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Fourth Judicial District, Ada County
**Trent Tripple, Clerk of the Court**
By: Deputy Clerk - Waters, Renee

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

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| STATE OF IDAHO,<br><br>Plaintiff,<br>v.<br><br>BRYAN C. KOHBERGER,<br><br>Defendant. | Ada County Case No. CR01-24-31665<br><br>**REDACTED MEMORANDUM DECISION AND ORDER ON DEFENDANT'S MOTION TO CONTINUE** |

## I. INTRODUCTION

Before the Court is Defendant's motion to continue the trial in this matter. The basis for the motion is three-fold. First, he asserts that the volume of discovery continues to pose a challenge to his counsel's ability to timely and meaningfully review all of it. Second, he asserts that there is penalty-phase investigation and preparation that still needs to be done. Third, he asserts that recent and forthcoming publicity on the case is highly prejudicial. Maintaining the current trial setting under these circumstances, he argues, will render any conviction and sentence unconstitutional. The State responds that Defendant's motion is untimely and he has failed to show either good cause for continuing the trial or prejudice that would result from maintaining the current trial setting.

Oral argument on the motion was held on June 18, 2025, after which the Court took the matter under advisement. The Court finds a continuance is not warranted as Defendant has not made a showing that there is good cause to continue the trial or that his substantial rights will be prejudiced by proceeding to trial as scheduled.[1]

## II. STANDARD

A motion for a continuance of trial is addressed to the sound discretion of the trial court. *State v. Ochoa*, 169 Idaho 903, 912, 505 P.3d 689, 698 (2022). On discretionary matters, the trial

[1] Defendant filed some of his supporting materials *ex-parte*. While the Court is not convinced that much of his filing is necessary or appropriate to be treated as *ex parte*, the Court will nevertheless, in an abundance of caution, issue a redacted and unredacted version of this Order, with the State only receiving the redacted version, given that the Court is denying Defendant's motion.

court must: 1) correctly perceive the issue as one of discretion; 2) act within the outer boundaries of its discretion; 3) act consistently with the legal standards applicable to the specific choice available to it, and; 4) reach its decision by the exercise of reason." *Lunneborg v. My Fun Life*, 163 Idaho 856, 867, 421 P.3d 187, 198 (2018).

## III. ANALYSIS

Under Idaho law, a criminal defendant seeking a continuance of trial must demonstrate that his or her "substantial rights" will be prejudiced absent a continuance. *State v. Cagle,* 126 Idaho 794, 797, 891 P.2d 1054, 1057 (Ct.App.1995) ("Unless an appellant shows that his or her substantial rights have been prejudiced by reason of a denial of his or her motion for continuance, appellate courts can only conclude that there was no abuse of discretion.") "Trial judges necessarily require a great deal of latitude in scheduling trials." *Id.* The burden of assembling the witnesses, lawyers, and jurors at the place and time for trial "counsels against continuances except for compelling reasons." *Id.* "There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied." *Matter of Doe I*, 170 Idaho 581, 588, 514 P.3d 991, 998 (2022) (quoting *Ungar v. Sarafite*, 376 U.S. 575, 589 (1964)).

Where a continuance is sought based on the late disclosure or discovery of evidence, the alleged tardiness of the discovery must be "shown to so prejudice the defendant's case preparation that a fair trial [will be] denied." *State v. Tapia*, 127 Idaho 249, 255, 899 P.2d 959, 965 (1995). "[T]he bare claim that additional investigation could have been conducted is not sufficient to demonstrate unfair prejudice so as to support a motion for a continuance." *Id.* Additionally, where a continuance is sought for the "potential receipt of evidence" from further investigation, the motion is properly denied if based on speculation. *Rowe v. Katavich*, 2014 WL 4244336, at *2 (C.D. Cal. Aug. 26, 2014) (citations omitted).

Defendant argues a continuance is necessary for him to sufficiently review relevant discovery, conduct a full and complete investigation of mitigation evidence—particularly claimed newly revealed evidence that allegedly raises "red flags"—and remedy the prejudice caused by recent and upcoming inflammatory publicity and the alleged leak of information to the media. Moving forward with trial, he warns, will violate his rights under the United States and

Idaho Constitutions[2] to due process, to be free from cruel and unusual punishment, to a fair trial, to effective assistance of counsel, to present a defense and confront witnesses and to a fair and reliable sentencing determination. Absent from Defendant's materials, however, is any good cause for the continuance or legitimate showing of prejudice should the trial proceed as scheduled.

### A. Defendant Has Not Demonstrated a Continuance is Warranted to Review Discovery.

Defendant first contends that the vast amount of discovery in this case renders it impossible for the defense team to review the necessary and relevant discovery in a manner that allows for it to be comprehensively integrated into his defense. He further argues, without any support or explanation, that there are a "myriad of issues" that continue to arise from the State failing to comply with discovery and expert disclosure deadlines.[3] A continuance, he argues, is necessary for counsel to mount an effective defense.

The Court, however, rejected this same argument two months ago when Defendant sought to strike the death penalty and impose discovery obligations upon the State.[4] In its Order, the Court observed the utter lack of any proof supporting Defendant's accusations of discovery violations by the State. More importantly, the Court found Defendant's complaints of being unable to meaningfully review discovery entirely unconvincing, pointing out that counsel struggled to articulate in any meaningful way what evidence—let alone relevant evidence—counsel had been unable to review over the past two-plus years and why efforts to facilitate discovery review were not made long ago through this Court and/or the resource judge.[5]

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[2] Defendant specifically cites to the Fifth, Sixth, Eighth and Fourteenth Amendments to the U.S. Constitution and Article I, §§ 6, 7, 8 and 13 of the Idaho Constitution. Notably, Defendant does not argue that the Idaho Constitution provides any heightened protection than the U.S. Constitution with regard to the rights cited. Thus, the Court will not engage in a separate analysis under the Idaho Constitution.

[3] Defendant continues to complain of the State's "discovery violations" but to be clear, this Court has found no such violations by the State.

[4] *See*, Order on Defendant's Motion to Strike Death Penalty and Adopt Other Necessary Procedures (April 29, 2025).

[5] Defendant's continual reference to the number of terabytes of discovery produced in this case is not helpful without providing a meaningful explanation of what that data primarily consists of and its particular relevance and importance. Indeed, as was discussed at the April 9, 2025, hearing in this case, it appears that most of those terabytes consists of extensive video surveillance from local businesses and residences that show nothing of significance. In fact, the State indicated at that hearing that much of that discovery is "completely irrelevant" and stipulated that it is unaware of any *Brady* material in the video surveillance footage other than that specifically identified in motion practice. Given that the State has identified all its trial exhibits, the Defense cannot be unaware

Defendant's second round of this argument fares no better. He again fails to identify any relevant discovery that his counsel has yet to review.[6] He also fails to identify any steps his counsel has taken, particularly since the Court's prior order, to aid in processing the yet-unreviewed discovery.[7] Moreover, he does not explain why he waited to seek a continuance until after discovery closed, expert disclosure deadlines passed and the pretrial conference occurred.

If defense counsel was truly struggling with discovery review, this motion should have been made when the claimed problem became apparent, and certainly should have been brought prior to the expiration of discovery, all expert deadlines and the final pretrial conference. Instead, defense counsel has robustly litigated this case, retaining approximately two dozen experts and a full mitigation team, engaging in extensive motion practice and disclosing witness and exhibits lists with nary a whisper that a continuance would be sought. These actions belie his counsel's ongoing—and ultimately empty—discovery complaints.[8] Without more, the Court can only conclude that defense counsel is using the volume of discovery measured in terabytes as a tactic to delay the proceeding at the eleventh hour simply for the sake of delay rather than a legitimate threat of prejudice to Defendant's substantial rights.

Perhaps even more problematic, and more telling, is the utter failure of defense counsel now, or at any time, to specify not only what needs to be reviewed but, importantly, when that review would be complete and Defendant ready for trial. Instead, Defendant seeks an unbounded

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of all the incriminating evidence in the discovery. Finally, it should be noted that it was Defendant who, early on, demanded that the State provide all investigative materials, no matter how irrelevant or unhelpful.

[6] The only discovery counsel claims that have not fully been reviewed are all of the thousands of tips provided to law enforcement. She argues these tips may lead to the discovery of evidence of an alternate perpetrator. The deadline for presenting alternate perpetrator evidence has come and gone, with no motion by the defense to extend it. Further, to offer alternate perpetrator evidence, Defendant needs far more than an unsubstantiated hearsay tip that another person *could have* committed the crime. *State v. Meister*, 148 Idaho 236, 220 P.3d 1055 (2009).

[7] At the hearing on Defendant's motion to strike the death penalty based on his counsel's alleged inability to process discovery, the Court suggested several options counsel had to obtain assistance in discovery review. There is no evidence that defense counsel has exercised any of these options, nor has there been any good explanation of why counsel had not sought additional resources to process and review discovery, such as the tips and security videos. The failure to do so suggests a recognition that this discovery was extremely unlikely to bear fruit.

[8] Relevant here, too, is the fact that defense counsel did not argue for a continuance as an alternate remedy to Defendant's attempt to strike the death penalty because of counsel's alleged inability to get through the discovery. This highlights that his claims regarding the volume of discovery were used as a tactical sword, untethered to a seriously legitimate concern about the ability to be prepared.

continuance with no apparent plan to complete the review of unspecified evidence that counsel claims it has yet to review. This is not sufficient to warrant a continuance.

### B. Defendant Has Not Established a Continuance is Necessary to Conduct A More Thorough "Life History" Investigation and Identify Necessary Experts.

Defendant next argues he needs additional time to investigate and prepare mitigation evidence, which he contends is necessary to uphold his constitutional rights, particularly those under the Eighth and Sixth Amendments. Specifically, the defense team claims that, to be effective, counsel must conduct an "exhaustive" and "comprehensive" dive into Defendant's "life history" for additional mitigation evidence, analyze the information into a cohesive narrative for the jury and identify any additional behavioral, cultural, scientific and/or mental health experts that may be necessary to develop the mitigation presentation. Despite having hired a mitigation team two years ago, defense counsel contends that recently discovered [redacted] have raised "red flags" that Defendant may have [redacted] According to Defendant's primary mitigation investigator, attorney [redacted] her team of four have been diligent in their investigation into Defendant's life history, but there have been [redacted] She believes that with time, she will be able to overcome these barriers by [redacted] Ex-Parte Decl. [redacted] p. 3 (May 20, 2025).

Defendant has not demonstrated a continuance to accommodate further investigation is constitutionally required. The Eighth Amendment requires that a capital defendant be allowed to present all relevant evidence in mitigation. *State v. Payne*, 146 Idaho 548, 570, 199 P.3d 123, 145 (2008); *see also, Eddings v. Oklahoma,* 455 U.S. 104 (1982) (jury must be allowed to consider all of a capital defendant's mitigating character evidence). In addition, a capital defendant has a Sixth Amendment right to a fair trial and effective assistance of counsel in both the guilt and penalty phases of a capital case. *Strickland v. Washington*, 466 U.S. 668, 691–92 (1984). As Defendant points out, defense counsel is constitutionally required to "to conduct a thorough investigation in preparation for the penalty phase of a capital case." *State v. Dunlap*, 155 Idaho 345, 388, 313 P.3d 1, 44 (2013) (citing *Porter v. McCollum,* 558 U.S. 30, 38–41

(2009)). "Presentation of some mitigating evidence, even if strong, is insufficient if other mitigating evidence is available upon reasonable investigation." *Id.* (citing *Rompilla v. Beard,* 545 U.S. 374, 387–93 (2005)).

The assertion that counsel needs the continuance to conduct an "exhaustive" and "comprehensive" dive into Defendant's "life history" for additional mitigation evidence overstates the extent of his counsel's constitutional obligations. Counsel's investigation into mitigation evidence must be "reasonable." *Id.* The Idaho Supreme Court and the United States Supreme Court hold that defense counsel is "not required to investigate a defendant's entire life in order to present constitutionally sufficient mitigation evidence." *State v. Row*, 131 Idaho 303, 313, 955 P.2d 1082, 1092 (1998);[9] *Wiggins v. Smith*, 539 U.S. 510, 533 (2003) ("[W]e emphasize that *Strickland* does not require counsel to investigate every conceivable line of mitigating evidence no matter how unlikely the effort would be to assist the defendant at sentencing.") While Defendant notes that the ABA Guidelines for Mitigation Function of Defense Teams in Death Penalty Cases urge counsel in death penalty cases to conduct an "ongoing, exhaustive and independent investigation of every aspect of the client's character, history, records and any circumstances of the offense" to meet their constitutional obligations, courts look not to what is "prudent or appropriate, but only what is constitutionally compelled." *State v. Dunlap*, 155 Idaho 345, 388, 313 P.3d 1, 44 (2013) (quoting *Burger v. Kemp,* 483 U.S. 776, 794 (1987)); *Hall v. State*, 151 Idaho 42, 53, 253 P.3d 716, 727 (2011) (rejecting argument that "heightened procedural safeguards should be employed at discovery in capital cases.").[10]

*Row*, a capital case, is instructive here. On post-conviction, Row argued her counsel was deficient because they failed to perform an adequate investigation into Row's background in search of mitigating evidence. 131 Idaho at 313, 955 P.2d at 1092. Specifically, Row argued

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[9] The Idaho Supreme Court reiterated this principle in *State v. Dunlap*, 155 Idaho 345, 388, 313 P.3d 1, 44 (2013) and *State v. Hall*, 163 Idaho 744, 823, 419 P.3d 1042, 1121 (2018).

[10] Although, as the State points out, the Idaho Supreme Court has declined the "invitation to adopt these guidelines," *State v. Porter*, 130 Idaho 772, 782, 948 P.2d 127, 137 (1997), the Idaho Public Defender Statutes, adopted in 2023, requires the State Public Defender to implement to ABA Guidelines for defendant attorneys delivering indigent defense services. I.C. § 19-6005(4). Further, the U.S. Supreme Court has recognized that ABA Guidelines for defending attorneys are "guides to determining what is reasonable." *Wiggins v. Smith*, 539 U.S. 510, 522 (2003); *see also, Cullen v. Pinholster*, 563 U.S. 170, 195 (2011) ("Beyond the general requirement of reasonableness, 'specific guidelines are not appropriate.'"). In other words, the ABA Guidelines are not dogmatic code; they are simply roadmaps to aid counsel in complying with their obligations of representation.

counsel "should have investigated her life from birth to the sentencing hearing, that counsel were deficient in presenting her mental health workup[.]" *Id.* The Court rejected this claim, holding that counsel "was not required to investigate Row's entire life in order to objectively and reasonably present Row's mitigation evidence." *Id.* The Court further noted the "great lengths" counsel underwent to investigate and present mitigating evidence from several of Row's friends, Health and Welfare records, letters from friends and family, and Veteran's Administration records concerning Row's husband's previous injuries and the couple's relationship. *Id.*

The investigation Defendant's experts have undertaken over the past two-plus years far exceeds that in *Row* and, in fact, readily appears to satisfy the relevant ABA Guidelines cited by Defendant.[11] It includes, but is not limited to:

- Defendant's K-PhD education records, including coursework, interviews and correspondence;
- Defendant's mental health and medical records, including [redacted]
- Records related to a childhood car accident;
- Defendant's employment records;
- Mental health, education and employment records of Defendant's sisters;
- Mental health records of Defendant's parents;
- Father's military records and social security records;
- Court records from multiple generations of Kohberger family (paternal side)
- VA records and death certificates from maternal and paternal uncles;
- Multiple interviews with Defendant and each immediate family member;
- Interviews of two of Defendant's fourth grade teachers, former boxing coach, and psychologist who evaluated Defendant in 2005;
- Interviews with multiple members of Defendant's extended family on maternal and paternal side;
- Interviews with Defendant's professor and advisor at DeSales University;
- Interviews of Defendant's former co-worker;
- Interviews of at least one family friend, and;
- Letters and jail calls between Defendant and his family.[12]

It is evident from the reports of Defendant's mitigation experts, Dr. Orr, Dr. Ryan and Dr. Brams, that they have developed an expansive understanding of Defendant's family

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[11] In its Opposition to Defendant's current motion, the State appended two tables that cross-reference the list of tasks Defendant has identified from the ABA Guidelines with the actual record in this case. These tables demonstrate that the guidelines have been amply satisfied.

[12] These topics of investigation were obtained from Defendant's disclosed penalty-phase expert reports.

environment, social development history, family history (both nuclear and extended over multiple generations), educational history and mental health and medical history. From this evidence, these experts have rendered several current diagnoses and identified other diagnoses for which Defendant "met criteria" at some point in his life.

Despite such an extensive investigation, Defendant claims additional investigation is warranted to identify: 1) [redacted] and; 2) [redacted] However, Defendant has not established that such investigation is constitutionally compelled, particularly given the extensive work already completed. Rather, the claimed need is based on unqualified speculation by [redacted]. Defendant has not offered any declaration by any of his disclosed mitigation experts opining the same, nor has he pointed to anything in their expert reports that would support [redacted] speculation. As noted, a continuance of trial is not warranted to chase down mere speculation that potential evidence exists. *Rowe,* 2014 WL 4244336, at *2. Further, Defendant has not set forth a plan for continued investigation, how much time it will take, what his team expects the investigation will reveal, why it is necessary to uphold his constitutional rights and why these matters are only now being raised with the Court. Additionally, assuming guilt is found, the penalty phase of the case will not begin until late October or early November. Thus, there remains significant time for [redacted] and her team to continue their investigation and to supplement expert disclosures if warranted.

1. [redacted]

[redacted] speculation that Defendant [redacted] is simply that – speculation built on circumstantial evidence. [redacted]

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[13] In a second declaration submitted June 16, 2025, [redacted]

conditions—which are currently attributed by his own mitigation experts to his ASD, OCD and/or ADHD—are consistent with childhood trauma, and; 5) there is evidence of poverty, both generational and familial.

According to [redacted][14] [redacted]

Notably missing from [redacted] declaration is any indication as to how she intends to confirm her suspicions or how long she expects it to take, be that months, years or even decades.[15] Defendant has been subjected to multiple lengthy interviews by several different experts over the past two years. Based on the expert reports reviewed by this Court, [redacted][16] Defendant's family has likewise been extensively interviewed and there has

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[redacted]

14 [redacted]

15 [redacted]

16 [redacted]

been no report that [redacted] None of Defendant's [redacted] have raised the alarm that [redacted] despite having the same information [redacted] relies upon. [redacted][17]

[redacted] Instead, it is an invitation for a perpetual continuance.

More importantly, aside from the [redacted]—all of this information has been available and documented in the record for months.[18] Yet again, that Defendant is only now moving for a continuance for further investigation into [redacted] unsupported suspicions smacks of tactical gamesmanship and delay. Absent more compelling evidence that [redacted] plan for

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17 [redacted] It is unreasonable for the Court to continue the trial indefinitely for [redacted]—a plan that is temporally unbounded, substantively undefined, and unlikely to result in any relevant mitigation evidence in the foreseeable future.

18 [redacted]

uncovering it, and a reasonable timeline to do so, there is no constitutional basis for further investigation, particularly on an open-ended basis with no plan to bring the matter home.

2. [redacted]

Counsel's argument that more time is needed to investigate whether [redacted] likewise squarely unsupported. [redacted]. Defendant has never moved for an extension to his disclosure deadline for penalty-phase experts so as to allow further opinions in this regard.

Nevertheless, [redacted]— who, again, is not even marginally qualified to opine [redacted] believes that there is evidence that [redacted] and seeks additional time to unearth it. Her support—which she has not provided to the Court—[redacted]

Again, not one of Defendant's [redacted] experts—who have had the same information [redacted] has identified—has submitted a declaration stating that they may change their diagnoses based on further investigation [redacted] Rather, it is based on [redacted] speculation that further investigation *might* change [redacted] Such speculation is not grounds for a continuance. [redacted]

[redacted]

[redacted][30]

FN 30: [redacted]

[redacted]

Not only is there a lack of support in the record for [redacted] anticipation that more investigation into [redacted] to change their minds, [redacted] and her team and defense counsel have known since November of 2024 that [redacted]. Neither the defense team nor [redacted] have articulated what efforts they have made, if any, since that time to understand the basis of [redacted]. Further, they have not indicated what plan they have to obtain this information if a continuance is granted or how long it will take. [redacted]

In sum, Defendant has not demonstrated that a continuance for further investigation into potential mitigation evidence is necessary to uphold his constitutional rights. The right to present mitigation evidence and the right to effective assistance of counsel do not necessitate an investigation of his entire history; they simply require that the investigation be reasonable. While "easily available mitigation evidence cannot be ignored," Defendant's briefing demonstrates that the evidence they are attempted to obtain is far from "easily available" and, in fact, may not even exist. *Dunlap*, 155 Idaho at 388, 313 P.3d at 44. Further, the evidence prompting the need for further investigation has, [redacted] been available for months yet it is only now that Defendant seeks a continuance. This tactic seems geared toward achieving delay rather than a good faith effort to obtain meaningful mitigation evidence.

Moreover, Defendant provides absolutely no plan for how further investigation will proceed, who will be interviewed or how long it will take. The Constitution does not demand and this Court is not willing to continue the trial indefinitely to allow the defense team to embark on a fishing expedition, pulling at every conceivable thread in Defendant's familial tapestry. Counsel's assertion that they will be better prepared with more time and more evidence is an assertion shared by every lawyer involved in a trial. At some point—and particularly after two and one-half years of investigation—the defense team must be satisfied with what they have which, in this case, is extensive.[19] In addition, while the crime victims' rights to a "timely disposition" under Article I, § 22 of the Idaho Constitution and I.C. § 19-5306 do not trump Defendant's federal constitutional rights,[20] they provide an additional justification for proceeding with trial as scheduled. For these reasons, a continuance is not warranted.

### C. A Continuance Is Not Warranted Due to Pretrial Publicity.

Defendant next seeks a continuance due to recent, inflammatory pretrial publicity. On May 9, 2025, approximately three months before trial is set to begin, Dateline NBC aired a two-hour episode about this case. The episode included details and materials about the case which, if true, are not publicly available and which promote a narrative of guilt. Defendant also advises that on July 9, 2025, Amazon Prime Video is planning to release a four-part docuseries about the homicides and on July 14, 2025, crime author James Patterson is set to release a book he wrote about the same. Defendant contends that this media coverage so close to trial threatens his right to a fair trial by an impartial jury, which can only be ameliorated by a continuance. In addition, Defendant argues that a continuance is necessary to investigate the source of the leaks to the media and impose accountability. The Court does not agree that either argument compels a continuance.

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[19] [redacted] However, this does not mean that the investigation into mitigation evidence has been unreasonable. It simply means that the investigation as it regards [redacted] did not bear all the fruit [redacted] or defense counsel speculated it might bear. Further, [redacted] has provided no basis to believe that [redacted] with more time or that they may be the source of yet-uncovered mitigation evidence.

[20] Federal constitutional rights trump state constitutional and statutory rights. U.S. Const. art. VI ("This Constitution, and the Laws of the United States which shall be made ... under the Authority of the United States, shall be the supreme Law of the Land ....")

1. <u>Defendant's right to a fair trial is not denied by the pretrial publicity, which is not likely to subside with time.</u>

The Sixth Amendment to the U.S. Constitution affords all criminal defendants, the "fundamental right to a fair trial." *Strickland v. Washington*, 466 U.S. 668, 684 (1984). This includes the right to have "impartial jurors, who know as little as possible of the case" decide the defendant's guilt based on material admitted into evidence before them in a court proceeding, uninfluenced by extrajudicial statements. *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1070 (1991). A trial judge has an affirmative duty to minimize the effects of pretrial publicity. *Sheppard v. Maxwell*. 384 U.S. 333 (1966).

In *Sheppard,* relied upon by Defendant, the United States Supreme Court recognized the adverse effect inflammatory publicity has on the ability to obtain an impartial jury and strongly urged trial courts to act quickly and forcefully in addressing such publicity. 384 U.S. at 335, 361. The Court further advised that "where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue the case until the threat abates, or transfer it to another county not so permeated with publicity." *Id.* at 363.

This statement from *Sheppard*, however, must be read in context. The media coverage in that case is far different from that present here. In *Sheppard*, news reporters extensively covered the story of Sam Sheppard, who was accused of bludgeoning his pregnant wife to death. The Court examined the extensive media fanfare surrounding the case, noting:

> Sheppard was not granted a change of venue to a locale away from where the publicity originated[,] nor was his jury sequestered...For months the virulent publicity about Sheppard and the murder had made the case notorious. Charges and countercharges were aired in the news media besides those for which Sheppard was called to trial. In addition, only three months before trial, Sheppard was examined for more than five hours without counsel during a three-day inquest which ended in a public brawl. The inquest was televised live from a high school gymnasium seating hundreds of people. Furthermore, the trial began two weeks before a hotly contested election at which both Chief Prosecutor Mahon and Judge Blythin were candidates for judgeships.

*Id.* at 352–54.

The Court found there was no "doubt that this deluge of publicity reached at least some of the jury," given that when the jury was questioned for the only time, "two jurors admitted in open court to hearing the highly inflammatory charge that a prison inmate claimed Sheppard was the father of her illegitimate child." *Id.* at 357. Nevertheless, the trial judge rejected requests by defense counsel for the jurors to be asked "whether they had read or heard specific prejudicial comment[s] about the case." *Id.* Further, the jurors "were subjected to newspaper, radio and television coverage of the trial while not taking part in the proceedings" and "were allowed to go their separate ways outside of the courtroom, without adequate directions not to read or listen to anything concerning the case." *Id.* at 353. The judge gave "suggestions" and "requests" to the jurors "[a]t intervals during the trial" to refrain from commenting upon the case, but "the jurors were thrust into the role of celebrities by the judge's failure to insulate them from reporters and photographers." *Id.* "[B]edlam reigned at the courthouse during the trial and newsmen took over practically the entire courtroom[.]" *Id.* at 355.

The Court reversed Sheppard's murder conviction. Crucially, the Court stated that although the pretrial publicity alone was <u>not</u> sufficient to warrant relief, when combined with the "carnival atmosphere" the press created at trial and the judge's inability or lack of desire to control courtroom proceedings, Sheppard's right to a fair trial was denied. 384 U.S. at 354–58. *See also*, *Nebraska Press Assn. v. Stuart,* 427 U.S. 539, 554 (1976) ("[P]retrial publicity—even pervasive, adverse publicity—does not inevitably lead to an unfair trial[.]"); *Skilling v. United States*, 561 U.S. 358, 384 (2010) (same).

If "months [of] virulent pretrial media coverage" was not enough to deny due process in *Sheppard*, it is certainly not enough in this case, where the media coverage has been far less pervasive. In addition, this Court is employing the measures recommended in *Sheppard* to protect a defendant from prejudicial pretrial publicity, to wit: 1) limiting the number of reporters in the courtroom during trial; 2) insulating prospective witnesses from interviews with the media about their prospective testimony, and; 3) making an effort to "control the release of leads, information, and gossip to the press by police officers, witnesses, and the counsel for both sides" to avoid the disclosure of inaccurate and/or inadmissible information to the public. *Id.* at 358-361.

Ultimately, whether Defendant can receive a fair trial depends on whether a fair and impartial jury can be seated. As the United States Supreme Court has said:

> To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.

*Irvin v. Dowd*, 366 U.S. 717, 723 (1961).

Accordingly, the Idaho Supreme Court has long recognized that trial courts can successfully select an "impartial jury" despite "widespread publicity." *State v. Windsor*, 110 Idaho 410, 415–16, 716 P.2d 1182, 1187–88 (1985). In *State v. Fetterly*, a capital case, the Idaho Supreme Court disagreed with the defendant's claim that "extensive publicity prior to trial deprived him of the opportunity to be tried before an impartial jury." 109 Idaho 766, 769, 710 P.2d 1202, 1205 (1985). Because "each juror was extensively questioned to determine the degree of their exposure to the pretrial publicity[,]" the Court found the defendant's rights were preserved. *Id.* In the defendant's subsequent habeas case, the Ninth Circuit examined at length the entire voir dire process and found no prejudice even though, on the day of jury selection, the case was covered on the front page of the local newspaper as well as on T.V. and the radio. *Fetterly v. Paskett*, 163 F.3d 1144, 1148 (9th Cir. 1998).

With the measures the Court has already put in place to protect Defendant against the pretrial media coverage and the Court's carefully crafted jury selection process, there is no reason to think that an impartial jury cannot be selected through a searching and robust voir dire.[21] In addition, while continuances may be appropriate if pretrial scrutiny is reasonably expected to fade with time, it is an ineffective tool where publicity is such that there is no reason anticipate that it would subside by any delay which would not put off the trial indefinitely. In *United States v. Moreno Morales,* the Court of Appeals for the First Circuit noted:

> The denial of a motion for an indefinite or substantial continuance predicated upon widespread adverse pretrial publicity about a defendant is all the more warranted when, as here, there is sound reason to believe that the defendant will continue to be a controversial, publicity-invoking figure and, hence, that there is little assurance that the passage of time will result in an abatement or subsidence of critical publicity in the foreseeable future.

815 F.2d 725, 737 (1st Cir. 1987) (internal citation omitted).

The court observed that the Sixth Amendment's guarantee of a speedy trial is one to which the government and society, as well as the accused, has a claim, and stated that society "cannot be utterly deprived of the right to prosecute and try someone for a crime within a reasonable time merely because of widespread community knowledge." *Id.* at 739. *See also;*

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[21] In his reply, Defendant argues that the allotted time is not sufficient for voir dire given the "vast media coverage." The Court recognizes that more time may be needed and has built in additional days for voir dire for this purpose.

*Gilday v. Callahan*, 866 F. Supp. 611, 627 (D. Mass. 1994), *aff'd,* 59 F.3d 257 (1st Cir. 1995) (denying continuance upon finding no reason the intense public interest in the case would abate); *United States v. Dennis*, 183 F.2d 201, 226 (2d Cir. 1950), *aff'd,* 341 U.S. 494 (1951) (concluding that where pretrial publicity and "heated" public opinion was ongoing, there was no "reasonable hope" that it would fade with a continuance).[22]

Here, there is no assurance that the pretrial publicity will fade with time. The murders occurred over two and one-half years ago. The circumstances of the murders were provocative – four college students in a small Idaho college town were brutally stabbed to death by an unknown perpetrator. It was an immediate media sensation and garnered widespread attention that not only continues to persist, but continues to grow.

Eighteen months ago, Defendant moved for a change of venue from Latah County due, in part, to the "extensive, inflammatory pretrial publicity" and "allegations made about Mr. Kohberger to the public by media that will be inadmissible at trial." Mtn. for Change of Venue (Jan. 30, 2024). He argued that Latah County was not large enough to "avoid the bias" caused by the "pervasive prejudicial publicity." *Id.* Defendant's motion was granted and, as a result, the trial date was continued by approximately ten weeks.

Those additional ten weeks have not resulted in fading media attention; it has only given the media more time and opportunity to provide coverage to a public audience which is clamoring for answers. The longer the public is made to sit and wait for the facts to come out at trial, the more time there is for inflammatory, speculative stories, movies and books to circulate and more time for prior ones to be rebroadcast, purchased, viewed and consumed by the public. Proceeding with trial as scheduled will likely avoid negative consequences from future publicity. Thus, the Court finds a continuance is not warranted based on the medial coverage. Rather, careful and patient voir dire is prescribed.

2. <u>A continuance is not warranted to investigate the leak of information</u>.

Defendant also asserts that a continuance is necessary to accommodate the special prosecutor's investigation into the source of the leaks to the media and to impose accountability.

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[22] In fact, long ago the Idaho Supreme Court recognized that "the existence of popular excitement and prejudice against the defendant is not ground for a postponement of trial in a criminal case, but may be grounds for change of venue." *State v. Rice*, 7 Idaho 762, 66 P. 87 (1901). Defendant has already moved for and received a change of venue.

With regard to the Dateline episode, Defendant points out that Dateline represented that the material came from sources "close to the investigation." He notes that Patterson's upcoming book on the crime promises claims to be "the most comprehensive narrative" of the "investigation and evidence to date" and is based on over 300 interviews several individuals, including the victims' families and "local law enforcement."[23] He also notes that the Amazon Prime docuseries promises to be told in "captivating, tense, and emotionally wrenching detail" by "only those involved in and affected by the crime[.]"[24] He argues that if any of the leaks came from witnesses the State intends to call or from others involved in the investigation, the information is *Brady* material because it would serve to impeach the leaker's credibility and may be exculpatory in nature.[25] He adds that if the investigation reveals that other State agents had information about the leaks but failed to disclose it, this omission would constitute a *Brady* violation.

As noted, a continuance is not warranted where the information sought thereby is mere speculation. *Rowe,* 2014 WL 4244336, at *2. Defendant's *Brady* argument is built on a house of speculative assumptions – an assumption that there was a leak by persons bound by the non-dissemination order, an assumption the leaker(s) will be found, an assumption that the leaker(s) were law enforcement,[26] an assumption that the leaker(s) (or others who may be were complicit) will be testifying as a government witness, and an assumption that these witnesses will likely be material. Such assumptions are not grounds for a continuance, particularly given that there is no guarantee if and when they will be confirmed or debunked. This trial cannot be held hostage indefinitely to the outcome of the investigation, particularly given the very significant chance the

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[23] James Patterson, "The Idaho Four: An American Tragedy," https://www.amazon.com/Idaho-Four-American-Tragedy/dp/0316572853

[24]Amazon MGM Studios, "Prime Video Debuts Trailer for One Night in Idaho: The College Murders (June 12, 2025), https://press.amazonmgmstudios.com/us/en/press-release/prime-video-debuts-trailer-for-ione-night-in-idaho

[25] Pursuant to *Brady v. Maryland*, a prosecutor has a constitutional duty to disclose favorable evidence to the accused where such evidence is "material" either to guilt or to punishment. 373 U.S. 83, 87 (1963). This duty covers not only exculpatory material, but also information that could be used to impeach the credibility of a key government witness. *Giglio v. United States,* 405 U.S. 150, 154 (1972).

[26] While the Court observed in its Document and Records Hold Order (May 15, 2025) that it "appear[ed] likely that someone currently or [formerly] associated with law enforcement, or the prosecution team, violated this Court's non-dissemination order," it could have been someone from the defense team or someone not subject to the non-dissemination order. The Court has not made and was not, by this statement, making a finding or otherwise accusing law enforcement or the prosecution of such.

leaker(s) may never be discovered.[27] Thus, the Court will not continue the trial pending the results of an investigation based on speculation that it will be successful and the hope that impeachment evidence may be uncovered as a result.

## IV. ORDER

Based on the foregoing, Defendant's Motion to Continue is DENIED.

IT IS SO ORDERED.

DATED this 26th day of June, 2025.

Steven Hippler
District Judge

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[27] In addition, even assuming it was law enforcement who leaked the information, the FBI played a preeminent role in the investigation of this case. If the leak(s) were from the FBI, a state court's ability to further investigate is highly circumscribed and limited if not altogether foreclosed. In addition, law enforcement in Pennsylvania and Washington may have had formal or informal access to some of the evidence, yet an Idaho state court may have significant limitations on the ability to investigate them.

**CERTIFICATE OF SERVICE**

I hereby certify that on 6/26/2025, I served a true and correct copy of the REDACTED MEMORANDUM DECISION AND ORDER ON DEFENDANT'S MOTION TO CONTINUE to:

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TRENT TRIPPLE
Clerk of the Court

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