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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,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>CHAD GUY DAYBELL AND LORI NORENE VALLOW DAYBELL,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No.: CR22-21-1623 Case No.: CR22-21-1624</p> <p>STATE’S RESPONSE TO DEFENDANTS’ MOTIONS FOR BILL OF PARTICULARS</p>
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The State of Idaho, by and through the Fremont County Prosecutor’s Office responds and objects to the Codefendants’, Lori Vallow Daybell and Chad Daybell, Motions for Bill of Particulars. Both Defendants’ Motions are nearly identical and make no independent or distinctly different claims and, as such, will be addressed in one response. The State objects to the Defense Motions on four grounds:

- 1) The Court is without authority to hear or grant a bill of particulars under either Idaho case law or Rules of Criminal Procedure. Idaho Criminal Rule 7 (I.C.R.).
- 2) The Defendants’ Motions are untimely objections pursuant to Idaho Criminal Rule 12(b)(2) alleging defects in their indictments. These untimely motions are barred by I.C.R. 12(d) and 12(f).
- 3) The Defendants’ Motions are thinly veiled efforts to obtain the State’s trial theory and work product prohibited under Idaho Criminal Rule 16.

- 4) Even were the Court to hear the motions, the Indictment is clear, conforms to Idaho Criminal Rule 7 and Idaho Code (I.C.) §19-1409 and §19-1418 and therefore bills of particulars are unwarranted.

ARGUMENT

I. Idaho Criminal Rules Do Not Authorize or Vest the Court with Jurisdiction to Order Bill of Particulars

A request for bill of particulars is a practice in many jurisdictions whereby a criminal defendant alleges the actual charging document, either information or indictment, fails to provide sufficient clarity as to the specific accusations against them.¹ An accused challenges the language of the charging document via a request for bill of particulars to allow them to understand the charges against them.² There is no legal authority in Idaho for a defendant to file a motion for bill of particulars as outlined in the Idaho Criminal Rules. Instead, to address concerns with notice provided in a charging document, the Idaho Criminal Rules provide authority for a motion to dismiss an indictment for lack of specificity and for other relief. Three rules specifically control how to raise and address questions as to the sufficiency of indictments or informations: I.C.R. 6.6, I.C.R. 7, and I.C.R. 12.

I.C.R. 6.6 provides for the dismissal of an indictment for challenges to the composition or qualifications of grand jurors, the matter had previously been dismissed for lack of probable cause by a magistrate or that the indictment was not properly found, endorsed or presented. Both Defendants have filed motions alleging concerns similar to those outlined in Rule 6.6 that have been denied by the Court. I.C.R. 6.6 provides no authority for a court to grant a request for bill of particulars to supplement a valid indictment.

¹ See Federal Rule 7

² See Federal Rule 7

I.C.R. 7 outlines the requirements for a legally sufficient information or indictment. The current version of I.C.R. 7 requires that an indictment:

- (1) must be a plain, concise and definite written statement of the essential facts constituting the offense charged;
- (2) need not contain a formal commencement, a formal conclusion or any other matter not necessary to the statement;
- (3) must not contain any reference to the procedural history of the action; and
- (4) must state, for each count, the official or customary citation of the statute, rule or regulation or other provision of law that the defendant is alleged to have violated, but error in the citation or its omission is not grounds for dismissal of the indictment or information or for reversal of the conviction if the error or omission did not mislead the defendant to the defendant's prejudice.

Further Rule 7 allows for informations or indictments to state the range of punishment, addresses surplus language, timing of filings and for the amendment of informations or indictments. Both Defendants, Lori Vallow Daybell and Chad Daybell, have filed motions which have implications under Rule 7. These motions have been denied.

The express language of Rule 7 contains no authority for a bill of particulars. I.C.R. 7 was first implemented in 1980. Neither the original rule nor current version (effective since 2017) have provided any authority for a bill of particulars. The Idaho Court of Appeals found any Idaho case suggesting a court ordered bill of particulars was permissible pre-dates the adoption of the Idaho Criminal Rules. *State v Holcomb*, 128 Idaho 296, 912 P.2d 664 (Ct. App. 1988). No case could be found after 1980 that expressly vests the Court with the power to require a bill of particulars. The case relied upon by the Defendants in their motions *State v. Neil*, 58 Idaho 359, 364, 74 P.2d 586, 587 (1937) is nearly 90 years old and predates the passage of I.C.R. 7. Even in *Neil*, the Idaho Supreme Court refused to express an opinion as to the

appropriateness of a bill of particulars. None of the cases after the passage of I.C.R. 7 that mention such motions address whether a bill of particulars motion is proper.³

Examining the plain language of I.C.R. 7 is illuminating as it contains no mention or authority for a bill of particulars. I.C.R. 7 is starkly different than its federal counter part, Federal Criminal Rule 7, which explicitly authorizes a bill of particulars if the request is made within 14 days of arraignment. The omission of such language from Idaho's enacted rules cannot have been an error.

I.C.R. 12 provides some limits to the pleadings and motions allowed in criminal proceedings. The mechanisms for defendants to object to defects in indictments are outlined in I.C.R. 12. The rule specifically explains “[d]efenses and objections before trial must be raised by motion to dismiss or to grant appropriate relief as provided in these rules.” I.C.R. 12 (a) [emphasis added]. A motion to dismiss and/or objections to defects in an indictment due to the lack of clarity or adequate notice provided by the document's language is authorized in Rule 12(b)(2). However, rule 12(b) authorizes amendments to documents but not a bill of particulars. Both Defendants have filed previous motions under Rule 12(b) challenging the sufficiency of the Indictment. These motions have all been denied. Rule 12 does not provide for the relief requested and the Motions previously filed by both Defendants address their implied concerns. The Court should deny a request for a bill of particulars as Idaho law does not permit such and as the Court has previously found the Indictment was sufficiently plead.

³ See *State v. Lewis*, 123 Idaho 336, 848 P.2d 394 (1993); *State v. Ritchie*, 114 Idaho 528, 757 P.2d 1247 (Ct.App.1988); and *State v. Blume*, 113 Idaho 224, 743 P.2d 92 (Ct.App.1987).

II. The Defendants’ Motions, as Attempts to Challenge the Clarity of the Indictment, are Untimely 12(b)(2) Motions and Should Not Be Considered.

I.C.R. 12 governs both the filing of, and the timing for, pre-trial motions. I.C.R. 12(b)(2) Defense motions must raise “[d]efenses and objections based on defects in the complaint, indictment or information.” Any 12(b) motions must be filed prior to trial. Specifically, I.C.R. 12(d) requires:

[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.

Reinforcing the strictness of the time requirements, 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.

The courts in Idaho have reinforced and upheld the time restrictions. The “[f]ailure 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). An exception to the requirement for filing 12(b)(2) motions prior to trial exists for 12(b) motions alleging that an 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 Court may also find good cause or excusable neglect to relieve the Defense of the time-period obligations.

The time restrictions of I.C.R. 12 provide clear safeguards for the integrity of the judicial system and seek to prevent invited error by the Court. Should an information or indictment be

defective the Defense claim needs to be brought forward at the earliest possible opportunity – saving time in jail and preventing waste of judicial resources. The time limits further aid both sides in obtaining a fair trial and proceedings by limiting the possibility for pretrial harassment of opposing counsel by successive, unwarranted and unduly burdensome, specious motions.

Both Defendants were indicted as codefendants on May 24, 2021. Chad Daybell was arraigned on June 9, 2021. Defendant Chad Daybell’s Counsel filed for an extension of time to file motions under 12(b) through September 10, 2021, without objection by the State. The Court further granted time until March 9, 2022. Defendant Chad Daybell’s other 12(b) motions challenging the Indictment were heard on March 23, 2022, and subsequently denied. No additional request for additional time under 12(b) has been made by Defendant Chad Daybell. There is no basis for hearing this additional unwarranted motion by Defendant Chad Daybell under I.C.R. 12. No application for either a finding of good cause or excusable neglect or a renewed challenge to the jurisdiction of the court have been filed.

Defendant Lori Vallow Daybell was not arraigned until April 19, 2022, due to the stay of the proceedings as required by Idaho Code 18-211. The trial was initially set for October 19, 2022, but then continued to January 9, 2023, by the Court. Pursuant to Idaho Criminal Rule 12, the deadline for Ms. Vallow Daybell to file 12(b) motions was May 27, 2022.

The State is unaware of any motion filed in Defendant Vallow Daybell’s action 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, filing a document generically claiming to reserve rights and defenses, which does not specifically request an extension of time to file as 12(b) motion does not suffice to extend the time to file

such motions. Second, the defense document is defective in itself as it appears to copy and paste the 12(b) causes of action from the Idaho Civil Rules of Procedure Rule 12, and not the obviously different and distinct Idaho Criminal Rules. 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).

The single Indictment against the Defendants includes multiple charges of first-degree murder, grand theft, and conspiracy to commit first degree murder and grand theft. The Defendant questioned the language of the indictment as to probable cause for the charge, questioned the jurisdiction of the Court as to the given the language and asked for the Indictment to be returned to Grand Jury. That Motion to Dismiss in the alternative to return the Indictment to the Grand Jury, while untimely, was heard on August 16, 2022, and subsequently denied. No mention of a need for a bill of particulars or any confusion as to the nature of the accusations themselves was made at that time the Motion to Dismiss was heard. As such, the Court’s previous finding of good cause and therefore built-in extension of time to raise 12(b) claims, does not apply to her novel Motion for a Bill of Particulars.

Both Defendants Lori Vallow Daybell and Chad Daybell have questioned what evidence the State intends to use at trial and raised concerns about the volume of evidence or discovery against them in their motion for Bill of Particulars. Such desire for the State’s trial strategy or information on how the State intends to use its discretion as to witnesses, while understandable, cannot be read to fit under the four-corners of Rule 12. Such discovery questions do not rise to legitimately question the clarity of the charges against them as permitted under 12(b) even if timely made.

The Court has discretion to find good cause to extend time to raise 12(b) issues. However, neither Defendant has provided the Court with any reason to find good cause. Due to the Defendants' failures to either comply with the requirements of I.C.R. 12 or to provide good cause or reasonable neglect for the untimeliness, the Defendants have waived the right to request the relief sought, should such relief be authorized, and the Court should deny the Defendants' motions without hearing. Further, the Court should deny all future such motions that should be brought under I.C.R. 12 or in the alternative set a deadline for filing of any further motions challenging the sufficiency of the Indictment, the sufficiency of the evidence heard pretrial, challenging the possible punishment authorized under the Indictment or challenging the jurisdiction of the Court.

III. Defendants' Bill of Particulars Motions Improperly Seek to Obtain the State's Trial Theory and Work Product Prohibited Under Idaho Criminal Rule 16

Among the Defendants' chief complaints in their Motions is that they allege there is too much discovery. Both Defendants mention the volume of discovery received, and under the guise of a motion for bill of particulars, requests what amounts to the State's work product and trial strategy. The Defendants argue because of the volume of discovery and evidence against them they want the State to provide its theory of the case to "narrow down the possible alternative theories that [Mr. or Mrs. Daybell] would be required to defend against." See *Defendant Vallow Daybell's Bill of Particulars Motion p. 3* and *Defendant Daybell's Bill of Particulars Motion p. 3*. Further both Defendants again admit the motion seeks to have the State define the theories it intends to assert at trial. *Id.* and *Id.* Defendants' Motions are thinly veiled efforts to obtain the State's trial theory and work product prohibited under Idaho Criminal Rules. The State's theory of the case, how it intends to prove the case and conspiracies and what evidence it intends to admit are not subject to pretrial disclosure outside rules of discovery.

Nothing in Rule 16 provides the disclosure of work product. I.C.R. 16 does not allow for either a compelled bill of particulars or the disclosure of the State's work product or trial strategy. The Idaho Supreme Court has held that an information or indictment must set forth every element necessary to constitute the offense charged and the particular circumstances of the offense when necessary to constitute a complete offense; but it is neither necessary nor proper to allege evidence or disclose in the charging document the proof on which prosecution will rely. *State v. McKeehan*, 91 Idaho 808, 430 (1967.) There is no legal theory or justification under Idaho law to require the State to specify which evidence it intends to use prove a specific charge. *See* I.C. §§ 19-1409 to 19-1411, 19-1418 to 19-1420. The Court should deny both Defendant's request for a bill of particulars.

IV. The Indictment is Clear, Conforms to Idaho Rule 7 and (I.C.) § 19-1409, § 19-1418 and Therefore Bills of Particulars are Unwarranted.

I.C.R. 7 provides the standards for a valid indictment as previously outlined. The Court has previously ruled on the sufficiency of the Indictment as it pertains to both Defendants. Nothing has changed as to the sufficiency of the Indictment itself. The Defendants provide no authority for the compelled disclosure or the specified language change. Further, they fail to acknowledge the Indictment conforms to the required legal standards outlined by the Idaho Supreme Court.

The Defendants' requests for a specific listing of all conspirators fails under Idaho law. In *State v. Yang*, the Idaho Court of Appeals held that the Idaho Code Section 18-1701 requires a defendant have an agreement to commit a crime with only one other person to form a conspiracy without proving the number of individuals pled actually participated in the charging document. 167 Idaho 944, 948, 477 P.3d 998, 1002 (Ct. App. 2020). "Additionally, the identity of a coconspirator is not a necessary element of the crime of conspiracy." *Id.* "Because the identity

of a defendant's coconspirators is not an essential element of conspiracy, the district court's failure to include the names of the coconspirators in the jury instructions was not a constructive amendment of the indictment.” *Id.* [citing to *United States v. Johnson*, 719 F.3d 660, 668 (8th Cir. 2013).] In *Yang*, the Court also explained “despite pleading a conjunctive list of alleged coconspirators in the second amended information, the State was not required to prove that all three coconspirators agreed ...” *Id.* at 948. If the information Defense requests is not required to be in jury instructions, how can such be compelled in a bill of particulars?

Likewise, the Defendants, without citing authority, ask for multiple other items: more specific time range for the conspiracy charges [*See* I.C. §19-1414 indictment does not need to state a precise time], specific locations other than in the State of Idaho, specific evidence used to prove the overt acts plead in the conspiracy, and the specific evidence the State intends to offer to establish each Defendant’s use of religious beliefs to encourage the objects of the conspiracies. None of these requests are required under either the Idaho Criminal Rules or case law.

CONCLUSION

The State of Idaho requests the Defendants’ Motions for Bills of Particular be denied without hearing or denied after argument for the reason(s) that either the Court lacks the authority to order a bill of particulars in either case, the Motions are untimely under I.C.R. 12 and/or that the Indictments are sufficient on their face. Further the State requests this Court rule that no further pretrial motions which should have been filed under I.C.R. 12 be filed, or in the alternative, set a deadline for filing of any further motions challenging the sufficiency of the Indictment, the sufficiency of the evidence heard pretrial, challenging the possible punishment authorized under the Indictment or challenging the jurisdiction of the Court.

DATED this 6th day of October 2022.

/s/Lindsey A. Blake

Lindsey A. Blake
Fremont County Prosecuting Attorney

/s/Rob H. Wood

Rob H. Wood
Madison County Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of October, 2022, that a copy of the foregoing Response to Defendant’s Motion for Bill of Particulars was served as follows:

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By: Tiffany Mecham