

CASE NO. CR29-22-2805  
BY JAL DEPUTY  
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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,  
Plaintiff,

V.

BRYAN CHRISTOPHER KOHBERGER,  
Defendant.

Case No. CR29-22-2805

STATE'S SUPPLEMENTAL  
RESPONSE TO DEFENDANT'S  
MOTIONS REGARDING GRAND  
JURY RECORD AND  
TRANSCRIPT

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and respectfully supplements its May 30, 2023, "State's Response to Defendant's Motions Regarding Grand Jury Record and Transcript."

As the State indicated in its initial response, a proposed Stipulation for the "Order for Preparation and Release of Transcript and Record of Grand Jury Proceedings with Conditions," was being reviewed by Defendant's counsel. Unfortunately, the State and the defense have not been able to reach agreement. Consequently, the State submits the following for the Court's consideration:

STATE'S SUPPLEMENTAL RESPONSE TO  
DEFENDANT'S MOTIONS REGARDING  
GRAND JURY RECORD AND TRANSCRIPT

1. Access to the audio record and a transcript of grand jury proceedings is controlled by I.C.R. 6.2(c). The overriding secrecy and confidentiality of grand jury proceedings is described in I.C.R. 6.3. Reading these rules together, the only exceptions to the secrecy and confidentiality of grand jury proceedings are:
  - a. For counsel “to listen to the record of the proceedings of the grand jury or to obtain a transcript of the proceedings . . .”.
  - b. The lists of juror votes which may be disclosed to counsel by order of the Court under I.C.R. 6.5(d); and
  - c. Disclosure of “what was said or done in the proceeding” by order of the Court for “good cause shown” under I.C.R. 6.3(c).
2. The Defendant’s “Motion to Make Available the Record of All Proceedings of the Grand Jury pursuant to I.C.R. 6.2” appears to go beyond what is permitted by the applicable court rules. Additionally, the defense proposes that the Court “unseal” various grand jury proceedings and then make them subject to a subsequent “qualified protective order.” This is contrary to the requirement that the grand jury records and transcript remain sealed under I.C.R. 6.2, 6.3., and 6.5., and I.C.A.R. 32(g)(7) and (i)(4). None of these records can be or should be unsealed. Rather, the Court should allow the parties to “listen to the record of the proceedings of the grand jury” and to obtain a “transcript of the proceeding” (under I.C.R. 6.2.(c)) and the list of juror’s votes under I.C.R. 6.5(d). [NOTE: I.C.R. 6.5(d) specifically requires that the “lists must remain sealed but may be disclosed to the prosecuting attorney, the defendant and the defendant’s counsel by order of the Court.” (Emphasis added).]

3. As mentioned above, disclosures of the grand jury of what was “said or done” in grand jury proceedings beyond the audio recording/transcript and list of jurors can only be done by order of the Court “for good cause shown” under I.C.R. 6.3(c). The State respectfully submits that the defense has not made such showing for the detailed list of items they requested in their “Motion to Make Available the Record of All Proceedings of the Grand Jury Pursuant to I.C.R. 6.2.”

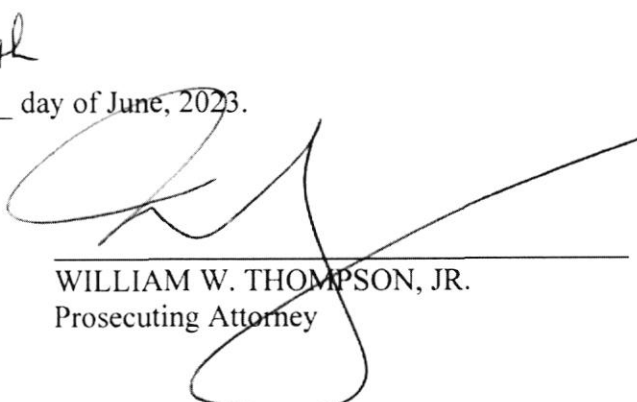
The Idaho Supreme Court has explained that “grand jury proceedings are intended, to the extent possible, to be secret.” *State v. Abdullah*, 158 Idaho 386, 449 (2015). A defendant who seeks more than what the rules expressly allow must show “good cause” for access to grand jury records. *Id.* For example, in *Abdullah*, a defendant convicted of first-degree murder and sentenced to death argued to the Idaho Supreme Court that he was entitled to grand jury selection transcripts “to determine whether he [had] any basis to challenge the grand jury term.” *Id.* at 448-49. The Court explained that the defendant “must demonstrate ‘good cause’ for this Court to allow his review of the grand jury selection transcripts.” *Id.* Because the defendant “provide[d] no legal basis for this Court to allow his review of the grand jury selection transcripts[,]” the Court declined to order the district court to provide defendant with the requested grand jury selection transcripts.

The State respectfully submits that the appropriate course of action at this point is for the Court to enter an order for preparation and release of a transcript of the grand jury proceedings (except the deliberations) and permit the State and Defense to obtain copies of said transcript and the audio recording of the grand jury. This is with the understanding that the same

will remain confidential as outlined in the State's proposed "Order for Preparation and Release of Transcript and Record of Grand Jury Proceedings with Conditions" appended to the State's May 25, 2023, "State's Response to Defendant's Motions Regarding Grand Jury Record and Transcript." The State also stipulates to the list of jurors' notes being disclosed to counsel pursuant to I.C.R. 6.5(d).

Once the transcript and audio recording have been reviewed by the parties, the Court, on motion of a party, can proceed to consider whether there is "good cause" required by I.C.R. 6.3(c) for further disclosure.

Respectfully submitted this 5<sup>th</sup> day of June, 2023.



WILLIAM W. THOMPSON, JR.  
Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the STATE'S SUPPLEMENTAL RESPONSE TO DEFENDANT'S MOTIONS REGARDING GRAND JURY RECORD AND TRANSCRIPT was served on the following in the manner indicated below:

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

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

Dated this 6<sup>th</sup> day of June, 2023.

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