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

STATE OF IDAHO,)	Case No. CR22-21-1624
Plaintiff,)	
v.)	MOTION FOR PRESELECTION
)	INSTRUCTION TO POTENTIAL
LORI NORENE VALLOW, aka LORI)	JURORS
NORENE VALLOW DAYBELL)	
<u>Defendant.</u>)	

NOW COMES the Defendant, by and through his undersigned counsel, and respectfully moves this Honorable Court pursuant to Article I, §§ 1, 6, 13 and 18 of the Idaho Constitution and the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution to instruct the potential jurors as to their duties in capital cases before jury selection begins. In support of the foregoing Motion, counsel shows the Court the following:

1. The Defendant is charged in the above-captioned case with First Degree Murder and

Conspiracy to Commit First Degree Murder and Grand Theft. The State has announced that the case will be tried as a capital offense.

2. The Defendant anticipates that the State will seek to remove any juror for cause whose views on capital punishment would "prevent or substantially impair the performance of his or her duties as a juror in accordance with his or her instructions and oath". Wainwright v. Witt, 469 U.S. 412 (1985).

3. To insure that potential jurors are not erroneously excluded because they do not have a full understanding of the duties that they must perform, it is necessary that the Court make clear to these jurors precisely what their role and duties are in a capital case. Wherefore, Defendant moves that all potential jurors be instructed as follows:

Members of the jury, the process we are about to begin is known as voir dire. The attorneys for the State and the Defendant will have the opportunity to ask you questions regarding your qualifications to serve on this jury. It is important that you be as honest as you can be in your responses to questions put to you by counsel.

LORI VALLOW DAYBELL is charged with First Degree Murder and Conspiracy to Commit First Degree Murder and Grand Theft. The penalty for both First-Degree Murder, and Conspiracy to Commit First Degree Murder and Grand Theft is either death or life in prison without the possibility of parole. Since one of the possible penalties for the offense of First Degree Murder and/ or Conspiracy to Commit First Degree Murder and Grand Theft is the Death Penalty, it is necessary that counsel ask you certain questions about your views regarding

the death penalty.

In this regard, I give you the following instructions: The law provides that the jury first hears the case and determines whether the defendant is guilty or not guilty. If the jury finds the defendant not guilty or guilty of an offense other than First-Degree Murder or Conspiracy to Commit First Degree Murder and Grand Theft, your jury service is complete. If the defendant is found guilty of First-Degree Murder, and / or Conspiracy to Commit First Degree Murder and Grand Theft then the jury must consider the issue of punishment. If the Defendant is found guilty of First-Degree Murder and /or Conspiracy to Commit First Degree Murder and Grand Theft, then the State and the Defendant have the opportunity to present evidence with regard to punishment. The jury then will hear argument from the State and the Defendant for or against a sentence of death. The Court then will give the jury instructions as to the law that applies regarding punishment. Each juror will be required to decide:

- (1) Whether the State has proved beyond a reasonable doubt the existence of any aggravating circumstances - the Court will define what constitutes an aggravating circumstance;
- (2) Whether the State has proved beyond a reasonable doubt that the aggravating circumstance or circumstances found is, or are, sufficient to outweigh any mitigating circumstance or circumstances that you might find; and
- (4) Whether the State has proved beyond a reasonable doubt that any aggravating circumstance or circumstances that you find is, or are, when

considered together with the mitigating circumstances found, sufficiently substantial to call for the imposition of the death penalty.

To repeat, the jury only considers punishment if it first finds the Defendant guilty of First Degree Murder and /or Conspiracy to Commit First Degree Murder and Grand Theft.

If you are selected as a juror you will take an oath that you will try all matters that come before you and render true verdicts according to the evidence. If the Defendant is found guilty of First Degree Murder and or Conspiracy to commit First Degree Murder and Grand Theft, then the jurors' duty would be to follow conscientiously the instructions of the Court regarding the sentence and to consider fairly both of the penalties provided by law -- the death penalty and life imprisonment without parole regardless of your personal views concerning capital punishment. It is acceptable for jurors to have different opinions about the death penalty and to have different views about what circumstances call for the death penalty. You are never required to return a sentence of death in any case. The law does require however, that you give consideration to both penalties notwithstanding your personal views regarding capital punishment, just as it is a juror's duty to apply the law as the Court explains it to you, not as you think it is or think it should be.

The questions counsel will be asking you or similar questions are asked in every case of First Degree Murder and/ or Conspiracy to commit First Degree Murder and Grand Theft in which one of the possible penalties is death. The law requires that such questions be asked. In responding to the questions concerning

the death penalty, you must keep in mind your duty as a juror as I have just explained it to you.

DATED this 24th 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 for Pre-Selection Instructions to Potential Jurors** by Eservice upon:

Lindsey Blake
Fremont County Prosecuting Attorney

Rob Wood
Madison County Prosecuting Attorney

This the 24th day of January, 2023.

_____/s/_____
John Thomas