

Lindsey A. Blake, ISB #7920
 Rob H. Wood, ISB #8229
 OFFICE OF THE FREMONT COUNTY
 PROSECUTING ATTORNEY
 22 W. 1st N.
 St. Anthony, ID 83445
 Tel: 208-624-4418
 Email: 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**

STATE OF IDAHO, <p style="text-align: center;">Plaintiff,</p> vs. LORI NORENE VALLOW DAYBELL, <p style="text-align: center;">Defendant.</p>	Case No.: CR22-21-1624 <p style="text-align: center;">STATE’S OBJECTION TO DEFENDANT’S MOTION TO REMAND TO GRAND JURY FOR PROBABLE CAUSE DETERMINATION AS TO AGGRAVATING FACTORS</p>
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The State of Idaho, by and through the Fremont County Prosecutor’s Office, hereby objects to the Defendant Lori Vallow/Daybell’s Motion to Remand to Grand Jury for Probable Cause Determination as to Aggravating Factors.

The State objects on the grounds that the Defendant’s Motion is contrary to Idaho Statutes and Idaho case law. The State further objects on the grounds that the Defendant’s Motion is an untimely 12(b) motion, and the defendant has waived the relief it seeks by failing to comply with Idaho Criminal Rule (ICR) 12.

ARGUMENT

I. There is No Requirement for a Probable Cause Finding of Aggravating Factors.

The Defendant Lori Vallow/Daybell has argued that she is entitled to “a grand jury finding of probable cause on each alleged statutory aggravating factor.” However, the Defendant State’s Objection to Defendant’s Motion to Remand to Grand Jury for Probable Cause Determination as to Aggravating Factors

has provided no authority to support this claim, and in fact, this claim is contrary to Idaho Statutes and Idaho Supreme Court holdings.

Idaho Code §19-2515 governs death penalty proceedings in first degree murder cases. I.C. §19-2515(9) contains the possible aggravating factors the State must prove beyond a reasonable doubt to obtain the death penalty. In the event the State chooses to seek the death penalty in a case, the State must give proper notice pursuant to IC §18-4004A. Nothing in I.C. §19-2515 or I.C. §18-4004A require the State to prove aggravating factors by the probable cause standard in a preliminary hearing or in a grand jury setting.

The question of whether a defendant is entitled to a probable cause finding of aggravating factors in a death penalty case was recently ruled upon by the Idaho Supreme Court in 2015. Upon offering a lengthy analysis of the question, the Court ruled: “[W]e also hold that there is no constitutional requirement that the State present evidence demonstrating probable cause for each aggravating circumstance to properly notify the defendant of its intent to seek the death penalty.” *State v. Abdullah*, 158 Idaho 386, 459-460, 348 P.3d 1, 74-75 (Idaho 2015).

The Court in *Abdullah* began its analysis with a discussion of *Ring v. Arizona*, in which the “United States Supreme Court held that the Sixth Amendment’s jury trial guarantee requires that a jury, not a judge, find an aggravating circumstance necessary for the imposition of the death penalty.” *Id.*, quoting *Ring v. Arizona*, 536 U.S. 584 [122 S.Ct. 2428, 153 L.Ed.2d 556] (2002). The *Ring* decision was based solely on the Sixth Amendment right to a jury trial. 536 U.S. at 597 n. 4, 122 S.Ct. at 2436–37 n. 4, 153 L.Ed.2d at 569 n. 4. The United States Supreme Court specifically noted in *Ring* that it did not address “whether notice of a fact that would be used to support a sentence had to be conveyed to the defendant through an indictment versus some other means.” *State v. Lovelace (Lovelace I)*, 140 Idaho 53, 70, 90 P.3d 278, 295 (2003) (quoting *Terrell v. State*, 276 Ga. 34, 572 S.E.2d 595, 602 (2002)); see *Ring*, 536 U.S. at 597 n. 4, 122 S.Ct. at 2437 n. 4, 153 L.Ed.2d at 569 n. 4 (“*Ring* does not contend that his indictment was constitutionally defective.”).

The Court in *Abdullah* found that “[a]lthough *Ring* was silent with respect to the indictment issue, “[t]he effect of *Ring* was to convert statutory aggravating circumstances relevant to sentencing into ‘the functional equivalent of an element of a greater offense,’ which was to be proved to a jury beyond a reasonable doubt.” *Id.* at 458, 73. *Abdullah* argued that the “functional equivalent” language in *Ring* made statutory aggravating factors elements of first-
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degree murder. *Id.* In response to this argument the Court relied on its own precedent in *Porter v. State*, by holding that:

Section 19–2515 did not define a separate crime of capital first-degree murder. It merely set forth the procedures that must be followed in order to impose a death sentence, defined the statutory aggravating circumstances, and required that at least one aggravating circumstance be found beyond a reasonable doubt before a defendant could be sentenced to death. *Ring did not elevate those statutory aggravating circumstances into elements of a crime, nor did it create a new crime. Schriro v. Summerlin*, 542 U.S. 348 [124 S.Ct. 2519, 159 L.Ed.2d 442] (2004). Indeed, the United States Supreme Court lacks the authority to enact or amend state legislation. Only our state legislature has that authority, and it did not make the aggravating circumstances elements of the crime. *Ring* merely held that a state cannot impose the death penalty unless its sentencing procedures have the jury, not the judge, determine the existence of a statutory aggravator. *Porter*, 140 Idaho at 784, 102 P.3d at 1103 (emphasis added). Thus, this Court stated in clear terms that the statutory aggravating circumstances are not elements of a crime. *Id.*

Similar to *Abdullah*, the Defendant in this case claims she has a right to a probable cause finding of the aggravating factors in the above-captioned case. The Court in *Abdullah* could not have been clearer when it stated: “[T]here is no constitutional requirement that the State present evidence demonstrating probable cause for each aggravating circumstance to properly notify the defendant of its intent to seek the death penalty.” *Id.* at 459-460, 74-75. The State of Idaho complied with IC §19-2515 and IC §8004A in notifying the Defendant of its intent to seek the death penalty. As such, the Defendant’s motion must be denied.

II. The Defendant’s Motion Is an Untimely 12(b)(1) and 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) motions must be filed prior to trial. I.C.R. 12(b)(1) motions may be brought by the defense regarding “defects in the prior proceedings in the prosecution.” I.C.R. 12(b)(2) motions may be brought by the Defense regarding: “Defenses 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 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.”

The Motion before the Court alleges a 12(b)(1) defect in the prior proceedings in the prosecution by alleging that the State failed to have the Grand Jury find probable cause of the aggravating factors listed in its Notice of Intent to Seek the Death Penalty. As such, the Defendant is also alleging a 12(b)(2) defect in the indictment because the indictment does not include the aggravating factors which the defense claim are “elements” of first-degree murder. Both claims are invalid and not supported by law, but there are still 12(b) claims subject to the time

I.C.R. 12(d) states: “Motions 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: “Failure 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).

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 in this Defendant’s case 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

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“Reservation of Rights and Defenses” before the Court in a hearing within the 14-day period required by I.C.R. 12(d).

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 set for January 9, 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.

CONCLUSION

The Defendant’s request to remand the indictment to the grand jury for a probable cause finding of the aggravating factors listed in the State’s Notice of Intent to Seek the Death Penalty must be denied by the Court as the Supreme Court of Idaho has clearly already decided this issue. The State is not required to put the aggravating factors before the grand jury. Further, while the Defendant’s motion has no merit, it is further barred by I.C.R. 12. The State respectfully requests that the Court deny the Defendant’s motion.

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 10th day of August, 2022, that a copy of the foregoing STATE'S OBJECTION TO DEFENDANT'S MOTION TO REMAND TO GRAND JURRY FOR PROBABLE CAUSE DETERMINATION AS TO AGGRAVATING FACTORS was served as follows:

John Prior
Law Office of John Prior
429 SW 5th Street, Ste. 110
Meridian, Idaho 83462
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
jimarchibald21@gmail.com

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

John Kenneth Thomas
Bonneville County Public Defender's Office
605 N. Capital Ave.
Idaho Falls, Idaho 83402
jthomasserve@co.bonneville.id.us

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



By: PAT SMITH, Legal Secretary

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