LATAH COUNTY PROSECUTOR'S OFFICE
WILLIAM W. THOMPSON, JR., ISB 2613
PROSECUTING ATTORNEY
JEFF NYE, ISB 9238
SPECIAL ASSISTANT ATTORNEY GENERAL
Latah County Courthouse
P.O. Box 8068
Moscow, ID 83843
Phone: (208) 883-2246
paservice@latah.id.us

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 MOTION TO DISMISS INDICTMENT ON GROUNDS OF ERROR IN GRAND JURY INSTRUCTIONS

The State submits this objection to address Defendant's assertion that the standard of proof in a grand jury proceeding is beyond a reasonable doubt. Far from novel, Defendant's argument has made numerous appearances throughout the state in recent years. Even those pushing this jarring theory are forced to concede "the whole of modern jurisprudence on this issue is against it." (Mot. at 6.) And, to the State's knowledge, every court in the state that has addressed this argument has soundly rejected it. (*See, e.g.*, Opinion, *State v. Williams*, Case No. CR28-22-18387 (March 28, 2023) (Duggan, J.) attached as Exhibit A; Memorandum Decision, *State v. Peone*, Case No. CR28-22-8343 (Dec. 22, 2022)

(Meyer, J.) attached as Exhibit B; Memorandum Decision, *State v. Rodriguez*, Case No. CR14-20-22902 (May 21, 2021) (Petty, J.) attached as Exhibit C.) For the reasons explained below, the law requires this Court to join that growing list of jurists.[1]

A. The Idaho Supreme Court has held probable cause is the correct standard of proof for a grand jury.

Defendant's argument that the beyond a reasonable doubt standard applies to grand jury proceedings is in direct conflict with Idaho Supreme Court precedent. Defendant seems to acknowledge as much but asks this Court "to recognize" what he claims is "the long string of error that lead [sic] us here." (Mot. at 21.) Defendant's request ignores one of the most basic tenants of our legal system: the Idaho Supreme Court "has been and remains the final arbiter of Idaho rules of law." *State v. Guzman*, 122 Idaho 981, 986-87, 842 P.2d 660, 665-66 (1991). The Idaho Supreme Court has declared that "[t]he primary purpose of a grand jury proceeding is to . . . determine probable cause." *State v. Edmonson*, 113 Idaho 230, 234, 743 P.2d 459, 463 (1987). This Court is duty-bound to apply that controlling precedent and reject Defendant's argument to the contrary.

Defendant claims that the court's numerous probable cause statements in *Edmonson* were "dicta." (Mot. at 12-13.) Nonsense. A statement from the Idaho Supreme Court is only dicta "[i]f the statement is not necessary to decide the issue presented." *State v. Hawkins*, 155 Idaho 69, 74, 305 P.3d 513, 518 (2013); *see Seminole Tribe v. Florida*, 517 U.S. 44, 67 (1996) ("When an opinion issues for the Court, it is not only the result but also those portions

[1] The State incorporates as part of its objection the reasoning in the decisions attached as Exhibits A, B, and C.

of the opinion necessary to that result by which we are bound."). The statements in *Edmonson* that probable cause is the standard of proof for grand jury proceedings were necessary to at least two of the court's holdings.

First, the court held a prosecutor's decision to use a grand jury rather than a preliminary hearing does not violate equal protection. Central to the court's rationale was the determination that a grand jury proceeding and a preliminary hearing serve the same purpose and have the same standard of proof:

> The purpose of a grand jury proceeding and a preliminary hearing is to determine probable cause. Any advantage that a preliminary hearing affords a defendant is purely incidental to that purpose. The independent grand jury's function would be duplicated by requiring a subsequent preliminary hearing.

113 Idaho at 234, 743 P.2d at 463.

Defendant suggests this holding is dicta because the court "note[d]" that "Edmonson did not request a preliminary hearing." *Id.* at 233, 743 P.2d at 462. Despite acknowledging it could have disposed of the case on that basis, the court "address[ed] the arguments raised by Edmonson" because of "the important constitutional issues at stake." *Id.* The court thus saw the equal protection claim as properly before it and resolved the issue by addressing the merits of Edmonson's claim. *See id.* at 235, 743 P.2d at 464 ("We accept the above reasoning as persuasive and *hold* that a prosecutor may proceed by either alternative—indictment or information." (emphasis added)). Moreover, Idaho's appellate courts have repeatedly applied *Edmonson*'s equal protection holding as binding precedent, which means this Court must do the same. *See State v. Odiaga*, 125 Idaho 384, 389, 871 P.2d 801, 806 (1994) ("In [*Edmonson*], this Court specifically held that the prosecutor can use either a grand jury

proceeding or a preliminary hearing before an impartial magistrate to initiate criminal proceedings."); *State v. Nelson*, 131 Idaho 210, 213, 953 P.2d 650, 654 (Ct. App. 1998) (finding "the reasoning presented in *Edmonson* to be dispositive" on the issue of whether defendant had a right to a preliminary hearing); *State v. Martinez*, 128 Idaho 104, 111, 910 P.2d 776, 783 (Ct. App. 1995) ("Moreover, as held in *Edmonson*, a defendant indicted by a grand jury is not entitled to a preliminary hearing."); *State v. Vaughn*, 124 Idaho 576, 584, 861 P.2d 1241, 1249 (Ct. App. 1993) ("[O]ur Supreme Court has held that, where a defendant has been indicted by a grand jury, the defendant is not afforded a right to a preliminary hearing." (citing *Edmonson*, 113 Idaho at 232-33, 743 P.2d 461-62)).

Second, the *Edmonson* court decided, as a matter of first impression, that an indictment will be sustained by a reviewing court when improper evidence is excluded and probable cause remains:

> The purpose of the grand jury proceeding is to determine whether *sufficient probable cause exists* to bind the defendant over for trial. The determination of guilt or innocence is saved for a later day. As long as the grand jury has received legally sufficient evidence which in and of itself supports a finding of probable cause it is not for an appellate court to set aside the indictment.

Id. at 236-37, 743 P.2d at 465-66 (emphasis added). This process of review would make no sense were the correct standard of proof for a grand jury anything other than probable cause.

In any event, post-*Edmondson*, the Idaho Supreme Court has consistently applied the probable cause standard to evidence presented to the grand jury. *See State v. Martinez*, 125 Idaho 445, 448-49, 872 P.2d 708, 711-12 (1994) (citing Idaho Code § 19-1107 and then holding there was "sufficient independent evidence to support a finding of probable cause and therefore this Court will not set aside the indictment"); *State v. Jones*, 125 Idaho 477,

483-84, 873 P.2d 122, 128-29 (1994) ("Because there is independent legal evidence to support a finding of probable cause and because the totality of the circumstances at the grand jury proceeding do not demonstrate prejudice, there is no basis for dismissal of the indictment."). The Idaho Court of Appeals has done the same, *see, e.g.*, *State v. Marsalis*, 151 Idaho 872, 877-78, 264 P.3d 979, 984-85 (Ct. App. 2011), and "all tribunals inferior to the Court of Appeals are obligated to abide by decisions issued by the Court of Appeals," *see Guzman*, 122 Idaho at 986, 842 P.2d at 665. In short, it is black letter law in Idaho that the standard of proof for indictment by a grand jury is probable cause.

B. Section 19-1107 sets the standard of proof for grand juries at probable cause.

Even if this Court were writing on a clean legal slate, the statute relied on by Defendant sets the standard of proof for a grand jury at probable cause. Statutory interpretation begins "with the statute's plain language." *State v. Wilson*, 165 Idaho 64, 67, 438 P.3d 302, 305 (2019). "The statute is considered as a whole, and words are given 'their plain, usual, and ordinary meanings.'" *Id.* (quoting *State v. Owens*, 158 Idaho 1, 3, 343 P.3d 30, 32 (2015)). The Idaho Supreme Court has also "adopted the rule that '[w]hen a statue and rule can be reasonably interpreted so that there is no conflict between them, they should be so interpreted rather than interpreted in a way that results in conflict.'" *State v. Weigle*, 165 Idaho 482, 486 n.4, 447 P.3d 930, 934 n.4 (2019) (quoting *State v. Johnson*, 145 Idaho 970, 974, 188 P.3d 912, 916 (2008)).

Idaho Code § 19-1107 and Idaho Criminal Rule 6.5(a) share the same title and address the same issue: "Sufficiency of Evidence to Warrant Indictment." The rule explicitly sets the standard of proof at probable cause. *See* I.C.R. 6.5(a). The statute can—and therefore

must—be read to do the same. *See State v. Garner*, 161 Idaho 708, 711, 390 P.3d 434, 437 (2017) ("Statutes and rules that can be read together without conflicts must be read in that way.").

The plain language of the statute states: "The grand jury ought to find an indictment when all the evidence before them, taken together, if unexplained or uncontradicted, would, in their judgment, warrant a conviction by a trial jury." I.C. § 19-1107. The Idaho Supreme Court has already rejected Defendant's claim that that language requires the grand jury to find the suspect guilty beyond a reasonable doubt. *See Gasper v. Seventh Jud. Dist.*, 74 Idaho 388, 395, 264 P.2d 679, 683 (1953) (observing that an instruction setting the standard of proof for the grand jury as beyond a reasonable doubt "calls for greater degree of proof to justify an indictment than [I.C. § 19-1107] requires"). To the extent § 19-1107 sets a standard of proof, the phrases "in their judgment" and "warrant a conviction by a trial jury" indicate the standard of proof is much different than Defendant opines.

Section 19-1107 emphasizes that whether sufficient evidence has been presented for an indictment is left to the judgment of the grand jury. The phrase "in their judgment" must be given more effect than just dictating who makes the decision, which is already clear from other language in the statute. *See* I.C. § 19-1107 ("The *grand jury* ought to find an indictment . . . ."); *see also State v. Nordquist*, 309 N.W.2d 109, 117 (N.D. 1981) (emphasizing the language of a nearly identical North Dakota statute "reflects the Legislature's intent to allow the grand jury to determine whether or not the evidence put before it . . . could withstand the test of a trial"). The practice of leaving the sufficiency of evidence question solely to the judgment of the grand jury is consistent with the historical practice of courts refusing to

inquire into the sufficiency of the evidence presented to a grand jury absent an allegation that *no evidence* was presented. *See, e.g.*, *Greenberg v. Sup. Ct. of S.F.*, 121 P.2d 713, 715 (Cal. 1942) (discussing the "settled" law "in most jurisdictions" that "[i]f there is *some evidence* to support the indictment the courts will not inquire into its sufficiency, but the lack of *any evidence* conclusively establishes that the grand jury has exceeded its authority in returning an indictment" (emphases added)).

Moreover, "[b]y including the phrase 'warrant a conviction by a trial jury,' the Legislature did not intend to equate a grand jury proceeding with a trial." *Cummiskey v. Sup. Ct.*, 839 P.2d 1059, 1066 (Cal. 1992). As defined at the time the statute was adopted, the word "warrant" meant "[t]o authorize; to give authority or power to do or forbear anything, by which the person authorized is secured or saved harmless from any loss or damage by the act." Goodrich, Chauncey A., "An American Dictionary of the English Language," G. and C. Merriam, Springfield Mass., (1862), p. 1249. It has a consistent definition today: "1. a) authorization or sanction, as by a superior or the law, b) justification or reasonable grounds for some act, course, statement, or belief . . . ." Webster's New World Dictionary, 2d College Ed., 1980.

These phrases, taken together, indicate that the legislature never intended that the grand jury would determine whether the suspect is guilty of the alleged crime beyond a reasonable doubt. Rather, the legislature left to the grand jury to determine "*in their judgment*" whether reasonable grounds exist for a future trial jury to convict the suspect. I.C. § 19-1107 (emphasis added). Consistent with the statutory language, Rule 6.5(a) directs grand jurors how they should exercise their legislatively empowered judgment. The grand

jury must determine whether "an offense has been committed" and whether "there is probable cause to believe that the accused committed it." I.C.R. 6.5(a). Because the statue and the rule can be read together to set the standard of proof for grand juries at probable cause, they "must be read in that way." *Garner*, 161 Idaho at 711, 390 P.3d at 437.

Defendant argues the precursor to I.C. § 19-1107 came from a California statute and must be interpreted consistent with the meaning California's statute had at the time, and—according to Defendant—the California Supreme Court read its statute to impose a beyond a reasonable doubt standard to grand jury proceedings. (Mot. at 4-7 (quoting *People v. Tinder*, 19 Cal. 539, 542 (1862)). But that would be news to the California Supreme Court, who has rejected the very interpretation of *Tinder* Defendant relies on here. *See Cummiskey* 839 P.2d at 1066. As the California Supreme Court explained, "the *Tinder* court's reference to probable cause was a comment on the quality of *evidence* required to return an indictment, not on the standard of proof for grand jury proceedings." *Id.* (emphasis in original). Unlike *Tinder*, *Cummiskey* addressed the standard of proof for grand jury proceedings in California and held California's version of I.C. § 19-1107 requires a finding of probable cause. *Id.*

Moreover, the assertion that Idaho incorporated sub silentio a beyond a reasonable doubt standard for grand juries when the Idaho Constitution was adopted would be a surprise to Idaho's founding fathers. During the debate on Article I, Section 8, William H. Clagett, the President of the Idaho Constitutional Convention, advocated for keeping the grand jury system and stated the standard of proof for grand juries in Idaho is probable cause: "[T]hat is all the grand jury is entitled to do, to say that there is probable cause to believe the man is guilty." Proceedings and Debates of the Constitutional Convention of Idaho 1889, p.266

(I.W. Hart ed. 1912). No one present at the debate offered a different opinion—a strange reaction from a group allegedly in the midst of setting the standard of proof for grand juries at beyond a reasonable doubt. *See State v. Clarke*, 165 Idaho 393, 397, 446 P.3d 451, 455 (2019) (explaining the "best resource" for determining the intent of the framers "is the compilation of the Proceedings and Debates of the Constitutional Convention of Idaho 1889" and stating statutes in existence at the time of the adoption of Idaho's Constitution and the common law need only be examined "[i]n the absence of the words of the framers").

C. Even if Idaho Code § 19-1107 and Rule 6.5(a) conflict, the rule controls and the result is the same.

Even if I.C. § 19-1107 and Rule 6.5(a) conflict, the rule controls and the standard for grand juries is probable cause. The Idaho Supreme Court "has the inherent power to make rules governing the procedure in all Idaho's courts." *Talbot v. Ames Constr.*, 127 Idaho 648, 651, 904 P.2d 560, 563 (1995). When a rule and statute conflict, the question then becomes whether the subject of the law is substantive or procedural. "Substantive law prescribes norms for societal conduct and punishments for violations thereof. It thus creates, defines, and regulates primary rights. In contrast, practice and procedure pertain to essentially mechanical operations of the courts by which substantive law, rights, and remedies are effectuated." *State v. Abdullah*, 158 Idaho 386, 483, 348 P.3d 1, 98 (2015).

As a general matter, "questions about standards of proof have long been recognized as procedural, not substantive, across a broad range of legal fields." *United States v. Montalvo*, 331 F.3d 1052, 1061 (9th Cir. 2003) (Kazinski, J., concurring); *see, e.g.*, *Carroll v. MBNA America Bank*, 148 Idaho 261, 267, 220 P.3d 1080, 1086 (2009) (explaining

"procedural matters . . . include . . . sufficiency of evidence"). Specific to the criminal context, a procedural rule is one that "merely raises the possibility that someone convicted with use of the invalidated procedure might have been acquitted otherwise." *Schriro v. Summerlin*, 542 U.S. 348, 353 (2004). A rule is substantive only "if it alters the range of conduct or the class of persons that the law punishes." *Id.* The standard of proof for a grand jury proceeding falls on the procedural side of the line because it does not dictate the range of conduct the law punishes but only affects the likelihood that such conduct will result in indictment.[2]

Defendant suggests that I.C. § 19-1107 is somehow insulated from the procedural versus substantive test because it was in effect when Idaho adopted a constitution. (Mot. at 15.) Not so. The Idaho Supreme Court will ignore as a "nullity" a statute purporting to govern procedure regardless of whether it was "codified long before Idaho's Constitution was created" or during the most recent legislative session. *Weigle*, 165 Idaho at 486-87, 447 P.3d at 934-35.

Thus, in the State's view, I.C. § 19-1107 and Idaho Criminal Rule 6.5(a) can be read without conflict and set probable cause as the standard of proof for grand juries. But even if a conflict exists, the rule controls and the standard of proof for grand juries in Idaho is still probable cause.

---

[2] Defendant's reliance on *Garrett v. Moore-McCormack Co.*, 317 U.S. 239 (1942) and similar cases is misplaced. (Mot. at 14-15.) The cases Defendant cites addressed the *burden* of proof, not the *standard* of proof. Moreover, as Defendant acknowledges, the Idaho Supreme Court has decided the issue differently, *see Carroll*, 148 Idaho at 267, 220 P.3d at 1086, and the question of whether the standard of proof for state grand juries in Idaho is procedural or substantive is a question of state law.

D. Defendant asserts a theory the law does not allow and seeks a remedy this Court cannot grant.

Defendant's motion should be denied as it rests entirely on an erroneous legal theory, but it has other problems as well. As Defendant acknowledges, the statutes governing grand jury proceedings do not allow for a challenge to the instructions given to the jury. (Mot. at 17.) The statute that sets out the grounds on which a defendant can seek to set aside an indictment does not mention instructions to the grand jury, *see* I.C. § 19-1601, and the inclusion of specific grounds to challenge the indictment in the statute "excludes the consideration of any other." *State v. Arregui*, 44 Idaho 43, 254 P. 788, 796 (1927).

Defendant claims the Idaho Supreme Court has "adopted" the theory that a defendant can challenge the grand jury instructions (Mot. at 17), but he cites for this rule a passage in *Gasper* that he previously labeled "dicta" because it did not suit his argument (Mot. at 11-12). It seems to the State that dicta for the goose is dicta for the gander. But assuming the Idaho Supreme Court did what Defendant claims in *Gasper*, the court merely allowed a defendant the opportunity to make "a *showing* of *prejudice*." *Gasper*, 74 Idaho at 396, 264 P.2d at 683 (emphases added). This Defendant cannot do. In fact, he fails even to allege that the grand jury would not have indicted him on a beyond a reasonable doubt standard of proof. *Cf. Edmonson*, 113 Idaho at 237, 743 P.3d at 466 (explaining that, in the grand jury context, "prejudicial effect" comes only in the "but for" flavor).

Instead, Defendant tries to short circuit his need to show prejudice by claiming "[w]here a jury has been misled as to the standard to the defendant's detriment, courts find fundamental error, because the error goes to the foundation of the case and takes away an

essential right." (Mot. at 17.) Defendant fails to point out, however, that every case he cites is referring to the *trial jury* being improperly instructed on the beyond a reasonable doubt standard of proof. *See State v. Erickson*, 148 Idaho 679, 685, 227 P.3d 933, 939 (Ct. App. 2010). And as the courts in those cases explain, improperly instructing the jury in that context is fundamental error because "[t]he requirement that the State prove every element of a crime beyond a reasonable doubt is grounded in the constitutional guarantee of due process." *Id.* Not even Defendant's unorthodox theory goes so far as to suggest the constitutional guarantee of due process compels the use of the beyond a reasonable doubt standard of proof in the grand jury.[3]

Moreover, Defendant's suggestion that some errors in the grand jury process necessitate dismissal of the indictment without any inquiry into the potential prejudicial effect cannot be squared with Idaho Supreme Court precedent. The high court has held that *any* error in the grand jury proceeding is harmless once the defendant has been afforded a fair trial. *See State v. Huckabay*, 168 Idaho 117, 122-23, 480 P.3d 771, 776-77 (2021) (refusing even to consider defendant's claim that the "prosecutor erroneously instructed the grand jury" because "[a]lleged errors in a grand jury proceeding will not be examined on appeal where the defendant has been found guilty following a fair trial").

Finally, Defendant's explanation of what would happen were this Court to set aside

[3] The closest Defendant comes is to argue that the precursor to I.C. § 19-1107 predated Idaho's Constitution and thus it "was incorporated into" Article I, Section 8. Unfortunately for Defendant, that is not how it works. *See State v. Clarke*, 165 Idaho 393, 397, 446 P.3d 451, 455 (2019) ("[P]reexisting statutes and the common law may be used to help inform our interpretation of the Idaho Constitution, but they are not the embodiment of, *nor are they incorporated within,* the Constitution." (emphasis added)).

the indictment is misleading. (Mot. 21.) He suggests this Court could simply treat the Indictment as a Presentment, but he cites no authority for the proposition that this Court can do so. (Mot. at 18-21.) He then suggests that if the Court decides to set aside the Indictment it would "hav[e] to determine whether the matter may be resubmitted to the grand jury." (Mot. at 21.) The statutes Defendant relies on do not say what Defendant claims. Those statutes allow the court to "direct[] that the case be resubmitted to the same or another grand jury." I.C. § 19-1603; *see* I.C. § 19-1604 ("If the court directs the case to be resubmitted . . . ."). But neither statute even purports to empower this Court to prohibit the State from presenting the case to a grand jury again. The law expressly states the opposite: "An order to set aside an indictment, as provided in this chapter, is no bar to a future prosecution for the same offense." I.C. § 19-1605. And whether the State initiates that future prosecution via a complaint or indictment is left exclusively to the prerogative of the prosecuting attorney. *See Edmonds*, 113 Idaho at 232, 743 P.2d at 461.

CONCLUSION

This Court should deny Defendant's motion to dismiss the indictment because the standard of proof that applies to grand juries in Idaho is probable cause.

RESPECTFULLY SUBMITTED this 16th day of August, 2023.

William W. Thompson, Jr.
Prosecuting Attorney

Jeff Nye
Special Assistant Attorney General

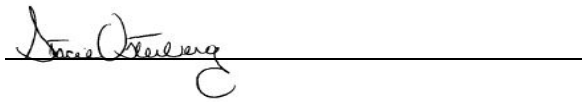
CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the OBJECTION TO DEFENDANT'S MOTION TO DISMISS INDICTMENT ON GROUNDS OF ERROR IN GRAND JURY INSTRUCTIONS 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
X E-filed & Served / E-mailed
☐ Faxed
☐ Hand Delivered

Dated this 16th day of August, 2023.



Filed:03/28/2023 14:57:44
First Judicial District, Kootenai County
Jennifer Locke, Clerk of the Court
By: Deputy Clerk - Schertz, Alyssa

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO, Plaintiff, v. WARREN CLAY WILLIAMS, Defendant.	CASE NO. CR28-22-18387 OPINION & ORDER RE: MOTION TO DISMISS

MATTER BEFORE THE COURT

Defendant Warren Williams moves to dismiss, alleging irregularities in the grand jury proceedings in this case. A hearing was conducted on March 21, 2023, and the matter was taken under advisement. For the reasons stated below, defendant's motion is denied.

BACKGROUND

At the grand jury proceedings in this matter, the state instructed the grand jury as follows:

> The burden of proof is probable cause. Probable cause exists when the grand jury has before it such evidence as would lead a

EXHIBIT A

> reasonable person to believe an offense has been committed, and that the accused party has probably committed the offense.

Transcript at 14.

STANDARDS

State v. Marsalis, 151 Idaho 872, 264 P.3d 979 (Ct. App. 2011) sets out standards applicable to motions to dismiss for irregularities in grand jury proceedings as follows:

> The decision to grant or deny a motion to dismiss an indictment based on irregularities in grand jury proceedings is reviewed for an abuse of discretion. *State v. Bujanda–Velazquez*, 129 Idaho 726, 728, 932 P.2d 354, 356 (1997). However, alleged defects in the grand jury process generally will not be reviewed on appeal at all after a defendant has been convicted in a fair trial on the merits. *State v. Grazian*, 144 Idaho 510, 517, 164 P.3d 790, 797 (2007); *State v. Smith*, 135 Idaho 712, 716–17, 23 P.3d 786, 790–91 (Ct.App.2001); *State v. Nelson*, 131 Idaho 210, 215, 953 P.2d 650, 655 (Ct.App.1998); *State v. Kilby*, 130 Idaho 747, 751, 947 P.2d 420, 424 (Ct.App.1997). . . .
>
> A collection of statutes and rules govern Idaho grand jury proceedings. *Idaho Code § 19–1107 states, "The grand jury ought to find an indictment when all the evidence before them, taken together, if unexplained or uncontradicted, would, in their judgment, warrant a conviction by a trial jury."* Idaho Criminal Rule 6.6(a) discusses the quantum of evidence required to warrant an indictment:
>
> > If it appears to the grand jury after evidence has been presented to it that an offense has been committed and that there is *probable cause* to believe that the accused committed it, the jury ought to find an indictment. *Probable cause* exists when the grand jury has before it such evidence as would lead a reasonable person to believe that an offense has been committed and that the accused party has probably committed the offense.
>
> When conducting a review of the propriety of the grand jury proceeding, our inquiry is two-fold. *State v. Martinez*, 125 Idaho 445, 448, 872 P.2d 708, 711 (1994). First, we must determine whether, independent of any inadmissible evidence, the grand jury received legally sufficient evidence to support a finding of *probable cause*. *Id.; State v. Jones*, 125 Idaho 477, 483, 873 P.2d 122, 128 (1994); *State v. Edmonson*, 113

Idaho 230, 236, 743 P.2d 459, 465 (1987). In making this determination, every legitimate inference that may be drawn from the evidence must be drawn in favor of the indictment. *State v. Brandstetter*, 127 Idaho 885, 887, 908 P.2d 578, 580 (Ct.App.1995). Second, even if such legally sufficient evidence was presented, the indictment must be dismissed if prosecutorial misconduct in submitting illegal evidence was so egregious as to be prejudicial. *Martinez*, 125 Idaho at 448, 872 P.2d at 711; *Jones*, 125 Idaho at 483, 873 P.2d at 128; *Edmonson*, 113 Idaho at 237, 743 P.2d at 466. "Prejudicial effect" means "the defendant would not have been indicted but for the misconduct." *Martinez*, 125 Idaho at 448, 872 P.2d at 711; *Edmonson*, 113 Idaho at 237, 743 P.2d at 466. Absent a showing of prejudice by the defendant, we will not second guess the grand jury. *Martinez*, 125 Idaho at 448–49, 872 P.2d at 711–12. To determine whether misconduct is so grievous as to be prejudicial and thus to require dismissal, an appellate court must balance the gravity and seriousness of the misconduct against the extent of the evidence supporting the indictment. *Id*. at 449, 872 P.2d at 712; *Edmonson*, 113 Idaho at 237, 743 P.2d at 466. The *Edmonson* Court further elaborated on the applicable balancing test:

> [In the sense of a grand jury proceeding, "prejudicial effect" means the defendant would not have been indicted but for the misconduct.] To determine whether misconduct gives rise to a dismissal, a reviewing court will have to balance the gravity and the seriousness of this misconduct with the sufficiency of the evidence supporting the *probable cause* finding. At one extreme, the misconduct can be so outrageous that regardless of the extent of *probable cause* evidence, dismissal will be required. At the other extreme, the misconduct may be so slight, that it becomes unnecessary to question the independent judgment of the grand jury. In the middle of these extremes, the court must examine the totality of the circumstances to determine whether the indictment should be dismissed. . . . [T]he burden rests with the criminal defendant to make an initial showing that the misconduct rises to the level of prejudice. Absent the showing of prejudice, a reviewing court will not second guess the grand jury. However, once the defendant does affirmatively prove prejudice, the court must dismiss.

Edmonson, 113 Idaho at 237, 743 P.2d at 466. Generally, prosecutorial misconduct will require dismissal only if it reaches the level of a constitutional due process violation. *Id*. . . .

[W]e assess the grand jury proceedings in light of the State's burden to present evidence showing *probable cause* . . . .

Id. 151 Idaho at 875–77, 264 P.3d at 982–84 (emphasis added) (footnote omitted). After *Marsalis*, former I.C.R. 6.6(a) was renumbered 6.5(a) and modified slightly as follows:

> If the grand jury finds, after evidence has been presented to it, that an offense has been committed and that there is probable cause to believe that the accused committed it, the jury ought to find an indictment. Probable cause exists when the grand jury has before it evidence that would lead a reasonable person to believe an offense has been committed and that the accused party has probably committed the offense.

"[W]here legally sufficient evidence will sustain an indictment, improperly admitted *hearsay* evidence will not overturn the indictment." *State v. Edmonson*, 113 Idaho 230, 237, 743 P.2d 459, 466 (1987) (emphasis added) cited in *Marsalis.*

ISSUE

The issue presented is whether the state erred in instructing the grand jury on the probable cause burden of proof. This Court determines that the state did not err.

ANALYSIS

Defendant argues that the state erred in instructing the grand jury that the applicable burden of proof was probable cause, when the applicable standard instead was proof beyond a reasonable doubt. Defendant has presented no authority on point. Defendant cites I.C. § 19–1107 which states:

> The grand jury ought to find an indictment when all the evidence before them, taken together, if unexplained or uncontradicted, would, in their judgment, warrant a conviction by a trial jury.

Proof beyond a reasonable doubt is not mentioned in this provision.

The Idaho Supreme Court has expressly rejected the argument that defendant asserts here. In *State v. Edmonson*, 113 Idaho 230, 743 P.2d 459 (1987) the Idaho Supreme Court stated:

> [T]he prosecutor directed the grand jury that it should not indict unless all the elements of an alleged crime are proven beyond a reasonable doubt. This is a much higher standard than is required by Idaho law.

Id. 113 Idaho at 238, 743 P.2d at 46.

Similarly, in *Gasper v. Dist. Ct. of Seventh Jud. Dist., in & for Canyon Cty.*, 74 Idaho 388, 264 P.2d 679 (1953) the Idaho Supreme Court stated:

> [P]laintiff urges as error the following portion of the charge:
>
> > . . . .
> >
> > It is . . . your duty to see to it that the innocent are not compelled to go under public trial in open court before a trial jury unless you are satisfied beyond a reasonable doubt from the evidence from the government presents that the defendant is guilty. . . .
>
> [W]e observe that the charge complained of, though erroneous, is more favorable to one accused before a grand jury than would be a charge embodying the statute. Section 19–1107, I.C. . . .
>
> . . . .
>
> The charge as given calls for a greater degree of proof to justify an indictment than the statute requires.

Id. 74 Idaho at 395, 264 P.2d at 683.

The state cites *State v. Brandstetter*, 127 Idaho 885, 908 P.2d 578 (Ct. App. 1995) wherein the Idaho Court of Appeals essentially indicated that the standard of proof applicable to grand jury proceedings under I.C. § 19–1107 is probable cause. The court stated:

> In considering a motion to dismiss an indictment *under I.C.R. 6.61 and I.C. § 19–1107*, the district court sits as a reviewing court, and it is the grand jury that is the factfinder. In a grand jury proceeding, the district court may set aside the indictment if, given the evidence before the grand jury, the court concludes that the *probable cause* is insufficient to lead a reasonable person to believe that the accused committed the crime. I.C.R. 6.6(a); *State v. Jones*, 125 Idaho 477, 482–83, 873 P.2d 122, 127–28 (1994).

Id. 127 Idaho at 887, 908 P.2d at 580 (emphasis added) (footnote omitted). See also *Marsalis*, *State v. Martinez*, 125 Idaho 445, 448, 872 P.2d 708, 711 (1994) and *State v. Jones*, 125 Idaho 477, 873 P.2d 122 (1994), overruled on other grounds by *State v. Montgomery*, 163 Idaho 40, 408 P.3d 38 (2017). Since the applicable burden of proof applicable to grand jury proceedings under I.C. § 19–1107 is probable cause, the state did not err in instructing the grand jury on the probable cause standard.

Additionally, Defendant's argument and briefing by Mr. Benjamin Onosko in the case at bar was recently reviewed in substantial form by District Judge Cynthia Meyer of the First Judicial District, wherein Mr. Onosko proffered the same argument by way of briefing in *State v. Cassadie Peone CR-28-22-8343.* This court adopts and incorporates without repetition herein, the analysis authored therein by Judge Meyer in her December 22, 2022 Memorandum Decision and Order on Defendant's First and Second Motion to Dismiss, pages 5-13, specifically and finds it to be persuasive authority.

ORDER

IT IS THEREFORE ORDERED: defendant's motion is DENIED.

DATED this _____ day of March, 2023.

3/28/2023 2:35:57 PM

BARBARA A. DUGGAN, District Judge

CERTIFICATE

I hereby certify a true and correct copy of the foregoing was sent this 28 day of March, 2023, as follows:

Benjamin M. Onosko
Deputy Kootenai County Public Defender
P.O. Box 9000
Coeur d'Alene, ID 83816
E-mail address: pdfax@kcgov.us
Via: _____

Molly R. Nivison
Deputy Kootenai County Prosecuting Attorney
451 N. Government Way
P.O. Box 9000
Coeur d'Alene, ID 83816
E-mail address: KCPAICOURTS@kcgov.us
Via: _____

JENNIFER LOCKE, Clerk of Court
3/28/2023 02:57 PM

By: _____
Deputy Clerk

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO, *Plaintiff,* v. CASSADIE MODESTA PEONE, *Defendant.*	**CASE NO. CR28-22-0008343** **MEMORANDUM DECISION AND ORDER ON DEFENDANT'S FIRST AND SECOND MOTION TO DISMISS INDICTMENT**

Defendant's First and Second Motion to Dismiss Indictment came on for hearing before the Honorable Cynthia K.C. Meyer on November 22, 2022. Benjamin Onosko, Deputy Public Defender, represented the Defendant. Adam Johnson, Deputy Prosecuting Attorney, represented the State. For the reasons stated within this memorandum decision, (1) Defendant's First Motion to Dismiss Indictment is denied, and (2) Defendant's Second Motion to Dismiss Indictment is denied.

I. FACTUAL AND PROCEDURAL BACKGROUND

The following facts are undisputed. On August 31, 2022, the State convened a Grand Jury to consider a three-count Indictment against the Defendant, Cassadie Peone. Defendant was accused of COUNT I, POSSESSION OF A CONTROLLED SUBSTANCE, in violation of I.C §

EXHIBIT B

37-2732(c)(1); count II, OPERATING VEHICLE WITHOUT OWNER'S CONSENT, in violation of I.C § 49-227, and COUNT III, POSSESSION OF A STOLEN VEHICLE, in violation of I.C. § 49-228. Before and after evidence was presented, the State instructed the grand jury as to the applicable probable cause standard and defined that term pursuant to Idaho Criminal Rule 6.5(a).

At the start of the hearing, the presiding Grand Juror asked the prosecutor a question regarding the distinction between stealing a car, and possessing a stolen vehicle, and the prosecutor answered that question. The State then called Mr. McGlone as a witness. Mr. McGlone testified by Zoom.

Mr. McGlone testified concerning the theft of his truck. He also testified about going to the Post Falls Walmart and seeing his truck. He was then asked whether he drove his vehicle home that evening or not, and he testified he did not. The State then asked him "why," and Mr. McGlone testified "there was Fentanyl found inside the vehicle, and myself and the police officers did not recommend, uh, me getting inside of the vehicle because of possible exposure." The State then asked Mr. McGlone if he was still able to drive his vehicle. Mr. McGlone testified he was not, and when the State asked why he responded, "so the insurance considered the vehicle a total loss, uh, because of the, um, risk involved with releasing that vehicle back out in the market once there had been Fentanyl reported inside of the vehicle, so they, uh, had to total the vehicle."

The State next called Officer Pierson. Officer Pierson is a K-9 handler, although no K-9 was used in this case. The State asked the officer if she had any Fentanyl as a "drug aid" to use in training her dog. The officer testified that she does not, and when asked why, she responded,

"Fentanyl is . . . very easy to be exposed [to] and it be very life-threatening." Officer Pierson then testified that she reviewed security footage from Walmart, and on that footage she saw Ms.

Peone exiting Mr. McGlone's truck on the date in question. Officer Pierson also testified to meeting Mr. McGlone in the parking lot that day, and talking with him about his vehicle. The State then asked Officer Pierson what her out of court statements to Mr. McGlone were. Officer Pierson testified that she told Mr. McGlone "I would probably throw that car seat away or anything that was in the vehicle, and then I also encouraged him to not drive the truck and tow it instead of driving it until it could be professionally detailed or cleaned or decontaminated."

Officer Pierson also testified about items found inside the vehicle. The officer testified that she found a piece of tin foil with pills on it "sitting on the driver's seat." The officer testified that when she asked Ms. Peone about the pills found in the vehicle, Ms. Peone told her "they were Fentanyl Mexi pills."

After Officer Pierson testified, the prosecutor thanked her for her time, but the grand jury did not excuse her. The next witness called by the State was Ms. Martin. After Ms. Martin finished testifying, a juror asked the prosecutor "how hard would it be to get, um, Officer Pierson back?" The prosecutor told the juror it's possible, but he is guessing she went back to work, but said he could give her a call. The prosecutor then took a break so the jurors could discuss having Officer Pierson return to answer further questions from the grand jury. However, after the break, the matter was never brought up again.

At the end of the hearing, the prosecutor gave the grand jury certain jury instructions. Notably absent was any instruction telling the grand jury what the legal definition of "steal" or "stolen property" was.

On November 20, 2022, Defendant submitted her First and Second Motion to Dismiss Indictment in this criminal action. Defendant asserts (1) that the State incorrectly instructed the grand jury that the applicable evidentiary standard to return an indictment is "probable cause"

instead of "proof beyond a reasonable doubt", (2) that the Indictment is defective, as it relates to Count II, because it lacks specificity as to how the defendant caused damage to a vehicle exceeding $1,000, (3) that the Prosecuting Attorney failed to properly instruct the grand jury as to Count III, Possession of a Stolen Vehicle, and (4) that Counts II and III were not supported by sufficient probable cause because a witness testified via live video rather than in person.

The jury trial is currently scheduled for January 2023.

II. STANDARD OF REVIEW

Due to the variety of legal issues raised, the court will address the applicable standards of review under the relevant subsections within this memorandum decision.

III. DISCUSSION

A. The State properly instructed the grand jury on the applicable standard of evidence to return an indictment.

In Defendant's Second Motion to Dismiss Indictment ("Second Motion"), Defendant contends that the State erred by instructing the grand jury that the applicable evidentiary standard to return an indictment is "probable cause" instead of "proof beyond a reasonable doubt." Defendant contends that the Grand Jury was not instructed to find, and therefore could not have found, a true indictment as that term is defined by statute. Rather, the Grand Jury was instructed on the statutory standard for the finding of a presentment:

> Pertinent to Ms. Peone's case and this Motion is the difference between the two standards required to find either an indictment or presentment. The requirement for finding a presentment is "reasonable ground" to believe the defendant committed the crime. I.C. § 19-1102. While the term used is not "probable cause," it appears the two standards are one in the same. Idaho's prior statute governing the issuance of an arrest warrant also used the term "reasonable ground" in place of the current standard of "probable cause." *Compare Revised Statutes*, §7518 (1887) ("there is reasonable ground to believe that the defendant has committed it, he must issue a warrant of arrest.") with, I.C 19-506 (2022) ("A

> magistrate may issue a warrant for the arrest of the defendant only after making a determination that there is probable cause...") (emphasis added). Given that probable cause has always been the standard required for issuance of a warrant, and, that the 1887 legislature used the word "reasonable ground" as the basis upon which to issue a warrant; Defendant asserts the standard for a presentment is a finding of probable cause by the grand jury
> . . . .
> In contrast to the probable cause requirement for a presentment, in order to find an indictment a grand jury must find the evidence before it "would, in their judgment, warrant a conviction by a trial jury." The standard that would "warrant a conviction by a trial jury" is not set out in our Constitution, but was established long ago by the legislature. That standard is of course proof beyond "a reasonable doubt." I.C. § 19-2104 (2022); *Revised Statutes*, § 7858 (1887).

Second Motion at 5-6.

An appellate court reviews questions of law de novo. *State v. Lankford*, 162 Idaho 477, 492, 399 P.3d 804, 819 (2017). "When [an appellate court] addresses issues of statutory interpretation, it exercises free review because it is a question of law." *State v. Casper*, 169 Idaho 793, 503 P.3d 1009 (2022).

The court rejects Defendant's contention regarding the standard for returning an indictment because: (1) the Idaho Supreme Court has repeatedly stated that that the standard is less than "beyond a reasonable doubt," (2) Idaho Code § 19-1107 and Rule 6.5(a) can be reasonably interpreted so that there is no conflict between them, and (3) even if a conflict did exist between Idaho Code § 19-1107 and Rule 6.5(a), the Criminal Rule would control to the exclusion of § 19-1107.

1. *Idaho case law explicitly states that the standard of evidence for returning an indictment is less than "beyond a reasonable doubt."*

"Our statutory provisions relative to indictments and informations were copied in 1864 by the Idaho territorial legislature, from the laws of California which were enacted in that State in

1851." *State v. McMahan*, 57 Idaho 240, 242, 65 P.2d 156, 158 (1937). "Provisions of the Idaho Constitution must be construed in light of the law prior to their adoption," and thus "the Idaho Constitution incorporated the principles . . . in the Idaho statutory and common law in 1890 when the constitution was adopted." *State v. Green*, 158 Idaho 884, 887-888, 354 P.3d 446, 449-450.

The statute in question here, Idaho Code § 19-1107, reads in full as follows:

> The grand jury ought to find an *indictment when all the evidence before them*, taken together, if unexplained or uncontradicted, *would, in their judgment, warrant a conviction by a trial jury.*

(emphasis added). Prior to Idaho's adoption of this statute, the Supreme Court of California addressed the evidentiary standard to find an indictment under a nearly identical statute in *People v. Tinder & Smith*, 19 Cal. 539 (1862). The statute at issue was California Criminal Practice § 212, which stated that the grand jury "ought to find an indictment when all the evidence before them, taken together, is such as in their judgment would, if unexplained or uncontradicted, warrant a conviction by the trial jury." *Id.* When addressing the evidentiary standard under this statute, the Supreme Court of California stated:

> The indictment is then something more than a mere accusation based upon probable cause; it is an accusation based upon legal testimony, of a direct and positive character, and is the concurring judgment of at least twelve of the grand jurors, selected to inquire into all public offenses committed or triable within their county, that upon the evidence presented to them the defendant is guilty.

Id. (emphasis added). However, over the last 160 years since the Supreme Court of California issued their decision *Tinder & Smith*, Idaho case law has repeatedly rejected applying the proof beyond a reasonable doubt standard to grand jury indictments.

The State points out the following:

> The probable cause standard is also endorsed by decades of Supreme Court precedent. See, e.g., *State v. Edmonson*, 113 Idaho 230, 236–37, 743 P.2d 459, 465–66 (1987) ("The purpose of a grand jury

> proceeding is to determine whether sufficient probable cause exists to bind the defendant over for trial."); *State v. Martinez*, 125 Idaho 445, 448, 872 P.2d 708, 711 (1994) (applying the probable cause standard and holding that one of the roles of a court reviewing a grand jury proceeding is to "determine whether . . . the grand jury received legally sufficient evidence to support a finding of probable cause"); *State v. Jones*, 125 Idaho 477, 483, 873 P.2d 122, 128 (1994), overruled on separate grounds by *State v. Montgomery*, 163 Idaho 40, 408 P.3d 38 (2017) (same); *State v. Juhasz*, 124 Idaho 851, 853, 865 P.2d 178, 180 (Ct. App. 1993) ("An indictment will be sustained as long as the grand jury has received legally sufficient evidence which in and of itself supports a finding of probable cause."); *State v. Martinez*, 128 Idaho 104, 110, 910 P.2d 776, 782 (Ct. App. 1995) ("The purpose of both a grand jury proceeding and a preliminary hearing is to determine probable cause."); *State v. Brandstetter*, 127 Idaho 885, 887, 908 P.2d 578, 580 (Ct. App. 1995) (applying the probable cause standard); *State v. Marsalis*, 151 Idaho 872, 876, 264 P.3d 979, 983 (Ct. App. 2011) (same).

State's Brief in Opposition to Defendant's Second Motion to Dismiss at 4-5.

The first Idaho case to mention the distinction between the standard for finding a presentment under I.C. § 19-1102 and the standard for finding an indictment under § 19-1107 was *Gasper v. District Court*, 74 Idaho 388, 264 P.2d 679 (1953). In *Gasper*, the Court reviewed various motions to set aside an indictment. Relevant to this case, the Court reviewed a grand jury instructions given by the judge, including an instruction that the grand jury should not find an indictment unless "you are satisfied beyond a reasonable doubt from the evidence [that] the government presents that the defendant is guilty." *Id.* 74 Idaho at 395, 264 P.2d at 683. The Court observed "that this instruction, 'though erroneous, is more favorable to one accused before a grand jury than would be a charge embodying [§ 19-1107].'" *Id.* The Court then quoted § 19-1107, and again stated, "[t]he charge as given calls for a greater degree of proof to justify an indictment than the statute requires." *Id.* However, the Court did not provide further analysis "as to why the two standards would be different; nor does the Court even attempt to identify what the proper standard would be." *Second Motion* at 8.

Likewise in *Edmonson*, 113 Idaho 230, 743 P.2d 459 (1987), the Court stated:

> [W]e note that the prosecutor directed the grand jury that it should not indict unless all the elements of an alleged crime are proven beyond a reasonable doubt. This is a much higher standard than is required by Idaho law.

Id., at 268, 743 P.2d, at 467. However, the Court again did not state the applicable standard of evidence necessary to return an indictment, nor did it cite to Rule 6.5, which was adopted at the time of this decision.

Our stare decisis rule is clear: "[w]hen there is controlling precedent on questions of Idaho law 'the rule of stare decisis dictates that we follow it, unless it is manifestly wrong, unless it has proven over time to be unjust or unwise, or unless overruling it is necessary to vindicate plain, obvious principles of law and remedy continued injustice.'" *Planned Parenthood Great Nw. v. State,* No. 49615, 2022 WL 3335696, at *5 (Idaho Aug. 12, 2022) (quoting *Houghland Farms, Inc. v. Johnson*, 119 Idaho 72, 77, 803 P.2d 978, 983 (1990)). None of the justifications to break stare decisis apply here. In short, stare decisis "provides that today's [c]ourt should stand by yesterday's decisions." *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 135 S.Ct. 2401, 192 L.Ed.2d 463 (2015). The Supreme Court has made clear that the standard for returning and indictment is much less than proof beyond a reasonable doubt.

2. *I.C. § 19-1107 and Rule 6.5(a) can be reasonably interpreted so that there is no conflict between them.*

> When interpreting a statute, the Court begins with an examination of the literal words of the statute. The language of the statute is to be given its plain, obvious and rational meaning. Where the language of a statute is plain and unambiguous, this Court must give effect to the statute as written, without engaging in statutory construction. When a statute and a rule can be reasonably interpreted so that there is no conflict between them, they should be so interpreted rather than interpreted in a way that results in conflict.

State v. Garner, 161 Idaho 708, 710–11, 390 P.3d 434, 436–37 (2017) (internal citations and quotations omitted). At issue is whether the probable cause standard under Rule 6.5(a) and the "would warrant a conviction by a trial jury" standard under § 19-1107 are in conflict; and whether Rule 6.5(a) and § 19-1107 can be reasonably interpreted so that there is no conflict between them.

Both the Idaho Code and Idaho Criminal Rules address the sufficiency of evidence to warrant an indictment. The statute in question here, Idaho Code § 19-1107, states:

> The grand jury ought to find an *indictment when all the evidence before them*, taken together, if unexplained or uncontradicted, *would, in their judgment, warrant a conviction by a trial jury.*

(emphasis added). Idaho Criminal Rule 6.5(a) states:

> *If the grand jury finds*, after evidence has been presented to it, that an offense has been committed and *that there is probable cause to believe that the accused committed it, the jury ought to find an indictment.* Probable cause exists when the grand jury has before it evidence that would lead a reasonable person to believe an offense has been committed and that the accused party has probably committed the offense.

(emphasis added). Probable cause "is the possession of information that would lead a person of ordinary care and prudence to believe or entertain an honest and strong presumption that a person they have placed under arrest is guilty of a crime." *State v. Williams*, 162 Idaho 56, 66, 394 P.3d 99, 109 (Ct. App. 2016) (citing *State v. Julian*, 129 Idaho 133, 136, 922 P.2d 1059, 1062 (1996)). "The probable-cause standard is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances." *State v. Hunter*, 156 Idaho 568, 571, 328 P.3d 548, 551 (Ct. App. 2014). Probable cause is not measured by the same level of proof required for conviction. *Id.*

The court determines that reasonable minds may differ on how to interpret § 19-1107. The court further determines that Rule 6.5(a) and § 19-1107 can be reasonably interpreted together

without conflict. Unlike Rule 6.5(a), the language of § 19-1107 does not specify the precise quantum of evidence necessary for a grand juror to determine that the evidence presented to them warrants a conviction *by a trial jury*, "in their judgment."

"Warrant" means "[t]o authorize; to give authority or power to do or forbear anything, by which the person authorized is secured or saved harmless from any loss or damage by the act." Goodrich, Chauncey A., "An American Dictionary of the English Language", G. and C. Merriam, Springfield Mass., (1862), p. 1249. This definition from 1862 remains largely unchanged throughout the decades. Webster's New World Dictionary, 2d College Ed., 1980, defines "warrant" as: "1. a) authorization or sanction, as by a superior or the law, b) justification or reasonable grounds for some act, course, statement, or belief . . ." (emphasis added).

As the State contends:

> Taken together this language reflects the Legislature's intent to allow the grand jury to determine whether or not the evidence put before it is satisfactory for the purpose of directing, in good faith, an accusation toward the person who is the subject of the indictment and which, in the jurors' minds, could withstand the test of a trial. Accordingly, the statute operates alongside the rule. Consistent with the grand jury's dual role of factfinder and accusatory body, the rule provides the quantum of evidence that the grand jury must find before indicting (probable cause), and the statute establishes the ultimate purpose of indictment – conviction by a trial jury.

State's Brief in Opposition to Defendant's Second Motion to Dismiss at 3-4.

Because Rule 6.5(a) and § 19-1107 can be reasonably interpreted so that there is no conflict between them, the court adopts this interpretation rather than interpreting in a way that results in conflict.

3. Even if a conflict did exist between I.C. § 19-1107 and Rule 6.5(a), the Criminal Rule would control to the exclusion of § 19-1107.

While the court has concluded that the I.C. § 19-1107 and Rule 6.5(a) do not conflict, the court concludes that, even if a conflict did exist, the rule govens. Defendant contends that I.C. § 19-1107 and Rule 6.5(a) are in conflict and that the rule must yield to the statue. Defendant argues that, because statutes remain in force until repealed, and, because "the right to a grand jury presentment or indictment is most certainly a constitutional right," the Idaho State Constitution leaves it to the legislature to pass laws defining what is meant by this constitutional right to the exclusion of the judicial branch. Defendant argues:

> Because a grand jury, being separate and apart from the judiciary, does not even fall within the contemplated authority of Art. V, § 2 or I.C. §§ 1-212, 213, our Supreme Court has no authority to create procedural rules for grand juries, much less rules governing substantive matters such as the burden of proof a grand jury is required to find.

Second Motion at 15. The court disagrees.

"When there is a conflict between a statute and a criminal rule, this Court must determine whether the conflict is one of procedure or one of substance; if the conflict is procedural, the criminal rule will prevail. On the other hand, when the conflict is substantive, the statute will prevail." *Garner*, 161 Idaho at 710–11, 390 P.3d at 436–37. The issue before this court is whether the standard of evidence necessary to find an indictment is substantive or procedural. "In making such a determination, the Idaho Supreme Court has relied in part upon a standard adopted by the Washington State Supreme Court in *State v. Smith*." *State v. Two Jinn, Inc.*, 148 Idaho 706, 710, 228 P.3d 387, 391 (Ct. App. 2010).

> Although a clear line of demarcation cannot always be delineated between what is substantive and what is procedural, the following general guidelines provide a useful framework for analysis. Substantive law prescribes norms for societal conduct and punishments for violations thereof. It thus *creates, defines, and regulates primary rights.* In contrast, practice and procedure pertain to the *essentially mechanical operations* of the courts by which

> substantive law, rights, and remedies are effectuated.

Id. Here, the standard of evidence necessary to find an indictment does not prescribe norms for societal conduct and punishments for violations thereof. Instead, this standard pertains to the *essentially mechanical operations* of the courts by which substantive law, rights, and remedies are effectuated."

Next, the court has the authority to promulgate rules regarding the procedural requirements relating to grand juries. Our constitution provides:

> The judicial power of the state shall be vested in a court for the trial of impeachments, a Supreme Court, district courts, and such other courts inferior to the Supreme Court . . .The courts shall constitute a unified and integrated judicial system for administration and supervision by the Supreme Court.

Idaho Const., Art. V, § 2. Idaho Code § 1-213 provides that the Court shall have the authority to create rules for "the forms of process, writs, pleadings and motions, the manner of service, time for appearance, and the practice and procedure in all actions and proceedings." The rules created by the Court "shall neither abridge, enlarge nor modify the substantive rights of any litigant." Idaho Code § 1-213. As the Court stated:

> It is well established that the Idaho Supreme Court is uniquely empowered with certain inherent powers. The Court has the inherent power to make rules governing the procedure in all of Idaho's courts." *Talbot v. Ames Constr.*, 127 Idaho 648, 651, 904 P.2d 560, 563 (1995) (citing *In re SRBA Case No. 39576*, 128 Idaho 246, 255, 912 P.2d 614, 623 (1995); *State v. Beam*, 121 Idaho 862, 863, 828 P.2d 891, 892 (1992)). "The inherent power of the Supreme Court to make rules governing procedure in all the courts of Idaho is hereby recognized and confirmed." I.C. § 1-212. Accordingly, this Court has noted that if a statutory provision that is procedural in nature is in conflict with the Idaho Criminal Rules, the rules govern.

State v. Weigle, 165 Idaho 482, 486, 447 P.3d 930, 934 (2019). As discussed before, criminal rules concerning procedure govern to the exclusion of statute. Because the evidentiary standard required

to return an indictment pertains to the *essentially mechanical operations* of the courts, the criminal rule would control to the exclusion of the statute.

Rule 6.5(a) of the Idaho Criminal Rules provides in pertinent part that "[if] the grand jury finds, after evidence has been presented to it, that an offense has been committed and that there is probable cause to believe that the accused committed it, the jury ought to find an indictment." While § 19-1107 is subject to interpretation as to the standard of proof necessary to return an indictment, Rule 6.5(a) is not. The standard is probable cause

B. The Grand Jury Proceedings

When conducting a review of the propriety of the grand jury proceeding, the Court of Appeals' inquiry is two-fold: (1) the Court must determine whether, independent of any inadmissible evidence, the grand jury received legally sufficient evidence to support a finding of probable cause, and in doing so, every legitimate inference that may be drawn from the evidence must be drawn in favor of the indictment, and (2) even if such legally sufficient evidence was presented, the indictment must be dismissed if prosecutorial misconduct in submitting illegal evidence was so egregious as to be prejudicial. *State v. Marsalis*, 151 Idaho 872, 264 P.3d 979 (Ct. App. 2011).

"Prejudicial effect" means "the defendant would not have been indicted but for the misconduct." *Id.* To determine whether misconduct is so egregious as to be prejudicial and thus to require dismissal, an appellate court must balance the gravity and seriousness of the misconduct against the extent of the evidence supporting the indictment. *Id.,* 151 Idaho at 876, 264 P.3d at 983.

> To determine whether misconduct gives rise to a dismissal, a reviewing court will have to balance the gravity and the seriousness of this misconduct with the sufficiency of the evidence supporting the probable cause finding. At one extreme, the misconduct can be

> so outrageous that regardless of the extent of probable cause evidence, dismissal will be required. At the other extreme, the misconduct may be so slight, that it becomes unnecessary to question the independent judgment of the grand jury. In the middle of these extremes, the court must examine the totality of the circumstances to determine whether the indictment should be dismissed. As stated above, the burden rests with the criminal defendant to make an initial showing that the misconduct rises to the level of prejudice. Absent the showing of prejudice, a reviewing court will not second guess the grand jury. However, once the defendant does affirmatively prove prejudice, the court must dismiss.

Id. 151 Idaho at 876–77, 264 P.3d at 983–84. Generally, prosecutorial misconduct will require dismissal only if it reaches the level of a constitutional due process violation. *Id.*

1. Prosecutorial Errors in the Grand Jury Proceedings do not warrant dismissal of Count II and III.

Defendant contends that Count II and III should be dismissed for the sole reason that a witness testified over zoom as opposed to testifying in person. Defendant states:

> In this case, the State did not bring Mr. McGlone into court to be "physically present before the grand jury" as required by the rules. Instead, and for reasons unknown, it appears the State, on its own volition, determined to have Mr. McGlone testify via Zoom. Aside from violating the requirement that a person appear in person to testify before the grand jury, this conduct also violates Rule 6(d) which places the power and duty of determining the sequence of witnesses with the presiding grand juror, not the prosecutor. As an aside, defendant would point out that the prosecutor once again overstepped his role when he excused Officer Pierson once he was done questioning her, but, before the presiding grand juror actually excused her. Because of this improper conduct, the testimony of Mr. McGlone was improperly admitted, and should not be considered when making a probable cause determination. Without this testimony, there was not probable cause to find a true bill on Counts II or III.

Brief in Support of Motion to Dismiss Indictment at 10.

This argument is disingenuous. First, the Idaho Supreme Court's emergency order in response to the COVID-19 pandemic remains in effect, which states in relevant part: "[o]ther than

jury trials, court rules which prohibit hearing any case or part thereof remotely remain suspended during the effective term of this order." *Re: Emergency Order Regarding Court Services* dated February 17, 2022. Defendant fails to identify legal authority for the proposition that a witness must be in the presence of the grand jury for testimony. Next, this is not a confrontation issue. The witness was present by Zoom and presumably the jury could hear and see the witness who could hear and see the prosecutor and the jury. Finally, Defendant did not demonstrate prejudice.

Defendant further contends that "Count III of the Indictment should be dismissed because the prosecutor failed to instruct the Grand Jury as to the law regarding this Count, and as such, the Grand Jury was never told what it was legally required to find in order to find a true bill as to this count." *First Motion* at 7.

> In Count III, Ms. Peone was charged with possessing a vehicle that "she knew or had reason to believe had been stolen." The Grand Jury was instructed that this was one of the elements of the crime. However, the prosecutor failed to instruct the Grand Jury as to what it was required to find in order to find that this vehicle was "stolen.

First Motion at 8.

Idaho Criminal Rule 6.1(b) sets out the powers and duties of the Prosecuting Attorney. These duties include to "list the elements of an offense being investigated by the grand jury, before, during or after the testimony of witnesses" and to "present opening statements and/or instruct the grand jury on applicable law." I.C.R. 6.1(b). "The prosecutor is expected to act as the grand jury's legal advisor, and as such, may appropriately explain the law and express an opinion on the legal significance of the evidence but should give due deference to the grand jury's status as an independent legal body." *State v. Edmonson*, 113 Idaho 230, 238, 743 P.2d 459, 467 (1987).

Considering the totality of the circumstances, and bearing in mind that "dismissal is a drastic remedy and should be exercised only in extreme and outrageous situations," *State v.*

Edmonson, 113 Idaho 230, 237 (Idaho 1987), the court determines that Defendant has not met its burden to demonstrate that the State's omission in instructing the Grand Jury on the definition of "stolen" rises to the level of prejudice. Specifically, Defendant has not shown that, but for this omission, the defendant would not have been indicted.

2. ***The Grand Jury received legally sufficient evidence to support a finding of probable cause as to Count II.***

Defendant contends that Count II of the Indictment, charging Ms. Peone with Felony Operating a Vehicle without the Owner's consent, is legally deficient "because it fails to state any facts or make any claims as to how Ms. Peone caused any damage at all to this vehicle." *Brief In Support of Motion to Dismiss Indictment* ("First Motion") at 4. Defendant further contends that Count II should be dismissed because of the "large amount of testimony that constituted hearsay, lacked foundation, and was expert testimony." *First Motion* at 11.

The State concedes that Count II is defective for a lack specificity as to how the defendant caused damage to a vehicle exceeding $1,000. *State's Brief in Opposition to Defendant's First Motion to Dismiss* at 2. However, the State contends that the proper remedy is to allow an amendment to the Indictment as opposed to dismissing the charge.

The Idaho Rules of Evidence apply at Grand Jury proceedings, and the State is prohibited from introducing inadmissible hearsay. I.C. § 19-1105; I.R.E. 101. Idaho Code § 19-1105 provides:

> In the investigation of a charge for the purpose of either presentment or indictment, the grand jury can receive any evidence that is given by witnesses produced and sworn before them except as hereinafter provided, furnished by legal documentary evidence, the deposition of a witness in the cases provided by this code or legally admissible hearsay.

I.R.E. 801(c) defines "hearsay" as "a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement." Hearsay is not admissible unless an exception applies. I.R.E. 802; *State v. Fox*, 170 Idaho 846, 517 P.3d 107, 126 (2022).

Here, Defendant was charged with count II, OPERATING VEHICLE WITHOUT OWNER'S CONSENT, in violation of I.C § 49-227. Count II of the Indictment states:

> That the Defendant, CASSADIE MODESTA PEONE, on or about the 7th day of June, 2022, in Kootenai County, Idaho, did operate a vehicle, to wit: a Toyota Tacoma, the property of Braden McGlone, without the consent of Braden McGlone, and with the intent to temporarily deprive him of his possession of the vehicle, and did cause damage to the vehicle exceeding one thousand dollars ($1,000) in value;

An essential element of § 49-227 is that the "damages caused to the vehicle as a result of a violation of this section exceed one thousand dollars ($1,000) in value."

No evidence provided to the grand jury explicitly detailed the damage to Mr. McGlone's truck. Regarding these damages, the State purports that testimony from Mr. McGlone and Officer Pierson provides sufficient evidence for the grand jury to find that the damages to the car by Defendant exceeded $1,000. Mr. McGlone testified that the 2021 Toyota Tacoma, *Grand Jury Transcript* ("Tr."), p. 9, ll. 10-14, was valued at $46,000. *Tr.*, p. 11, ll. 4-6. He was then asked whether he drove his vehicle home that evening or not, and he testified he did not because "there was Fentanyl found inside the vehicle, and myself and the police officers did not recommend, uh, me getting inside of the vehicle because of possible exposure." *Tr.*, p. 16, ll. 21-25; p. 16, ll. 1-6. When asked if he was still able to drive his vehicle after the vehicle was recovered, Mr. McGlone testified that he had not because, " the insurance considered the vehicle a total loss, uh, because of the, um, risk involved with releasing that vehicle back out in the market once there had been

Fentanyl reported inside of the vehicle, so they, uh, had to total the vehicle." *Tr.*, p. 18, ll. 5-13. Officer Pierson testified that Fentanyl is "very easy to be exposed to" and is "very life-threatening." She further testified that she told Mr. McGlone to throw away a car seat that was in the bed of the truck and not to drive his vehicle, because Fentanyl had been inside the vehicle.

Representations made to Mr. McGlone by his insurance agency that his car was totaled due to the Fentanyl is a statement and these statement are being offered to prove the truth of the matter asserted, i.e. that the car was "totaled" due to the Fentanyl. However, Mr. McGlones is entitled to testify that his car is totaled. Therefore, the grand jury had sufficient evidence to draw reasonable inferences to conclude that, because Mr. McGlone was no longer able to possess his $46,000 vehicle due to the conduct of the defendant, that Defendant caused damages greater than $1000. Therefore, Count II shall not dismissed.

3. ***Defendant failed to demonstrate that substantial rights of the defendant would be prejudiced by the amending the Indictment.***

The parties disagree as to the proper remedy for Count II's lack of specificity as to the damages caused by Defendant's conduct. Idaho Criminal Rule 7(e) provides that the "court may permit a complaint, an information or indictment to be amended at any time before the prosecution rests if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced." There is no question that the information in its unamended form lacked specificity. "Such a lack of specificity clearly prejudiced the rights of the defendant." *State v. Gumm*, 99 Idaho 549, 552, 585 P.2d 959, 962 (1978). However, the court does not see "how an amendment which would have cured this defect, would necessarily have prejudiced the substantial right of the defendant to prepare an adequate defense." *Id.*

Here Defendant cannot legitimately contend that she would be surprised, to her substantial prejudice, by the absence in the Indictment of a specific description of the damage she inflicted

upon a $46,000 vehicle. Defendant undoubtedly is on notice, based upon the grand jury transcript, what the indictment is referring to in Count II. By failing to demonstrate that her substantial rights are prejudiced by the amendment, the court exercises its discretion to permit the State to amend the Indictment. Therefore, Defendant's Motion to Dismiss Indictment on these bases are denied.

IV. ORDER

ORDER:

Based on the foregoing and good cause appearing therefore,

IT IS HEREBY ORDERED, that:

Defendant's First Motion to Dismiss is denied.

Defendant's Second Motion to Dismiss is denied.

DATED this 22nd day of December, 2022.

BY THE COURT:

Cynthia K.C. Meyer
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 22 day of December, 2022, I caused, to be served, a true and correct copy of the foregoing document as addressed to:

Adam Johnson
kcpaicourts@kcgov.us
✓ Email

Benjamin Onosko
pdfax@kcgov.us
✓ Email

Deputy Clerk

Filed: 05/21/2021 16:15:23
Third Judicial District, Canyon County
Chris Yamamoto, Clerk of the Court
By: Deputy Clerk - Hatfield, Betty Jo

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO, Plaintiff, vs. JUANITO J. RODRIGUEZ, Defendant.	Case No. CR14-20-22902 **MEMORANDUM DECISION AND ORDER DENYING DEFENDANT'S MOTION TO DISMISS GRAND JURY INDICTMENT**

Defendant filed a Motion to Dismiss Grand Jury Indictment on April 1, 2021. Defendant requests that the Court dismiss his case because of errors in the grand jury proceeding. The State filed an Objection to Motion to Dismiss Grand Jury Indictment on April 16, 2021. The Court heard argument from the parties on April 21, 2021, and took the matter under advisement.

I. BACKGROUND

At approximately 10:00 p.m. on December 26, 2020, Defendant Juanito J. Rodriguez went over to his sister Alexis Rodriguez's house to listen to music and play drinking games. Grand Jury Transcript ("Tr."), Tr. p. 45 -47. Defendant's girlfriend, Darlene Rodriguez, and two of her cousins, Natalie "Devine" Anguiano and Joey Anguiano, went with Defendant to Alexis's home. Tr. p. 46, ll. 2-23. Alexis's husband, Jossue "Josh" Garcia, and her cousin Alyssa were already at the house. Tr. p. 46, ll. 2-6; p. 52, ll. 20-24.

EXHIBIT C

At around midnight, a fight broke out between Alexis, Josh, Defendant, and Devine. Tr. p. 49, l. 12 – p. 50, l. 1; p. 50, l. 2-15; p. 71, l. 24 – p. 72, l. 9. After the fight, Darlene grabbed Defendant and her cousins and got in their car and left. Tr. p. 73, ll. 10-25. On their way home, Josh called Defendant to inform him that he and Alexis were coming over to his house to get Alexis's phone because Defendant took her phone instead of his own. Tr. p. 51, l. 12 – p. 52, l. 9; p. 74, l. 12 – p. 75, l. 11.

Defendant, Darlene, Devine, and Joey drove to Devine's house at 1504 Ruby Court. Tr. p. 75, l. 13; p. 189, ll. 2-9. Devine and her brother Omar Canchola live next door to Darlene, Defendant, and Darlene's parents at 1500 Ruby Court. Tr. p. 62, ll. 16-23; p. 64, ll. 2-6; p. 99, ll. 14-15. After Darlene checked everyone for injuries, Darlene's parents, Daniel Rodriguez and Monica Anguiano, went next door to see what was going on. Tr. p. 75, l. 13 – p. 77, l. 17; p. 214, ll. 8-20. When Daniel went next door, he took his handgun but no other weapon. Tr. p. 215, l. 13 – p. 216, l. 6. Defendant, Darlene, and Devine went outside with Daniel and Monica when they saw Josh, Alexis, and Alyssa drive up. Tr. p. 77, l. 22 – p. 78, l. 25; p. 53, ll. 5-25. Soon thereafter, Joey and Omar went outside. Tr. p. 153, ll. 7-22; p. 156, ll. 16-19; p. 190, l. 18 – p. 191, l. 1.

Josh, Alexis, and Alyssa parked the car. Alexis claims that she was attacked by a bunch of girls as she got out of the car. Tr. p. 55, ll. 3-17. However, Devine, Darlene, and Darlene's mother, Monica, recall that Alexis headed straight for Devine and attacked her. Tr. p. 82, l. 20 – p. 83, l. 3; p. 105, l. 14 – p. 106, l. 10; p. 265, ll. 8-12. Darlene's aunt, Maria Anguiano, and Monica attempted to break up the fight and pull Alexis and Devine off each other. Tr. p. 83, ll. 4-9; p. 107, ll. 11-18; p. 127, ll. 12-23.

Meanwhile, Josh got out of the car and headed in the direction of Darlene, Defendant, and Daniel. Tr. p. 79, ll. 9-25. Daniel claims that Josh charged at him with brass knuckles. Tr. p. 218,

ll. 9-17. Darlene remembers seeing Josh with brass knuckles on one hand and a knife in the other hand. Tr. p. 81, ll. 8-22. However, no one else ever saw Josh with a knife. Tr. p. 117, l. 24 – p. 118, l. 5 (Monica); p. 126, l. 25 – p. 127, l. 7 (Maria); p. 158, ll. 15-25 (Joey); p. 194, l. 24 – p. 195, l. 10 (Omar); p. 219, ll. 6-14; p. 236, ll. 11-18 (Daniel); p. 271, l. 25 – p. 272, l. 15 (Devine).

Joey recalls seeing Defendant and Josh fighting when he went outside. Tr. p. 154, l. 1 – p. 155, l. 11. Joey believes that, after a short while, Daniel approached Defendant and Josh's fight to separate them. Tr. p. 155, ll. 12 – 18. Darlene believes she saw Daniel get injured by Josh and then Defendant, Daniel, Joey, and Omar attacked Josh. Tr. p. 86, l. 24 – p. 87, l. 22. Darlene saw Defendant punching Josh and saw Omar kick at him. Tr. p. 84, l. 22 – p. 85, l. 2; p. 89, l. 22 – p. 90, l. 24. Joey and Omar claim that they never touched Josh, but tried to help break up the fight. Tr. p. 157, l. 3 – p. 159, l. 5; p. 195, l. 13 – p. 196, l. 10.

Daniel recalls that only he and Josh were fighting, and that he was trying to block Josh from hitting him with the brass knuckles. Tr. p. 221, l. 9 – p. 223, l. 2; p. 231, ll. 17-21. As Daniel and Josh were fighting, they slipped on the icy grass and fell to the ground. Tr. p. 223, ll. 12-21. Daniel recalls that he continued to hold Josh's hand with the brass knuckles, to keep from getting hit by them, until Joey, Omar, and Defendant helped separate he and Josh. Tr. p. 223, l. 20 – p. 224, l. 10.

After Joey tried to help break up the fight, he saw Daniel fall to the ground and he moved to help Daniel up. Tr. p. 156, l. 23 – p. 157, l. 12. Joey remembers seeing Josh trip over Daniel and fall to the ground. Tr. p. 163, l. 14 – p. 164, l. 5. While Josh was on the ground, Joey recalls Defendant standing over Josh. Tr. p. 164, ll. 6-21. Darlene claims she then heard Josh say "Stop" and "I'm done." Tr. p. 84, ll. 1-5.

Once Daniel was able to break free from Josh, he noticed blood and cuts on his hands and forearm. Tr. p. 230, ll. 1-23. Daniel went to his front yard to wash the blood off with a hose. Tr. p. 232, l. 9 – p. 233, l. 6; p. 234, ll. 14-18. While rinsing off, Defendant approached Daniel, put his knife in Daniel's jacket pocket, and told Daniel "Just tell them it was self-defense." Tr. p. 234, l. 14 – p. 235, l. 19. Darlene never saw Defendant with a knife in his hand but knew he had one with him that day because he received the knife as a gift for Christmas a few days prior. Tr. p. 85, ll. 3-8; p. 91, l. 20 – p. 92, l. 19; p. 91, l. 20 – p. 92, l. 15.

Monica watched Josh walk towards a trailer parked on their street and then leaned against it. Tr. p. 114, l. 9 – p. 115, l. 15. She then watched Josh walk towards his car to try to leave. Tr. p. 117, ll. 17-22. Daniel also saw Josh walk towards his car and fall to the ground. Tr. p. 245, ll. 19-24.

Daniel went inside his home to continue to wash the blood off and check on his injuries. Tr. p. 233, ll. 7-13. When Monica came inside, Daniel told her to get the knife and gun out of his jacket pocket. Tr. p. 120, ll. 19-24. Monica took the weapons from Daniel's jacket and put them under her mattress. Tr. p. 120, l. 25 – p. 121, l. 23.

After the fights broke up, Maria called the police and went inside the house at 1504 Ruby Ct. with Darlene, Defendant, Devine, Joey, and Omar. Tr. p. 131, ll. 12-25. Maria saw Defendant in the kitchen and remembered him saying "I'm sorry," multiple times. Tr. p. 132, l. 19 – p. 133, l. 13.

Officers from the Nampa Police Department arrived at 1500 and 1504 Ruby Ct. Tr. p. 278, ll. 1-12; p. 287, ll. 11-20. Officers saw Josh lying in the street, deceased, with multiple wounds to his body. Tr. p. 290, ll. 16-25; p. 17, ll. 3-20; p. 24, ll. 3-7.

Officers went into the residences at 1500 and 1504 Ruby Court. Tr. p. 308, l. 25 – p. 309, l. 5; p. 311, ll. 3-9. Inside the residence at 1504 Ruby Court, officers located two knives in Omar's bedroom. Tr. p. 318, l. 16 – p. 319, l. 2. Inside Daniel and Monica's master bedroom at 1500 Ruby Court, officers found two small knives and a pistol under the mattress. Tr. p. 330, l. 17 – p. 331, l. 10. The officers noted that one of the knives had the initials "CRKT" etched on the knife, and these initials were the same as those found on a box in the recycling bin located outside the 1500 Ruby Court residence. Tr. p. 330, l. 17 – p. 331, l. 19. The officers unfolded the knife and noticed a red substance on the blade. Tr. p. 331, ll. 20-25.

Criminalist Christine Cannon and Detective Kari Seibel attended Josh Garcia's autopsy on December 28, 2020. Tr. p. 347, l. 19 – p. 348, l. 25; p. 367, l. 20 – p. 368, l. 7. Detective Seibel observed thirty-four (34) knife wounds to his body. Tr. p. 350, l. 5 – p. 355, l. 1; p. 368, ll. 13-23. They noted knife wounds to Josh Garcia's lung, his heart, and the top of his skull. Tr. p. 355, l. 11 – p. 356, l. 13; p. 368, l. 17 – p. 369, l. 18.

Ms. Cannon tested the red substance on the "CRKT" blade and it was presumptive positive for human blood. Tr. p. 357, ll. 1-19; p. 365, l. 18 – p. 366, l. 12. She also tested other knives found at the scene, and both the knife found under the trailer and the knife found in Josh's pocket tested presumptive positive for human blood. Tr. p. 357, ll. 16-24; p. 25, ll. 22-24.

Defendant was charged by Superceding Indictment on January 14, 2021, with one count of Murder I, a felony, in violation of I.C. §§ 18-4001, 18-4003(a-f), one count of Intimidating, Impeding or Influencing the Attendance of a Witness, a felony, in violation of I.C. § 18-2604(3), and one count of Destruction, Alteration, Concealment of Evidence, a felony, in violation of I.C. § 18-2603. Defendant filed a Motion to Dismiss Grand Jury Indictment on April 1, 2021, asserting

that the State improperly instructed the grand jury and presented numerous instances of inadmissible testimony, in violation of Defendant's due process rights.

II. APPLICABLE STANDARD

When considering a motion to dismiss an indictment, the district court sits as a reviewing court and the grand jury is the factfinder. *State v. Brandstetter*, 127 Idaho 885, 887, 908 P.2d 578, 580 (Ct. App. 1995). A motion to dismiss an indictment may be granted by the court if "the indictment was not properly found, endorsed and presented as required by these rules or by the statutes of the state of Idaho." I.C.R. 6.6. Idaho Criminal Rule 6.5(a) discusses the sufficiency of evidence required to warrant an indictment:

> If the grand jury finds, after evidence has been presented to it, that an offense has been committed and that there is probable cause to believe that the accused committed it, the jury ought to find an indictment. Probable cause exists when the grand jury has before it evidence that would lead a reasonable person to believe an offense has been committed and that the accused party has probably committed the offense.

When reviewing the propriety of a grand jury proceeding, the court must conduct a two-part inquiry. *State v. Marsalis*, 151 Idaho 872, 876, 264 P.3d 979, 984 (Ct. App. 2011).

> First, we must determine whether, independent of any inadmissible evidence, the grand jury received legally sufficient evidence to support a finding of probable cause. In making this determination, every legitimate inference that may be drawn from the evidence must be drawn in favor of the indictment. Second, even if such legal sufficient evidence was presented, the indictment must be dismissed if prosecutorial misconduct in submitting illegal evidence was so egregious as to be prejudicial. "Prejudicial effect" means "the defendant would not have been indicted but for the misconduct." Absent a showing of prejudice by the defendant, we will not second guess the grand jury. To determine whether misconduct is so grievous as to be prejudicial and thus require dismissal, an appellate court must balance the gravity and seriousness of the misconduct against the extent of evidence supporting the indictment.

Id. (internal citations omitted). The decision to grant or deny a motion to dismiss an indictment is discretionary for the trial court. *State v. Curtiss*, 138 Idaho 466, 468, 65 P.3d 207, 209 (Ct. App. 2002).

III. ANALYSIS

Defendant asserts that the State violated his due process rights during the grand jury proceedings because (1) the self-defense jury instruction was erroneous and reversed the required standard; (2) the burden of proof instruction was erroneous because it failed to instruct the grand jury that they must find Defendant committed these crimes beyond a reasonable doubt; (3) the State failed to present admissible evidence of the victim's cause of death; and (4) a substantial amount of inadmissible testimony was presented to the grand jury.

A. The Error in the Self-Defense Jury Instruction

Defendant argues that the self-defense instruction given to the grand jury contains a misstatement of the law, and it created a substantial likelihood that the jury instructions as a whole misled that jury. Defendant also asserts that the erroneous jury instruction was extremely prejudicial to Defendant because it was the most important instruction. Defendant further argues that Idaho caselaw does not address the standard of review for analyzing erroneous jury instructions given during a grand jury proceeding, and argues that this Court should apply the same standard outlined by the Idaho appellate courts for erroneous jury trial instructions. The State does not dispute that there is an error in the self-defense instruction but argues that the error is harmless because there is no evidence that Defendant acted in self-defense.[1]

The State gave the grand jury the following instructions:

ICJI 701 MURDER DEFINED

> Murder is the killing of a human being without legal justification or excuse and with malice aforethought

[1] The Prosecutor argues, without citation to any legal authority, that it is not required to provide a self-defense instruction to the grand jury. In this case, the Prosecutor did provide a self-defense instruction. The question to be answered is whether that instruction was proper and whether the Indictment should be dismissed due to the error in that instruction.

or

by the intentional application of torture.

The killing of a human being is legally justified or excused when "done in self-defense". You will be instructed later on the elements of legal justification and excuse.

ICJI 704A FIRST DEGREE MURDER – MALICE AFORETHOUGHT

In order for the defendant to be guilty of First Degree Murder with malice aforethought, the state must prove each of the following:

1. On or about December 27, 2020
2. in the state of Idaho
3. the defendant Juanito "JJ" Rodriguez engaged in conduct with caused the death of Jossue Garcia,
4. the defendant acted without justification or excuse,
5. with malice aforethought, and
6. the murder was perpetrated by lying in wait;

or

the murder was a willful, deliberate, and premeditated killing. Premeditation means to consider beforehand whether to kill or not to kill, and then to decide to kill. There does not have to be any appreciable period of time during which the decision to kill was considered, as long as it was reflected upon before the decision was made. A mere unconsidered and rash impulse, even though it includes an intent to kill, is not premeditation;

If you find that the state has failed to prove probable cause any of the elements one (1) – five (5) above or failed to prove any of the circumstances listed in element six (6), you must not vote for a true bill of First Degree Murder. If you find that elements one (1) – five (5) above have been proven by probable cause, and you 12 jurors agree that the state has proven any of the above circumstance[s] under element six (6) by probable cause, you must vote for a true bill of first degree murder. You are not required to agree as to which circumstance under element six (6) you find to exist.

The State then presented the following self-defense instruction to the grand jury:

ICJI 1517 SELF-DEFENSE

A homicide is justifiable if the defendant was acting in self-defense or defense of another.

In order to find that the defendant acted in self-defense or defense of another, all of the following conditions must be found to have been in existence at the time of the killing:

1. The defendant must have believed that the defendant or another person was in imminent danger of death or great bodily harm.
2. In addition to that belief, the defendant must have believed that the action the defendant took was necessary to save the defendant or another person from the danger presented.
3. The circumstances must have been such that a reasonable person, under similar circumstances, would have believed that the defendant or another person was in imminent danger of death or great bodily injury and believed that the action taken was necessary.
4. The defendant must have acted only in response to that danger and not for some other motivation.
5. When there is no longer and reasonable appearance of danger, the right of self-defense or defense of another ends.

In deciding upon the reasonableness of the defendant's beliefs, you should determine what an ordinary and reasonable person might have concluded from all the facts and circumstances which the evidence show existed at that time, and not with the benefit of hindsight.

The danger must have been present and imminent, or must have so appeared to a reasonable person under the circumstances. A bare fear of death or great bodily injury is not sufficient to justify a homicide. The defendant must have acted under the influence of fears that only a reasonable person would have had in a similar position.

The burden is on the prosecution to prove probable cause that the homicide was not justifiable. *If there is not probable cause that the homicide was justifiable, you must not vote for a true bill.*

(Emphasis added). Defendant correctly notes that it is an inaccurate statement of the law to advise the grand jury that it "must not vote for a true bill" if they find that "there is not probable cause that the homicide was justifiable."

In addition to the above instruction, the State provided the grand jury with the following instructions related to self-defense:

ICJI 1518 SELF-DEFENSE – REASONABLE FORCE

The kind and degree of force which a person may lawfully use in self-defense or defense of another are limited by what a reasonable person in the same situation as such person, seeing what that person sees and knowing what the person knows, then would believe to be necessary. Any use of force beyond that is regarded by the law as excessive. Although a person may believe that the person is acting, and may act, in self-defense or defense of another, the person is not

justified in using a degree of force clearly in excess of that apparently and reasonably necessary under the existing facts and circumstances.

ICJI 1519 SELF-DEFENSE – DUTY TO RETREAT

In the exercise of the right of self-defense or defense of another, one need not retreat. One may stand one's ground and defend oneself or the other person by the use of all force and means which would appear to be necessary to a reasonable person in a similar situation and with similar knowledge; and a person may pause the attacker until the person [or] the other person has been secured from danger if that course likewise appears reasonably necessary. This law applies even though the person being attacked [or] defended might more easily have gained safety by flight or by withdrawing from the scene.

ICJI 1520 SELF-DEFENSE – VICTIM'S REPUTATION

Evidence has been admitted concerning the reputation of the victim for being quarrelsome, violent and dangerous. You may consider this evidence only for the limited purpose of making your determination as to the reasonableness of the defendant's beliefs under the circumstances then apparent to the defendant, but only if the defendant was aware of such reputation or whether the victim was the aggressor.

ICJI 1521 SELF-DEFENSE – PARTICIPANTS IN MUTUAL COMBAT

The right of self-defense is not available to a person who, by pre-arrangement or agreement engages in mutual combat, unless and until the person has really and in good faith endeavored to decline further combat, and has fairly and clearly informed the adversary of a desire for peace and that the person has abandoned the contest. If, after the adversary has been so informed and given an opportunity to quit the fight, such adversary continues the combat, such continuance of the fight is a new assault by the adversary, and the person seeking to withdraw from the fight may exercise the right of self-defense.

1. The Error in the Self-Defense Instruction Does Not Invalidate the Indictment.

On a motion to set aside an indictment, the Idaho Supreme Court addressed an erroneous instruction given to the grand jury in *Gasper v. District Court of Seventh Judicial District, in & for Canyon County*, 74 Idaho 388, 264 P.2d 679 (1953). Despite finding that the instruction was erroneous, the Idaho Supreme Court held that it did not invalidate the indictment. The Court stated:

> The charge to the grand jury is general in nature; it does not bind or control the grand jurors as does the charge to a trial jury. The grand jury is the judge of the law and the fact, it is advised by the prosecuting attorney during the course of its proceedings, and that part of the proceedings when deliberating and voting upon an

> indictment is secret. §§ 19-1112, 19-1113, I.C. For these reasons, among others, it is generally held that in the absence of a showing of prejudice, errors in the charge to the grand jury do not invalidate an indictment.

Id. at 396, 264 P.2d at 683 (citing *State v. Lawler*, 221 Wis. 423, ___, 267 N.W. 65, 67-68 (1936)) (finding that the court's failure to instruct the grand jury does not invalidate the indictments returned); *see also State v. Inthavong*, 402 N.W. 2d 799, 802 (Minn. 1987) (citing *Gasper*, 74 Idaho at 396, 264 P.2d at 683) (concluding that "prejudice ordinarily will be found only on those rare occasions where the grand jury instruction are so egregiously misleading or deficient that the fundamental integrity of the indictment process itself is compromised"); *State v. Smith*, 876 N.W.2d 310, 325 (Minn. 2016).

Idaho Criminal Rule 6.1(b) outlines the powers and duties of the prosecuting attorney during a grand jury proceeding. These powers and duties include the following:

1) present to the grand jury evidence of any public offense, however, when a prosecutor conducting a grand jury inquiry is personally aware of substantial evidence which directly negates the guilt of the subject of the investigation the prosecutor must present or otherwise disclose that evidence to the grand jury;
2) at the commencement of a presentation of an investigation to the grand jury, inquire as to whether there are any grounds for disqualification of any grand juror and advise the presiding juror of the possible disqualification of a juror;
3) list the elements of an offense being investigated by the grand jury, before, during or after the testimony of witnesses;
4) advise the grand jury as to the standard for probable cause, and tell them that if a person refuses to testify this fact cannot be used against him or her;
5) issue and have served grand jury subpoenas for witnesses;
6) present opening statements and/or instruct the grand jury on applicable law; and
7) prepare an indictment for consideration by or at the request of the grand jury.

The Prosecutors, in accordance with their duties, advised the grand jury of the elements of the offenses being investigated, the standard for probable cause, and instructed the jury on applicable laws, including self-defense. Defendant fails to show how the error in the self-defense instruction is prejudicial. The State properly instructed the grand jury as to the elements required to be proven by probable cause to return a true bill of First Degree Murder. Included in this instruction, element

four (4) requires that Defendant acted without justification or excuse. In the self-defense instruction, the grand jury was properly instructed that self-defense makes a homicide justifiable. The grand jury was also properly instructed on what self-defense is under Idaho law. The First Degree Murder instruction further states that "If you find that the state has failed to prove probable cause *any of the elements* one (1) – five (5) … you must not vote for a true bill of First Degree Murder." (Emphasis added). Applying this instruction, the grand jury found that the State proved probable cause on all of the elements for First Degree Murder, including that Defendant acted without justification or excuse. The error in the self-defense grand jury instruction does not invalidate the indictment returned against Defendant. Therefore, the error does not invalidate the indictment.

2. The Jury Instructions as a Whole Did Not Mislead the Grand Jury or Prejudice Defendant.

Defendant urges this Court to adopt the same standard outlined by the Idaho appellate courts for erroneous jury trial instructions to this grand jury proceeding. Defendant asserts that the erroneous self-defense instruction created a substantial likelihood that the jury instructions as a whole misled the grand jury based on the instruction's reversal of the applicable standard. Even if this were the applicable standard, Defendant's argument fails.

When reviewing whether jury trial instructions "fairly and accurately present the issues and state the applicable law," the Idaho Supreme Court "looks to jury instructions as a whole, rather than individually." *State v. Campbell*, 481 P.3d 118, 123 (2021). "An erroneous instruction will not constitute reversible error unless the instructions as a whole misled the jury or prejudiced a party." *Id.* (quoting *State v. Mann*, 162 Idaho 36, 43, 394 P.3d 79, 86 (2017)). The Idaho Supreme Court has held that a reviewing court "must presume that the jury followed the jury

instructions" in arriving at their decision. *State v. Hall*, 161 Idaho 413, 429, 387 P.3d 81, 97 (2016).

The grand jury instructions, taken as a whole, did not mislead the grand jury. There is no dispute that the language used in the self-defense grand jury instruction is erroneous. However, looking at the totality of the instructions, the grand jury was not misled by this instruction and Defendant was not prejudiced by the error. The State instructed the grand jury on the elements that must be proven to indict Defendant on First Degree Murder. This instruction requires that the grand jury find probable cause that Defendant acted without justification or excuse. The self-defense instruction directs the grand jury that, to find that a homicide was justified, Defendant acted in self-defense or in defense of another. Despite the erroneous language, this Court must presume that the grand jury followed the remainder of the self-defense instruction and did not find that the conditions existed when they indicted Defendant. This Court must also presume that in indicting Defendant for First Degree Murder that the grand jury followed the elements instruction and found that Defendant acted without justification or excuse. Analyzing these instructions as a whole, the Court does not find that the erroneous instruction misled the jury, or that it prejudiced Defendant. Defendant's Motion to Dismiss Grand Jury Indictment is dismissed on this ground.

B. The State Correctly Instructed the Grand Jury on the Burden of Proof Required to Indict Defendant.

Defendant asserts that the State erroneously instructed the grand jury on the burden of proof required to indict him. He argues that the probable cause burden of proof set out in Idaho Criminal Rule 6.5 contradicts the beyond a reasonable doubt burden of proof required in I.C. § 19-1107. He further argues that this inconsistency is a matter of substantive law and the State should have instructed the grand jury on the beyond a reasonable doubt burden of proof. The State argues that I.C. § 19-1107 does not clearly state that the grand jury should indict when the evidence presented

is beyond a reasonable doubt, and Idaho caselaw states that the grand jury standard is probable cause.

When interpreting a statute, Idaho courts begin with an examination of the literal words of the statute. *State v. Garner*, 161 Idaho 708, 710, 390 P.3d 434, 436 (2017). The language of the statute "is to be given its plain, obvious and rational meaning." *State v. Keeton*, 165 Idaho 663, 665, 450 P.3d 311, 313 (2019) (quoting *State v. Brand*, 162 Idaho 189, 191, 395 P.3d 809, 811 (2017)). "If that language is clear and unambiguous, the Court need merely apply the statute without engaging in any statutory construction." *Id.* (internal quotations omitted). Furthermore, the Idaho Supreme Court addressed whether a grand jury should be instructed on the beyond a reasonable doubt burden of proof in *Gasper v. District Court of Seventh Judicial District, in & for Canyon County*, 74 Idaho 388, 264 P.2d 679 (1953). In *Gasper*, the grand jury was given the following instruction:

> It is further your duty to see to it that the innocent are not compelled to go under public trial in open court before a trial jury unless you are satisfied beyond a reasonable doubt from the evidence from the government presents that the defendant is guilty. When you determine that, then you may return an indictment.

Id. at 395, 264 P.2d at 683. The Court held that the grand jury instruction was erroneous and required a "greater degree of proof to justify an indictment than [I.C. § 19-1107] requires." *Id.*

Defendant misinterprets the burden of proof required in I.C. § 19-1107, and the State correctly instructed the grand jury on the probable cause burden of proof. Defendant attempts to read the beyond a reasonable doubt standard into I.C. § 19-1107 where the literal words of the statute states that a "grand jury ought to find an indictment when all the evidence before them, taken together, if unexplained or uncontradicted, would, in their judgment, *warrant* a conviction by a trial jury." (Emphasis added). The statute does not specifically state that proof beyond a reasonable doubt is required. His argument that the grand jury should have been instructed on the

reasonable doubt burden of proof is incorrect. As the Idaho Supreme Court previously stated, the beyond a reasonable doubt standard is a greater degree of proof than is required by I.C. § 19-1107. Therefore, Defendant's Motion to Dismiss Grand Jury Indictment is denied on this ground.

C. The State Sufficiently Proved the Victim's Cause of Death.

Defendant asserts that the State failed to present direct evidence of the victim's cause of death and, thus, failed to prove an essential element of the First Degree Murder charge. Defendant further asserts that Detective Seibel and Ms. Cannon lacked the training and experience to testify to cause of death. The State argues that sufficient evidence was presented to the grand jury to show cause of death.

Murder in the first degree includes the unlawful killing of a human being "perpetrated by any kind of willful, deliberate and premeditated killing." I.C. §§ 18-4001 – 18-4003(a). In homicide cases, the state is required to prove the corpus delicti of the crime. *State v. Severson*, 147 Idaho 694, 712, 215 P.3d 414, 432 (2009). "[T]he corpus delicti consists of two elements: (1) the death of the individual 'named in the charges as … being dead;' and (2) the death was caused by a criminal act of the defendant." *Id.* at 712-13, 215 P.3d at 432-33 (quoting *State v. Cutler*, 94 Idaho 295, 296, 486 P.2d 1008, 1009 (1971)). Both of these elements may be satisfied based solely on circumstantial evidence. *Id.*

The State presented sufficient evidence for the grand jury to find probable cause that Defendant caused the death of Jossue "Josh" Garcia. At the grand jury proceedings, the State presented multiple witnesses who saw Mr. Garcia alive and get out of his vehicle at Ruby Court. Darlene Rodriguez testified that Defendant was punching Mr. Garcia during the fight. After the fight, witnesses also testified that Mr. Garcia fell down in the street and was found dead by responding officers. Daniel Rodriguez testified that Defendant put a knife into Daniel's jacket

pocket after the fight with Mr. Garcia and asked Daniel to say it was self-defense. Daniel's wife, Monica, testified that she took the knife from Daniel's jacket pocket and hid it under their mattress. That same knife was found by law enforcement and the blade tested presumptive positive for human blood. Detective Seibel and Ms. Cannon testified that they observed 34 stab wounds to Mr. Garcia's body during the autopsy, including wounds to his head, heart, and lung. Based on the evidence presented, the grand jury had probable cause to believe that Mr. Garcia was dead and his death was caused by a criminal act of the Defendant. Therefore, Defendant's Motion to Dismiss Grand Jury Indictment is denied on this ground. Defendant's objections to the testimony of Detective Seibel and Christine Cannon will be addressed below.

D. Defendant's Objections to Evidence Presented to the Grand Jury.

Defendant asserts that the State presented inadmissible testimony to the grand jury. The State argues that, even without the alleged inadmissible evidence, sufficient admissible evidence was presented to the grand jury to find probable cause that crimes were committed and Defendant committed those crimes.

1. Defendant's Objections to Detective Seibel and Christine Cannon's Testimony Presented on Cause of Death is Admissible.

Defendant asserts that Detective Seibel and Christine Cannon's testimony contains hearsay or lacks foundation, and should not be considered to prove the victim's cause of death. *See* Defendant's Motion to Dismiss Grand Jury Indictment ("Motion to Dismiss"), pp. 11-13; Tr.[2] p. 356, ll. 17-25; p. 368, ll. 17-23; p. 368, l. 24 – p. 370, l. 6. The State argues that both Detective Seibel and Ms. Cannon were present at the autopsy and testified based on their personal observations. The State further argues that both witnesses were competent to testify from their

[2] Transcript citations identified in Defendant's Motion to Dismiss Grand Jury Indictment, pp. 11-20.

experience and common sense.

Hearsay is an out of court statement offered into evidence to prove the truth of the matter asserted in the statement. I.R.E. 801(c). "A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." I.R.E. 602. Proof of personal knowledge may consist of the witness's own testimony. I.R.E. 602. Additionally, "[a] witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue." I.R.E. 702.

Defendant argues that the following testimony from Ms. Cannon's is hearsay: "I think the doctor believes that that's the knife wound that pictured [sic] the lung" because it is hearsay. Motion to Dismiss, p. 12; Tr. p. 356, ll. 17-25. In this testimony, Ms. Cannon is testifying about her understanding of what the doctor believed. This testimony does not contain an out of court statement that is offered for the truth of the matter asserted. While it may be inadmissible on other grounds, this testimony is not hearsay. Therefore, this hearsay objection is overruled.

Defendant also objects to Detective Seibel's testimony that knife wounds touched the victim's heart and punctured his lung, and that a knife wound to a person's heart, lung, or head could be fatal. Motion to Dismiss, p. 13; Tr. p. 368, ll. 17-23; p. 368, l. 24 – p. 370, l. 6. Defendant asserts that Detective Seibel lacks the medical expertise needed to testify about these wounds and whether any of these wounds were actually the cause of the victim's death. Defendant also argues that whether these wounds touched the heart and lung are hearsay. Detective Seibel testified that she attended the autopsy performed on the victim and observed 34 knife wounds to Mr. Garcia's body, including one that touched his heart and another that punctured his lung. Detective Seibel

is testifying about her own observations of the wounds that she observed during the autopsy. Her testimony that a knife wound to a person's heart, lung, and/or head could be fatal is based upon her training and experience and, based upon the record, appear to be appropriate expert testimony. The grand jury transcript does not show that Detective Seibel lacks the training and experience necessary to testify about these matters. This testimony is not hearsay as there is no out of court statement admitted. For these reasons, Detective Seibel's testimony is admissible.

2. Objections that Statements Were Made Without Proper Foundation or Lack of Personal Knowledge.

"A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." I.R.E. 602. Proof of personal knowledge may consist of the witness's own testimony. I.R.E. 602. The Idaho Supreme Court has long held than an objection "that no proper foundation has been laid" is not sufficiently specific because it does not state how the foundation for the testimony is insufficient. *State v. Davis*, 155 Idaho 216, 219, 307 P.3d 1242, 1245 (Ct. App. 2013) (citing *Hobbs v. Union Pac. R.R. Co.*, 62 Idaho 58, 74, 108 P.2d 841, 849 (1940)); *see also Hansen v. Roberts*, 154 Idaho 469, 473, 299 P.3d 781, 785 (2013).

Defendant asserts that numerous statements made by witnesses are inadmissible because they were made "without proper foundation." *See* Motion to Dismiss, pp. 16, 17, 19; Tr. p. 5, ll. 10-11; p. 7, ll. 17-19; p. 9, ll. 9-11; p. 10, l. 14; p. 14, ll. 19-20; p. 15, ll. 2-9; p. 25, ll. 22-24; p. 34, ll. 23-24; p. 36, ll. 22-25; p. 43, l. 23; p. 282, ll. 13-14; p. 297, ll. 6-7. Defendant fails to state in what respect these statements are insufficient (*i.e.*, that a witness lacked personal knowledge). A broad objection that the testimony of a witness lacks foundation is not sufficiently specific. Therefore, the Court denies these objections.

Defendant also argues that Detective Seibel and Joey Anguiano made statements without

personal knowledge. *See* Motion to Dismiss, pp. 16-18; Tr. p. 11, ll. 14-22; p. 12, ll. 3-11; p. 12, l. 16 – p. 14, l. 15; p. 171, l. 13. Detective Seibel testified that she is the lead investigator assigned to this case, and a part of her duties is to touch base with the responding officers and gather as much information as possible from them. She also testified that she observed several interviews of the witnesses. Thus, sufficient evidence was introduced that Detective Seibel would have personal knowledge that consent was given to search Joey's cell phone, and to the contents of the Snapchat video found on Joey's phone. Joey also testified that he recorded a Snapchat video on his cell phone and testified to the contents of said video. Therefore, there was sufficient evidence that Joey had knowledge of what occurred in the video found on his phone. The objections to these statements are overruled.

Defendant further asserts that Sergeant Wilber testified that another officer secured Defendant "since much of the information that we had that he was a suspect at that point" without any foundation. Motion to Dismiss, p. 19; Tr. p. 299, ll. 22-23. Sergeant Wilber's preceding testimony explains his actions and the information he gathered prior to Defendant's arrest. Therefore, Sergeant Wilber's testimony, read in context, has sufficient foundation and is admissible.

3. The State Did Not Comment on Defendant's Right to Remain Silent.

The Fifth and Fourteenth Amendments of the United States Constitution, as well as the Idaho Constitution, guarantee a criminal defendant the right not to be compelled to testify against himself. U.S. Const. amends. V, XIV; Idaho Const. art. I, § 13. In *Griffin v. California*, 380 U.S. 609, 85 S.Ct. 1229 (1965), the United States Supreme Court held that this right also bars the prosecution from commenting on a defendant's invocation of his right to remain silent. 380 U.S. at 613-14, 85 S.Ct. at 1232.

> A prosecutor may not use evidence of post-arrest, post-*Miranda* silence for either impeachment purposes or as substantive evidence of guilt because of the promise present in a *Miranda* warning. If a prosecutor is allowed to introduce evidence of silence, for any purpose, then the right to remain silent guaranteed in *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), becomes so diluted as to be rendered worthless. The prosecutor also may not use any post-custody silence to infer guilt in its case-in-chief. In cases of pre-*Miranda*, pre-arrest silence, the prosecutor may not use that evidence solely for the purpose of implying guilt. The prosecutor may use pre-*Miranda* silence, either pre- or post-arrest, for impeachment of the defendant.

State v. Parker, 157 Idaho 132, 147, 334 P.3d 806, 821 (2014) (internal quotations and citations omitted). "*Miranda* warnings must be given to a suspect who is subjected to custodial interrogation." *State v. Silva*, 134 Idaho 848, 854, 11 P.3d 44, 50 (Ct. App. 2000); *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966). "Interrogation" under *Miranda* means "police words or conduct that police should know are reasonably likely to elicit an incriminating response from the suspect." *Id.*; *see also Rhode Island v. Innis*, 446 U.S. 291, 301, 100 S.Ct. 1682, 1689 (1980). However, "routine booking questions" such as a person's name, address, height, weight, eye color, and date of birth fall outside the protections of *Miranda*. *Pennsylvania v. Muniz*, 496 U.S. 582, 601-02, 110 S.Ct. 2638, 2650 (1990); *see also United States v. Ochoa-Gonzalez*, 598 F.3d 1033, 1039 (8th Cir. 2010) (concluding that "request[s] for routine information necessary for basic identification purposes" are not interrogation questions because they are not directly relevant to the substantive offense); *United States v. Paxton*, 848 F.3d 803, 813 (7th Cir. 2017) (finding that biographical questions "are not the sort of questions that one would expect to yield incriminating information" for purposes of *Miranda*); *United States v. Garcia-Zavala*, 919 F.3d 108, 113 (1st Cir. 2019) (holding that defendant's statements identifying himself, his date of birth, and his country of origin are not subject to *Miranda*).

Defendant argues that statements made by Detective Seibel and Officer Wyatt were improper comments on his constitutional rights to remain silent, and that the State continued its

line of questioning with full knowledge that Defendant had invoked his right to remain silent. *See* Motion to Dismiss, pp. 16, 19; Tr. p. 8, ll. 4-10; p. 279, l. 21. During Detective Seibel's testimony, she stated that Defendant was read his *Miranda* rights prior to his interview, and that Defendant gave details about his relationship with his sister, where he lived, and discussed the get-together at his sister's house. When the Prosecutor inquired whether Defendant provided any information about the fight that occurred at his sister's house or the fight that occurred on Ruby Court, Detective Seibel stated that "[Defendant] did not provide many specifics," and "Not at that time," respectively. Detective Seibel's vague responses do not comment on Defendant's right to remain silent or imply that Defendant invoked his right to remain silent. It is not clear from the record that Defendant had invoked his right to remain silent at that point in his interview. During Officer Wyatt's testimony, he stated that "[Defendant] wouldn't tell me his name" in response to the State's inquiry as to the identity of the person who was placed into custody at the scene. Although it is unclear from Officer Wyatt's testimony whether Defendant was read his *Miranda* rights prior to being asked for his name, asking Defendant for his name or other identifying information is not considered an interrogating question that requires *Miranda* warnings prior to questioning. Thus, Officer Wyatt's response was not a comment on Defendant's right to remain silent. Detective Seibel's and Officer Wyatt's statements are admissible.

4. Defendant's Objections to Hearsay Statements.

Defendant asserts that the grand jury transcript contains numerous examples of inadmissible hearsay. *See* Motion to Dismiss, pp. 11-13; 16-20; Tr. p. 15, ll. 2-9; p. 36, ll. 22-25; p. 97, ll. 8-16; p. 135, ll. 10-13; p. 136, ll. 10-13; p. 279, ll. 10-11; p. 283, ll. 2-16; p. 365, ll. 8-13; p. 372, ll. 2-4.

Pursuant to I.C. § 19-1105, "the grand jury can receive any evidence that is given by witnesses produced and sworn before them except as hereinafter provided, furnished by legal documentary evidence, the deposition of a witness in the cases provided by this code or legally admissible hearsay." Hearsay is an out of court statement offered into evidence to prove the truth of the matter asserted in the statement. I.R.E. 801(c). Hearsay is not admissible unless it falls under one of the enumerated exceptions in Rules 803 and 804. I.R.E. 802.

Detective Seibel testified that Nampa Dispatch received a call at 12:46 in the morning. Tr. p. 15, ll. 2-9. This testimony is not hearsay as it does not contain an out of court statement because Detective Seibel's testimony was not about the content of the call received by Nampa Dispatch, only the time the call was received. Therefore, this testimony is admissible.

Officer Mills's testimony that a knife was found inside a bedroom at 1500 Ruby Court and the knife was tested for the presence of blood is not hearsay. Tr. p. 36, ll. 22-25. Defendant's objection that Officer Mills testified that the knife tested *positive* for blood misstates the testimony. There is no out of court statement in this testimony, and this testimony is admissible.

Darlene Rodriguez testified that her father, Daniel Rodriguez, told her that Defendant told him that it was self-defense. Tr. p. 97, ll. 8-16. Defendant asserts that this testimony is hearsay within hearsay. "Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the hearsay rule." I.R.E. 805. Defendant's statement to Daniel is a party-opponent statement and is not hearsay. However, Daniel's statement to Darlene Rodriguez is an out of court statement offered for the truth of the matter asserted that Defendant acted in self-defense. Although this testimony is inadmissible hearsay, this self-defense testimony likely favors Defendant.

Maria Anguiano stated that she assumed Defendant hurt Mr. Garcia based on what some of her family members told her before the fights occurred. Tr. p. 135, ll. 10-13. The statements made by family members to Maria are hearsay and are not admissible.

After viewing a video, Maria stated that she had been told one person in the video was her nephew, Omar. Tr. p. 136, ll. 10-13. This statement is hearsay and is inadmissible.

Officer Wyatt's testimony that he learned that the person who did the stabbings was inside this house is not hearsay. *See* Tr. p. 279, ll. 10-11. This statement is not being offered for its truth. Instead, it is offered for the effect on the listener and explains why Officer Wyatt arrested Defendant. Therefore, his testimony is admissible.

Officer Wyatt, in response to a grand juror's question, explained what he was told that lead to Defendant's arrest. Tr. p. 282, l. 22 – p. 283, l. 20. The witnesses' statements to Officer Wyatt are out of court statements used to explain their effect on the listener. Based in part on these statements, Officer Wyatt entered the house and placed Defendant in custody and, therefore, his testimony is admissible.

Defendant asserts that Christine Cannon testified that the coroner said that all the wounds were similar in depth and size, but believed one wound may have been caused by a different weapon than the rest of Mr. Garcia's wounds without personal knowledge and that the testimony is hearsay. Tr. p. 365, ll. 8-13. Ms. Cannon's testimony, in response to a grand juror's question, relays what the coroner said to her during Mr. Garcia's autopsy. Therefore, her testimony as to what the doctor said is hearsay and is inadmissible.

Detective Seibel testified that witnesses stated that Alexis scratched Defendant's face. Transcript, p. 372, ll. 2-4. This testimony is hearsay and is not admissible.

5. Defendant's Objections to the State's Leading Questions.

Defendant claims that the State engaged in improper leading questioning of Joey Anguiano and Daniel Rodriguez. *See* Motion to Dismiss, pp. 18-19; Tr. p. 166, ll. 16-25; p. 236, ll. 6-8; p. 247, ll. 6-11. The State argues that its questions to Joey and Daniel were not leading because the questions did not suggest a specific answer desired by the examiner. Pursuant to I.R.E. 611(c), "[l]eading questions should not be used on direct examination except as necessary to develop the witness's testimony." A question is leading "when it suggests to the witness the answer sought." *Collins v. Parkinson*, 98 Idaho 871, 873, 574 P.2d 913, 915 (1978). The State's leading questions to Joey Anguiano about the fight, even if improper, are only a summary of the testimony previously given by Joey. *See* Tr. pp. 163-67. The Court does not find that this is prosecutorial misconduct. Furthermore, the State's question to Daniel Rodriguez whether he felt Defendant was trying to tell Daniel to take the blame is not a leading question. Daniel's response was based on Defendant's comments to him when Defendant placed his knife in Daniel's jacket pocket and his opinion based on what he observed. These questions were proper and Joey and Daniel's responses are admissible.

The State's question to Daniel whether it was possible that it could have been Defendant that accidentally cut him was an improper leading question. Tr. p. 247, ll. 6-11. This question suggested to Daniel the answer sought by the State, and is therefore an improper leading question.

6. Portions of Darlene Rodriguez and Maria Anguiano's Testimony Were Speculative.

Defendant asserts that Darlene Rodriguez and Maria Anguiano's testimony that they assumed Defendant hurt the victim is speculative. *See* Motion to Dismiss, pp. 17-18; Tr. p. 97, l. 20 – p. 98, l. 4; p. 134, l. 11 – p. 135 l. 13. The State argues that their testimony was based on their own observations, conversations with, or knowledge of, Defendant. "Testimony is

speculative when it theorizes about a matter as to which evidence is not sufficient for certain knowledge." *Adams v. State*, 158 Idaho 530, 538, 348 P.3d 145, 153 (2015).

Darlene testified that she told Defendant that "it was his self-defense." Tr. p. 97, ll. 11-13. The State asked why she knew that Defendant hurt Mr. Garcia. Tr. p. 97, l. 14 – p. 98, l. 4. Darlene explained that she saw Mr. Garcia bleeding after the fight was over, and she knew that Defendant had a knife. However, Darlene's response is speculative because she did not see Defendant pull out his knife, did not see Defendant stab Mr. Garcia, and merely believes that it is possible that he stabbed him. Therefore, Darlene's testimony is inadmissible.

Similarly, the State asked Maria why she told Defendant to say he acted in self-defense. Maria made the following response: "Because when I was there, they were telling – when I got to my sister's house, they were telling me that Josh and Alexis were coming over to hurt [Defendant]. So I assumed that since I heard that [Defendant] was hurt, that it was [Defendant] who hurt him back." Tr. p. 135, ll. 9-13. Maria admitted that she never saw any weapons and did not see what happened with Defendant, Mr. Garcia, and Daniel Rodriguez. Maria's testimony that she assumed Defendant hurt Mr. Garcia is speculative and is inadmissible.

7. The State's Question About the Credibility of Another Witness Was Improper.

Defendant asserts that the State improperly comments on the credibility of another witness by asking Omar Canchola whether another witness lied. Tr. p. 197, ll. 16-18. The State argues that, in an attempt to impeach Omar because of the conflicting testimony of another witness, asking Omar whether another witness was lying was not improper.

The Idaho Supreme Court has held that "a question calling for the opinion of one witness as to the truthfulness of another … is clearly an invasion of the province of the jury, who are the judges of the credibility of witnesses." *State v. Perry*, 150 Idaho 209, 229, 245 P.3d 961, 981

(2010). Similarly, "the mere fact that the testimony of witnesses is conflicting only raises questions as to the credibility of the witnesses and the weight to be given their testimony, and that these questions are exclusively for the jury's determination." *State v. Bolton*, 119 Idaho 846, 850, 810 P.2d 1132, 1136 (Ct. App. 1991). Lay witnesses are prohibited from testifying on matters of credibility. *Perry*, 150 Idaho at 229, 245 P.3d at 981.

The State's question to Omar whether he or another witness was lying about specific details of the fight was improper. It was improper for the State to invade the province of the grand jury by asking Omar to testify about another witness's credibility. This testimony is inadmissible.

8. Detective Seibel Did Not Make Improper Comments on the Weight of Evidence.

Defendant claims that Detective Seibel improperly commented on the weight of the evidence as to whether an expert could determine if a specific knife caused a specific wound. Motion to Dismiss, p. 20; Tr. p. 373, ll. 12-25. Based on her nine years of experience and training handling crimes involving persons, specifically homicide cases, Detective Seibel testified that, to her knowledge, an expert is not able to determine whether a specific knife caused a specific wound. Detective Seibel's testimony did not comment on the weight of the evidence but was in direct response to a grand juror's question. Therefore, this evidence is admissible.

9. Testimony Without Objections.

Defendant expresses concern about some testimony without stating an objection to that testimony. Motion to Dismiss, pp. 18, 19; Tr. p. 133, ll. 4-13; p. 139, ll. 1-3; p. 370, ll. 13-14; p. 371, ll. 21-22. The Court finds that this testimony is admissible because Defendant failed to raise a specific objection to this testimony.

E. The Indictment Will Not be Dismissed.

Defendant asserts that the State's misconduct is prejudicial because he is in jail for a murder charge, with a bond he is unable to pay, based on an indictment that is not supported by sufficient legally admissible evidence. The State argues that none of Defendant's objections address the competency of the evidence presented by all the first-person testimony about what occurred, and that, even if all of the objected-to testimony was inadmissible, there is an overwhelming amount of testimony to justify the grand jury's finding of probable cause.

Under the two-part inquiry articulated in *Marsalis*, *supra*, the grand jury received legally sufficient evidence, independent of the inadmissible evidence, to support a finding of probable cause that Defendant committed First Degree Murder. The grand jury heard testimony that Mr. Garcia was alive when he arrived at Ruby Court, that he was involved in a fight with Defendant, and that he collapsed in the street after that fight. The grand jury also heard testimony that Mr. Garcia was dead when law enforcement arrived. In addition, they heard evidence that Defendant had a knife and Mr. Garcia had 34 knife wounds on his body. The grand jury also heard evidence that Defendant said he was sorry shortly after the stabbing. This evidence is sufficient to lead a reasonable person to believe that there was probable cause that first degree murder was committed and that Defendant committed the murder.

The State's misconduct during the grand jury proceeding was not so egregious as to be prejudicial. *See Marsalis*, 151 Idaho at 876, 264 P.3d at 984 ("'Prejudicial effect' means 'the defendant would not have been indicted but for the misconduct.'"). As discussed in detail above, the misconduct included presenting some inadmissible testimony and invading the province of the grand jury. *See* Tr. p. 97, ll. 8-16; p. 97, l. 11 – p. 98, l. 4; p. 135, ll. 9-13; p. 136, ll. 10-13; p. 197, ll. 16-18; p. 247, ll. 6-11; p. 365, ll. 8-13; p. 372, ll. 2-4. The State's misconduct was not prejudicial

to Defendant. As noted in the previous paragraph, the most persuasive evidence against Defendant was admissible and properly presented to the grand jury. Balancing the seriousness of the State's misconduct against the extent of evidence supporting the indictment, the Court finds that Defendant was not prejudiced. Defendant likely would have been indicted even if the inadmissible evidence had not been presented.

IV. ORDER

Based on the foregoing, Defendant's Motion to Dismiss Grand Jury Indictment is DENIED.

DATED: **5/21/2021 04:12 PM**

Gene A. Petty
District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that s/he served a true and correct copy of the original of the foregoing on the following individuals via the court's electronic filing system:

- upon counsel for the state:
  Canyon County Prosecuting Attorney
  1115 Albany St.
  Caldwell, ID 83605
  criminalefile@canyonco.org

- upon counsel for the Defendant:
  Canyon County Public Defender
  111 N. 11th Ave., Suite 120
  Caldwell, ID 83605
  pdmail@canyonco.org

CHRIS YAMAMOTO,
Clerk of the Court

5/21/2021 04:15 PM

B. Hatfield
By Deputy Clerk of the Court