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

STATE OF ARIZONA,  
Plaintiff,

vs.

LORI DAYBELL,  
Defendant.

CR 2021-001704-001

**MOTION FOR NEW TRIAL**

Honorable Justin Beresky

Lori Daybell requests that the Court grant her a new trial. This motion is filed pursuant to the protections provided by Rule 24.1 of the Arizona Rules of Criminal Procedure, the Fifth Amendment Due Process Clause of the United States Constitution and Article II, § 4 and § 24 of Arizona State Constitution. This motion is accompanied by the following Memorandum of Points and Authorities.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. FACTS**

**A. Juror Misconduct**

On April 28, 2025 it came to the attention of this defendant's advisory counsel and later the Court, that Juror Fifteen made a statement indicating he had knowledge of this defendant's prior conviction. (Exhibit 1, Clip Fox 10 News). He also indicated that

he was leaning towards a not guilty vote up until yesterday and through deliberations. (Exhibit 1, minute 0:55). This prior conviction involved the homicide of her children in Idaho in 2023. This defendant did not testify in this trial, and this conviction was not presented by the State as Rule 404(b) other act evidence, thus Juror Fifteen should not have learned about this information.

Because this case was a high-profile matter, once the jury was released from its admonition jurors were free to speak with media. During an interview Juror Fifteen was asked about his reaction upon learning about this defendant's prior convictions, he stated the following: "you know I feel sorry for her, driving home yesterday, I was like God she's spending the next three lives in prison, in a cell..." (Exhibit 1 at 03:12).

**B. Preclusion of Tylee Ryan and Alex Cox Statements and Impermissible Expert Testimony by Detective Daniel Coons.**

Prior to trial, the Court precluded this defendant from presenting to the jury any of Tylee Ryan or Alex Cox's statements. Both of these people were present during the shooting of Charles Vallow and thus some of their statements were not hearsay as they show effect on listener pursuant to Arizona Rules of Evidence 803(3). The State filed a motion in limine throwing a blanket hearsay objection over the entire statements. The Court indicated in a pretrial ruling that it would, at least to Alex Cox's statement, take it on a statement-by-statement basis. During trial, this defendant was precluded from even discussing that Alex conducted a walk through, much less his statements with Chandler Police Detectives during that walkthrough. (FTR, 04.08.25 at 04:19:05).

Then in the State's case-in-chief it elicited expert testimony from the scene agent Detective Daniel Coons. This defendant objected to his testimony as an expert witness based on lack of foundation and her not having had time to rebut his professional opinion. (FTR, 04.08.25 at 01:30:00). Again, this defendant was precluded from discussing Alex Cox's (the shooter) walk through that was conducted with several Chandler Police detectives including Det. Coons. (FTR, 04.08.25 at 04:19:05). This walk through was precluded as inadmissible hearsay, however, it formed the basis for Det. Coon's questioning with the medical examiner and how he then investigated this case as Alex Cox indicated he shot the victim in self-defense.

### **C. Discovery Violation**

On April 14, 2025 during trial, Ms. Treena Kay produced a hard drive containing the "graykey" information for Charles Vallow cell phone. The contents of the hard drive are exculpatory evidence. Defense had been requesting this evidence so that she could provide it to her independent expert for his review. This discovery disclosure occurred in the middle of trial.

### **D. Prosecutorial Misconduct**

On April 8, 2025 the State elicited irrelevant, prejudicial, and improper character evidence when she asked Chandler Fire Captain Keller if he overheard any conversations with this defendant. Ms. Treena Kay asked Captain Keller on direct examination did you overhear this defendant talking with police. (FTR 04.08.25 at 11:49:22). He responded in the affirmative stating he overheard someone stating, "not getting invited to pool party because of the commotion at the house or something." (Id.) This statement caught this

defendant off guard as Captain Keller indicated during his interviews with Chandler Police just after this incident occurred that he only saw the male outside on the curb and did not mention even seeing this defendant.

During closing arguments while addressing the justification defenses Ms. Treena Kay told the jury that this defendant was not entitled to any of these self-defense instructions. (FTR 04.21.25 at 02:21:00). Ms. Treena Kay also gave false statements by saying Alex had no reason to be at this defendant's home and that this defendant told Alex to bring a gun. (FTR 04.21.25 at 01:02:40; 01:29:54; 01:48:31). Ms. Treena Kay knew from previous testimony, interviews, and pretrial defense interviews that Summer had begged Alex to go over to this defendant's home because of Summer's concerns for this defendant's safety. Finally, Ms. Treena Kay commented several times on this defendant's demeanor during this incident, drive to police station, on the body camera, and told the jury "you did not see her cry in that interview," yet knowing there were portions of this defendant's interview that had been cut from the full interview admitted by the State where she sat in the room and did show emotion and can be seen grabbing a Kleenex. (FTR 04.21.25 at 02:27:55 and 03:06:22; State Exhibit 286; Defendant Exhibit 269 at minute 10:08:33).

#### **E. Court's Lack of Impartiality**

The Court precluded this defendant from presenting a defense by striking her witnesses, including but not limited to Nate Eaton and Brandon Beaudreax before they were even called to the stand. Specifically, before testimony began the Court required this defendant to establish on the record what relevancy her witnesses would present.

This required this defendant to state in front of the prosecutor her defense strategy. This is not required under the law or any rule of evidence.

During cross examination of a civilian witness, Serena Sharp, in relation to testimony regarding religious beliefs the Court commented during the prosecutor's objection to relevancy stating, "I guess to the extent that you are comparing yourself to these biblical figures I will allow it." (FTR, 04.10.25 at 01:43:32). Part of the State's case was to establish that this defendant had stepped outside of the Mormon religion by claiming she was a translated being, specifically in text messages saying she would be like Nephi, and that these messages were nothing more than part of the conspiracy to kill Charles Vallow. This defendant attempted to establish that being translated was a regular part of the Mormon religion and thus a relevant line of questioning.

## **II. ARGUMENT AND AUTHORITY**

The Arizona Rules of Criminal Procedure provide that a court may grant a new trial when a juror or jurors have committed misconduct by "receiving evidence not properly admitted during the trial." *Ariz. R. Crim. P.* 24.1(c)(3)(A). Additionally, a new trial is appropriate if "for any other reason not due to the defendant's own fault the defendant has not received a fair and impartial trial." *Ariz. R. Crim. P.* 24.1(c)(5).

### **A. This Defendant is Entitled to a New Trial Because the Jury Received and Consulted Extraneous Evidence.**

"Once a defendant shows the jury received and consulted extraneous information, prejudice must be presumed, and a new trial must be granted unless the State proves beyond a reasonable doubt the information did not taint the verdict." *State v. Aguilar*,

224 Ariz. 299, 301, 230 P.3d 358, 360, (Ct. App. 2010). In *State v. Poland*, the court held that “since the federal convictions were based on the same series of acts as were at issue in the state prosecution, evidence of the prior convictions is inherently prejudicial.” 132 Ariz. 269, 285, 645 P.2d 784, 800 (1982).

When a juror does not base his verdict on evidence developed at trial, he violates “the fundamental integrity of all that is embraced in the constitutional concept of trial by jury.” *State v. Glover*, 159 Ariz. 291, 293 (1988). Such misconduct by jury members denies criminal defendants their rights under the Sixth and Fourteenth Amendment to “confront and cross-examine his accusers about that extrinsic evidence.” *Id.*

This defendant’s advisory counsel and the Court both received evidence that the jury’s verdict was tainted when Juror Fifteen spoke during his interview with Fox 10 News disclosing that he had learned of her prior conviction seemingly one day prior to the admonition being lifted. Because it is clear Juror Fifteen had information he was not entitled to know prior to conducting deliberations the burden is on the State to prove beyond a reasonable doubt that this information did not taint the verdict. *State v. Aguilar* at 301. The State will not be able to meet this burden, and this defendant is entitled to a new trial.

Even if an offending juror may not have influenced the other jurors, unanimity is required to convict a criminal defendant and the juror’s conclusion may have been different had the juror not consulted extraneous sources. *State v. Cornell*, 173 Ariz. 599, 602 (Ariz. Ct. App. 1992).

In *Cornell*, a juror looked up definitions that were neither admitted into evidence nor included in the trial court's instructions. *Id.* The juror testified that he was confused and undecided about the allegations and his reference to outside sources made his decision that the defendant was guilty. *Id.* Reference to dictionary definitions by jurors is usually considered a harmless error. *Id.* at 601. However, the appellate court found that this was not a harmless error, and that the defendant was entitled to a new trial.

Similar to the juror in *Cornell*, Juror Fifteen stated he had information neither admitted into evidence nor included in the trial court's instructions. *Id.* Even more egregious than in *Cornell*, was that this information learned was that this defendant had prior homicide convictions. *Id.* As in *Poland*, this information is inherently prejudicial as these prior convictions directly related to this prosecution. 132 Ariz. at 285.

At the time of the writing of this motion it is not known if Juror Fifteen shared this information with other jurors. However, what is clear is that Juror Fifteen did not follow the admonition and notify the Court of him having learned of this information so an inquiry could have conducted been prior to deliberations. These actions directly violated the Court's instructions and could have factored into Juror Fifteen's verdict, if not multiple jurors' verdicts. In fact, Juror Fifteen noted that up until the day of closing arguments he would have voted not guilty. Given this, the State is unable to prove that Juror Fifteen's misconduct did not taint his and potentially other jury member's verdicts.

The State will not be able to overcome the overwhelming evidence of Juror Fifteen's misconduct in order to prove beyond a reasonable doubt that Juror Fifteen's misconduct did not taint the jury. Accordingly, this defendant is entitled to a new trial.

**B. Preclusion of Tylee Ryan and Alex Cox Statements and Because the Court Allowed Expert Testimony without a Rule 702 Ruling This Defendant is Entitled to a New trial.**

A new trial is appropriate if “for any other reason not due to the defendant’s own fault the defendant has not received a fair and impartial trial.” *Ariz. R. Crim. P.* 24.1(c)(5). By precluding Tylee Ryan and Alex Cox’s statements this defendant was prevented from presenting part of her defense at trial and thus she did not receive a fair and impartial trial. The Court made a pretrial ruling, that at least to Alex Cox’s statements it would make a statement-by statement ruling. Instead, this defendant was even precluded from discussing Alex Cox’s statements during his walk through. These walk-through statements formed the basis for Detective Coons being able to testify as an expert, yet she was precluded from cross examining him on this foundation. For this basis, this defendant is entitled to a new trial.

**C. Discovery Violation that Occurred in the Middle of Trial Entitle This Defendant to a New Trial.**

Discovery rules are designed to implement and not impede the fair and speedy trial rights. On April 14, 2025 during trial, Ms. Treena Kay produced a hard drive containing the “graykey” information for Charles Vallow cell phone. The contents of the hard drive are exculpatory evidence. Defense had been requesting this evidence so that she could provide it to her independent.

The State’s discovery violation is (1) the importance of the evidence which the defendant was deprived cross examination, the right to confrontation and proper investigation and examination for defense, (2) the State manifested the surprise and



prejudice to the opposing party, (3) the violation was motivated by bad faith which neither the Court nor the State corrected and (4) the many other relevant factors that the State saw fit to depriving the defendant of her constitutional and statutory rights.

**D. Acts of Prosecutorial Misconduct Entitles This Defendant to a New Trial.**

A new trial is appropriate if “for any other reason not due to the defendant’s own fault the defendant has not received a fair and impartial trial.” *Ariz. R. Crim. P.* 24.1(c)(5). This includes prosecutorial misconduct. The statement elicited from Captain Keller was irrelevant and prejudicial to this defendant, yet Ms. Treena Kay purposefully asked this witness if he overheard any statements. (FTR 04.08.25 at 11:49).

Second, it is improper for a prosecutor to misstate the law or evidence during closing arguments. Ms. Treena Kay stated this defendant was not entitled to self-defense instructions, yet they were clearly provided to the jury. (FTR 04.21.25 at 02:21:00). Ms. Treena Kay also gave false statements in her closing argument by stating Alex had no reason to be at this defendant’s home and that this defendant told him to bring a gun and extra ammo. (FTR 04.21.25 at 01:02:40; 01:29:54; 01:48:31). Ms. Treena Kay knew from previous testimony, interviews, and pretrial defense interviews that Summer had begged Alex to go over to this defendant’s home because of Summer’s concerns for this defendant’s safety. Lastly, commenting on this defendant’s demeanor, specifically stating this defendant did not cry during her police interview was improper comment as she had cut this portion out of the exhibit admitted that she called a “full interview.” (FTR 04.21.25 at 02:27:55 and 03:06:22; State Exhibit 286; Defendant Exhibit 269 at minute 10:08:33). All of these comments add up to prosecutorial misconduct

**E. Judge Commenting on the Evidence During This Defendant's Cross Examination Showed a Lack of Impartiality and Entitles this Defendant to a New Trial.**

“A defendant may move for a new trial based on the court’s lack of impartiality.” *State v. Medina*, 193 Ariz. 504, 509, 975 P.2d. 94, 100 (1999). While under the law, a trial court is presumed to be impartial and free from bias. This defendant can rebut this by the preponderance of the evidence by showing the Court required her to present her defense strategy to the State before calling any witnesses.

Rule 15.2(b) of the Arizona Rule of Criminal Procedure requires a defendant to disclose for each listed defense, other than the defendant, that the defendant intends to call as a witness at trial in support of the defense. Rule 15.2(c)(1) requires a defendant to list the name and address of each person, other than the defendant, the defendant intends to call as a witness at trial, and any written or recorded statement of the witness. There is nothing in Rule 15.2 that requires this defendant to present her defense strategy in order to call witnesses. The Fifth Amendment of the United States Constitution provides this defendant the right to subpoena power. This preclusion of witnesses and requirement of this defendant to inform the State of her defense prior to calling any properly noticed witness, shows a specific claim of partiality. *Id.* at 510.

Second, For the Record established that the Court commented while responding to the State’s relevant objection and that comment showed a specific claim of partiality by casting doubt onto this defendant’s credibility on this religious issue and in general showing she cannot be trusted. The Court commenting to a relevancy objection “I guess to the extent that you are comparing yourself to these biblical figures I will allow it” can

be seen as injecting his own opinion as to this defendant's reliability during her cross examination. (FTR, 04.10.25 at 01:43:32). (FTR, 04.10.25 at 01:43:32). This comment is even more important when taken into consideration that Juror Fifteen in the Fox News 10 clip indicated he ultimately made a decision to vote guilty based two text messages including the one describing "I will be like Nephi." (Exhibit #1 at 02:20 and 4:02). The Court inserted his own improper comment when a simple overruled or sustained was warranted. This in and of itself shows a lack of impartiality and requires a new trial.

### **III. CONCLUSION**

Given the above reasons, this defendant respectfully requests that the Court grant her motion for a new trial.

Respectfully submitted this 1 May 2025.

*/s/ Lori Daybell*

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Original foregoing Motion  
e-filed this 1 May 2025 to:

Clerk of the Superior Court  
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Copies of the foregoing Motion  
e-filed and/or emailed this 1 May 2025 to:

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By: Ana Lena Ramirez

# Exhibit 1

CD – Clip of Juror Fifteen Fox 10 News Interview  
(to be hand delivered to Judge Beresky Division)