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ISB No. 6428

Attorney for Appellant

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

v.

LORI NORENE VALLOW a/k/a
LORI NORENE DAYBELL,

Appellant.

Case No. 51091-2023

Fremont County Case No.
CR22-21-1624

**REPLY TO STATE'S OBJECTIONS
TO MOTION TO AUGMENT AND
SUSPEND**

Appellant Lori Daybell offers this short reply to the State's objections to her Motion to Augment and Suspend the Briefing Schedule.

1. Augmenting a portion of the Clerk's Record in *State v. Chad Daybell*:

Appellant has limited her request to the portion of the Clerk's Record from the companion case that corresponds in time with the district court's consideration of the State's motion to disqualify Lori Daybell's counsel. Appellant anticipates citing other

parts of that portion of the Clerk's Record from the companion case in her brief on appeal – beyond the specific ones mentioned by the State in its response – to demonstrate that matters were proceeding in *State v. Chad Daybell* that pertained to Lori Daybell's rights while her case was stayed. Given that the current record on appeal is well over 10,000 pages, adding this limited portion of the unsealed Clerk's Record in *State v. Chad Daybell* imposes neither an administrative burden nor prejudice to any party. If the request is denied, Appellant's counsel could be forced to file yet another motion to augment additional documents from the *State v. Chad Daybell* record, piecemeal, when the brief is filed.

2. Preparing transcripts on the same conflict of interest issue litigated in Case No. CR22-20-0838. While considering the revived conflict of interest issue, below, the district court took judicial notice of the entire record from Case No. CR22-20-0838:

MS. SMITH [special prosecutor]: According to my notes it's 22-20-0838.

THE COURT: Okay.

MS. SMITH: And it is attached to the filing itself as well, Judge, the ruling. But I would ask the court to take judicial notice of the whole court file, specifically because it's my understanding that counsel provided a waiver of conflict of interest to Judge Eddins for the issue that was raised in that case. And I think that is relevant for this court in its consideration of the issues raised by Mr. Prior.

THE COURT: All right. I can take judicial notice of the information in that case. I'll note, also for the record, I was the presiding judge on that case while it was pending, so I think that's appropriate for me to take judicial notice, which I'll do.

See Tr. 8/30/21, *State v. Chad Daybell*, p. 24 (provided separately to the Court and opposing counsel).

While it is true, as the State notes, that a *transcript* of those hearings does not yet exist, it does not follow that the district court failed to consider all or portions of the evidence or argument at those hearings, which were audio recorded in the magistrate division under the FTR system. But it should not matter, as the district court judicially noticed the “whole court file” and the “information in that case” at the State’s request, which would include the content of those hearings. And what occurred there is relevant here. For instance, it appears that Judge Eddins spoke directly to both Chad Daybell and Lori Vallow Daybell at the July 27, 2021 hearing, in Case No. CR22-21-0838, and they reaffirmed that they had signed written waivers of conflicts and that they stood by those. *See* Clerk’s Record, *State v. Lori Norene Vallow alk/a Lori Norene Daybell*, Dkt. 51091-2023, p. 79 (Judge Eddins’ Findings of Fact and Conclusions of Law re: Conflict, also attached as Exhibit B to Ms. Daybell’s Motion to Augment and Suspend.) The district court in this case expressly relied on Judge Eddins’ Findings of Fact and Conclusions of Law, in part, to disqualify Ms. Lori Daybell’s counsel. *See*, CR, pp. 457-73. What Judge Eddins himself relied on to make his findings and reach those conclusions is, in turn, therefore relevant.

Appellant is entitled to a full and complete record and to the effective assistance of counsel on appeal. All the records that she has requested to be augmented are

relevant and necessary. Accordingly, Appellate respectfully asks the Court to overrule the State's objections and to grant the Motion to Augment and Suspend in its entirety.

Respectfully submitted on this 24th day of January, 2025.

/s/Craig H. Durham
Craig H. Durham
Attorney for Appellant

CERTIFICATE OF SERVICE

The foregoing has been served on the following on this 24th day of January, 2025,
by filing through the Court's e-filing and serve system.

KENNETH JORGENSEN
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Attorney for Respondent

/s/Craig H. Durham
Craig H. Durham