

**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,

vs.

LORI NORENE VALLOW aka LORI
NORENE VALLOW DAYBELL

Defendant.

Case No. CR22-21-1624

**ORDER FOR APPOINTMENT OF
COUNSEL**

This matter is before the Court on issues relating to the State's motion in objection to the appearance of Mark Means as Counsel to Defendant and other proceedings. Based on the record and good cause appearing, this Court finds the following:

1. Upon request of Mark Means in Case No. CR22-20-0838, the Court ordered an I.C. §18-211 evaluation of Defendant's competency to stand trial. The State raised the issue that no finding of indigency had been made. Defendant explained she lacked the means to pay for the evaluation and on May 21, 2021 the Court determined her to be indigent.
2. On May 24, 2021, a Fremont County Grand Jury returned an indictment charging Defendant with several crimes including charges that carry the possibility of the death penalty or life in prison as punishment.
3. On May 27, 2021, this Court stayed all proceedings in Defendant's Case No. CR22-20-838, based upon the issue of Defendant's competency; and after taking judicial notice of that fact, on June 9, 2021 entered an Order Staying Case in this case.

4. On June 8, 2021, this Court found Defendant not competent to stand trial and ordered Defendant to be committed to the Custody of the Department of Health and Welfare for treatment.

5. Idaho Code Section 19-854(2)(c) requires the Court to presume the Defendant to be indigent while she is being housed in a mental health facility.

Both the Sixth Amendment to the United States' Constitution and Art. I Sec. 13 of the Idaho State Constitution guarantee the right to counsel to persons charged with a crime. Statutory protections bolster these rights in the State of Idaho, requiring that counsel be provided to defendants at every critical stage of a criminal proceeding. *See I.C. §§ 19-106 and 19-852; State v. Lovelace*, 140 Idaho 53 (2003). Further, under Idaho Criminal Rule 44.3, a finding of indigency for Defendant to obtain state assistance for the necessary expenses of her representation coupled with potential penalties of the death sentence on charges against her in the indictment require this Court to appoint a *qualified* trial attorney.¹

Certainly, the Sixth Amendment also “grants to the accused personally the right to make his defense”² meaning every defendant enjoys the right to waive death penalty qualified counsel and hire their own private representation. However, because this matter is stayed pursuant to a finding that the Defendant is incompetent to stand trial, and is therefore deemed unable to understand the nature of the proceedings against her and meaningfully assist in her defense; the Court is unable to conduct the requisite inquiry to determine whether the Defendant may elect to “knowingly, voluntarily, and intelligently” waive her right to death penalty qualified counsel at public expense.

¹ *See* I.C.R. 44.3(c) for a list of qualifications of trial attorneys who may represent on cases that may include the death penalty.

² *STATE V. LOVELACE*, 140 Idaho 53 (2003).

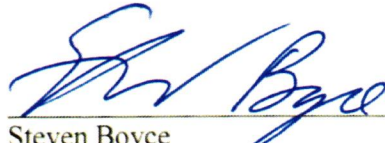
Further, the Court determines that although this case is stayed, ongoing evidentiary issues, including an alleged co-conspirator's concern that DNA materials may be entirely consumed, bear upon this Defendant's right to an exhaustive defense of her case. As such, upon consideration of the Court's power to control its processes so as to make them conformable to law and justice,³ and in order to uphold a duty to protect a fair proceeding to the parties in this case,

IT IS HEREBY ORDERED:

That a death penalty certified public defender is ordered to appear in the case under I.C.R. 44.3 as co-counsel with Defendant's privately retained attorney Mark Means. The Court finds that there is no need at this time to appoint a second death penalty qualified counsel.

IT IS SO ORDERED.

Dated this 6 day of August, 2021.


Steven Boyce
District Judge

³ I.C. Sec. 1-1603(8)

