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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 **OBJECTION TO DEFENDANT'S MOTION TO DECLARE DEFENDANT NOT DEATH ELIGIBLE**

The State of Idaho hereby objects to the Defendant Lori Daybell's Motion to Declare Defendant Not Death Eligible.

ARGUMENT

The Defendant has asked this Court to declare her not eligible for death penalty pursuant to the Eighth and Fourteenth Amendments to the United States Constitution. Her reasoning in this particular motion relies erroneously on the holdings in *Enmund v. Florida*, 458 U.S. 782, and *Tison v. Arizona* 481 U.S. 137. The Defendant claims that the non-death eligibility of those convicted of felony murder who did not engage in the actual killing or intend that a killing should occur should be applied to her. Her motion must be denied as: 1) it is not ripe; 2) Idaho law allows the death penalty in this case; and 3) her motion has no basis in law or fact, but is instead an attempt to apply the felony murder intent rule to a pre-meditated murder and conspiracy murder.

I. Defendant's death penalty challenge is not ripe.

"A claim is not ripe for adjudication if it rests upon 'contingent future events which t maynot occur as anticipated, or indeed may not occur at all". *Texas* v. *U.S.*, 523 U.S. 296, 300, 118 S.Ct. 1257, 1259, 140 L.Ed.2d 406 (1998). "Eighth Amendment claims of 'cruel and unusual punishment' are not ripe when raised prior to the actual, or immediately pending, imposition of the challenged form of punishment." *Cheffer* v. *Reno*, 55 F.3d 1517, 1523 (11th Cir. 1995). Because the Defendant has not yet been convicted, any challenge to a potential sentence is premature.

II. Idaho Law Allows the Death Penalty for the Charges of the Defendant.

First Degree murder is punishable by death in Idaho. Idaho Code 18-4004 states " Subject to the provisions of sections 19-2515 and 19-2515A, Idaho Code, every person guilty of murder of the first degree shall be punished by death or by imprisonment for life, provided that a sentence of death shall not be imposed unless the prosecuting attorney filed written notice of intent to seek the death penalty as required under the provisions of section 18-4004A."

Conspiracy is punishable to the same extent as the crimes to which the defendant has conspired. Idaho Code 18-1701 states: "If two (2) or more persons combine or conspire to commit any crime or offense prescribed by the laws of the state of Idaho, and one (1) or more of such persons does any act to effect the object of the combination or conspiracy, each shall be punishable upon conviction 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."

The Defendant is charged with conspiracy to commit murder and pre-meditated murder. Upon conviction, and upon a finding of aggravating factors by the jury, the defendant is death penalty eligible as authorized by Idaho law.

III. The Felony Murder Cases Cited by the Defendant are Inapplicable

Neither the present case before the Court nor the case of Chad Daybell involve felony murder charges. The attempt by the Defendant to apply the *Enmund* and *Tison* rulings is the proverbial attempt to put a square peg in a round hole. The Defendant has incorrectly relied on the

felony murder rule providing that a defendant is not eligible for the death penalty when the defendant is only convicted of felony murder and did not engage in a physical killing. *Enmund* rules that a defendant who is guilty of felony murder, but who did not commit the actual killing or did not intend for a killing to occur cannot receive the death penalty. As the Defendant notes in her brief, the *Enmund* Court held that the punishment for a defendant "must be tailored to his personal responsibility and moral guilt." *Defendant's Motion at 2, citing to Enmund, pg 801.*

The Defendant fabricates a two-prong *Enmund* test, which is non-existent, mis-leading, not supported by *Enmund*, and directly contradicted by *Tison.* The Defendant states: "The two-prong test of Enmund is not met where (1) the defendant has not killed or attempted to kill ***and*** (2) does not have the requisite intent that any of the deaths of Tylee Ryan, JJ Vallow or Tammy Daybell should be taken or contemplated that they would be taken." *Defendant's Motion at 3.* (emphasis added.) The ruling in *Enmund* does not create a two-prong test. The words "two-prong" never appear in *Enmund* nor does the Court ever create such a test. The language used by *Enmund* is: "Enmund did not kill ***or*** intend to kill and thus his culpability is plainly different from that of the robbers who killed." *Id* at 798. (Emphasis added.) *Enmund* does not require that a defendant perform the actual killing to be eligible for the death penalty; it holds that a person convicted of felony murder who was a minor participant in the underlying felony and who did not kill or intend a killing cannot be executed. *Id* at 801. *Enmund* further holds that punishment must be "tailored to his (the defendant's) personal responsibility and moral guilt." *Id.* It is entirely consistent with *Enmund* that a defendant who arranges and plans a murder for someone else to carry out could receive the death penalty.

The Defendant's attempt to create a two-prong test the Court never articulated or intended exposes the Defendant's faulty application of *Enmund* and *Tison* in the case before the Court. Felony murder is fundamentally different than pre-meditated murder or conspiracy to commit murder in that it requires no intent to kill, but arises out of a murder committed during the commission of another felony. *Enmund* is an example of a low-level participant who becomes liable for felony murder, in that the defendant only intended for a robbery to occur, was the getaway driver, and was not present when the murders occurred. If Enmund had intended that a murder take place as part of the robbery, pre-meditated murder or conspiracy to commit murder

would have been appropriate and the defendant would have been eligible for the death penalty - even if he hadn't committed the actual murder.

In further clarification of *Enmund,* the *Tison* Court held that an intent to kill was not required to justify the death penalty. "Only a small minority of those jurisdictions imposing capital punishment for felony murder have rejected the possibility of a capital sentence absent an intent to kill, and we do not find this minority position constitutionally required." *Tison v. Arizona*, 481 U.S. 137, 158 (1987)" A narrow focus on the question of whether or not a given defendant "intended to kill," however, is a highly unsatisfactory means of definitively distinguishing the most culpable and dangerous of murderers." *Id* at 157. The *Tison* Court reasoned that certain people with the intent to kill, such as in self-defense, are not even murderers. *Id.* However, those who don't intend to kill but exhibit such a callous disregard for human life, such as a torturer who doesn't care if their victim lives or dies, may justify the death penalty. *Id.* "We hold that the reckless disregard for human life implicit in knowingly engaging in criminal activities known to carry a grave risk of death represents a highly culpable mental state, a mental state that may be taken into account in making a capital sentencing judgment when that conduct causes its natural, though also not inevitable, lethal result." *Id* at 157, 158.

In the case before the court, the Defendant has been indicted with pre-meditated murder and conspiracy to commit murder. Both of these crimes differ from felony murder in that they require the State to prove that the Defendant intended for her victims to die. Contrary to the assertions of the Defendant, sufficient evidence existed for the Grand Jury to find probable cause that the Defendant intended for her children and Tammy Daybell to die. Further, there is sufficient evidence for a jury to conclude that the Defendant participated in the killing of her own children. This intent of the Defendant differentiates her from the defendants in *Enmund* and makes her eligible for the death penalty. As stated in *Enmund*, "It is fundamental that "causing harm intentionally must be punished more severely than causing the same harm unintentionally." *Id.*

CONCLUSION

The Defendant states in her motion "It is well established that the death penalty is reserved for the most egregious murders." *Defendant's Motion*, pg 2. She further quotes *Gregg v. Georgia* stating "[t]he death penalty is reserved for crimes that are 'so grievous an affront to humanity that the only adequate response may be the penalty of death.'" *Id* at 3. The State concurs with these

statements, and for this reason has filed a notice of intent to seek the death penalty in the case before the Court. The facts of this case are egregious and heinous. The evidence the State will introduce at trial, some of which a grand jury has already reviewed, will establish that the Defendant intended for her children and her boyfriend's wife to die, and that she affirmatively acted to make those deaths happen. The Defendant has failed to provide any authority whatsoever which would allow this Court to apply rulings regarding felony murder to conspiracy to murder or first-degree murder. As such, the State respectfully requests that the Court deny the Defendant's motion.

DATED this 12th day of January, 2023

/s/ Lindsey A. Blake
Lindsey A. Blake
Prosecuting Attorney for Fremont County

/s/ Rob H. Wood
Rob H. Wood
Prosecuting Attorney for Madison County

CERTIFICATE

I HEREBY CERTIFY that on this 12th day of January, 2023, that a copy of the foregoing OBJECTION was served as follows:

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By: /s/ Jodi L. Thurber