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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

STATE OF IDAHO, Plaintiff, vs. LORI NORENE VALLOW, Aka: Lori Norene Daybell Defendant.	)	Case No. CR22-21-1624 **DEFENDANT'S REBUTTAL TO STATE'S RESPONSE TO DEFENDANT'S MOTION TO COMPEL**

COMES NOW, the Defendant, LORI NORENE VALLOW, Hereinafter referred to Lori Daybell, by and through her attorney's of record, JAMES ARCHIBALD and JOHN THOMAS, AND REBUT States response to Defendants Motion to Compel.

ARGUMENT

The State is running a cost benefit analysis on the Lori Daybell case. If they wait to disclose information at the last second, it will likely be considered "harmless error" because the burden is on the defense to show that the late disclosure would have likely changed the outcome of the case.

The cost benefit analysis here cannot be measured by dollars and cents as Ford Motor Company did when they ran the analysis of changing the gas tank configuration of the Ford Pinto. The justice system should not and cannot allow the Government to prosecute this case like a corporation. The cost is too high and the potential for error is too great. The Governments arguments of "substantial compliance" and "potential existence" should be summarily dismissed.

The fact that the prosecutor put the defense on notice that this information "potentially existed", shifts the burden from the prosecutor to the defense in violation of Mrs. Daybell's Constitutional right to Due Process under the Fifth and Fourteenth Amendments, and violates fundamental fairness.

Likewise, the "substantial compliance" argument shifts the burden from the Government to the citizen in violation of Constitutionally protected rights of due process and fundamental fairness. The State of Idaho has spent well over 3 million dollars in the prosecution of this case so far. That money was spent on personnel, police, prosecutors, investigators. And for what? "Substantial compliance?" For three million dollars, the Government should be at complete and total compliance. We don't have a breakdown of the actual dollars and cents spent on getting the discovery to the defense, but I can almost guarantee that it is but a sliver of that three million dollar price tag.

The Governments arguments seem to put the burden on the defense to compel information that it thinks the Government might have in violation of Criminal Rules without knowledge thereof. The Government knows what evidence they have against the defendants. They are in the best position to turn over what evidence they have. This includes the evidence against any co-defendants. We asked for that in our initial discovery request as referenced in exhibit A of our motion.

As the Court will recall, Defendant Lori Daybell asked for a Bill of Particulars in this matter. We asked the Government to disclose several things, like who the other co-conspirator's were. As part of our argument the Defendant stated " . . . [T]he discovery in this case is voluminous to say the least. Discovery is still ongoing and as of the date of this motion the Defense has nearly 5 terabytes of electronic material. . . Much of the discovery has been gathered over several years and the defense is in the position of sorting through all of the discovery which the prosecution has had, in some instances, for years.*" Defense Motion for Bill of Particulars at Page 3.*

Mrs. Daybell further reasoned that the Bill of Particulars would help to avoid unfair surprise. "It is also needed to avoid unfair surprise at trial, a further purpose of the bill of particulars. Under the current indictment, the government could change the theory under Motion for Bill of Particulars which it is alleging murder or conspiracy at its whim, between now and trial, or during the trial itself, posing a grave danger of unfair surprise. Finally, the prosecutors are pursuing the highest, most final, and harshest penalty allowed in our country. The defendant should have the right to defend herself and face her accusers armed with the information needed to confront the Government's allegations*."* *Motion for Bill of Particulars at 3-4.* That motion was filed on September 2, 2022.

The Governments response was that "the motions [were] a thinly veiled effort to obtain the States trial theory and work product prohibited under Idaho Criminal Rules." *States Response to Defendants' Motion for Bill of Particulars at 8*. The Government was obviously aware of its duties under the Idaho Criminal Rules to disclose evidence requested by the defendant. They were using the rules with surgical precision to avoid having to disclose information about their case in chief.

This Court ultimately ruled that "the INDICTMENT is legally sufficient to afford the Defendant due process, and to impart jurisdiction in this case. Further, the INDICTMENT provides sufficient particularity to provide the Defendant a meaningful opportunity to prepare a defense and protect her from subsequent prosecution for the same act. The Court cannot find that the Defendant would be taken by surprise from the record before the Court of the charges brought against her through the INDICTMENT. Neither can the Court find that any of the counts of Conspiracy neglect to mention discrete action of the Defendant allegedly tied to further the conspiracy. As such, the court cannot conclude that the Defendant is prejudiced absent a Bill of Particulars*."* *Order on Defendants Bill of Particulars at 3-4.* This order was filed on January 18, 2023. Two weeks later the Defense began receiving an avalanche of discovery.

While the above-mentioned motion did not deal with the non-disclosure of co-defendant statements that the defense did not know existed, the point is, that the Government was well aware of what it had, and was holding its discovery close. The last minute disclosure of over 3,000 phone calls was not an oversite. The aggregate effect of this damming up the discovery and releasing it close to trial is nothing more than gamesmanship on the part of the Government. The arguments here by the Government are that of the proverbial bully in the playground.

The Government is portraying its late disclosure as "harmless error". This is not acceptable in this day and age. The Government, on the one hand, is saying that it has a right to not disclose its theories and work product. On the other hand it is trying to say that the late disclosure was "substantial compliance" or in the alternative, the defense was put on notice of its "potential existence". These arguments are not valid. In the last 60 days, the Defense has been inundated with discovery disclosures. (*Thirteenth*

Supplemental Discovery Disclosure filed on 2/27/2023. Twelfth Supplemental Discovery disclosure filed on 2/16/2023. Eleventh Supplemental Discovery Disclosure filed on 2/9/2023. Tenth Supplemental Discovery Disclosure filed on 2/6/2023. Ninth Supplemental Discovery Disclosure filed on 2/2/2023). The Government knew full well what it was doing as it was holding onto this information.

FOR THESE REASONS, the Court should dismiss the case.

Dated this 14th day of March, 2023.

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R. James Archibald	John Thomas