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

STATE OF IDAHO, Plaintiff, vs. CHAD GUY DAYBELL, Defendant.	**CASE NO. CR22-21-1623** **OBJECTION TO DEFENDANT'S MOTION TO CONTINUE**

The State of Idaho, by and through the Fremont County Prosecuting Attorney's Office, submits the following Objection to the Defendant's Motion for a Continuance.

The Defendant had his initial appearance on May 26, 2021. The Defendant was then arraigned in the District Court on June 9, 2021, and the State announced its intent to seek the death penalty on August 5, 2021. The trial in this matter was originally set to begin on November 8, 2021. The Defendant waived his right to a speedy trial on August 20, 2021, and the trial was vacated. The State originally had requested a trial be set in the Fall of 2023, but the Defendant was adamant the matter proceed in January of 2023. On September 27, 2022, the Defendant filed a Motion to Continue the trial set to begin in January of 2023. The State did not object to the Motion to Continue based on the joint trial having been vacated in Defendant Vallow Daybell's case; however, the State's paramount position has consistently been this is one

case for trial with the corresponding case for Defendant Lori Vallow Daybell, Fremont County Case Number CR22-21-1624. The State has consistently opposed any improper severance and continues to hold that position.

Defendant Lori Vallow Daybell had her initial appearance on May 26, 2021. Due to some pending competency proceedings, she wasn't arraigned until April 19, 2022, and the State filed its notice to seek the death penalty on May 2, 2022. Defendant Vallow Daybell did not waive speedy trial, and a trial date was originally set for October of 2022. This date was later changed to January of 2023 to allow her trial to proceed with Defendant Chad Daybell's case. New competency proceedings began regarding Defendant Lori Vallow Daybell in September of 2022, and due to those proceedings, the January trial date was vacated. Defendant Lori Vallow Daybell has maintained she is not waiving speedy trial, and the joint trial was reset to begin on April 3, 2023.

Defendant Daybell has now filed another Motion to Continue the trial date set to begin in April.

ARGUMENT

Defendant Daybell argues his defense team cannot reasonably be prepared for an April trial – similar to reasons he outlined in his prior motion from September of 2022 as to the reasons they were not going to be able to be prepared for a January trial; however, this is inconsistent with representations from counsel. Defendant Daybell's counsel represented at the hearing on the previous Motion to Continue heard on October 13, 2022, that he would be prepared for trial in January, 2023. Additionally, the defense has now had over three (3) months from the last filing for a continuance to work on getting prepared for trial.

Furthermore, as this Court pointed out in its recent *Order on Defendant's Objection to the Court's Scheduling Order Issued on December 16, 2022:* "[the Defendant] mistakes the Court's admonition in the October 28, 2022 Order as a concession that the Defense is entitled to more time to prepare a defense. To be clear, the Court's comments were a note that Daybell's counsel had revealed it had not prepared to meet previously issued deadlines, and the comments were not intented to conclude Daybell has been denied ample time to prepare for trial. The record belies this very assertion." *See Pg. 4.*

I. There is No Constitutional Right or Requirement for a Mitigation Expert.

The Defendant cites to his "right to individualized sentencing, right to be free from cruel and unusual punishment, right to due process, right to a fair trial, right to the effective assistance of counsel, right to present a complete defense, right to a fair and reliable sentencing determination, and other rights safeguarded by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Article 1, Sections 6, 7, 8, and 13 of the Idaho State Constitution" as one reason he should be granted a continuance. *See Defendant's Motion to Continue, Pg. 3.* However, the Defendant fails to provide how any of these rights or provisions will be violated if he is not allowed a continuance to allow his mitigation specialist more time.

Additionally, the Defendant clearly acknowledges that the requirement for a mitigation specialist is actually contained only in professional guidelines – which are not constitutional rights or guarantees.[1] *See Defendant's Motion to Continue, Pgs. 4, 9, 11 &12.*

[1] The Defendant asserts and argues that if the Court does not continue the trial to allow him to fully comply with the ABA guidelines, it will be grounds for an automatic reversal. However, the Defendant fails to assert or argue that compliance with other portions of the ABA guidelines are necessary to avoid an automatic retrial, and/or distinguish why only certain portions must be complied with when looking at the sections applicable to death penalty cases. It is the State's position the reason is that the ABA guidelines are just that – guidelines.

The United States Supreme Court in *Strickland v. Washington*, specifically lays out that the ABA Guidelines are just that – guidelines:

> "These basic duties neither exhaustively define the obligations of counsel nor form a checklist for judicial evaluation of attorney performance. In any case presenting an ineffectiveness claim, the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances. Prevailing norms of practice as reflected in American Bar Association standards and the like, *e.g.,* ABA Standards for Criminal Justice 4-1.1 to 4-8.6 (2d ed. 1980) ('The Defense Function'), are guides to determining what is reasonable, but they are only guides. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Any such set of rules would interfere with the constitutionally protected independence of counsel and restrict the wide latitude counsel must have in making tactical decisions. See *Unites States v. Decoster*, 199 U.S. App. D.C., at 371, 624 F.2d, at 208. Indeed, the existence of detailed guidelines for representations could district counsel from the overriding mission of vigorous advocacy of the defendant's cause. Moreover, the purpose of the effective assistance guarantee of the Sixth Amendment is not to improve the quality of legal representation, although that is a goal of considerable importance to the legal system. The purpose is simply to ensure that criminal defendants receive a fair trial." 466 U.S. 668, 688-89, 104 S.Ct. 2052, 2064 (1984).

The Defendant indicates he waited until August of 2022, and it is clear this decision was made knowing the trial was set to begin for January of 2023. The Defendant is now arguing the fact he chose to delay obtaining a mitigation expert is not only grounds for a continuance but would be a basis for the granting of a new trial if the Court proceeds with the April trial date. The State disagrees with this assessment. The decision not to obtain a mitigation specialist until August of 2022 – when the Defendant has known since August 5, 2021, when the State announced its intention to seek the death penalty is a strategic decision left to the discretion of the Defendant and his counsel – there is no constitutional right or obligation for a mitigation specialist to be obtained.

The State does not disagree the Defendant should be allowed to present mitigating evidence and is entitled to an individualized sentencing; however, none of the case law cited by

the Defendant references the requirement or need for a mitigation specialist – simply that mitigation evidence is allowed and necessary. The distinction between the obligation to present relevant evidence in mitigation and hiring a particular staff person titled "mitigation special" is exceptionally important. One is an obligation – the other an optional staffing choice.

The Defendant cites to *Frierson v. Woodford*, to support the proposition that defense counsel must employ a mitigation specialist and perform as complete and thorough of an investigation that the Defendant asserts must be done; however, the Court in *Frierson v. Woodford*, provides:

> "Although counsel's duty to seek out evidence of mitigation is not limitless, the Supreme Court has recognized that the failure to pursue avenues of readily available information – such as school records, juvenile court and probation reports, and hospital records – may constitute deficient performance… The Supreme Court has also made clear that when counsel is on notice that important mitigation evidence exists, a failure to uncover and present such evidence at the penalty phase represents ineffective assistance of counsel."
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> 463 F.3d 982, 989, 2006 U.S. App. 23673, *19 (9th Cir. 2006). Internal Citations Omitted.

"Because strategy presupposes investigation, Lieman's actions cannot be attributed to strategy…Because the record 'underscores the unreasonableness of counsel's conduct by suggesting that [Lieman's] failure to investigate thoroughly resulted from inattention, not reasoned strategic judgment,' we hold that Lieman was deficient in his performance at the penalty phase." *Id.* at 992.

In *Porter v. McCollum*, his standby counsel "became his counsel for the penalty phase a little over a month prior to the sentencing proceedings before the jury. It was the first time this lawyer had represented a defendant during a penalty-phase proceeding." According to the attorney, he "had only one short meeting with Porter regarding the penalty phase. He did not obtain any of Porter's school, medical or military service records or interview any members of

Porter's family…Here, counsel did not even take the first step of interviewing witnesses or requesting records…Beyond that,…, he ignored pertinent avenues for investigation of which he should have been aware. The court-ordered competency evaluations, for example, collectively reported Porter's very few years of regular school, his military service and wounds sustained in combat, and his father's 'over-disciplin[e].'" 558 U.S. 30, 39, 130 S.C. 447, 453 (2009.

"Counsel thus failed to uncover and present any evidence of Porter's mental health or mental impairment, his family background, or his military service. The decision not to investigate did not reflect reasonable professional judgment…Porter may have been fatalistic or uncooperative, but that does not obviate the need for defense counsel to conduct some sort of mitigation investigation." *Id.* Internal Citations Omitted.

In *Rompilla v. Beard*, the Court held: "Even when a capital defendant and his family members have suggested that no mitigating evidence is available, his lawyer is bound to make reasonable efforts to obtain and review material that counsel knows the prosecution will probably rely on as evidence of aggravation at the trial's sentencing phase." 545 U.S. 374, 377, 125 S.Ct. 2456, 2460 (2005). In *Rompilla v. Beard* the defense attorney failed to look at a file from a prior conviction which he knew the State was going to rely on as an aggravating factor.

> "It flouts prudence to deny that a defense lawyer should try to look at a file he knows the prosecution will cull for aggravating evidence, let alone when the file is sitting in the trial courthouse, open for the asking. No reasonable lawyer would forgo examination of the file thinking he could do as well by asking the defendant or family relations whether they recalled anything helpful or damaging in the prior victim's testimony. Nor would a reasonable lawyer compare possible searches for school reports, juvenile records, and evidence of drinking habits to the opportunity to take a look at a file disclosing what the prosecutor knows and even plans to read from in his case. Questioning a few more family members and searching for old records can promise less than looking for a needle in a haystack, when a lawyer truly has reason to doubt there is any needle there. But looking at a file the prosecution says it will use is a sure bet: whatever may be in that file is going to tell defense counsel something about what the prosecution can produce." *Id. at 389.*

Similarly in *Wiggins v. Smith*: "…[C]ounsel abandoned their investigation of petitioner's background after having acquired only rudimentary knowledge of his history from a narrow set of sources." 539 U.S. 510, 524, 123 S.Ct. 2527, 2537 (2003).

"The scope of their investigation was also unreasonable in light of what counsel actually discovered in the DSS records." *Id.* at 525. There was evidence present in the reports received by defense counsel which contained information making it clear there was reasonable follow up to be completed. *Id.* "Indeed, counsel uncovered no evidence in their investigation to suggest that a mitigation case, in its own right, would have been counterproductive, or that further investigation would have been fruitless; this case is therefore distinguishable from our precedents in which we have found limited investigations into mitigating evidence to be reasonable." *Id.*

"The record of the actual sentencing proceedings underscores the unreasonableness of counsel's conduct by suggesting that their failure to investigate thoroughly resulted from inattention, not reasoned strategic judgment. Counsel sought, until the day before sentencing, to have the proceedings bifurcated into a retrial of guilt and a mitigation stage." *Id.* at 526.

This case is distinguishable from the above cases since counsel in this case is aware of his obligation and responsibility in obtaining and presenting mitigating evidence. Further, none of the cases on mitigation evidence discuss the need for a particular staff person to gather the evidence in mitigation – only that the evidence be gathered.

Counsel in this matter represents he is actively seeking out and obtaining evidence which he believes may be useful in mitigation if there is a penalty phase in this matter. Indeed, the record is replete with defense counsel's statements on his efforts for finding information helpful to the defendant. Counsel has represented the Defendant for over three years regarding the allegations which are part of this case. Presumably given the length and nature of the

representation, it would seem the Defendant has had adequate time to consult with his counsel and provide him information necessary to obtain any relevant documents and evidence for use in the mitigation phase. Again, the Defendant is simply basing the request for a continuance on the fact he decided, that rather than gather mitigation documentations through investigators or subpoenas, they now wanted to add staff to the team labeled as a 'mitigation specialist" in August of 2022 – several months before trial.

There is no evidence that Mr. Daybell's personal history is so complex or unique as to require a unique method or protracted period of record gathering – certainly none that could not be accomplished in the eight (8) months the specialist has been on the defense team. The Defense motion does not include any references to a particular type of evidence that the Defendant needs to obtain through the specialist which cannot, or has not already been, obtained in the time before trial. There is no evidence that Mr. Daybell's educational, social, mental health or family records have not, or cannot, be obtained in time for use at trial in three months.

II. Outstanding Discovery Especially Before the Discovery Deadline is Not a Valid Reason to Continue the Joint Trial.

The Defendant continues to harp on the outstanding discovery from the State and claims this is a reason for a continuance; however, the State has until February 23, 2023 to provide all discovery. Furthermore, the remedy for any outstanding discovery is not necessarily a continuance of a trial, but instead could include the exclusion of evidence and other remedies if appropriate or necessary. The Defendant is aware of the nature of outstanding discovery. It is premature to conclude he will need an additional expert analysis or that it will take more than three months to complete such report, assessment and/or evaluation. Furthermore, by far the bulk of the discovery has been completed in this case. Again, the Defendant relies on guidelines

rather than any constitutional guarantees or potential violation of any constitutional rights. *See Defendant's Motion to Continue, Pg. 16.*

The Defendant also asserts he will be without time and full opportunity for necessary hearings since the last set hearing prior to trial in this matter is March 9, 2023. However, the Court has been clear with counsel that additional hearing dates may be necessary and would simply need to be scheduled through the Court.

Additionally, the State has not continued to object to specific discovery requests from the Defendant – the State has objected to the duplicative requests with regard to items which have already been provided (some on multiple occasions) and also some that simply do not exist.

Wherefore, the State respectfully requests this Court deny the Defendant's Motion to Continue.

DATED this 12th day of January, 2023.

/s/Rob H. Wood
Rob H. Wood
Prosecuting Attorney

/s/Lindsey A. Blake
Lindsey A. Blake
Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of January, 2023, that a copy of the foregoing document was served as follows:

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