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11 Attorney for LORI NORENE (DAYBELL) VALLOW

12 **IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF**  
13 **THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT**

14 STATE OF IDAHO,  
15 PLAINTIFF

16 Case No: CR22-20-0838  
17 CR22-20-0755

18 Vs.

19 LORI NORENE VALLOW,  
20 CHAD GUY DAYBELL  
21 DEFENDANTS

22 **DEFENDANT’S OBJECTION and RESPONSE**  
23 **TO MOTION TO COMPEL AND MOTION IN**  
24 **LIMINE<sup>1</sup>**

25 COMES NOW DEFENDANT LORI NORENE VALLOW (DAYBELL), by and through her Attorney of  
26 Record, Mark L. Means and state in opposition to State’s Motion to Compel, Amended Motion to  
27 Compel, Motion in Limine, Brief in Support of the State’s Motion in Limine.

28 **IN REGARD TO MOTION AND AMENDED MOTION TO COMPEL:** State served supplemental  
29 discovery requests on or about 2/23/21. They filed their motion to compel on or about: 2/25/21.

30 \_\_\_\_\_  
31 1 Please note that This matter was set for hearing on 3/8/21 before this  
32 Court with shorten time notice provided during status conference on or about  
33 3/2/21. Prosecutor’s Motion in Limine was filed on 3/2/21. Motion to compel  
34 was filed on 3/2/21 following discovery requests for expert information filed  
35 on 2/22/21. The various motions and briefs filed by the state with shorten  
36 time for response total approximately 37 legal brief/motion pages. Please  
note that Defendant Lori Vallow (Daybell) Motion to Compel was filed on  
1/8/21 and taken up before this Court on or about Feb. 2021.

1 Discovery responses to this request were not due at the time of filing their motion to compel in regard  
2 to this request. This motion should be denied as untimely.

3 If not denied, this request (attached) was seeking *expert disclosure information*. There appears  
4 in the record no timeline for disclosure of expert or lay witnesses. Furthermore, this applies to the  
5 informal survey conducted by lay witness for on and behalf of Mr. Chad Daybell and Mrs. Lori Vallow  
6 (Daybell). These persons notes, records, surveys have been provided and disclosed as exhibits intended  
to be introduced in the matter of transfer of this trial.

7 The expert retained in regard to transfer of trial/venue has been disclosed in a timely manner as  
8 Ironwood Insights for and on behalf of Mrs. Vallow (Daybell) along with its report, upon receipt of  
Counsel.

9 **IN REGARD TO STATE'S MOTION IN LIMINE:** Objection. Again, the State appears to attempt to  
10 hold the lay witnesses of the Defense to the standard of an expert, but at the time argues said lay  
11 witnesses are not experts. The State cannot have it both ways. By arguing they are not experts they  
12 cannot hold to an expert disclosure standard and the matter of testimony of lay witnesses is a  
13 trial/motion hearing issue.<sup>2</sup> The argument, on shorten notice, of lack of expert disclosure but fails to  
14 qualify as expert is a "house of cards" which cannot stand as it takes inconsistent positions.  
15 Furthermore, the Prosecution is arguing facts not in evidence. He refers to surveys, legal conclusions,  
16 expert conclusions as if an expert on surveys, etc. These arguments lack foundation and or consistency  
and as such denied with reservation for argument at the hearing.<sup>3</sup>

17 As I have not had time to adequately address a fourteen (14) page memorandum filed Saturday  
18 evening before this hearing, I will address as time allows the Motion in Limine. Again, the Prosecutor is  
19 arguing expert witness failure to disclose and if lay witness then not qualified as expert. If the resolution  
20 is to disclose as an expert that is easily remedied through disclosure, as Prosecution is somewhat late to  
21 disclose his expert. If resolution if lay witness not qualified to testify that is a trial/motion hearing  
determination. As all of some of the expected testimony will be admissible at the hearing.

22 In regard to Lay vs. expert argument is a follow: The admissibility of *testimonial*  
23 *evidence*, whether lay or expert, rests upon a three-pillared "foundation." The three pillars are:

24 \_\_\_\_\_  
25 2 Please note that only recently has the State discloses its expert in regard  
to Transfer of Trial/Venue. Despite this motion's filing months in advance of  
this disclosure.

26 3 Please note that Prosecution filed an additional memorandum on 3/6/21  
(Saturday) that is approximately 14 pages.

1 (1) competence; (2) relevance; and (3) reliability. The “strength” of the competence and  
2 reliability pillars required for the admission of lay testimony compared to that required for  
3 expert testimony is vastly different and beyond time allowances to argue. Here, the lay witness  
4 testimony at issue is admissible if said testimony is truthful, based upon the witnesses’ personal  
5 knowledge, and can be clearly communicated. Whether there exists minimally sufficient  
6 evidence from which a factfinder could find that a lay witness is truthful and that the lay  
7 witness’ testimony is based on his personal knowledge. Competence, personal knowledge, and  
8 opinions of lay witnesses are admissible. Competency requires ability to communicate  
9 adequately, tell the truth. Personal knowledge of witness is acquired through sight, hearing,  
10 taste, touch, smell. Opinions are allowed if rationally based on personal knowledge of witness  
11 and helpful to determination of material facts. All of these issues/determinations are to be  
12 made at the hearing and this motion should be denied.  
13  
14  
15

16 DATED this 8 day of March 2021.

17  
18 *M.L. Means*

19 \_\_\_\_\_  
20 Mark L. Means  
21 Advocate for Mrs. Lori Norene Vallow (Daybell)  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 8 day of March 2021, I caused a true and correct copy of the FOREGOING document to be forwarded by the method(s) indicated below, to the following:

MADISON COUNTY PROSECUTING ATTORNEY  Efile  
Email: [mcpo@madison.id.us](mailto:mcpo@madison.id.us)

Mr. John Prior  Efile  
Email: [john@jpriorlaw.com](mailto:john@jpriorlaw.com)

DATED this 8 day of March 2021.

Mark L. Means  
Mark L. Means  
Advocate for Mrs. Lori Norene Vallow (Daybell)