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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. LORI NORENE VALLOW a/k/a LORI NORENE DAYBELL, Appellant.	Case No. 51091-2023 Fremont County Case No. CR 22-21-1624

REPLY BRIEF OF APPELLANT LORI NORENE DAYBELL

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT, IN AND FOR THE COUNTY OF FREMONT

HONORABLE STEVEN W. BOYCE, PRESIDING

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INTRODUCTION

Lori Daybell stands on the arguments in her Opening Brief but addresses here several points raised in the State's response.

This case is not about a district court exercising its discretion, as the State suggests. It is about structural Sixth and Fourteenth Amendment errors surrounding the dismissal of a retained counsel of choice, the wholesale introduction of 404(b) evidence to shore up a weak case, and the failure to honor a defendant's repeated and firm invocation of her speedy trial rights.

The State defends the district court's decision to disqualify Ms. Daybell's counsel of choice as a routine exercise of discretion, even though the district court routed litigation on that issue to Chad Daybell's case and denied Lori Daybell's counsel from participating. Then, the State uses the district court's irregular procedure as a sword on appeal, arguing that Ms. Daybell's counsel never objected to his disqualification under her case number (then stayed), although counsel tried to be heard on the issue repeatedly and in vain in the only forum in which the district court allowed it to be heard – Chad's case. And, finally, the State brushes aside the district court's decision to hold hearings, in which Ms. Daybell's right to counsel of choice hung in the balance, outside of her presence and during a period of her adjudicated incompetence. These errors were not discretionary; they were structural.

ARGUMENT

I.

The district court committed structural error by removing Ms. Daybell's retained counsel of choice in the absence of an actual or serious potential conflict of interest.

In defending the trial court's disqualification of Ms. Daybell's retained counsel, the State relies heavily on *Wheat v. United States*, 486 U.S. 153, 161, 164 (1988), to argue that the trial court acted within its discretion. (Res. Brf., pp. 14-25.) Respectfully, the State misreads *Wheat*, downplays other Supreme Court cases addressing the importance of the right to counsel of choice, and urges the Court to affirm an "actual or serious potential" for a conflict on non-existent evidence.

The defendant's right to hire her own attorney when facing serious criminal charges is a bedrock principle of the Sixth Amendment. *E.g.*, *Powell v. Alabama*, 287 U.S. 45, 53 (1932). The right protects the defendant's autonomy – her ability to choose the advocate she trusts and to control the strategy of her defense when confronted with the power of the State. *United States v. Gonzalez–Lopez*, 548 U.S. 140, 147-48 (2006). This remains true even when outsiders view the defendant's choice about representation as unwise or perhaps foolhardy. It is almost never a good idea, for example, for a defendant to choose to represent herself in court, but the Sixth Amendment allows it. *See Faretta v. California*, 422 U.S. 806, 819–20 (1975) (Sixth Amendment grants the accused "personal" rights and reflects respect for the defendant's autonomy). The

autonomy principle is a throughline that reappears again and again in other Sixth Amendment precedent that protects the defendant's control over fundamental defense decisions, regardless of the perceived wisdom of the choice. *E.g.*, *McCoy v. Louisiana*, 584 U.S. 414, 423–24 (2018) (the Sixth Amendment secures the defendant's "autonomy to decide that the objective of the defense is to assert innocence").

To be sure, as with any right, this one is not absolute. Courts may deny counsel of choice where the attorney is not admitted to practice, is unavailable for trial, or is suspended or disqualified from practice. *Wheat*, 486 U.S. at 159–60. And, occasionally, a defendant's right to counsel of choice may conflict with that counsel's duty of loyalty to a different client. In *Wheat,* the Supreme Court addressed that tension and held a trial court can disqualify a defendant's retained counsel without violating the Sixth Amendment if the court finds an actual conflict of interest or the "serious" potential for one. 486 U.S. at 164. There, the trial court was confronted with the potential for simultaneous representation of co-conspirators in the same prosecution, and the risk of divided loyalties was immediate and concrete. *Id*., at 160–63.

Since then, however, the Supreme Court has returned to the centrality and importance of the right to counsel of choice. In 2006, the Court held that the "right to select counsel of one's choice" is "the root meaning" of the Sixth Amendment. *Gonzalez–Lopez*, 548 U.S. at 147–148. Ten years later, the Court cited the limited exceptions set out

in *Wheat* but noted that "[w]e nonetheless emphasize that the constitutional right at issue here is fundamental." *Luis v. United States*, 578 U.S. 5, 12 (2016).

The present case is nothing like the facts in *Wheat*. Whether Mark Means ever truly represented Chad Daybell as his counsel was disputed. But to the extent that he did, it was for a "cup of coffee" before Chad was criminally charged. Chad then hired John Prior to represent him against the charges. If Means ever represented Chad, it was cursory, limited, and had long since ended. Both Chad and Lori had executed a written waiver of any potential conflict in the magistrate court. After that, no new confidential information had been identified, no evidentiary conflict was demonstrated, and there was no ongoing dual representation as the case headed to trial.

In short, there is no evidence in this record that supports either an "actual" conflict of interest or the serious potential for one. For Sixth Amendment purposes, "'an actual conflict of interest' mean[s] precisely a conflict that affected counsel's performance – as opposed to a mere theoretical division of loyalties." *Mickens v. Taylor*, 535 U.S. 162, 171 (2002). The danger of an actual conflict may be high when an attorney is *actively* representing jointly charged defendants in a single trial. *See*, *e.g.*, *Holloway v. Arkansas*, 435 U.S. 475, 485 (1978) (holding that reversal is automatic when a defense attorney has timely objected to concurrent representation); *cf. Cuyler v. Sullivan*, 446 U.S. 335, 346–47 (1980) (holding that reversal is not automatic when there is no objection and the defendant must instead show some effect on the representation).

The danger is much less acute when an attorney no longer represents the defendants at the same time. This is known as successive rather than concurrent representation. *See Mickens*, 535 U.S. at 175 (noting that the Federal Rules of Criminal Procedure require a trial court to inquire into the likelihood of conflict whenever jointly charged defendants are represented by a single attorney but not when counsel previously represented another defendant in a substantially related matter). As the Idaho Supreme Court has noted, the "likelihood of an unreliable verdict, which justified the presumption of prejudice under *Cuyler*, [is] not equivalent in cases of successive representation." *State v. Alvarado*, 168 Idaho 189, 200, 481 P.3d 737, 748 (2021).

While the State assumes in its brief that Means was saddled by an actual or serious potential conflict of interest from his supposed brief joint representation of Chad and Lori, nothing concrete supports that assumption. The representation, if any, was not concurrent and ongoing. There are no facts in the record to establish that Chad shared specific confidential information with Means that Means could use to help Lori to Chad's detriment, or vice versa. On that point, the district court cited a jail call from Lori to Chad on April 28, 2020, and the district court found during that call "Chad alluded he had shared confidential information with Mr. Means that Chad believed would be covered by attorney/client privilege," and the recording "suggested that Chad believed he would not have to testify against Lori if Mr. Means represented them both." (CR, p. 459.) How precisely Chad "alluded to" confidential information or "suggested"

he would not need to testify against Lori remained wholly unexplained in the district court's opinion.

And yet Chad *had* explained to the district court about his interaction with Means, an explanation that did not make it into the district court's opinion. Chad did so in the ex parte hearing where the court queried him about the relationship. There, he told the court that he had not "discussed with Mr. Means any of the factual details of Lori's case or the circumstances surrounding her case." (Aug. Conf. Tr. 10/8/2021, Hrg. in *State v. Chad Daybell*, No. 1623, p. 10, ln. 19-25.) He told the court that "all [Means] ever discussed with [him] regarding Lori's case" were court dates and the like. (*Id*. at p. 11, ln. 1-11.) Chad's attorney told the court, as he did repeatedly, that he saw no problem because "Ms. Vallow has no information about Mr. Daybell that could cause him any concern anyway." (*Id*. at 20, ln. 12-18.) Chad again said that he never considered Means to be his counsel and he was fine with Means continuing to represent Lori. (*Id*. at 18, ln. 8-15.) The court did not grapple with any of that in its written opinion. The State fails to grapple with it here.

Wheat allows disqualification to prevent ethical paralysis arising from divided loyalties, not to elevate the court's paternalistic assessment of counsel's abilities, override a previously accepted waiver because charges became more serious, or reshape the defense team during a period when the defendant is incompetent and proceedings are stayed.

It is true that the magistrate court who had earlier enforced the waiver stated it might have ruled differently if the penalties were more severe, which is what the district court then did. That statement reveals the flaw. The conflict analysis changed because of punishment severity, not because of new conflict facts. There were none. Severity of charges does not transform a waivable potential conflict into an unwaivable actual one. If it did, every capital case would permit trial courts to override waivers based solely on gravity. That is not the law. [1]

This was not a *Wheat* scenario involving simultaneous representation creating an imminent trial conflict. There was no actual or serious potential for conflict. Rather, this is a case in which the State and the court restructured the defense team without her or her counsel's participation. That is the structural injury condemned in *Gonzalez-Lopez*: the wrongful deprivation of the defendant's chosen advocate. Once that deprivation occurs, "no additional showing of prejudice is required." 548 U.S. at 146.

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[1] The State argues in its brief that Lori Daybell was unable to renew her previous conflict waiver when the disqualification issue came up a second time because she had since been deemed incompetent. (Res. Brf., pp. 20-22.) Later, it contends that her physical absence from proceedings affecting her right to counsel was not constitutionally problematic, in part, because her alleged incompetency meant she would have added nothing to the proceeding as she could not make knowing and voluntary choices or assist in her defense. (Res. Brf. pp. 34-42.)

As it stands, this is "a heads I win, tails you lose" argument. But the State is very close to coming upon the simple, constitutionally sound solution to these sticky problems: *don't proceed on issues affecting Lori Daybell's fundamental constitutional rights until her competency is restored.*

The solution is not, however, to go full speed ahead without any input from her or her lawyer.

II.

The disqualification proceeding was a critical stage of the criminal prosecution against Ms. Daybell because her substantial rights were affected, regardless of whether that proceeding occurred under Chad Daybell's closely related and parallel case number.

The State attempts to reframe the second issue raised in Ms. Daybell's opening brief as nothing more than the denial of a motion to intervene in a "separate criminal case." (Res. Brf., p. 27.) That characterization obscures what actually occurred.

First, the State glides over the fact that counsel filed the motion to intervene under the "separate," but closely related, case number because the district court chose to split the cases over the State's objection and then directed the litigation on this particular subject to occur in Chad Daybell's case. It wasn't a random choice that Ms. Daybell's counsel made. The district court had ordered her case to be separated and stayed.

But more importantly, it is the substance of the proceeding, not where it happened, that matters constitutionally. This proceeding – regardless whether it occurred in "Chad Daybell's case" or in the courthouse parking lot – determined whether Ms. Daybell would lose her retained counsel of choice. A hearing that results in the removal of a defendant's chosen advocate is a critical stage of the prosecution against that defendant.

The Sixth Amendment guarantees the assistance of counsel at every critical stage where substantial rights may be affected. *United States v. Wade*, 388 U.S. 218, 227–28 (1967); *Mempa v. Rhay*, 389 U.S. 128, 134 (1967). A stage is critical if "the accused required aid in coping with legal problems or assistance in meeting his adversary." *Wade*, 388 U.S. at 225. A stage is also critical if it is one "where the results might well settle the accused's fate and reduce the trial itself to a mere formality." *Id*. at 224.

Under this controlling case law, the Sixth Amendment doesn't turn on docket numbers. It turns on the substance of the hearing and its effect on the defendant's ability to defend herself. The disqualification proceeding in this case determined whether Ms. Daybell would be deprived of her retained counsel of choice in what was then a capital prosecution. That determination directly altered the structure of her defense and the course of her case. There should be little doubt that a proceeding to decide whether a defendant loses her retained counsel, where the State is advocating to disqualify that attorney, is one in which "the accused required aid in coping with legal problems or assistance in meeting [her] adversary."

Nor can the State claim successfully that the issue was waived or forfeited based on counsel's alleged failure to file an objection under Lori Daybell's case number. The State suggests that because defense counsel filed other motions in Ms. Daybell's case number, he "knew how" to object there if he wished. That argument misses the point.

The issue is not whether counsel was capable of filing things. The issue is whether the district court structured the conflict litigation in a manner that foreclosed meaningful objection in Ms. Daybell's case. The district court expressly routed the conflict issue into Chad Daybell's companion case and confined argument there. When counsel attempted to participate in that proceeding, the court denied intervention. The court then relied on the record developed in that forum to disqualify counsel in Ms. Daybell's stayed case. Under those circumstances, filing duplicative objections in a stayed case – after the court had already designated another forum for resolving the issue – would have been futile. The Sixth Amendment does not require a defendant to engage in procedural formalism to preserve an objection where the court has already signaled that the matter will be decided elsewhere. A defendant cannot be faulted for failing to object in a proceeding from which she was not permitted meaningful participation. *See United States v. Cronic*, 466 U.S. 648, 659 (1984) (presuming prejudice where counsel is denied at a critical stage).

The constitutional inquiry focuses on whether Ms. Daybell was afforded the assistance of counsel at the stage where her retained attorney's removal was determined. She was not. The fact that counsel filed unrelated motions in her case does not cure that defect.

The denial of counsel at a critical stage is structural error. *Cronic*, 466 U.S. at 659. When the accused is denied the assistance of counsel at a proceeding where substantial

rights are determined, prejudice is presumed. *Id*. This Court therefore need not assess harmlessness. The constitutional injury occurred when counsel was prevented from participating in the proceeding that determined his removal.

The State's attempt to reduce this issue to a procedural technicality does not withstand scrutiny. The disqualification proceeding was a critical stage, and Ms. Daybell was denied the assistance of counsel at that stage. Reversal is required.

III.

The district court violated Ms. Daybell's Fourteenth Amendment right to due process by adjudicating her fundamental Sixth Amendment right to counsel while her case was stayed to determine her competency.

As for the third issue raised in Ms. Daybell's opening brief, the State characterizes the disqualification proceedings outside of Ms. Daybell's presence while she was at the state hospital as ministerial and unrelated to the prosecution. That characterization is incorrect.

A defendant may not be subjected to proceedings affecting substantial rights while incompetent. *Drope v. Missouri*, 420 U.S. 162, 171–72 (1975); *Cooper v. Oklahoma*, 517 U.S. 348, 354 (1996). The prohibition is not limited to trial. It extends to proceedings in which the defendant's ability to consult with counsel and protect her interests is essential.

The State again recasts the hearings on Lori Daybell's fundamental Sixth Amendment right under Chad Daybell's case number as matters occurring in a "separate criminal case." (Res. Brf., p. 40.) The State writes that "neither the U.S. Supreme Court nor Idaho's appellate courts have held that a defendant has a due process right to be physically present in hearings held in someone else's criminal case." (*Id*.) It is not *where* the proceeding occurs that matters constitutionally but *what* the proceeding is about. *See*, *e.g*., *Wade*, 388 U.S. at 226–27. Surely the State would not claim that a charged criminal defendant could be found guilty in a trial under a separate case heading and docket number, without participation from the defendant or her counsel, free from any constitutional concern.

The State also argues that the court's order finding Ms. Daybell incompetent means that her presence would have added nothing to the hearing. (Res. Brf., pp. 39-40.) That turns the right upside down. The constitutional rule is not that courts *may* proceed outside of a defendant's presence *because* a defendant is incompetent and cannot meaningfully add to a substantive issue. It is the opposite. A defendant who "lack[s] capacity to understand the proceedings against [her] or to assist in [her] own defense," *see* I.C. § 18-210, is entitled to protection from adjudications affecting substantial rights during that period. *See Drope*, 420 U.S. at 171–72.

The State relies on *Kentucky v. Stincer*, 482 U.S. 730, 745 (1987), but *Stincer* addressed the right to presence at a competency-related evidentiary hearing where the

defendant's presence would not have contributed to the fairness of the procedure. That case did not involve the removal of retained counsel of choice. It did not involve a structural Sixth Amendment right. And it did not involve the adjudication of a defense team's composition in what was then a capital prosecution.

The constitutionally appropriate solution was not to proceed with weighty matters that affected Ms. Daybell's substantial rights while she was gone and at the state hospital, whether it was in Chad Daybell's case or anywhere else. If the State's view were correct, there would be no constitutional or statutory rule that proceedings must be suspended while a defendant is incompetent, because her presence, as the State sees it, would just be "useless, or the benefit but a shadow." (Res. Brf., p. 40.) The State's argument shows why adjudication on substantive matters must be deferred during a period of incompetence. The removal of retained counsel of choice is not administrative housekeeping. It fundamentally alters the structure of the defense. That determination required strategic input, consultation, and the exercise of personal autonomy – none of which an incompetent defendant can provide.

The State argues that Ms. Daybell's case was technically "stayed," suggesting that no substantive rights were adjudicated. But the district court lifted no stay before disqualifying counsel. Instead, it entered an order permanently removing retained counsel during the period of incompetency and relied on proceedings conducted outside her presence.

Due process does not permit the State to suspend a case for incompetency while simultaneously restructuring the defense team. *See Drope*, 420 U.S. at 171 (emphasizing that the right not to be tried while incompetent protects the fairness and dignity of the criminal process). The constitutional protection would be hollow if courts could adjudicate fundamental defense rights during a period when the defendant lacks the capacity to participate.

The State's harmless-error framing should also fail. The question is not whether substitute counsel performed adequately. The question is whether a substantial defense right was determined while the defendant was incompetent and absent. It was. That violation of due process independently warrants reversal.

CONCLUSION

Based on the above, and based on the reasons provided in Appellant's Opening Brief, Lori Daybell respectfully asks this Court to reverse her judgment of conviction and remand for an order dismissing all charges against her based on a violation of her statutory and constitutional right to a speedy trial.

Short of that, this Court should reverse the judgment of conviction and remand for a new trial based on the errors raised in Issues I through IV.

Respectfully submitted on this 11th day of March 2026.

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CERTIFICATE OF SERVICE

This Brief has been served on the following on this 11th day of March, 2026, by filing through the Court's e-filing and serve system:

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