

JOHN PRIOR
LAW OFFICES OF JOHN PRIOR
ISB#5344
429 SW 5th Avenue #110
Meridian, Idaho 83642
(208) 465-9839 Telephone
Email john@jpriorlaw.com
Attorney for Defendant

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

STATE OF IDAHO,)	Case No.: CR22-21-1623
)	
Plaintiff,)	MOTION IN LIMINE TO LIMIT STATE
)	TO CONSISTENT ARGUMENTS ON
v.)	DEFENDANT’S RELATIVE
)	CULPABILITY
CHAD DAYBELL,)	NOTICE OF HEARING
)	
Defendant.)	
_____)	

COMES NOW the Defendant, Chad Daybell, and through undersigned counsel, submits this Motion in Limine to Limit State to Consistent Arguments on Defendant’s Culpability.

The core of the State’s case against Mr. Daybell’s co-defendant, Lori Vallow, was that she was the driving force behind a conspiracy leading to the deaths of Tylee Ryan, J.J. Vallow, and Tamara Daybell, that Ms. Vallow used both Alex Cox and Chad Daybell through emotional and sexual manipulation, and that Ms. Vallow remained in charge of her plan throughout. Because it would violate principles of fundamental fairness, due process, and the prohibition against cruel and unusual punishment to allow the State to present a different core theory in prosecuting Mr. Daybell. Mr. Daybell requests that the State be limited to presenting the same theory of its case in any trial against him, pursuant to the Sixth, Eighth and Fourteenth Amendments to the United

States Constitution, Idaho Const. Article I, Sections 6, 7, 8 and 13, as well as the legal authorities cited below.

FACTUAL AND PROCEDURAL BACKGROUND

The State of Idaho charged Chad Daybell and Lori Vallow as co-defendants in connection with the deaths of Tylee Ryan, J.J. Vallow, and Tamara Daybell. On March 3, 2023, the Court severed Mr. Daybell's and Ms. Vallow's trials. Ms. Vallow's trial began in April 2023. She was convicted on all counts.

During the trial of Ms. Vallow, the State argued repeatedly and consistently that the alleged conspiracy was "set in motion" by Lori Vallow, and "was driven by Lori's desire for and use of money, power, and sex." TR 3830: 13-15.¹ As the State asserted, Ms. Vallow manipulated both Chad and Alex Cox throughout the plan that she had set in motion. *See, e.g.*, TR 3859: 21-23 ("Lori manipulated Alex through religion. She manipulated Chad through emotional and sexual control."); TR 3862: 3-5 ("Lori uses sex to manipulate Chad. And Chad seeks confirmation from Lori repeatedly."); TR 3859: 25 ("[S]he groomed Alex Cox.").

The core of the State's case was that Lori set a conspiracy in motion, that she manipulated Chad and Alex to partake in that conspiracy, and that she was in charge throughout her plan. *See, e.g.*, TR 3834-35 ("And there is one common thread through these murders, Lori Vallow. She is the one person who ties these all together."); TR 3847: 2-5 ("Lori is the conduit of information to Alex. He does – Alex does what Lori tells him, a plan to remove obstacles . . ."); TR 3860: 15-17 ("Lori Vallow is telling Alex Cox what to do. In these messages, you never see Alex tell her what

¹ Citations to the trial transcript for the trial of Lori Vallow will be in the following format. TR: [Page Number]: [Line Numbers].

to do. She's telling him what to do."); TR 3869: 6-9 ("[Melanie Gibb] responds: Okay, Captain. Why does she say: Okay, Captain. Because Lori is in charge.").

More specifically, a core part of the State's case was that Lori manipulated Chad and that Chad took direction from Lori. In the State's own words: "Chad is not going to act without Lori saying so. . ." TR 3868: 12-13. The State repeatedly argued that Chad followed Lori's leads throughout the conspiracy that Lori herself set in motion. *See, e.g.*, TR 3862: 4-5 ("And Chad seeks confirmation from Lori repeatedly."); TR 3909: 14-18 ("What does Chad say? Just grab me by the storm and I will follow you to the ends of the universe. Not will you follow me, Lori. I will follow you."). Per the State's argument and presentation of evidence, Chad Daybell would not have acted without direction from Lori Vallow.

ARGUMENT

"[S]erious questions are raised when the sovereign itself takes inconsistent positions in two separate criminal proceedings against two of its citizens." *United States v. Valencia-Mendoza*, 912 F.3d 1215, 1224 (9th Cir. 2019) (quoting *Bradshaw v. Stumpf*, 545 U.S. 175, 189 (2005) (Souter, J., joined by Ginsburg, J., concurring)). The United States Supreme Court has addressed a prosecutor's use of inconsistent prosecutorial theories in co-defendant cases on only one occasion, which considered whether *even a guilty plea* could remain valid when the State has altered its theory regarding co-defendants' relative culpability and conspiratorial roles.

In *Bradshaw v. Stumpf*, 545 U.S. 175 (2005), the Supreme Court considered a petitioner's challenge to his guilty plea of aggravated murder and attempted aggravated murder, and, more specifically, the viability of the prosecutor's use of inconsistent theories involving two co-defendants who were tried separately. *Id.* at 184-87. Below, the United States Court of Appeals for the Sixth Circuit had held that the prosecution's use of inconsistent theories as to the identity

of the shooter violated due process and required the invalidation of the defendant's guilty plea. *See id.* at 189. On appeal the Supreme Court held that the guilty plea itself could remain intact, since the identity of the triggerman did the requisite intent for a plea. *Id.* at 182-87. However, while “express[ing] no opinion on whether the prosecutor’s actions amounted to a due process violation, or whether any such violation would have been prejudicial,” the Court held that the inconsistency may have influenced sentencing, and thus reversed the sentence and remanded for further sentencing proceedings. *Id.* at 187.

In more directly addressing the issue of inconsistent prosecutorial theories being presented at co-defendants’ severed trials, lower courts have repeatedly held that the State may not present inconsistent theories that go to the core of their case. *See, e.g., Thompson v. Calderon*, 120 F.3d 1045, 1058 (9th Cir. 1997) (overturned on other grounds) (stating “it is well established that when no new significant evidence comes to light a prosecutor cannot, in order to convict two defendants at separate trials, offer inconsistent theories and facts regarding the same crime”); *Smith v. Groose*, 205 F.3d 1045, 1053-54 (8th Cir. 2000) (finding due process violation where prosecution used “inconsistent, irreconcilable” theories to secure convictions against two defendants in different trials for the same offenses); *Sifrit v. Nero*, 2014 WL 5140329 at *28 (D. Md. 2014) (discussing the position of numerous circuits that it violates due process to present “an inconsistency at the core of the state’s case”).

Here, the core of the State’s case in Lori Vallow’s trial was that she was the driving force behind the alleged conspiracy leading to the deaths of Tylee Ryan, J.J. Vallow, and Tamara Daybell, that she used both Alex Cox and Chad Daybell through emotional and sexual manipulation, and that she remained in charge of her plan throughout. As such, it would plainly be inconsistent with the core of the State’s case to argue in Mr. Daybell’s trial that he was the person

that planned or set in motion a conspiracy leading to these deaths. *Cf.* TR 3830: 13-15 (“[T]his plan was driven by Lori’s desire for and use of money, power, and sex. And this plan, which she set in motion . . .”).

It would likewise be inconsistent to argue for the State to argue that Chad’s alleged actions were taken of his own accord, free from manipulation and coercion. *Cf.* TR 3859: 21-23 (“Lori manipulated Alex through religion. She manipulated Chad through emotional and sexual control.”); TR 3862: 3-5 (“Lori uses sex to manipulate Chad. And Chad seeks confirmation from Lori repeatedly.”). It would be highly inconsistent for the State to argue that anybody, but Lori was in charge throughout the plan that Lori set in motion. *Cf.* TR 3847: 2-5 (“Alex does what Lori tells him . . .”); TR 3860: 15-17 (“Lori Vallow is telling Alex Cox what to do. In these messages, you never see Alex tell her what to do. She’s telling him what to do.”); TR 3869: 6-9 (“[Melanie Gibb] responds: Okay, Captain. Why does she say: Okay, Captain. Because Lori is in charge.”).

To remain consistent with the core of the State’s case against Ms. Vallow, the State must be limited to arguing that Chad followed Lori’s leads throughout the alleged conspiracy that Lori herself set in motion. *See, e.g.,* TR 3868: 12-13 (“Chad is not going to act without Lori saying so . . .”); TR 3862: 4-5 (“And Chad seeks confirmation from Lori repeatedly.”); TR 3909: 14-18 (“What does Chad say? Just grab me by the storm and I will follow you to the ends of the universe. Not will you follow me, Lori. I will follow you.”).

Especially in a co-defendant case where only one defendant faces the possibility of a death penalty, the relative culpability of each defendant goes to the core of the prosecution’s case and directly impacts the constitutionality of any resulting sentence. *See Enmund v. Florida*, 458 U.S. 782 (1982) (holding that identical treatment of co-defendants without regard for their different levels of culpability was impermissible under the Eighth Amendment); *People v. Kliner*, 705

N.E.2d 850, 897 (Ill. 1998) (holding that, in capital cases, “similarly situated codefendants should not be given arbitrarily or unreasonably disparate sentences”). If the State is permitted to argue theories of relative culpability that are different from those presented during Ms. Vallow’s trial and sentencing, it will violate Mr. Daybell’s due process rights under the Fourteenth Amendment to the U.S. Constitution and Article I, Section 13 of the Idaho Constitution, and may result in Mr. Daybell and his co-defendant receiving unreasonably disparate sentences, in violation of the Eighth Amendment to the U.S. Constitution and Article I, Section 6 of the Idaho Constitution.

CONCLUSION

For the foregoing reasons, the State should be limited to arguing only levels of relative culpability that are consistent with what was argued during Ms. Vallow’s trial and sentencing, especially if the State continues to seek more severe punishment of Mr. Daybell than his co-defendant. In particular, the State must be limited to presenting the same core theory that was presented in the prosecution of Ms. Vallow: that she was the driving force behind a conspiracy leading to the deaths of Tylee Ryan, J.J. Vallow, and Tamara Daybell, that Ms. Vallow used both Alex and Chad through emotional and sexual manipulation, and that Ms. Vallow remained in charge of her plan throughout.

NOTICE IS HEREBY GIVEN that on 29th day of November 2023 at the hour of 9:00 am., or as soon thereafter as counsel may be heard, John Prior, attorney for Defendant above named will call up for hearing a hearing for Defendant’s Motion in Limine to Limit State to Consistent Arguments Regarding Culpability before the Honorable Judge Steven W. Boyce District Judge at the Fremont County Courthouse in St Anthony, ID.

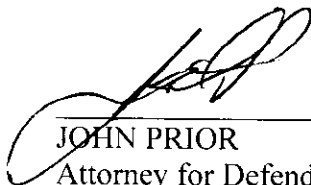
DATED this 9th day of November 2023



JOHN PRIOR
Attorney for Defendant

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered to the FREMONT COUNTY PROSECUTING ATTORNEY'S OFFICE, by efileing and service to prosecutor@co.fremont.id.us on this date.

DATED this 9th day of November 2023.



JOHN PRIOR
Attorney for Defendant