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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**

STATE OF IDAHO,

Plaintiff,

v.

CHAD GUY DAYBELL,

Defendant.

Case No. CR22-21-1623

STATE'S SECOND RESPONSE TO
DEFENDANT'S MOTION FOR
CAMERAS LIVE STREAMING IN
THE COURTROOM

The State of Idaho hereby files this Second Response to Defendant's request for Cameras Live Streaming in the Courtroom. The State's response is to the Defendant's request filed September 29, 2022, and the Court's inquiry regarding the issue during a status conference on October 10, 2023.

The Defendant's wife/co-defendant, Lori Vallow Daybell filed a request for exclusion of cameras from the Courtroom on August 30, 2022. At that time the Defendant and his wife were scheduled to go to trial together. The State concurred with Defendant Vallow Daybell's request and the Court heard the matter on September 15, 2022. Despite notice, neither the Defendant Chad Daybell nor his counsel attended that hearing. The Court heard from Lori Daybell's

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counsel, the State, and Attorney Steven J. Wright on behalf of multiple media members. The Court issued its MEMORANDUM DECISION AND ORDER PROHIBITING VIDEO AND PHOTOGRAPHIC COVERAGE on September 23, 2022.

The Defendant Chad Daybell filed a MOTION TO CLARIFY MEDIA IN THE COURTROOM on August 30, 2022. The Court denied the Defendant's motion but noted that a severance of the case would allow the Court to reconsider the Defendant's request. The State's initial response to the Defendant's MOTION TO CLARIFY MEDIA IN THE COURTROOM focused on the procedure and timeliness of the Defendant's motion, whereas this response will address the issue itself. The State maintains its objection and position that the Defendant Chad Daybell waived his right to challenge the Court's decision in this matter by not attending the hearing and by failing to provide argument or a position on September 15, 2022.

LAW AND ARGUMENT

I. The Right of the Public and Media Access to the Courtroom is Presumed but Does Not Include Unfettered Use of Recording Equipment.

The State recognizes and supports the rights of the State, the citizens of the State, and the Defendant to public hearings on criminal matters. Government transparency, especially in the administration of justice, is a cornerstone of our Democracy. Public hearings typically afford both parties protection and communication with the people they serve.

The State acknowledges the right of the public to access the criminal justice system. Public access to the judicial system is fundamental to the public's confidence in the system's legitimacy. The United States' Supreme Court held "that the right to attend criminal trials is implicit in the guarantees of the First Amendment; without the freedom to attend such trials, which people have exercised for centuries, important aspects of freedom of speech and 'of the State's Response to Defendant's Motion for Cameras Live Streaming in the Courtroom

press could be eviscerated’.” *Richmond Newspapers, Inc. v. Virginia*, (1980) 448 U.S. 555. 579
100 S.Ct. 281465 L.Ed.2d 973 (1980) [quoting *Branzburg v. Hayes*, 408 U.S. 665 at 681(1972).]

The State’s response to the Defendant’s motion does not include any request to limit the public access to the courtroom unless matters are sealed by court order under the law given their prejudicial, confidential or statutorily sensitive nature. Indeed, the State asserts the courtroom must remain open to the public absent a showing of good cause for closure. However, as guaranteed by the First Amendment, public access to the courtroom and proceedings is fundamentally different than, and does not include the unfettered use of audio/visual equipment by the media or third parties. Use of methods of recording is a privilege afforded the media by the courts when the recording does not impact on the rights of litigants to a fair, impartial trial.

II. Idaho Court Administrative Rule ICAR 45 Outlines the Process and Restrictions on the Use of Camera in the Courtroom.

The Court has broad discretion in allowing the audio/visual coverage of proceedings within a judicial district. Use of cameras in the courtroom is governed by ICAR 45. ICAR 45 (a) and (b) state:

[a] Audio/visual coverage is authorized subject to the discretion of the presiding judge. The presiding judge maintains the right to limit audio/visual coverage of any public hearing when the interests of the administration of justice requires. Authorization may be revoked at any time, without prior notice, when in the discretion of the court it appears that audio/visual coverage is interfering in any way with the proper administration of justice.

[b] The presiding judge may, at his or her discretion, limit, restrict, or prohibit audio/visual coverage at any proceeding. Any decision regarding audio/visual coverage is not subject to appellate review.

Once the Court permits the visual or audio recording of a hearing by the media the Court loses any authority to regulate the subsequent use of the recording by the public – even when one or more parties’ rights to fair trial are at risk. Pursuant to ICAR 45(h) once a Court allows a video

camera in the courtroom, the Court is not allowed to include any “restriction on the time when, the place where, or the manner in which the content of the audio/visual coverage may be aired or published.” Simply put, once a proceeding is recorded or aired, the Court cannot limit how or what is done with that third-party recording. Given the vast amount of attention on the Defendants’ case, the potential for abuse and public misuse directly impacts on the parties’ right to fair trial. The risk is great that excessive prejudicial pretrial publicity will negatively impact the parties’ right to trial created by the improper use of camera and audiovisual equipment in sensitive pretrial hearings.

III. Pre-Trial Publicity Impedes the Ability of the Parties to Pick a Fair and Impartial Jury.

Transparency of Court proceedings does not require mass publicity. In this Court’s MEMORANDUM DECISION AND ORDER PROHIBITING VIDEO AND PHOTOGRAPHIC COVERAGE dated September 23, 2022, this Court stated:

While the right to public access must be protected, the scope of the coverage cannot supersede the rights of all parties to the fair administration of justice in this case. Courts have historically struggled with the issue of permitting cameras in the courtroom. Going back decades, cases have been overturned by the U.S. Supreme Court because of issues relating to extensive media coverage.⁹ In this day and age, the problem is further exacerbated, where instantaneous access to coverage provided by traditional media outlets is quickly rebroadcast, repackaged, and reimagined. The Court has previously been made aware and continues to be informed that documentaries, dramatizations and fictionalized movies focusing on the Defendants and allegations in this case have already been produced and continue to be disseminated to the public. All of this continues to occur in a case which has not yet been tried.¹⁰

The Court is very concerned that continued visual coverage of this case will impede the ability of the parties to select fair and unbiased jurors. While the Court has refrained from delving into viewing the coverage in this case, the coverage is so extensive the Court has had to proactively avoid viewing it, as it is routinely part of local, and at times, national news. The affidavit submitted by Mr. Wright confirms this, in that just one of Mr. Wright's 30+ clients distributes footage from hearings in this case "to dozens of media organizations and millions of viewers..."¹¹

Since the Court issued its decision in September of 2022, the Defendant’s wife and co-defendant has been tried and convicted of two counts of conspiracy to commit first degree murder

and grand theft, one count of conspiracy to commit murder, two counts of murder, and one count of grand theft. The Defendant is listed as a co-conspirator for each of the counts of conspiracy to commit murder and grand theft, the conspiracy to commit murder, and is also charged with first degree murder for each of the victims involved in the co-defendant's case. Her trial, held between April 1, 2023 and May 12, 2023, garnered a massive amount of media attention. While the trial was not televised due to the Order of the Court, the media constantly reported on the case. Multiple reporters "live-tweeted" the trial, providing the public with accurate and by-the-minute access to what was happening in the Courtroom. At the end of each day of trial the audio from the trial was provided to the public.

While it remains to be seen if the public will be as interested in Chad Daybell's case as they are/were in Lori Daybell's case, it goes without saying that pre-trial hearings and trial will garner media attention. The concerns listed by the Court above still apply to both pretrial hearings and trial proceedings. One of the State's primary concerns is that pre-trial publicity will, again, make picking a jury difficult. During the jury selection for Lori Daybell's trial, the Court essentially barred anyone who had viewed the Netflix special, "The Sins of Our Mother" from serving on the jury. Further, individuals who had viewed Dateline specials were generally precluded by the Court from serving on the jury.

Due to the pre-trial publicity that has already occurred, and the trial of Lori Daybell, the State is concerned about the ability to pick a fair and impartial jury in Chad Daybell's case in Ada County. Allowing cameras back into the Courtroom for pre-trial proceedings will only complicate that selection process by creating even more publicity. The State notes that the Defendant has taken the position that cameras should be allowed in the Courtroom. While the Defendant is certainly free to take that position, having made that request he is not free from the consequences of such a position. The situation is analogous to issues that arise due to "invited error." The Idaho Court of Appeals held that "one may not successfully complain of errors one has consented to or acquiesced in. In other words, invited errors are not reversible." *State v. Caudill*, 109 Idaho 222, 226, 706 P.2d 456, 460 (1985); *State v. Owsley*, 105 Idaho 836, 673 P.2d 436 (1983). The doctrine of invited error applies to estop a party from asserting an error when his own conduct induces the commission of the error." *People v. Perez*, 23 Cal.3d 545, 153 Cal.Rptr. 40, 591 P.2d 63, 66, n. 3 (Cal.1979). *State v. Atkinson*, 864 P.2d 654, 657 (Idaho App. 1993) If
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the Defendant wishes to create, or even just allow, more publicity, the Defendant then cannot credibly complain when a potential juror has consumed media about that case and cannot object to the inclusion of such a juror in good faith.

IV. Visual Broadcasting of Trial Impedes on the Parties Right to a Fair Trial

In its MEMORANDUM DECISION AND ORDER PROHIBITING VIDEO AND PHOTOGRAPHIC COVERAGE, the Court held:

Where continued coverage of pre-trial motions will likely cause potential jurors to be biased, disqualifying them from service, coverage during trial raises additional and equally serious concerns. The Court will not risk the loss of seated jurors who may intentionally or inadvertently review the very trial proceedings they are sworn to decide, where those jurors must make their decision only upon the evidence presented at trial.¹³ The Court will not risk the potential loss of State or Defense witnesses who may intentionally or inadvertently become tainted by viewing the trial proceedings before they testify, assuming their exclusion from the proceedings, as is regularly ordered for material witnesses. The Court further is concerned that at trial the added and unnecessary pressure witnesses and counsel will be subject to, knowing their every expression, utterance and appearance will be captured and circulated without their control in perpetuity, is unwarranted and will likely interfere with the fair administration of justice in this case. Subjecting trial participants, including attorneys and witnesses, to that added pressure may unfairly influence jurors who may incorrectly question credibility based on the reactions to that pressure.

The issues raised by the Court in this paragraph will be issues in the trial of Chad Daybell. Even without visual broadcasting Lori Daybell's trial, multiple witnesses (who were brought to the Court's attention) inadvertently heard portions of the trial audio. As this Court noted, allowing visual broadcasting of the trial subjects witnesses to added pressure that may unfairly influence jurors. As this Court is aware from the last trial, multiple witnesses in this case are not law enforcement, but are lay witnesses who in no way ever tried to be involved in the case. Several witnesses are witnesses simply because of business dealings, casual friendships, or because they knew one of the victims. Being called as a witness in a murder trial is in and of itself daunting. Knowing that potentially millions of viewers may scrutinize every word you say and your appearance is exponentially more daunting. Such an effect on a witness can influence the witness's ability and willingness to participate and a juror's perception of the witness.

During the Lori Vallow Daybell trial, the Court ordered witnesses at trial not to consume

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media on the trial once the jury was sworn in. Should the Court allow the trial to be visually broadcast the Defendant should be prohibited from seeking the exclusion of witnesses who inadvertently learn of specific stories or coverage. Live or recorded broadcast of the Chad Daybell trial will increase the burden on witnesses as the local news likely will be inundated with the local news of the day. Not only will the witnesses feel pressure from the press they then will be in a difficult situation of not following local news or media at risk of the disqualification; likewise, the Court will be incentivizing reluctant witnesses to watch the news to avoid having to testify.

V. Visual Broadcasting is not Necessary for a Transparent and Public Trial

As stated above, Lori Daybell’s trial garnered a massive amount of publicity. Everything that happened during the trial was live-tweeted as it was happening. Inasmuch as the State could or did follow the live-tweeting, it appeared that the public received accurate information regarding the trial in real-time. The audio of the trial was provided to the media daily. Both the public and the media were allowed to attend the trial in person and additional viewing rooms were provided in Ada and Madison Counties.

It cannot be realistically said that not allowing visual broadcasting of Lori Daybell’s trial rendered said trial un-transparent or not “public.” The State is unaware of any factors that would make Chad Daybell’s trial any different. The media and public will continue to have access to an open Court. Reporters will still be allowed to report on the case and be provided the audio and transcripts of the proceedings if they so wish. It appears the only factor that is different in this case is that the Defendant himself wants the trial to be broadcast. Again, the State is unaware of any legal requirement in statute, rule, or caselaw that suggests that transparency requires mass publicity by way of visual broadcasting.

In the event the Court does not decide to follow its previous Order, the State respectfully requests the following:

1. That no media microphones be placed at Counsels’ tables. This issue arose in the previous case and was previously litigated. Microphones outside of the parties’ control risks violation of ICAR 45(c).
2. That the Court consider alternatives to live visual broadcasting, such as still photography.

3. That should the Court allow visual broadcasting, that camera placement be limited in the Courtroom similar to the camera placement at the sentencing of Lori Vallow, and also which does not allow for zooming in on a witness's face.

CONCLUSION

The Vallow/Daybell case has garnered widespread media attention across the Country. The entire State of Idaho has been inundated with media coverage about the murders of Tylee Ryan, JJ Vallow, and Tammie Daybell. Broadcasting or live streaming the presentation of arguments, hearings and testimony has the potential of exacerbating prejudice to all parties. Whereas the Court has the absolute and sole authority to decide if audio/visual equipment are allowed in the courtroom, the State urges the Court to maintain its MEMORANDUM DECISION AND ORDER PROHIBITING VIDEO AND PHOTOGRAPHIC COVERAGE issued on September 23, 2022. In the alternative, the State requests that the Court limit broadcasting of the trial in such a manner as to limit prejudice to the parties.

DATED this 15th day of November, 2023.

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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of November, 2023, that a copy of the foregoing Response was served as follows:

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By: /s/ Jodi L. Thurber
