

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.

Ada County Case No. CR01-24-31665

**REDACTED ORDER ON DEFENDANT'S
OFFER OF PROOF RE: ALTERNATE
PERPETRATORS**

I. INTRODUCTION

The State previously moved *in limine* seeking to preclude Defendant from offering or arguing alternative perpetrator evidence without first satisfying the applicable evidentiary standards. In accordance with the Court's subsequent order on the motion, Defendant filed his offers of proof and evidence in support, identifying four individuals as potential alternate perpetrators. The State objects to the presentation of this evidence at trial, arguing it fails to satisfy the standard under *State v. Meister*, 148 Idaho 236, 220 P.3d 1055 (2009). Defendant conceded at oral argument that, at this point, his proffer is not sufficient to pursue an alternate perpetrator theory at the outset of trial, but requests latitude in cross-examination of the State's witnesses to try to establish additional evidence to satisfy the *Meister* standard.

The Court concludes that, at this time, Defendant's alternate perpetrator proffer is inadmissible under *Meister* as it is irrelevant and/or excluded by I.R.E. 403. However, this does not foreclose Defendant from cross-examining law enforcement regarding the reasonableness of its investigation and its follow-up on plausible leads.

II. STANDARD

Trial courts have broad discretion in the admission of evidence at trial. *Karlson v. Harris*, 140 Idaho 561, 564, 97 P.3d 428, 431 (2004). A trial court acts within the bounds of its discretion when it: "(1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason."

Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018).

III. ANALYSIS

The seminal Idaho case on the admissibility of alternative perpetrator evidence is *Meister, supra*. Prior to *Meister*, a defendant wishing to present such evidence at trial had to first present “proof of connection with the crime, such a train of facts or circumstances, as tend clearly to point out someone besides the accused as the guilty party. Remote acts, disconnected and outside of the crime itself, cannot be separately proved for such a purpose.” *State v. Larsen*, 91 Idaho 42, 47, 415 P.2d 685, 690 (1966). *Meister* clarified that the Idaho Rules of Evidence—rather than the more onerous *Larsen* standard—control alternative perpetrator evidence admissibility. 148 Idaho at 240, 220 P.3d at 1059.

Under these rules, evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. I.R.E. 401; *State v. Garcia*, 166 Idaho 661, 670, 462 P.3d 1125, 1134 (2020). Idaho Rule of Evidence 403 governs the exclusion of relevant evidence and permits a court to exclude evidence if its probative value is substantially outweighed by a danger of “unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”

Meister further offered the following guidance on applying these rules and determining whether proffered alternative perpetrator evidence is relevant and admissible:

If the defendant proffers evidence which merely tends to mislead the jury that another person committed the crime, or the evidence is not relevant because it does not tend to make the defendant's involvement more probable or less probable, then it is within the trial court's discretion to find the evidence inadmissible. Mere inferences that another person *could* have committed the crime will most likely not be relevant, and if relevant will still be subject to the limitation provisions of I.R.E. 403. ‘A defendant has no right to present irrelevant evidence and even if evidence is relevant, it may be excluded in certain cases.’ *Self*, 139 Idaho at 722, 85 P.3d at 1121. The Idaho Rules of Evidence effectively safeguard against the admission of ‘conjectural inferences’ without the lower courts needing to apply the *Larsen* direct connection doctrine.

State v. Meister, 148 Idaho 236, 241, 220 P.3d 1055, 1060 (2009).

Here, the evidence Defendant has offered purporting to establish the four individuals as alternate perpetrators abjectly fails to meet the *Meister* standard.¹ Namely, the evidence is

¹ In addition, the evidence largely consists of inadmissible hearsay. Defendant contends, however, that under *Chambers v. Mississippi*, 410 U.S. 284 (1973), hearsay tending to establish third party culpability may be admissible

entirely irrelevant. Nothing links these individuals to the homicides or otherwise gives rise to a reasonable inference that they committed the crime; indeed, it would take nothing short of rank speculation by the jury to make such a finding.

Three of the individuals² were each socially connected to one or more of the victims, interacted with one or more of the victims at social events in the hours prior to the homicide,

to protect a defendant's constitutional rights to a fair trial and to present a defense under the Sixth and Fourteenth Amendments. What *Chambers* actually held is that an accused has a due process right to the admission of exculpatory hearsay, i.e., a confession by third party, provided it is accompanied by "persuasive assurances of trustworthiness." *Id.* at 302. *Chambers* stated:

The testimony rejected by the trial court here bore persuasive assurances of trustworthiness and thus was well within the basic rationale of the exception for declarations against interest. That testimony also was critical to Chambers' defense. In these circumstances, where constitutional rights directly affecting the ascertainment of guilt are implicated, the hearsay rule may not be applied mechanistically to defeat the ends of justice.

Id.

In other words, *Chambers* indicates that due process requires hearsay rules to bend to evidence directly bearing on the determination of guilt; it does not hold that unreliable evidence may be admitted simply because it may be relevant to the defense case. As the Court later stated, "[t]he accused does not have an unfettered right to offer [evidence] that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence." *Montana v. Egelhoff*, 518 U.S. 37, 42 (1996).

²



lived within walking distance of the crime scene³ and were familiar with the layout of the victims' home from prior social events. While perhaps this evidence could suggest an opportunity to commit the crime—which, no doubt, is an opportunity shared by dozens of others in the victims' social circles—there is no compelling evidence that any of them had a motive to kill the victims—much less physically harm them—or a means to do so. Further, there is no evidence connecting them to the crime scene. They have each cooperated with law enforcement, providing DNA samples, fingerprints and allowing searches as requested. Notably, lab testing has excluded their DNA from samples taken from the crime scene and victims.

The fourth individual⁴ did not know the victims, but had a “passing connection” to one of them while noticing her shopping at a store approximately five weeks prior to the homicides. He followed her briefly out the exit of the store while considering approaching her to talk. He turned away before ever speaking to her. The event was captured on a surveillance camera. This individual subsequently cooperated with law enforcement, providing his phone number and a DNA sample. As with the other alleged alternative perpetrators, lab reports excluded his DNA from the samples taken from the crime scene and victims and there is no evidence connecting him to the crime scene.

³ The fact that these individuals lived within walking distance to the crime scene is not probative evidence given that the perpetrator drove a vehicle to the crime scene. Further, none of these individuals drove a vehicle matching the description of the suspected killer's.

Collectively, Defendant's proffer with regard to these four individuals fails to give rise to even an inference that they committed the crimes or otherwise make it more or less likely that Defendant was the perpetrator; therefore, it is irrelevant under I.R.E. 401. Defendant has provided no probative, admissible, significant evidence of motive, ill-feelings, means, presence at the scene or any other connection to the crime that could possibly move the ball to the extent it supports an alternate perpetrator theory.⁵ At best, Defendant's offer of proof can give rise to only wild speculation that it is possible any one of these four individuals could have committed the crimes, which is inadequate under *Meister*. Again, "[m]ere inferences that another person *could* have committed the crime will most likely not be relevant[.]" *Meister*, 148 Idaho at 241, 220 P.3d at 1060. In other words, it is not sufficient for a defendant to merely offer up unsupported speculation that another person may have committed the crime, which is all Defendant has done here.

Even if there was a shred of probative value in the proffered evidence beyond wild speculation, it is excluded by I.R.E. 403. As the Tenth Circuit noted regarding alternate perpetrator evidence:

It is not sufficient for a defendant merely to offer up unsupported speculation that another person may have done the crime. Such speculative blaming intensifies the grave risk of jury confusion, and it invites the jury to render its findings based on emotion or prejudice.

United States v. McVeigh, 153 F.3d 1166, 1191 (10th Cir. 1998).

Likewise, here, presentation of the proffered alternate perpetrator evidence would pose a great threat of confusing the issues because it would force the State to defend against a nebulous allegation that perhaps these individuals were involved. This foray would lead the jury astray, turning its focus away from whether Defendant—the only person whose actions are on trial—committed the charged crimes. It also presents a threat of unfair prejudice, as it would invite the jury to blame unrepresented persons for a heinous crime when there is not a scintilla of competent evidence connecting them to the crime. Finally, it would do nothing more than waste the precious time of the jury and the Court in what is already a scheduled three-month trial. Nonetheless, the Court's ruling does not preclude Defendant from confronting and cross-examining the State's law enforcement witnesses regarding the thoroughness of the

⁵ At the State notes, none of the four individuals drives a car that could be mistaken for a Hyundai Elantra. State's Obj., p. 10.

investigation, particularly in following up on and ruling out leads generally. Indeed, the Idaho Court of Appeals recently found in an unpublished opinion that questioning a detective about failing to follow up on other plausible leads was relevant to alternative perpetrator analysis: “We agree with Emerson that a relevant line of inquiry would be to question the scope and breadth of the investigation and to explore on cross-examination whether plausible investigative leads about third parties were ignored or overlooked.” *State v. Buck*, 2023 WL 6133215, * 23 (Idaho Ct. App. Sept. 20, 2023), *review granted* (Oct. 23, 2024). It further stated that this line of questioning may not include inquiries about the investigation of specific third parties absent satisfying *Meister*, noting:

While evidence challenging the thoroughness and reliability of the investigation might be probative, questioning whether law enforcement investigated specific individuals with no connection to the murder provided no probative evidence. Moreover, with no connection between the evidence and the crime, there is no explanation or justification for the questioning, and it would not help the jury answer the only question in the case: whether Emerson killed James.

Id. at * 25.

The Court will apply these same parameters at trial regarding Defendant’s cross-examination of law enforcement. He may inquire as to the reasonableness of the investigation, including investigating and ruling out other leads. He is not, however, permitted to question law enforcement about the investigation of any specific individual as a potential alternate perpetrator without first raising the matter with the Court outside the jury’s presence.

IV. ORDER

Based on the foregoing, Defendant’s Offer of Proof re: Alternate Perpetrators is DENIED.

IT IS SO ORDERED.

DATED this 26th day of June, 2025.



Steven Hippler
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on 6/26/2025, I served a true and correct copy of the REDACTED ORDER ON DEFENDANT'S OFFER OF PROOF RE: ALTERNATE PERPETRATORS to:

WILLIAM W. THOMPSON, JR.
PROSECUTING ATTORNEY
VIA EMAIL: paservice@latahcountyid.gov

ASHLEY JENNINGS
SENIOR DEPUTY PROSECUTING ATTORNEY
VIA EMAIL: paservice@latahcountyid.gov

JOSHUA D. HURWIT
SPECIAL DEPUTY PROSECUTING ATTORNEY
VIA EMAIL: paservice@latahcountyid.gov

JEFFERY D. NYE
SPECIAL ASSISTANT ATTORNEY GENERAL
VIA EMAIL: jeff.nye@ag.idaho.gov

MADISON ALLEN
SPECIAL ASSISTANT ATTORNEY GENERAL
VIA EMAIL: Madison.allen@ag.idaho.gov

ANNE TAYLOR LAW, PLLC
ANNE C. TAYLOR
VIA EMAIL: info@annetaylorlaw.com

ELISA G. MASSOTH, PLLC
ELISA G. MASSOTH
VIA EMAIL: emassoth@kmrs.net

IDAHO STATE PUBLIC DEFENDER'S OFFICE
FIRST DISTRICT PUBLIC DEFENDER
JAY W. LOGSDON
VIA EMAIL: jay.logsdon@spd.idaho.gov

BICKA BARLOW
Pro Hac Vice
VIA EMAIL: bickabarlow@sbcglobal.net

TRENT TRIPPLE
Clerk of the Court

By: 
Deputy Clerk 6/26/2025 2:49:25 PM

CERTIFICATE OF SERVICE