

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

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| STATE OF IDAHO, Plaintiff, vs. CHAD GUY DAYBELL, Defendant. | Case No. CR22-21-1623 MEMORANDUM DECISION ON DEFENDANT'S MOTION TO CHANGE VENUE |
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I. STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On May 24, 2021 a Fremont County Grand Jury returned an indictment charging Defendants Chad Guy Daybell and Lori Norene Vallow with multiple crimes. In Counts I and II of the Indictment, Mr. Daybell is charged with Conspiracy to Commit First Degree Murder, First Degree Murder, and Grand Theft by Deception in relation to the death of Tylee Ryan. In Counts III and IV of the Indictment, Mr. Daybell is charged with Conspiracy to Commit First Degree Murder, First Degree Murder, and Grand Theft by Deception in relation to the death of Joshua Jaxon Vallow. In Counts V and VI of the Indictment, Mr. Daybell is charged with Conspiracy to Commit First Degree Murder and First Degree Murder in relation to the death of Tamara Daybell. In Counts VIII and IX, Mr. Daybell is charged with counts of felony Insurance Fraud.

On August 5, 2021 the State filed its Notice of Intent to Seek the Death Penalty. Mr. Daybell was previously charged on June 20, 2020 in Fremont County Case No. CR 22-20-755 with multiple felonies relating to alleged alteration or destruction of evidence, in which case the underlying facts relate to the case at bar. Co-defendant Lori Norene Vallow's case relating to the

Grand Jury Indictment is currently stayed pursuant to I.C. § 18-212. For purposes of determining this motion, the Court also considers that the Mr. Daybell and Lori Norene Vallow are married, and that subsequent to the commencement of this case, Lori Norene Vallow was indicted in another murder case in Arizona.

On July 21, 2021, Mr. Daybell (hereinafter “Defendant”) filed a “Motion to Change Venue,” citing I.C.R. 21, the United States Constitution, and Article I § 7 of the Idaho Constitution.¹ Defendant contends that “a fair and impartial jury trial cannot be had in Fremont County nor within the Seventh Judicial District of the State of Idaho.” The State filed its response in objection on September 29, 2021, arguing that a fair and impartial jury can take place in Fremont County. The matter came before the Court for a hearing on October 5, 2021, and the Court considered the testimony, admitted exhibits, and argument of counsel. For the reasons explained herein, the Motion to Change Venue is granted.

II. STANDARD OF ADJUDICATION

A defendant’s constitutional right to a fair trial and to an impartial jury are granted by the Sixth Amendment of the Constitution of the United States and Article I §§ 7 and 13 of the Idaho Constitution. I.C.R. 21(a), in discussing a transfer of trial, states: “For Prejudice. On motion of either party, the court must transfer the proceeding to another county if the court is satisfied that a fair and impartial trial cannot be had in the county where the case is pending.” I.C. § 19-1801 states: “Ground for removal. A criminal action, prosecuted by indictment, may be removed from

¹ The Court notes that I.C.R. 21 is a rule under Title V of the Criminal Rules, “Venue,” but to clarify, I.C.R. 21 relates to a transfer of trial. While caselaw and the pleadings do make reference to a “change of venue” in the context of I.C.R. 21, the actual issue of venue under I.C.R. 19 is not the subject of the Defendant’s Motion, nor is it being considered by the Court in this decision.

the court in which it is pending, on the application of the defendant, on the ground that a fair and impartial trial cannot be had in the county where the indictment is pending.”

Several Idaho cases have addressed the issue of transfer of a trial. “A motion to change venue is addressed to the discretion of the trial court. *State v. Winn*, 121 Idaho 850, 856, 828 P.2d 879, 885 (1992); *State v. Needs*, 99 Idaho 883, 591 P.2d 130 (1979). The validity of a court's decision to try a case in a particular venue is tested by whether, in the totality of existing circumstances, juror exposure to pretrial publicity resulted in a trial that was not fundamentally fair. *State v. Hyde*, 127 Idaho 140, 145, 898 P.2d 71, 76 (Ct.App.1995).” *State v. Yager*, 139 Idaho 680, 687, 85 P.3d 656, 663 (2004).

III. DISCUSSION

Defendant asserts that extensive pretrial publicity relating to both Defendant and co-defendant Lori Norene Vallow has tainted the prospective jury pool of both Fremont County and the entire Seventh Judicial District such that a transfer of the trial to a location outside of the District is required. In support of that contention, Defendant has submitted for the Court's consideration exhibits outlining the quantity and nature of the pretrial publicity. A review of the exhibits reveals that hundreds of new stories have been published locally and nationally dating back to December, 2019.

The Court reviewed the admitted exhibits *in camera* during and subsequent to the hearing. In an attempt to preclude further dissemination of material that could prejudice potential jurors, this opinion will include limited specific details of the content of the exhibits and make general references to the evidence. In summary, the review of the exhibits reveals that the pretrial publicity surrounding this case has been lengthy, continuous and pervasive in the Seventh Judicial District's local media market. This is evidenced by the quantity of stories and nearly continuous

nature of the coverage of this and the co-defendant's cases. The media coverage began long before charges were filed in June of 2020 in Fremont County Case No. CR 22-20-755.

As an example, one article references a former neighbor to Defendant, who discussed what has happened since these cases commenced. According to the article, the neighbor states that the "normally quiet road in front of [the neighbor's] house turned into a highway filled with both mourners and the media," and further states: "It was like a circus."² The pretrial publicity has not been confined to local media markets. When hearings are scheduled in this case, the Court routinely receives requests for media coverage approval from Eastern Idaho News and Court TV Media, LLC, among others. The exhibits show that full-length features and dedicated programming pertaining to the facts of this case have been broadcast by national media outlets including NBC, A&E, and Oxygen Network, and syndicated television shows including Dr. Phil and Dr. Oz.

In addition to the vast quantity of the coverage, some of the coverage has been inflammatory in nature. For example, one article published by East Idaho News contains the title: 'He's a liar. He's a liar.' Grandmother, brother react to Daybell's not guilty plea".³ The media has sought to attach prejudicial nicknames to the co-defendants in sensationalizing their coverage.⁴

In addition to the great quantity of media coverage surrounding this case, the exhibits presented by Defendant in support of his motion reveal additional concerns. Several exhibits demonstrate that the media has focused on the religious component to the case.⁵ In the Indictment,

² Aug. 13, 2020 Rexburg Standard Journal article, "rexburgstandardjournal – justice for kids", Exhibit Folder "3 National News"

³ MP4 File "He's a liar. He's a liar.", Exhibit Folder "1 East Idaho News"

⁴ i.e. "Doomsday Couple", Court TV broadcast Sept. 24, 2020 (Exhibit Folder 6)

⁵ "A look at the religious circle surrounding Chad and Lori Daybell", East Idaho News Video, Exhibit Folder 1

it is alleged that the Defendant “did endorse and espouse religious beliefs” as a motivating factor in the alleged homicides.⁶ Defendant has presented evidence that Court TV published a story referencing a letter that was circulated to the “church community” in Fremont County near Defendant’s former residence.⁷ Another exhibit indicates the region where that letter was circulated, within Fremont County.⁸ Both the reporting of the religious aspect of the case, in conjunction with the exhibits indicating that a letter was circulated within Fremont County to potential jurors, further raises the Court’s concerns in this case regarding the probability of finding fair and impartial jurors for trial.

Beyond the media coverage, Defendant has introduced evidence that local vigils directly relating to this case have been held, courthouses have been decorated when hearings have been scheduled, and signs that could influence jurors have been posted locally. The reality is that Fremont County is very large geographically, but in terms of population it is a small community (approximately 13,000 citizens spread out over 1,896 mi²). Also, the county seat of St. Anthony is a small town (population around 4,000). Given that, the Court is hesitant to underestimate the impact on potential jurors that both media coverage and local interest in this case have garnered.

Compounding things, this case has convoluted facts that have likely caused many potential jurors to look further into the case than would be typical, to understand what is alleged to have occurred. The exhibits reveal that East Idaho News has a pinned banner on its homepage leading directly to all of their coverage of this case, which is in the top 10 links followed on their website.⁹ In addition, the prevailing local culture of neighbors helping neighbors, and community support

⁶ Indictment, “Overt Acts” recitations

⁷ “CourtTV – heather letter article”, Exhibit Folder “3 National News”

⁸ “CourtTV – map of letter exposure”, Exhibit Folder “3 National News”

⁹ “Total_Pageviews_EastIdahoNews.com”, Exhibit Folder “1 East Idaho News”

during times of need, resulted in great local outreach when Tylee Ryan and Joshua Jaxon Vallow were last believed to have been alive in Madison and / or Fremont Counties. That component of the case lead to the initial substantial media coverage and likely resulted in some potential jurors delving into the reported alleged facts of this case.

Finally, a likelihood exists that potential jurors have been impacted by media coverage relating to Defendant's wife, co-defendant Lori Norene Vallow, in regards to both this case and her additional pending murder case in Arizona. As the Indictment in this case charges both individuals together, and the matters will be scheduled for a joint trial, the Court determines that the media coverage relating to Lori Norene Vallow is a significant further concern as it relates to the ability to select a fair and impartial jury in Fremont County.

Counsel for the Defendant urges the Court to consider *Irvin v. Dowd* in finding that a transfer of trial is needed due to the facts set forth in the exhibits. That case discusses juror bias, stating: "As stated in *Reynolds*, the test is 'whether the nature and strength of the opinion formed are such as in law necessarily raise the presumption of partiality.'" *Irvin v. Dowd*, 366 U.S. 717, 723, 81 S. Ct. 1639, 1643, 6 L. Ed. 2d 751 (1961). The Court notes that the *Irvin* case references "these days of swift, widespread and diverse methods of communication," addressing media coverage in 1961. One can only imagine what the Justices who decided that case 50 years ago would have thought about that concern today, when every potential juror has instant access to limitless media, literally at their fingertips, on a handheld device.

Counsel for the State does not dispute that this case has garnered widespread media attention in Fremont County, the 7th Judicial District, across the State of Idaho, or across the Country. However, the State argues that the Defendant has failed to provide sufficient evidence to prove that pretrial publicity is so inflammatory, or contains such inadmissible evidence, that a

change of venue from the Seventh Judicial District is warranted. The State relies on a number of cases for the proposition that publicity alone is not sufficient support for a change of venue, and that a number of factors must be considered in conjunction with pretrial publicity.

For instance, the State relies upon *State v. Blitz*, which states that “[p]ublicity itself does not require a change of venue.” 93 Idaho 239, 242, 460 P.2d 374, 377 (1969). Expanding on this issue, *State v. Hadden* sets forth a number of factors that should be considered in determining whether a defendant has received a fair trial. These factors include: (1) the existence of affidavits indicating prejudice or an absence of prejudice in the community where the trial took place; (2) the testimony of the jurors at jury selection regarding whether they had formed an opinion based upon adverse pretrial publicity; (3) whether the defendant challenged for cause any of the jurors finally selected; (4) the nature and content of the pretrial publicity; and (5) the amount of time elapsed between the pretrial publicity and the trial. 152 Idaho 371, 376, 271 P.3d 1227, 1232 (Ct. App. 2012).

First, the Court will note that the Defendant has not provided any affidavit indicating prejudice within the Fremont County community, nor has the State provided any affidavit indicating an absence of prejudice in the Fremont County community. The Court recognizes that the Defendant bears the burden of proving a change of venue is warranted, however, Factor 1 indicates that affidavits opposing a finding of prejudice are also pertinent in the Court’s analysis of the issue. Second, because trial has not been set in this matter and therefore a jury selection has not been conducted, the Court has no evidence in which it may consider Factors 2 and 3.

When considering the nature and content of the pretrial publicity, the Court looks at “the accuracy of the pretrial publicity, the extent to which the articles are inflammatory, inaccurate, or beyond the scope of admissible evidence, the number of articles, and whether the jurors were so

incessantly exposed to such articles that they had subtly become conditioned to accept a particular version of the facts at trial.” *Id.*

The State contends, and nothing in the record disputes, that the media coverage contains accurate representations of the facts. However, as noted above, the articles have also included inflammatory information that is not pertinent to the underlying issues presented in the case. Additionally, the number of articles with respect to the case have been significant. Over two-hundred and fifty articles – from East Idaho News alone – have been published and circulated throughout East Idaho and beyond. Furthermore, with respect to Factor 5, the history of the pretrial publicity and unrefuted fact that significant interest continues in this case, leads the Court to determine that voluminous media coverage will continue as the case proceeds to trial.

In making the final determination, the Court would note that it has experience in conducting jury trials in Fremont County, Idaho, and considers that in this decision. The Court has always found the citizens of Fremont County to be fair, attentive and dedicated jurors when called upon to fulfill that critically important civic duty. The Court has no doubt that absent the extraordinary circumstances presented here, Fremont County would be an ideal location for this trial, and an ideal jury pool from which to select triers of fact to determine this case. However, this is no ordinary case.

The concerns raised in this case are best described in *State v. Hall*:

Impartiality may be affected adversely by the quality or the quantity of pretrial media coverage. Qualitatively, the courts must be concerned with news stories and editorials that are inflammatory, inaccurate or beyond the scope of admissible evidence. E.g., *State v. Beason*, 95 Idaho 267, 506 P.2d 1340 (1973). The quantitative **1258 *830 impact also must be recognized. **When prospective jurors are incessantly exposed to news stories selectively packaged for mass consumption, they may become subtly conditioned to accept a certain version of facts at trial. Such repetitive exposure may diminish the jurors' ability to**

separate information absorbed before trial from information presented during trial. *State v. Brooks*, 103 Idaho 892, 655 P.2d 99 (Ct.App.1982) (concurring opinion).

When a trial judge finds a reasonable likelihood that qualitative or quantitative elements of pretrial publicity have affected the impartiality of prospective jurors, the constitutional balance swings in favor of assuring a fair trial. “[T]he trial courts must take strong measures to ensure that the balance is never weighed against the accused.” *Sheppard v. Maxwell*, 384 U.S. at 362, 86 S.Ct. at 1522. The judge should continue the case until the impact of publicity abates or should transfer the case to another county where publicity has been less pervasive. Id. Idaho judges have authority, under I.C. § 19-1801 and I.C.R. 21, to change venue in such situations.

State v. Hall, 111 Idaho 827, 829-30, 727 P.2d 1255, 1257-58 (Ct. App. 1986) (emphasis added)

As in *Hall*, the coverage of this case has gone to the point where the Court believes that many prospective jurors would be “subtly conditioned to accept a certain version of facts at trial.” While considerations of cost, efficiency, and inconvenience weigh against moving a lengthy trial out of the original county of venue, those concerns cannot outweigh the constitutional right of a Defendant to be afforded a fair trial before an impartial jury. Idaho Criminal Rule 21(a) and Idaho Code § 19-1801 were implemented for a reason, and a case such as this is that very reason.

The Court determines that the Defendant has presented evidence sufficient to be convinced that there is a reasonable likelihood that coverage prejudicial to Defendant will prevent a fair trial in Fremont County. In addition, in consideration of the evidence presented, the Court has determined that a transfer within the Seventh Judicial District would not alleviate the issue, as the entire Seventh District is within the scope of the saturated media coverage and local interest that the Court has considered in determining this issue as to Fremont County. Therefore, pursuant to I.C.R. 21(c)(2)(A), the Court will transfer trial out of the Seventh Judicial District.

In light of that determination, the Court considers the State's request that I.C. § 19-1816 should be considered, to allow for transport of a jury from another county to Fremont County for trial, in lieu of the trial being conducted in another county. The Court also notes that the State has filed a Motion to Sequester the Jury, which has not yet been called for hearing. For the reasons stated below, the Court denies the request to transport the jury from another county to Fremont County, and will reserve ruling on the Motion to Sequester until such motion can be heard.

In anticipation that this ruling could occur (this issue having first been raised over 13 months ago, in Case CR22-20-755), the Court proactively has considered and researched an appropriate county to which this case should be transferred. Having fully considered factors including but not limited to the population base from which to draw jurors, courthouse facilities and staffing of required personnel, courtroom availability for a multi-week high-profile case, ability to house and transport in-custody defendants, control of citizen and media attendance, and jury security and accommodations during trial, the Court concludes that Ada County would provide the best opportunity to conduct the trial in this case. The Court has considered the distant geographic location and additional cost that the selection creates, and accompanying inconvenience for the Court and counsel, but upon weighing all factors the Court determines this to be the best choice. The Court further concludes that having made that suggestion pursuant to I.C.R. 21(c)(2)(A), the geographical distance between the counties makes it impractical for the Court to order the transport of a jury from Ada County to Fremont County pursuant to I.C. § 19-1816.

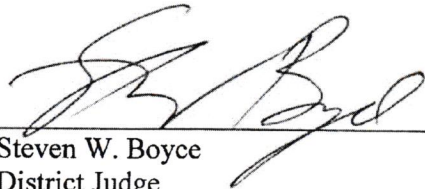
IV. CONCLUSION AND ORDER

Defendant's Motion to Change Venue is Granted, in that the trial in this case will be transferred out of the Seventh Judicial District pursuant to I.C.R. 21(a). Pursuant to I.C.R.

21(c)(2)(A), this Court recommends that it (Judge Boyce) continue the assignment over the case, and the Court suggests that Ada County be selected as the location for trial.

IT IS SO ORDERED.

Dated this 8th day of October, 2021.



Steven W. Boyce
District Judge

CERTIFICATE

I HEREBY CERTIFY that on this 8th day of October, 2021, that a copy of the foregoing MEMORANDUM DECISION ON DEFENDANT'S MOTION TO CHANGE VENUE was served as follows:

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