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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 OBJECTION TO DEFENDANT'S
MOTION TO STRIKE MULTIPLE VICTIMS
AGGRAVATOR

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and hereby objects to the Defendant's Motion to Strike the Multiple Victims Aggravator in this case.¹ For the following reasons, the Defendant's motion should be denied.

ARGUMENT

Defendant does not make a legal argument in his motion to strike the multiple murders aggravator. Instead, he attempts to craft a public policy argument. Unfortunately for the Defendant,

¹ Defendant is referring to Idaho Code section 19-2515(9)(b), which applies when, "[a]t the time the murder was committed the defendant also committed another murder." Going forward, the State will refer to this aggravator as the "multiple murders" aggravator as it more closely reflects the statutory language.

there is no legal authority that supports his motion. Defendant claims “murders cannot be aggregated in a manner that makes the act of a malice aforethought murder aggravated.” *Def. Motion to Strike Multiple Victims Aggravator*, p. 1. He baldly asserts “there is no way that in which two murders can be aggregated in a way that makes the act of murder aggravated except to resort to one of the other aggravators.” *Id.* p. 3. In support of this contention, he does not cite a single statute or appellate case, but rather, an article from the New York University Review of Law and Social Change. *Id.* (citing Jonathan R. Sorensen & James W. Marquart, *Prosecutorial and Jury Decision-Making in Post Furman Capital Cases*, 18 N.Y.U. Rev. L. Soc. Change 743, 775 (2002)). The article does not even stand for the proposition that Defendant claims it does. The article does not argue that “multiple murders” is not an appropriate aggravator in a capital case. Rather, the article analyzes a study on capital cases in Texas, and the extent to which non-legal considerations play a role in prosecutor and jury decision-making. *Id.* The article is summarized as follows:

The present study seeks to determine the effects of several legal and extra-legal factors on prosecutors’ decisions to seek death sentences and juries’ decision to impose death or life sentences in Texas. Many *legally relevant factors*, such as the defendant’s prior record and the killing of *multiple victims*, which could be expected to influence the punishment decision, are considered. Factors not legally relevant to the case include individual characteristics, such as race or gender, of the offender and victim. If prosecutors’ and juries’ decisions were not made on the basis of legally relevant factors, it may be concluded that the death penalty was imposed arbitrarily. If decisions were based on extra-legal legal factors, it may be concluded that the punishment was imposed discriminatorily. Finally, *if the decisions were consistently based identifiable legal factors, the conclusion may be drawn that death sentences were fairly and equitably imposed.*

Id. at 750-51 (emphasis added). Put another way, the article specifically refers to “multiple victims” as one of the “legally relevant” factors to consider in capital cases, and further states that death penalty sentences are “fairly and equitably imposed” when such factors consistently form

the basis of decisions to impose the death penalty. *Id.* If this article can be read to present any opinion at all on the multiple murders aggravator, it is that it is a fair, legitimate, and appropriate consideration in a capital case.

Citing to *State v. Abdullah*, Defendant further asserts the multiple murders aggravator violates the Idaho Supreme Court's prohibition on double counting. *Defendant's Motion to Strike Multiple Victims Aggravator*, p. 4 (citing *State v. Abdullah*, 158 Idaho 386, 470 (2015)). *State v. Abdullah* did not even involve the multiple murders aggravator. 158 Idaho 386, 348 P.3d 1 (2014). In *Abdullah*, the Idaho Supreme Court simply reiterated the well-established standard that double-counting or double-weighting aggravators is impermissible. *Id.* at 470, 348 P.3d 85 (citing *State v. Dunlap*, 155 Idaho 345, 365, 313 P.3d 1, 21 (2013)).

In this case, the State intends to present evidence that would allow a reasonable jury to find all statutory aggravators without engaging in impermissible double-counting by presenting additional evidence for each statutory aggravator. *See State v. Charboneau*, 116 Idaho 129, 153-54, 774 P.2d 299, 323-24 (1989), *overruled on other grounds by State v. Card*, 121 Idaho 425, 430 (1991). Further, there is no reason to doubt that the jury will be instructed that they may not double-count or double-weight the evidence. Idaho Criminal Jury Instruction 1723 addresses this very issue:

The State has alleged more than one statutory aggravating circumstance in this case. You must consider whether the State has proven the existence of more than one statutory aggravating circumstance beyond a reasonable doubt by relying on the same facts or independent facts. The same facts, without more, cannot be relied on to find more than one statutory aggravating circumstance beyond a reasonable doubt. Independent facts must exist for each statutory aggravating circumstance in order for you to find that the State has proven multiple statutory aggravating circumstances beyond a reasonable doubt.

Idaho Criminal Jury Instruction 1723 Multiple Aggravating Circumstances, *available at* <https://isc.idaho.gov/main/criminal-jury-instructions>. Thus, any argument that the jury would disregard the instructions provided to them and engage in impermissible double-counting is purely speculative because juries are presumed to follow instructions. *See State v. Moses*, 156 Idaho 855, 871, 332 P.3d 767, 783 (2014).

CONCLUSION

Defendant has failed to provide any binding legal authority for this Court to strike the multiple murders aggravator. Instead, he provided the Court with a law review article that favorably describes it as a legally relevant consideration and an Idaho case that did not even address the multiple murders aggravator at all. His motion is legally meritless and should be denied.

RESPECTFULLY SUBMITTED this 9th day of October 2024.



Ingrid Batey
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 TO STRIKE MULTIPLE VICTIMS AGGRAVATOR was served on the following in the manner indicated below:

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

Dated this 9th day of October 2024.



Kim K. Workman