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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** **STATE'S OBJECTION AND BRIEF IN SUPPORT OF OBJECTION TO DEFENDANT'S MOTION TO DISMISS THE INDICTMENT OR TO PRECLUDE THE IMPOSITION OF THE DEATH PENALTY**

COMES NOW the State of Idaho, by and through undersigned counsel and hereby submits the following Objection and Memorandum in Support of Objection to the Defendant's Motion to Dismiss the Indictment or Preclude the Imposition of the Death Penalty filed on February 10, 2023 based on the following:

FACTUAL AND PROCEDURAL BACKGROUND

On May 24, 2021, a Grand Jury returned a single Indictment against the Defendants, Chad Daybell and Lori Vallow Daybell, containing a total of nine criminal charges relating to the murders of Tylee Ryan, JJ Vallow and Tamara Daybell. Specifically, the Indictment charges both Defendants with: One Count of Conspiracy to Commit First-Degree Murder and Grand Theft by Deception wherein Tylee Ryan is the victim; One Count of First-Degree Murder

wherein Tylee Ryan is the victim; One Count of Conspiracy to Commit First-Degree Murder and Grand Theft by Deception wherein JJ Vallow is the victim; One Count of First-Degree Murder wherein JJ Vallow is the victim; and One Count of Conspiracy to Commit First-Degree Murder wherein Tamara Daybell is the victim. In addition, Defendant Lori Vallow Daybell is charged with One Count of Grand Theft wherein the United States Government is the victim due to Defendant Lori Vallow Daybell receiving social security funds intended for the care of Tylee Ryan and J.J. Vallow. Defendant Chad Daybell has additional charges of One Count of First-Degree Murder wherein Tamara Daybell is the victim; and Two Counts of Insurance Fraud for the receipt of life insurance proceeds for Tamara Daybell's death.

On June 9, 2021, the Defendant was arraigned in the presence of his counsel on all his charges in the Indictment and entered not guilty pleas to all charges. Due to a stay in her case, Defendant Vallow Daybell was not arraigned until April 19, 2022.

On July 18, 2022, the State filed a Motion and Brief regarding consumptive DNA testing of samples of materials located on JJ Vallow's body. Due to the small amount of the samples, and the likelihood of consumption in testing such evidence, these samples were set aside since the Codefendant's case was stayed. This was done to allow both Defendants the opportunity to analyze and establish a position with regard to the request for consumptive testing. Once the Defendants agreed, the Parties entered into a stipulation regarding the testing of such evidence, and the Court signed an Order to that effect on August 15, 2022.

In late December, 2022, State lab personnel notified the prosecution team that during the stipulated testing process additional hairs were removed from the testing sample, which might have potential evidentiary value. However, the State lab had limited ability to test this evidence and was unable to retrieve any usable DNA evidence. Defense counsel was immediately

contacted, and based on the timeline of the additional hair collection, the State located and secured a private lab which could test such items on an expedited basis. On January 25, 2023, the parties entered into a new stipulation regarding the consumptive testing of such items by the private lab.

In late January 2023, the prosecution team found that papers reflecting tips collected from the public in 2019 and 2020 during the search for JJ Vallow and Tylee Ryan had not been copied and provided to either the State or the Defense. While various reports had been made and disclosed to Defense about the relevant tips investigated, not all tips had been disclosed. The individual slips of paper for the public tips in the possession of the Rexburg Police Department was provided to the Defense on or about February 8, 2023. Papers from Rexburg Police department totaled 1188 pages including a 92-page document summarizing the tips in list form and the individual tip sheets (See attached Exhibit 1 Tip Analysis.)

On August 9, 2021, the Defendants were advised of the existence of the electronic devices seized during the January 3, 2020 search of the Defendant's home. Counsel were notified of the contents of the electronic devices, as well as that the electronic devices were available for inspection and copying as required by I.C.R. 16(b)(4). All reports on the seizure of these items was disclosed. Multiple disclosures reminded the Defendants that the items were available for review. At this point neither Defendant has requested, nor attempted to make any arrangements to review the devices or their contents.

LAW AND ARGUMENT

I. The Prosecutor's Duty to Disclose is Governed by I.C.R. 16, the Due Process Clause, Case Law and the Idaho Rules of Professional Conduct.

The applicable section of Idaho Criminal Rule 16 is subsection (a) which requires the

mandatory disclosure of evidence which tends to negate the guilt of the accused. Specifically, I.C.R. 16(a) provides as follows:

> (a) Mandatory Disclosure of Evidence and Material by the Prosecution. As soon as practicable after the filing of charges against the accused, the prosecuting attorney must disclose to defendant or defendant's counsel any material or information in the prosecuting attorney's possession or control, or that later comes into the prosecuting attorney's possession or control, that tends to negate the guilt of the accused as to the offense charged or that would tend to reduce the punishment for the offense. The prosecuting attorney's obligations under this paragraph extend to material and information in the possession or control of members of the prosecuting attorney's staff and of any others who have participated in the investigation or evaluation of the case who either regularly report, or have reported in that case, to the office of the prosecuting attorney. The prosecuting attorney must also disclose the general nature of evidence of other crimes, wrongs, or acts, it intends to introduce at trial as required by Rule 404(b) of the Idaho Rules of Evidence.

In addition to the duties of a prosecutor under the rules of discovery, a prosecutor is bound by due process and ethical considerations. "Due process requires all material exculpatory evidence known to the State or in its possession be disclosed to the defendant." *Stevens v. State*, 156 Idaho 396, 406 (Ct. App. 2013) (Quoting *Brady v. Maryland*, 373 U.S. 83, 87 (1963)). However, the State does not have a general constitutional duty to provide a complete and detailed accounting of all police investigatory work to defense on a case. *Dunlap v. State,* 141 Idaho 50, 64 (2004). Nor is a prosecutor "required to disclose evidence the prosecutor does not possess or evidence of which the prosecutor could not reasonably be imputed to have knowledge or control." *Queen v. State*, 146 Idaho 502, 505 (Ct. App. 2008).

> In addition, several jurisdictions have concluded that the due process requirements imposed by *Brady* do not place an affirmative duty on the prosecution to seek out information for the defense. See *Lovitt v. True*, 403 F.3d 171,185-86 (4th Cir. 2005) (holding that the duty imposed by Brady did not cross jurisdictional lines); *United States v. Romo*, 914 F.2d 889, 898 (7th Cir. 1990) (noting that prosecutors are not usually required to seek out information not in their possession); *Taus v. Senkowski*, 293 F. Supp. 2d 238, 246 (E.D.N.Y. 2003) (holding that the district attorney cannot be deemed to have constructive possession, nor is it appropriate to

> impute knowledge, of an FBI report when there was no cooperation between those governmental agencies in that case); *Sears v. State*, 268 Ga. 759, 493 S.E.2d 180, 184 (Ga. 1997)(concluding that "the state is not required to provide to the defense the confidential out-of-state juvenile records of a state witness, when those records are not a part of the state's file" and even if that information is more accessible by the state); *People v. Sanchez*, 257 A.D.2d 451, 451, 683 N.Y.S.2d 524 (N.Y. App. Div. 1999) (affirming no *Brady* violation where a "14-year- old out-of-State misdemeanor conviction record of the complainant was not in the People's possession at the time of trial" and concluding that "they were not required to affirmatively seek it out" *Id*. 505-506.

The court in *Queen* ultimately held "a conclusion that *Brady* does not place an affirmative duty on the state to seek out information for the defense is consistent with Idaho law." *Queen* at 506.

The Idaho Rules of Professional Conduct also note the special responsibilities of a prosecutor.

> A prosecutor in a criminal case shall: make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; IRPC 3.8(d).

However, as required by the criminal discovery rules, this exculpatory information only pertains to evidence or information **known** to the prosecutor. This is consistent with due process and case law regarding the interpretation of the constitutional responsibilities required of a prosecutor when dealing with exculpatory or mitigating information. The ABA opinion on a prosecutor's duty to disclose evidence and information favorable to the defense also notes the importance of the knowledge requirement, providing that knowledge means actual knowledge which may be inferred from the circumstances. However, this duty does not include an obligation to undertake an investigation in search of evidence or information favorable to the accused that may possibly exist. Nor does it require an exhaustive copy of all documents or

devices in the State's possession. "[T]he prosecutor is not required to deliver his entire file to defense counsel…" *United States v. Bagley*, 473 U.S. 667, 675 (1985). Certain documents or tangible objects may be of a nature that requires defense counsel to view/inspect or photograph or make a copy of it. This process complies with the duty under I.C.R. 16.

Sanctions for discovery violations can encompass a number of options, however, analysis regarding *Brady* violations typically occurs in a post-conviction setting upon review of the case law. Discovery violations occurring prior to or during trial require the District Court to consider other remedies. "Witness exclusion for a discovery violation is an extreme remedy." *State v. Albert*, 138 Idaho 284, 289, 62 P.3d 208, 213 (Ct. App. 2002). When considering evidence that was not timely disclosed, "a district court is obligated to also consider less severe remedies, such as a short continuance, a mistrial, or imposition of sanctions on defense counsel, that might serve as an alternative to excluding the evidence." *State v. Saxton*, 133 Idaho 546, 548, 989 P.2d 288, 290 (Ct. App. 1999). Setting aside whether there have in fact been discovery violations, a request to dismiss the Indictment for disclosures provided prior to the discovery deadline, but later than defense counsel would like, is an even more extreme remedy for evidence disclosed prior to trial.

> The suppression of material evidence helpful to the accused, whether at trial or on a motion to suppress, violates due process if there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different. See *Brady,* 373 U.S. 83, 87, 10 L. Ed. 2d 215, 83 S. Ct. 1194 (1963);*United States v. Barton,* 995 F.2d 931, 933-34 (9th Cir. 1993). Such a due process violation may be cured, however, by belated disclosure of evidence, so long as the disclosure occurs " 'at a time when disclosure would be of value to the accused.' " *United States v. Span,* 970 F.2d 573, 583 (9th Cir. 1992) (quoting *United States v. Gordon,* 844 F.2d 1397, 1403 (9th Cir. 1988)). *United States v. Gamez-Orduno,* 235 F.3d 453, 461 (9th Cir. 2000).

II. Application of the Prosecutor's Duty to Disclose to the Underlying Case.

First, as noted in the Defendant's Motion to Dismiss, we are dealing with additional discovery items in three categories:

(A) Tips provided to law enforcement during the search for Tylee Ryan and JJ Vallow;

(B) Devices seized from the Defendant's residence on January 3, 2020;

(C) Additional DNA evidence that lab analysts obtained during stipulated consumptive testing procedures and clean up; The State will address its duty to comply with I.C.R. 16 and due process with each of these in turn.

"The duty of disclosure enunciated in *Brady* is an obligation of not just the individual prosecutor assigned to the case, but of all the government agents having a significant role in investigating and prosecuting the offense." *Stevens v. State*, 156 Idaho 396, 406 (Ct. App. 2013). The holding in *Brady* v. *Maryland* requires disclosure only of evidence that is both favorable to the accused and "material either to guilt or to punishment." *373 U.S., at 87. United States v. Bagley*, 473 U.S. 667, 674 (1985).

> The *Brady* rule is based on the requirement of due process. Its purpose is not to displace the adversary system as the primary means by which truth is uncovered, but to ensure that a miscarriage of justice does not occur. Thus, the prosecutor is not required to deliver his entire file to defense counsel, but only to disclose evidence favorable to the accused that, if suppressed, would deprive the defendant of a fair trial: "For unless the omission deprived the defendant of a fair trial, there was no constitutional violation requiring that the verdict be set aside; and absent a constitutional violation, there was no breach of the prosecutor's constitutional duty to disclose. . . . ". . . But to reiterate a critical point, the prosecutor will not have violated his constitutional duty of disclosure unless his omission is of sufficient significance to result in the denial of the defendant's right to a fair trial. *State v. Augurs*, 427 U.S. 97, 108 (1976).

(A) Tips provided to law enforcement.

The tips provided are of limited evidentiary value and are unlikely to contain evidence

either favorable to the accused or of exculpatory value. Although the Defendant tries to characterize such evidence as containing potential alternate suspects, this is simply not the case. The tips included those from 56 (fifty-six) psychics and/or visions called in to provide information as to the whereabouts of the missing children. There were tips referencing alleged sightings of the children in multiple different states and at conflicting times – including well past the time of the last known proof of life for both of the children. Misinformation or "tips" as to the location of the children contradicting the reality of Tylee and JJ's burial on the Defendant's property is neither favorable nor exculpatory. The tip line was created in late November 2019, after Rexburg Police had been contacted to conduct a welfare check on JJ. Therefore, any information as to the alleged whereabouts of the children from psychics, or otherwise, is of extremely limited evidentiary value. Furthermore, all tips with information deemed to have possible evidentiary value were investigated by police and any reports made were turned over to defense in discovery early on in this matter and in the previous case CR22-20-755. While the Defense may quibble as to what is considered by law enforcement to have evidentiary value, if the argument is going to be that every tip, including those provided by psychics/visions or facially holding no credibility should be explored, the State would suggest that such information does not meet the materiality requirement of *Brady*. The tips do not contain information which would negate the Defendant's guilt or tend to reduce punishment pursuant to I.C.R. 16(a) and are not required for mandatory disclosure pursuant to that rule. The fact that the State has provided the information to the Defense in an abundance of caution does not transform the tips into exculpatory or mitigating material for the Defendant. Therefore, such information does not violate the constitutional or statutory rights of the Defendant.

(B) Devices seized from Defendant Daybell's residence.

A number of devices were seized from the Defendant's residence during a search in January 2020. The existence of these devices was disclosed in discovery provided to the Defense on August 9, 2021. Indeed, both Defendant's also received this same information in their prior cases on January 14, 2021, several months before they were indicted with their current charges. Further, on May 31, 2022, the State disclosed an FBI Report in its "Fourth Supplemental Discovery Disclosure" regarding multiple devices in which the raw data was downloaded and provided. This report contains a detailed list of the devices. All information has been made available for the Defense to view, inspect or copy in compliance with I.C.R. 16(b)(4). As noted previously, the State does not have an obligation to turn over the entire file nor to provide an exhaustive and detailed accounting of all police work to defense. Making the devices available to the Defendant for inspection and copying complies with the State's discovery and due process obligations. Although counsel for the Defendant has not inspected or sent hard drives to copy such devices as yet, the devices continue to remain available to the Defense as they have been for approximately two years. Furthermore, there has been no showing by the Defendant that any information contained in these devices is relevant or material to the case at hand or defense in any manner.[1] "In order to establish a *Brady* violation, there must be evidence that (1) is favorable to the accused because it is either exculpatory or impeaching; (2) was willfully or inadvertently suppressed by the State; and (3) was prejudicial or material in that there is a reasonable probability that its disclosure to the accused would have led to a different result." *State v. Lankford*, 162 Idaho 477, 503 (2017). Regarding the devices, any information which was

[1] The State incorporates the arguments and list of devices/digital evidence contained in its Response to Defendant's Second Motion to Compel.

favorable has not been suppressed by the State as it has been made available to the Defendant for inspection and copying. There has been no showing by the Defendant - beyond a bare assertion - that these devices "may well be material." *See Defendant's Motion to Dismiss page 18*. Therefore, there is no constitutional or statutory violation of the Defendant's rights with regard to these items.

(C) Additional DNA Evidence.

Once the evidence related to the children's remains was discovered on the Defendant's property, it was transferred to the custody of the Idaho State lab and was initially processed for DNA evidence. DNA evidence that did not involve consumptive testing was handled promptly and those results were provided to defense counsel. In consideration of the stay in the Codefendant's case, the processing of DNA evidence that necessitated consumptive testing was halted until all parties could participate, consider their options and reach a stipulation for testing agreeable to all the Parties. A stipulation for consumptive testing of this evidence was reached and the Court entered an Order on August 15, 2022. During the processing, collection and testing of this evidence, lab personnel collected additional hairs and notified Prosecutor Rob Wood of this information shortly before Christmas, 2022. Prosecutor Wood immediately contacted the Defense and provided notice of the additional hairs. Idaho State Lab did not believe it could use its existing equipment or procedures to successfully develop a DNA profile from collected additional hairs because of their size, the fact they had been embedded in duct tape and soaked in JJ Vallow's decomposition fluid. In an effort to address the fact these additional hairs were retrieved later in the testing process, the prosecution team sought out a lab with the ability to perform expedited testing for mitochondrial, and potentially Y chromosome DNA, on small hair samples. A stipulation was entered into between the parties for this testing to

be conducted at a private lab with the capacity to conduct the necessary testing rapidly.

While the Defendant discounts the potential inculpatory value of this evidence, hairs from duct tape surrounding JJ's body would have significant inculpatory value if related to the Defendant. DNA matching to coconspirators would likewise be incriminating given the Defendant's participation in the conspiracy to murder JJ Vallow. If the hairs are simply attributable to JJ Vallow, they have no exculpatory value.

The testing performed by the Idaho State Lab has already been provided to defense for review by their expert, Mr. Hampikan. The State is unclear what additional testing the Defense is referencing since they will have the same reports and findings as the State, as well as having access to the information regarding the testing process.

Because of the protocol entailing first testing evidence for fingerprints, the collection of hair and fiber, and the delay in consumptive testing, these additional hairs were not obtained until examination during that consumptive testing process. This information was provided to defense counsel immediately upon its discovery. While Mr. Hampikan may need some additional time for review and analysis from this recent testing, the State has made every effort to provide this in an expedited manner and has agreed to a continuance beyond the discovery deadline for defense reports. Again, the Defendant has not made a showing that the evidence is exculpatory or impeaching beyond speculation. The State has not willfully or inadvertently suppressed this information and there has been no showing that such evidence is material or prejudicial to the defense such that its suppression would deprive the Defendant of a fair trial or a reasonable probability of a different outcome. "To prove prejudice, a defendant must show there is a reasonable probability that, but for the late disclosure of evidence, the result of the proceedings would have been different." *State v. Tapia*, 127 Idaho 249, 255 (1995). Therefore, the State has

not violated Mr. Daybell's constitutional due process rights or statutory rights under I.C.R. 16.

CONCLUSION

For these reasons, the State respectfully requests the Court deny the Defendant's Motion to Dismiss the Indictment or to Preclude the Imposition of the Death Penalty Due to Continued Discovery Violations by the State.

RESPECTFULLY SUBMITTED this 16th day of February, 2023.

_____/S/ Lindsey A. Blake_____
Lindsey A. Blake
Prosecuting Attorney

_____/S/ Rob H. Wood_____
Rob H. Wood
Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of February, 2023, that a copy of the foregoing was served as follows:

James Archibald
Jimarchibald21@gmail.com

- ☐ U.S. Mail
- ☐ Hand Delivered
- ☐ Courthouse Box
- ☐ Facsimile:
- X File & Serve
- ☐ Email

John Thomas
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- ☐ U.S. Mail
- ☐ Hand Delivered
- ☐ Courthouse Box
- ☐ Facsimile:
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John Prior
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- ☐ U.S. Mail
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- ☐ Courthouse Box
- ☐ Facsimile:
- X File & Serve
- ☐ Email

By: Tiffany Mecham
Tiffany Mecham

Rexburg Police Department

Case 201905298

Tips

Sightings confirmed not to be Tylee/JJ 42

Tips led to interview/follow up/report by law enforcement 10

- Tip 3 – Interview of Gillian Kennedy on 09-30-2020 by Detective Ray Hermosillo, written 03-01-2021.
- Tip 14, 26, 108 – Interviews of Christopher Parrett as follows:
    - 02-25-2020 by Detective Kunsaitis and Detective Schmitt, written 02-25-2020.
    - 07-21-2020 by Detective Kunsaitis, written on 10-29-2020.
- Tip 15, 309 – Information regarding crawl space. Officers followed up on tips on 05-29-2020, report written by Detective Hermosillo on 06-01-2020.
- Tip 24 – Interviews of April Raymond as follows:
    - 01-08-2020 by Detective Reese, written 02-24-2020.
    - 05-26-2020 by Detective Reese, written 05-28-2020.
    - 09-09-2020 by Detective Hermosillo, written 09-21-2020.
- Tip 41 – Interviews of Melanie Gibb as follows:
    - 12-06-2019 by Detective Hermosillo, written 12-16-2019
    - 12-07-2019 by Detective Hermosillo, written 12-16-2019
    - 02-03-2021 by Detective Hermosillo, written 02-04-2021
    - 06-03-2020 by Detective Hermosillo, written 06-08-2020
    - 04-30-2021 by Detective Hermosillo, written 04-30-2021

  Tip 41 – Interview of Jason Mow 04-28-2021, by Lt. Ball written on 05-22-2022.

- Tip 125 – Interview of Annie Cushing on 01-09-2020, written 02-24-2020.
- Tip 358 - Phone call with Jay Johnson on 03-09-2020 by Lt. Foster, written 04-20-2020.

Information or comment by tipster on case 284

Tips on other people who possibly had knowledge of kids' whereabouts* 23

Tips unfounded due to Chad/Lori being in Hawaii	35
Sightings confirmed not to be Chad/Lori	7
Psychic/Vision tips	56
Press/Media	2
Tip referred to FBI/AZ	1
Duplicate tip	1

***Other people with possible knowledge**

Hector Sosa- LE attempted to interview, but he would not cooperate.

Julie Rowe-LE spoke with (FBI).

Christopher Parrott- LE spoke with (RPD).

Jason Mow- LE spoke with (RPD).

Melanie Gibb- LE spoke with (RPD).

Bentley (Tip 89)-LE spoke with caller who mentioned Bentley. Children were not Tylee and JJ (RPD).

Eric Smith-Anonymous tip, caller wanted us to watch You Tube video.

Alex Cox- LE spoke with on initial first visit (RPD).

Wendy Mecham-LE spoke with caller, confirmed Wendy was just a known associate (RPD).

Mike Stroud (Tip 322) LE attempted to contact multiple times, but no cooperation (RPD).

DATED this 16th day of February, 2023.

Detective Eric Wheeler