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CASE NO. CR 29-22-2805
2023 July 17 11:24
CLERK OF DISTRICT COURT
LATAH COUNTY a.m.
BY Cull DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,
Plaintiff,

V.

BRYAN C. KOHBERGER
Defendant.

Case No. CR29-22-2805

MOTION TO RECONSIDER
ORDER STAYING TIME FOR
SPEEDY TRIAL

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and respectfully requests that this Court reconsider its Order Staying Time for Speedy Trial. The law does not allow Defendant to partially waive his statutory right to a speedy trial and thus, his acquiescence to the limited stay in this matter could be deemed a full waiver of speedy trial, with the potential to create needless litigation in the future. Additionally, the Court's stay has no practical effect where (a) the parties are continuing to litigate discovery matters and file motions, (b) trial remains set, and (c) Defendant is free to request a stay in the future. Due to these practical

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considerations, the State respectfully requests that the Court rescind its Order Staying Time for Speedy Trial. The State further requests that the jury trial in this matter remain set for October 2, 2023, or alternatively, that it be moved beyond the speedy trial period only if Defendant unambiguously waives his right to a speedy trial. The State makes these requests to give the parties, the victims' families, and the witnesses predictability as to future trial dates; to protect the record; and to avoid needless speedy trial litigation down the road.

BACKGROUND

Defendant was indicted on four counts of first-degree murder and one count of burglary on May 16, 2023. On May 19, Defendant filed motions requesting grand jury materials, including the record and transcript. In the days that followed, the State and Defense conferred but were unable to reach an agreement as to the scope of the grand jury materials subject to release under the Idaho Criminal Rules. On June 13, the Defendant filed a Motion to Stay Proceedings, arguing that he "intends to contest the indictment," *Def. Mo. to Stay*, p. 2, and asking the Court to stay this case so that he could "discover the grounds" upon which to do so. *Id.* at 2-3. The sole legal basis offered by Defendant in his request to stay was Idaho Code § 2-213, which allows a party to request a stay in proceedings where there has been a "substantial failure to comply with [the applicable law] in selecting the grand or trial jury." I.C. 2-213(1).

On July 10, 2023, the Court issued an Order for a Limited Stay of Proceedings. The Court rejected the Defendant's rationale that Idaho Code § 2-213 applies at this stage. Nevertheless, the Court elected to issue a limited stay to toll speedy trial for a period of 37 days, relying upon the "good cause" language found in Idaho Code § 19-3501. As the Court noted in its Order for a Limited Stay of Proceedings, Kohberger and his counsel agreed to the terms of this stay on July 6, 2023, acknowledging that he could not later argue that his right to a speedy trial was violated so

long as he is brought to trial within the six-month speedy trial period, plus the additional time period of the stay (37 days). Trial remains set to begin on October 2, 2023.

ARGUMENT

Idaho Code §19-3501, which allows a Court to dismiss a case for lack of a speedy trial, is triggered “if a Defendant, *whose trial has not been postponed upon his application*, is not brought to trial within six months [from the filing of an indictment or information].” Idaho Code § 19-3501(2) (emphasis added). Notably, § 19-3501 does not require an unequivocal, on-the-record, waiver of speedy trial. Instead, the statute by its own language excludes from relief those individuals whose trials have been postponed upon their own application.

State v. Lundquist is instructive. 134 Idaho 831, 11 P.3d 27 (Idaho 2000). There, the Idaho Supreme Court held that an individual who requested a single trial continuance beyond the speedy trial period in order to substitute counsel—but objected to further continuances—had fully waived his right to a speedy trial. *Id.* Lundquist’s arraignment took place on January 4, 1996, and his jury trial was set for July 9, 1996. *Id.* at 833, 11 P.3d at 29. On April 18, 1996, Lundquist filed a motion to separate his trial from that of two co-defendants. *Id.* That motion was granted on May 31, 1996, because Lundquist had not waived his right to a speedy trial, while the co-defendants had. *Id.* On June 14, 1996, Lundquist moved to substitute a new attorney for his one of two defense attorneys representing him. *Id.* The court determined that Lundquist would be allowed to substitute counsel if he agreed to a continuance of his trial and waived his speedy trial right. *Id.* Lundquist and his counsel had concerns that Lundquist could be tried with his co-defendants in the future if he were to waive speedy trial. *Id.* However, the court noted that the co-defendants were not prepared to proceed to trial and had requested a trial continuance to January 1997, whereas the court could set Lundquist’s trial earlier, in August or September of 1996. *Id.* Lundquist then agreed to the

continuance and waived his right to a speedy trial. *Id.* His trial date was continued to September 5, 1996. On August 5, 1996, the state moved to continue the trial in order to prepare a response to a report from a defense psychologist. *Id.* Lundquist objected to the continuance, arguing that the state had time to prepare. *Id.* Lundquist offered not to call the psychologist if it meant there would be a continuance. *Id.* Nevertheless, the court granted the State's request to continue and set trial for January 8, 1997. *Id.* On August 8, 1996, the State made a motion to consolidate Lundquist's trial with that of his co-defendants, and the motion was granted. *Id.* Ultimately, Lundquist's trial did not start until January 29, 1997—a year and 25 days after he was arraigned. *Id.* On appeal, Lundquist did not contest the continuance from the July trial date to the September trial date. Instead, he argued that the subsequently-granted continuance from the September trial date to the January trial date was a violation of his right to a speedy trial because his waiver was limited to the initial continuance. *Id.*

The Idaho Supreme Court unambiguously rejected the notion that a defendant can partially, but not fully, waive his right to a speedy trial, explaining that “[s]ection 19-3501 does not allow for such a limited waiver. Once the trial has been postponed, the six-month statutory period no longer applies.” *Id.*

In this case, the Court issued its order for stay after Defendant requested a stay under Idaho Code § 2-213, which—as the Court noted in its Order Staying Time for Speedy Trial—is a premature request. *Order Staying Time for Speedy Trial*, p. 1. Instead of issuing a stay under Idaho Code § 2-213, the Court crafted a limited stay that serves not to halt the proceedings in the traditional sense of a “stay,” but rather, to simply extend the speedy trial period for 37 days. However, trial was left set for October 2, 2023.

Although Defendant may have stated on the record that he did not intend to waive speedy trial, the practical effect of his motion for stay and the Court's subsequent order is that the Court has issued an order, upon the Defendant's application, that trial may be set outside of the six-month speedy trial period. It further complicates matters that Defendant has even stipulated to good cause under the very statute that the Idaho Supreme Court has held cannot allow for limited speedy waivers. See *Order Staying Time for Speedy Trial* at 3 ("This Court finds, and Kohberger has agreed, that there is good cause to stay the running of the speedy trial clock for a set period of time."); see also *State v. Lundquist*, 134 Idaho 831, 11 P.3d 27 (Idaho 2000) ("[s]ection 19-3501 does not allow for such a limited waiver [of speedy trial]").


As a purely practical matter, the parties, witnesses, and victim family members are now in limbo—will trial be set out thirty days at the Defendant's option, or not? If the Defendant reviews the grand jury materials and elects to challenge them, will the Court issue another few-weeks postponement? Could more few-weeks postponements be forthcoming as other pretrial matters get litigated, such as 12(b) motions, 404(b) notice(s), motions in limine, or death penalty challenges? The State is respectful of the Defense's responsibility and need to prepare for trial, and specifically, the need to review all of the materials at issue. But it is the State who carries the burden of proof in this case, an awesome endeavor requiring the subpoenaing, preparation, and coordination of numerous witnesses, many of whom require travel arrangements and other logistical considerations. These witnesses include loved ones and friends of the victims who are undoubtedly anxious for some degree of predictability as this case proceeds. The State is concerned that should the Court continue to order such short-term stays that these witnesses—not to mention the parties—will be left in limbo during a series of tolling periods where short-term continuances could be invoked at Defendant's option.


Conversely, if the Court were to reconsider its Order and determine that it was appropriate to rescind that Order, nothing would change. Defendant would still be entitled to review the materials that are being prepared and provided. The State would still continue to provide discovery. The parties still would continue to litigate discovery matters and file motions and responses to those motions. Defendant could still elect to seek a stay under Idaho Code § 2-213, at such time as such a motion would become ripe. And Defendant could still determine whether to waive his right to a speedy trial, or proceed in October on the currently-set trial date within the speedy trial period.

CONCLUSION

As the Court noted in its recent order, this is a complicated and unusual case posing unique challenges to the parties. The State is appreciative of the balancing that the Court must do in this case, and of the Court's sensitivity to the needs of the parties. But while the Defendant undeniably has the right to review the grand jury materials, the law simply does not allow for a Defendant to agree to toll speedy trial beyond six months, and later invoke his right to a speedy trial. As such, in the interests of protecting the record in this case, and in the interest of promoting efficiency and predictability in the weeks and/or months ahead, the State respectfully requests that this Court reconsider its Order Staying Time for Speedy Trial.

RESPECTFULLY SUBMITTED this 17th day of July, 2023.


William W. Thompson, Jr.
Prosecuting Attorney


Ingrid Batey
Special Assistant Attorney General

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the MOTION TO RECONSIDER ORDER STAYING TIME FOR SPEEDY TRIAL 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 17th day of July, 2023.

A handwritten signature in black ink, appearing to read "Kim Workman", written over a horizontal line.