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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

<p>STATE OF IDAHO, Plaintiff, vs. LORI NORENE VALLOW, Defendant.</p>	<p>CASE NO. CR22-21-1624</p> <p>MOTION TO FIND GOOD CAUSE TO CONTINUE TRIAL & PREVENT IMPROPER SEVERANCE</p>
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The State of Idaho hereby files this Motion to Continue the October trial setting in the above-captioned matter and the October date for the companion case CR22-21-1623. While this Court recently entered an order setting a trial in the above-captioned matter to begin on October 11, 2022, this Court has repeatedly found and held that these cases are one for trial. It is proper to continue the October trial setting for both Defendants' cases and restore the prior trial date scheduled to commence on January 9, 2023. If both cases are not set for trial at the same time, it will result in an improper severance.¹

FACTUAL AND PROCEDURAL BACKGROUND

¹ During off the record discussions between the Court and Counsel the Court reiterated this is one case for trial and that a Trial Scheduling Order for the October date would be entered in companion case number CR22-22-1623.

On April 16, 2021, a grand jury was convened in Fremont County, Idaho. On May 24, 2021, that grand jury returned a joint 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 Tammy 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 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 was the victim; and Two Counts of Insurance Fraud for the receipt of life insurance proceeds for Tammy Daybell's death.

Defendant Vallow Daybell's previous counsel, Mark Means requested a Competency Evaluation under I.C. §18-211 in a prior case, CR22-20-838. This Court entered an Order for Competency Evaluation on March 8, 2021, and following its review of the Psychological Assessment, determined that the Defendant was incompetent to stand trial on June 8, 2021. On June 9, 2021, this Court entered an Order Staying Case in the above-entitled matter pursuant to the finding of incompetence and commitment of Defendant Vallow Daybell to the State Hospital. On September 22, 2021, an Order for Extended Commitment was entered following a progress report from the State Hospital on restoration efforts. On April 11, 2022, this Court entered an

Order finding the Defendant Vallow Daybell, fit to proceed and lifting the previously entered stay. On April 19, 2022, Defendant Vallow Daybell was arraigned and pursuant to her request for a trial setting within statutory speedy trial limits, her case, along with her Co-Defendant, Chad Daybell, was set for trial commencing October 11, 2022.

LAW AND ARGUMENT

In Idaho, criminal cases are governed by constitutional and statutory considerations regarding speedy trial rights. “The right to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution and Article I, Section 13 of the Idaho Constitution. These constitutional protections are supplemented by Idaho Code §19-3501 which sets specific time limits within which a criminal defendant must be brought to trial.” *State v. Risdon*, 154 Idaho 244, 246-247 (Ct. App. 2012); referencing *State v. Clark*, 135 Idaho 255 (2000); *State v. Jacobson*, 153 Idaho 377 (Ct. App. 2012). The relevant part of Idaho Code §19-3501 provides that the Court must order that a prosecution or indictment be dismissed if not brought to trial within six months, “unless good cause to the contrary is shown”. The State bears the burden of demonstrating that good cause exists for delay of a trial beyond the six month statutorily prescribed time period.

In *State v. Clark*, the Idaho Supreme Court took the opportunity to analyze what constitutes good cause in relation to the U.S. Supreme Court’s four factor balancing test announced in *Barker v. Wingo*, 407 US 514 (1972):

The Court adopted a balancing test in which the conduct of the defendant and the prosecution were to be weighed and identified four primary factors the courts should evaluate in determining whether a particular defendant has been deprived of his speedy trial right: (1) the length of the delay; (2) the reason for the delay; (3) whether the defendant asserted the right to a speedy trial; and (4) the prejudice to the defendant. *Clark*, 135 Idaho 255 at 258.

Ultimately the *Clark* court decided that good cause could be determined by an examination of the reasons for the delay and concluded “good cause means that there is a substantial reason that rises to the level of a legal excuse for the delay.” *Id.* at 260. “The ultimate question of whether legal excuse has been shown is a matter for judicial determination upon the facts and circumstances of each case.” *Risdon*, 154 at 247.

In evaluating whether there is good cause for a delay, the trial court is instructed to consider and apply different weights to different reasons.

Our speedy trial standards recognize that pretrial delay is often both inevitable and wholly justifiable. (Internal citations omitted) We attach great weight to considerations such as the State's need for time to collect witnesses, oppose pretrial motions, or locate the defendant in the event he or she goes into hiding. *Risdon*, at 248.

Further, the length of the delay is a triggering mechanism, unless there is a delay that is presumptively prejudicial, an analysis into the remaining factors is unnecessary. However, the nature of the case is also relevant “in determining the period of delay that can be tolerated, for the period that is reasonable for prosecution of an ordinary street crime is considerably less than for a complex conspiracy charge.” *Risdon*, at 250.

Typically, courts have looked at the reasons for a delay in relation to unavailable witnesses, newly discovered evidence, or issues that arise much closer in proximity to the trial date. The reason for the delay in *Risdon* was due to an unavailable lab witness. In *Clark*, however, the witness was not found to be truly unavailable and the rest of the delay was attributed to a congested court calendar. In *Risdon*, the Court found good cause for the delay, while the *Clark* court dismissed the case due to the speedy trial violation.

I. The Court Should Find Good Cause to Continue the Trial Date as the Reason for the Delay Arises to the Level of a Legal Excuse and the Length of the Delay is Short in Relation to the Complexity of the Case.

Defendant Vallow Daybell's case is uniquely positioned as good cause arguments are being made shortly after arraignment and months before issues relating to witness availability, evidence testing, notice of affirmative or mental illness defenses, full exchange of discovery or argument of all pre-trial motions have occurred. The State asserts this fact in itself constitutes good cause. As noted above, great weight should be attached to the time needed to address full exchange of discovery, litigation of all pretrial motions, and collect witnesses. This is even more true in a case of this complexity with voluminous discovery and with the added complication of arranging trial logistics in a different venue. Further, co-counsel for Vallow Daybell has only recently been appointed and the time to digest the status of the case, prior pre-trial motions filed by former defense counsel, and review discovery has been limited.

The indictment in this matter alleges nine counts with three counts of conspiracy and overt acts attributed to both Defendants. This is a complex case involving extensive evidence and multiple witnesses. Preparation of the grand jury transcript alone took approximately three months. The State has been diligent in reviewing evidence and disclosing evidence to the defense, but there are still items that remain outstanding that have yet to be produced in discovery or are awaiting argument and rulings from the Court in relation to consumption of DNA samples. The complexity of the case weighs in favor of finding good cause for a continuance of the trial date beyond the six-month statutory guideline.

The brief continuance of Defendant Vallow Daybell's trial also allows for properly joined Co-Defendants to proceed to trial in an efficient manner without allowing a type of improper,

back-door severance of the cases to occur. This Court has entered a Memorandum Decision Denying Defendant Chad Daybell's request for severance. In that decision, this Court found that joinder of Defendants Daybell and Vallow Daybell was proper and that the defense had not met its burden to demonstrate prejudice requiring a severance. This Court further determined that a joint trial would serve the interests of justice by providing for judicial economy, procedural efficiency and avoid possible inconsistent verdicts. The Court's rationale is valid and would be undermined by allowing one joined co-defendant to assert speedy trial as a method of obtaining improper severance early on in the case. A scenario could develop where Defendant Vallow Daybell's current assertion of speedy trial results improperly in a premature severance, and then a later basis for continuance is discovered as the case progresses; and Defendant Vallow Daybell's waiver of speedy trial is then entered. At such point, would the trial dates be re-joined? Would such a scenario result in further delays? The Court's determination of good cause to continue Defendant Vallow Daybell's trial date for a short period as proposed by the State ensures the cases remain properly joined and avoids further complications in the future.

The length of the delay that would take place were the Court at this juncture to find good cause to continue Defendant Vallow Daybell's trial to January 9, 2023 is relatively short. Whether the length of the delay is presumptively prejudicial under Idaho law varies with the circumstances, nature and complexity of each case; as well as whether under a statutory or constitutional analysis. Idaho courts have determined that judicial review was warranted in several instances: in a delay of nine months between complaint and arrest (*State v. Holtlander*, 102 Idaho 306 (1981)); forty-two days after the expiration of the six-month statutory time period (*State v. Beck*, 128 Idaho 416 (Ct. App 1996)); and a one-month delay for trial (*State v. Wengren*, 126 Idaho 662 (Ct. App. 1995)). *See also State v. McNew*, 131 Idaho 268, 271-272 (Ct. App.

1998) for summary. However, the U.S. Supreme Court has held that for constitutional purposes a “delay is not presumptively prejudicial until it approaches one year.” *Doggett v. United States*, 505 U.S. 647, 652 n.1 (1992). The delay from the October 11, 2022 trial date to January 9, 2023 is two months and twenty-nine days. As stated above, given the nature and complexity of this case, the interest in allowing adequate time for discovery, litigation of pre-trial motions and the existing and proper joinder of the Defendants, such a limited delay is justified and the Court can find good cause to allow the joint trial to proceed on January 9, 2023.

Furthermore, this Court has granted a change of venue that was brought and argued in Defendant Chad Daybell’s case. As Defendant Vallow Daybell’s case was stayed at the time, no argument was made on her behalf as to the change of venue. However, defense counsel for Defendant Vallow Daybell stated on the record at the April 19, 2022 hearing on the State’s Motion for the Court to Allow Additional Evidence & Follow Idaho Code §19-1816 by Transporting a Jury, that Defendant Vallow Daybell agreed to the venue change and with the Court’s decision to hold trial in Ada County. This Court has determined that in the interests of ensuring a fair trial, a change of venue to Ada County is necessary. This Court has further determined that the Co-Defendants are properly joined for trial.

At the hearing on April 19, extensive testimony was heard regarding the costs associated with holding one trial in Ada County. These costs would be doubled for Fremont and Madison if the Court were to considering holding trials for Defendant Vallow Daybell in October, 2022 and Defendant Daybell in January, 2023. This Court has consistently held and found that these cases are one for trial, and that the Defendants are properly joined for trial. If good cause is not found to continue Vallow Daybell’s trial, and especially if this Court considers severing the case by default, there may be need to make a record and determine if Defendant Vallow Daybell’s

previously filed change of venue motion should be granted. No argument or hearing has been held on Defendant Vallow Daybell's motion to change venue, and while the Court has scheduled trial in Ada County for October currently, there is no record in Defendant Vallow Daybell's case determining that such a change of venue was necessary or appropriate.

II. The Pre-Arrest Delay in Defendant Vallow Daybell's Case is Attributable to the Defendant's Actions.

The foregoing arguments in favor of finding good cause to continue Defendant Vallow Daybell's trial date have been in relation to the reason for the delay and a calculation of the length of delay from her arraignment and entry of not guilty pleas on April 19, 2022 to the January 9, 2023 trial date. Idaho Code §19-3501 and a constitutional analysis of speedy trial include consideration of the date from which a Complaint or Information is filed, an Indictment found, or an arrest made. See I.C. §19-3501(1)(2) and (3). "This Court has held that the Idaho speedy trial constitutional protection is 'not necessarily identical to that right guaranteed in the Constitution of the United States' and comes into play no later than the time at which the complaint is filed." *State v. Holtlander*, 102 Idaho 306, 310 (1981).

In Defendant Vallow Daybell's case an Indictment was found and filed with the Court on May 25, 2021. An arrest warrant was served on the same date. Defendant Vallow Daybell had a first appearance on May 26, 2021, however no further actions were taken because the Court was aware of the pending competency order in CR22-20-838. As noted previously, a stay was entered in the case and remained in effect until April 11, 2022. I.C. §18-210 provides that no person shall be tried, convicted, sentenced or punished so long as the person lacks capacity to understand the proceedings or assist in his/her defense. A request for a Competency Evaluation was filed by Defendant Vallow Daybell's previous counsel, and the finding of incompetency was adopted by the Court in this case. Defendant Vallow Daybell was transported to the State Hospital in June,

2021 for restoration efforts. The need for restoration efforts and the length required for that is directly attributable to the actions of the Defendant. The Defendant's actions or acquiescence in any pre-arraignment delay is therefore not chargeable to the State. "[A]ny delay(s) occurring prior to the date the information was filed were stipulated to by Risdon and, therefore, not chargeable to the State." *Risdon*, 154 Idaho at 250.

III. Defendant Vallow Daybell has Asserted Her Speedy Trial Rights.

Although Idaho Courts have held that where sufficient good cause for the delay is apparent on its face, there is no need to address the remaining *Barker* factors, the State will briefly address the remaining two factors.

Our Supreme Court's non-application of the *Barker* factors, other than the reason for the delay, in *Clark* and *Young* is significant. We take this to mean that where the reason for the delay is well defined, and that reason on its face clearly does, or clearly does not, constitute good cause, there is no occasion to consider the other *Barker* factors in assessing a claimed violation of Idaho Code § 19-3501. *State v. Jacobson*, 153 Idaho 377, 380 (Ct. App. 2012).

"The defendant's assertion of his or her right to a speedy trial is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." *Risdon*, at 250. Defendant Vallow Daybell has clearly and affirmatively asserted her speedy trial rights as of the date of her arraignment. The bulk of the delay in her case thus far has occurred from Indictment and her arrest and prior to this assertion of speedy trial. In *State v. McNew*, 131 Idaho 268 (Ct. App. 1998) the Court found that a delay in the trial setting due to the defendant's request to undergo a psychological examination was attributed to the defendant and weighed against a later assertion of speedy trial rights. "It is clear that the delay in resetting the trial for a date prior to October 9, 1995, was entirely due to McNew's refusal to cooperate in the preparation of his psychological examination and that the State did nothing to cause or facilitate further delay of the trial. The period of delay attributable to McNew will not be weighed against the State." *Id.* at

272. The Court also determined that the failure to assert speedy trial until well after the six-month time period had expired, combined with the defendant's request for continuances, and the delay in addressing the mental health concerns, indicated that McNew did not necessarily want a speedy trial. This Court should also consider the time taken to address Vallow Daybell's mental health concerns and the resulting delay to her case in assessing the weight to be given the assertion of her speedy trial rights at this time.

IV. Prejudice to Defendant Vallow Daybell.

The final *Barker* factor to address is the prejudice to the defendant that arises from any post-arrest delay. "Prejudice is to be assessed in light of the interests the right to a speedy trial is designed to protect: (1) to prevent oppressive pretrial incarceration; (2) to minimize anxiety and concern of the accused; and (3) to limit the possibility the defense will be impaired. (internal citations omitted) The third of these is the most significant because a hindrance to adequate preparation of the defense skews the fairness of the entire system." *Risdon*, 154 Idaho at 251.

Defendant Vallow Daybell was served a warrant for arrest in this case on May 25, 2021. Shortly thereafter, her case was stayed, and she was transported to the custody of the Department of Health and Welfare for competency restoration efforts at a State Hospital. While such custody has been deemed incarceration for purposes of awarding pre-sentencing credit (See *State v. Burke*, 166 Idaho 621 (2020); the restrictions on liberty and access to amenities and activities was less stringent than what would have been enforced had Defendant Vallow Daybell remained in the county jail. Further, as noted above, the length of this pre-trial incarceration at the hospital was at the Defendant's request and the commitment to a mental health facility was necessary to address competency and other mental health or medical concerns. Defendant Vallow Daybell's time in the county jail on this matter has been limited to approximately one month before her

transfer to the State Hospital, and the few weeks since her return following restoration of legal competence.

With regards to the second consideration, anxiety or concern of the accused, courts have noted that any criminal defendant will likely be stressed or anxious, particularly when facing serious charges including murder. “Indeed, anxiety by itself is generally insufficient to support a claim of a speedy trial violation.” *Risdon* at 252.

Finally, this Court must consider any hindrance or impairment to the Defendant Vallow Daybell’s defense. There has been no assertion by the Defendant Vallow Daybell of any impairment to her defense in relation to a delay of trial. In fact, there are multiple outstanding pre-trial motions that have not been addressed, co-counsel has been recently appointed, and discovery is yet to be completed. Certainly, the parties and the Court could make extraordinary efforts to address all pre-trial litigation, review extensive discovery and prepare for the logistics of conducting trial in another county in October. However, such efforts are likely to be at the cost of preparing an adequate defense, not to mention any other cases or defendants that may suffer delay as a result of limited attorney and judicial resources. Without an allegation from the defense that there would be impairment to Defendant Vallow Daybell’s defense from the limited delay suggested here, this factor must weigh against the Defendant’s asserted speedy trial right.

Weighing the limited prejudice suffered by the Defendant to this point, her assertion of speedy trial rights at arraignment, against the relatively short length of the delay suggested here, and considering the complexity of the case and the valid reasons to delay the trial, this Court can properly find good cause to continue the joint trial to the previously scheduled date beginning on January 9, 2023.

Wherefore, the State respectfully requests this Court find good cause to continue the October trial date to the previously scheduled date of January 9, 2023, and prevent any attempt for an improper severance of properly joined Co-Defendants for trial.

Respectfully submitted this 2nd day of May, 2022.

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

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

CERTIFICATE

I HEREBY CERTIFY that on this 2nd day of May, 2022, that a copy of the foregoing NOTICE OF INTENT TO SEEK THE DEATH PENALTY was served as follows:

James Archibald
Jimarchibald21@gmail.com

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

John Thomas
jthomasserve@co.bonneville.id.us

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

By:


