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Seventh Judicial District, Teton County
Kim Keeley, Clerk of the Court
By: Deputy Clerk - Hill, Susan

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

STATE OF IDAHO,

Plaintiff,

vs.

JEREMY ALBERT BEST,

Defendant.

Case No. CR41-23-0877

MEMORANDUM DECISION AND ORDER RE: MOTION TO DISMISS INDICTMENT

I. STATEMENT OF THE CASE

On December 18, 2023, an Indictment was entered whereby the grand jury in Teton County charged Jeremy Albert Best with: (1) Murder in the First Degree for the killing of his wife, Kali Jean Best, (2) Murder in the First Degree for the killing of Kali Jean Best's fetus, (3) Murder in the First Degree for the killing of his son, Zeke Gregory Best, and (4) enhancements for the use of a deadly weapon applied to each count.

Best moves the Court to dismiss the indictment.

Best's motion to dismiss indictment is denied.

II. FACTUAL AND PROCEDURAL BACKGROUND

On November 30, 2023, Kali Randall Best[1] was killed at her home in Victor, Idaho. Kali was Best's wife and was pregnant at the time of her death. After law enforcement discovered Kali's body, it determined Kali and Best's infant son was missing from the family home. Law enforcement located Best on December 2, 2023. Zeke was found dead nearby.

[1] The Defendant is referred to throughout this document by his last name. To distinguish them from the Defendant, Kali and Zeke are referred to by their first names. No disrespect is intended by the informal use of first names.

On December 4, 2023, the State filed a Criminal Complaint, charging Jeremy Albert Best with two counts of murder in the second degree, for the killing of Kali and her unborn fetus. It also charged Best with a sentence enhancement for use of a firearm or other deadly weapon during the commission of a crime. Within minutes of the Criminal Complaint's filing, the State filed an Amended Criminal Complaint, charging Best with two counts of murder *in the first degree* for the killing of Kali and her unborn fetus along with enhancements for the use of a deadly weapon.

On December 18, 2024, a grand jury returned an Indictment, charging Best with three counts of murder in the first degree, under Idaho Code §§ 18-4001 through 18-4004, for the killing of Kali Randall Best, her unborn fetus, and Zeke Gregory Best. The Indictment charged enhancements, under Idaho Code § 19-2520, for the use of a firearm or other deadly weapon as to each murder charge.

On January 3, 2024, Best was arraigned on the indictment and pleaded not guilty.

On January 30, 2024, Best filed a Motion to Dismiss Indictment.

On February 28, 2024, the State filed a Notice of Intent to Seek Death Penalty.

On May 1, 2024, the State filed an Opposition to Defendant's Motion to Dismiss the Indictment.

On May 9, 2024, Best filed a Reply to State's Opposition to Defendant's Motion to Dismiss Indictment.

Best's Motion to Dismiss was scheduled for hearing on May 14, 2024. However, at that hearing, the Court took under advisement the State's motion to seal portions of the briefing and the motion to dismiss hearing. Due to the necessity of first deciding the State's motion to seal, hearing of the motion to dismiss was rescheduled for June 11, 2024.

On June 11, 2024, the Court heard argument on the Motion to Dismiss Indictment and took the matter under advisement.

For the same reasons set forth in this Court's June 20, 2024, Order Sealing Documents and Hearing and consistent with I.C.A.R. 32(g)(7), this Memorandum Decision and Order will be sealed. A redacted version, which strikes all references to grand jury materials, will be released to the public.

III. STANDARD OF ADJUDICATION

"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. Marsalis*, 151 Idaho 872, 875, 264 P.3d 979, 982 (Ct. App. 2011).

> When this Court reviews a trial court's discretionary decision, it applies a four-prong test to determine whether there was an abuse of discretion: whether the trial court "(1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choice available to it; and (4) reached its decision by the exercise of reason." *Lunneborg v. My Fun Life*, 163 Idaho 856, 867, 421 P.3d 187, 198 (2018).

State v. Ochoa, 169 Idaho 903, 912, 505 P.3d 689, 698 (2022).

A defendant seeking to dismiss an indictment "has a heavy burden." *State v. Edmonson*, 113 Idaho 230, 237, 743 P.2d 459, 466 (1987).

> In considering a motion to dismiss an indictment under I.C.R. 6.6[2] 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).

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[2] Subsequently renumbered as I.C.R. 6.5(a).

State v. Brandstetter, 127 Idaho 885, 887, 908 P.2d 578, 580 (Ct. App. 1995) (notes omitted). "[E]very legitimate inference that may be drawn from the evidence must be drawn in favor of the indictment." *State v. Marsalis*, 151 Idaho 872, 876, 264 P.3d 979, 983 (Ct. App. 2011) (citing *State v. Brandstetter,* 127 Idaho 885, 887, 908 P.2d 578, 580 (Ct. App. 1995)).

IV. ANALYSIS

Best moves to dismiss the indictment under I.C.R. 6.6. He argues that the evidence shows he experienced a mental health breakdown on the day in question, and the grand jury should have considered murder in the second degree or manslaughter as alternatives to first degree murder. He contends evidence of his mental breakdown impacts any consideration of malice aforethought and premeditation, justifying a lesser charge. Best states the following evidence should have been introduced at the grand jury proceedings: (1) his disoriented behavior while naked at the general store in Swan Valley on November 30, 2023, (2) the Bonneville County Sheriff Office's transportation of him to Eastern Idaho Regional Medical Center ("EIRMC") following his detention in Swan Valley, (3) the existence of numerous witnesses[3] who would testify he had a great relationship with his wife, and (4) the fact that a sudden quarrel arose between him and his wife.

Under the Idaho Constitution, "No person shall be held to answer for any felony or criminal offense of any grade, unless on presentment or indictment of a grand jury or on information of the public prosecutor." Idaho Const. art. I, § 8.

"The grand jury must inquire into all public offenses committed or triable within the county, and present them to the court, either by presentment or by indictment." I.C. § 19-1101.

> *The grand jury is not bound to hear evidence for the defendant;* but it is their duty to weigh all the evidence submitted to them, and *when they have reason* to believe

[3] Best's Motion to Dismiss Indictment does not identify any witnesses by name.

> that other evidence within their reach will explain away the charge, *they* should order such evidence to be produced, and for that purpose *may require the prosecuting attorney to issue process* for the witnesses.

I.C. § 19-1106 (emphasis added); *accord* I.C.R. 6.4(c).

> The prosecuting attorney has the power and duty to . . . 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;

I.C.R. 6.1(b)(1) (emphasis added). The prosecuting attorney must also "advise the grand jury as to the standard for probable cause." I.C.R. 6.1(b)(4).

"The grand jury is an accusing body and not a trial court. Its functions are investigative and charging. The purpose of . . . a grand jury proceeding . . . is to determine probable cause." *State v. Edmonson*, 113 Idaho 230, 234, 743 P.2d 459, 463 (1987). Probable cause exists if the grand jury has seen "evidence that would lead a reasonable person to believe an offense has been committed and that the accused party has probably committed the offense." I.C.R. 6.5(a). If probable cause exists, the grand jury "ought to find an indictment." *Id.* "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 determination of guilt or innocence is saved for a later day." *Edmonson,* at 236, 743 P.2d at 465. The grand jury process "does not require the fine resolution of conflicting evidence that a reasonable-doubt or even a preponderance standard demands, and credibility determinations are seldom crucial in deciding whether the evidence supports a reasonable belief in guilt." *Id.* at 234, 743 P.2d at 463 (quoting *Gerstein v. Pugh,* 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975)).

"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." *State v. Brandstetter*, 127 Idaho 885, 887, 908 P.2d 578, 580 (Ct. App. 1995). Idaho code also requires that an "indictment must be set aside by the court in which the defendant is arraigned, upon his motion, . . . [w]hen it is not found, endorsed and presented as prescribed in this code." I.C. § 19-1601(1); *accord* I.C.R. 6.6 (allowing dismissal of an indictment when it "was not properly found, endorsed and presented as required by these rules or by the statutes of the state of Idaho").

"[D]ismissal of an indictment is a 'drastic remedy and should be exercised only in extreme and outrageous situations, and therefore, the defendant has a heavy burden' to show prejudice." *Marsalis*, 151 Idaho at 879, 264 P.3d at 986 (quoting *Edmonson*, 113 Idaho at 237, 743 P.2d at 466.)

To establish a defendant committed murder in the first degree, the State bears the burden of proving:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] engaged in conduct which caused the death of [name of decedent],
4. the defendant acted without justification or excuse,
5. *with malice aforethought*, and
6. [the murder was perpetrated by means of poison];

   [or]

   [the murder was perpetrated by lying in wait];

   [or]

[the murder was a willful, deliberate, and *premeditated killing*.

ICJI 704A (emphasis added).

> 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.

Id.

The Idaho Supreme Court has held that the following facts may infer premeditation: (1) a defendant inflicted more than one "blow," (2) a defendant's calm demeanor after inflicting injuries, (3) a defendant's refusal to aid the victim or otherwise seek help, (4) a defendant's immediate efforts to "cover up his involvement," and (5) the fact that a victim's injuries "were unusual and difficult to achieve and must have been inflicted by extraordinary force." *State v. Aragon*, 107 Idaho 358, 367, 690 P.2d 293, 302 (1984).

> Malice may be express or implied.
>
> Malice is express when there is manifested a deliberate intention unlawfully to kill a human being.
>
> Malice is implied when:
>
> 1. The killing resulted from an intentional act,
>
> 2. The natural consequences of the act are dangerous to human life, and
>
> 3. The act was deliberately performed with knowledge of the danger to, and with conscious disregard for, human life.
>
> When it is shown that a killing resulted from the intentional doing of an act with express or implied malice, no other mental state need be shown to establish the mental state of malice aforethought. The mental state constituting malice aforethought does not necessarily require any ill will or hatred of the person killed.
>
> The word "aforethought" does not imply deliberation or the lapse of time. It only means that the malice must precede rather than follow the act.

ICJI 702.

A. Evidence presented to the grand jury supports a finding of probable cause for first degree murder.

The Court begins its analysis by considering the evidence upon which the grand jury found the Indictment. In particular, the Court considers evidence pertaining to malice aforethought and premeditation, the elements on which Best's motion focuses.

Before the grand jury, the prosecution presented an abundance of evidence relevant to these two elements. [redacted]

[redacted]

[redacted]

When reviewing the evidence before the grand jury, the Court must draw every legitimate inference it can in favor of the indictment. *Marsalis,* 151 Idaho at 876, 264 P.3d at 983.

The following evidence supports probable cause relative to implied malice as to both the killings of Kali and her fetus. First, [redacted] demonstrates "an intentional act." ICJI 702. Second, [redacted] presented a grave danger to life as its "natural consequence." *Id.* Finally, [redacted] could reasonably be inferred to establish he acted intentionally and deliberately with "knowledge of the danger to, and with conscious disregard for, [Kali and her fetus's] li[ves]." *Id.*

The following evidence supports probable cause relative to malice aforethought as to the killing of Zeke. First, [redacted] demonstrates intent. *Id.* Second, the "natural consequences" of [redacted] is danger to life. *Id.* Finally, [redacted] is evidence Zeke's killing was "deliberately performed with knowledge of the danger to, and with conscious disregard" for Zeke's life. *Id.*

The following evidence supports probable cause that Best's actions were premeditated as to Kali and her fetus. First, [redacted] Second, [redacted] Third, [redacted] Fourth, [redacted] Fifth, [redacted] Finally,

[redacted] Taken together, this evidence implies premeditation.

The following evidence supports probable cause that Best's actions were premeditated as to Zeke. First, [redacted] Second, [redacted] Third, [redacted] Fourth, [redacted] Fifth, [redacted] Sixth, [redacted] Seventh, [redacted] Eighth, [redacted]

Given the evidence presented to the grand jury, the indictment does not demonstrate an "outrageous situation[]" that would justify dismissal. The evidence presented to the grand jury is sufficient to "lead a reasonable person to believe" murder in the first degree "has been committed and that [Best] has probably committed the offense." I.C.R. 6.5(a). Rule 6.5 and Idaho Code § 19-1107 sustain the grand jury's indictment.

B. Additional evidence, relied on by Best, does not directly negate guilt.

Best contends that additional evidence regarding his mental state would have directly negated the malice aforethought and premeditation elements of murder in the first degree. He maintains that if the prosecution had presented the grand jury with additional evidence and instructions regarding lesser included charges, the grand jury might have charged him with a lesser crime. He argues, "there is *proof* that the case against the defendant lacked both premeditation and malice." M. to Dismiss at 3 (emphasis added).

As the moving party, Best bears the burden of establishing the Indictment must be dismissed. While there may be evidence to support Best's defense that he lacked premeditation and malice, a grand jury does not concern itself with proof because the "determination of guilt or innocence is saved for a later day." *Edmonson, supra.* Idaho law does not require a prosecutor to present all evidence which might possibly support a defense to considered charges. It requires that when a prosecutor is "personally aware of substantial evidence which directly negates" guilt, the prosecutor must present such evidence to the grand jury. I.C.R. 6.1(b)(1).

The interpretation of a court rule "begins with the language of the rule, read according to its 'plain, obvious and rational meaning.'" *State v. Rose*, ___ Idaho ___, 546 P.3d 665, 668 (2024) (quoting *Valentine v. Valentine*, 169 Idaho 621, 627, 500 P.3d 514, 520 (2021)). "The rule should be considered as a whole, and we give effect to all the words and provisions so that none will be void, superfluous, or redundant." *Id.* (citing *State v. Singh*, 171 Idaho 685, 688, 525 P.3d 723, 726 (2023)).

Direct evidence is "the testimony of witnesses who, with their physical senses, perceived conduct constituting the offense, and whose testimony relates to what they thereby perceived." *State v. Sundquist*, 128 Idaho 780, 781, 918 P.2d 1225, 1226 (Ct. App. 1996)

(quoting *State v. Bedwell,* 77 Idaho 57, 61, 286 P.2d 641, 644 (1955)). "[T]estimony is not direct evidence of the defendant's guilt if the jury must draw inferences from such facts in order to conclude that the defendant committed the crime." *Id; see also Evidence,* BLACK'S LAW DICTIONARY (12th ed. 2024) (defining direct evidence as "[e]vidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.").

"Negate" is commonly understood as "to deny the existence or truth of." *Negate,* MERRIAM-WEBSTER ONLINE, available at http://ww.merriam-webster.com/dictionary/negate (last visited July 17, 2024); *see also Negate*, BLACK'S LAW DICTIONARY (12th ed. 2024) (**1.** To deny. **2.** To nullify; to render ineffective.").

"Guilt" is defined as "the fact of having committed a breach of conduct especially violating law and involving a penalty." *Guilt,* MERRIAM-WEBSTER ONLINE, available at https://www.merriam-webster.com/dictionary/guilt (last visited July 17, 2024); *see also Guilt,* BLACK'S LAW DICTIONARY (12th ed. 2024) ("The fact, state, or condition of having committed a wrong, esp. a crime").

Under the rule's plain meaning, evidence that "directly negates the guilt" of an individual is evidence that denies or disproves the violation of a law or commission of a crime *without reliance on inference.* Such evidence must be "substantial" before its presentation to the grand jury is mandated. I.C.R. 6.1(b)(1).

Best's motion to dismiss alleges the following evidence would have negated the malice aforethought and premeditation elements of murder in the first degree: (1) his conduct in Swan Valley earlier in the day on November 30, 2023, (2) his detention by law enforcement, (3) his transportation to EIRMC that same day, (4) the lack of evidence regarding his ill will towards his wife or Zeke, (5) the existence of witnesses who would testify he had a great relationship with

his wife, and (6) the existence of many witnesses who would testify that Best had a mental health breakdown which caused his actions.

Assuming for the sake of argument that this evidence was all admissible, it does not *directly* negate guilt. First, malice aforethought "does not necessarily require any ill will or hatred of the person killed." ICJI 702. Accordingly, number four, above plainly does not directly negate guilt. The remaining evidence is direct evidence: (1) of Best's irrational behavior before and after the day in question, (2) of Best's relationship with his wife and son, and (3) of medical care Best received prior to the killings. While this evidence may be relevant to defenses Best may raise at trial, it is circumstantial *as to the issues of malice aforethought and premeditation*. To reach a conclusion that Best lacked malice and premeditation based on the evidence, a jury would need to draw inferences from it. *See State v. Bahr*, 163 Idaho 433, 436, 414 P.3d 707, 710 (Ct. App. 2018) (explaining that a jury may infer premeditation from "the commission of acts and the surrounding circumstances"). Because the evidence Best cites is circumstantial on the issue of malice and premeditation, Idaho law did not obligate the prosecution to present the evidence to the grand jury.

C. Best's reply brief untimely raises new issues.

Best's original Motion to Dismiss Indictment mentions evidence falling in the above-listed categories. The original motion was, however, largely devoid of specifics, including the names of potential witnesses. Best identified specific evidence in his reply brief and in an Exhibit List filed simultaneously with the reply brief on May 9, 2024.

I.C.R. 12(d) requires that a motion to dismiss an indictment be filed "within 28 days after the entry of a plea of not guilty or seven days before trial whichever is earlier." "A motion must state the grounds on which it is based and the relief or order sought." I.C.R. 47(b). A "court

may shorten or enlarge the time and, *for good cause shown or for excusable neglect*, may relieve a party of failure to comply with this rule." I.C.R. 12(d). A defendant's failure to comply with such time requirements waives "the defenses, objections or requests" unless "the court, for cause shown, . . . grant[s] relief from the waiver." I.C.R. 12(f).

Best entered his not guilty plea on January 3, 2024. Any motion to dismiss the indictment was due by January 31, 2024. Best's motion to dismiss, filed on January 30, 2024, was timely. However, new issues raised in his reply brief, including the identified exhibits, were late because the original motion did not include the issues as grounds on which it was based. I.C.R. 47(b).

The Idaho Court of Appeals has explained that Rule 12(d) "clearly requires either good cause or excusable neglect to be shown by a party who has missed the prescribed deadlines." *State v. Dice*, 126 Idaho 595, 597, 887 P.2d 1102, 1104 (Ct. App. 1994). "Allowing untimely motions to be heard because they appear meritorious eviscerates the purpose of the rule." *Id.* If a party does not establish good cause or excusable neglect, the motion should not be heard. *Id.*

Best has not offered any explanations of good cause or excusable neglect for untimely raising arguments and exhibits more than three months after the deadline for filing a motion to dismiss under Rule 12(d). The Court does not, therefore, consider issues not raised in the January 30, 2024, Motion to Dismiss Indictment.

D. The U.S. Constitution does not impose a greater burden on the prosecution.

Idaho law requires a prosecutor to present substantive evidence that directly negates guilt. The U.S. Constitution does not hold prosecutors to a higher standard than that imposed under Idaho law. The United States Supreme Court has explained that "requiring the prosecutor to present exculpatory as well as inculpatory evidence would alter the grand jury's historical role, transforming it from an accusatory to an adjudicatory body." *United States v. Williams*, 504 U.S. 36, 51–52, 112 S. Ct. 1735, 1744, 118 L. Ed. 2d 352 (1992). It explained:

> It is axiomatic that the grand jury sits not to determine guilt or innocence, but to assess whether there is adequate basis for bringing a criminal charge. . . .That has always been so; and to make the assessment it has always been thought sufficient to hear only the prosecutor's side. As Blackstone described the prevailing practice in 18th–century England, the grand jury was "only to hear evidence on behalf of the prosecution[,] for the finding of an indictment is only in the nature of an enquiry or accusation, which is afterwards to be tried and determined." . . . So also in the United States. According to the description of an early American court, three years before the Fifth Amendment was ratified, it is the grand jury's function not "to enquire ... upon what foundation [the charge may be] denied," or otherwise to try the suspect's defenses, but only to examine "upon what foundation [the charge] is made" by the prosecutor. . . . As a consequence, neither in this country nor in England has the suspect under investigation by the grand jury ever been thought to have a right to testify or to have exculpatory evidence presented. . . .

United States v. Williams, 504 U.S. 36, 51–52, 112 S. Ct. 1735, 1744, 118 L. Ed. 2d 352 (1992) (citations omitted).

This conclusion is consistent with that set forth in a well-respected criminal procedure treatise:

> Courts also note that the obligation to disclose clearly exculpatory evidence does not require the prosecution to present evidence suggesting a possible defense, a mitigating factor, or the possible lack of an adequate men rea. . . .
>
> In describing the type of evidence most likely to come within the prosecution's duty to disclose, *courts focus on evidence said to establish in itself that the defendant has not committed the crime.* They cite, for example, evidence such as the confession by another to the crime, witnesses who can establish that "the accused was nowhere near the scene of the crime when it occurred," and the situation in

which one of two eyewitness states the defendant is not the offender.

LeFave, 4 Crim. Proc. § 15.7(f) Failure to present known exculpatory evidence (4th ed.) (emphasis added; notes omitted).

E. The prosecution was not required to instruct the grant jury regarding lesser included offenses.[4]

"[P]rosecutors are not ordinarily required to inform the grand jury of lesser included offenses." *Id.* § 15.7(f). Prosecutors may only be required to explain a lesser included offence when "the grand jurors themselves indicated that they want to consider such a charge." *Id.*

"At common law, the prosecutor's charge of a specific crime was viewed as giving presumptive notice of any lesser included offense." *State v. Gilman*, 105 Idaho 891, 893, 673 P.2d 1085, 1087 (Ct. App. 1983) (citing *State v. Padilla,* 101 Idaho 713, 716, 620 P.2d 286, 289 (1980)). "The common law doctrine, that a defendant has presumptive notice of a lesser included offense, has survived due process scrutiny." *Id.* "Second degree murder, voluntary manslaughter, and involuntary manslaughter are commonly referred to as lesser included offenses of first degree murder." *State v. Cochran*, 149 Idaho 688, 691, 239 P.3d 793, 796 (Ct. App. 2010).

V. CONCLUSION AND ORDER

The grand jury had sufficient evidence before it to establish probable cause for the crime of first-degree murder. Dismissal of the Indictment is improper.

The prosecution was not required to present the grand jury with circumstantial defense evidence or instruct the grand jury regarding lesser included offenses.

[redacted]

Best's motion to dismiss the indictment is denied.

IT IS SO ORDERED.

Dated this 25 day of July, 2024.

Dane H. Watkins, Jr.
District Judge

SEVENTH JUDICIAL DISTRICT
TETON
COUNTY
IDAHO

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of July, 2024, the foregoing Order was entered and a true and correct copy was served upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be delivered to their courthouse boxes; by causing the same to be hand-delivered, by facsimile, or by e-mail.

Parties Served:

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Clerk of the District Court
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by Susan Hill
Deputy Clerk