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**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISCTRICT
FOR THE STATE OF IDAHO, COUNTY OF FREMONT**

STATE OF IDAHO,)	Case No. CR22-21-1624
Plaintiff,)	
v.)	MOTION TO DISCLOSE
)	PENALTY PHASE
LORI NORENE VALLOW, aka LORI)	INFORMATION
NORENE VALLOW DAYBELL)	
Defendant.)	
_____)	

NOW COMES the Defendant, LORI NORENE VALLOW, by and through her counsel of record, R. JAMES ARCHIBALD and JOHN THOMAS, and moves the Court to order that the State disclose any information in its possession and/or the possession of any law enforcement agencies which might be potentially relevant or admissible at the penalty phase of this case, should that phase of this case ever be reached. Such

disclosures are required under the Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article I, §§ 1,6, 13 and 18 of the Idaho Constitution.

In support of this motion, undersigned counsel show unto the Court:

I.

A defendant is entitled to all material exculpatory information in the possession of the state, even if that material is only relevant to sentencing and is not in anyway relevant to issues related to guilt and innocence. “*Brady*, we reiterate, held that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to *punishment*.” *Banks v. Dretke*, ___ U.S. ___, 124 S.Ct. 1256, 1271, 157 L.Ed.2d. 1166, 1189 (February 24, 2004) (emphasis added). *See also Strickler v. Greene*, 527 U.S. 263, 294-95 (1999) (Supreme Court analyzes the effects that undisclosed evidence would have had on capital sentencing decision in assessing its materiality)

The state is required to disclose exculpatory information relevant to sentencing known to law enforcement personnel even if the prosecutor handling Defendant’s case is not personally aware of that information. In *Kyles v. Whitley*, 514 U.S. 419, 437-38 (1995), the United States Supreme Court ruled that the State is held liable for failing to disclose exculpatory information known to the police even if the prosecutor was unaware of the information.

[T]he individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police. But whether the prosecutor succeeds or fails in meeting this obligation (whether that is, a failure to disclose is in good faith or bad faith) the prosecution's responsibility for failing to disclose known favorable evidence rising to a material level of importance is inescapable.

Id. (citation omitted).

II.

Additionally, Defendant is entitled to discovery of relevant sentencing material even if that information is not technically exculpatory. The United States Supreme Court has made it unmistakably clear that a capital defendant must be given a fair opportunity to meet, rebut or explain any evidence which the State offers as a reason that the defendant should be sentenced to death. See *Gardner v. Florida*, 430 U.S. 349, 51 L.Ed. 2d 393 (1977), wherein the Court invalidated a death sentence because the sentencer relied upon a confidential pre-trial report not disclosed to defense counsel. See also *Presnell v. Georgia*, 439 U.S. 14, 58 L.Ed.2d 207 (1978) and *Lankford v. Idaho*, 500 U.S. 110 114 L.Ed.2d 173 (1991).

III.

Moreover, in *Lockett v. Ohio*, 438 U.S. 586, 57 L.Ed. 2d 973 (1978), the United States Supreme Court established the bedrock Eighth Amendment principle of capital litigation that the sentencer may not be precluded in any way from considering anything about the crime or the defendant proffered by the defendant as the basis for a sentence less than death. It is important to note just how broad the definition of “mitigating” is and that it include “any aspect of a defendant’s character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death.” 438 U.S. at 604. Thus, any evidence in the possession of the State and/or its agents which might serve to reduce the urge to punish harshly must be deemed mitigating.

IV.

WHEREFORE, the undersigned counsel respectfully request the Court to order the State to disclose any and all information potentially relevant to a possible penalty phase determination in this case, including, but not limited to:

A. Any evidence concerning any of the statutory aggravating factors listed in Idaho code, Title 19, section 2515(9).

B. Any information upon which the State might rely in rebuttal to any of the mitigating factors.

C. Any information concerning any of the mitigating factors pursuant to *Brady v. Maryland*, 373 U.S. 83, 10 L.Ed.2d 215 (1963), *Kyles*, and *Strickler*.

D. Any information which might reduce a juror's urge to sentence the Defendant to death, including, but not limited to:

1. Any expression of remorse by this Defendant.

2. Any information concerning cooperation by this Defendant with any law enforcement official.

3. Any information concerning a satisfactory adjustment to incarceration by this Defendant. The State is required to disclose such information pursuant to *Brady*, *Kyles*, *Strickler* and *Skipper v. South Carolina*, 476 U.S. 1 (1986).

E. Any information concerning victim impact in this case that might be offered pursuant to *Payne v. Tennessee*, 501 U.S. 808 (1991).

V.

Defendant further moves that all of this information be disclosed to Defendant sufficiently in advance of trial to allow Defendant and her counsel adequate time to fully investigate this information and to develop any evidence or witnesses that might be

developed as a result of the disclosure of this information. If the State is required to disclose information to a defendant, it does not meet its burden simply by disclosing the information at any point during the proceedings.

DATED this __24__ day of January, 2023.

_____/s/_____
R. James Archibald
Counsel for Lori Vallow Daybell

_____/s/_____
John Thomas
Co-Counsel for Lori Vallow Daybell

CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing **Motion to Disclose Penalty Phase Information** by eserve upon:

Lindsey Blake
Fremont County Prosecuting Attorney

Rob Wood
Madison County Prosecuting Attorney

This the 24th day of January, 2023.

_____/s/_____
John Thomas