

**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,

Defendant.

Case No. CR22-21-1624

ORDER

ON CROSS-MOTIONS IN LIMINE

Pending before the Court are cross-motions in limine. Inasmuch as the motions are interrelated, the Court, after full consideration of the record, the arguments of counsel, and relevant legal authority issues the following consolidated order on the motions in limine.

I. FACTS AND PROCEEDINGS¹

On January 27th, 2023, the State of Idaho filed a MOTION IN LIMINE ON MENTAL HEALTH EVIDENCE. On February 2, 2023, Vallow Daybell filed an OBJECTION TO STATE'S MOTION RE: MENTAL HEALTH EVIDENCE. The Court called a hearing on the State's motion on February 23, 2023. During the hearing the parties argued the motion and counsel for Vallow Daybell made an oral motion to preclude a state-witness, Michael Welner, from testifying during the State's case-in-chief. The Court heard argument on the oral motion, and the State's motion was GRANTED in part on the issue of precluding Vallow Daybell from using an expert on mental health pursuant to the strictures of Idaho Code Section 18-207(4). The Court took the issue of precluding Welner from testifying under advisement. While the decision was pending, on March 5, 2023, Vallow Daybell filed a MOTION IN LIMINE TO EXCLUDE LATE-DISCLOSED EVIDENCE. The State filed an

¹ The full factual history is not set forth herein.

OBJECTION to the Vallow Daybell's motion in limine. The Court heard the parties in argument during a hearing on March 15, 2023.

II. STANDARD OF REVIEW

Trial courts have broad discretion when ruling on a motion in limine so we review the district court's decision to grant or deny a motion in limine for abuse of discretion." *Cramer v. Slater*, 146 Idaho 868, 878, 204 P.3d 508, 518 (2009) (quoting *Puckett v. Verska*, 144 Idaho 161, 167, 158 P.3d 937, 943 (2007)). "A trial court does not abuse its discretion if it (1) recognizes the issue as one of discretion, (2) acts within the boundaries of its discretion and applies the applicable legal standards, and (3) reaches the decision through an exercise of reason." *State v. Guess*, 154 Idaho 521, 528, 300 P.3d 53, 60 (2013) (quoting *Johannsen v. Utterbeck*, 146 Idaho 423, 429, 196 P.3d 341, 347 (2008)). The Court freely reviews questions of law. *State v. Meister*, 148 Idaho 236, 239, 220 P.3d 1055, 1058 (2009).

State v. Richardson, 156 Idaho 524, 527, 328 P.3d 504, 507 (2014).

III. ANALYSIS

a. State's motion in limine.

As stated above, the State seeks an order precluding Vallow Daybell from raising conditions of mental health at trial because the deadline for Vallow Daybell to raise any issue of mental condition and to call experts concerning mental conditions was at least ninety (90) days in advance of trial. *See* I.C. 18-207(4). Vallow Daybell did not object, per se, to an order but requested that given a ruling that Vallow Daybell would not be permitted to introduce an expert to testify on a condition of mental health during a guilt phase of the trial, that the State be barred from calling Michael Welner to testify.

Therefore, the Court GRANTS the State's motion in limine to prevent Vallow Daybell from introducing evidence of a mental condition in contravention of Idaho Code Section 18-207(4); and upon representation from the State that it does not plan to call Welner during its case-

in-chief, and having considered the rationale argued by the Defense that absent evidence of a mental condition being presented by the Defense, Welner's testimony would be irrelevant, the Court also GRANTS Vallow Daybell's oral motion to preclude the State from calling Welner to testify. However, should Vallow Daybell open the door and introduce evidence on the issue of a mental condition within the scope of Welner's expertise, the State would be permitted to call Welner to testify.

b. Vallow Daybell's motion in limine to preclude the introduction of late-disclosed evidence.

On March 5, 2023, Vallow Daybell filed a motion in limine seeking an order from the Court to preclude permitting the State to present all of the evidence contained in its Thirteenth Supplemental Discovery Disclosure, filed February 27, 2023, at 4:07 p.m., arguing that the discovery was both late and so substantial that the Defense was irreparably hindered in being prepared for trial as a result of the discovery "dump."

The State objected and provided clarification about much of the information disclosed in the Thirteenth Supplemental Discovery Disclosure.

In response, Vallow Daybell filed a Reponse and attached an AFFIDAVIT OF MARY C. GOODY, the mitigation specialist to Vallow Daybell's defense team.

The Court heard the parties in argument on March 15, 2023, and upon consideration of other pending motions, the Court, in an oral ruling given March 21, 2023, struck the death penalty as a sentencing option from this case and instructed counsel that a decision on the motions in limine would be issued in light of that ruling.

In reviewing the motions and the Thirteenth Supplemental Discovery Disclosure, the Court has reviewed the arguments and summarized categories of evidence and makes the following rulings:

“702” Disclosures/Reports:

The deadline to disclose witnesses was March 20, 2023. The State’s Thirteenth Supplemental Discovery Disclosure was a timely disclosure and none of the witnesses disclosed, excepting Michael Welner, in the Thirteenth Supplemental Discovery Disclosure will be barred from testifying at trial. Vallow Daybell will have the opportunity to cross-examine the witnesses disclosed by the State. As such, Vallow Daybell’s motion in limine to prevent the testimony of the witnesses disclosed through the Thirteenth Supplemental Discovery Disclosure is DENIED.

Arizona Certified Documents:

These are documents that were previously disclosed and this updated disclosure merely included the certified copies of the same substantive evidence. Accordingly, Vallow Daybell’s motion in limine to preclude the Arizona Certified Documents comprising 25 pages is DENIED.

Astrea Report (“Dr. Green”) (38 pages):

This report was disclosed to both the State and Defense on the same date the State received it on February 23, 2023. The late timing of the receipt of this report is attributable to disputes over consumptive DNA testing that have been thoroughly litigated in this case. Any potential prejudice which may ensue from the results of testing of the DNA is purely speculative at this time. While neither side will have an opportunity to obtain results prior to trial, Vallow Daybell has insisted on trial beginning as scheduled. Thus, that risk is one borne by the Defense, knowing in advance of trial that the outstanding DNA evidence could have materiality to her case. Accordingly, Vallow Daybell’s motion in limine to preclude the use of the Astrea Report is DENIED.

FBI REPORTS and witnesses included in the FBI REPORTS:

Vallow Daybell argues that late disclosed reports from the FBI should be precluded from introduction and the witnesses interviewed by the FBI should be precluded. The State clarified that 24 of 25 enumerated FBI Interviews had been previously disclosed to counsel; 23 of the 25 had been disclosed on August 9, 2021. One witness interview—Jeanie Martin—was not disclosed in the August 9, 2021 discovery delivery.

The State further clarified that the substance of these reports had been disclosed to the defense and that this final disclosure was supplemental hand written notes above and beyond those reduced into reports generated by the FBI agents. Notably, these supplemental reports may not have any material alternation on the information already in the possession of the Defense. Accordingly, the motion in limine to preclude the use of the reports and to preclude the witnesses from testifying is DENIED; however, to the degree that any new information is provided to the Defense that was not disclosed prior to February 27, 2023, the Court will defer ruling on that information until it is ripe for review before the Court. “It is within the discretion of the trial court to rule on a motion in limine prior to trial or to withhold a decision on the motion until the evidence is offered at trial.” *State v. Dopp*, 129 Idaho 597, 603, 930 P.2d 1039, 1045 (Ct. App. 1996).

Fremont County:

The Defense argues that several interviews should be precluded and the witnesses barred from testifying. Specifically, the Defense raises the testimony of Audrey Barratario as problematic; however, the Defense has been provided with the Grand Jury transcripts which contain sworn testimony of Barratario. The remedy for the malady alleged by Defense is to cross-examine this witness and let the jury weigh the credibility of any testimony offered by Barratario, not to exclude a previously disclosed witness. Further, the other “Fremont County” categorized evidence was

previously disclosed to the Defense. Accordingly, as to this evidence, the Court will DENY the motion in limine for these witnesses and reports.

PATCTECH-Glenn Bard Report:

The State alleges this was a timely disclosed expert report, chiefly considering the extended deadline for expert reports of March 13, 2023. Because the Court does not have the report before it to review, the Court defers ruling on this piece of evidence. Counsel is permitted to re-raise the issue as to the PATCTECH report if needed during trial.

PYSCHIC LAMBERT REPORT:

Given the representations of the State that it is not introducing this evidence at trial, the Court will GRANT the motion in limine to bar its introduction.

REXBURG POLICE DEPARTMENT:

The representations of counsel for the State during the hearing indicate that the additional information given to the Defense from the Rexburg Police Department is updated evidence sheets and chain of custody reports for information and evidence previously disclosed. The Court does not find anything contained in this disclosure to require prohibiting the introduction of this information at trial. Accordingly, Vallow Daybell's motion in limine as to the information given by the Rexburg Police Department is DENIED.

SSA INVESTIGATOR MARK SAARI:

The record reflects that Mark Saari was a testifying witness at the Grand Jury and the testimony he offered there has unquestionably been disclosed to the Defense; however, the State represented that upon a recent meeting with this witness, the State learned of evidence Saari possessed and requested copies that the State then disclosed to the Defense. Again, these supplemental items may not have any material alternation on the information already in the

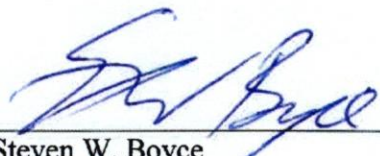
possession of the Defense. Accordingly, the motion in limine to preclude the use of the documents and to preclude the witness from testifying is DENIED; however, to the degree that any new information is provided to the Defense that was not disclosed prior to February 27, 2023, the Court will defer ruling on that information until it is ripe for review before the Court. "It is within the discretion of the trial court to rule on a motion in limine prior to trial or to withhold a decision on the motion until the evidence is offered at trial." *State v. Dopp*, 129 Idaho 597, 603, 930 P.2d 1039, 1045 (Ct. App. 1996).

IV. CONCLUSION

For the foregoing reasons, the State's Motion in Limine is GRANTED. Vallow Daybell's oral Motion in Limine re: Michael Welner is GRANTED consistent with the conditions herein; and Vallow Daybell's motion in limine is GRANTED in part and DENIED in part, consistent with the ruling herein.

IT IS SO ORDERED.

Dated this 22 day of March, 2023.


Steven W. Boyce
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 22 day of March, 2023, 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.

Parties Served:

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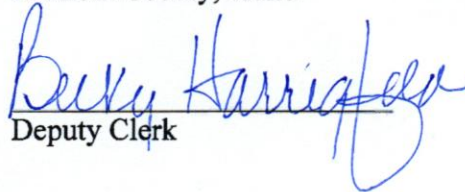
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Clerk of the District Court
Fremont County, Idaho

by


Deputy Clerk