

Anne Taylor Law, PLLC
Anne C. Taylor, Attorney at Law
PO Box 2347
Coeur d'Alene, Idaho 83816
Phone: (208) 512-9611
iCourt Email: info@annetaylorlaw.com

Jay W. Logsdon, First District Public Defender
Idaho State Public Defender
1450 Northwest Blvd.
Coeur d'Alene, Idaho 83814
Phone: (208) 605-4575

Elisa G. Massoth, PLLC
Attorney at Law
P.O. Box 1003
Payette, Idaho 83661
Phone: (208) 642-3797; Fax: (208)642-3799

Assigned Attorney:

Anne C. Taylor, Attorney at Law, Bar Number: 5836
Jay W. Logsdon, First District Public Defender, Bar Number: 8759
Elisa G. Massoth, Attorney at Law, Bar Number: 5647

**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 NUMBER CR01-24-31665

**REPLY TO STATE'S OBJECTION TO
DEFENDANT'S MOTION REGARDING
NONSTATUTORY AGGRAVATING
EVIDENCE**

COMES NOW, Bryan C. Kohberger, by and through his attorneys of record, and submits this Reply to the State's Objection to his Motion for an order requiring: (1) that the prosecution provide the defense with notice of any nonstatutory aggravating fact/circumstance it intends to prove at the sentencing phase, if any sentencing phase is conducted; and (2) that the prosecution

be required to prove any such nonstatutory aggravating fact/circumstance beyond a reasonable doubt to the unanimous satisfaction of the jury before any juror may consider an alleged aggravating fact/circumstance as a reason to support a death sentence.

The State concedes the necessity of providing notice of nonstatutory aggravators and Mr. Kohberger requests nothing additional at this time.

The State, however, argues against its burden. Not only does it argue that it need not prove nonstatutory aggravation beyond a reasonable doubt, it apparently has no burden as to these aggravators at all. To arrive here, the State puts enormous weight on this line from *State v. Creech*, 105 Idaho 362, 369, 670 P.2d 463, 470 (1983): "...that section of the court's findings denominated "5. Facts and Arguments Found in Aggravation," although including circumstances not statutorily listed and not expressly found beyond a reasonable doubt, is not error."

Putting to the side the fact that when *Creech* was decided it was a judge, not a jury, making decisions in death cases, the word "expressly" does not do for the State what it thinks it does. At the time of *Creech*, judges had to provide written findings as to statutory aggravators when determining whether to impose death. *See* I.C. 19-2515 (1983). Thus "expressly" is simply in reference to what the Court had to put in its written findings. The Court in *Creech* was not holding that nonstatutory aggravators could be found without proof, much less without proof beyond a reasonable doubt. This Court should so find.

DATED this 24 day of October, 2024

BY: 

JAY W. LOGSDON
FIRST DISTRICT PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served as indicated below on the 24 day of October, 2024 addressed to:

Latah County Prosecuting Attorney –via Email: paservice@latahcountyid.gov

Elisa Massoth – via Email: legalassistant@kmrs.net

Jay Logsdon – via Email: Jay.Logsdon@spd.idaho.gov

Ingrid Batey – via Email: ingrid.batey@ag.idaho.gov

Jeff Nye – via Email: jeff.nye@ag.idaho.gov


