

Evidence, Lack of Sufficient Evidence, and Prosecutorial Misconduct in Withholding Exculpatory Evidence. A hearing on both motions was held on October 26, 2023. On December 15, 2023, this Court issued an Order Denying Motion to Dismiss Indictment for Inaccurate Instructions to Grand Jury and a Sealed Order Denying Motion to Dismiss Indictment on Grounds of Biased Grand Jury, Inadmissible Evidence, Lack of Sufficient Evidence, and Prosecutorial Misconduct. On December 21, 2023, Defendant filed a Motion to Reconsider Orders Denying Motions to Dismiss Indictment and in the Alternative for Permission to Appeal from Interlocutory Orders and a Stay of Proceedings.

A two-part hearing on Defendant's Motion was held on January 26, 2024. The first portion of the hearing was closed to the public to protect the secrecy of the grand jury proceedings.¹ The second part of the hearing was open to the public, which focused on the standard required for a grand jury indictment. At both hearings, Defendant was present and represented by Anne Taylor, Jay Logsdon, and Elisa Massoth. The State was represented by William W. Thompson, Jr., Ashley Jennings, Jeff Nye, and Ingrid Batey.

To date, a trial has yet to be rescheduled as the parties continue to work through discovery, trial preparation, and the continued motions challenging the grand jury. Given the immense amount of potential evidence, defense counsel has represented that the earliest a trial should be scheduled is spring 2025 and, more realistically, summer 2025. The State would prefer a setting in summer 2024, but also acknowledged that a trial in summer 2025 would be more realistic.

¹ On January 12, 2024, Defendant filed a Motion to Unseal Defendant's Motion to Reconsider Orders Denying Motions to Dismiss the Indictment and in the Alternative for Permission to Appeal from Interlocutory Orders filed December 21, 2023. Defendant also asked for the State's Objection, filed January 5, 2024, to be unsealed and for the entirety of the hearing on the motion for reconsideration or permission to appeal to be open. The Court took up the Motion to Unseal at the outset of the sealed hearing on January 26, 2024, and, for the reasons articulated on the record, denied the Motion to Unseal.

II. LAW

The Idaho Criminal Rules do not expressly provide for a “motion for reconsideration” like Idaho Rules of Civil Procedure. *State v. Nelson*, 104 Idaho 430, 430, 659 P.2d 783, 783 (Ct. App. 1983); *State v. Flores*, 162 Idaho 298, 302, 396 P.3d 1180, 1184 (2017) (“there is no criminal procedural rule that provides a basis to reconsider a decision of this kind. The Idaho Rules of Criminal Procedure have nothing similar to Idaho Rule of Civil Procedure 11.2(b)(1).”); I.R.C.P. 11.2(b). However, such motions have not been deemed improper if made. *Nelson*, 104 Idaho at 430, 659 P.2d at 783; see *State v. Pendleton*, 537 P.3d 66, 72 (Idaho 2023). Under the Idaho Rules of Civil Procedure, “[t]he decision to grant or deny a request for reconsideration generally rests in the sound discretion of the trial court.” *Johnson v. Lambros*, 143 Idaho 468, 473, 147 P.3d 100, 105 (Ct. App. 2006). A motion for reconsideration may be based on new evidence or calculated to draw the court’s attention to errors of law or fact in the initial decision. *Id.*

To obtain permission to appeal an interlocutory order, the appealing party must first seek permission from both the trial court that issued the interlocutory order and the appellate court before the appeal can be heard. I.A.R. 12(b) and 12(c); *State v. Maynard*, No. 27691, 2002 WL 31433657, at 2 (Idaho Ct. App. Oct. 30, 2002). Even if the trial court enters an order disapproving a motion for permission to appeal, the appellate court may still accept the appeal. I.A.R. 12(c). However,

the trial court's assessment of the desirability of allowing an interlocutory appeal is of great importance. A trial court's role under I.A.R. 12, is to differentiate between those interlocutory orders for which an appeal ought to be permitted because an immediate appeal will ultimately facilitate the litigation, and those where an appeal would unduly disrupt the case or unfairly prejudice a party. The trial court is generally in a far better position than an appellate court to evaluate this factor. Although the appellate court may grant permission for an appeal despite the trial court's refusal to do so, the explanation given by the trial court for its decision provides important information for the appellate court's consideration.

Maynard, No. 27691, 2002 WL 31433657, at *4.

**ORDER DENYING DEFENDANT’S
MOTION TO RECONSIDER
AND MOTION FOR PERMISSIVE APPEAL - 3**

Under I.A.R. 12, an appeal may be taken from an interlocutory order under very limited circumstances. I.A.R. 12(a). First, the order appealed from must involve a controlling question of law as to which there is substantial grounds for difference of opinion. I.A.R. 12(a). Second, it must appear that an immediate appeal from the order may materially advance the orderly resolution of the litigation. *Id.* “It was the intent of I.A.R. 12 to provide an immediate appeal from an interlocutory order if substantial legal issues of great public interest or legal questions of first impression are involved.” *Budell v. Todd*, 105 Idaho 2, 4, 665 P.2d 701, 703 (1983). In addition to the factors set forth in I.A.R. 12, a court determining whether to hear an interlocutory appeal should also consider “the impact of an immediate appeal upon the parties, the effect of the delay of the proceedings in the district court pending the appeal, the likelihood or possibility of a second appeal after judgment is finally entered by the district court, and the case workload of the appellate courts.” *Id.* I.A.R. 12 only creates “an appeal in the exceptional case and does not . . . broaden the appeals which may be taken as a matter of right under I.A.R. 11.” *Id.*

III. ANALYSIS

1) Reconsideration

For the reasons articulated on the record on January 26, 2024, Defendant’s Motion for Reconsideration is denied. The Order Denying Motion to Dismiss Indictment for Inaccurate Instructions to Grand Jury and the Sealed Order Denying Motion to Dismiss Indictment on Grounds of Biased Grand Jury, Inadmissible Evidence, Lack of Sufficient Evidence, and Prosecutorial Misconduct are both soundly rooted in case law, constitutional law, statutes, and criminal rules. The Court does not find error with any factual findings or application of well-settled law to the facts as found. In reaching its decision, the Court spent a significant amount of time reviewing the grand

jury proceedings and researching the issues presented by Defendant. Reconsideration does not change the Court's decisions.

2) Permission to Appeal

For the reasons articulated on the record on January 26, 2024, Defendant's Motion for Permission to Appeal from Interlocutory Orders is denied. First, neither the Order Denying Motion to Dismiss Indictment for Inaccurate Instructions to Grand Jury or the Sealed Order Denying Motion to Dismiss Indictment on Grounds of Biased Grand Jury, Inadmissible Evidence, Lack of Sufficient Evidence, and Prosecutorial Misconduct involve a controlling question of law as to which there is substantial grounds for difference of opinion. I.A.R. 12(a). Indeed, it is well-settled law in Idaho that the standard for a grand jury indictment is probable cause, not beyond a reasonable doubt. Defendant himself recognizes that "the whole of modern jurisprudence on the issue is against" his novel theory that beyond a reasonable doubt is the applicable standard. In Idaho, colleagues of defense counsel have presented this theory to at least three District Judges and all have agreed that probable cause and not beyond a reasonable doubt is the appropriate standard. Thus, there are not substantial grounds for differences of opinion on this issue.

Similarly, Idaho Criminal Rule 6.6 expressly states that: A motion to dismiss the indictment may be granted by the district court for "a valid challenge to an individual juror who served on the grand jury that found the indictment, *except that finding of the valid challenge to one or more members of the grand jury is not grounds for dismissal of the indictment if there were 12 or more qualified jurors concurring in the finding of the indictment.*" (emphasis added). Although Defendant argues this rule violates due process, there is no case law supporting Defendant's position. Thus, there are no substantial grounds for differences of opinion to dismiss the indictment where the indictment was found to a probable cause by all 16 jurors.

Second, an immediate appeal of the orders denying dismissal of the indictment would not materially advance the orderly resolution of the litigation. Quite the opposite is true. Unfortunately, this case has already been pending for a year and, at this juncture, trial may not even be set until spring or summer 2025. If an appeal is granted now, the case will essentially come to a halt for some period while the appellate court reviews the grand jury proceedings, causing even further delay. And the gain to Defendant, even assuming a permissive appeal is granted by the appellate court and the appellate court rules in Defendant's favor, is de minimis as the State has stated that charges would immediately be refiled. Stated differently, the likelihood of Defendant being released from custody, even if the indictment were dismissed by a higher court, is essentially nonexistent. The only path forward for either side is a trial. Additionally, as time passes both sides are faced with the reality that witnesses memories may fade or witnesses may become unavailable, which may cause prejudice to one or both sides. Finally, while the Court remains steadfast in its obligation to ensure Defendant's constitutional rights are protected, the Court is also mindful of the victims' families' constitutional right to "timely disposition of the case." Idaho Const. art. I, § 22. An appeal now would not advance Defendant's rights or the rights of the victims' families.

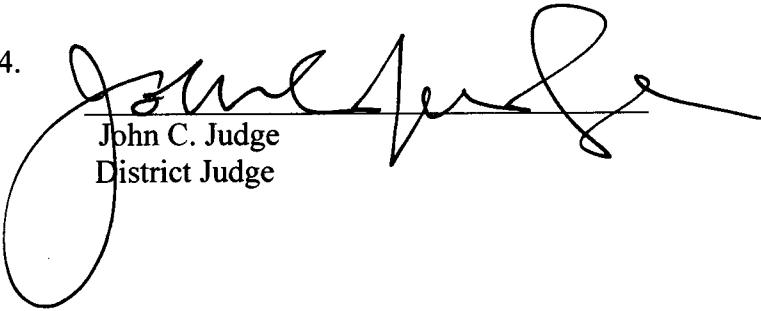
Case law also instructs this Court to consider "the impact of an immediate appeal upon the parties, the effect of the delay of the proceedings in the district court pending the appeal, the likelihood or possibility of a second appeal after judgment is finally entered by the district court, and the case workload of the appellate courts." *Budell*, 105 Idaho at 4, 665 P.2d at 703. As outlined above, the impact of an appeal now on the parties would not be favorable to either side, and the effect of further delay of these proceedings may result in prejudice to one or both parties. Finally, if Defendant is convicted by a trial jury, and especially if the death penalty is imposed, there will

undoubtedly be years of appeals to come where the issues raised by Defendant now may be reviewed by a higher court.

I.A.R. 12 only creates “an appeal in the exceptional case and does not . . . broaden the appeals which may be taken as a matter of right under I.A.R. 11.” *Budell*, 105 Idaho at 4, 665 P.2d at 703. “It was the intent of I.A.R. 12 to provide an immediate appeal from an interlocutory order if substantial legal issues of great public interest or legal questions of first impression are involved.” *Id.* While this case in and of itself is exceptional in that Defendant is charged with four counts of first-degree murder and is facing the death penalty if convicted, the issues raised by Defendant’s motions to dismiss the indictment are not exceptional nor are they “substantial legal issues of great public interest” or “legal questions of first impression.” If grand jury proceedings were routinely reviewed by appellate courts before jury trials, the system – both at the trial level and at the appellate level – would become bogged down. The grand jury is merely an investigative body tasked with determining if there is probable cause for Defendant to face the charges against him. Nothing the grand jury did has any bearing on the ultimate question of Defendant’s guilt or innocence.

For these reasons, Defendant’s motion for permission to appeal is denied.

Dated this 1st day of February 2024.



John C. Judge
District Judge

**ORDER DENYING DEFENDANT’S
MOTION TO RECONSIDER
AND MOTION FOR PERMISSIVE APPEAL - 7**

CERTIFICATE OF SERVICE

I certify that copies of the ORDER DENYING DEFENDANT'S MOTION TO RECONSIDER AND MOTION FOR PERMISSIVE APPEAL were delivered to:

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on this 1st day of February 2024.

CLERK OF THE COURT

By: 
Deputy Clerk

**ORDER DENYING DEFENDANT'S
MOTION TO RECONSIDER
AND MOTION FOR PERMISSIVE APPEAL - 8**