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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>Plaintiff,</p> <p>vs.</p> <p>LORI NORENE VALLOW AKA LORI NORENE DAYBELL,</p> <p>Defendant.</p>	<p>CASE NO. CR22-21-1624</p> <p>OBJECTION AND RESPONSE TO DEFENDANT’S MOTION TO DECLARE THE DEATH PENALTY UNCONSTITUTIONAL AND TO PRECLUDE ITS APPLICATION IN THIS CASE</p>
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The State of Idaho, by and through the Fremont County Prosecuting Attorney’s Office, objects to the Defendant’s Motion to Declare the Death Penalty Unconstitutional and to Preclude Its Application in this Case based on the fact the motion is premature. A motion to challenge the constitutionality of the imposition of the death penalty isn’t ripe until the sentence of death is actually imposed. Notwithstanding, said objection, the State provides the following response:

“When a party challenges a statute on constitutional grounds, it ‘bears the burden of establishing that the statute is unconstitutional and must overcome a strong presumption of validity.’” *State v. Kelley*, 161 Idaho 686, 689, 390 P.3d 412, 415 (2016) (*quoting State v. Manzanares*, 152 Idaho 410, 418, 272 P.3d 382, 290 (2012)). Reviewing courts “are obligated to

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seek an interpretation of a statute that upholds its constitutionality.” *Kelley*, 161 Idaho at 689 (quoting *Manzanares*, 152 Idaho at 418).

I. This Motion is Not Ripe and the Idaho Death Penalty Structure Meets Court-Imposed Constitutional Requirements.

The Defendant challenges two features of Idaho’s capital punishment procedure. First, the Defendant focuses on Idaho’s bifurcated proceeding. (*See Defendant’s Motion pg. 8*). Second, the Defendant focuses on Idaho’s statutory and instructional procedures to inform jurors. (*Id.*).¹ However, the Court does not need to address these challenges because the Defendant’s Motion is premature.

A. Defendant’s Death Penalty Challenges are Not Ripe.

“A claim is not ripe for adjudication if it rests upon ‘contingent future events that may not occur as anticipated, or indeed may not occur at all.’” *Texas v. U.S.*, 523 U.S. 296, 300, 118 S.Ct. 1257, 1259, 140 L.Ed.2d 406 (1998) (internal citations omitted.) “Eighth Amendment claims of ‘cruel and unusual punishment’ are not ripe when raised prior to the actual, or immediately pending, imposition of the challenged form of punishment.” *Cheffer v. Reno*, 55 F.3d 1517, 1523 (11th Cir. 1995). Because the Defendant has not yet been convicted, any challenge to a potential sentence is premature. The Court should accordingly deny the Motion.

B. Idaho’s Bifurcated Trial Procedure Complies with the Requirements of *Furman/Gregg*.

¹ The Defendant purports to assert the Motion pursuant to the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth and Fourteenth Amendments to the United States Constitutions [sic] and Article 1, sections 6, 7, 8 and 13 of the Idaho Constitution. (*See Defendant’s Motion, pg. 62*). However, the Defendant’s argument is limited to the cruel and unusual punishment jurisprudence derived from the Eighth and Fourteenth Amendments of the United States Constitution and Article 1, section 13 of the Idaho Constitution. (*See Defendant’s Motion*). Defendant refers to the Sixth Amendment but only in the context of defense counsel’s duties. (*See Defendant’s Motion, pg. 23-24*). The other constitutional authorities are not cited or discussed in the motion and, therefore, are not addressed in this response.

In *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726 (1972), the U.S. Supreme Court held that the death penalty “could not be imposed under sentencing procedures that created a substantial risk that it would be inflicted in an arbitrary and capricious manner.” *Gregg v. Georgia*, 428 U.S. 153, 188, 96 S.Ct. 2909, 2932 (1976). Four years later, the Supreme Court recognized that the concerns expressed in *Furman* “are best met by a system that provides for a bifurcated proceeding at which the sentencing authority is apprised of the information relevant to the imposition of sentence and provided with standards to guide its use of the information.” *Gregg*, 428 U.S. at 188, 96 S.Ct. at 2935. In *Ring v. Arizona*, the U.S. Supreme Court determined that the jury should be the sentencing authority in a capital case. 536 U.S. 584, 122 S.Ct. 2428 (2002). Idaho’s death penalty procedures meet these requirements. First, an Idaho death penalty trial is bifurcated into a guilt phase and a separate sentencing phase. Idaho Code §19-2515(5).

Next, the Idaho system channels the discretion of the jury to limit the application of the death penalty to a subset of the most severe crimes. Under Idaho Code §19-2515(3)(b), the death penalty is limited to those cases where the jury not only finds that the defendant has committed a first-degree murder, but where the jury also finds at least one statutory aggravating circumstance beyond a reasonable doubt.

Finally, under the Idaho system, the jury decides whether to impose the death penalty. In 2003, eight months after the decision in *Ring*, the Idaho legislature amended Idaho Code §19-2515 to authorize the jury, rather than the judge, to find aggravating circumstances and weigh mitigating evidence. *See State v. Abdullah*, 158 Idaho 386, 451, 348 P.3d 1, 66 (2015). The current Idaho statutory structure provides the “sentencing proceeding shall be conducted before a

jury unless a jury is waived by the defendant with the consent of the prosecuting attorney.” I.C. §19-2515(5)(a).

The Idaho legislature and judiciary have established a system of statutes and instructions which comply with each requirement of the *Furman/Gregg* line of decisions. The Defendant has not identified any single aspect of the bifurcated sentencing procedure in Idaho which fails to meet these requirements.

C. Idaho’s Statutes and Model Instructions Properly Channel Discretion and Guide Jurors.

Idaho’s capital punishment procedures are “rooted in the principle that the Eighth and Fourteenth Amendments cannot tolerate the infliction of a death sentence under legal systems that permit this unique penalty to be wantonly and freakishly imposed.” *Dunlap v. State*, 159 Idaho 280, 298, 360 P.3d 289, 307 (2015) (citing *Lewis v. Jeffers*, 497 U.S. 764, 774, 110 S.Ct. 3092, 3099 (1990)) (internal quotations and alterations omitted). The Idaho Supreme Court recognizes that capital punishment procedures must “channel the sentencer’s discretion by clear and objective standards that provide specific and detailed guidance, and that make rationally reviewable the process for imposing a sentence of death.” *Dunlap*, 159 Idaho at 299, 360 P.3d at 308 (quoting *Arave v. Creech*, 507 U.S. 463, 471, 113 S.Ct. 1534, 1541 (1993)) (internal quotations omitted). Contrary to Defendant’s unspecified allegation of noncompliance (*See Defendant’s Motion, Pg. 6*), Idaho has tailored its sentencing procedures to avoid the arbitrary and capricious imposition of the death penalty.

Under Idaho law, a broad class of murderers are eligible for capital punishment. *Arave*, 507 U.S. at 475, 113 S.Ct. at 1542-43. However, the Idaho legislature has limited imposition of the death penalty to only those cases where the State establishes a statutory aggravator beyond a

reasonable doubt. Idaho Code §19-2515(9). *See Dunlap*, 159 Idaho at 299, 360 P.3d at 308.

Thus, the procedure channels the sentencer's discretion. *Dunlap v. State*, 159 Idaho at 298, 360 P.3d at 307 (citing *Lewis v. Jeffers*, 497 U.S. at 774, 110 S.Ct. at 3099).

In this case, the State has given notice of its intent to rely the following statutory aggravating circumstances:

- 1) The murder of Tylee Ryan was committed for remuneration (Idaho Code §19-2515(9)(d)); and/or
- 2) The murder of J.J. Vallow was committed for remuneration (Idaho Code §19-2515(9)(d)); and/or
- 3) The murder of Tammy Daydell was committed for remuneration (Idaho Code §19-2515(9)(d)); and/or
- 4) The murder of Tylee Ryan was especially heinous, atrocious or cruel, manifesting exceptional depravity (Idaho Code §19-2515(9)(e)); and/or
- 5) The murder of J.J. Vallow was especially heinous, atrocious or cruel, manifesting exceptional depravity (Idaho Code §19-2515(9)(e)); and/or
- 6) The murder of Tammy Daybell was especially heinous, atrocious or cruel, manifesting exceptional depravity (Idaho Code §19-2515(9)(e)); and/or
- 7) By the murder(s), or circumstances surrounding their commission, the Defendant exhibited utter disregard for human life (Idaho Code §19-2515(9)(f)); and/or
- 8) The Defendant, by her conduct, whether such conduct was before, during or after the commission or the murder(s) at hand, has exhibited a propensity to commit murder which will probably constitute a continuing threat to society. (Idaho Code §19-2515(9)(i).)

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(See Notice of Intent to Seek the Death Penalty of May 2, 2022).² None of the aggravators are vague.

“‘[A]n Eighth Amendment claim based upon vagueness examines whether the challenged aggravating circumstance, together with any limiting instruction, adequately channels the discretion of the sentencing body in order to prevent the imposition of an arbitrary and capricious sentence.’” *State v. Hall*, 163 Idaho 744, citing to *State v. Leavitt*, 121 Idaho 4, 5, 822 P.2d, 523, 524 (1991).

Turning to the first three aggravators, which reference paragraph (9)(d), the question of whether the Defendant received, or believed she would, receive any financial gain, from the murders is straightforward and clearly wouldn’t be applicable in every murder case.

With regard to the remaining factors, the Idaho Supreme Court in *State v. Hall* determined that paragraphs (9)(e), (9)(f) and (9)(h) are not unconstitutionally vague. *Id.* at 785-787. “[T]he statutory aggravating circumstance in section 19-2515(9)(e) has been determined constitutional time and time again.” *Hall* at 786. The U.S. Supreme Court approved Idaho’s “utter disregard” aggravator, as instructed. *Arave v. Creech*, 507 U.S. 463, 113 S.Ct.1534 (1993).³ Turning to paragraph (9)(h), the Idaho Supreme Court has consistently upheld this as constitutional. In *Hall*, the Idaho Supreme Court stated: “‘we have upheld the propensity aggravator, when combined with [the *Creech*] limiting construction, against challenges that it is

² Defendant does not have standing to challenge statutory aggravators that are not at issue in this action (see e.g., Defendant’s Motion, Pgs. 9 & 54-55). *Miles v. Idaho Power Co.*, 116 Idaho 635, 641, 778 P.2d 757, 763 (1989) (holding that standing requires both a personal stake in the outcome and a fairly traceable causal connection between the claimed injury and the challenged conduct”).

³ The determination that paragraphs (9)(e) and (9)(f) are not unconstitutionally vague is not affected based on whether on a jury or judge is the sentencer. *Hall* at 786-787. “We hold that the utter disregard aggravator is not rendered unconstitutional by the change from judge to jury sentencing.” *State v. Dunlap*, 155 Idaho 345, 378, 313 P.3d 1,72 (Ida. 2013). Affirmed by *State v. Abdullah*, 158 Idaho 386, 463, 348 P.3d 1, 78 (Idaho. 2015).

vague or that it unconstitutionally lowers the burden of proof.” *Hall* at 787, citing to *Dunlap v. State*, 159 Idaho 280, 299, 360 P.3d 289, 308 (2015). *See also* ICJI 1711, 1712, 1713, 1714 and 1715.

Idaho jurors need not guess at the procedure employed in the sentencing phase. The statute governing capital sentencing proceedings requires the court to clearly explain the work of the jury and consequences of their findings, as follows:

- Idaho Code §19-2515(7)(a) requires the judge to inform the jurors: “If the jury finds that a statutory aggravating circumstance exists and no mitigating circumstances exist which would make the imposition of the death penalty unjust, the defendant will be sentenced to death by the court.”
- Idaho Code §19-2515(7)(b) requires the judge to inform the jurors: “If the jury finds the existence of a statutory aggravating circumstance but finds that the existence of mitigating circumstances makes the imposition of the death penalty unjust or the jury cannot unanimously agree on whether the existence of mitigating circumstances makes the imposition of the death penalty unjust, the defendant will be sentenced to a term of life imprisonment without the possibility of parole.”
- Idaho Code §19-2515(7)(c) requires the judge to inform the jurors: “If the jury does not find the existence of a statutory aggravating circumstance or if the jury cannot unanimously agree on the existence of a statutory aggravating circumstance, the defendant will be sentenced by the court to a term of life imprisonment with a fixed term of not less than ten (10) years.”

- Moreover, Idaho’s model jury instructions provide language which may be used by the trial court to explain the sentencing procedure. *See* ICJI 1718, 1719.

These statutory procedures and instructions establish a clear record that an appellate court may rationally review. *See, e.g., State v. Abdullah*, 158 Idaho 386, 348 P.3d 1 (2015) (discussing Idaho defendant’s direct appeal from death sentence and petition for post-conviction relief). Not only are all filings and proceedings preserved, but the jury decision is sufficiently separated to track the decision-making process. Notably, the question of guilt and its jury verdict form are completely bifurcated from the penalty phase and its jury verdict form. For the penalty phase, Idaho’s model jury verdict form requires jurors to first analyze whether each alleged aggravator was proved beyond a reasonable doubt. Then, the model verdict form requires jurors to weigh each proven aggravator against all mitigation evidence. A completed verdict form allows a reviewing court to determine exactly which aggravators, if any, were proven, and exactly which aggravators, if any, held up against mitigation to make the death penalty just. Accordingly, Idaho’s death penalty procedures are “rationally reviewable.” *Dunlap*, 159 Idaho at 299, 360 P.3d at 308.

The Defendant directs this Court to what appear to be academic papers regarding jurors who have served in the past in other states. Even without reviewing each report, it is clear from the Defendant’s conclusory statements that any lack of understanding on the part of those research subjects derives from an absence of clear instructions to them and the omission of important information. As discussed above, Idaho’s death penalty procedures have clear instructions written in plain language, which clearly explain the entire sentencing procedure to

jurors including the consequent of each potential jury finding. The papers cited by the Defendant do not have any bearing on the constitutionality of Idaho's sentencing procedures.

In sum, the Defendant's motion should be denied because it is not ripe for this Court's consideration. However, if the Court were to take up the Defendant's arguments, the Motion should be denied because the Defendant has failed to identify a single aspect of Idaho's capital punishment system that fails to comply with the constitutional mandates of the United States Supreme Court or the Idaho Supreme Court.

Wherefore the State respectfully requests that this Court deny the Defendant's Motion.

DATED this 7th day of December 2022.

/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 7th day of December, 2022, that a copy of the foregoing document was served as follows:

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