

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 TO STRIKE
HAC AGGRAVATOR**

COMES NOW, Bryan C. Kohberger, by and through his attorneys of record, and submits the follow Reply to the State's Objection to his Motion to strike the HAC aggravator from the notice of intent to seek death.

**REPLY TO STATE'S OBJECTION TO DEFENDANT'S
MOTION TO STRIKE HAC AGGRAVATOR**

The State argues that the HAC in Idaho is constitutional based on the judicial gloss from *Osborn*. The State argues that *Verska v. St. Alphonsus Regional Medical Center*, 151 Idaho 889, 896, 265 P.3d 502, 509 (2011), does not change the Idaho Supreme Court’s ability to change the law.

Mr. Kohberger does not know exactly what the State’s authority is for this conclusion – the State appears to be comparing the idea of rewriting unambiguous laws with limiting constructions and finding a difference. *State’s Brief* at 4. What that difference is is not defined. The State does not argue that the HAC is ambiguous. If the State agrees that it is ambiguous, the State provides no case that permits the Idaho Supreme Court to rewrite the statute to clarify it.

The larger issue – that the United States Supreme Court suddenly created the power to rewrite statutory language to preserve the death penalty – goes essentially unanalyzed in the State’s objection. Again, even if this Court cannot overrule the Idaho Supreme Court, it can acknowledge where its holdings violate the principles of law upon which our system was founded.

The State then takes up the differences between the ICJI and *Osborn*, and notes that they match. Counsel for Mr. Kohberger admits that in May of this year the ICJI was amended to reflect the language of the opinion. However, that merely reinforces his original argument – that this aggravator was not written by the legislature but rather by the Idaho Supreme Court. Mr. Kohberger cannot be put to death on the grounds of an aggravator that was not adopted by the legislature.

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


