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Attorneys for the State

**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

**RESPONSE TO DEFENDANT'S
MOTION FOR PRE-SELECTION
INSTRUCTIONS**

The State of Idaho, by and through the Fremont County Prosecuting Attorney's Office, provides the following response to the Defendant's Motion for Pre-Selection Instruction to Veniremen. The State joins in part, and objects in part, with the Defendant's request.

The nature and complexity of this co-defendant, co-conspirator triple homicide where a jury may consider the death penalty merits guidance to those individuals selected as part of the venire panel. The nature and topic of the charges and potential punishment necessitate allowing the parties to ask questions of the potential jurors who have been given a framework or guidance on the questions they may face. Therefore, the State joins in the Defendant's request for some preselection instruction of the venire panel.

However, the State objects to the language tendered by the Defendant as it misstates the law in Idaho, fails to adequately outline the process jurors will have to follow in this matter and is not based on Idaho pattern jury instructions. The State has drafted a proposed instruction based on the

Response to Defendant's Motion for Pre-selection Instruction

following specific Idaho instruction tendered by the Supreme Court:

ICJI 108 CONDUCT OF JURORS (modifications by the State in bold and **underlined.**)

ICJI 202 DETERMINING FACTS FROM THE EVIDENCE AND DISREGARDING
NON-EVIDENCE (modifications by the State in bold and **underlined.**)

ICJI 001 OPENING COMMENTS AND VOIR DIRE (STRUCK JURY) (modifications
by the State in bold and **underlined.**)

ICJI 1702 PUNISHMENT A CONCERN, CAPITAL CASE (modifications by the State in
Bold and **underlined.**)

ICJI 1703 JURY MUST NOT CONSIDER PENALTY IN GUILT PHASE OF CAPITAL
CASE (modifications by the State in bold and **underlined.**)

ICJI 1704 NATURE OF HEARING (modifications by the State in bold and **underlined.**)

See attached Proposed Instruction A and Proposed Instruction B.

The State requests the Court grant its request for use of preselection instructions as provided
by the State.

RESPECTFULLY SUBMITTED this 2nd day of February, 2023.

/s/Lindsey A. Blake
Lindsey A. Blake
Fremont County Prosecuting Attorney

/s/Rob H. Wood
Rob H. Wood
Madison County Prosecuting Attorney

CERTIFICATE

I HEREBY CERTIFY that on this 2nd day of February, 2023, that a copy of the foregoing MOTION TO COMPEL was served as follows:

John Prior
john@jpriorlaw.com

- U.S. Mail
- Hand Delivered
- Courthouse Box
- Facsimile:
- File & Serve
- Email

James Archibald
Jimarchibald21@gmail.com

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John Thomas
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- U.S. Mail
- Hand Delivered
- Courthouse Box
- Facsimile:
- File & Serve
- Email



Tiffany Mecham

ICJI 001 OPENING COMMENTS AND VOIR DIRE (STRUCK JURY) with other ICJI instructions (modifications by the State in **bold** and underline.)

INSTRUCTION NO.

This is the case of State of Idaho v. the Defendants **Chad Guy Daybell and Lori Norene Vallow Daybell.** Are the parties ready to proceed?

~~———— In a moment the Clerk will call the roll of the jury. When your name is called you will also be identified with a number. Please remember your number as we will be using it later in the jury selection process.~~

~~———— The Clerk will now call the roll of the jury.~~

Ladies and Gentlemen, you have been summoned as prospective jurors in the lawsuit now before us. The first thing we do in a trial is to select **12** ~~{6}~~ jurors and, perhaps, ____ alternate jurors from among you.

I am [Insert name of Judge], the judge in charge of the courtroom and this trial. The deputy clerk of court, [Insert name of Clerk], marks the trial exhibits and administers oaths to you jurors and to the witnesses. The bailiff, [Insert name of Bailiff], will assist me in maintaining courtroom order and working with the jury. The Court reporter, [Insert name of Reporter], will keep a verbatim account of all matters of record during the trial.

Each of you is **preliminarily** qualified to serve as a juror of this court. This call upon your time does not frequently come to you, but is part of your obligation for your citizenship in this state and country. No one should avoid fulfilling this obligation except under the most pressing circumstances. Service on a jury is a civic and patriotic obligation which all good citizens should perform.

Service on a jury affords you an opportunity to be a part of the judicial process, by which the legal affairs and liberties of your fellow men and women are determined and protected under our form of government. You are being asked to perform one of the

highest duties of citizenship, that is, to sit in judgment on facts which will determine the guilt or innocence of persons charged with a crime.

To assist you with the process of selection of a jury, I will introduce you to the parties and their lawyers and tell you in summary what this action is about. When I introduce an individual would you please stand and briefly face the jury panel and then retake your seat.

The state of Idaho is the plaintiff in this action. The lawyer representing the state is [Insert name of Prosecuting Attorney], a member of the county prosecuting attorney's staff. [The prosecuting attorney will be assisted by [Insert name of Officer assisting Prosecutor], a law enforcement officer.]

The defendants in this action ~~is~~ **are** [Insert name or names of defendants]. [The lawyer representing [Insert name of Defendant 1] is [Insert name of Defendant 1's Lawyer]. [The lawyer representing (Insert name of Defendant 2) is (Insert name of Defendant 2's Lawyer).] [Repeat for each additional Defendant.]]

I will now read you the pertinent portion of the ~~[information]~~ **[indictment]** ~~[complaint]~~ which sets forth the charges against **each** defendant. The ~~[information]~~ **[indictment]** ~~[complaint]~~ is not to be considered as evidence but is a mere formal charge against the defendant[s]. You must not consider it as evidence of guilt and you must not be influenced by the fact that ~~[a charge has]~~ **[charges have]** been filed.

With regard to [Insert name of Defendant 1], the [information] [indictment] [complaint] charges [in Count I] that [Insert name of Defendant 1], on or about the [Insert charging language against Defendant 1, Count I].

[The (information) (indictment) (complaint) in Count II charges that defendant, (Insert name of Defendant 1), on or about the (Insert charging language against Defendant 1, Count II).] [Repeat for each additional charge against Defendant 1.]

To these charges both Mr. Daybell and Ms. Vallow Daybell have~~Insert~~
~~Mr./Mrs./Ms.] [Insert Defendant 1's Surname]~~ has pled not guilty.

[With regard to (Insert name of Defendant 2), the (information) (complaint) charges that ([Insert name of Defendant 2), on or about the (Insert charging language against Defendant 2: Count I.).

[The (information) (complaint) in Count II charges that defendant, (Insert name of Defendant 2), on or about the (Insert charging language against Defendant 2, Count II).]
[Repeat for each additional charge against Defendant 2.]

[To these charges [Insert Mr./Mrs./Ms.] [Insert Defendant 2's Surname] has pled not guilty.]

It is your duty to give separate personal consideration to the case of each defendant.

Under our law and system of justice, every defendant is presumed to be innocent. This means two things.

First, the state has the burden of proving the defendant guilty. The state has that burden throughout the trial. The defendant is never required to prove [his] [her] innocence, nor does the defendant ever have to produce any evidence at all.

Second, the state must prove the alleged crime beyond a reasonable doubt. A reasonable doubt is not a mere possible or imaginary doubt. It is a doubt based on reason and common sense. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence. If after considering all the evidence you have a reasonable doubt about the defendant's guilt, you must find the defendant not guilty.

As the judge in charge of this courtroom, it is my duty, at various times during the course of this trial, to instruct you as to the law that applies to this case.

The duty of the jury is to determine the facts; to apply the law set forth in the instructions to those facts, and in this way to decide the case. In applying the Court's instructions as to the controlling law, you must follow those instructions regardless of your opinion of what the law is or what the law should be, or what any lawyer may state the law to be.

During the course of this trial, including the jury selection process, you are instructed that you are not to discuss this case among yourselves or with anyone else, nor to form any opinion as to the merits of the case until after the case has been submitted to you for your determination.

We will now call an initial selection of [Insert the number of jurors to be called] jurors. As your name is called please take a seat as directed by the bailiff. The clerk will please draw the initial jurors' names.

* * * * The clerk calls the jurors * * * *

In this part of the jury selection, you will be asked questions touching on your qualifications to serve as jurors in this particular case. This part of the case is known as the voir dire examination.

Voir dire examination is for the purpose of determining if your decision in this case would in any way be influenced by opinions which you now hold or by some personal experience or special knowledge which you may have concerning the subject matter to be tried. The object is to obtain twelve persons who will impartially try the issues of this case upon the evidence presented in this courtroom without being influenced by any other factors.

Please understand that this questioning is not for the purpose of prying into your affairs for personal reasons but is only for the purpose of obtaining an impartial jury.

Each question has an important bearing upon your qualifications as a juror and each question is based upon a requirement of the law with respect to such qualifications. Each question is asked each of you, as though each of you were being questioned separately.

If your answer to any question is yes, please raise your hand. You will then be asked to identify yourself both by name and juror number.

At this time, I would instruct ~~both~~ all sides to avoid repeating any question during this voir dire process which has already been asked. I would ask counsel to note, however, that you certainly have the right to ask follow-up questions of any individual juror based upon that juror's response to any previous question.

The jury should be aware that during and following the voir dire examination one or more of you may be challenged.

Each side has a certain number of "peremptory challenges", by which I mean each side can challenge a juror and ask that he or she be excused without giving a reason therefor. In addition, each side has challenges "for cause", by which I mean that each side can ask that a juror be excused for a specific reason. If you are excused by either side please do not feel offended or feel that your honesty or integrity is being questioned. It is not.

Insert ICJI 1702 PUNISHMENT A CONCERN, CAPITAL CASE
(Modifications by the State in **bold** and underline.)

During this process the attorneys may question you on issues related to punishment.

The state is seeking the death penalty in this case. **If the either the defendant Chad Guy Daybell or the defendant Lori Norene Vallow Daybell are** convicted of murder in the

first degree or conspiracy to commit murder in the first degree, there will then be a separate sentencing hearing. At that hearing, additional evidence may be presented and the jury will be given additional instructions **as to each Defendant independently**. At the conclusion of that hearing, the jury will then decide if **either, both or neither** defendant will be sentenced to death. If the jury decides that the defendant will not be sentenced to death, the judge will sentence the defendant to a term of life imprisonment, during which the defendant could not be paroled for at least ten years and possibly for life.

The fact that questions are being asked about punishment at this time should not be taken by you as any indication that the defendant(s) in the case before you (is) (are) guilty of the offense(s) charged. Nothing that is said by the attorneys or by another prospective juror during this process is evidence, and you should not let any such statements influence you in any way.

A case in which the death penalty is a possible punishment is tried in two stages. In the first stage, the jury must decide whether the defendant is guilty or not guilty. If either or both defendants are found guilty of first degree murder or conspiracy to commit first degree murder, a second stage is held in which the jury must decide upon the appropriate punishment.

If a second stage is reached in this case, the court will instruct the jury as to the process it must follow to reach its decision on punishment.

During this second stage but before the jury may consider imposing the death penalty, it must also find, unanimously and beyond a reasonable doubt, that the evidence establishes the existence of at least one special fact or circumstance specified by law, called a statutory aggravating circumstance. If no statutory aggravating circumstance is found, the defendant cannot be sentenced to death.

Insert -- ICJI 1703 JURY MUST NOT CONSIDER PENALTY IN GUILT PHASE OF
(Modifications by State in **bold and underline.**)

If selected as a juror, at the conclusion of the trial, you will decide whether the state has proved the defendant guilty beyond a reasonable doubt. The subject of penalty or punishment is not to be discussed or considered by you in making that decision. That is a matter which must not in any way affect your verdict **as to the guilt of either individual.** **A juror's verdict as to the guilt of each defendant must be entirely separate from any thought of possible punishments of that particular defendant.**

INSERT ICJI 1704 NATURE OF HEARING (Modifications by State in **bold and underline.**)

~~The defendant in this case has been convicted of the crime of First Degree Murder. We will now have a sentencing hearing [regarding that offense. The court will sentence the defendant for the other offense(s) of which you found [him] [her] guilty].~~

Only after the jury's finding of either defendant guilty beyond a reasonable doubt of the crime(s) of first degree murder and/or conspiracy to commit first degree murder will the special sentencing hearing take place. Additional evidence may **be presented during the sentencing hearing.** **At that point the jury** may also consider the evidence presented during the trial.

After a determination of guilt, but before the death penalty can be considered as to **each defendant independently and separately**, the state must prove at least one statutorily-defined aggravating circumstance beyond a reasonable doubt for each defendant **independently and separately**. If you unanimously decide that the state has so proven [the] [one or more] statutory aggravating circumstance[s] **as to that defendant**, then you must decide whether the imposition of the death penalty would be unjust by weighing all mitigating circumstances **for each defendant independently and separately** against each statutory aggravating circumstance that has been proven.

The clerk will now swear the entire jury panel for the voir dire examination.

ICJI 202 DETERMINING FACTS FROM THE EVIDENCE AND DISREGARDING
NON-EVIDENCE (modifications by the State in **bold** and underlined.)

INSTRUCTION NO. _____

As members of the **potential** jury it is your duty to decide what the facts are and to apply those facts to the law that I have given you. **Those selected as jurors will** ~~You are to~~ decide the facts from all the evidence presented in the case.

The **only** evidence ~~you~~ **the jurors** are to consider consists of:

1. sworn testimony of witnesses;
2. exhibits which have been admitted into evidence; and
3. any facts to which the parties have stipulated.

Certain things **the jurors may** ~~you~~ have heard or seen are not evidence, including:

1. arguments and statements by lawyers. The lawyers are not witnesses. What they say in their opening statements, closing arguments and at other times is included to help you interpret the evidence, but is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, follow your memory;
2. testimony that has been excluded or stricken, or which you have been instructed to disregard;
3. anything you may have seen or heard when the court was not in session – **including before, during or after any part of the trial.**

Comment

If no exhibits were admitted into evidence, or if there were no stipulated facts, this instruction should be modified accordingly to avoid confusing the jury.