

Lindsey A. Blake, ISB #7920  
Rob H. Wood, ISB #8229  
OFFICE OF THE FREMONT COUNTY  
PROSECUTING ATTORNEY  
22 W. 1<sup>st</sup> N.  
St. Anthony, ID 83445  
Tel: 208-624-4418  
Email: [prosecutor@co.fremont.id.us](mailto:prosecutor@co.fremont.id.us)

*Attorneys for the State*

**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,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>LORI NORENE VALLOW DAYBELL,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No.: CR22-21-1624</p> <p><b>STATE’S OBJECTION TO DEFENDANT’S MOTION TO REMAND INDICTMENT TO THE GRAND JURY FOR FURTHER PROCEEDINGS</b></p>
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The State of Idaho, by and through the Fremont County Prosecutor’s Office objects and responds to the Defendant Lori Vallow Daybell’s Motion to Remand Indictment to the Grand Jury for Further Proceedings.

The State objects to the Defendant’s Motion to Remand on two grounds:

- 1) The Defendant’s position that the Indictment is defective because it “lumps two crimes into one allegation making it a general felony for possible punishment purposes at sentencing” has no basis in law or fact. To the contrary, the law specifically allows for an allegation in a single count of a conspiracy to commit multiple crimes.
- 2) The Defendant’s Motion to Remand is an untimely Idaho Criminal Rule 12(b)(2) objection alleging a defect in the indictment. The motion is barred by I.C.R. 12(d) and 12(f).

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The Defendant has alleged a defect in the Indictment due to Counts 1 and 3 of the Indictment charging a Conspiracy to Commit First Degree Murder and Grand Theft by Deception - Count 1 as to Tylee Ryan and Count 3 as to JJ Vallow. The Defendant alleges a defect because:

1. The Statutes listed on those charges, Idaho Code §§18-1701, 18-4003(a), 18-2403(1), 18-2403(4)(a), and 18-2407(1)(b)(3) do not overlap in their elements;
2. It is contrary to Idaho Criminal Rule 8(a);
3. It could confuse the jury;
4. It is contrary to Idaho Criminal Rule 6.5(b);
5. There is no statutory punishment for an allegation of a conspiracy to commit multiple crimes.

The Defendant requests that the Indictment be returned to the Grand Jury to be amended or for the Court to strike language from the Indictment. The Defendant has provided no legal authority for this novel request.

## ARGUMENT

### **1. A Charge of Conspiracy May Allege a Single Count of a Conspiracy to Commit Several Crimes.**

#### **A. Caselaw allows a single count of conspiracy to commit multiple crimes.**

It is well established that a single allegation or count of the crime of conspiracy can include multiple and diverse crimes. The United States Supreme Court has explicitly allowed such a charging practice since at least 1919. “Countenance we believe has been given by some Courts to the notion that a single count in an indictment for conspiring to commit two offences is bad for duplicity. This Court has given it none...The conspiracy is the crime, and that is one, **however diverse its objects.**” *Frohwerk v. United States*, 249 U.S. 204, 209–10, 39 S. Ct. 249, 252, 63 L. Ed. 561 (1919) (Emphasis added.).

The United States Supreme Court addressed this issue again when a defendant was charged with multiple conspiracies despite the government’s concession at trial that only a single agreement existed. “The single agreement is the prohibited conspiracy, and however diverse its objects it violates but a single statute of the Criminal Code.” *Braverman v. U.S.*, 317 U.S. 49, 54

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(1942). *Braverman* was indicted, with others, on seven counts, each charging a conspiracy to violate a separate and distinct internal revenue law of the United States. Upon appeal the Supreme Court reversed the judgement of conviction because the government did what the Defendant is currently asking this Court or Grand Jury to do, which is charge a separate conspiracy for each crime alleged as an object of the conspiracy. The Court in *Braverman* held “[w]hether the object of a single agreement is to commit one or many crimes, it is in either case that agreement which constitutes the conspiracy which the statute punishes. The one agreement cannot be taken to be several agreements and hence several conspiracies because it envisages the violation of several statutes rather than one.” *Id.* Referring to *Braverman*, the United States Supreme Court has further held “[a] single agreement to commit several crimes constitutes one conspiracy. By the same reasoning, multiple agreements to commit separate crimes constitute multiple conspiracies. *U.S. v. Broce*, 488 U.S. 563, 570–71 (1989).

The Ninth Circuit Court of Appeals has rendered a similar holding in a case where a defendant was charged with one count of conspiracy to commit four different crimes. The Court held, “where conspiracy is the charge, the established rule is that a charge of conspiracy to commit more than one offense may be included in a single count without violating the general rule against duplicity. So here, the defendants were properly charged with a single continuing agreement to defraud the United States and to commit the substantive offenses.” *U.S. v. Smith*, 891 F.2d 703, 713 (9th Cir. 1989), amended, 906 F.2d 385 (9th Cir. 1990).

### **B. The Idaho Criminal Jury Instructions Provide for One Count of Conspiracy to Commit Multiple Crimes**

Consistent with statutes and caselaw, the Idaho Criminal Jury Instructions anticipate and provide for a charge of conspiracy to commit multiple crimes. ICJI 1001 reads:

In order for the defendant to be guilty of Conspiracy, the state must prove each of the following:

1. On or about [date]
2. in the State of Idaho
3. the Defendant [name] and [name(s)] [and] [another unknown person] [other unknown persons] agreed
4. to commit the crime[s] of [name(s) of crime(s)]; (Emphasis Added)
5. the Defendant intended that [at least one of] the crime[s] would be committed
6. one of the parties to the agreement performed [at least one of] the

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- following act[s]:
7. [list act(s) alleged in the charging instrument]
  8. and such act was done for the purpose of carrying out the agreement.

ICJI 1002 reads:

The State alleges the defendant was a party to an agreement to commit the crime[s] of [names of crime(s)].

[Name of crime] is defined by law as: [definition of crime].

[Name of crime] is defined by law as: [definition of crime]. (Emphasis added).

Both ICJI 1001 and 1002 refer to a single count of conspiracy with the possibility of multiple crimes being the object of the single conspiracy. In ICJI 1001, the “[s]” in line 4 clearly contemplates a defendant entering into an agreement to commit multiple crimes. Line 5 furthers the explicit language by establishing that the State needs to prove that a defendant “intended that **at least one of the crimes** would be committed.” (Emphasis added). Line 5 can only be applicable if, and when, a single agreement exists to commit more than one crime. Similar jury instructions have been upheld in a case involving one count of conspiracy to commit multiple fraudulent crimes in the Ninth Circuit. “Thus, the jury instructions informing the jurors they needed to find only “a plan to commit at least one of the crimes alleged in the indictment as an object of the conspiracy” was not an abuse of discretion.” *U.S. v. Carroll*, 73 Fed. Appx. 222, 225 (9th Cir. 2003) (unpublished).

ICJI 1002 includes the possibility of multiple crimes in one count of conspiracy by the use of “[s]” attached to the word “crime,” indicating a plurality of crimes in one count. The instruction further provides for multiple crimes in one count of conspiracy by providing multiple lines of the phrase: “[Name of crime] is defined by law as: [definition of crime].”

In the case before the Court, the Defendants Chad Daybell and Lori Vallow Daybell have each been indicted with a count of conspiracy to commit first degree murder of Tylee Ryan and to commit grand theft, and another count of conspiracy to commit first degree murder of JJ Vallow and to commit grand theft. The Defendant Vallow Daybell requests the Indictment be remanded to the Grand Jury because the statutes of first-degree murder and grand theft do not overlap in elements. No requirement in the law requires that the multiple crimes agreed to in a conspiracy must overlap in elements. The Defendant has provided no statute or case that

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provides such a requirement. Indeed, caselaw is clear that “the conspiracy is the crime, and that is one, however diverse its objects” *Frohwerk* at 209-210.

The law is clear that when conspiracy is the charge, the State is not required to prove the elements of the crimes agreed to in the conspiracy. Idaho Code §18-1701, caselaw, and the Idaho Criminal Jury Instructions are clear that the elements the State must prove are that two or more people conspired or agreed to commit a crime or crimes, and that at least one of them performed at least one overt act to affect the object of the conspiracy. It is entirely possible for a defendant to be charged with and convicted of a conspiracy to commit a crime without committing any of the substantive elements of the crime they conspired to commit. For instance, if Defendants A and B conspire/agree to commit a murder, and A purchases a firearm for that purpose and B drives A to the home of the intended victim, the elements of a conspiracy have been met whether the defendants are successful in killing the intended victim. The State is not required to prove a murder occurred, or the elements of the murder, to convict the defendant(s) of the crime of conspiracy to commit murder. Similarly, in the case before the Court, the State is not required to prove the elements of first-degree murder or grand theft by deception to convict the Defendant(s) of conspiracy to commit first degree murder and grand theft by deception.

The Defendant argues “there is no statutory punishment for this allegation.” This argument is false and contrary to Idaho Code §18-1701, which prescribes the punishment for conspiracy as “punishable upon conviction in the same manner and to the same extent as is provided under the laws of the state of Idaho for the punishment of the crime or offenses that each combined to commit.” The plain language of the statute contemplates a count of conspiracy with multiple “offenses” in the plural. In the current case, upon conviction of conspiracy to commit first degree murder and grand theft, the Defendant will be punished to the same degree as the crimes which were the object of the conspiracy.

The Defendant argues that a count of Conspiracy to commit First Degree Murder and Grand Theft is contrary to Idaho Criminal Rule 8(a). However, the Defendant provides no analysis of this position. The State is left to assume the Defendant’s argument relies on the incorrect position that a single count of conspiracy involving multiple crimes runs afoul of the requirement in I.C.R. 8(a) that the indictment state a separate count for each offense. This analysis, however, requires an incorrect view of the law. A count of conspiracy to commit

multiple crimes or offenses is still only one count regardless of how many criminal objects are agreed upon.

Similarly, the Defendant further argues that Counts 1 and 3 of the Indictment are contrary to the requirements of Idaho Criminal Rule 6.5(b) which reads, “There may be two or more separate charges in a grand jury indictment, but each must be voted on separately by the grand jury.” Again, the Defendant relies on the incorrect position that a count of conspiracy to commit multiple crimes is in fact multiple crimes. Similar to the argument above, a count or charge of conspiracy to commit multiple crimes is one crime, regardless of how many criminal objects are agreed upon in the conspiracy.

## **II. The Defendant’s Motion Is an Untimely 12(b)(2) Motion and Should Not Be Considered.**

Idaho Criminal Rule 12 governs the filing of pre-trial motions and the time in which they must be filed. Any 12(b) motion must be filed prior to trial. I.C.R. 12(b)(2) motions may be brought by the Defense regarding “[d]efenses and objections based on defects in the complaint, indictment or information”. An exception to the requirement that 12(b)(2) motions be filed prior to trial exists if the 12(b)(2) motion alleges that the indictment “fails to show jurisdiction of the court or to charge an offense, which objections may be made at any time during the pendency of the proceedings.”)

I.C.R. 12(d) states, “[m]otions under Rule 12(b) must be filed within 28 days after the entry of a plea of not guilty or seven days before trial whichever is earlier. In felony cases, motions under Rule 12(b) must be brought on for hearing within 14 days after filing or 48 hours before trial, whichever is earlier. The court may shorten or enlarge the time and, for good cause shown or for excusable neglect, may relieve a party of failure to comply with this rule.”

I.C.R. 12(f) states “[f]ailure by the defendant to raise defenses or objections or to make requests that must be made prior to trial, or at the time set by the court pursuant to subsection (d), or prior to any extension of time granted by the court, constitutes waiver of the defenses, objections or requests, but the court, for cause shown, may grant relief from the waiver.” “Failure by the defendant to file the motion prior to trial, or at the time set by I.C.R. 12(d), shall constitute a waiver of the relief sought by the motion. I.C.R. 12(f).” *State v. Gleason*, 130 Idaho 586, 590, 944 P.2d 721, 725 (Ct. App. 1997).

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The Defendant Lori Vallow Daybell was indicted on May 24, 2021. Due to a delay caused by Idaho Code §18-211 proceedings, she was not arraigned until April 19, 2022. Trial was initially set for October 19, 2022, but then continued to January 9, 2023. Pursuant to the Idaho Criminal Rule 12, the deadline to file 12(b) motions was May 27, 2022.

No Motion has been filed by this Defendant to extend time to file 12(b) motions. The Defendant's prior counsel did file a document on June 28, 2021, entitled "Reservation of Rights and Defenses." However, this document cannot be construed as a motion to extend time to file 12(b) motions for three reasons. First, simply filing a document claiming to reserve rights and defenses which does not request an extension of time to file as 12(b) motion cannot extend the time to file said motions. Second, the document itself is defective in that it appears to copy and paste the 12(b) causes of action from the Idaho Civil Rules of Procedure Rule 12, and not the Idaho Criminal Rules, which are clearly different. Third, the Defendant never brought the "Reservation of Rights and Defenses" before the Court in a hearing within the 14-day period required by I.C.R. 12(d).

While the Defendant has questioned the manner in which two counts of the Indictment were charged, they have not claimed under Rule 12(b)(2) that the indictment has failed to charge an offense. Indeed, the Indictment against the Defendant Vallow Daybell includes multiple other charges of first-degree murder, grand theft, and conspiracy to commit first degree murder. Nor has the Defendant questioned the jurisdiction of the Court. As such, the built-in extension of time to raise 12(b)(2) motions does not apply to this motion.

The Court has discretion to find good cause to extend time to raise 12(b) issues. However, the Defendant has not provided the Court with any reason to provide such cause. Further, trial in this case is not set for January 19, 2023, less than six months away. Requiring the State to return the Indictment to the grand jury would be prejudicial.

Finally, the Defendant did not schedule the hearing on this motion within the 14-day period required by I.C.R. 12(d). The motion was filed on July 12, 2022. The motions should have been scheduled by July 26, 2022. The State has not agreed to an extension of time to hear the motion.

Due to the Defendant's failure to comply with the requirements of I.C.R. 12 and failure to provide good cause or reasonable neglect for the untimeliness, the Defendant has waived the right to request the relief sought and the Court should deny the Defendant's motion without hearing.

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**CONCLUSION**

Counts 1 and 3 of the Indictment are properly charged. There is no law or rule prohibiting the Grand Jury or the State from charging the Defendant with a count of conspiracy to commit multiple crimes. Indeed, the law is clear that a defendant may be charged and convicted of conspiracy to commit multiple crimes. Further, the Defendant has failed to comply with Idaho Criminal Rule 12 and as such has waived any relief sought.

DATED this 10th day of August 2022.

/s/Lindsey A. Blake

Lindsey A. Blake  
Fremont County Prosecuting Attorney

/s/Rob H. Wood

Rob H. Wood  
Madison County Prosecuting Attorney



CERTIFICATE

I HEREBY CERTIFY that on this 10<sup>th</sup> day of August, 2022, that a copy of the foregoing STATE'S OBJECTION TO DEFENDANT'S MOTION TO REMAND INDICTMENT TO THE GRAND JURY FOR FURTHER PROCEEDINGS was served as follows:

John Prior  
Law Office of John Prior  
429 SW 5th Street, Ste. 110  
Meridian, Idaho 83462  
[john@jpriorlaw.com](mailto:john@jpriorlaw.com)

- U.S. First Class Mail
- Hand Delivered
- Courthouse Box
- Facsimile:
- File & serve
- Email

R. James Archibald  
Attorney for Defendant  
1493 North 1070 East  
Shelly, Idaho 83274  
[jmarchibald21@gmail.com](mailto:jmarchibald21@gmail.com)

- U.S. First Class Mail
- Hand Delivered
- Courthouse Box
- Facsimile:
- File & serve
- Email

John Kenneth Thomas  
Bonnevill County Public Defender's Office  
605 N. Capital Ave.  
Idaho Falls, Idaho 83402  
[jthomasserve@co.bonneville.id.us](mailto:jthomasserve@co.bonneville.id.us)

- U.S. First Class Mail
- Hand Delivered
- Courthouse Box
- Facsimile:
- File & serve
- Email



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By: PAT SMITH, Legal Secretary

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