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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA, Plaintiff, vs. LORI N DAYBELL, aka LORI VALLOW Defendant.	CR2021-001704-001 **STATE'S RESPONSE TO DEFENDANT'S MOTION FOR NEW TRIAL** (Assigned to the Honorable Justin Beresky, Div. CRJ25)

The State of Arizona, through undersigned counsel, requests this Court deny defendant's Motion for New Trial as there was no juror misconduct, no prosecutorial misconduct, no improper exclusion of hearsay testimony and no lack of impartiality by the Court. The State's response is supported by the attached Memorandum of Facts and Authority.

MEMORANDUM OF FACTS AND AUTHORITY

I. FACTS, LAW AND ARGUMENT

A. There Was No Juror Misconduct.

After the verdict, the jurors were release from the admonition and had to face a mob of journalist questioning them as they waited for the bus to take them to their vehicles. Juror number fifteen was one of the jurors who was caught by the media. Juror fifteen made multiple statements that were recorded by multiple agencies. Video on YouTube from Idaho News on Demand shows the first contact by the media with Juror Fifteen as he was exiting the South Court Building. (See Exhibit A, Thumb Drive containing YouTube video, https://youtu.be/K7LTLYvhi7k?si=YAiBBUhXR5I9Z7s9). In this video, there are multiple media agencies rushing up to Juror Fifteen. It is clear from the fact that you see the media running up to the juror, that this encounter with the media occurred before the video cited by the defense which was conducted next to the street/bus stop. In the initial media contact, one of the media asked Juror Fifteen and another Juror, "Were any of you folks aware that this woman had already been convicted of three homicides?" Juror Fifteen responds, "No, no. I did not." (Exhibit A, Idaho News at 1: 13 minutes into the video to 1:23) Juror Fifteen and another Juror are then asked, "There is a lot of backstory here and this woman has already been convicted of three homicides and they obviously didn't want you folks to know that, and nobody knew that during your deliberations, is that correct?" Both Juror Fifteen and the other juror both

say, "No". (Exhibit A, Idaho News at 1: 29 minutes into the video to 1:40). Juror fifteen was very clear in this immediate contact with the media that he did not know about the defendant's prior criminal history prior to reaching a verdict.

A few days after the verdict, Juror Fifteen participated in an hour-long interview with Loren Matthias for her podcast, "Hidden True Crime." (See Exhibit A, Thumb Drive containing "Hidden True Crime" Podcast by Lauren Matthias with Juror Fifteen, https://youtu.be/r3lG2mxss-I?si= JCK3-NPIGYg_A4Q). In that interview, Juror Fifteen states that everyone was respectful of not telling him anything about the case while the trial was going and that, "If anyone would have, I would have put up a hand." (Exhibit A, "Hidden True Crime" video at 12:06 to 12:10). During this hour-long interview, Juror Fifteen stated that after the verdict was read and they were released from the admonition, he started "Googling" Lori Vallow while still in the Jury Room. (Exhibit A, "Hidden True Crime" video at 12:10 to 13:38). During the interview from 15:30 minutes to 15:40 minutes, Juror Fifteen is asked and responds:

> **Loren Matthias:** It's the day of the verdict you learn, so is that what you quickly Googled on your phone, and you saw before you walked out of the courthouse?
>
> **Juror Fifteen:** "Yeah"
>
> **Loren Matthias:** That there were other murders.
>
> **Juror Fifteen:** "Absolutely"
>
> **Loren Matthias:** So you learned right then.

Juror Fifteen: "Um hmmm"

During the interview, Juror Fifteen talks about not wanting to talk to the media when he left but that all of the sudden, he was surrounded. (Exhibit A, "Hidden True Crime at 18:56 to 19:18 minutes). Juror Fifteen was asked directly by Matthias about whether or not he knew about the other murders prior to the verdict (Exhibit A, "Hidden True Crime at 23:11 to 23:38 minutes):

> **Loren Matthias:** But to clarify, you don't know how you knew there might have been another sentencing, everything's a blur, I do understand that, sometimes I forget what day, you know, it is when I'm in, attending trial, reporting at a trial, but you did not know about any of the other murders until after the verdict?
>
> **Juror Fifteen:** Right, Yeah, I had no idea of anything else she had been through prior to this trial and even during the trial, I didn't know that.

During this hour-long interview, Juror Fifteen repeatedly stated that he did not know about the defendant's prior murders or sentences before the verdict in this case.

Juror Fifteen spoke with multiple media outlets who accosted him as he was attempting to get to the juror bus. The videos provided by the State in Exhibit A, listed as Idaho News on Demand, is the first contact by the media with Juror Fifteen where he clearly states twice that he did not know that the defendant had been convicted of three other murders prior to the verdict. The defendant is later interviewed for an hour on the "Hidden True Crime" podcast where he advised that as soon as he was released from the admonition and while he was still inside the jury room, he was Googling the defendant.

Juror Fifteen advised Matthias that this is when he learned she had prior convictions. When the juror was again asked if he didn't know the information until after the verdict, he again confirmed that he did not know anything before or during the trial.

This juror was basically mobbed by media while just trying to get to the juror bus. During this time, Juror Fifteen made one sentence that seemed to imply that he had looked up information about the defendant's prior criminal history before reaching a verdict. Looking at all of Juror Fifteen's interactions with the media, it is clear that he has remained consistent that he did not violate the admonition, he waited until he was released from the admonition to immediately begin "Googling" the defendant and that he and the other jurors did not know about the defendant's prior convictions before reaching a verdict.

B. Tylee Ryan and Alex Cox Statements were Appropriately Precluded as Hearsay Statements and Detective Daniel Coons Expert Testimony was Based upon the Physical Evidence.

In this case, the State appropriately filed Motions in Limine to Preclude the defendant from admitting any statements made by Alexander Cox or Tylee Ryan as these statements are hearsay and there is no exception that permits their admission. The Court precluded the Statements by Tylee Ryan made almost 3 hours after the shooting as hearsay. The Court ultimately precluded any Statements by Alexander Cox to the police from both when the police first arrived 47 minutes after the shooting as well as the statements he made at the police station a couple hours after the murder. The State also

objected to, and the Court sustained as hearsay, any testimony regarding Alexander Cox's walk-through with police nearly 8 hours after the shooting.

Detective Daniel Coons was noticed by the State as an expert witness to discuss the trajectory of the shots at the crime scene. During his testimony, the State asked Detective Daniel Coons if based upon his training, experience, the location of the casings, projectiles, bullet strikes and injuries to Charles Vallow, if he could determine an approximate location of where the shooter would have been standing when the two shots were fired. Detective Daniel Coons then provided his opinion that the shooter would have been standing in the area between the curved wall, kitchen and hallway.

The defendant never established a foundation that any statements made by Alex Cox or Tylee Ryan hours after the shooting were admissible under any of the Arizona Rules of Evidence. The testimony of Alex Cox and Tylee Ryan were appropriately precluded as hearsay. During his testimony, Detective Daniel Coons gave his opinion as to the approximate location of the shooter based upon his training, experience, and the physical evidence to include the location of the casings, projectiles, bullet strikes, the location of the injuries to Charles Vallow and the wound path/trajectory through Charles Vallow. Detective Daniel Coons did not ever indicate that his opinion was based on the statements or walk through of the defendant's co-conspirator.

C. There Was No Discovery Violation

On January 9, 2024, the State disclosed the Cellebrite Cell phone download for Charles Vallow's Iphone (CH131035-001) to the Defendant. On January 13, 2024, the State filed "State's Notice of Disclosure and Request for Disclosure." This Notice advised the defendant that the State would use any evidence arising out of Chandler Police Department report DR201983744, any information relevant to the case obtained from Cellebrite downloads, and that "all requests to examine or scientifically test items of evidence must be in writing."

On March 12, 2025, Defendant filed a supplemental Rule 15.2 Notice of Disclosure where she noticed an expert, Lonnie Dworkin. Defendant never provided the State any notice regarding Dworkin's testimony. On March 13, 2025, the State was advised that Dworkin had not begin work. On March 16, 2025, the State filed State's Motion to Preclude Defense Expert Lonnie Dworkin and Preclude Noticed Witnesses. The State filed a separate Statement in Support of Rule 15.7 sanctions due to the late and incomplete notice of Defense Expert Lonnie Dworkin.

On March 18, 2025, the Defendant was asked by the Court about Lonnie Dworkin. The defendant was advised that she could request a continuance to allow time for her expert to review the victim's cell phone. The Court further advised the defendant that anything the expert discovered could potentially be precluded. The defendant advised she wanted to proceed with trial instead of seeking a continuance to allow her

expert time to review the victim's cell phone. The defendant advised that she would like her expert to review Charles Vallow's actual cell phone. This was the first time the Defendant requested access to this item of evidence.

On March 18, 2025, the State emailed a stipulation to the Defendant's investigator regarding the release of Charles Vallow's cell phone to Defense Expert Lonnie Dworkin to allow the expert to extract the cell phone. Jury Selection for trial began on March 31, 2025. The cell phone was returned to the Chandler Police Department on April 3, 2025.

On April 7, 2025, while the State and Defendant were presenting evidence and testimony in trial, the Defendant emailed a Motion to Dismiss for Failure to Disclose Exculpatory Evidence and Prosecutorial Misconduct. The Motion provided no facts to support that any exculpatory evidence existed, nor did it provide any facts to support prosecutorial misconduct. Attached to the Motion was an affidavit from Defense expert Lonnie Dworkin requesting the raw data from the Graykey extraction of, among other items, Charles Vallow's cell phone. The Defendant's expert did not advise that exculpatory evidence existed, it only provided that newer versions of Cellebrite might be able to locate additional data that was unable to be located in the 2019 and 2020 versions of Cellebrite. On April 10, 2025, the State provided Defendant with a Thumb Drive containing the Graykey raw data for Charles Vallow's cell phone, Ipad and MacBook to give to their defense expert.

The State has not received any reports, notes, affidavits or information relating to Lonnie Dworkin's review of his extraction of Charles Vallow's cell phone or his analysis of the Graykey raw Data. The State has not received any information advising that any exculpatory evidence was withheld from the defendant. Instead, Defendant's Motion for New Trial makes a conclusion, without any support, that the Graykey raw data contained exculpatory evidence.

"Under *Brady*, the State must disclose all material, exculpatory evidence." *State v. Johnson*, 247 Ariz. 166, 201, 447 P.3d 783, 818 (2019)(Citing *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct.1194 (1963)). "The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceedings would have been different." *United State v. Bagley*, 473 U.S. 667, 682(1985).

In this case, the defendant did not provide the state in writing a request to examine the Graykey raw data from the extraction of Charles Vallow's cell phone until April 7, 2025. Upon this request, the State provide this data. Furthermore, the Defendant has not provided any documentation to support the claim that the Graykey raw data included any exculpatory information that was not part of the Cellebrite data that was disclosed to the defendant on January 9, 2024. Defendant's motion does not support a *Brady* violation or any violation of disclosure by the State.

D. There Was No Prosecutorial Misconduct.

On April 8, 2025, the State elicited from retired Captain Kent Keller a statement made by the defendant while she was standing across the street from her rental house, approximately an hour after her brother shot and killed her husband. The Statement made by the defendant was admissible under 801(d)(2), as a statement by party opponent. Furthermore, the Statement was relevant to show the defendant's demeanor during the investigation into the shooting of her husband.

On April 21, 2025, the Court read the Final Jury Instructions to the jury. The jury was advised:

> In their opening statements, the prosecutor and defendant talked to you about the law and the evidence. In a few minutes, the prosecutor and defendant will give their closing arguments and will talk about the law and the evidence. What they said or say is not evidence because it is not sworn testimony, but it may help you to understand the law and the evidence.

During closing arguments on April 21, 2025, the State made an argument to the jury about all three of the justification defenses: Self Defense, Defense of a Third Party and Crime Prevention. The Defendant has intentionally mischaracterized one sentence from the State's closing to claim prosecutorial misconduct. The State provided both facts and evidence to support why the defendant was not entitled to Self-defense, Defense of a Third Party and Crime Prevention.

During closing arguments on April 21, 2025, the State made an argument to the jury based on Exhibit 210, 227 and Exhibit 222, that on July 9, 2019, Alex Cox made

plans to have his brother Adam Cox stay with him the night of July 10, 2019. Alex Cox's plans changed later that night of July 9, 2019, when the Defendant requested her co-conspirator, Alex Cox, stay close to her the next couple of days. The State's exhibits showed that Alex Cox did not answer his brother Adam Cox's calls or texts at 3:22pm and 3:23pm on July 10, 2019. Although the State did interview the Defendant's sister, she told the State and Det. Duncan that she spoke with Alex Cox the night of July 10, 2019, and begged him to stay with the defendant. The State therefore was able to infer that since Alex Cox did not respond to Adam Cox hours before the defendant's sister spoke with him, that his plans to stay with the defendant were based upon his discussion with the defendant on July 9, 2019.

During closing argument, the State made argument to the jury regarding the defendant's demeanor from the time she arrived at the scene almost an hour after the shooting through the time that she handed over the cell phone to Det. Ynclan around 3pm on the day of the shooting. Witnesses described the defendant on July 11, 2019, as chatty, nonchalant and unaffected by her brother allegedly being struck with a baseball bat, her husband lying dead in her house and her children no longer having a father. The defendant's demeanor with law enforcement the day of the murder was in complete opposition to the defendant's demeanor during opening statements where the defendant attempted to testify as to facts that were never brought in by the defendant during the trial and crying in front of the jury.

"The prosecutor is permitted to argue "all reasonable inferences from the evidence," but cannot "make insinuations that are not supported by the evidence." *State v. Morris*, 215 Ariz. 324, 336, 160 P.3d 203, 215 (2007). "Prosecutors are given 'wide latitude' in presenting closing argument to the jury." *State v. Goudeau*, 239 Ariz. 421, 466, 372 P.3d 945, 990 (2016)(*citing State v. Comer*, 165 Ariz. 413, 426, 799 P.2d 333, 346 (1990)). "In determining whether an argument is misconduct, "we 'consider two factors: (1) whether the prosecutor's statements called to the jury's attention matters it should not have considered in reaching its decision and (2) the probability that the jurors were in fact influenced by the remarks." *Id. Citing State v. Nelson*, 229 Ariz. 180, 189 ¶39, 273 P.3d 632, 641 (2012) (quoting *Newell*, 212 Ariz. 389, 402 ¶60 (2006)).

In this case, the State did not argue or raise any matters that the jury should not have considered. Each of the inferences and arguments made by the State during its closing argument were based upon the testimony of witnesses and evidence admitted at trial.

E. The Court Remained Impartial Before, During and After Trial.

The State filed three separate Motions to Preclude the defendant's Noticed 15.2 Witnesses. After each Motion filed by the State, the Court heard argument as to the late notice, lack of the witnesses being made available to the State and their relevance to the trial. The Court did not preclude most of the witnesses, even after multiple requests by the State.

One witness the defendant noticed, Nate Eaton, is a reporter with no personal knowledge of the case. Mr. Eaton filed his own motion to be allowed to remain in the courtroom. Later, Mr. Eaton's attorney file a motion with the Court. The court heard argument by Mr. Eaton's lawyer and the defendant. Mr. Eaton's lawyer argued to remove Mr. Eaton from the defendant's list of witnesses and to allow him to remain in the courtroom during the trial. During this argument, the court asked the defendant why she needed Mr. Eaton, a reporter, for trial. The defendant indicated that Mr. Eaton might be used to impeach a witness who testified. The Court advised the defendant that she could impeach a witness with Mr. Eaton's recording(s). The Court also advised the defendant that if she felt Mr. Eaton became a necessary witness, he would reconsider his preclusion even if Mr. Eaton was in the courtroom during their testimony. The defendant never requested to call Mr. Eaton to impeach any witness.

The State filed two motions seeking to remove Brandon Boudreaux from the defendant's witness list as he is a listed victim in CR2022-001242-001. During trial, the parties interviewed Brandon Boudreaux. In this interview, Mr. Boudreaux advised he was not aware that Adam Cox was in town or that Charles and Adam were planning an intervention. The defendant was unable to provide any other basis for calling him as a witness. The Court struck Brandon Boudreaux from the defendant's witness list without prejudice, again advising the defendant that should Mr. Boudreaux become relevant the

Court would be open to hearing her argument. The defendant did not request that Brandon Boudreaux testify.

On April 10, 2025, the defendant cross examined Serena Sharp. The defendant asked the witness if several named people in the Bible were "translated". The State objected to this as relevant. The Court allowed the defendant to continue questioning the witness about this area. The defendant never asked Serena Sharp or any of the three other witnesses who were members of the Church of Jesus Christ of Latter-Day Saints who testified during this trial if they thought it was a "regular part of the Mormon religion" for a current living person to be a "translated being." Instead, the defendant merely asked one witness if there were people in the Bible who had been "translated".

"It is well established, however, that a 'trial judge is presumed to be free of bias and prejudice." *State v. Medina*, 193 Ariz. 504, 509, 975 P.2d 94, 100 (1999) (citing *State v. Rossi*, 154 Ariz. 245, 247, 741 P.2d 1223, 1225 (1987). "To rebut this presumption in a criminal case a party must prove by a preponderance of the evidence that the judge is biased or prejudiced and must file a motion alleging specific grounds of impartiality." *Rossi* at 247 (Citing Ariz.R.Crim.Pro., Rule 10.1).

Here, the defendant has admitted that the court overruled the State's objection but argues that one comment by the Judge during a two-week trial somehow rises to the level of establishing by a preponderance of the evidence that the Judge was

biased or prejudiced. Defendant has not shown by any level that she was denied a fair trail before an impartial judge.

II. CONCLUSION

Defendant's Motion for New Trial should be denied since the evidence supports that Juror Fifteen did not know about the defendant's prior felony convictions before reaching a verdict, the court properly excluded the hearsay testimony of Alex Cox and Tylee Ryan, the State's expert witness, Daniel Coons, relied upon the physical evidence at the scene and the autopsy of Charles Vallow to reach his conclusion as to the trajectory and general location of the shooter, there has been no discovery violation by the State, there has been no prosecutorial misconduct by the State and there is no evidence that the Court was biased or prejudiced against the defendant.

Submitted May 6, 2025.

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BY: /s/ Treena Kay
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