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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

<p>STATE OF IDAHO,</p> <p>Plaintiff,</p> <p>vs.</p> <p>CHAD GUY DAYBELL,</p> <p>Defendant.</p>	<p>CASE NO. CR22-21-1623</p> <p>RENEWED MOTION TO RECONSIDER CHANGE OF VENUE</p>
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The State submits the following Motion to Reconsider Change of Venue and Memorandum in Support based on the following:

PROCEDURAL HISTORY

On May 24, 2021, a Fremont County Grand Jury returned an Indictment charging the Defendant and his Co-Defendant Lori Vallow Daybell with multiple crimes, including several counts of Conspiracy to Commit First-Degree Murder and First-Degree Murder. The crimes the Defendant is charged with spanned across Madison and Fremont County and culminated with the bodies of all three victims being located in Fremont County.

The Defendant filed a motion requesting a change of venue on July 21, 2021. The State filed a response in opposition on September 29, 2021. On October 5, 2021, this Court heard argument, and received evidence, regarding whether or not a change of venue was required

and/or appropriate. Subsequently, an order was entered granting the Defendant's request for a change of venue on October 8, 2021. On February 17, 2022, the State requested this Court reconsider the change of venue, or in the alternative, consider transporting a jury to Fremont County for the trial. The Defendant filed a response to that motion on March 2, 2022. This Court issued a decision, on April 28, 2022, declining to reconsider the change of venue and/or to transport a jury to Fremont County for the trial.

The State has always, and continues, to maintain that a fair and impartial jury can be had in Fremont County, Idaho. Fremont County is the appropriate venue based on the Defendant's and/or other Co-Conspirators' actions and/or planning occurring in Fremont County and all three bodies being located in Fremont County.

At the time the venue hearing was held, approximately 14 months had passed since the bodies of Tylee Ryan and J.J. Vallow had been recovered in Fremont County, Idaho which was the event that garnered the most publicity in Fremont County. It has now has been approximately 28 months since the recovery of the bodies. In contrast, the intensive media coverage during the Co-Defendant Lori Vallow's trial took place only six months ago in Ada County, Idaho. Local media and community participation in Ada County itself was pervasive and extensive. Given this significant change in circumstances and information not in existence at the time this Court entered the original order changing venue, this Court choosing to modify its decision regarding the change of venue is appropriate and necessary.

LAW AND ARGUMENT

Idaho Criminal Rule (I.C.R.) 21(a) provides: "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."

Further, Idaho Code (I.C.) §19-1801 provides: “A criminal action, prosecuted by indictment, may be removed from 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.”

In this case, the Court granted a change of venue for the trial from Fremont County over the State’s objection. The State maintains Fremont County is the proper venue, a fair and impartial jury can be found in Fremont County and potential jurors in Fremont County are capable and willing of following the instructions provided by this Court to render a fair and impartial verdict. Fremont County continues to be the venue where the pretrial matters are being handled – with only the location of the trial being transferred –which transfer was for the joint trial of the Defendant and his Co-Defendant.

Referencing the competing interests of journalists’ first amendment rights and the defendants’ sixth amendments rights in the context of venue, the Idaho Court of Appeals found “the trial judge faces the difficult task of balancing these competing forces. Because the task necessarily is imprecise, turning upon circumstances peculiar to each case, it is committed to the trial judge’s sound discretion.” *State v. Hall*, 111 Idaho 827, 829, 727 P.2d 1255, 1257 (Ct.App.1986). Internal Citations Omitted. However, this discretion is not without legal limits.

An accused person’s distress at becoming the object of news media attention – while wholly understandable – affords no basis, by itself, to change venue. On the other hand, a defendant’s inability to make a detailed and conclusive showing of prejudice is not a proper ground for refusing to change venue. Prejudice seldom can be established or disproved with certainty. Rather, it is sufficient for the accused to show “a reasonable likelihood that prejudicial news [coverage] prior to trial will prevent a fair trial.”

Id. Internal Citations Omitted.

Furthermore, the Idaho Court of Appeals recognized that both the quality and quantity of

the pretrial media coverage can have an affect on the impartiality of the jury. *Id.*

Qualitatively, the courts must be concerned with news stories and editorials that are inflammatory, inaccurate or beyond the scope of admissible evidence. The quantitative 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.

Id. at 829-830. Internal Citations Omitted.

The Court went on to provide: “[T]he trial courts must take strong measures to ensure the balance is never weighed against the accused.’ 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.* at 830.

In the Order dated October 8, 2021, this Court found hundreds of news stories had been published at that time both nationally and locally since December 2019. *See Memorandum Decision on Defendant’s Motion to Change Venue, dated October 5, 2021, Pg. 3.* This Court further made a finding that the coverage was continuous and pervasive in the Seventh Judicial District. *See Memorandum Decision, dated October 5, 2021, Pg. 3.* However, there was no finding specifically regarding Fremont County – only lumping it into the Seventh Judicial District as a whole. In the Order, this Court considered news stories which were published at that time – from December 2019 to October 2021; however, there was nothing in the record to establish how many residents in Fremont County viewed, subscribed or were exposed to the publicity. Further, this Court specifically found the people of Fremont County to be fair and honest jurors. *See Memorandum, dated October 8, 2021, pg. 8.*

Since the issuance of this Court’s October 8 Order, the Defendant repeatedly requested, and was eventually granted, a severance from the Co-Defendant’s case, which proceeded to trial

in Ada County. The fact the Co-Defendant's trial was held in Ada County now creates a more difficult process of selecting a jury in that venue in relation to the Defendant's case. The Co-Defendant's trial did not take place in Fremont County, and the extensive media coverage associated with the Co-Defendant's trial is not present in Fremont County. To discount Fremont County only because of its size, without any evidence supporting there would be actual prejudice, may have been premature initially, but now, allowing for a second trial in Ada County is simply not a viable option in light of the volume of recent, ongoing local media attention in that specific jurisdiction.

The facts, evidence and witnesses for both the Defendants are similar, related and intertwined. The Co-Defendant's case spanned from the last week of March through the middle of May of 2023. Before, during and after that time, the media coverage in Ada County was extensive and pervasive. There were daily recaps recorded on the courthouse steps by multiple media outlets and local commentary.

Before the Co-Defendant's trial, there was significant media coverage in Ada County; however, the media attention only intensified during the course of her trial, and that coverage has continued with the conclusion of the trial, and in anticipation of the Defendant's trial being held in Ada County. One of the main media outlets in Ada County is KTVB. In looking at the media coverage, KTVB conducted multiple interviews with public figures from Ada County, as well as others located and/or residing in Ada County.¹ Given the location of the individuals, those who know them and reside in the same jurisdiction are more likely to pay attention to the interviews

¹ See KTVB7: "*How Ada County is Preparing for Lori Vallow Daybell's Murder Trial*", March 30, 2023: Judge Hippler interviewed in front of Ada County Courthouse and Former Ada County Chief Deputy Prosecutor Jean Fisher interviewed. (Both video and article); "*Preparations for Lori Vallow and Chad Daybell Trial at Ada County Courthouse in Boise*" June 16, 2022. (Interview of Judge Hippler in Ada County Courtroom); "*What to Expect During Lori Vallow's Sentencing*" July 28, 2023. (Article with interview with Jean Fisher); "*Keep an Open Mind: Jury Selected in Lori Vallow Daybell Trial*" April 7, 2023. (Interview of Jean Fisher at Courthouse).

which in turn draws their attention to the case. We find ourselves in the same situation which existed at the time of the change of venue but this time in relation to the pervasive media coverage in Ada County, rather than Fremont County, particularly due to the Co-Defendant's trial.

This Court's October 8th Order, specifically included an analysis of a religious letter and mention of the religious nature of the case causing potential issues seating a jury in this area; however, it also specifically referenced the letter was broadcast on Court TV. *See Memorandum, date October 8, 2021, Pg. 5.* With regard to any religious affiliation of the Defendant – anytime a crime is committed where a defendant resides, there is going to be the potential for some potential jurors to know the defendant or have some information regarding the alleged crime – whether they know the person from Church or other associations or activities.

This Court referenced vigils held in Fremont County as part of the rationale for changing venue. *See Memorandum, dated October 8, 2021, pg. 5.* We are now over three years from when those were held; however, we are only approximately six months from the time when crowds gathered outside the Ada County Courthouse to gain access to the Co-Defendant's trial and the verdict. The Ada County Courthouse was also the scene for multiple interviews, statements and news coverage related to the Co-Defendant's trial. This coverage included individuals' perception of the evidence, strength of the case, culpability of the Defendant and the Co-Defendant and credibility of witnesses.

In this Court's Order, coverage by East Idaho News was specifically referenced; however, there was nothing to support or establish where those who follow the stories reside or are located. In fact, East Idaho News has taken over coverage of this story, and has viewers nationally and internationally. Further, East Idaho News was a consistent and strong presence

during the trial in Ada County, and after the trial conducted interviews with some of the jurors. The same rationale that applied at the time the Court ordered the change of venue now applies – but in relation to Ada County.

In this Court’s Memorandum, reference was made to the fact the case was joined with Co-Defendant’s case as a concerning factor since she was garnering so much media attention. *See Memorandum, dated October 8, 2021, pg. 6.* Following up on that –the Co-Defendantjust had her highly publicized trial approximately six months ago in Ada County – and only a year from when the Defendant’s trial is scheduled to begin. Adopting this Court’s concern regarding the publicity surrounding the Co-Defendant– it raises serious concerns in relation to holding the Defendant’s trial in Ada County where the media saturation has consistently been more than other counties in Idaho – and at least on par with the Seventh Judicial District – if not a little higher.

This Court previously found “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.’” *See Memorandum, dated October 8, 2021, pg. 9.* This Court’s same rationale applies, but this time in relation to Ada County. The pervasive coverage in Ada County has created those same concerns regarding residents of Ada County.

In addition, there were 1800 prospective jurors called in for the Co-Defendant’s case six months ago. There was a questionnaire provided to those potential jurors, and unlike a Grand Jury, jurors are not precluded from discussing the information obtained during the selection process. In Ada County, the Parties now face the fact that over 1800 Ada County residents received summons, the vast majority of which also appeared for jury duty and filled out a questionnaire, and approximately 700 which were subjected to Voir Dire questioning related to

the facts of the Defendant's case. Where the potential jurors, and the jurors themselves, were not prohibited from discussing the case or information they obtained, the potential for discussion with others who reside in Ada County by the jurors is very likely – this could result in piquing individual's interest in the case and result in more viewing of pretrial publicity. While Fremont County is a much smaller county based on population, there has been very limited contamination of potential jurors through a jury selection process since a Grand Jury was able to be quickly seated in Fremont County with a limited number of potential jurors being given any information regarding the facts and/or circumstances of the case. Due to the extensive media coverage in Ada County, and the significant number of potential jurors in Ada County who had to be pulled in and provided a questionnaire and a further number who were questioned – with the process being open to the public in Ada County – it seems appropriate to reconsider the change of venue to Ada County.

If this Court is not inclined to relocate the trial to Fremont County, Idaho, the State would request consideration be given to relocating the trial to a closer venue – such as Bonneville County, or if this Court believes it must be heard outside of the Seventh Judicial District – then to Bannock County or another location which does not have the pervasive community saturation which is present in Ada County.

CONCLUSION

Due to the significant changes in circumstances, information and timing than were in existence at the time the change of venue was initially granted, the State would respectfully request this Court reconsider its order from October 8, 2021, and keep the trial in Fremont County, or in the alternative, this Court reconsider a transfer of venue to a closer, less saturated and less expensive venue.

Respectfully submitted this 15th day of November, 2023.

/s/Lindsey A. Blake
Lindsey A. Blake
Fremont County Prosecuting Attorney

/s/Rob H. Wood
Rob H. Wood
Madison County Prosecuting Attorney

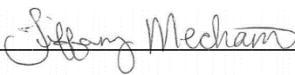
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of November, 2023 that a copy of the foregoing State's Motion to Amend the Indictment was served as follows:

John Prior
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- U.S. First Class Mail
- Hand Delivered
- Courthouse Box
- Facsimile:

- File & serve

By: 
TIFFANY MECHAM
Legal Secretary