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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

STATE OF IDAHO,)	
Plaintiff,)	Case No. CR33-20-0302
)	
vs.)	MEMORANDUM IN SUPPORT
)	OF MOTION TO QUASH
LORI NORENE VALLOW,)	
AKA LORI NORENE DAYBELL,)	
Defendant.)	
_____)	

COMES NOW, the Idaho Office of the Attorney General, Criminal Division (“the OAG”), by and through its counsel, Kristina M. Schindele, Deputy Attorney General, and moves this Court for an order, pursuant to Idaho Rule of Criminal Procedure 17(b), quashing the subpoena duces tecum issued by the Clerk of the Court on behalf of Defendant on April 16, 2020, and served on the OAG on April 21, 2020. See Exhibit A attached to the Affidavit of Kristina M. Schindele in Support of Motion to Quash.

I. BACKGROUND

On February 18, 2020, the Madison County Prosecuting Attorney filed a criminal complaint charging Defendant with the following crimes: Counts I and II, desertion and nonsupport of children, Idaho Code § 18-401(1); Count III, resisting and/or obstructing an officer, Idaho Code § 18-705; Count IV, solicitation to commit a crime, Idaho Code § 18-2001; and Count V: contempt,

Idaho Code § 18-1801(4). This pending Madison County case addresses allegations that Lori Vallow abandoned her children, obstructed officers' efforts to confirm the whereabouts of the children and refused to comply with a lawful court order to produce the children.

Separate from the Madison County abandonment, obstruction and contempt case, law enforcement officers are currently engaged in additional investigations concerning events involving Tammy Daybell in Fremont County. The OAG has agreed to provide assistance to the Fremont County Prosecutor related to the investigation into potential criminal conduct that may have occurred in Fremont County and prosecution, if any is warranted. See Exhibit B attached to the Affidavit of Kristina M. Schindele in Support of Motion to Quash.

On April 16, 2020, counsel for Defendant requested the Madison County Clerk of Court issue a subpoena duces tecum to the OAG to produce “the entire file (books, papers, documents, communications, correspondence, or other objects tangible/intangible) and its contents (whether tangible or intangible) in regards to the investigation of ‘**Chad Daybell, Lori Daybell/Conspiracy, Attempted Murder, Murder**’ as identified in the correspondence/letter from the State of Idaho Office of Attorney General Lawrence G. Wasden dated April 9, 2020.” See Exhibit A attached to the Affidavit of Kristina M. Schindele in Support of Motion to Quash (emphasis in original). The subpoena then identifies 9 specific types of records Defendant requests.

To date, no charges related to Tammy Daybell have been filed against Chad Daybell or Lori Vallow, n/k/a Daybell.

II. ARGUMENT

The scope of Defendant's subpoena duces tecum is unreasonable and oppressive and requires the disclosure of privileged or other protected matters and information. Additionally, the records requested in the subpoena are not relevant to the charges pending in this Madison County case. Rather, Defendant seeks inside information regarding a pending criminal investigation into unrelated conduct. In fact, among the records sought in the subpoena, in specific request number 9, are “[a]ny records, documents, exhibits, etc. related to or intended for use by the prosecutor as evidence at a trial[.]” Yet the subpoena is not directed to the Madison County Prosecuting Attorney, counsel for the State in the matter pending before the Court. Rather, Defendant served the subpoena on the OAG regarding an unrelated criminal investigation, where no charges or trial are pending.

Idaho Criminal Rule 17(b) provides:

For Production of Documentary Evidence and of Objects. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated in it. The court, on motion, may quash or modify the subpoena if compliance would be unreasonable or oppressive.

I.C.R. 17(b). The decision whether to quash a subpoena upon motion under Idaho Criminal Rule 17(b) is committed to this Court's sound discretion. State v. Joy, 155 Idaho 1, 12, 304 P.3d 276, 287 (2013).

Idaho's appellate courts have not provided much guidance concerning application of Idaho Criminal Rule 17(b). However, the Idaho standard for quashing a subpoena mirrors that set forth in Federal Criminal Rule 17(c)(2), which provides, "Quashing or Modifying the Subpoena. On motion made promptly, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive." Fed. R. Crim. P. 17(c)(2). The Ninth Circuit has confirmed that a subpoena duces tecum is "not intended to provide a means of discovery for criminal cases." United States v. George, 883 F.2d 1407, 1418 (9th Cir. 1989), citing United States v. Nixon, 418 U.S. 683, 698 (1974). In George, the defendant, charged with bank robbery, caused a subpoena to be issued to the Federal Bureau of Investigation seeking "extensive information for all bank robberies occurring in Orange County between [certain dates]." Id. The Ninth Circuit affirmed the district court's order quashing the subpoena as even defense counsel conceded that the request was overly broad and bore the hallmarks of a "wild goose chase." Id. The United States Supreme Court has determined that in order to require production under Rule 17, the requester must meet the following requirements:

(1) [T]hat the documents are evidentiary and relevant; (2) that they are not otherwise procurable reasonably in advance of trial by exercise of due diligence; (3) that the party cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and (4) that the application is made in good faith and is not intended as a general "fishing expedition."

United States v. Nixon, 418 U.S. 683, 699–700 (1974). The Ninth Circuit has reiterated that a trial court's determination whether to quash a subpoena requires a "case-by-case inquiry." United States v. Bergeson, 425 F.3d 1221, 1226 (9th Cir. 2005).

In the present case, Defendant seeks information related to a separate criminal investigation into activity involving Tammy Daybell under the auspices of discovery efforts in the pending Madison County case. Defendant's efforts are misplaced. Compliance with the subpoena is

unreasonable as the records sought are not relevant or related to her pending criminal case. The documents and information sought under the subpoena duces tecum would not have “any tendency to make a fact [of consequence in determining the action] more or less probable than it would be without the evidence....” I.R.E. 401. The action in question concerns Defendant’s abandonment of her children, obstruction of law enforcement’s efforts to confirm the safety of the children, soliciting someone to provide false information to law enforcement and willful disobedience to a lawful order to produce the children. Information related to an investigation involving Tammy Daybell in Madison County would not help prepare a defense in the pending case.

The OAG acknowledges that “a trial court does not have discretion to restrict a defendant’s access to potentially admissible evidence because some of it might be irrelevant”, Joy, 155 Idaho at 13, 304 P.3d at 288, but this request initiates a fishing expedition into an investigation into circumstances involving Tammy Daybell, including events that took place immediately preceding the death of Tammy Daybell, issues quite unrelated to the abandonment and refusal to produce Defendant’s children. Based on the fact that the ongoing investigation is separate and distinct from Defendant’s abandonment and refusal to produce her children, compliance with the subpoena duces tecum is unreasonable. Defendant bears the burden of demonstrating that compliance with the subpoena would produce information with some evidentiary value in the charged case. Incidents involving Tammy Daybell that occurred in Fremont County are separate and distinct from the abandonment, failure to produce and contempt of court in Madison County.

Further, compliance with the subpoena duces tecum would be oppressive. As noted in the Affidavit of Kristina M. Schindele in Support of Motion to Quash, at this time, the OAG does not have the completed investigation or records requested in the subpoena duces tecum. Rather, the OAG has received limited information and documents necessary for the ongoing investigation. Compliance with the subpoena would require disclosure of sensitive information. Dissemination of such privileged information would harm the ongoing investigation. Idaho Criminal Rule 17(b) permits the Court to quash the subpoena in the ongoing Madison County child abandonment case to ensure that Defendant cannot interfere with additional, ongoing criminal investigations. Defendant seeks information that will permit her to invade law enforcement’s investigation and likely impede their efforts. Such conduct simply cannot be permitted.

CONCLUSION

For the above-stated reasons, the OAG respectfully requests that Defendant's subpoena duces tecum, directed to the OAG, be quashed.

DATED 1st day of May 2020.

/s/ Kristina M. Schindele
Kristina M. Schindele
Deputy Attorney General

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 1st day of May 2020, I caused to be served a true and correct copy of the foregoing Memorandum in Support of Motion to Quash to the following persons by the following means:

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