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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 NOTICE OF INTENT
TO SEEK THE DEATH PENALTY ON
GROUNDS OF FAILURE TO PRESENT
AGGRAVATORS TO A NEUTRAL FACT
FINDER

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney,
and hereby objects to Defendant's Motion to Strike Notice of Intent to Seek the Death Penalty on
Grounds of Failure to Present Aggravators to a Neutral Fact Finder. The thrust of Defendant's
argument is that the applicable aggravating factors in a capital case must be presented to a grand

jury. His argument is squarely foreclosed by binding Idaho Supreme Court precedent. *See State v. Abdullah*, 158 Idaho 386, 456-61, 348 P.3d 1, 71-76 (2015); *see also* Order on Defendant’s Pretrial Motions, pp.12-18, *State v. Ross*, Case No. CR35-21-6092 (Oct. 10, 2023) (Monson, J.) (rejecting this same argument because *Abdullah*’s “controlling precedent is clear”).

Both Article I, Section 8 of the Idaho Constitution and the Sixth Amendment of the United States Constitution require the State to provide notice to the accused of the crime charged by indictment or information. Pursuant to Idaho law, the State must include in the information or indictment “a plain, concise and definite written statement of the essential facts constituting the offense charged.” I.C.R. 7(b).

In a capital case, the State must also provide notice to the accused of the intent to seek the death penalty within 60 days of the entry of a plea. I.C. § 18-4004A. The notice must include “a listing of the statutory aggravating circumstances that the state will rely on in seeking the death penalty.” *Id.* “[T]he statutory aggravating circumstances are not elements of a crime,” which means “there is no constitutional requirement that the State present evidence demonstrating probable cause for each aggravating circumstance.” *Abdullah*, 158 Idaho at 458-60, 348 P.3d at 73-75.

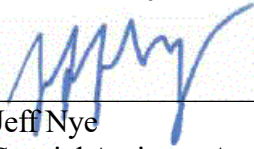
Defendant concedes that *Abdullah* is fatal to his argument because “the Idaho Supreme Court held that aggravators do not have to be presented to the grand jury.” (Mot. at 8.) He insists, however, that “[t]he decision in *Abdullah* is wrong and should be overruled.” *Id.* The length of Defendant’s brief suggests he believes this Court has that power. He is, of course, wrong. *See State v. Guzman*, 122 Idaho 981, 986-87, 842 P.2d 660, 665-66 (1991) (“[The Idaho Supreme Court] has been and remains the final arbiter of Idaho rules of law, both those promulgated and those evolving decisionally.”).

Even setting aside the authoritative weight of *Abdullah*, Defendant's critique of the decision is unpersuasive. Defendant posits that *Abdullah* should have analyzed the issue through the lens of the Eighth Amendment because, in Defendant's view, letting the prosecutor alone decide who faces the death penalty without the check of a neutral fact finder violates the prohibition on cruel and unusual punishment. But the U.S. Supreme Court has already rejected the argument that a state violates the Eighth Amendment simply because "the state prosecutor has unfettered authority to select those persons whom he wishes to prosecute for capital offenses." *Gregg v. Georgia*, 428 U.S. 153, 199 (1976). In fact, the Court found the unchecked discretion of the prosecutor was not an Eighth Amendment issue at all. *Id.* ("The existence of these discretionary stages is not determinative of the issues before us.").

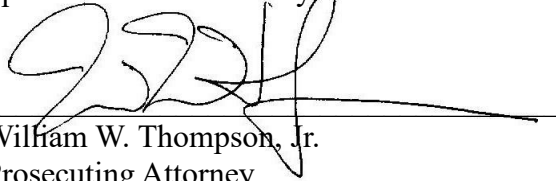
In the face of contrary, controlling U.S. Supreme Court precedent, the best Defendant can come up with is a case suggesting the Eighth Amendment may prohibit rules that "diminish the reliability" of the guilt or sentencing determination in a capital case. *Beck v. Alabama*, 447 U.S. 625, 638 (1980). Even accepting Defendant's broad interpretation of the Eighth Amendment, he has failed to explain how Idaho's well-settled process of omitting the aggravating circumstances from the *grand jury's* probable cause determination has any effect whatever on the reliability of the *trial jury's* guilt or sentencing determination. *See State v. Edmonson*, 113 Idaho 230, 234-35, 743 P.2d 459, 463-64 (1987) ("The purpose of a grand jury proceeding is to determine whether sufficient probable cause exists to bind the defendant over for trial. The determination of guilt or innocence is saved for a later day."); *State v. Huckabay*, 168 Idaho 117, 122-23, 480 P.3d 771, 776-77 (2021) (explaining that any error in the probable cause determination is remedied by a finding of guilt by a trial jury).

In sum, this Court should deny Defendant's motion because "there is no constitutional requirement that the State present evidence demonstrating probable cause for each aggravating circumstance" and "the notice requirements in Idaho Code section 18-4004A is sufficient to satisfy due process and the Sixth Amendment." *Abdullah*, 158 Idaho at 458-60, 348 P.3d at 73-75.

RESPECTFULLY SUBMITTED this 9th day of October 2024.



Jeff Nye
Special Assistant Attorney General



William W. Thompson, Jr.
Prosecuting Attorney

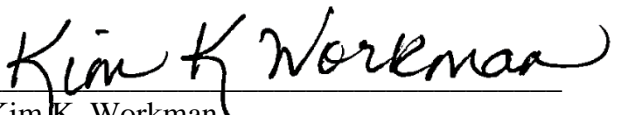
CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the STATE’S OBJECTION TO DEFENDANT’S MOTION TO STRIKE NOTICE OF INTENT TO SEEK THE DEATH PENALTY ON GROUNDS OF FAILURE TO PRESENT AGGRAVATORS TO A NEUTRAL FACT FINDER was served on the following in the manner indicated below:

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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