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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,

v.

CHAD GUY DAYBELL,

Defendant.

Case No.: CR22-21-1623

**RESPONSE TO MOTION FOR
DISCOVERY CONCERNING EVENTS
THAT WERE REVEALED IN LORI
VALLOW'S MOTION DATED
OCTOBER 27, 2021**

The State of Idaho provides the following response and objection to Defendant Daybell's Motion and respectfully requests this Court deny the Motion and vacate any hearing in this matter based on the following:

PROCEDURAL HISTORY

Defendant Vallow Daybell was found incompetent in the companion case, CR22-21-1624.1 After this finding, Defendant Vallow Daybell was referred for restorative treatment pursuant to Idaho Code §18-212. Proceedings on the competency issues have been sealed.

During a hearing in case CR22-21-1624, Prosecutor Wood informed this Court and

¹ While Co-defendants, Lori Norene Vallow AKA Lori Norene Daybell and Chad Guy Daybell have been assigned separate case numbers, this Court has consistently indicated that these matters are one case for trial. The State has a standing objection to the Co-defendants having separate case numbers and separate proceedings leading up to trial.

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counsel for Lori Vallow Daybell he had received communication from a private attorney in the State of Utah regarding Defendant Vallow Daybell reaching out to that attorney. There was nothing relayed to the State regarding any exculpatory statements made by Defendant Vallow Daybell. The State notified counsel and this Court out of an abundance of caution and as a professional courtesy. Prior to that hearing, it is the State's understanding that one of the attorneys for Defendant Vallow Daybell had spoken with an attorney at the same firm regarding the conversation.

Co-counsel for Defendant Lori Vallow Daybell, Mark Means, filed his Declared Motion(s) Re: (1) Motion for State to Disclose Brady Violations Disclosures; (2) Motion for Criminal Deposition(s); (3) Motion for out-of-state subpoena(s); and (4) Motion to Disqualify Idaho Department of Health and Welfare on October 27, 2021.² This was the first the State was made aware of any of the allegations regarding an employee from the State Hospital directing Defendant Vallow Daybell to make contact with a private attorney.³ Shortly thereafter, Defendant Daybell filed his motion.

ARGUMENT

Defendant Daybell is requesting discovery materials and information not allowed for under Idaho Criminal Rule 16, unknown to the State, or not within the State's possession and control. In addition, Defendant Daybell appears to be attempting to impose additional requirements on the State with regard to its obligation to comply with discovery requests and

² This Motion is referred to by Defendant Daybell as Lori Vallow's Motion dated October 27, 2021. It is referred to by the State as Motion for Disclosures. This Motion was only filed by Co-counsel Means and in no way indicated his Co-counsel signed off on the Motion.

³ The State was without any information regarding these allegations outside of what was contained in the Motion for Disclosures which didn't provide any evidence or support for the allegations. Since then the State and the Defense Counsel for Defendant Lori Daybell has been provided additional information from the Idaho Department of Health and Welfare which contradicts the allegations in Mark Means' Motion for Disclosures, but which was provided under seal, and is not within the State's discretion to disclose.

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procedures. This request is further confused by Defendant Daybell's request that the State be prohibited from communicating with the entities and/or individuals who he alleges possess the requested information. Further, there are mechanisms in place in the Idaho Criminal Rules and Idaho Statutes which allow for Defendant Daybell to gather the alleged information – if in fact, it exists. Defendant Daybell can comply with the Idaho Criminal Rules and Idaho Statutes governing the issuances of subpoenas to obtain any requested material from the Idaho Department of Health and Welfare and any third party rather than attempting to expand the State's burden without providing any authority or legal basis for his request.

I. Rule 16 of the Idaho Criminal Rules Governs Discovery and Either Prohibits or Does Not Require the Disclosure by the State of the Requested Discovery.

Rule 16 of the Idaho Criminal Rules governs discovery requests. It specifically outlines what discovery materials the State must turn over to a Defendant upon a written discovery request. *See I.C.R., Rule 16(b)(1-9)*. Further, subsection (g) outlines: “**Prosecution Information Not Subject to Disclosure.** (1) *Work Product*. Disclosure must not be required of: (A) legal research or records, (B) correspondence, or (C) reports or memoranda to the extent that they contain the opinions, theories or conclusions of the prosecuting attorney or members of the prosecuting attorney's legal staff....” Rule 16(b)(10) further provides: “Disclosure by Order of the Court. On motion of the defendant showing substantial need in the preparation of the defendant's case for additional material or information not otherwise covered by this Rule, and that the defendant is unable without undue hardship to obtain the substantial equivalent by other means, the court may order the additional material or information to be made available to the defendant. The court may, on the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.”

The Idaho Court of Appeals reiterates, “The prosecutor does not have a general duty to Response to Motion for Discovery Concerning Events that Were Revealed in Lori Vallow's Motion Dated October 27, 2021

collect evidence. *State v. Bryant*, 127 Idaho 24, 28, 896 P.2d 350, 354 (Ct. App. 1995). Nor is there a ‘constitutional requirement that the prosecution make a complete and detailed accounting to the defense of all police investigatory work on a case.’ *Moore v. Illinois*, 408 U.S. 786, 795, 92 S.Ct. 2562, 33 L.Ed. 2d 706 (1972); accord *United States v. Bagley*, 473 U.S. 667, 675, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985) (‘[T]he prosecutor is not required to deliver his entire file to defense counsel.’).” *State v. Boehm*, 158 Idaho 294, 300, 346 P.3d 311, 317 (Ct.App. 2015).

In *Boehm*, the Idaho Appellate Court found there was no discovery violation, or violation of due process, where the State referred the defendant to the sheriff’s office to obtain several requested items because they were not in the prosecutor’s possession or control. The Court focused on the fact, the requested discovery was not exculpatory in nature, and the prosecutor is not tasked with collecting evidence. *Id.* at 317.

The Defendant in this case is requesting the State turn over discovery which is strictly prohibited from disclosure and go beyond the requirements of the Idaho Criminal Rules and case law. Essentially the Defendant wishes the State to conduct his additional discovery for him. Pursuant to I.C.R. 16 and case law, the State provides the following response to each individual request of Defendant Daybell:

- 1) These are excluded from disclosure pursuant to Rule 16.
- 2) These are not required pursuant to Rule 16. Notwithstanding said objection, there are none in existence.
- 3) These are not required pursuant to Rule 16.4 Further, these communications would not be discoverable by Defendant Daybell as they deal with sealed proceedings in the companion case CR22-21-1624.

⁴ In addition, there are sealed court orders in case CR22-21-1624 which deal with this information but which the Response to Motion for Discovery Concerning Events that Were Revealed in Lori Vallow’s Motion Dated October 27, 2021

- 4) These are excluded from disclosure pursuant to Rule 16.
- 5) These are excluded from disclosure pursuant to Rule 16.
- 6) These are excluded from disclosure pursuant to Rule 16.
- 7) These are excluded from disclosure pursuant to Rule 16.
- 8) These are excluded from disclosure pursuant to Rule 16.
- 9) These are not required pursuant to Rule 16. In addition, this is not within the State's custody or control, and the State would refer the Defendant to the Idaho Department of Health and Welfare. The Defendant can follow the same procedure that would be required of the State to obtain this information which is to contact IDHW or seek a properly issued subpoena. The Defendant has failed to make a showing of substantial need for this information in preparation of the Defendant's case or that it would be unduly burdensome for him to obtain the information.
- 10) These are not required pursuant to Rule 16. In addition, this is not within the State's custody or control, and the State would refer the Defendant to the Idaho Department of Health and Welfare. The Defendant can follow the same procedure that would be required of the State to obtain this information which is to contact IDHW or seek a properly issued subpoena. The Defendant has failed to make a showing of substantial need for this information in preparation of the Defendant's case or that it would be unduly burdensome for him to obtain the information.
- 11) These are excluded from disclosure pursuant to Rule 16. Notwithstanding said objection, there are none in existence.

State is not at liberty to disclose.

12) This is not required pursuant to Rule 16 and is irrelevant. The Defendant has failed to make a showing of substantial need for this information in preparation of the Defendant's case.

13) This is not required pursuant to Rule 16. In addition, this is not within the State's custody or control, and the State would refer the Defendant to the Idaho Department of Health and Welfare. The Defendant can follow the same procedure that would be required of the State to obtain this information which is to contact IDHW or seek a properly issued subpoena. The Defendant has failed to make a showing of substantial need for this information in preparation of the defendant's case.

14) This is not required pursuant to Rule 16. In addition, this is not within the State's custody or control, and the State would refer the Defendant to the Idaho Department of Health and Welfare. The Defendant can follow the same procedure that would be required of the State to obtain this information which is to contact IDHW or seek a properly issued subpoena. The Defendant has failed to make a showing of substantial need for this information in preparation of the Defendant's case.

15) This is not required pursuant to Rule 16. In addition, this is not within the State's custody or control, and the State would refer the Defendant to the Idaho Department of Health and Welfare. The Defendant can follow the same procedure that would be required of the State to obtain this information which is to contact IDHW or seek a properly issued subpoena. The Defendant has failed to make a showing of substantial need for this information in preparation of the Defendant's case.

16) This is not required pursuant to Rule 16. In addition, this is not within the State's custody or control, and the State would refer the Defendant to the Idaho Department

of Health and Welfare. The Defendant can follow the same procedure that would be required of the State to obtain this information which is to contact IDHW or seek a properly issued subpoena. The Defendant has failed to make a showing of substantial need for this information in preparation of the Defendant's case. Further, this may implicate Ms. Vallow's rights.

17) This is not required pursuant to Rule 16 and is irrelevant. The Defendant has failed to make a showing of substantial need for this information in preparation of the Defendant's case.

Defendant Daybell appears to be attempting to circumvent the Idaho Criminal Rules regarding discovery to obtain access to information that is specifically prohibited from disclosure and to require the State to conduct his additional discovery for him. Defendant Daybell couches this argument by citing to multiple cases regarding capital punishment and heightened burdens; however, none of the cited authority has any reference to the broadening of the discovery process or duties on the State. He further provides a catchall that this Court must allow equal access to information without any authority for expanding the discovery process in violation of I.C.R. 16. The State recognizes that Defendant Daybell should have equal access to information; however, he should be required to follow and comply with the Idaho Criminal Rules and statutes regarding how and what discovery may be obtained and not be allowed to require the prosecuting attorneys to gather evidence for him. It is Defendant Daybell who is arguing the State should not have equal access to the information by requesting this Court order the State not be allowed to speak with the entities and individuals whom he claims have the alleged information. Attempting to join in on unfounded and outrageous allegations as a mechanism to thwart the Idaho Criminal Rules is inappropriate and shouldn't be entertained by this Court.

II. There is No Brady Violation or Valid Support for Any Such Claim.

I.C.R. 16(a) provides:

“Mandatory Disclosure of Evidence and Material by the Prosecution. As soon as practicable after filing of charges against the accused, the prosecuting attorney must disclose to defendant or defendant’s counsel any material or information in the prosecuting attorney’s possession or control, or that later comes into the prosecuting attorney’s possession or control, that tends to negate the guilt of the accused as to the offense charged or that would tend to reduce the punishment for the offense. The prosecuting obligations under this paragraph extend to material and information in the possession or control of members of the prosecuting attorney’s staff and of any others who have participated in the investigation or evaluation of the case who either regularly report, or have reported in that case, to the office of the prosecuting attorney...”

Further, Brady material is material or evidence in the possession of the State that is potentially exculpatory or tends to negate the guilt of a person charged with a crime. The concept of Brady material derives from the United States Supreme Court case *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196–97, 10 L. Ed. 2d 215 (1963). In *Brady v. Maryland*, the United States Supreme Court held “that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” 373 U.S. 83, 87, 83 S. Ct. 1194, 1196–97, 10 L. Ed. 2d 215 (1963).

There is no credible allegation the State has failed to disclose Brady material.⁵ Co-counsel Mark Means made the allegation, adopted by Defendant Daybell, in the Motion for Disclosures, filed in case CR22-21-1624, but the allegation and argument made in the Motion for Disclosures was misplaced and did not actually indicate any information or connection which would be indicative, or trigger, a Brady violation. The Motion for Disclosures indicates the

⁵ See State’s Response to Motion for Disclosures filed in case CR22-21-1624.

information was allegedly relayed to a private attorney in the State of Utah. There is no indication the State was aware, or ever made aware, of any of the statements allegedly made by Ms. Vallow Daybell which would be considered exculpatory. The State cannot turn over evidence not within its possession – or not in existence.

In *State v. Cochran*, the Idaho Court of Appeals determined there was no discovery violation when there was nothing to be found with what defense requested, and where the State never indicated that the evidence existed – when it didn't. 129 Idaho 944, 950, 935 P.2d 207, 213 (1997).

In addition, Co-counsel Means alleged Ms. Vallow Daybell informed him of information which no one else seems to have knowledge of, or possess. It appears Defendant Daybell is requesting to be provided the content of the alleged information in possession of Co-counsel Means and possibly Ms. Vallow Daybell.⁶ The State is not in possession or control of this information. Co-counsel Means does not indicate in the Motion for Disclosures that he made any attempt to follow up on the information, to the contrary, it seems that he did not, but instead, he simply makes multiple allegations against others. However, his allegations in no way indicate the State provided, or requested, any individual to act on the State's behalf in requesting Ms. Vallow Daybell make a phone call to a third-party private attorney.

Defendant Daybell cites to case law regarding situations there were claims that there was an actual government intrusion into an attorney-client relationship. The cited case law deals with situations in which an undercover officer is privy to conversations between a defendant and his/her counsel. Defendant Daybell then makes the claim those situations are analogous to the

⁶ Generally, this would be considered a privileged communication; however, Co-counsel Means has made this information public, or at least alluded to it, in his Motion for Disclosures. It would be up to this Court whether or not it is now discoverable by Defendant Daybell.

unfounded allegations he is attempting to have this Court adopt as evidence and/or fact. Unlike the case law cited by Defendant Daybell, there is no allegation the State, specifically prosecution, has been made privy to any conversations between Defendant Vallow Daybell and her counsel. The only allegations, which are unfounded, are that an employee of the State Hospital encouraged Defendant Vallow Daybell to speak with a private attorney – not associated with the State.

While Defendant Daybell indicates he believes N.C. is a state actor as an employee for the State Hospital, the case law cited by him does not make this finding in *New Jersey v. T.L.O.* – the Supreme Court indicates many individuals working for the State may be considered state actors or have Fourth Amendment restrictions, but there is no specific mention of employees of the State Hospital. Rather, a separate case, *Ferguson v. City of Charleston*, 532 U.S. 67 (2001) references *New Jersey v. T.L.O.* finding that [b]ecause MUSC is a state hospital, its staff members are government actors subject to the Fourth Amendment’s strictures. *Id.* at 76. This was in the context of MUSC’s program to drug test pregnant women who came to the hospital for obstetric care and involved turning the results over to law enforcement for criminal charges. The Court held that in prior cases, the “special need” of the permissible suspicion less search did not violate the Fourth Amendment as it was “divorced from the State’s general interest in law enforcement.” *Id.* at 79. Although *Ferguson* determines that staff members of a state hospital were government actors for that particular Fourth Amendment analysis, this is not a categorical rule in reviewing additional case law. Determining whether a staff member of a state hospital is a government actor turns on the underlying action of the hospital and staff and whether those actions are tied into a general law enforcement purpose. Suffice to say, this case does not stand for the proposition that Defendant is relying upon, a staff member for a state-run hospital is not

automatically a government actor.

Turning to I.C.R. 16, an employee of the Idaho Department of Health and Welfare and/or State Hospital, would not fall under the mandatory disclosure definition of the prosecutor, or of individuals the prosecutor is impugned to have knowledge from. The Idaho Department of Health and Welfare and the State Hospitals are distinct state entities from the prosecutor's office. The prosecutor's office is not privy to the information, policies, procedures, or specific patient information any more than a defense attorney who is representing a defendant in the subject case.

In addition, when a patient is receiving restorative treatment, the available information, and access to that information is governed by the Idaho Statutes §§18-210-18-212 and any applicable court orders. Idaho Statute §18-215 provides:

A statement made by a person subjected to psychiatric or psychological examination or treatment pursuant to sections 18-211, 18-212 or 19-2522, Idaho Code, for the purposes of such examination or treatment shall not be admissible in evidence in any criminal proceeding against him on any issue other than the defendant's ability to assist counsel at trial or to form any specific intent which is an element of the crime charged, except that such statements of a defendant to a psychiatrist or psychologist are relevant for impeachment purposes may be received subject to the usual rules of evidence governing matters of impeachment.

It is clear there is an understanding that when a defendant is receiving treatment under the specified statutes, statements may be made which are against the defendant's interests. This places the employees of a State Hospital and the Idaho Department of Health and Welfare in a unique position and a safeguard has been specifically carved out in I.C. §18-215. This is a different scenario than the references by Defendant Daybell to Fourth Amendment searches and seizures, as well as the fact the State, specifically the prosecution, did not request any action from, or even communicate, with N.C.

Further, Defendant Daybell references the State did not inform the Court or counsel of the phone call between Prosecutor Wood and Mr. McConkie. This is completely false. The Response to Motion for Discovery Concerning Events that Were Revealed in Lori Vallow's Motion Dated October 27, 2021

State did in fact notify counsel for Defendant Vallow Daybell, Jim Archibald, immediately after receiving the communication from private counsel, and also informed this Court during a court proceeding in CR22-21-1624 that a phone call had taken place between Prosecutor Wood and a private attorney – not Mr. McConkie. There was no conversation between Mr. McConkie and Prosecutor Wood. Further, there is no exculpatory information to provide to Defendant Daybell regarding the content of the conversation.

III. Defendant Daybell Has Failed to Provide Any Basis or Support for His Request to Call Prosecutor Wood as a Witness.

The Idaho Supreme Court provides, “[w]hether a defending or prosecuting attorney may testify in a case he is trying is within the discretion of the district court. *United States v. Buckhanon*, 505 F.2d 1079, 1084 (8th Cir. 1974); *Gajewski v. United States*, 321 F.2d 261, 268 (8th Cir. 1963). *cert. denied*, 375 U.S. 968, 84 S.Ct. 486, 11 L.Ed.2d 416 (1964). Requests for such testimony are disfavored. *United States v. Prantil*, 764 F.2d 548, 551 (9th Cir. 1985); *United States v. Dupuy*, 760 F.2d 1492, 1498 (9th Cir. 1985). The party seeking such testimony must demonstrate that the evidence is vital to his case, and that his inability to present the same or similar facts from another source creates a compelling need for the testimony. *See Gajewski*, 321 F.2d at 269 (defendant must show prosecutor ‘possesses information vital to the defense’); *Prantil*, 764 F.2d at 551 (‘a defendant has an obligation to exhaust other available sources of evidence before a court should sustain [his] efforts to call a participating prosecutor as a witness’); *United States v. Tamura*, 694 F.2d 591, 601 (9th Cir. 1982) (movant must demonstrate a ‘compelling need’ for opposing counsel’s testimony).” *State v. Aguilar*, 135 Idaho 894, 895-896, 26 P.3d 1231, 1232-1233 (2001).

Defendant Daybell’s indication he intends to call Prosecutor Wood as a witness is without merit and clearly does not meet the standard required for a defendant to call a prosecutor as a

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witness. Prosecutor Wood is an attorney for the State, and as such, he is not a witness in these proceedings. Defendant Daybell has other methods available to him to obtain the information he alleges exists – if, in fact, it exists. Further, there is no requirement to have an adversarial proceeding for Defendant Daybell to subpoena information from the Idaho Department of Health and Welfare or Mr. McConkie. He would simply need to follow the Idaho Criminal Rules and statutes, which to the State’s knowledge, he has not attempted to do. The State would be required to follow the same process to attempt to obtain the information being requested by Defendant Daybell. As stated above, the Idaho Department of Health and Welfare is a separate entity from the Prosecuting Attorney’s Offices, and as such, the Prosecuting Attorney’s Offices are not privy to documents in their possession and control.

IV. Defendant Daybell’s Requests are Premature.

The unverified allegations which are being adopted by Mr. Daybell are not properly before this Court. Defendant Daybell has requested an evidentiary based on the allegations made in his filing; however, there has been no testimony or showing of the veracity of the allegations at this point, and the State would request this Court not adopt or accept such unfounded statements. The State would request these be stricken, until or unless, appropriate evidence is presented to this Court in compliance with the Rules of Evidence. Due to this, Defendant Daybell’s motion is premature. Defendant Daybell would need to properly present his allegations to this Court at an evidentiary hearing for a finding as to whether or not there is any veracity to them prior to requesting an evidentiary hearing regarding the merits of his motion. The only witness that has purported to have knowledge of these allegations is Counsel Means, and he states, under penalty of perjury, this information was provided to him by Lori Vallow Daybell.

The State would need to be permitted the opportunity to cross-examine any witness(es)

Defendant Daybell may call – especially since the State was first made aware of these allegations in the Motion for Disclosures which Defendant Daybell refers to as Lori Vallow’s Motion. Until such time as there has been adequate and appropriate evidence presented to this Court, it would appear Defendant Daybell has failed to meet any burden with showing why his extraordinary requests should be considered.

V. There is No Basis to Appoint a Special Prosecutor.

There are no grounds or law which support Defendant Daybell’s request to appoint a special prosecutor to handle an evidentiary hearing on this motion in this matter. Idaho Code §31-2603 governs the appointment of a Special Prosecutor, under what conditions it is required and whom may make the request. This case is appropriately being handled by the Fremont County Prosecuting Attorney’s Office where jurisdiction is proper and no conflict exists.

CONCLUSION

Defendant Daybell again mischaracterizes prior statements made by the prosecution. The State has indicated that it doesn’t intend to try this case publicly – meaning the State has no interest in litigating this case through statements made to the media and baseless allegations. The State intends to ensure the integrity of this case and fairness to all involved in the process - including the Defendants. The State will continue to try to preserve the integrity and fairness of this case for all involved.

Defendant Daybell’s motion is without merit, fails to provide any established or verified allegations to support his request(s), fails to provide any legal authority to support his requested relief and is premature. Wherefore, the State respectfully requests this Court deny Defendant Daybell’s Motion in full and vacate any hearing on this motion.

DATED this 30th day of November, 2021

/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 OF SERVICE

I HEREBY CERTIFY that on this 30 day of November, 2021, that a copy of the foregoing RESPONSE TO MOTION FOR DISCOVERY CONCERNING EVENTS THAT WERE REVEALED IN LORI VALLOW'S MOTION DATED OCTOBER 27, 2021 was served as follows:

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By:  _____