

**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,

v.

LORI NORENE VALLOW aka LORI
NORENE VALLOW DAYBELL,

Defendants.

Case No. CR22-21-1624

**MEMORANDUM DECISION and
ORDER**

Pending before the Court is Defendant Lori Norene Vallow Daybell's ("Vallow Daybell") MOTION TO REMAND INDICTMENT TO GRAND JURY FOR FURTHER PROCEEDINGS. The State opposes the motion. On August 16, 2022, the Parties appeared before the Court to be heard and the Court took the matter under advisement. Having fully considered the record, all relevant legal authority, and the arguments presented, the Court renders the following decision and order.

I. FACTUAL AND PROCEDURAL BACKGROUND¹

On May 24, 2022, a Fremont County Grand Jury returned an INDICTMENT charging Vallow Daybell with the commission of several crimes. At issue are Counts 1 and 3 of the INDICTMENT. Count 1 of the Indictment is a charge of Conspiracy under I.C. § 18-1701. Count 3 of the INDICTMENT is also a charge of Conspiracy under I.C. § 18-1701.

On May 2, 2022, the State of Idaho filed a NOTICE OF INTENT TO SEEK DEATH PENALTY.

On July 12, 2022, Vallow Daybell filed the instant motion. The State filed an objection to the motion on August 10, 2022. On August 16, 2022, the Court held a hearing where the Parties presented argument to support their respective positions on the motion.

¹ The full factual background is not set forth herein but incorporated by reference to Case No. CR22-21-1624.

II. STANDARD OF REVIEW

The Idaho Supreme Court wrote in *Rhoades v. State*:

This Court exercises free review over questions of law. Statutory interpretation is a question of law over which this Court exercises free review. The constitutionality of Idaho's capital sentencing scheme is likewise a question of law over which this Court exercises free review.

149 Idaho 130, 132, 233 P.3d 61, 63 (2010) (internal citations omitted).

Issues of constitutional and statutory interpretation are questions of law and are reviewed by this Court de novo. *State v. Winkler*, 167 Idaho 527, 529, 473 P.3d 796, 798 (2020) (internal citations omitted).

III. ANALYSIS

a. Timeliness

As a threshold matter, the State contests the motions as untimely under I.C.R. 12. Vallow Daybell argues that given the procedural history of her case and only the recent assembly of the Defense team, the motions should be heard pursuant to the Court finding “good cause” for the timing delay.

Pursuant to I.C.R. 12(f), given the complexity of the case, the severity of the possible penalties for the alleged crimes, the timing of Defense Counsels’ appointments to represent Vallow Daybell, the time remaining before trial, and the arguments made, the Court does find good cause exists and will not deny the motion as untimely; instead determining the Motion on the merits.

b. Indictment Remand

At issue is the objection of Defendant to Counts 1 and 3 of the INDICTMENT, each of which charge “Conspiracy to Commit First Degree Murder and Grand Theft by Deception.” The Defense asserts that the language of those counts will be confusing to the jury, arguing the counts “lump

two crimes together into one allegation making it a general felony for possible punishment purposes at sentencing.”² The Defense further objects to the Indictment on statutory and criminal rule grounds. The State responds that the INDICTMENT is not defective because Counts 1 and 3 charge a single crime, Criminal Conspiracy, and asserts that conspiracy charges may allege multiple substantive crimes. Having fully considered the arguments of counsel, and upon review of the relevant authority on this issue, the Court concludes that the INDICTMENT is not defective in that Counts 1 and 3 are each single offenses, properly charged.

Initially, the Court considers the Defense argument that Idaho Criminal Rule 8(a) mandates that an indictment “must state a separate count for each offense.” The State counters that Counts 1 and 3 each are a single offense: Criminal Conspiracy in violation of I.C. § 18-1701. Having reviewed the charging language of those counts, the Court determines here that the INDICTMENT in fact charges a single count of Criminal Conspiracy in Count 1, and another single count of Criminal Conspiracy in Count 3. While the INDICTMENT does list the substantive crimes of Murder and Grand Theft, the State is correct in its assertion that the listing of those substantive crimes does not create multiple offenses in violation of I.C.R. 8(a). The Defense also argues that the INDICTMENT fails to comply with I.C.R. 6.5(b), which states: “(b) Multiple Charges of Indictment. There may be two or more separate charges in a grand jury indictment, but each must be voted on separately by the grand jury.” The Court agrees with the State’s argument that both Count 1 and 3 each are separate, single crimes (Conspiracy), and there has been no showing that the grand jury failed to separately vote to indict on each of those counts. The Court therefore determines that there is no statutory basis to require a remand of the INDICTMENT.

A review of relevant caselaw further supports the proposition that this INDICTMENT has

² MOT. TO REMAND INDICTMENT. p. 2. July 12, 2022.

properly charged Conspiracy as a single crime in Count 1 and Count 3. In a case involving the issue of whether a defendant can be punished separately for both a conspiracy conviction and a completed substantive offense, the Idaho Supreme Court has made clear that a conspiracy offense is a separate and distinct crime from underlying substantive offenses, stating:

Traditionally the law has considered conspiracy and the completed substantive offense to be separate crimes. *Iannelli v. United States*, 420 U.S. 770, 777, 95 S.Ct. 1284, 1289, 43 L.Ed.2d 616, 622 (1975). As the Supreme Court explained, “[T]he conspiracy to commit an offense and the subsequent commission of that crime normally do not merge into a single punishable act. Thus, it is well recognized that in most cases separate sentences can be imposed for the conspiracy to do an act and for the subsequent accomplishment of that end.” *Id.* at 777–78, 95 S.Ct. at 1290, 43 L.Ed.2d at 623.

State v. Sanchez-Castro, 157 Idaho 647, 648, 339 P.3d 372, 373 (2014).

Relying on those federal cases, the Idaho Supreme Court affirmed the separate convictions and sentencings imposed by the District Court in the *Sanchez-Castro* case, thus confirming that the crime of conspiracy is a crime in and of itself.

Next, the Court has considered the holdings in federal cases including *Braverman v. U.S.*, 317 U.S. 49 (1942) and *U.S. v. Broce*, 488 U.S. 563 (1989).³ *Braverman* states: “[w]hether the object of a single agreement is to commit one or many crimes, it is in either case that agreement which constitutes the conspiracy which the statute punishes.” *Broce* further clarifies the position argued by the State in this case, plainly stating that “[a] single agreement to commit several crimes constitutes one conspiracy.” Finally, the Court has also considered that the Idaho Criminal Jury Instructions (“I.C.J.I.”) contemplate the possibility of multiple substantive offenses when instructing a jury on a single conspiracy count. I.C.J.I. 1101, the approved instruction for the crime of conspiracy, sets out optional plural language to be considered should multiple substantive offenses be alleged in a count of conspiracy. The instruction alternately provides for the naming

³ STATE’S OBJ TO DEF.’S MOT. TO REMAND INDICTMENT. p. 3. Aug. 10, 2022.

of a crime or *crimes*, and references that “[at least one of] the crime[s] would be committed.”

The Defense has argued that the disparate substantive offenses in Counts 1 and 3 of the INDICTMENT, First Degree Murder and Grand Theft, “combine two separate and distinct crimes into one”.⁴ In considering the above-cited authority, the caselaw clarifies that in fact the INDICTMENT as charged here is not combining separate crimes “into one.” Rather, the single offense of Criminal Conspiracy, I.C. § 18-1701, is charged in each of the two disputed counts.

In regards to the argument that the jury may be confused by an instruction sufficient to identify the elements of Counts 1 and 3, the Court agrees that it may be challenging to properly instruct a jury where multiple disparate offenses, with completely distinguishable elements for each, are named. However, this concern does not rise to the level of requiring a remand or amendment of the charges now set forth in those two counts. Instead, the Court will reserve for trial the matter of ensuring that proper instructions are drafted and presented to the jury.

Finally, the Court has considered the Defense argument that Counts 1 and 3, as charged, have “no statutory punishment,” and should therefore be determined to be a “general felony” pursuant to I.C. § 18-112, with a prescribed punishment of 5 years of prison and/or a fine of \$50,000. However, I.C. § 18-1701 clarifies that the punishment for conspiracy is “in the same manner and to the same extent as is provided under the laws of the state of Idaho for the punishment of the crime or offenses that each combined to commit.” Here, Counts 1 and 3 allege separate “offenses.” Thus, by the plain language of I.C. 18-1701, the punishment for those counts must match the punishment of those two underlying offenses—Murder and Grand Theft. Defendant was advised of such at the time of arraignment, where the Court instructed the possible penalties for both offenses. The State argues that, as a logical conclusion, the larger of the two possible

⁴ MOT. TO REMAND INDICTMENT. p. 3. July 12, 2022.

sentences controls.

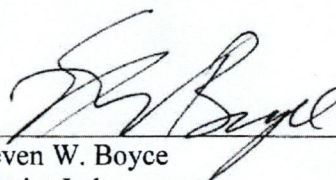
The Court has found no authority to the contrary, and determines that the State's interpretation of the punishment provisions of the statute, as it relates to the Indictment in this case, is correct. Count 1 and 3 of the INDICTMENT are each a single charge of conspiracy. Thus, there cannot be multiple sentences. The allegation is that two separate offenses constitute the conspiracy. The question raised by the Defense is whether the punishment would be the punishment for Grand Theft or for First Degree Murder, or alternatively if a general felony penalty applies. Without any express exemption from the plain language of the statute to alter that determination, the Court agrees that a conviction of Count 1 and / or 3 would subject the Defendant to the penalty proscribed for First Degree Murder.^{5 6}

IV. CONCLUSION

For the foregoing reasons, Vallow Daybell's MOTION TO REMAND INDICTMENT TO GRAND JURY FOR FURTHER PROCEEDINGS is DENIED.

IT IS SO ORDERED.

Dated this 7 day of September, 2022.


Steven W. Boyce
District Judge

⁵ See I.C. § 18-4004.

⁶ Other jurisdictions have elected to enact statutes that specifically define penalties for conspiracy convictions. For example, New Mexico has enacted a statutory scheme separating penalties in three distinct degrees (NM Stat § 30-28-2 (2018)). Idaho has enacted no such legislation, thus mandating that the penalty match that of the substantive offenses listed within the conspiracy charge.

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of September, 2022, the foregoing 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; by causing the same to be hand-delivered, by facsimile, or by e-mail.

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Clerk of the District Court
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by

Becky Harrigbee
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