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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 NUMBER CR01-24-31665

**REPLY TO STATE'S OBJECTION TO
DEFENDANT'S MOTION TO STRIKE
UTTER DISREGARD AGGRAVATOR**

COMES NOW, Bryan C. Kohberger, by and through his attorneys of record, and hereby submits the following Reply to the State's Objection to his Motion for an Order striking from the state's Notice Pursuant to Idaho Code § 18-4004A the allegation that the murder itself or by its circumstances showed an utter disregard for human life.

The State’s Objection to Mr. Kohberger’s argument that Idaho cannot rewrite a statute via “glass” consists of the same argument it made to Mr. Kohberger’s objection to the HAC, and Mr. Kohberger incorporates his response in that Reply to the extent that it is the same.

The State, however, goes on to argue that the gloss does not change what the legislature had intended by the aggravator. This argument is based on the literal words of the aggravator. Mr. Kohberger would point out that the literal words of the statute were so broad that the Idaho Supreme Court held that they were unconstitutional:

Under *Gregg*, it is apparent that the language contained in I.C. ss 19-2515(f) (5) and (6) is facially constitutional. However, inasmuch as a reasonable person could fairly characterize any murder as “especially heinous, atrocious or cruel, manifesting exceptional depravity” and as exhibiting an “utter disregard for human life,” it is equally apparent under *Godfrey* that this court must place a limiting construction upon these statutory aggravating circumstances so as to avoid the possibility of their application in an unconstitutional manner.

State v. Osborn, 102 Idaho 405, 417-18 (1981). So, it changed the aggravator to save it. It took an unambiguous law and changed it. Mr. Kohberger’s interpretation of the literal words of the statute derive from the statutes and decisions that made use of the words “utter disregard” throughout history. The ICJI and the Supreme Court’s gloss was simply a “saving construction” created by the Court to stop itself from having to hold the aggravator unconstitutional – which it was, and continues to be. This Court must 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 by placing a copy of the same as indicated below on the 24 day of October, 2024, addressed to:

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