

**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 TO GRAND JURY FOR PROBABLE CAUSE DETERMINATION AS TO ALLEGED AGGRAVATING FACTORS ("Aggravating Factors"). 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, 2021, a Fremont County Grand Jury returned an INDICTMENT charging Vallow Daybell with the commission of several crimes including First Degree Murder and Conspiracy to Commit First Degree Murder.²

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

On July 12, 2022, Vallow Daybell filed a MOTION TO REMAND TO GRAND JURY FOR PROBABLE CAUSE DETERMINATION AS TO ALLEGED AGGRAVATING FACTORS. The State filed objection to the motion on August 10, 2022. On August 16, 2022, the Court held a hearing where

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

² INDICTMENT. May 24, 2021.

the Parties presented argument to support their respective positions on the motion.

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).

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, and the arguments made, the Court does find good cause exists and will not deny the motion as untimely.

b. Aggravating Factors

Vallow Daybell argues that she is entitled to a probable cause determination as to the statutorily required aggravating factors the State intends to rely upon in seeking the death penalty.³

The State argues that there is no requirement in Idaho to supply Vallow Daybell with a probable cause finding of the aggravating factors the State intends to rely upon in seeking the death penalty at this stage of the case.⁴ The State asserts that this issue has been squarely decided in *State*

³ MOTION TO REMAND TO GRAND JURY. p. 2. ¶¶ 4-6. July 12, 2022.

⁴ STATE’S OBJ. TO DEF.’S MOT TO REMAND. p. 2. Aug. 10, 2022.

v. *Abdullah*, 158 Idaho 386, 348 P.3d 1 (2015).

During the hearing, Vallow Daybell's counsel conceded that *Abdullah* controls but cites a policy argument that given recent decisions in the Supreme Court of the United States overturning prior precedent, this Court, and any reviewing Court in the future, should reconsider whether a finding of probable cause should be required when the State files a notice of intent to seek the death penalty. The Court declines to engage in speculation that *Abdullah*'s clearly controlling authority may be overturned in the future, but instead follows clear precedent here.

The Court agrees with the State: *Abdullah* controls. "[T]here is no constitutional requirement that the State present evidence demonstrating probable cause for each aggravating circumstance to properly notify the defendant of its intent to seek the death penalty." *Abdullah*, 158 Idaho at 459-60.

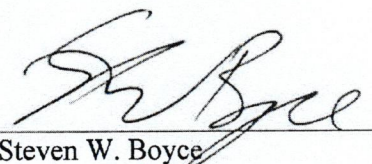
For the rationale set forth in *Abdullah* and as applied to the facts of this case, the motion is DENIED.

IV. CONCLUSION

Vallow Daybell's MOTION TO REMAND TO GRAND JURY FOR PROBABLE CAUSE DETERMINATION AS TO ALLEGED AGGRAVATING FACTORS is DENIED.

IT IS SO ORDERED.

Dated this 7 day of September, 2022.


Steven W. Boyce
District Judge

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
Fremont County, Idaho

by Betsy Harrington
Deputy Clerk