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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 THE DEATH PENALTY ON GROUNDS OF STATE SPEEDY TRIAL PREVENTING EFFECTIVE ASSISTANCE OF COUNSEL

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and hereby objects to Defendant's Motion to Strike the Death Penalty on Grounds of State Speedy Trial Preventing Effective Assistance of Counsel. Defendant claims that this Court must strike the death penalty because he cannot be forced to choose between his right to a speedy trial under the Idaho Constitution and his constitutional right to effective assistance of counsel. His argument rests entirely on the inaccurate premise that the Idaho Constitution sets a hard-and-fast six-month deadline for his trial. Because the Idaho Supreme Court has held otherwise, this Court should deny Defendant's motion.

All criminal defendants in Idaho have a constitutional right to a speedy trial pursuant to both the U.S. Constitution and the Idaho Constitution. The right to a speedy trial under the U.S. Constitution is assessed by the balancing of four factors: (1) the length of the delay; (2) the reason for the delay; (3) whether the defendant asserted the right to a speedy trial; and (4) the prejudice to the defendant. *See Barker v. Wingo*, 407 U.S. 514, 530 (1972). "This approach has been adopted in Idaho for determining whether a speedy trial violation has occurred under the Idaho Constitution." *State v. Clark*, 135 Idaho 255, 258, 16 P.3d 931, 934 (2000); *see State v. Lankford*, 172 Idaho 548, ___, 535 P.3d 172, 184 (2023) ("Thus, the United States Constitution and the Idaho Constitution are both interpreted under *Barker*.").

In fact, the *only* difference between the federal and state constitutional rights to a speedy trial identified by the Idaho Supreme Court is "when the speedy trial clock begins." *Lankford*, 535 P.3d at 184. The clock begins for the federal right at the time of arrest and for the state right at the time of arrest or the time charges are filed, whichever occurs first. *Id.* "From there, both state and federal constitutional claims turn to the balancing test under *Barker.*" *Id.*

Predictably, the case-specific balancing test adopted by the Idaho Supreme Court has resulted in a wide variety of permissible lengths of delay before trial. Delays from fifteen months, *see State v. Ish*, 551 P.3d 746, 762 (2024), to seventeen months, *State v. Lopez*, 144 Idaho 349, 355, 160 P.3d 1284, 1290 (Ct. App. 2007), to two years, *see Lankford*, 535 P.3d at 187, have all been found permissible under the Idaho Constitution.

Defendant attempts to free himself from this well-settled caselaw simply by opining that "the Idaho Supreme Court has wrongfully deviated from the right [to a speedy trial] as it was defined by the framers." (Mot. at 4.) He pleads with this Court "to hold [the decisions of the Idaho Supreme Court] were wrongly decided." (Mot. at 8.) He asks this Court to instead side with the

legislatures of other states and "draw a firm line at six months" in the Idaho Constitution. (Mot. at 11.) Unfortunately for Defendant, that is not how constitutional interpretation—or the law generally—operates. *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.").

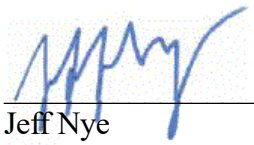
Once Defendant's fatally flawed premise is corrected, his alleged Hobson's choice between the right to a speedy trial and the right to effective assistance of counsel is not a choice a defendant has to make at all. In fact, the Idaho Supreme Court has expressly held that a constitutionally permissible reason to delay trial is so that defense counsel has adequate time to prepare. *See Lankford*, 535 P.3d at 187 (holding delay to allow prosecutors and defense counsel time to prepare for trial was reasonably necessary and thus not a violation of defendant's speedy trial rights). The delay for trial preparation "merely results in a trial that is less speedy" and does not preclude the possibility that the trial can satisfy the Sixth Amendment and Idaho Constitution, "(which, after all, guarantee[] only a *speedy* trial, not the *speedier* or the *speediest* trial)." *United States v. Ashimi*, 932 F.2d 643, 648 (7th Cir. 1991) (emphases in original); *see Stuard v. Stewart*, 401 F.3d 1064, 1068-69 (9th Cir. 2005) (rejecting the same argument).

While it is true that a defendant misses out on a *statutory* benefit of a six-month deadline for trial when he takes an action that results in the delay of his trial, *see* I.C. 19-3501(3), Defendant has not asserted the loss of a statutory benefit as part of his argument. Even if he had, there is nothing impermissible about forcing a defendant to choose between a statutory benefit and a constitutional right. *See Stewart*, 401 F.3d at 1069 ("A compulsion to choose between two advantages, where the compulsion does not force the defendant to forfeit any constitutional entitlements, is not contrary to or an unreasonable application of [U.S. Supreme Court

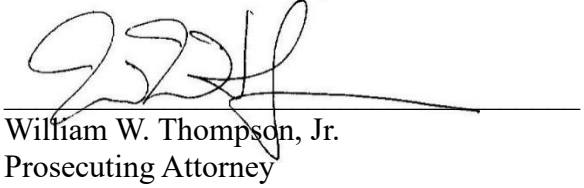
precedent].”); *Ashimi*, 932 F.2d at 647-48 (explaining the doctrine of unconstitutional conditions “does not apply . . . when a defendant is made to choose between a constitutional benefit and a statutory benefit”).

Here, Defendant chose to waive *all* his speedy trial rights. *See* Waiver of Speedy Trial (Felony), filed 8/23/2023. He did so in writing and after consultation with his attorney. *See id.* There was nothing impermissible—much less unconstitutional—about his waiver, and this Court should deny his motion. *See State v. Youngblood*, 117 Idaho 160, 162 (1990) (holding written waiver of speedy trial rights “dispositive of . . . claim of denial of speedy trial”)

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 THE DEATH PENALTY ON GROUNDS OF STATE SPEEDY TRIAL PREVENTING EFFECTIVE ASSISTANCE OF COUNSEL was served on the following in the manner indicated below:

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☐ Mailed
☒ E-filed & Served / E-mailed
☐ Faxed
☐ Hand Delivered

Dated this 9th day of October 2024.

Kim K. Workman