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

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| <p>STATE OF IDAHO, Plaintiff, vs. JEREMY ALBERT BEST, Defendant.</p> | <p>Case No. CR41-23-0877</p> <p>MOTION TO DISMISS INDICTMENT</p> |
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Comes now the Defendant, through his attorney, and pursuant to Rule 6.6 and Rule 12(b)(2), Idaho Criminal Rules, moves the Court to dismiss the indictment dated December 18, 2023.

LAW

A motion to dismiss must be filed within 28 days after the entry of a plea of not guilty, according to Rule 12(d) of the Idaho Criminal Rules. The defendant was arraigned on the indictment on January 3, 2024, and a not guilty plea was entered at that time. Therefore, this

motion must be filed by January 31, 2024, unless extended by the court for good cause. Rule 12(d), I.C.R.

The indictment must be set aside by the court in which the defendant is arraigned, upon his motion, ... when it is not found, endorsed and presented as prescribed in this code. Idaho Code Section 19-1601.

The grand jury must inquire into all public offenses committed or triable with the county, and present them to the court, either by presentment or by indictment. Idaho Code Section 19-1101.

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. Idaho Code Section 19-1105.

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 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. Idaho Code Section 19-1106.

ARGUMENT

The grand jury considered only the charge presented to them by the prosecuting attorney, that being murder in the first degree. The grand jury did not consider murder in the second degree. However, this case initially started out as murder in the second degree, as filed in a criminal complaint by the prosecuting attorney.

The difference between first-degree murder and second-degree murder are the separate elements of premeditation and malice. First-degree murder requires both premeditation and malice, second-degree murder does not require either one. Premeditation and malice are defined in the Idaho Criminal Jury Instructions, and each require the finding of a certain state of mind of the defendant. Therefore, the defendant's state of mind is relevant. The grand jury should have considered second-degree murder, as there is proof that the case against the defendant lacked both premeditation and malice.

The mental health of the defendant should have been considered by the grand jury. Premeditation and malice, or lack thereof, could have changed the indictment from the grand jury. The fact that defendant had been detained on the day in question at a store in Swan Valley, Idaho, where he was found delirious and confused and naked, and then detained by law enforcement and taken to EIRMC in Idaho Falls, Idaho, was not considered by the grand jury. The mental health breakdown of the defendant deals directly with premeditation and malice. There is no evidence that defendant harbored any ill will toward his wife or his child, who came to pick him up at EIRMC when the hospital would not keep him. In fact, if the grand jury would have investigated as the law states they should have, they would have found a host of witnesses who would say that defendant had a great relationship with his wife, and that but for the defendant's mental health breakdown, this incident would not have happened.

Likewise, the grand jury did not inquire as to the charge of manslaughter. Manslaughter, like murder in the second degree, does not require premeditation or malice. There is evidence of a sudden quarrel surrounding defendant about his mental health, and a sudden quarrel is evidence which would fit directly within the definition of manslaughter, not first-degree murder.

CONCLUSION

For these and other reasons to be argued at a hearing herein, the court should dismiss the indictment and reconvene the grand jury so that murder in the second degree and manslaughter can be investigated and considered by the grand jury.

Dated: January 30, 2024

/s/ Jim Archibald
R. James Archibald, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on this day I served a true and correct copy of the foregoing document on the following by the method of delivery indicated:

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|-------------------------|-----------------|
| Bailey A. Smith, Esq. | Efile and serve |
| Lauretta Y. Welch, Esq. | Efile and serve |
| John L. Stosich, Esq. | Efile and serve |

Dated: January 30, 2024

/s/ Jim Archibald
R. James Archibald, Esq.