

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

STATE OF IDAHO,

Plaintiff,

vs.

CHAD GUY DAYBELL,

Defendant.

Case No. CR22-21-1623

**MEMORANDUM DECISION
and ORDER**
on Motions to Strike the Death Penalty

This matter is before the Court on two motions filed by Defendant Chad Guy Daybell (hereinafter "Daybell"): (1) MOTION TO STRIKE THE DEATH PENALTY BASED ON RELATIVE CULPABILITY and (2) MOTION TO STRIKE THE DEATH PENALTY AS ARBITRARY, CAPRICIOUS, & DISPROPORTIONATE IN LIGHT OF STRIKING DEATH IN CO-DEFENDANT'S CASE, both filed November 9, 2023. The State of Idaho objects to the motions. On November 29, 2023, subsequent to oral argument, the Court took the matters under advisement. Having fully considered the record, briefing and arguments offered in support of the parties' respective positions on the motions, and in applying relevant legal authority the Court enters the following decision and order.

I. FACTS AND PROCEEDINGS

On May 24, 2021, a Grand Jury returned an INDICTMENT against Daybell and his wife, Lori Vallow Daybell (hereinafter "Vallow"). Both Daybell and Vallow were charged with three counts of Conspiracy, and two counts of First Degree Murder for the homicide of Vallow's children: Joshua Jaxon "JJ" Vallow and Tylee Ryan. They were each separately charged with additional crimes. Vallow was charged with Grand Theft. Daybell was charged with an additional count of First Degree Murder for the homicide of his late wife, Tamara Daybell, and two counts of Insurance Fraud. The two cases, though brought under a single INDICTMENT, have always been

treated as two distinct cases, with separate case numbers, and individualized consideration. While the two cases were initially joined for trial, they have been litigated separately from the outset of the filing of the INDICTMENT. Further, trial for the two cases was severed after Daybell successfully moved this Court to do so.

An extensive and notable procedural history of the cases impacts this decision: after a determination that she was not legally competent to stand trial, Vallow's case was stayed for an extended period of time while she received medical treatment, pursuant to Idaho Code §§ 18-211-212, focused on restoring her to legal competency. No such issue or delay occurred in Daybell's case; nor has he ever been determined to require such treatment. Further, and significantly, Vallow refused to waive her constitutional right to a speedy trial, while concurrently Daybell filed a written waiver of speedy trial on August 19, 2021. Finally, on his third attempt, Daybell successfully moved this Court for, and obtained, a severance of trials from his alleged co-conspirator Vallow.¹

The State of Idaho timely filed its NOTICE OF INTENT TO SEEK THE DEATH PENALTY in both Daybell's and Vallow's cases. The State has not withdrawn this NOTICE. Following the severance of Daybell and Vallow's trial and the continuance for Daybell to review additional discovery and conduct additional DNA testing, Vallow's case proceeded to trial without the option of a death penalty sentence, after this Court struck the death penalty as a sanction for late-disclosed discovery to Vallow's defense team. The sanction was ordered based on voluminous discovery having been provided to the defense on the (figurative) eve of trial, and beyond the Court's scheduled deadline to do so. Where Vallow forged ahead with her trial setting, refusing to waive her speedy trial right, the Court determined that due process required the imposition of that particular sanction. The

¹ The first motion to sever was filed September 7, 2021 and denied by this Court on March 21, 2022. The second motion to sever was filed September 27, 2022 and denied on November 17, 2022. The third motion to sever was granted on March 2, 2023, when Daybell requested additional time to conduct testing on DNA, which necessitated continuing Daybell's April 2023 trial setting, which setting was maintained in Vallow's case.

Court made findings predicated on procedural due process and carefully weighed fundamental rights in reaching that decision. The decision did not consider, nor was the analysis in reaching the decision predicated on, a determination of the constitutionality of the death penalty. Importantly, at the time the Court made the ruling, the Court expressly stated that the ruling applied exclusively to Vallow's case, as Daybell was provided his requested remedy of additional time to review the voluminous discovery disclosure, and to test potentially exculpatory DNA evidence, prior to trial.² Finally, on March 21, 2023, the Court issued a written order expressly indicating that the substantive motions founded in constitutional argument were rendered moot, as the ruling was sanction-based.³

Daybell's trial was rescheduled for April 1, 2024. On November 9, 2023, Daybell filed the instant motions requesting this Court to strike the death penalty. On November 22, 2023, the State filed STATE'S OBJECTION TO DEFENDANT'S MOTIONS TO STRIKE DEATH PENALTY. On November 29, 2023, the Court heard the parties in argument on the motions and took the matters under advisement to issue this written decision.

II. LEGAL STANDARD

The constitutionality of Idaho's capital sentencing scheme is a question of law over which the appellate courts exercise free review. *Rhoades v. State*, 149 Idaho 130, 132, 233 P.3d 61, 63 (2010). "Capital punishment is not prohibited under the United States Constitution, and 'the States may enact laws specifying that sanction.'" *State v. Abdullah*, 158 Idaho 386, 456, 348 P.3d 1, 71 (2015). The Idaho Supreme Court has determined that Idaho's death penalty statute does not

² "I'll also note that the ruling here applies only in this case against Ms. Vallow [Vallow Daybell], the 1624 case, and in no way impacts or affects the companion case, 1623, because that Defendant has been provided additional time to prepare for trial and to review additionally disclosed discovery, so it has no impact on that case."

TRANSCRIPT OF COURT'S RULINGS ON MOTION TO COMPEL; MOTION TO DISMISS THE DEATH PENALTY. p. 30, lns. 17-23. March 21, 2023.

³ Id.

violate the Eighth Amendment.⁴ Idaho Code § 18-4004A requires the prosecuting attorney to file a written notice of the State's intent to seek the death penalty in any criminal case "no later than sixty (60) days after entry of a plea." I.C. § 18-4004A.

III. ANALYSIS

Daybell's two motions request a court order to strike the death penalty as a potential sentencing option. The State objects to both motions. The Court will discuss each in turn.

a. MOTION TO STRIKE THE DEATH PENALTY BASED ON RELATIVE CULPABILITY

Daybell's first motion argues that the State of Idaho's theory of the case is that his alleged co-conspirator, Vallow, is more culpable than Daybell. The motion then argues that Daybell should not be subject to the death penalty, because the State argued that Vallow was more culpable, and Vallow was not subject to the death penalty. The State argues that the motions to strike the death penalty are not procedurally ripe for review, and further argues that on the merits, the motion to strike the death penalty based on the relative culpability of Daybell versus Vallow should be denied.

Considering the ripeness of the motion to strike with respect to relative culpability, the Court agrees with the State. Idaho has a clearly established procedure for cases where capital punishment is a potential outcome. A two-phase trial is employed: (1) a "guilt phase" where a petit jury sits in judgment of the facts and deliberates to reach a verdict of guilty or not-guilty of the crimes charged against a defendant; and (2) if convicted on crimes that carry a potential of the death penalty, a petit jury then hears evidence of aggravating and mitigating factors by both the State and the Defense before deliberating again on whether or not they find "a statutory aggravating circumstance exists and no mitigating circumstances exists which would make the

⁴ Id.

imposition of the death penalty unjust.” I.C. § 19-2515.

Here, Daybell is asking this Court to preempt the maximum potential penalty of death before a trial jury has undertaken any deliberations about his guilt of the crimes charged or heard any evidence whatsoever. Further, following the U. S. Supreme Court’s holding in the *Ring* case⁵, the State of Idaho amended Idaho’s statutes to comply with the directives set forth in that decision. Pursuant to *Ring*, it is a jury of one’s peers—not a judge—who recommends the imposition of the death penalty for individuals first charged, and then duly convicted of crimes eligible for capital punishment in Idaho. Again, it is only upon a jury’s determination that aggravating circumstances exist to outweigh any mitigating factors, during a bifurcated sentencing phase of a capital case, that the death penalty may thereafter be imposed. Accordingly, the Court does not find this request to be ripe for judicial determination because the request requires wholesale speculation at this juncture.

Turning next to the substantive arguments on relative culpability, Daybell relies on citations from the transcript prepared in the Vallow trial. The Court has reviewed those quotes and determines, as the State contends, that they are largely taken out of context, truncated, or otherwise incomplete in their presentation. Beyond this, however, Daybell overlooks one important consideration: the Court cannot and will not speculate about what the evidence at Daybell’s trial will be with respect to Daybell’s culpability. To make a pre-trial determination about whether Daybell is more, less, or equally culpable to Vallow, who has now been convicted of all charges brought by the State of Idaho, would require this Court to invade the province of the jury and make a premature determination about what the facts of Daybell’s case—not *Vallow’s case*—are. The Court declines to do so, and finds that this request is not ripe for judicial

⁵ *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428 (2002).

determination because the State has not yet put on their case against Daybell.

Additionally, while the Court believes there is likely to be considerable overlap in witnesses and evidence for Daybell’s trial, the INDICTMENT charges Daybell with separate and additional crimes. Daybell repeatedly and ardently argued for his trial to be severed from Vallow’s—emphasizing the necessity to preserve “individualized consideration” between Daybell and Vallow.⁶ Further, Daybell argued for separate trials with individualized consideration of Daybell and Vallow given the “mutually antagonistic nature of the defendants’ positions.”⁷

The Court has carefully reviewed the cited authority by Daybell and the State and finds that the case law does not suggest that degrees of culpability are appropriately determined by courts ahead of trial. To do so would defy the fundamental right to a fair trial by a jury of one’s peers. Facts submitted at trial may only be considered after the admission of evidence and testimony within the constraints of evidentiary rules. Thus, while Daybell is charged as a co-conspirator on some counts in the INDICTMENT, he is nevertheless also charged with First Degree Murder for the murder of Tamara “Tammy” Daybell, under Idaho Code §§ 18-4001 and 18-4004, a crime that is punishable by death. Where Daybell alone faces that count, the potential of his conviction for that separate murder, distinct from any of Vallow’s convictions, further reveals that a determination of relative culpability is speculative when considered before trial. Therefore, Daybell’s argument about relative culpability is not persuasive as a basis to strike the death penalty.

Moreover, the salient point remains: it is the duty of jurors, not this Court, to determine the facts of this case—including deliberating about whether the State meets its burden to prove beyond reasonable doubt that Daybell is guilty of the mirroring charges raised against both Daybell and Vallow.

⁶ DAYBELL’S 2ND RENEWED MOTION TO SEVER. p. 17. Feb. 13, 2023.

⁷ Id. p. 28.

Accordingly, the Court finds no basis to strike the death penalty on arguments of relative culpability. The State has complied with its statutory obligation, having timely filed its NOTICE OF INTENT TO SEEK THE DEATH PENALTY, and Daybell was indicted on multiple counts punishable by death, subject to the procedural requirements of I.C. § 19-2515. The motion is therefore DENIED.

b. MOTION TO STRIKE THE DEATH PENALTY AS ARBITRARY, CAPRICIOUS, AND DISPROPORTIONATE IN LIGHT OF STRIKING DEATH IN CO-DEFENDANT'S CASE

Next, the Court considers Daybell's second motion, which argues that the death penalty should be stricken as it is arbitrary, capricious, and disproportionate when juxtaposed with the striking of the death penalty in Vallow's case. Specifically, Daybell argues that he faces a more severe penalty *because* he waived his right to a speedy trial. The State contests this assertion, arguing that Daybell has waived any credible basis to bring the motion because he did not file any joinder to Vallow's motion to remove the death penalty as a sanction for late-disclosed discovery.⁸ Further, the State argues Daybell could have—but did not—bring a motion to reconsider the severance from Vallow's trial, and continuance of Daybell's own trial, at the time the death penalty was stricken from Vallow's case.

As a prefatory comment, in reviewing Vallow's, the Court is not persuaded that Daybell suffers any abuse of his procedural due process by allowing the death penalty to remain a sentencing potential in his case though the death penalty was struck in Vallow's case. The triggering event for both Daybell and Vallow to move the Court for remedy (though separate avenues of relief were plead in the respective cases) was the late disclosure of a large volume of discovery from the State in early 2023. At that time, Daybell ardently argued he needed additional

⁸ On March 5, 2023, Vallow filed a MOTION TO DISMISS DEATH PENALTY. The State filed an OBJECTION to that motion on March 13, 2023. Vallow filed a response to the objection on March 14, 2023. Following a hearing, the Court set forth its rationale to impose the sanction to strike the death penalty as a sentencing option in Vallow's case during a hearing on March 21, 2023. Daybell did not file any joinder to Vallow's motions.

time to evaluate and weigh the discovery, and was thereafter afforded that by (1) obtaining a severance of his trial from Vallow's trial, and (2), obtaining a continuance of over one year to adequately prepare for trial. Thus, Daybell has obtained his requested relief and, additionally, given the length of additional time for trial preparation, has been afforded *heightened* or *super* due process given the potential for capital punishment in his case.⁹

The rationale to remove the death penalty as a sanction in Vallow's case was predicated on a finding of material prejudice given the proximity between the time of discovery disclosure and trial in her case—a concern that is not evergreen for Daybell. To the contrary, Daybell has been afforded the additional time needed to mitigate prejudice, if any, for him in his case. Where Vallow's team had a matter of days to review and evaluate late discovery ahead of trial, Daybell was provided a full additional year to review the material and prepare his defense. Further, Daybell's counsel has had the significant benefit in preparing for his trial of observing Vallow's trial and accessing the transcripts from that case. In weighing those factors, the Court does not find a persuasive argument to strike the death penalty based on Daybell's argument that in his case it is arbitrary, capricious, and disproportionate.

i. IDAHO'S BIFURCATED PROCEDURE IN CAPITAL CASES AMELIORATES CONCERNS OF ARBITRARY OR CAPRICIOUS IMPOSITION OF THE DEATH PENALTY.

Daybell argues that it would be unconstitutional, arbitrary, and capricious to continue seeking capital punishment in his case where it was struck in Vallow's case. The State rebuts this argument and again raises the critical fact that Daybell is charged with First-Degree Murder for the death of Tamara "Tammy" Daybell—a crime punishable by death that Vallow was not charged with. Nevertheless, the Court will briefly walk through Idaho's procedure for capital cases.

⁹ See *Furman v. Georgia*, 408 U.S. 238 (1972) ('super due process' requires heightened attention to procedural fairness).

As established by the Supreme Court of the United States, the controlling case on imposing capital punishment in the United States is *Ring v Arizona*.¹⁰ In *Ring*, the Court held that it is a jury—not a judge—who must find that aggravating factors exist before recommending imposition of the death penalty. Following *Ring*, the Idaho State Legislature amended Idaho’s statute to likewise establish that jurors employ a bifurcated procedure by which a jury must first deliberate as to a defendant’s guilt or innocence and second, if and only if a jury finds a defendant guilty of a crime punishable by death, will a second special sentencing phase, commence. During this second special sentencing phase, a jury is charged with determining whether the State can prove beyond reasonable doubt that certain statutory aggravating circumstances exist and further, that such circumstances outweigh mitigating evidence, if any, to negate imposition of the death penalty. *See* I.C. § 19-2515.

The Court is unpersuaded that the death penalty in this instance is sought in a manner that is arbitrary or capricious, despite Vallow not facing the same consequence. The State timely filed a NOTICE OF INTENT TO SEEK THE DEATH PENALTY against both defendants. The State vigorously contested and, unsurprisingly, expressed frustration and disappointment with the Court’s striking of that penalty in Vallow’s case. The State has never conceded that one or the other of the charged and alleged co-conspirators was more or less culpable than the other. Each defendant has been given individualized consideration from the outset of these cases—and will continue to be afforded individualized consideration by this Court. Further, the Court will instruct the jury in compliance with I.C. § 19-2515 should a conviction result to any or all of the conspiracy or murder charges in Daybell’s trial, ensuring the administration of proper due process.

Also, as mentioned above, the additional charge relating to Tammy Daybell’s death is a

¹⁰ *Supra* note 5.

separate crime where the State—in its discretion—has elected to seek the death penalty. The Court is not convinced that the State’s decision to pursue the death penalty is arbitrary or capricious given all circumstances in this case. All due process Daybell is entitled to will be carefully afforded, leaving to the jury its ultimate determination if he is adjudicated guilty of murder and the special sentencing proceeding is employed. This Court will not abandon its duty, under basic separation of powers considerations, to interpret and apply the law, and invade what is rightfully the province of the legislative branch of government:

Thirty-two states, the military, and the federal government continue to allow the death penalty as a sentencing option. *See* DEATH PENALTY INFORMATION CENTER, <http://www.deathpenaltyinfo.org/states-and-without-death-penalty> (last visited February 23, 2015); Tracy L. Snell, Bureau of Justice Statistics, U.S. Dep't of Justice, *Capital Punishment, 2012–Statistical Tables* (Rev.2014), available at <http://www.bjs.gov/content/pub/pdf/cp12st.pdf>. As stated by the United States Supreme Court in *Trop v. Dulles*:

Whatever the arguments may be against capital punishment, both on moral grounds and in terms of accomplishing the purposes of punishment—and they are forceful—the death penalty has been employed throughout our history, and, in a day when it is still widely accepted, it cannot be said to violate the constitutional concept of cruelty.

356 U.S. 86, 99, 78 S.Ct. 590, 597, 2 L.Ed.2d 630, 641–42 (1958). “[I]t is difficult to regard a practice as ‘objectively intolerable’ when it is in fact widely tolerated.” *Baze*, 553 U.S. at 53, 128 S.Ct. at 1532, 170 L.Ed.2d at 434. Therefore, absent some legislative or executive action, a determination by this Court that Idaho's death penalty statute is unconstitutional based on evolving standards of decency and public opinion is unsupported. **“Courts are not representative bodies. They are not designed to be a good reflex of a democratic society.”** *Gregg v. Georgia*, 428 U.S. 153, 175, 96 S.Ct. 2909, 2926, 49 L.Ed.2d 859, 875 (1976) (quoting *Dennis v. United States*, 341 U.S. 494, 525, 71 S.Ct. 857, 875, 95 L.Ed. 1137, 1160–61 (1951) (Frankfurter, J., concurring in affirmance of judgment)).

State v. Abdullah, 158 Idaho 386, 456, 348 P.3d 1, 71 (2015) (emphasis added).

The Court will impartially administer the validly enacted laws under the State of Idaho and United States of America in this case. Here, that requires the upholding of the State's determination to seek the death penalty in this case while also affording Daybell all due process.

ii. **DAYBELL IS NOT BEING DISPROPORTIONATELY PUNISHED FOR WAIVING HIS RIGHT TO A SPEEDY TRIAL.**

Daybell hypothesizes that had he not waived speedy trial, he would not be facing the death penalty. Further, he argues that he not advised of this potential outcome at the time he waived and argues that permitting the death penalty to remain a potential punishment is infringing upon his fundamental rights. The State urges this Court to reject that argument.

It is neither uncommon, nor outright indicative of arbitrary or capricious application that co-defendants (or co-conspirators) may face differing penalties. Throughout the two cases, Daybell has repeatedly raised the need for "individualized consideration" given "mutually antagonistic" positions between Vallow and Daybell. It is precisely because individualized consideration has been administered that the two cases did not remain joined for trial. It has been individualized consideration of Daybell's right and desire to conduct additional DNA testing that persuaded this Court to sever the cases and afford Daybell additional time. At every critical stage of this case, the Court has been mindful of the need for individual consideration of each defendant's rights.

Retaining the death penalty as a sentencing option is, in no uncertain terms, neither punitive nor resultant for Daybell having waived his right to speedy trial. The ability of the State to seek capital punishment in Daybell's upcoming trial was a foreseeable result when the cases were severed. The Court expressly indicated as much in previous rulings. In sum, the Court declines to speculate about what the evidence will or will not establish at trial to make a determination about Daybell's relative culpability to that of his alleged co-conspirators. Neither will the Court invade the province of the jury to determine the facts of this case or stand inviolate of Idaho's

capital punishment statutes. The State of Idaho is well within its express enumerated power to seek the death penalty and has maintained its intention to do so throughout this case.

While Daybell will continue to enjoy the full due process to which he is entitled, if he is adjudicated guilty on a charge or charges of murder in the first degree, the ultimate determination of punishment shall be determined by the jury.

IV. CONCLUSION

For the foregoing reasons, Daybell's MOTION TO STRIKE THE DEATH PENALTY BASED ON RELATIVE CULPABILITY is DENIED. Daybell's MOTION TO STRIKE THE DEATH PENALTY AS ARBITRARY, CAPRICIOUS, & DISPROPORTIONATE IN LIGHT OF STRIKING DEATH IN CO-DEFENDANT'S CASE is likewise DENIED.

IT IS SO ORDERED.

Dated this 19 day of December, 2023.


Steven W. Boyce
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on Dec 19, 2023 the foregoing MEMORANDUM DECISION AND ORDER was entered and a true and correct copy was served upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be delivered to their courthouse boxes.

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