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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,	)	Case No. CR22-21-1624
vs.	)	
	)	<b>MOTION TO DECLARE</b>
LORI NORENE VALLOW,	)	<b>DEFENDANT NOT DEATH</b>
Aka: Lori Norene Daybell	)	<b>ELIGIBLE</b>
	)	
Defendant.	)	
_____	)	

COMES NOW, the Defendant, LORI NORENE VALLOW, Hereinafter referred to Lori Daybell, by and through her attorney’s of record, R. JAMES ARCHIBALD and JOHN THOMAS, and moves this honorable court for an order finding that the defendant, LORI NORENE VALLOW, Hereinafter referred to LORI DAYBELL, not eligible for the

death penalty under the Eighth and Fourteenth Amendments to the United States Constitution.

Lori Daybell has been indicted on charges of first-degree murder, and conspiracy to commit first-degree murder and grand theft, both of which carry the possibility of the death penalty. As pled, the defendant does not have the requisite culpability to be charged with the death penalty under the indictment for conspiracy to commit first-degree murder and grand theft, nor as a principal or accessory to first degree murder.

I would first call the courts attention to *Enmund v Florida*, 458 U.S. 782, 102 S.Ct. 3368, 73 L. Ed.2d 1140 (1982). Earl Enmund was charged with the murder of Thomas and Eunice Kersey. Enmund was a get away driver for an armed robbery gone wrong. When Enmund's two accomplices went to rob the Kersey's at gunpoint, one of the victims grabbed a gun and shot at Enmund's accomplice, injuring her. The accomplices shot back and subsequently killed both Thomas and Eunice Kersey. Enmund was convicted of first degree murder and sentenced to death. The Supreme Court granted Cert.

Under *Enmund v Florida*, a person who neither kills nor intends to kill and has not the requisite intention of participating in or facilitating a murder, cannot be put to death. The court explains that "[f]or purposes of imposing the death penalty, Enmund's criminal culpability must be limited to his participation in the robbery, and his punishment must be tailored to his personal responsibility and moral guilt." *Enmund at 801*.

While the *Enmund* case revolved around a felony murder conviction, the concept is the same for conspiracy to commit murder and grand theft charge, as well as being charged as a principal or accessory in the first-degree murder charges that Mrs. Daybell faces today. It is well established that the death penalty is reserved for the most egregious murders. The court in *Enmund* rejected the notion that a felon is generally responsible for the lethal actions of his co-felons when it comes to the death penalty. As so many others

have said, death is different. The death penalty has with it the finality that no other punishment in our system of justice has. The charge of conspiracy to commit murder is much like the felony murder rule where co-conspirators are deemed just as culpable as those who actually pulled the trigger, so to speak.

“The Cruel and Unusual Punishment Clause of the Eighth Amendment is directed in part ‘against all punishments which by their excessive length or severity are greatly disproportioned to the offense charged’” *Enmund* at 788 quoting *Weems v United States*, 217, US 349, 371, 30 S.Ct. 544, 551, 54 L.Ed. 793 (1910), Quoting *Oneil v Vermont*, 144 U.S. 323, 339-340, 12 S.Ct. 693, 699-700, 36 L.Ed. 450 (1892) (Field, J., dissenting). The death penalty is reserved for crimes that are “so grievous an affront to humanity that the only adequate response may be the penalty of death.” *Gregg v Georgia*, 428 U.S., at 184, 96 S.Ct. at 2930. The Government has pled this case in several alternatives. There is nothing in the discovery of this case that has put Mrs. Daybell at the threshold of killing anyone. The two-prong test of *Enmund* is not met where (1) the defendant has not killed or attempted to kill and (2) does not have the requisite intent that any of the deaths of Tylee Ryan, JJ Vallow, or Tammy Daybell should be taken or contemplated that they would be taken. From a plain reading of the Indictment, Lori Daybell is not death eligible.

Another Supreme Court decision, *Tison v Arizona* 481 U.S. 137, 107 S.Ct. 1676, 95 L.Ed.2d. 127, (1987), gives the court further guidance on the matter. Decided in 1987, the *Tison* Court expanded on, or gave further guidance for those with accomplice type liability. *Tison* was another felony murder case, but like *Enmund*, the defendant in this case believes that the same principles apply to the case at bar.

Ricky Wayne Tison and Raymond Curtis Tyson helped his father and another man break out of prison. The Tison’s came to the prison with a large ice chest filled with guns and held the prison guards and other visitors at gunpoint and later locked them in a closet

while they broke the men out of prison. No shots were fired at the prison. The Tison's drove off the prison grounds in Tison's Ford Galaxy, then changed get away cars near a local hospital before driving on the highway across the Arizona desert where they got a flat tire. Raymond Tison was told that he was to wait by the vehicle and flag someone down to help him with the flat tire. The others were armed and lying in wait by the side of the road. When a Mazda occupied by John Lyons, his wife Donnelda, his two year old son Christopher and his fifteen year old niece, Theresa Tyson, pulled over to render aid.

The Lyons family was taken hostage and driven off into the desert. The Tison's transferred their belongings from the get away car with the flat tire to the Mazda. Gary Tison then told his son to drive the get away car further into the desert. The Lyons were then escorted to the get way car and stand in front of the headlights. John Lyons pleaded for his life and asked if the Tisons would give them some water and leave them in the desert. Gary Tison then told his sons to go to the Mazda and get some water for the Lyons family. As Ricky and Raymond Tison were at the Mazda they heard the gunshots. The stories diverge a bit, but ultimately the Tison boys watch their father and the other convict brutally murder the Lyons family. The Tisons were later charged with capital murder under the felony murder rule and each was convicted of the four murders under the states accomplice liability and felony murder statutes.

The Supreme Court in *Tison* analyzed the facts in *Enmund* and compared them to the facts as found by the Arizona supreme court in *Tison*. The court agreed with the Tison's in that they did not pull the trigger and land the final blow on any of the Lyon's family members. They however were major contributors to the underlying crime which to the felony murder conviction. That, combined with the fact that the Tison's were "knowingly engaging in criminal activities known to carry a grave risk of death representing a highly culpable mental state, a mental state that may be taken into account in making a capital

sentencing judgement when that conduct causes its natural, though also not inevitable, lethal result.” *Tison* at 157-158. The Court reasoned that the Tison boys had the intent to kill. “[Their] participation up to the moment of the firing of the fatal shots was substantially the same as that of Gary Tison . . .” *Tison* at 145. The Court reasoned that the level of participation in the crimes was major, rather than minor, like *Enmund*. They further stated that a person would have to have reckless disregard for human life in conjunction with the major role in the killings.

In the case at bar, Mrs. Daybell was not a participant in the deaths, as a conspirator or otherwise, and could not have the foreknowledge that her children, Tylee Ryan and JJ Vallow, or Tammy Daybell would end up dead. Further there is nothing in the record to show that Lori Daybell showed reckless disregard for human life as the *Tison* Court requires for accomplice liability. While the State of Idaho may give defendants more rights and more protection than the U.S. Constitution, they cannot give less. Here the state fails to meet its burden that Lori Daybell is eligible for the death penalty under *Enmund v Florida* and *Tison v Arizona*.

Therefor the Defendant hereby requests that the court issue an order finding that Defendant is not eligible for the death penalty.

Dated this   4   Day of January, 2023.

\_\_\_\_\_/s/\_\_\_\_\_  
R. James Archibald  
Counsel for Defendant  
Lori Daybell

\_\_\_\_\_/s/\_\_\_\_\_  
John Thomas  
Co-Counsel for Defendant  
Lori Daybell