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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. LORI NORENE VALLOW AKA LORI NORENE DAYBELL, Defendant.	**CASE NO. CR22-21-1624** **STATE'S MOTION IN LIMINE ON MENTAL HEALTH EVIDENCE AND MEMORANDUM IN SUPPORT**

The State of Idaho, by and through the Fremont County Prosecuting Attorney's Office, submits the following Motion in Limine on evidence related to Defendant Vallow Daybell's Mental Health at the time of the crimes and a Memorandum in Support of the Motion in Limine.

ARGUMENT

Less than a year ago, the Idaho Supreme Court reiterated:

> "A motion seeking a pretrial ruling on the admissibility of evidence is known as a motion in limine. Idaho's courts recognize the importance of a motion in limine. *State v. Young*, 136 Idaho 113, 120, 29 P.3d 949, 956 (2001). A motion in limine enables a judge to make a ruling on evidence without first exposing it to the jury. It avoids juror bias sometimes generated by objections to evidence during trial. The court's ruling on the motion enables counsel of both sides to make strategic decisions before trial on the content and order of evidence to be presented. *See generally Warren v. Sharp*, 139 Idaho 599, 605, 83 P.3d 773, 779 (2003), *overruled on other grounds by Blizzard v. Lundeby*, 156 Idaho 204, 322 P.3d 286 (2014)."

State v. Diaz, 507 P.3d 1109, 1113, (2022).

The number of charges, the existence of two jointly charged Defendants, the acts of the Defendants' spanning into different counties and/or states, the extent of the conspiracy alleged, the significant amount of witnesses and the number of law enforcement agencies involved make the trial of these actions complex. The State, the Court, and even the Defendants, will be best served by resolution before trial of any issues that can be resolved to reduce potential confusion during the substantial trial preparation.

The State requests this Court enter an order, in advance, prohibiting the Defendant from presenting evidence from a mental health expert at any time, which falls under the same theory of Idaho Code §18-207; yet, which would be in complete contradiction and violation of the discovery requirements of Idaho Code §18-207. The State asks the Court to issue a ruling that the introduction of evidence of the Defendant's beliefs is not a justification for the Defendant to later argue the "door has been opened," and then attempt to bootstrap the introduction of mental condition evidence as a defense to negate guilt or for any other defense purposes in violation of the Idaho Code and discovery requirements.

I. The Defendant Should be Prohibited from the Use of an Expert Witness Regarding Mental Health or a Mental Health Defense.

Idaho has recently reiterated that: "[s]tated more concisely, the United States Constitution guarantees criminal defendants a meaningful opportunity to put on a complete defense. *Crane*, 476 U.S. at 690. Nevertheless, a criminal defendant must still comply with the rules of procedure and evidence to ensure a fair and reliable trial. *Chambers*, 410 U.S. at 302." *Abdullah v. State*, 169 Idaho 711, 723, 503 P.3d 182, 194, (2021).

A. The Defendant has Failed to Comply with the Requirements of Idaho Code §18-207.

Idaho Code §18-207(1) provides: "Mental condition shall not be a defense to any charge of criminal conduct." I.C. §18-207(3) states: "Nothing herein is intended to prevent the admission of expert evidence on the issue of any state of mind which is an element of the offense, subject to the rules of evidence." Should the Defendant attempt to admit such evidence, the Defendant will not have complied with the relevant Idaho Statute. Idaho Code §18-207(4)(a) requires 90 days' notice prior to trial of the intent to put on a mental impairment defense. The jury trial will now begin in less than 90 days. Moreover, the Defendant explicitly just gave the opposite notice – affirmatively stating that in fact she does not intend to do so.

I.C. §18-207(4)(b) further requires the report of any proposed expert the defense would intend to use to be disclosed to the State in adequate time to prepare for rebuttal of the defense expert. The Defendant has not provided any such synopsis, reports or documentation. I.C. §18-207(4)(c) requires the State then be provided access to the Defendant for a mental health examination by the State's chosen expert. The Defendant has not permitted such an evaluation.

In fact, as to evidence of mental issues at the time of the charged offenses, I.C. §18-207(4)(e) establishes that if a defendant refuses to meet with an expert, then the defense may be unavailable, or at a minimum, the jury maybe instructed to consider the defendant's refusal to undergo the evaluation and/or meet with the expert. On January 6, 2023, through counsel, the Defendant filed a Notice of Intent Not to Raise a Mental Health Defense to her charges; thereby, expressly waiving her right to do so. The State has no access to any proposed expert report or testimony which may be presented regarding her mental health or mental condition at trial. Further, the State has not been provided an opportunity to have an expert for the State examine the Defendant to assist in forming an expert opinion. Given the defense discovery

announcement, there is no way to know whether or not the Defendant would have subjected herself to examination as required for the defense to be presented – further limiting the State's ability to respond as contemplated by I.C. 18-207.

When mental health has not properly been raised pursuant to I.C. §18-207, the appropriate jury instruction is ICJI 1505 which provides: "[o]ur law provides that mental illness is not a defense to any charge of criminal conduct." This means that mental illness, if the evidence shows such a condition existed at the time the Defendant allegedly committed the crimes charged, it is not a defense.

Considering this waiver of the Mental Condition Defense and the Defendant's admitted lack of compliance with Idaho Code §18-207, this Court should now issue an order precluding the use of an expert by the Defense regarding the Defendant's mental condition, and an order barring the Defense from presenting evidence or argument of a mental condition as a defense in any situation.

B. The Defendant is Precluded from Offering Mental Condition Evidence Based on Idaho Case Law.

In 2020, the Idaho Supreme Court upheld a felony jury conviction despite exclusion of belated evidence of mental incompetency because the evidence was not related to or relevant to the evidence on the prerequisite *mens rea*. In *State v. Oxford*, the Idaho Supreme Court expressly ruled, upholding prior Idaho law and rulings, that mental health evidence may be admitted to demonstrate a criminal defendant's state of mind. *State v. Oxford*, 167 Idaho 515, 522-23, (2020). *Oxford* involved a defendant who had been found guilty of burglary and kidnapping. *Id.* at 519. She had been found incompetent to stand trial and her defense lawyer had requested evaluation funds to mount a defense attacking specific intent as an element of those crimes but never sought funds nor such evaluation to do so. *Id.* at 518-519. Instead, the defense

attorney sought simply to admit an expert report as to competency but the offered report did not address any mental condition in existence or present at the time of the incident. *Id.* In upholding the District Court's exclusion of the report, which led to a jury conviction, *Oxford* explained:

> "In the proceedings below, Defense counsel explained that Dr. Traughber would testify as to Oxford's clinical diagnosis as contained in his report, which only addressed Oxford's mental state at the time of the interview. Thus, the district court did not err by concluding that Dr. Traughber's testimony would not have assisted the trier of fact in determining Oxford's state of mind at the time of the criminal conduct. As the Court of Appeals emphasized in *State v. Dryden*, section 18-207 is "concerned with mental disease or defect at the time of [the] criminal conduct." 105 Idaho 848, 850, 673 P.2d 809, 811 (Ct. App. 1983)."

State v. Oxford, 167 Idaho 515, 524, 473 P.3d 784, 793, (2020).

Similar to the Defense in *Oxford*, the Defendant Vallow Daybell previously had been found incompetent to stand trial for a time during these proceedings but is now competent. Also, like *Oxford*, the Defendant apparently has never sought or at least has not provided an evaluation as to her ability to form *mens rea*, at the time of the charged conduct. Defense evidence on the defendant's mental condition at the time of the charged conduct is an absolute prerequisite for any application of I.C. §18-207 to present negation of specific intent as a defense. The Defendant has failed to raise such a defense in light of two points made in *Oxford*. First, she has produced no evidence of her *mens rea*. Second, there is no expert witness information providing such *mens rea* evidence addressing her condition at the time of the offense. In present situation, it was almost a year before any mental health evaluation of any sort was even performed on the Defendant – much more than the mere seven week delay that was rejected in *Oxford*. As far as the State is aware, no *mens rea* evaluation has ever been done in this case, and if one has – it has never been provided to the State.

C. The Court Should Now Rule that the State's Admission of Testimony or Evidence About the Defendant's Beliefs Does Not Open the Door at Trial to the Defense's Use of Mental Condition as a Defense.

Relative to resolution of issues in advance of trial via motions in limine, the Idaho Supreme Court noted: "It avoids juror bias sometimes generated by objections to evidence during trial." *Diaz* at 1113 (2022). Again, it is very possible, and even likely, the State will introduce evidence regarding the Defendant's beliefs and/or views. This Court should order the admission of such evidence by the State does not "open the door" for the Defense to offer undisclosed, unnoticed evidence, or even argue to the jury that the Defendant's beliefs and/or views should be construed as a "delusional" condition diminishing or negating her guilt.

The Defendant chose to give up her right to present a mental health defense or evidence at any part of the guilt phase of her trial January 6, 2023, via her legal counsel. The Defendant's decision was made knowing the State would likely present evidence regarding her beliefs. Allowing the Defendant to argue the door is opened by the State with its use of such evidence during trial would allow for an "end run" around I.C. §18-207, improperly allowing the Defendant to argue such as evidence of delusional thinking. This would grossly and unfairly undermine the provisions of the Statute which clearly serve to give the State ample opportunity to prepare to meet such argument long before trial. This cuts at the very core of the notion of providing the defense and the State a "fair" trial.

The State respectfully requests that the Court grant the motion in limine and prohibit the Defendant from using evidence provided through a mental health expert, using evidence that is not disclosed or properly noticed and prohibit improper argument on mental health and/or a mental health defense that does not follow Idaho law. The State requests this matter be set for oral argument at the same time as the State's Motion for Inclusion of Evidence Pursuant to I.R.E.

401, 402, 403, 404(b).

DATED this 26th 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 26th day of January, 2023, that a copy of the foregoing document was served as follows:

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