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CASE NO. CR 29-22-2805  
2023 June 15 1:35  
CLERK OF DISTRICT COURT  
LATAH COUNTY P.M.  
BY am DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,  
Plaintiff,

V.

BRYAN C. KOHBERGER  
Defendant.

Case No. CR29-22-2805

OBJECTION TO MOTION TO  
STAY PROCEEDINGS

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and objects to Defendant's Motion to Stay Proceedings. For the following reasons, Defendant's motion should be denied.

**BACKGROUND**

On May 16, 2023, Defendant was indicted by a Latah County grand jury of four counts of first-degree murder and one count of burglary. Three days later, on May 19, Defendant filed a Motion Requesting Release of Grand Jury Materials under Qualified Protective Order, Motion to Enlarge Time to File Pretrial Motions, and Motion to Make Available the Record of All Proceedings of the Grand Jury. On May 26, the State filed its response to Defendant's Motion to Enlarge Time. The State noted that it did not object to Defendant's Motion to Enlarge Time and

went a step further by concurring in his request for additional time. On May 30, the State filed its Response to Defendant's Motions Regarding Grand Jury Record and Transcript and a proposed Order for Preparation and Release of Transcript and Record of Grand Jury Proceedings with Conditions. As noted in that response, the State had also provided a proposed stipulation to Defendant's counsel on May 25. After the parties were unable to reach an agreement as to the scope of grand jury materials that would be subject to release, the State submitted its Supplemental Response to Defendant's Motions Regarding Grand Jury Record and Transcript on June 6. On June 13, the Defendant filed a Reply to State's Supplemental Response to Defendant's Motions Regarding Grand Jury Record and Transcript, addressing the substantive legal arguments that State set forth in its June 6 supplemental response.

Also on June 13, the Defendant filed a Motion to Stay Proceedings. Defendant asserts that he "intends to contest the indictment," *Def. Mo. to Stay*, p. 2, and asks this Court to stay this matter so he that he may "discover the grounds upon which to file a motion to dismiss related to the how the grand jury was selected," *Id.* at 2-3.<sup>1</sup> In his motion to stay, Defendant relies solely on Idaho Code § 2-213. *Id.*

### ARGUMENT

Defendant's reliance on Idaho Code § 2-213 is misplaced. That statute provides that a party can request a stay in proceedings where there has been a "substantial failure to comply with [the applicable law] in selecting the grand or trial jury." I.C. 2-213(1). Under § 2-213, a motion to stay must contain a "sworn statement of facts which, if true, would constitute a substantial failure to

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<sup>1</sup> The Idaho Supreme Court has explained that dismissal of an indictment is "a drastic remedy and should be exercised only in extreme and outrageous situations, and therefore, the defendant has a heavy burden." *State v. Edmonson*, 113 Idaho 230, 237, 743 P.2d 459, 466 (1987).

comply with this chapter[.]” I.C. 2-213(2). Only *after* the court determines that a substantial failure to comply has occurred can the matter be stayed:

Upon motion filed under subsection (1) of this section containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with this chapter, the moving party is entitled to present in support of the motion the testimony of the jury commissioner or the clerk, any relevant records and papers not public or otherwise available used by the jury commissioner or the clerk, and any other relevant evidence. *If the court determines that in selecting either a grand jury or trial jury there has been a substantial failure to comply with this chapter, the court shall stay the proceedings pending the selection of the jury in conformity with this chapter, quash an indictment, or grant other appropriate relief.*

*Id.* (emphasis added).

As the plain language of the statute makes clear, a moving party must make a factual showing of substantial failure to comply with the statute; and only after a court makes a finding that such failure to comply occurred can the court stay the matter.

Defendant’s Motion is deficient because he did not include a “sworn statement of facts which, if true, would constitute a substantial failure to comply with this chapter.” *Id.* Rather than include a sworn statement with his motion, Defendant asserts in a footnote that “Mr. Kohberger will comply with filing a sworn statement of facts in accordance with I.C. 2-213(2) as soon as he has the grand jury record.” *Def. Mot’n to Stay Proceedings*, p. 3.<sup>2</sup> By including this promise to file a sworn statement in the future, Defendant implicitly concedes that his motion is deficient at the present. Because Defendant has failed to comply with this key requirement of Idaho Code § 2-213, his motion should be denied.

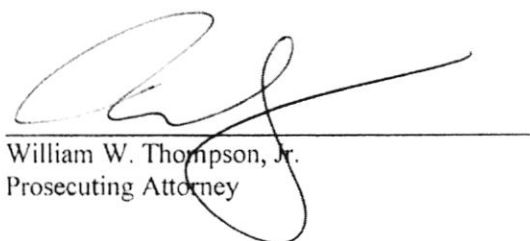
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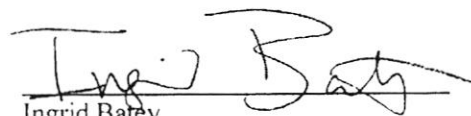
<sup>2</sup> It is unclear to the State how Defendant could assert that he will swear to the Court that a substantial failure to comply with the law in the jury selection process occurred when he has yet to review the grand jury materials upon which he intends to rely.

**CONCLUSION**

Defendant asks this Court to put the cart before the horse—stay the case now, and Defendant will give the Court a basis for the stay later. The Court should decline to adopt this backward reading of the requirements of Idaho Code § 2-213. Defendant’s motion should be denied.

RESPECTFULLY SUBMITTED this 15 day of June, 2023.

  
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William W. Thompson, Jr.  
Prosecuting Attorney

  
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Ingrid Batey  
Special Assistant Attorney General

CERTIFICATE OF DELIVERY

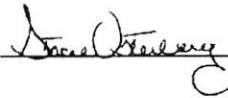
I hereby certify that true and correct copies of the OBJECTION TO MOTION TO STAY

PROCEEDINGS was served on the following in the manner indicated below:

Anne Taylor  
Attorney at Law  
PO Box 9000  
Coeur D Alene, ID 83816-9000

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

Dated this 15 day of June, 2023.




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