ORIGINAL

No. 24- 23-7771

SUPREME COURT OF THE UNITED STATES

Stephen Lundquist,

Petitioner

vs.

State of Idaho,

Respondent

On Petition for a Writ of Certiorari to
The United States Court of Appeals
for the Nineth District Circuit

PETITION FOR A WRIT OF CERTIORARI

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I. Questions Presented

1. Is the Idaho state court in violation of the rule in *Brady v. Maryland* by changing the evidence, contrary to uncontroverted evidence, in dismissing the third component of a *Brady* violation that obviates "reasonable probability of a different verdict"?

2. When pursuant to the Uniform Post Conviction Procedure Act, where only a preponderance of evidence is required, does the standard of reasonable probability become more attainable when only a preponderance of evidence is the threshold?

3. Is the State of Idaho in conflict with Federal laws and other States where duress negates criminal intent?

II. Related Cases

1. Stephen Lundquist v. State of Idaho, Docket No. 49532-2022, Supreme Court of the State of Idaho. Order Denying Petition for Review and Motion to Augment the Record entered November 27, 2023.
2. Stephen Lundquist v. State of Idaho, Docket No. 49532-2022, Court of Appeals of the State of Idaho. Opinion on Appeal entered August 30, 2023.
3. Stephen Lundquist v. State of Idaho, CV01-19-7369, District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada. Opinion on Appeal entered December 22, 2021.
4. Stephen Lundquist v. State of Idaho, CV01-19-7369, District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada. Order Denying Post Conviction Relief entered March 1, 2021.
5. State v. Lundquist, CR01-19-00061, District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada. Judgment entered March 28, 2019.
6. State v. Lundquist, CR01-18-30736, District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada. Judgment entered August 15, 2018.

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V. Petition for Writ of Certiorari

Stephen Lundquist respectfully petitions this court for a writ of certiorari to review the opinion of the Idaho Court of Appeals.

VI. Opinion

The Opinion by the Idaho Court of Appeals denying Mr. Lundquist's petition for post-conviction relief is unpublished, filed on August 30, 2023 (docket No. 49532-2022). Attached at Appendix at 2-9. The Idaho Supreme Court denied Mr. Lundquist's Petition for Review and Motion to Augment Record on November 27, 2023. Attached at Appendix at 1.

VII. Jurisdiction

Mr. Lundquist's Petition for Review and Motion to Augment Record to the Idaho Supreme Court was denied on November 27, 2023. Mr. Lundquist invokes this Court's jurisdiction under 28 USC section 1257, having timely filed this petition for a writ of certiorari within ninety days of the Idaho Supreme Court order.

VIII. Constitutional Provisions Involved

United States Constitution, Amendment XIV:

> All persons born or naturalized in the United States, and subject top the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which abridge the privileges or immunities of citizens on the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

IX. Statement of the Case

Over 60 years ago, this Court held in *Brady v. Maryland* that the State must disclose all exculpatory evidence to the defendant in criminal cases. In *Giglio v. United States* that evidence extends to impeaching evidence of a witness. *Strickler v. Greene* defined three components of a *Brady* violation: the evidence at issue must be favorable to the accused, either exculpatory or impeaching; that evidence was suppressed by the State, either willfully or inadvertently; and prejudice must have ensued. Ever since *Mooney v. Holohan*, 294 U.S. 103, 55 S.Ct. 340, the undisclosed evidence demonstrates that the prosecution's case includes perjured testimony, and that the prosecution knew, or should have known, of the perjury violates the Fourteenth Amendment. In a series of subsequent cases, the Court has consistently held that a conviction obtained by the knowing use of perjured testimony is fundamentally unfair and if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury then the resulting conviction must be set aside. In *United States v. Agurs* it is this line of cases on which this Court has applied a strict standard of materiality, not just because they involve prosecutorial misconduct, but more importantly because they involve a corruption of the truth-seeking function of the trial process. In *Kyles v. Whitley* found that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine the confidence of the verdict. In *U.S. v. Bagley* this Court has found prejudice must be considered "in light of the totality of circumstances" and a Constitutional error results when the Government suppresses this evidence "if there

is reasonable probability that had the evidence been disclosed to the defense, the result of the proceeding would have been different".

1. The violation of a No Contact Order

Mr. Lundquist was arrested and charged with violation of a no contact order when Ms. Gena Santa Lucia, the protected person, came to Mr. Lundquist's home uninvited on December 31, 2018, and she was found there by police. Mr. Lundquist entered a not guilty plea, trial was on March 28, 2019, and found guilty by jury.

Mr. Lundquist filed a timely petition for Post-Conviction Relief (PCR) because the State did not disclose a police report of an interview of Ms. Santa Lucia conducted by police Detective Dozier (Dozier report) despite proper request for discovery by the defense. This interview of Ms. Santa Lucia was on March 4, 2019, twenty-four (24) days before the trial and discussed the violation of the no contact order. This non-disclosure of the Dozier report caused a *Brady* violation. Dozier report was discovered by Mr. Lundquist seven months later in October 2019. In the Dozier report Ms. Santa Lucia claimed fear of Mr. Lundquist. At trial, Ms. Santa Lucia testified she was in a dating relationship with Mr. Lundquist and implied no fear whatsoever. This non-disclosure by the State of the Dozier report prevented Mr. Lundquist to present an affirmative defense at trial. Mr. Lundquist argues the violation of the no contact order was a result of duress from extortion by Ms. Santa Lucia and as such there was no intent to the crime pursuant to Idaho Code Section 18-114 which requires *mens rea* for a crime to be committed. Ms. Santa Lucia's contradictions would have allowed the defense to impeach her

testimony that there was a dating relationship and would have corroborated Mr. Lundquist's testimony he was a victim of extortion by her. Trial counsel provided an affidavit that averred that Mr. Lundquist had told him of the extortion before the trial but based on the evidence at the time, trial counsel did not think that an affirmative defense that Mr. Lundquist was under duress to be a viable defense. During pre-trial review of the evidence that was provided, primarily the police report of the night of the incident, December 31, 2018, Ms. Santa Lucia told police then she had "rekindled" the relationship with Mr. Lundquist and they had been seeing each other on a regular basis. This was deemed this would be the same story she would use at trial to explain why she was at Mr. Lundquist's home despite a no contact order in effect presumably to protect her.

Decision by magistrate court found that the first two prongs of a *Brady* violation, had been satisfied that the Dozier report was "at least impeaching, and that it was not disclosed" but ruled Mr. Lundquist failed to show the third component, that there was prejudice. The magistrate court concluded there was no prejudice because it found there was no extortion by Ms. Santa Lucia as claimed by Mr. Lundquist. Decision was appealed to the district court and was affirmed, and then to the Court of Appeals where again affirmed. Thereafter, Mr. Lundquist filed for a Petition for Review with the Idaho Supreme Court and was denied.

2. Petition for Post-Conviction Relief (PCR)

This proceeding of a Post-Conviction Relief was brought pursuant to the Uniform Post Conviction Procedural Act and is a civil case in nature which only

requires a preponderance of evidence to prevail.

This PCR was filed pursuant to Idaho Code Section 19-4901(a)(1):

> 19-4901. REMEDY — TO WHOM AVAILABLE — CONDITIONS. (a) Any person who has been convicted of, or sentenced for, a crime and who claims:
> (1) That the conviction or the sentence was in violation of the constitution of the United States or the constitution or laws of this state;

The conviction in this case violated of the Constitution of the United States (XIV Amendment).

X. REASONS FOR GRANTING THE WRIT

A. The Court Disregarded and Even Changed Evidence That Supported There was Extortion then Concluding There was No Reasonable Probability of a Different Verdict Ignoring the Totality of Circumstances

The matter in question of this PCR was not for the court to convict Ms. Santa Lucia of extortion beyond a reasonable doubt, but to find the withholding of the Dozier report was a violation of Mr. Lundquist's rights under Federal and State constitutions and Idaho law, violating due process and preventing a fair trial. The evidence presented in the PCR to the magistrate and subsequent appeals clearly warrants the guilty verdict of violating the no contact order to be vacated. The magistrate court focused on the relationship between Mr. Lundquist and Ms. Santa Lucia and made numerous factual errors in the circumstances, formulating a flawed theory to find there was no extortion by Ms. Santa Lucia against Mr. Lundquist and thus no prejudice. This finding contradicted the preponderance of evidence that supports the third component of a *Brady* violation, that there was prejudice. In this case the preponderance of evidence presented by Mr. Lundquist

clearly met the measure needed to vacate conviction because it undermines the confidence of the verdict as required by *Kyles*. The Idaho State Court found that the first two components had been satisfied, but ruled that Mr. Lundquist failed to meet the third component because he failed to show "a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceedings would have been different". The reasonable probability standard provides a clear and consistent measure by which judges can accurately gauge the effect of a *Brady* violation. By virtue of its reliability and endurance, this standard safeguard the due process rights afforded to every citizen under the Fourteenth Amendment. But in this case, the reliability of this standard of *reasonable probability* is negated when the court does not follow the evidence and particularly when only a preponderance of evidence is needed.

Mr. Lundquist presented argument in the PCR and in the appeals to district and Court of Appeals that supports that the withholding of the Dozier report did cause prejudice when Ms. Santa Lucia claimed fear of Mr. Lundquist in the Dozier report, contradicting her trial testimony. The magistrate court made several errors in assessing the relationship between Ms. Santa Lucia and Mr. Lundquist and resulted in the incorrect finding there was no extortion. But judicious examination of the "totality" of circumstances, as required in *Bagley*, in the relationship with Mr. Lundquist's and Ms. Santa Lucia's and their actions, clearly shows that allegation of extortion is credible. The factual errors made in the decision of the initial post-conviction relief proceedings (CV01-20-07369) by the magistrate were

clearly defined by Mr. Lundquist in appeals to both the District Court and the Idaho Court of Appeals. Nonetheless, these errors in the circumstances were repeated by the Idaho District Court in appeal there which affirmed the denial of post-conviction relief and was then affirmed by Idaho Court of Appeals. In this case Idaho courts not only disregarded the totality of the circumstances but *changed* the circumstances in contravention of uncontroverted evidence.

Magistrate stated the following in its Order Denying Post-Conviction Relief. The factual errors made by the magistrate contradicts the uncontroverted evidence that was presented:

> After being released from custody on this charge on August 24th, 2018, Petitioner was walking home when Santa Lucia drove by him. She stopped her vehicle, and offered him ride home. In the ensuing months, despite the no-contact order, Petitioner and Santa Lucia frequently saw each other, but their relationship was not entirely stable. There were accusations of infidelity, and in September of 2018, Petitioner filed for, and received, civil protection order against Santa Lucia, based on an incident where Petitioner believed that Santa Lucia had vandalized his car. That order was later dismissed when Petitioner learned that Santa Lucia had not been involved in the incident. (R. p. 171, paragraphs 2).

There are numerous errors here. Mr. Lundquist (Petitioner) was released on August 15, 2018, not August 24th. There were no accusations of infidelity. They did not see each other frequently. And most importantly, Mr. Lundquist did not file for his civil protection order in September 2018, it was filed in April 2018, the significance of which is explained below.

The magistrate then made the erroneous conclusion there was no extortion, therefore no prejudice in the suppression of the police report based on the following finding:

> This court finds that the lack of supporting evidence for the extortion defense is due to simple fact: that there is none because the allegation is not true. Two items lead the court to this conclusion. First, Petitioner claims that that he could not tell anyone about this extortion because it would lead to false accusations by Santa Lucia that would put him in legal jeopardy. But Petitioner was quick to file for civil protection order when he believed that Santa Lucia had damaged his windshield. He did not appear to seek the protection of the law when he thought that he had been wronged. If he was willing to do so over piece of broken glass, it would seem as if he would seek the legal protection to avoid going to jail.
>
> Second, his own words condemn him. As pointed out by the state at length, when Petitioner admitted to his felony probation violation, course that would likely lead him to prison, he admitted to willfully violating the terms of his probation. Judge Medema told Petitioner that he had the right to hearing (in which he could have asserted his extortion defense), and that he need not admit to anything. Despite this warning, he admitted to the violation. (R. p. 171, paragraphs 2 and 3)

The analysis of the correct sequence of events, or the "totality of circumstances" between Mr. Lundquist and Ms. Santa Lucia in the nine months from April through December 2018 is paramount in determining the plausibility of Mr. Lundquist's assertion he was being extorted for payback for Ms. Santa Lucia's attorney's fees she incurred because of a civil protection order he filed against her on April 6, 2018, after his vehicle was vandalized. Ms. Santa Lucia admitted under oath at trial she was "upset" at incurring her attorney's fees, obviously her motive, first for filing her civil protection order against Mr. Lundquist, and then the extortion. She had made that clear to Mr. Lundquist when the extortion was ongoing. These events are described in detail in Mr. Lundquist's declarations and his testimony at the evidentiary hearing held on January 7, 2021, and are uncontroverted by the State.

First, the finding by the magistrate court there was no extortion was based on its erroneous timing of when Mr. Lundquist filed his civil protection order against Ms. Santa Lucia. The magistrate incorrectly stated Mr. Lundquist filed for his civil protection order in September 2018 when the extortion was ongoing. However, his civil protection order was filed months before, in April 2018, precipitating the events *leading* to extortion. Mr. Lundquist dismissed his protection order in late May 2018, and within five days Ms. Santa Lucia vindictively filed for a civil protection order against him and made false allegations against him, which resulted in Mr. Lundquist being arrested with criminal charge of felony stalking, incarceration, and having to retain an attorney in June through August 2018. Mr. Lundquist was simply attempting to avoid a repeat of this situation once again during the period of extortion which was September through December 2018. The magistrate court erroneously postulated if Mr. Lundquist was willing to seek legal protection (civil protection order) at time of being extorted, he should have also been willing to report the extortion as well if it was true. The filing date of his protection order was provided in Mr. Lundquist's declaration and his testimony at evidentiary hearing also detailed the filing if his and Santa Lucia's protection orders. This error was pointed out and the correct date was again stated in argument in the appeal to the district court. Nonetheless, the district court repeated the magistrate court's error of his filing date as September 2018 and again, the resulting erroneous logic that Mr. Lundquist should have been willing to report the extortion and was affirmed by Court of Appeals. The correct date is

relevant because it started the tumultuous conflict between the parties which led to Mr. Lundquist's first arrest and criminal charges in June 2018, thereafter to the extortion and the coerced contact, finally his second arrest on December 31, 2018, for violating the no contact order. The opinion by Court of Appeals addressed this issue and continues citing the incorrect filing date of September 2018, but did cite the State's admission in footnote it was filed on March 6, 2018, (although incorrect). The Court of Appeals Opinion also addressed Mr. Lundquist's motion to augment the record with a copy of both civil protection orders, but states the motion was denied because the issue was not presented to or considered by the magistrate or the district court. That is not correct. As stated, this error of timing of the civil protection order was presented and argued in the appeal to the district court, and even the State admitted in its Response there that Mr. Lundquist's civil protection order was indeed filed prior to September 2018. Respondent's brief in the district appeal erroneously states the date of filing as March 6, 2018, rather than the correct date of April 6, 2018. Either way, Mr. Lundquist's civil protection order was not filed while being extorted months later, invalidating the court's logic that he should have been willing to report the extortion during the same time-period if he filed for a protection order. The magistrate's conclusion Mr. Lundquist did not want to report the extortion he was subjected to as, "defies logic". That conclusion itself defies reality. The hesitance by Mr. Lundquist to report the extortion during the time frame of August through December 2018, and instead, just pay the relatively smaller amount of money demanded by Ms. Santa Lucia;

when compared to being threatened with yet another arrest, incarceration, more attorney costs, and possible prison sentence imposed due to probation violation (which ultimately did happen) was simply a cost/benefit analysis at the time. Mr. Lundquist testified as such at the evidentiary hearing and was uncontroverted. As outlined above, Mr. Lundquist was arrested on June 14, 2018, after Ms. Santa Lucia vindictively filed her own civil protection order on May 29, 2018, against him only five days after he dismissed his on May 24, 2018, and made false allegations of stalking against him. This also resulted in a charge of a probation violation from a previous case. Santa Lucia was aware of Mr. Lundquist's probation which made her extortion even more effective. This was the first time she used the false fear factor when she filed for her civil protection order claiming she needed protection from Mr. Lundquist. This resulted in him being arrested, incarcerated for 64 days, and incurring $10,000.00 in attorney fees. The criminal charge of felony stalking in the June arrest was adjudicated with a plea agreement in early August and a no contact order was issued by the court. Bail had been denied due to the probation violation allegation. Even though Mr. Lundquist believed he was innocent of the charges, but because he was experiencing severe pain and not receiving proper medical treatment while in jail for a past injury he received in the military and was not allowed to post bail due to the probation violation, he accepted the plea deal rather than continue intense suffering in jail for several more months while waiting for the trial scheduled for late November 2018. Prior to this arrest Mr. Lundquist was being treated by the Veterans

Administration Medical Center with prescription opiate pain medication which was denied to him by the jail. The denial of bail and lack of adequate medical care essentially forced the acceptance of the plea agreement. Mr. Lundquist's probation was reinstated as part of plea and was released from jail on August 15, 2018, and only twenty minutes later during heavy traffic, Ms. Santa Lucia offered him a ride in her car as he was walking home causing him utter shock. Her testimony at trial characterized it as coincidental and she was not stalking him:

("[S]o I pulled over, and I told him, I said, it's okay. I'm not stalking you."). She also testified that Mr. Lundquist told her he could not be near her because of the no contact order. But why is she waiting, watching for him, and offering a ride to her stalker immediately after his release from jail? Obviously, there was no fear by her, instead she had used the judicial system to exact revenge for his civil protection order and her having to expend money to hire an attorney. Ms. Santa Lucia's behavior substantiates Mr. Lundquist's belief he was innocent of the criminal charges he had just been prosecuted for. These details were not considered by the court in the decision.

As noted earlier, the magistrate also gave a second reason to find there was no extortion in the following:

> Second, his own words condemn him. As pointed out by the state *at length*, (emphasis added) when Petitioner admitted to his felony probation violation, course that would likely lead him to prison, he admitted to willfully violating the terms of his probation. Judge Medema told Petitioner that he had the right to hearing (in which he could have asserted his extortion defense), and that he need not admit to anything. Despite this warning, he admitted to the violation.

This issue was raised by the Respondent in the PCR to the magistrate court, who was the prosecutor for the probation violation and as stated by the magistrate, the argument was "at length". Of note, this Respondent was also the same prosecutor who tasked Detective Dozier to interview Ms. Santa Lucia.

The magistrate, district, and Court of Appeals brought into question why Mr. Lundquist did not present the extortion defense at his probation violation hearings that were held after the trial, and this somehow proves there was no extortion. This cannot be considered to determine post-conviction relief of the violation of the no contact order because what was said at the probation violation hearings were separate proceedings in a different case *after* the trial. The notion, that not presenting a defense later in a different case when there is nothing to support it, is not evidence. Furthermore, certified transcripts of the probation hearings were never entered into evidence in this PCR and are not part of the record. Even if Mr. Lundquist had claimed extortion at probation hearings, it would not have changed the verdict of the previous trial, which was the basis for the probation violation. The magistrate court accepted this illogical reasoning which contravenes both to justice and Idaho Rules of Evidence. Furthermore, an analysis of not presenting the affirmative defense then must be done in context.

Mr. Lundquist was convicted of the no contact violation on March 28, 2019, in the magistrate court; the admit/deny probation violation hearing was held April 9, 2019, in the district court, and the sentencing hearing April 26, 2019. First, the district court only asked Mr. Lundquist if was willing to admit he violated the law

by being convicted of violating the no contact order. An affirmative answer was the only answer since there was a conviction. There was no admission to willfully violating probation as the magistrate erroneously states.

Then at the sentencing hearing Mr. Lundquist was following his defense counsel's advice not to bring up the extortion because it was not presented at the trial and would only antagonize the court as it would appear he was fabricating an excuse never heard before. And just like at the trial, the prosecution would certainly have argued that Mr. Lundquist was only trying to shift all the blame on Ms. Santa Lucia for his violation of the no contact order with nothing to substantiate his claim. Importantly, the Dozier report still had not been disclosed before these probation hearings as well. Mr. Lundquist testified at the January 7, 2021, evidentiary hearing, if he had the Dozier report then, his allocution would have changed and would have had grounds to challenge the probation violation. And lastly, the charge of violating the no contact order, which was the basis for the probation violation, would have been an acquittal if the State had provided the Dozier report as required. The probation violation would have been dismissed. Withholding of the Dozier report harmed the defense in both the trial and the probation violation proceedings.

B. *Mens rea* or Criminal Intent

Idaho Court of Appeals addressed the issue of *mens rea* and ruled that to establish a violation of Idaho Code Section 18-920, the State need only to prove that the defendant had contact with the victim in violation of a valid No Contact

Order (NCO) with notice that the NCO was in effect. Idaho Code Section 18-920 provides, in relevant part:

> (1) When a person is charged with or convicted of an offense under section 18-901, 18-903, 18-905, 18-907, 18-909, 18-911, 18-913, 18-915, 18-918, 18-919, 18-6710, 18-6711, 18-7905, 18-7906 or 39-6312, Idaho Code, or any other offense for which a court finds that a no contact order is appropriate, an order forbidding contact with another person may be issued. A no contact order may be imposed by the court or by Idaho criminal rule.
>
> (2) A violation of a no contact order is committed when:
>
> (a) A person has been charged or convicted under any offense defined in subsection (1) of this section; and,
>
> (b) A no contact order has been issued, either by a court or by an Idaho criminal rule; and,
>
> (c) The person charged or convicted has had contact with the stated person in violation of an order.

Opinion further states violation of this statute does not require specific intent. But that opinion is irreconcilable with Idaho Code Section 18-114 which states:

> 18-114. Union of act and intent. In every crime or public offense there must exist a union, or joint operation, of act and intent, or criminal negligence.

The statute is clear about intent, "every crime" and "must exist". The opinion given by Court of Appeals ruled Idaho Code Section 18-920 contains no wording to any specific mental state. Idaho Code Section 18-114 precedes all criminal statutes, almost all of which do not contain wording about mental state. Idaho Code Section 18-114 must be applied here as in any other crime. Even the State/Respondent admitted in its Response Brief to Idaho Court of Appeals:

> "Lundquist has not contested the fact that he had contact with Gena in violation of the no contact order, and had notice that the order was in effect. That is all that the law requires - unless he was legally excused by duress."

Mr. Lundquist also cited in his argument that Idaho Criminal Jury Instruction (ICJI) no. 305 is applicable. This was argued in the original filings of the PCR. ICJI no. 305 states:

> In every crime or public offense there must exist a union or joint operation of act and [intent] [or] [criminal negligence].

Other State courts of last resort have found intent to be negated when there is duress and coercion that conflict with Idaho courts:

> Duress negates an element of the crime charged-the intent or capacity to commit the crime-the defendant need raise only a reasonable doubt that he acted in the exercise of his free will. *People v. Graham*, 57 Cal.App.3d 238 (1976).

Opinion of Idaho Court of Appeals found that the magistrate court correctly determined that the victim's (Santa Lucia) impeached testimony would not have been material to this issue. But this finding is contrary to United States Supreme Court's precedence:

> Where intent of the accused is an ingredient of the crime charged, its existence is a question of fact which must be submitted to the jury for determination in the light of all relevant evidence, and the trial court may not withdraw or prejudge the issue by instructing the jury that the law raises a presumption of intent from a single act. *Morrissette v. United States*, 342 U. S. 273-276.

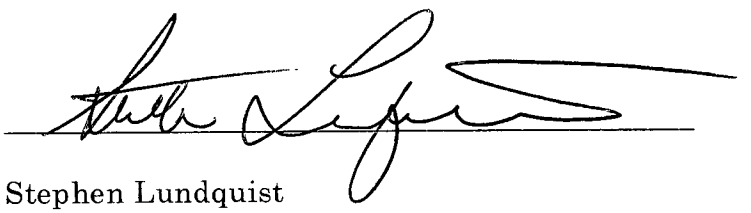
Mr. Lundquist argued that if the State had provided the Dozier report as required, the affirmative defense of duress could have been presented successfully. The jury would have come to a different verdict based on the impeached testimony of Santa Lucia and the totality of the circumstances.

XI. CONCLUSION

For the forgoing reasons, Mr. Lundquist respectfully requests that this Court issue a writ of certiorari to review the record and the judgment of the Idaho Court of Appeals and vacate the conviction.

DATED this 20th day of February 2024.

Respectfully submitted,



Stephen Lundquist