

LATAH COUNTY PROSECUTOR'S OFFICE  
WILLIAM W. THOMPSON, JR., ISB 2613  
PROSECUTING ATTORNEY  
JEFF NYE, ISB 9238  
SPECIAL ASSISTANT ATTORNEY GENERAL  
Latah County Courthouse  
P.O. Box 8068  
Moscow, ID 83843  
Phone: (208) 883-2246  
paservice@latahcountyid.gov

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 OBJECTION TO DEFENDANT'S  
MOTION REGARDING NONSTATUTORY  
AGGRAVATING EVIDENCE

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and hereby objects to Defendant's Motion for Court Order Requiring the State: (1) to Provide Notice of Every Alleged Nonstatutory Aggravating Fact/Circumstance It May Rely on at Any Sentencing Trial; and (2) to Prove Beyond a Reasonable Doubt Every Alleged Nonstatutory Aggravating Fact/Circumstance ("Motion"). Defendant's requested notice is already governed by I.C. § 19-2515(6), and Defendant's argument that the State must prove nonstatutory aggravating evidence beyond a reasonable doubt conflicts with Idaho Supreme Court precedent.

**A. Idaho’s Capital Sentencing Scheme Sets the Appropriate Standard for Notice.**

Idaho’s capital sentencing scheme dictates the appropriate notice that each side must give for all evidence it intends to introduce at the sentencing phase in a capital case. The statute governing the special sentencing proceeding states that “the state and the defendant shall be entitled to present all relevant evidence in aggravation and mitigation.” I.C. § 19-2515(6). The phrase “all relevant evidence” in the statute includes non-statutory aggravating evidence. *See State v. Hall*, 163 Idaho 744, 795-99, 419 P.3d 1042, 1093-97 (2018). The statute requires the disclosure of all evidence either side intends to rely on at the special sentencing proceeding “in accordance with Idaho criminal rule 16.” I.C. § 19-2515(6).

Defendant cites this statute approvingly (Mot. at 6), and it is unclear to the State what more Defendant seeks. To the extent Defendant is requesting more notice than the notice required by the statute, this Court should reject Defendant’s request.

**B. The State Does Not Have to Prove Nonstatutory Aggravating Evidence Beyond a Reasonable Doubt.**

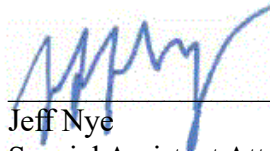
Idaho’s capital sentencing scheme requires the State to prove at least one statutory aggravating circumstance beyond a reasonable doubt, but it does not require the State to prove nonstatutory aggravating evidence beyond a reasonable doubt. *See Hall*, 163 Idaho at 797, 419 P.3d at 1096. In *Hall*, the court reaffirmed that the factfinder in a special sentencing proceeding can consider “circumstances not statutorily listed and not expressly found beyond a reasonable doubt.” *Id.* (quoting *State v. Creech*, 105 Idaho 362, 369, 670 P.2d 463, 470 (1983)). Moreover, the statute governing the special sentencing proceeding lays out in detail what the jury must find for a sentence of death, including that it must find the State proved the existence of at least one statutory aggravating factor beyond a reasonable doubt. *See* I.C. § 19-2515. Entirely absent from the statute

is any mention of proving nonstatutory aggravating evidence, much less proving it beyond a reasonable doubt. *See id.*

Defendant supports his argument by citing a case that provides no support at all. (Mot. at 8-9 (citing *People v. Tenneson*, 788 P.2d 786, 792 (Colo. 1990).) *Tennison* did not address nonstatutory aggravating evidence; it held only that the jury “must be convinced beyond a reasonable doubt that any mitigating factors do not outweigh the proven *statutory* aggravating factors before a sentence of death can be imposed.” 788 P.2d at 792 (emphasis added).

Thus, this Court should deny Defendant’s request for an order that the State must prove nonstatutory aggravating evidence beyond a reasonable doubt.

RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of October 2024.



---

Jeff Nye  
Special Assistant Attorney General



---

William W. Thompson, Jr.  
Prosecuting Attorney

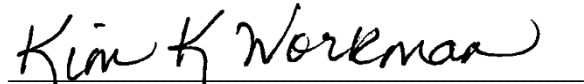
**CERTIFICATE OF DELIVERY**

I hereby certify that true and correct copies of the STATE’S OBJECTION TO DEFENDANT’S MOTION REGARDING NONSTATUTORY AGGRAVATING EVIDENCE was served on the following in the manner indicated below:

Anne Taylor  
Attorney at Law  
PO Box 2347  
Coeur D Alene, ID 83816-9000

- Mailed
- E-filed & Served / E-mailed
- Faxed
- Hand Delivered

Dated this 9th day of October 2024.

  
\_\_\_\_\_  
Kim-K. Workman