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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.

LORI NORENE VALLOW
AKA LORI NORENE DAYBELL,

Defendant.

Case No.: CR22-21-1624

**MEMORANDUM REGARDING EXCLUSION OF
VICTIMS**

The State of Idaho, by and through the Fremont County Prosecuting Attorney's Office, submits the following Memorandum Regarding Exclusion of Victims.

FACTS

Joshua Jaxon "JJ" Vallow was seven years old at the time of his death. One of his accused murderers is his adoptive mother, Lori Vallow-Daybell. JJ Vallow was born to Dennis Todd Trahan and Mandy Leger on May 25, 2012. When Todd and Mandy were unable to care for JJ, he was provided a home by his paternal grandmother Kay Woodcock. JJ lived with Kay and her husband Larry for the first several months of his life. During this time, the Woodcock's had temporary custody and guardianship of JJ. Charles Vallow, Kay's brother, was married to Lori Vallow, who had other young children from another marriage. When Dennis and Mandy elected to give up their parental rights in an effort to provide JJ with a better upbringing than they could provide, Charles and Lori Vallow began adoption proceedings. After the adoption was finalized,

Kay Woodcock now found herself in the interesting position of being both the biological grandmother and the adoptive aunt of JJ. Kay Woodcock continued in her role as a grandmother, frequently having JJ visit her and Larry both at their home or where JJ lived. Although she may have legally held the familial title of “aunt,” Kay was considered by JJ and his adoptive family as JJ’s grandmother. When law enforcement first made contact with the Defendant on November 26, 2019, regarding JJ’s whereabouts, the Defendant referred to Kay as JJ’s Grandma.

In early 2019, Charles Vallow – recognizing Kay as JJ’s grandmother and desiring that JJ be taken care of by a loving family member – designated Kay to stand in his place as the provider for JJ, by making Kay Woodcock the beneficiary of his life insurance policy.

Although Charles Vallow had two other sons, Cole Vallow, who was an adult and Zach Vallow, who was an older teenager, at the time he adopted JJ, Charles considered Kay to be the person who would take his place as caretaker and provider for JJ in the event of his untimely demise. After Charles’ death, Kay Woodcock sought to act in the role Charles intended for her by reaching out repeatedly to assist JJ. As evidence of Kay’s dedication to JJ, it was she who first contacted police in late 2019, to express her concerns about JJ’s location and welfare. Over the ensuing days and weeks, as JJ’s whereabouts remained unknown and when the Defendant (now Lori Vallow-Daybell) refused to provide information, Kay became frantic. She frequently called law enforcement and her sister-in-law, the Defendant Lori Vallow-Daybell, in an effort to ascertain JJ’s location and determine if he was ok. After several months of worry, her greatest fears were realized when JJ’s body was found buried in the backyard of the Defendant’s new husband Chad Daybell.

Summer Shiflet, is the Defendant Lori Vallow-Daybell’s biological sister, biological aunt to Tylee Ryan and adoptive aunt to JJ Vallow. Tylee Ryan is the biological daughter of the Defendant Lori Vallow-Daybell and adoptive half-sister of JJ Vallow. Colby Ryan is the biological son of Lori Vallow-Daybell and adoptive half-brother of JJ Vallow.

ARGUMENT

I. Victims have Both a Constitution and Statutory Right to Attend Court Proceedings.

In an acknowledgement that the State of Idaho has long protected the rights of criminal defendants but had failed to protect the rights of crime victims, in 1994 the Idaho Constitution

was amended to protect the rights of victims of crime by adding Section 22. Shortly thereafter Idaho Code § 19-5306 was amended relating to victims' rights. With the amendment, a crime victim has a constitutional right "to be present at all criminal justice proceedings." Idaho Constitution Art. 1, sec 22(4), Idaho Code § 19-5306(1)(b). This constitutional right to be present at *all* proceedings is not limited to victims who will not also be called as witnesses.

Idaho Code § 19-5306(5)(a) defines "victim" as an individual who suffers direct or threatened physical, financial **or emotional harm** as the result of the commission of a crime or juvenile offense. (Emphasis added.) Further, Idaho Code § 19-5306(3) states it shall apply equally to the immediate families of homicide victims. See also Idaho Code § 19-5304(1)(e). "Immediate family" is not defined. It has however, been defined in other Idaho Code.

II. Immediate Family and/or a Personal Representative are Victims Pursuant to I.C. §19-5306(3) and/or §19-5306(5).

Idaho Code defines "immediate family" in at least five places. *See, e.g.*, I.C. § 15-5-315 (for the purposes of the guardian ad litem statutes "immediate family" includes but is not limited to "spouse, parents, siblings, children and next of kin"); I.C. § 20-101C (for prison furlough purposes "Immediate family is defined as a mother or father, brothers, or sisters, of the whole or halfblood, a wife or husband, or lawful issue."); I.C. § 41-1325 (for certain insurance fraud regulations "the term 'immediate family member' means a parent, mother-in-law, father-in-law, husband, wife, sister, brother, brother-in-law, sister-in-law, son-in-law, daughter-in-law, or a son or daughter."); I.C. § 44-1601 (for the purposes of farm labor contractor licenses " 'Immediate family member' means the spouse, children, brother, sister, mother or father."); I.C. §26-31-303 (for residential mortgage practices, " 'immediate family member' means a spouse, child, sibling, parent, grandparent or grandchild, and includes stepparents, stepchildren, stepsiblings, and adoptive relationships). In each case, both siblings and parents are included as "immediate family." *See also State v. Payne*, 146 Idaho 548, 575, 199 P.3d 123, 150 (2008) (interpreting the term "immediate family" for the purposes of the victim impact statement statute, I.C. § 19-5306). *State v. McNeil*, 158 Idaho 280, 284-85, 346 P.3d 297, 301-02 (Ct. App. 2014). In *McNeil*, the Court concluded both the victim's father and brother fell within the core meaning of "immediate family." *Id.* Federal code relating to homicide victims' families' rights in cold cases includes commonly understood immediate family members but then extends to parents-in-law, grandparents, and grandparents-in-law of murder victims. 34 U.S.C.A §60911.

One of the murdered victims in this case is JJ Vallow. As JJ's father, Charles Vallow would constitute a victim pursuant to I.C. § 19-5306(3). Due to his own murder, for which Defendant has been indicted in Maricopa County Arizona, he is no longer able to represent JJ as an immediate family member. Therefore, *his* immediate family or appointed personal representative would be entitled to step into his place as the immediate family of JJ. That would include Charles' sister, Kay Woodcock. Defendant should not be allowed to benefit from her alleged role in Mr. Vallow's death which has precluded him from exercising his right as a victim in this case (as JJ's father), and further precluding other affected persons from filling his role as the immediate family or personal representative, as a recognized victim of JJ's murder.

If the court concludes Kay Woodcock and/or Larry Woodcock are not immediate family members pursuant to I.C. § 19-5306(3), they certainly qualify as victims pursuant to I.C. § 19-5306(5). The Woodcocks have suffered direct emotional harm as the result of the commission of the crime(s) in this case. Whether the court views Ms. Woodcock as the biological grandmother or adoptive aunt, it is undisputed she is a close family member of a minor child who was murdered. It was Kay Woodcock who initiated the investigation into JJ's whereabouts based on her worries and fears as to his wellbeing. Without her contacting law enforcement, the disappearance and murder of JJ (and Tylee Ryan) may not have been discovered. Summer Shiflet, as the biological aunt to Tylee and adoptive aunt to JJ, has also suffered direct emotional harm due to Defendant's actions.

Additionally, Defendant was indicted in this case on May 25, 2021. At no time from May 25, 2021, almost two years ago, until March 29, 2023 has Defendant raised the issue that Mrs. Woodcock, or other family members, are not victims entitled to the constitutional and statutory rights afforded victims of crimes. Throughout the case, Ms. Woodcock and other family members have been allowed to attend zoom and in-court hearings with special accommodations given regarding their presence, access, seating, etc. The Court has allowed, and the Defendant has not objected to their sitting as victims in prior proceedings, thus indicating apparent recognition of their status as victims. Only now, five days before trial, has Defense raised the issue following the Court issuing its *sua sponte* order excluding witnesses pursuant to Idaho Rule of Evidence 615(a). After relying on the (at least implicit) representation that their victims' rights would be upheld and they could receive some degree of healing through taking a part in

the legal proceedings, to now suddenly rip the proverbial carpet out from under their feet seems a cruel request by Defendant.

III. A Victim Who May Also be a Witness is Not Subject to Exclusion from Court Proceedings.

Idaho Rule of Evidence 615(a) provides that a court “*may*” exclude witnesses during certain proceedings, thus giving the court discretion on whether to exclude all, some, or no witnesses from hearing other witnesses’ testimony. The permissive nature of IRE 615(a) is differentiated from IRE 615(b) which states, “Notwithstanding subsections (a)(1), (2), and (3) of this rule, in a preliminary hearing if either party requests it, the magistrate must exclude all non-party witnesses who have not been examined. However, rule expressly states that a court is not authorized to exclude “a crime victim whose exclusion is prohibited under Article 1, Section 22 of the Idaho Constitution. As victims, Kay Woodcock, Summer Shiflet, and Colby Ryan have a right to be present in all court proceedings and cannot be excluded, even in proceedings where they may be called as witnesses. While not specifically challenged, this same analysis is applicable to Tamara “Tammy” Daybell’s family members, including but not limited to, Tammy’s parents, siblings, and siblings’ spouses.

Even should the Court determine that Kay and Larry Woodcock do not get to stand in the place of their murdered brother to act as victim representatives for their murdered grandson, the Court should still find them to be victims based on their direct emotional harm. Even were the Court to somehow find they did not meet the statutory definition of “victim”, given their relationship to the actual victim and their prior treatment by the Court as victims, the Court should still exercise the discretion given it under the rule and allow their presence during trial.

CONCLUSION

The State of Idaho holds victims’ rights to be of paramount importance as evidenced by a constitutional amendment to ensure victims’ rights are properly protected. Victims of homicide cannot exercise their constitutional rights as a result of the actions of their killers. An accused killer should not be able to benefit from the absence of a victim nor should an accused killer be able to block the exercise of those rights by those that stand in the place of deceased victims.

Defendant now seeks to do exactly that. Defendant asks this court to exclude, *inter alia*, Kay and Larry Woodcock. Kay is the biological grandmother and legal aunt of JJ Vallow. They raised JJ during most of his first year of life and exercised the role of doting grandparents despite

holding the legal status of aunt and uncle. While “aunt” and “uncle” do not normally fall within the definition of “immediate family” to JJ Vallow, the man who would normally stand in JJ’s place for purposes of victim’s rights was also murdered. Defendant has been indicted for her involvement in a conspiracy for that murder. Because JJ’s father has been murdered, *his* immediate family should then be able to stand in his place. Kay and Larry Woodcock are immediate family under the statute as sister and brother-in-law. Alternatively, they have suffered direct emotional harm, similar to Summer Shiflet, as a result of Defendant’s actions and constitute victims pursuant to statute.

DATED this 31st day of March, 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 31st day of March, 2023, that a copy of the foregoing MEMORADUM REGARDING EXCLUSION OF VICTIMS was served as follows:

R. James Archibald
Jimarchibald21@gmail.com

- ☐ U.S. Mail
- ☐ Hand Delivered
- ☐ Courthouse Box
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/s/Lindsey A. Blake