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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 DEFENDANT'S
SECOND MOTION TO STAY
PROCEEDINGS

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and objects to the Defendant's Second Motion to Stay Proceedings. Because the Defendant has not factually asserted a substantial failure to comply with the Uniform Jury Selection and Service Act, his motion should be denied.

INTRODUCTION

Before ever reviewing any of the grand jury materials to determine whether a violation of Idaho's Uniform Jury Selection and Service Act had actually occurred, the Defendant was determined to obtain a stay in this case. And so, he filed his first motion to stay under Idaho Code § 2-213. *Def. Mo. To Stay* (June 13, 2023). Without knowing whether he had any basis in law or fact to make such a request, the Defendant asked this Court to grind the litigation in this matter to a halt because he "intend[ed] to contest the indictment," *Def. Mo. To Stay*, p. 2, and desired to

“discover the grounds upon which to file a motion to dismiss related to the how the grand jury was selected[.]” *Id.* at 2-3. The Court declined to grant relief under that subsection, and instead, issued a limited stay ordering that speedy trial be tolled for a period of 37 days. *Order Staying Time for Speedy Trial* (July 7, 2023). The State has moved to reconsider that order and argument is set for August 18, 2023.

Having now reviewed the grand jury materials provided since his initial motion, the Defendant has delivered on his promised strategy: he seeks a stay to buy more time to challenge the indictment in this case. In support of his second motion to stay, the Defendant submitted the affidavit of Anne Taylor, filed under seal. Through that affidavit, the Defendant argues for a stay relying solely on Idaho Code §§ 2-208 and 2-213. This motion—like the last—should be denied.

ARGUMENT

A. Defendant’s allegations regarding juror bias and statements of the court during the jury selection process do not fall within the scope of the Uniform Jury Selection and Service Act

The Uniform Jury Selection and Service Act is concerned with the procedural mechanisms put in place by the courts in selecting grand and trial juries. Specifically, the purpose of the Act is to ensure that “all persons selected for jury service be selected at random from a fair cross section of the population of the area served by the court, and that all qualified citizens have the opportunity, in accordance with this act to be considered for jury service in this state and an obligation to serve as jurors when summoned for that purpose.” Idaho Code § 2-202. To that end, the Act prohibits discrimination *against jurors* on the basis of “race, color, religion, sex, national origin, or economic status,” Idaho Code § 2-203 (emphasis added); establishes the process for appointment of a jury commissioner and the process of reimbursing the jury commissioner for travel and other expenses, Idaho Code § 2-205; establishes the procedure by which jury lists are compiled and maintained, Idaho Code § 2-206; sets forth a procedure by which the courts must

update those jury lists, Idaho Code § 2-207; establishes the procedure for the courts to issue juror questionnaires and summonses, Idaho Code § 2-208; and sets forth other processes and procedures to ensure that grand and trial juries are fairly selected from a reasonable cross-section of the community.

The Act does not address—nor does it provide a remedy for—individual juror bias or statements made by the court during the jury selection process. Thus, to the extent that Defendant’s concerns are based on such allegations, *see Affidavit of Anne Taylor* at ¶ 2, such issues fall outside the scope of the Act and cannot form a basis for the stay Defendant seeks.

B. Defendant’s allegations regarding the exclusion of clerical information on some of the questionnaires do not fall within the scope of the Act.

Defendant asserts that the court-issued questionnaires constitute a failure of mechanism in drawing a grand jury pool. In support of this argument, Defendant asserts that some of the questionnaires did not include certain numerical information at the top of the page. *Taylor Aff.*, ¶ 4. However, the information referenced by the Defendant is not required by the Act. *See* Idaho Code § 2-208. Further, this information is not even included in the model form promulgated by the Idaho Supreme Court. *See* Idaho Court Administrative Rule 62(c), Appendix A, *available at* [https://isc.idaho.gov/rules/Appendix-A-ICAR62\(c\).pdf](https://isc.idaho.gov/rules/Appendix-A-ICAR62(c).pdf) (model juror qualification questionnaire form that does not include the information referenced by Defendant). Thus, this issue also falls totally outside the scope of the Act.

C. Defendant’s suggestion that courts should maintain separate qualified juror lists for grand juries and trial juries misreads the plain language of Idaho Code § 2-208

Through Ms. Taylor’s affidavit, Defendant argues that Idaho Code § 2-208 states that “individuals must be randomly drawn from a county jury list and that the jury commissioner shall draw a requisite number of qualified juries for one or more panels OR for a grand jury.” *Taylor Aff.*, ¶ 1 (emphasis in original). Thus, the defense asserts, the panel was improperly brought in as

a grand jury. *Id.* Later, the defense again points out that “the language of the statute uses the word OR between jury panels and a grand jury panel.” *Id.* ¶ 3 (emphasis in original). This is a misreading of the plain language of the statute. Idaho Code § 2-208(1) provides that:

[t]he court or any other state or county official having authority to conduct a trial or hearing with a jury within the county may direct the jury commissioner to draw and assign to that court or official *the number of qualified jurors deemed necessary for one or more grand jury panels or as required by law for a grand jury.* Upon receipt of the direction and in a manner prescribed by the court, the jury commission shall publicly draw at random, by use of a manual, mechanical, or automated system, from the county jury list *the number of prospective jurors specified.*

Idaho Code § 2-208 (emphasis added). Plainly, the word “or” appears because the requisite number of jurors for a misdemeanor, felony, or civil trial jury is not always the same as the requisite number for a grand jury. Nothing in the Act requires that courts maintain separate lists for grand or trial juries. The Court should decline to entertain this misreading of the Act.

D. As to the remainder of Defendant’s allegations, he has not alleged a substantial failure to comply with the Act

Even if Defendant can factually establish that a violation occurred, Defendant has not met his burden of demonstrating a “substantial failure to comply” with the Act. *See* I.C. 2-213(1). Instead, Defendant asks the Court to enter a stay in this case by raising allegations of technical violations without ever explaining how any reach the “substantial” standard set forth in the statute, apparently inviting the Court to apply a strict liability standard. *Taylor Aff.* ¶ 5. But the Act does not sweep so broadly. Only a substantial failure to comply can trigger a stay:

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). Thus, to obtain a stay, Defendant cannot merely allege that *a* violation occurred—the Defendant must allege that a *substantial* violation occurred. Setting aside the claims of juror bias and missing numerical information on the questionnaire forms that fall wholly outside the scope of the Act, the Court has before it three issues related to the questionnaires: first, that one of the grand jurors marked a box indicating that they do not comprehend English; second, that one of the grand jurors disclosed that they were a prior criminal defendant; and third, that one of the grand jurors did not mark whether they were a prior criminal defendant and did not sign and affirm the truth of responses. The Court should dismiss out of hand the arguments related to prior criminal history, because being a prior criminal defendant does not preclude someone from sitting on a grand jury. *See* Idaho Code § 2-208 (setting forth qualification questionnaire requirements). Instead, only those with a *felony criminal conviction* are disqualified from serving on a grand jury. *See* Idaho Code § 2-209(2)(b). Thus, this allegation falls outside the scope of the Act altogether.

The final two allegations concern the duty of the courts to follow up when a juror is not qualified to serve or when a questionnaire is not fully completed. *See* Idaho Code § 2-209(1) (“the administrative district judge or administrative district judge’s designee, upon request . . . or on its own initiative, shall determine on the basis of information provided on the qualification questionnaire” whether a juror is disqualified); *and see* § 2-208(3) (“if it appears that there is an omission. . . the clerk or the jury commissioner shall again send the form with instructions. . . to make the necessary addition[.]”).

Defendant alleges that one of the grand jurors submitted an incomplete questionnaire and suggests that this somehow violated the Act. But the submission of an incomplete form is not a

violation of the Act. In fact, the Act contemplates that incomplete forms will be submitted, in which case the statute requires only that the jury commissioner “again send the form with instructions to the prospective juror to make the necessary addition, clarification, or correction and to return the form to the jury commission within ten (10) days after its second mailing.” I.C. § 2-208(3). Notably, the statute requires no additional follow up after the jury commissioner simply sends out the form a second time. That means there are two problems with Defendant’s incomplete form theory. First, just as with the check-box allegation above, the defense’s affidavit does not even allege that the jury commissioner failed to follow this process in response to the incomplete questionnaires, and thus Defendant is not entitled to a stay. *See* I.C. § 2-213(2) (requiring for a stay a “sworn statement of facts which, if true, would constitute a substantial failure to comply with this chapter”). Second, even if that allegation had been made, the jury commissioner’s mere failure to conduct the ministerial task of sending the questionnaire out a second time cannot accurately be described as a “substantial failure to comply” with the statute. *Id.*

As to the allegation that a grand juror checked a box indicating that he or she did not comprehend the English language, it is entirely accurate that an individual who *actually* cannot comprehend the English language is not qualified to sit on a grand jury. *See* Idaho Code § 2-209(1)(a) (setting forth the requirement that jurors read, speak, and understand the English language). And, the Act provides a process by which the Court may determine the qualification of grand jurors either upon request or upon its own initiative. Idaho Code § 2-209(1).

That this grand juror was presumably able to otherwise complete the questionnaire form entirely in English, and to participate in the grand jury proceedings, demonstrates that the individual merely checked the wrong box of a lengthy form. More importantly, however, the defense does not even allege that the administrative district court judge or designee failed to follow

up on this particular questionnaire. Idaho Code § 2-209(2)(b). Thus, the Defendant has not alleged any violation of the Act, let alone a substantial one.

CONCLUSION

Most of the allegations submitted by the Defendant fall entirely outside of the Uniform Jury Selection and Service Act. The few that remain do not factually allege a “substantial failure” to comply with the Act. The Court should decline to indulge the Defendant’s already-stated intention to buy more time to engage in various litigation strategies. *Def. Mo. to Stay*, p. 2-3. This motion, like his last, should be denied.

RESPECTFULLY SUBMITTED this 11th day of August, 2023.



William W. Thompson, Jr.
Prosecuting Attorney



Ingrid Batey
Special Assistant Attorney General

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing OBJECTION TO SECOND MOTION TO STAY 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 11th day of August, 2023.


