EXCLUDE IGG EVIDENCE

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and responds to Defendant's Motion in Limine regarding investigative genetic genealogy ("IGG"). The defense's motion rests on inaccurate factual assertions and an erroneous legal standard. Nevertheless, the State does not object to—and has in fact also moved—for the exclusion of the IGG information at trial.

FACTS

In June 2023, the State moved for "an order protecting the information related to the use

of IGG in this case," including "[t]he 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." (Motion for Protective Order, p.7, filed 6/16/2023.) The State argued the IGG information did not fall within Rule 16 of the Idaho Criminal Rules because it was used only as a tip and the State "has no plans to present the IGG information for which a protective order is sought as evidence at trial," other than having an investigator testify "only that they received a tip pointing law enforcement to Defendant." *Id.* at 12-13 & n.6. The State suggested that the Court review the IGG information *in camera* to determine what, if any, of the IGG information should be disclosed to the defense. *Id.* at 17-18.

The Court found "[t]he 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." (Order Addressing IGG DNA and Order for *In Camera* Review ("*In Camera* Order"), p.30, filed 10/25/2023), but also determined the defense may be entitled to some of the IGG information. *Id.* Accordingly, the Court "grant[ed] the State's request for an *in camera* review of the IGG information." *Id.* at 1.

The State gathered the IGG information from the Idaho State Police; Othram, which is the private lab who contracted with the Idaho State Police; and the FBI and turned the information over to the Court. The information provided to the Court included original documents as well as some descriptions of other IGG-related information that was available for further review if the Court chose to do so. After the *in camera* review, the Court issued an order describing which pages of the IGG information had to be disclosed. (Sealed Order for Disclosure of IGG Information and Protection Order ("Disclosure Order"), filed 12/29/2023.) The State then provided the defense the materials the Court ordered disclosed.

The Court's *In Camera* Order and Disclosure Order made it clear that all IGG discovery was to be filtered through the Court. Nevertheless, a few months later, the defense sent supplemental discovery requests to the State requesting additional IGG information. (Defendant's 15th Supplemental Request for Discovery, Exhibit N, filed 3/27/2024.) The State objected to all the requests. (State's Objection to Defendant's 15th Supplemental Request for Discovery, filed 4/4/2024.) The State explained the basis of its objection was that the State had already provided the IGG information to the Court, the Court had already ordered what IGG information should be disclosed to the defense, and the State had already disclosed that information. *Id.* at 1-2.

At the hearing on the defense's motion to compel the IGG information, the State made the same argument asserted in the written objection. The State explained that, after it had received the *In Camera* Order, it reached out to the private lab and to the FBI and asked for everything related to IGG. (5/30/2024 Tr., p.83, L.6-16.) The State explained that it was not fighting the *In Camera* Order or trying to withhold from the Court any of the IGG information. (5/30/2024 Tr., p.83, L.22 – p.84, L.1.) The State asserted that, after receiving the new IGG requests, the State showed the new requests to Othram, and Othram said they had already given everything they had to the State. (5/30/2024 Tr., p.84, Ls.1-7.) To the extent the new requests were asking for anything beyond what had already been provided, Othram had told the State it did not exist. (5/30/2024 Tr., p.84, Ls.3-7.) The Court clearly understood the State's argument to be that the requested materials *either* had been turned over to the Court *or* did not exist because it concluded the discussion on Othram's materials with this question:

> THE COURT: So Othram has said – you've asked them and they said we've given you everything we have?
>
> [THE STATE]: Yes.

(5/30/2024 Tr., p.85, Ls.16-18.) The Court denied the defense's motion to compel as it related to

the IGG information. (Order on Defendant's 4th and 5th Motions to Compel Discovery, pp.8-12, filed 6/14/2024.[1])

The defense later moved to suppress all evidence collected as a result of IGG on the basis that the IGG process violated Defendant's rights under the Fourth Amendment. At the January 23, 2025, hearing on the motion to suppress, ISP Lab Director Matthew Gammette testified that ISP had received Othram's standard operating procedures in the context of the bidding process used by ISP to secure a private lab to perform work related to IGG. (1/23/25 Tr., p.58, Ls.1-13.)

Shortly after the hearing, the defense sent additional discovery requests to the State related to the IGG information, including a request for Othram's protocols and procedures as testified to by Matthew Gammette. (Defendant's 22nd Supplemental Request for Discovery, Exhibit U, filed 1/28/2025.) The State put together a response objecting to each of the IGG requests for the same or similar reasons it had objected to previous IGG-related discovery requests: the IGG discovery had already been handled through the process established by the Court's *In Camera* Order and Disclosure Order.

[1] Consistent with the colloquy at the hearing, the Court's order gave the defense the benefit of the doubt and interpreted the requests related to Othram to be asking for *additional* materials that were not already known to the Court rather than as an attempt to evade the Court's protective order and secure from the State materials the Court had already ruled on. The defense's interpretation, that the Court was saying none of the requested information existed *at all*, is not consistent with the record. For example, one of the requests asked for the names and CVs of the individuals responsible for work done at Othram. (*See* Defendant's 15th Supplemental Request for Discovery, Exhibit N, p.1, filed 3/27/2024.) Obviously, the State never represented to the Court that the individuals who worked at Othram did not have names or CVs. In fact, the State had already disclosed *in camera* information about the chief scientist who did the work at Othram, including his name and qualifications. (*In Camera* Materials, ISP Othram Contract Documents, p.80, filed 11/30/23.) Similarly, another Othram-related discovery request asked for any data file that was uploaded to any commercially available database, and the State expressly told the Court both in writing and at the hearing that documents existed that were responsive to the request but had already been turned over. (*See* 5/30/24 Tr., p.85, Ls.3-13; Second Supplemental Response to Defendant's Fifth Motion to Compel, p.2 (stating in response to Request 3 that "[n]o such data file exists *other than the SNP profile(s) already provided*) (emphasis added), filed 5/28/24.).

In putting together its response, the State learned that Othram had provided its standard operating procedures to ISP, but ISP had not provided them to the Latah County prosecutor's office to be disclosed to the Court in response to the Court's December 29, 2023, *In Camera* Order. Specifically, on February 9, 2025, the State first recognized that the form Othram filled out during the bidding process asked the bidder to submit written standard operating procedures, and Othram's response indicated that Othram uploaded its standard operating procedures as the file SOPs.zip. (*In Camera* Materials, ISP Othram Contract Documents, p.80, filed 11/30/23.) The State compared Othram's response to the information provided to the Court in response to the *In Camera* Order and found the State did not provide the SOPs.zip file as an attachment to the bid. Upon further review of its records, the State found that ISP had not provided the file SOPs.zip to the Latah County prosecutor's office. The State then confirmed with ISP that Othram had provided the standard operating procedures to ISP but that they were inadvertently not provided to the Latah County prosecutor's office.

Just two days after learning this information, the State provided to the defense and filed with the Court its response to the defense's discovery requests. (State's Response to Defendant's 22nd Supplemental Request for Discovery, filed 2/11/2025.) The State explained in its response that the bidding documents included for the Court's *in camera* review revealed the existence of Othram's standard operating procedures, but the State had inadvertently failed to disclose the standard operating procedures themselves. *Id.* at 1. The State also explained that the standard operating procedures were covered by the Court's protective order because the Court had not required the disclosure of any of the bidding documentation other than the MOU, including the document that revealed the existence of the standard operating procedures, on the basis that "[t]he remaining contract documents are not relevant to any issue in the case." (State's Response to

Defendant's 22nd Supplemental Request for Discovery, Ex. S-1, p.1, filed 2/11/2025 (quoting Disclosure Order, p.5).) Two weeks later, the defense filed a motion in limine asking the Court to exclude IGG evidence from the trial on the basis that the State allegedly violated *Brady*.

ARGUMENT

The defense's motion is based on a mischaracterization of the record and inapposite case law. The State did not act in bad faith; the State never made the concession the defense now claims; and the defense's reliance on *Youngblood* is legally erroneous. The defense has failed both legally and factually to substantiate a *Brady* violation.

A. The defense's motion is based on the wrong legal standard.

The defense's motion relies on the wrong legal standard by confusing *Brady* and *Youngblood*. The *Brady* standard asks if the State withheld exculpatory evidence that had a reasonable probability of changing the outcome of the proceeding and applies "irrespective of the good faith or bad faith of the prosecution." *Thumm v. State*, 165 Idaho 405, 422-23, 447 P.3d 853, 870-71 (2019). *Brady* applies when the State possesses but fails to disclose allegedly exculpatory evidence. *See State v. Campbell*, 170 Idaho 232, 247, 509 P.3d 1161, 1176 (2022). "However, a separate issue arises when the allegedly exculpatory evidence was not withheld by the State, but rather lost or destroyed by the State." *State v. Davis*, 165 Idaho 709, 714, 451 P.3d 422, 427 (2019). In that circumstance, the *Youngblood* standard asks whether the State acted in bad faith. *See id.*

Idaho's appellate courts have been clear about this distinction for decades. *See, e.g.*, *State v. Sarbacher*, 168 Idaho 1, 5, 478 P.3d 300, 304 (2020) ("While we have consistently held that *Brady* applies when the State fails to disclose *known* exculpatory evidence, we have applied [*Youngblood*] in cases where the State has failed to preserve material evidence of unknown exculpatory value."); *State v. Ward*, 135 Idaho 68, 74, 14 P.3d 388, 394 (Ct. App. 2000)

(explaining "the district court failed to distinguish between the state's duty to *disclose* evidence and the state's duty to *preserve* evidence" and that *Youngblood* "applies only to situations where the state failed to *preserve* potentially exculpatory evidence").

Determining which legal standard applies is as easy as it sounds. For example, in a case where the State possessed but failed to disclose an allegedly exculpatory social media post, the Idaho Supreme Court held *Brady* was the correct standard. *See Campbell*, 170 Idaho at 247-49, 509 P.3d at 1176-78. But in a different case when the State "destroyed or deleted" an allegedly exculpatory social media post, the court held that *Youngblood* applied. *See Davis*, 165 Idaho at 715, 451 P.3d at 428. Here, *Brady* applies because the defense alleges that the State failed to disclose Othram's standard operating procedures. *Youngblood* does not apply because the defense has not alleged that the State lost or destroyed Othram's standard operating procedures. Because *Brady* applies rather than *Youngblood*, whether the State acted in good faith or bad faith is irrelevant. Thus, the defense's motion, which rests entirely on its faulty accusations of bad faith, fails from the get-go.

Though legally correct, it is unfortunate for the State that *Youngblood* does not apply because there is no reasonable reading of the record that supports a finding of bad faith. "Bad faith is a high bar, requiring more than mere negligence; rather, bad faith refers to a calculated effort to circumvent the disclosure requirements established by *Brady v. Maryland* and its progeny." *State v. Sarbacher*, 168 Idaho 1, 7, 478 P.3d 300, 306 (2020) (internal quotations omitted). There was no calculated effort to circumvent *Brady*. The State disclosed to the Court the records it had received regarding the bidding process. Then, just two days after learning that the standard operating procedures themselves were inadvertently left out of the material provided for *in camera* review, the State notified the defense and the Court still *six months* before the trial. The State acted

in good faith and there is no reasonable basis to conclude otherwise.

B. The defense has not and cannot prove a *Brady* violation.

The defense has not and cannot prove a *Brady* violation related to Othram's standard operating procedures. "There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it's exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." *State v. Hall*, 163 Idaho 744, 830, 419 P.3d 1042, 1128 (2018). The defense has not proven any of three components.

First, the defense has not shown that Othram's standard operating procedures are exculpatory or impeaching. Much of the defense's argument is based on a misreading of the transcript of May 30, 2024, to say the State conceded the IGG information is relevant to the case. Of course, relevance is not the proper standard. *See State v. Campbell*, 170 Idaho 232, 247, 509 P.3d 1161, 1176 (2022) (explaining *Brady* only applies where the evidence is "favorable to the defense"). In any event, the defense is wrong about the State's concession.

The defense omitted from its motion the beginning of the State's argument at the hearing, which demonstrates that the State maintained its position that *none* of the IGG information is relevant and that the State's references to the Court's order were referring to the *In Camera* Order requiring the State to turn IGG information over *to the Court*, not the Disclosure Order requiring the State to turn *some* of the IGG information over to the defense:

> [THE STATE]: Thanks, Judge. So I just want to start with maybe a bigger picture for a second. You know, we started with arguments about whether the IGG stuff is relevant at all. We, of course, made our argument that it is not relevant at all. It shouldn't even have to be produced. The Court made a ruling on that. We still don't agree with it, but we understand –
>
> [THE COURT]: I understand.

> [THE STATE]: -- the Court makes the decisions, and so we complied with that order.

(5/30/2024 Tr., p.83, Ls.6-15.) In light of that portion of the State's argument, it is clear that the next portion of the State's argument was nothing more than the State acknowledging that—to the extent the requested materials exist—those materials fell within the scope of the Court's *In Camera* Order and, pursuant to that order, the State had to turn over those materials *to the Court*:

> [THE STATE:] We have talked to Othram. We've spoken to Othram since we have gotten this Exhibit N and provided them these requests. And we are not in a position – for example, request 1 through 6, we are not fighting those. I'm not saying, we are not going to turn those over. In my view, they fall pretty clearly under the Court's order. The issue is, we go to Othram and show them these, and Othram says, we have given you everything. You have everything. Everything we have was given to the Court and then provided to the Defense. So, there's nothing on this list that we are holding back because we think we have some justification for doing so. Othram is just telling us we don't have it.

(5/30/2024 Tr., p.83, L.20 – p.84, L.7.)

That the State was referring to the *In Camera* Order and turning over materials *to the Court* is also clear from the orders themselves. The *In Camera* Order required the State to disclose a category of information to the Court: all the IGG information related to the case. (*In Camera* Order, pp.30-31.) The Disclosure Order, on the other hand, specified precisely which pages or discrete information reviewed *in camera* needed to be turned over to the defense. (*See* Disclosure Order, pp.1-5.) Given the nature of the orders, it would make no sense for the State to assert that any additional information not provided *in camera* was subject to the Disclosure Order.

The defense's misreading of the transcript pales in comparison to its misreading of the State's motion for a protective order. (Mot. at 3.) The defense tries to claim the State conceded in its motion that all information related to Othram's work was relevant because the State agreed to provide the lab report pursuant to Rule 16(b)(5). *Id.* Nothing could be further from the truth. The

State dedicated an entire section of the motion to explaining why Rule 16(b)(5) required *only* the disclosure of the scientific report and nothing else. (Motion for Protective Order, pp.13-15, filed 6/16/2023.) The State also affirmatively argued the rest of the IGG information should be protected because it fell outside of Rule 16, including any "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." *Id.* at 7.

Second, the defense has not shown that the State "suppressed" Othram's standard operating procedures because those documents have been withheld from disclosure to the Defendant pursuant to a protective order. Idaho's appellate courts have looked with favor on the use of an *in camera* review process for a trial court to determine whether evidence is exculpatory or impeaching. *See Campbell*, 170 Idaho at 246-49, 509 P.3d at 1175-78. The Court ordered such a process in this case. (*See In Camera* Order, pp.30-31.) While Othram's standard operating procedures were inadvertently left out of the material presented *in camera*, the materials that were provided were sufficient to obtain a ruling from the Court that the information Othram provided to ISP as part of the bidding process, was not relevant to the case. As the State explained in its response to the defense's discovery request:

> Matthew Gamette testified about Othram's protocols and procedures in the context of the bidding process. The documents related to the bidding were included in or referenced in the materials provided to the court to review *in camera*. The court required the State to discover only the MOU from the bidding documents. (See Sealed Order for Disclosure of IGG Information and Protective Order, p.5, filed 12/29/2023 ("The State need only discover pages 99-103, the Memorandum of Understanding. The remaining contract documents are not relevant to any issue in the case.")).
>
> The court did not require the State to produce any of the other bidding documentation, including Othram's bid submission that discussed Othram's accreditation status, other customers, past cases, the name and qualifications of the primary genealogist, the name

> and qualifications of the chief scientist, and the SOPs or analytical methods that were to be used. Though the SOPs were inadvertently excluded from the materials reviewed in camera, the bidding document referencing the SOPs were included and the court did not require disclosure of that document or the SOPs.

(State's Response to Defendant's 22nd Supplemental Request for Discovery, Exhibit S-1, p.1, filed 2/11/25.) If the defense disagreed with the State's position, it could have filed a motion to have the Court rule on the issue. Instead, the defense chose to skip that step and jump straight to alleging the State violated *Brady*.

The defense's only explanation for jumping ahead to the exclusion of the IGG information instead of first asking the Court to order the disclosure of the standard operating procedures is a conclusory statement that Defendant would be "significantly handicapped" by "production of the materials sought at this late date" because with an earlier disclosure "he would have been able to utilize the materials for motion work and consultation with experts." (Mot. at 14.) But when the *Brady* issue is one of delayed disclosure, the question is whether "'earlier disclosure would have created a reasonable doubt of guilt.'" *Thumm*, 165 Idaho at 423, 447 P.3d at 871 (quoting *United States v. Burke*, 571 F.3d 1048, 1054 (10th Cir. 2009). In *Thumm*, the Idaho Supreme Court found disclosure of a fingerprint report just one week before trial did not violate *Brady* because the defense attorney "had enough time to review the report and use its conclusions if she sought to do so" and "[t]he State then agreed not to use the report in its case-in-chief." *Id.* Here, the defense was informed of the standard operating procedures *six months* before trial; the defense has not even attempted to articulate with any specificity how the standard operating procedures could make any difference in the jury's determination of guilt; and the State is not seeking to use the standard operating procedures (or any of the IGG information) at trial.

Third, the defense has not shown prejudice, and the law and logic dictate that the defense

cannot show prejudice with respect to Othram's standard operating procedures. "'Prejudice' and 'materiality' are used interchangeably in the context of *Brady*." *Campbell*, 170 Idaho at 247 n.5, 509 P.3d at 1176 n.5. "When assessing materiality, the question is whether the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the [outcome]." *Id.* at 247, 509 P.3d at 1176 (quoting *Thumm v. State*, 165 Idaho 405, 423-24, 447 P.3d 853, 871-72 (2019) (brackets in original)). "Such evidence is material 'if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" *Id.* (quoting *Strickler v. Greene*, 527 U.S. 263 (1999)). Nothing about IGG in this case, including Othram's standard operating procedures, comes anywhere close to being "material" for purposes of *Brady*.

It is undisputed that IGG is simply a means to generate potential leads as to who DNA found at a crime scene may belong. If one of those leads proves fruitful, law enforcement can conduct a confirmatory test as to whether the DNA belongs to the suspect using an STR comparison. The strength of the evidence against a defendant in terms of DNA evidence depends upon the confirmatory result from the STR DNA analysis between the defendant's DNA and the DNA recovered from the crime scene. *See, e.g.*, *In the Matter of: Michael Green*, Case No. PDL20200007, Ruling on Motion to Compel Production of Discovery, pp.11-12 (Sup. Ct. Cal. Oct. 5, 2020) ("[T]he evidence that is material to [the defendant's] guilt or innocence is the testing that followed the [IGG] investigation, which directly compared a fresh swab of [the defendant's] DNA with the DNA profile collected from the victim's nightgown.").

Here, the IGG information is even less material (if that is possible) than it would otherwise have been because the defense has not disclosed any experts or evidence to challenge the confirmatory STR comparison. The defense has disclosed an expert regarding DNA evidence

interpretation and the likelihood ratio to challenge one of the State's conclusions concerning DNA. (Defendant's Supplemental Response to Request for Discovery Regarding Expert Witnesses, Ex. D10-B, pp.1-2, filed 1/23/25.) But the defense has not disclosed any experts to challenge the confirmatory STR comparison showing the DNA on the knife sheath matched Defendant's DNA. On the contrary, the defense has disclosed that its Forensic Biology and DNA expert will testify that "[t]here is good support that Mr. Kohberger's DNA was found on Item 1.1, a swab from the knife sheath." (*Id.*, Ex. D1-B, p.19.) Instead of challenging the conclusion that the DNA on the knife sheath belonged to Defendant, the defense's expert disclosures reveal that the defense plans to argue the DNA on the knife sheath does not prove Defendant was ever at the crime scene and the knife sheath itself could have been planted by the real perpetrator. *See, e.g.*, *id.*

The parties' theories demonstrate why the IGG work in this case cannot possibly be material under *Brady*. *See Thumm*, 165 Idaho at 424, 447 P.3d at 872 (finding allegedly exculpatory evidence not material under *Brady* because it was "not part of the State's theory of the case"). The IGG was conducted as a preliminary assessment of potential owners of the DNA found on the knife sheath and identified Defendant as a potential owner of the DNA. But it was the scientific process of the STR comparison that confirmed Defendant's DNA matched the DNA found on the knife sheath. Now, the State has no plans to use the preliminary assessment of the IGG at trial, and the defense has no plans to challenge the confirmatory STR comparison. Thus, the preliminary assessment of the IGG could have no effect on the result of the trial.

The defense erroneously asserts prejudice on the basis that it will not be able to use the standard operating procedures to cross-examine the State's expert witness David Mittelman, the CEO of Othram. (Mot. at 14.) But the State disclosed Dr. Mittelman only as a rebuttal witness to respond to the two IGG experts the defense initially disclosed. Now that the defense has decided

not to call their IGG experts, the State has no need to call Dr. Mittelman. (See "State's Response to Defendant's Motion in Limine #10 RE: Improper Expert Opinion Testimony – Mittelman" filed contemporaneously with this Response.

More importantly, however, demonstrating prejudice under *Brady* requires far more than a showing that the standard operating procedures could be used for cross-examination. *See Campbell*, 170 Idaho at 247, 509 P.3d at 1176 (defining the elements of *Brady* to require the defendant to show "prejudice" separate from showing the evidence is "exculpatory or impeaching"). The defense would have to prove that the cross-examination using the standard operating procedures would have a reasonable probability of changing the outcome of the case. *See id.* at 249, 509 P.3d at 1178. The defense has not (and cannot) do so. Even if Othram failed to follow every standard operating procedure, that does not change the facts that the IGG merely pointed law enforcement toward Defendant as a potential owner of the DNA on the knife sheath or that the unchallenged confirmatory STR comparison showed the DNA on the knife sheath matched Defendant.

The defense also whispers in a footnote that Defendant may have been prejudiced because the standard operating procedures "could have" bolstered Defendant's argument that the IGG work violated his Fourth Amendment rights on the basis that it revealed private medical information. (Mot. at 14 n.8.) Such speculation is insufficient to prove prejudice under *Brady*. *See, e.g.*, *State v. Albert*, 138 Idaho 284, 290, 62 P.3d 208, 214 (Ct. App. 2002) ("Materiality, for purposes of a *Brady* analysis, must rest on something more than wild speculation."). The defense's speculation also runs contrary to all the related evidence presented at the hearing. For example, Rylene Nowlin, a forensic laboratory manager with ISP, testified that medical information fell outside of Othram's scope of work in this case and that the information Othram provided back to ISP did not contain

medical information. (1/23/25 Tr., p.73, L.1 – p.74, L.1.) Similarly, the defense's own expert, who previously oversaw a lab like Othram and played a role like Othram in law enforcement investigations, testified such labs develop SNP profiles related to genealogy and ancestry rather than medical information and developing SNPs related to medical information in the context of IGG "wouldn't be relevant nor probative nor appropriate." (1/23/25 Tr., p.136, Ls.11-21.)

Furthermore, even if the defense's speculation were correct, it would not have changed the outcome of the Court's decision. (*See* Order on Defendant's Motion to Suppress Re: Genetic Information, p.17, filed 2/19/25 ("Moreover, even assuming there were sensitive genetic details revealed by the IGG performed here, the fact that the DNA was obtained from a crime scene and analyzed for purposes of identifying the perpetrator displaces any reasonable expectation of privacy.").)

The defense has not proven any of the elements necessary to show a *Brady* violation, and this Court should deny the defense's motion.

C. The State does not object to the requested relief.

The defense's factual allegations and legal arguments all fall flat. But perhaps the most perplexing portion of the defense's motion is the relief requested: in the ultimate concession of immateriality, the defense seeks only the exclusion at trial of the IGG information even though the State has consistently stated it does not plan to present the IGG information to the jury. This means the State finds itself in the unusual position of strongly disagreeing with the rationale for the defense's motion but having no objection to the defense's requested relief.

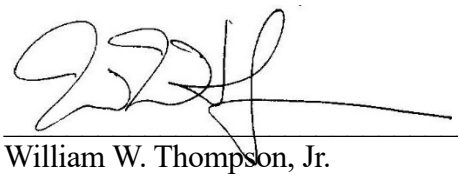
As the State has explained as far back as the beginning of the litigation over the IGG and as recently as its competing motion in limine filed contemporaneously with the defense's motion, the State does not intend to introduce the IGG information at trial other than to help the jury

understand how the investigation progressed. The State can do so by referring to the IGG information as a generic tip without revealing the source or the substance of the tip. An investigator can simply testify that law enforcement received a tip and that based on the information received law enforcement took the next step in the investigation.

CONCLUSION

The State did not act in bad faith, and the defense has failed to show the State violated its obligations under *Brady*. This Court should deny the defense's motion to the extent the defense requests sanctions against the State. The parties do seem to agree, however, that the IGG information should not be presented at trial. This Court should thus enter an order excluding the IGG information at trial other than as a generic tip for the purpose of helping the jury understand how the investigation progressed.

RESPECTFULLY SUBMITTED this 10th day of March 2025.



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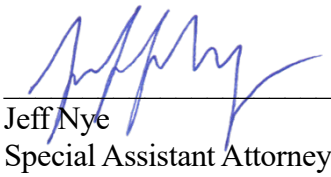

Jeff Nye
Special Assistant Attorney General

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the STATE'S OBJECTION TO DEFENDANT'S MOTION IN LIMINE #11 RE: EXCLUDE IGG EVIDENCE were served on the following in the manner indicated below:

Anne Taylor
Attorney at Law
PO Box 2347
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☐ Mailed
☒ E-filed & Served / E-mailed
☐ Faxed
☐ Hand Delivered

Dated this 10th day of March 2025.