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**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.

CHAD GUY DAYBELL, and,
LORI NORENE DAYBELL,

Defendant.

Case No.: CR22-20-0755

Case No.: CR22-20-0838

**RESPONSE TO DEFENDANTS'
MOTION TO PRESERVE DNA
EVIDENCE, PHOTOGRAPH
SEROLOGY EXAMINATIONS AND
FOR LABORATORY RECORDS**

The State, through Special Prosecuting Attorney, Rob H. Wood, hereby responds to both Defendants' Motion to Preserve DNA Evidence, Photograph Serology Examinations and for Laboratory Records. The State requests that the Court deny portions and grant portions of the above. The State explains as follows:

Factual Background

Chad and Lori Vallow Daybell have been charged with Conspiracy to Conceal/Destroy Evidence. Chad Daybell has additional charges of Concealment/Destruction of Evidence. The investigation into the deaths of Tylee Ryan and Joshua Vallow, and the Defendants' connection to those deaths, is ongoing. The discovery process in these pending actions began when counsel for both Defendants entered their appearances with the Court. The discovery process itself is ongoing

in line with the law enforcement activity. All discovery currently in Special Prosecutor Rob Wood's possession in connection to these cases has been produced. When updated or new discoverable reports are received, they will be given over to both Defendants on an ongoing basis.

Since the investigation's inception, numerous items of evidentiary value have been collected; many of which are suitable for forensic analysis and testing. The reports reflecting the seizure of these items have been produced to the defense. One specific report documenting the seizure of the tools in question was provided in a July 29, 2020 discovery disclosure to the defense, bates stamped as Vallow/Daybell 006828. Given testing and processing backlogs at forensic laboratories, the length and nature of testing of some items with potential evidentiary value and the impact of COVID-19 on staffing and resources, some testing is ongoing and remains outstanding. As results are received, they will be produced to the Defense.

On April 12, 2021, the State received the results of DNA analysis of debris found on tools that were seized from Chad Daybell's property. The State also learned that some samples obtained from the examined items were possibly suitable for DNA analysis but that those samples were of such size and quantity that the testing process itself would consume the entirety of the sample(s). On April 18, 2021 the State received another report from the State Lab regarding a possible blood sample from an apartment that would require consumptive testing to test the DNA.

On April 21, 2021 the State sent the above-mentioned lab results to the Defense in a discovery disclosure and also sent a letter giving the defense notice that the State intended to ask the State Lab to perform consumptive testing. Both defendants wrote the State and told the State they objected to this without their experts having a chance to review the materials. On the morning of April 22, 2021, both defendants filed motions. On that same day, the State sent the Defense an email informing them that due to their requests the State would not immediately seek the consumptive testing and asked the Defense to send the State the names of their experts within 14 days. The State offered to facilitate the defense experts' access to and examination of the sample(s) in question.

The State is entitled to test such items of evidentiary value as it believes necessary to achieve a fair and just result. Forensic testing is common in the criminal justice system. The

State is not required to perform any specific test but may elect to do the testing it believes necessary. Further the State must disclose reports and exculpatory documents in its possession under Idaho Rule of Criminal Procedure 16 and *Brady v. Maryland*, 373 U.S. 83 S. Ct. 1194, 10 L.Ed.2d 215 (1963).

The Defendants are allowed to examine evidence in the State's possession as they prepare their defense. (See *State v. Lewis*, 144 Idaho 64, 156 P.3d 565 at 567-8 (2007)).

Response and Conclusion

The State acted in good faith and notified the Defense Counsel of the likelihood that evidentiary samples in its possession would be consumed once subjected to testing. The State has no objection to the Defense experts examining the items in evidence within a reasonable timeline established by the Court. The State has a certified and accredited forensic laboratory ready and able to perform analysis once the Defense examination of the sample(s) in question has been completed – at no cost to either party. Further, should the Defense experts be able to arrange an appropriate protocol for observing the testing procedures agreeable to the State's experts, the State will agree to the specified expert(s) observing the testing process and procedure. The State further does not object to the preservation of any DNA samples sufficient in size to not be consumed by testing.

Therefore, the State requests that the Defense Motions involving the Motion to Oppose Use of and Preserve DNA Samples, Motion for Photographic Record of Serology and other Visual Samples, and Motion for Laboratory Record be denied in part and granted in part as outlined herein.

DATED this 27 day of April, 2021



Rob H. Wood
Special Prosecuting Attorney for Fremont County

CERTIFICATE

I HEREBY CERTIFY that on this 27 day of April, 2021, that a copy of the foregoing RESPONSE was served as follows:

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By: Joel L. THURBER