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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 RESPONSE TO
DEFENDANT'S SECOND MOTION TO
COMPEL**

The State hereby objects to the Defendant's Second Motion to Compel for the following reasons:

LEGAL AUTHORITY

Discovery in Idaho criminal cases is governed by Idaho Criminal Rule 16 and Idaho Code §19-1309. I.C.R. 16 establishes and governs the duties of the State and the Defendant in regards to disclosure of reports, evidence, Brady material, witnesses, expert witnesses, etc. The rule requires disclosure of multiple types of evidence. "[T]he prosecutor is not required to deliver his entire file to defense counsel..." *United States v. Bagley*, 473 U.S. 667, 675 (1985). I.C.R. 16 requires the State to disclose evidence and make it available to the Defendant.

I.C.R. 16(b)(4) states:

(b) Disclosure of Evidence and Materials by the Prosecution on Written Request. Except as otherwise provided in this rule, the prosecuting attorney must,

at any time following the filing of charges, on written request by the defendant, disclose the following information, evidence and material to the defendant:

(4) *Documents and Tangible Objects.* On written request of the defendant, the prosecuting attorney must permit the defendant to inspect and copy or photograph:

- (A) books,
- (B) papers,
- (C) documents,
- (D) photographs,
- (E) tangible objects,
- (F) buildings or places,

or copies or portions of them, that are in the possession, custody or control of the prosecuting attorney and that:

- (A) are material to the preparation of the defense,
- (B) are intended for use by the prosecutor as evidence at trial, or
- (C) were obtained from the defendant or belong to the defendant.

ARGUMENT

The State has complied with I.C.R. 16 in regard to the items listed in the Defendant's Second Motion to Compel and will continue to do so.

While the Defendant's Second Motion to Compel does not specify which devices it references, the State believes from other filings and the number and types of devices listed that it refers to items seized from the Defendant's home on January 3, 2020. A full list of items seized during that search has been disclosed to the Defendant at least twice. Indeed, the State disclosed these items in a previous case before the Defendant was indicted in the current case.

On January 14, 2021, in a discovery disclosure in Fremont County Cases CR22-20-0755 and CR22-20-0838, the State provided a copy of the FBI FD-302 report regarding the January 3, 2020 search. Attached to that report was a copy of the "Evidence Collected Item Log." The FBI 302 Report is stamped with Bates No. 017118, and the Evidence Log begins on Bates No. 017125 and includes the items referenced in the Defendant's motion. The Discovery Disclosure provided by the State at that time and in that case contained the following language in Paragraph 4(a):

Defense counsel can inspect and copy or photograph the items or material described in Idaho Criminal Rule 16(b)(4) by simply making prior arrangements with the Madison County Prosecutor's Office or the Law Enforcement Agency holding such items or evidence.

After the Defendant was indicted in the current case, the same report and evidence log were disclosed again in the State's "First Supplemental Discovery Disclosure" dated August 9, 2021. The same Paragraph 4(a) was included in that disclosure, alerting the Defendant that he could inspect, copy, or photograph any items or material in the State's possession.

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. This disclosure again includes the same Paragraph 4(a), which states that defense counsel can make arrangements to inspect, copy or photograph the materials with the Prosecutor's office in compliance with Rule 16.

Of the items referenced in the Defendant's motion, not only did the State make the devices and their contents available to the Defense, but also provided the following to the Defendant:

1. Tammy Daybell's cellphone. An extraction of that phone and a report regarding the information was provided in the State's first discovery disclosure in the pending case.
2. Seth Daybell's iPad (Redacted and Unredacted Bates Nos. 60195-60197);
3. An approximately 850-page report of a disk in the Defendant's iMac including approximately 109 articles of the Defendant's writings, wills, living wills, and trust documents were provided on August 9, 2021. Bates No. 015994.
4. Review of Digital Evidence on an LG phone belonging to Seth Daybell, IWR91199 on 4.3.20 (Redacted and Unredacted Report.) (Bates Nos. 16849-16890);
5. Review of Digital Evidence on a Sandisk Memory Device, IWR091205 on 4.23.20 (Redacted and Unredacted Report.) (Bates No. 16891);
6. Review of Digital Evidence on a Sandisk Memory Device, IWR091209 on 4.28.20 (Redacted and Unredacted Report.) (Bates No. 16892);
7. Review of Digital Evidence on an EmTec Memory Device, IWR100590 on 4.23.20 (Redacted and Unredacted Report.) (Bates No. 16893);
8. Review of Digital Evidence on an EmTec Memory Device, IWR100591 on 5.1.20 (Redacted and Unredacted Report.) (Bates No. 16894);
9. Review of Digital Evidence on a Sandisk Flash Memory, IWR100592 on 5.12.20 (Redacted and Unredacted Report.) (Bates No. 16895);
10. Review of Digital Evidence on a PQ1 Memory Device, IWR100593 on 4.28.20 (Redacted and Unredacted Report.) (Bates No. 16896);
11. Review of Digital Evidence of a Sandisk memory device, IWR100595 on 4.28.20 (Redacted and Unredacted Report.) (Bates No. 16897);
12. Review of Digital Evidence on a SD Card, IWR100597 on 4.1.20, (Redacted and Unredacted Report.) (Bates No. 16898);

13. Review of Digital Evidence on a SD Card, IWR100598 on 4.1.20, (Redacted and Unredacted Report.) (Bates No. 16899);
14. Review of Digital Evidence on a Sandisk Memory Device, IWR100599 on 4.24.20 (Redacted and Unredacted Report.) (Bates No. 16900);
15. Review of Digital Evidence on a Sandisk Memory Device, IWR100603 on 4.24.20 (Redacted and Unredacted Report.) (Bates No. 16901);
16. Review of Digital Evidence on a Flash Memory Device, IWR100605 on 4.23.20 (Redacted and Unredacted Report.) (Bates No. 16903);
17. Review of Digital Evidence, on an electronic storage device, IWR1005601 on 4.24.20 (Redacted and Unredacted Report.) (Bates No. 16902);
18. Review of Kyovera Cell Phone on 3.20.20, (Redacted and Unredacted Report.) (Bates Nos. 16904-16906);
19. Review of Electronic Media on a Seagate Hard drive from a Lenovo Laptop, (Redacted and Unredacted Doc) (Bates No. 20505);
20. Northwest RCFL report for Apple iPhone 7 and SIM card associated with Seth and Kayla Daybell, (Redacted and Unredacted Docs) (Bates Nos. 21858-21861);
21. Review of electronic media on a Seagate hard drive from an HP Desktop, (Redacted and Unredacted Doc) (Bates No. 24723);
22. Review of electronic media on a WD hard drive from a Lenovo Laptop, (One Audio File and Redacted and Unredacted Doc) (Bates No. 25552);
23. Review of electronic media on a Nikon 3500, (Redacted and Unredacted Doc) (Bates No. 25605);
24. Review of electronic media on the following: IWR100600 Flash Memory, PNY, IWR100602 Flash Memory, Olatec, and IWR100604 Flash Memory, San Disk. (Redacted and Unredacted Bates No. 38522);
25. Review of Seth Daybell's Phone Extraction Data, (Unredacted and Bates Nos. 61901-62020).

CONCLUSION

The electronic devices described in the Defendant's Second Motion to Compel clearly fall under I.C.R. 16(b)(4). They are tangible objects, and some of them contain documents. It is arguable the State did not need to disclose items belonging to the Defendant's children which contain no material information. Nevertheless, the State did disclose those items and made them available to the Defense. Any reports regarding items the State reviewed have been provided. The State has consistently made these items available to the Defense. The State cannot force the Defendant to review items, nor should it be compelled to a burden beyond what is required by I.C.R. 16. As such the State respectfully requests the Court deny the Defendant's Second Motion to Compel.

DATED this 16th day of February 2023.

/s/ Lindsey A. Blake

Lindsey A. Blake
Prosecuting Attorney for Fremont County

/s/ Rob H. Wood

Rob H. Wood
Prosecuting Attorney for Madison County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of February 2023, that a copy of the foregoing STATE'S RESPONSE TO DEFENDANT'S SECOND MOTION TO COMPEL was served as follows:

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Tiffany Mecham