Electronically Filed 1/25/2023 4:32 PM Seventh Judicial District, Fremont County Abbie Mace, Clerk of the Court By: Becky Harrigfeld, Deputy Clerk

Lindsey A. Blake, ISB #7920 Rob Wood, ISB #8229 OFFICE OF THE FREMONT COUNTY PROSECUTING ATTORNEY 22 W. 1st N. St. Anthony, ID 83445

Tel: 208-624-4418

Email: prosecutor@co.fremont.id.us

## 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.

MOTION TO COMPEL

Case No.: CR-22-21-1624

LORI NORENE DAYBELL,

Defendant.

The State of Idaho, through the Fremont County Prosecuting Attorney's Office, asks the Court for an order compelling the Defendant to answer the State's Request for Discovery dated June 15, 2021.

When the State received no response to its request, the State sent a letter to counsel requesting discovery be provided on December 30, 2022. Counsel for Defendant Lori Norene Daybell provided the State with an incomplete notice of alibi and a limited witness list in response to the State's letter for discovery. Noticeably missing from disclosure were the time of the alleged alibi, the names of any expert witnesses and any evidence connected to the penalty phase of the case.

Idaho Code 19-2515 (6) specifically outlines that discovery for the penalty phase of a capital trial is controlled by ICR 16:

At the special sentencing proceeding, the state and the defendant shall

be entitled to present all relevant evidence in aggravation and mitigation.

Disclosure of evidence to be relied on in the sentencing proceeding shall be made in accordance with Idaho criminal rule 16. Evidence admitted at trial shall be considered and need not be repeated at the sentencing hearing.

Discovery the Defense must provide pursuant to I.C.R. 16 (c) and applicable for its use in the entire trial includes:

- (c) Disclosure of Evidence by the Defendant on Written Request. Except as otherwise provided in this rule, the defendant must, at any time following the filing of charges against the defendant, on written request by the prosecuting attorney, disclose the following information, evidence and material to the prosecuting attorney:
- (1) Documents and Tangible Objects. On written request of the prosecuting attorney, the defendant must permit the prosecuting attorney to inspect and copy or photograph:
  - (A) books,
  - (B) papers,
  - (C) documents,
  - (D) photographs, and
  - (E) tangible objects,

or copies or portions of them, that are in the possession, custody or control of the defendant, and that the defendant intends to introduce in evidence at the trial.

- (2) Reports of Examinations and Tests. On written request of the prosecuting attorney, the defendant must permit the prosecuting attorney to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case if they are within the possession or control of the defendant, that the defendant intends to introduce in evidence at the trial, or that were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to testimony of the witness.
- (3) *Defense Witness*. On written request of the prosecuting attorney, the defendant must furnish the prosecuting attorney a list of names and addresses of witnesses the defendant intends to call at trial.

(4) Expert Witnesses. On written request of the prosecuting attorney, the defendant must provide a written summary or report of any testimony that the defense intends to introduce pursuant to Rules 702, 703 or 705 of the Idaho Rules of Evidence at trial or hearing. The summary provided must describe the witness's opinions, the facts and data for those opinions and the witness's qualifications. Disclosure of expert opinions regarding mental health must also comply with the requirements of Idaho Code § 18-207. The defense is not required to produce any materials not subject to disclosure under subsection (h) of this Rule, or any material otherwise protected from disclosure by defendant's constitutional rights.

To date, no additional witness names, reports, documents or any items related to expert testimony or penalty phase have been supplied.

Therefore, the State requests that the Court order the Defendant to answer the State's Requests for Discovery dated June 15, 2021, immediately or in the alternative exclude any such evidence or expert testimony that has not been disclosed.

RESPECTFULLY SUBMITTED this 25th 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

## **CERTIFICATE**

I HEREBY CERTIFY that on this 25<sup>th</sup> day of January, 2023, that a copy of the foregoing MOTION TO COMPEL was served as follows:

John Prior		U.S. Mail	
john@jpriorlaw.com		Hand Delivered	
		Courthouse Box	
		Facsimile:	
	×	File & Serve	
		Email	
Jim Archibald		U.S. Mail	
		Hand Delivered	
		Courthouse Box	
		Facsimile:	
	×	File & Serve	
		Email	
	By: Wecham		
	Tiffany Mecham		