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Attorneys for Defendant

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

STATE OF IDAHO,  Plaintiff,  vs.  LORI VALLOW DAYBELL,  Defendant.	<b>Case No. CR22-21-1624</b>  <b>MOTION FOR NEW TRIAL</b>
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Comes now the Defendant, through her attorneys, and pursuant to Rule 34, Idaho Criminal Rules, and Idaho Code 19-2406, moves the Court for a new trial.

Rule 34 of the Idaho Criminal Rules provides that “the court may vacate any judgment and grant a new trial on any ground permitted by statute” and states that the motion must be filed

within 14 days after the verdict. The verdict in this case was filed on May 12, 2023. This filing is within the 14-day time limit.

The statute which the rule refers to is Idaho Code 19-2406, which provides that the court may grant a new trial in the following cases only:

- (2) when the jury has received any evidence out of court other than that resulting from a view of the premises,
- (5) when the court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial,
- (6) when the verdict is contrary to law or evidence.

**1. The Court misdirected the jury in a matter of law as it related to the jury instructions on conspiracy.** The Indictment filed by the grand jury on May 25, 2021, states that the conspiracy is “Chad Guy Daybell, Lori Norene Vallow, and Alex Cox (deceased) and other co-conspirators, both known and unknown.” This language clearly states that at least five people entered into a conspiracy: Chad, Lori, Alex, and other conspirators. The trial court, however, at the government’s request, allowed the trial jury to consider a conspiracy of only two people: Lori and Chad, Lori and Alex, or Chad and Alex. This change of the definition of conspiracy from the grand jury to the trial jury completely changed the complexity of this case by allowing the insertion of the “and/or” language. For the past two years, the defense had been put on notice that the conspiracy involved at least five people. This notice was clear from the language of the indictment. To have the government and the court permit a conspiracy of just two people instead of five was prejudicial and unlawful, and should require a new trial.

**2. The Court misdirected the jury in a matter of law as it related to the amended indictment.** At the close of the evidence in this case, the government moved to amend the indictment two years after it was filed by the grand jury for a “clerical error.” The amendment was not a clerical error, but changed the statute in the definition of grand theft. Repeated attempts by the defense to remand the indictment last year were objected to by the government and denied by the court. The court should have likewise denied the government’s request to amend the indictment. Whether the language of the grand theft charge included “intent to deprive” or “intent to deceive” was an element of proof to be determined by the trial jury, and should not have been amended by the government.

**3. A juror interview revealed that the jury instructions were confusing and that he knew of evidence not submitted to the jury.** Juror Number 8 was interviewed by East Idaho News on May 17, 2023, in Boise, Idaho. The juror and the reporter were very respectful of the process. Roughly half way through the interview, an interesting discussion takes place for two minutes, as follows:

Reporter: Having seen all the evidence, all the thousands of hours spent, how would you describe the efforts of law enforcement?

Juror: You know, they did a good job with what they had. I don’t know that you can ever train for something like this. I think they did a good job with what they had. You question some things that happened. I’m sure there’s a reason for it. You question had some things been done different early on, would any of us be here?

Reporter: Do you have an example of one of those things?

Juror: We didn't consider this during our deliberations, because it was clear to us, the instructions were clear, Arizona evidence and testimony is only for demonstrative purposes.

Reporter: Sure, yes.

Juror: And we were all very, very respectful of the rule, the directions that we were given. But now being removed from that, I think the police department in Phoenix had some significant red flags, that had they been followed up on, you know, maybe we're not here.

Reporter: Do you mean after Charles was shot?

Juror: Before and after.

Reporter: Before and after, yes, you're right, before he was shot, with the body cam.

Juror: (nods in the affirmative)

Reporter: (moves on to another line of questions)

This question and answer between the reporter and the juror make clear that evidence permitted under Rule 404(b), Idaho Rules of Evidence, is confusing to the jury. The defense continually objected to 404(b) evidence and this is a good example why. Arizona evidence and testimony was not for demonstrative purposes, as the juror stated and as the reporter agreed, but was evidence to show some other reason other than bad character. The demonstrative evidence allowed in this case was the summary evidence from the law enforcement witnesses. To confuse demonstrative evidence and character evidence is easy to do; hence, the defense objections should have been sustained.

The second problem with this juror's comments are that Charles Vallow's statements to law enforcement were not part of the evidence presented in this case. The juror and the reporter refer to it, but it wasn't presented in court. We can only conclude that the juror relied on information not presented in court to reach his conclusion that Arizona dropped the ball and

should have done more, even before Charles Vallow was shot and killed by Alex Cox. The actual recording of this interview can be made available to the court for review.

For these reasons, the defense asks that the Court vacate the judgment and order a new trial. Oral argument is requested.

Dated: May 25, 2023

/s/ Jim Archibald  
R. James Archibald, Esq.

Dated: May 25, 2023

/s/ John Thomas  
John Thomas, Esq.

#### Certificate of Service

I hereby certify that on this day I served a true and correct copy of this document on the following by the method of delivery indicated:

Lindsey Blake, Esq.

efile and serve

Robert H. Wood, Esq.

efile and serve

Dated: May 25, 2023

/s/ Jim Archibald  
R. James Archibald, Esq.