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THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF FREMONT

STATE OF IDAHO, Plaintiff, v. CHAD DAYBELL, Defendant.	Case No.: CR-22-21-1623 REPLY TO STATE'S SUPPLEMENT AND DISCLOSURE FOR THE STATE'S MOTION FOR THE COURT TO ALLOW ADDITIONAL EVIDENCE & FOLLOW IDAHO CODE § 19-1816 BY TRANSPORTING A JURY

COMES NOW the Defendant, Chad Daybell, and through undersigned counsel, submits this Reply to the prosecution's Supplement and Disclosure for the State's Motion for the Court to Allow Additional Evidence & Follow Idaho Code § 19-1816 by Transporting a Jury. The prosecution's Supplement fails to provide a proper basis for transporting an Ada County jury to Fremont County for a lengthy capital trial. In particular, the Supplement ignores and misconstrues the relevant law, fails to provide the information necessary to compare the costs of a trial in Ada County to a trial in Fremont County, inflates cost estimates through the State's own costly decisions, and fails to even acknowledge Mr. Daybell's fundamental constitutional rights that would be prejudiced by transporting a jury from Ada County. Ultimately, the prosecution's Supplement does not provide relevant new evidence or a proper legal analysis that would support a reconsideration of the Court's October 8, 2021 Memorandum Decision on Defendant's Motion

to Change Venue. Therefore, pursuant to the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article I, Sections 6, 7, 8 and 13 of the Idaho Constitution, the Idaho Code, as well as the legal authorities cited below, Mr. Daybell respectfully requests that the Court deny the prosecution's motion to reconsider.

ARGUMENT

I. The Prosecution Continues to Ignore the Primary Findings in the Court's October 8, 2021 Memorandum Decision.

On October 8, 2021, the Court issued a Memorandum Decision on Defendant's Motion to Change Venue, in which the Court addressed the prosecution's arguments and denied the request to transport jurors to Fremont County from another county. In reaching its decision, the Court noted that it had "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." Moreover, the Court specifically noted that "the geographical distance between the counties make it impractical for the Court to order the transport of a jury from Ada County to Fremont County pursuant to I.C. § 19-1816." The decision was approved by the Idaho Supreme Court on October 20, 2021.

In contrast to the Court's full consideration of these factors, the prosecution's Supplement does not even address them. The Supplement does not compare the "courthouse facilities and staffing of required personnel" in the respective counties, nor does the Supplement discuss "courtroom availability for a multi-week high-profile case." The Supplement further ignores the geographical distance and its impact on transporting the jury. In fact, the Supplement does not consider any issues outside of costs, which the prosecution also failed to analyze meaningfully, as

discussed in Section III below. Because the prosecution continues to ignore the central components of the Court's October 8 Memorandum Decision, the prosecution's motion to reconsider should be denied.

II. The Court Properly Applied the Law in Its Previous Ruling and the Prosecution Continues to Ignore or Misapprehend the Relevant Law.

a. The Supplement Misstates the Law and Urges an Improper Balancing Test.

Idaho law permits state courts discretionarily to "enter an order directing that jurors be impaneled from the county to which venue would otherwise have been transferred," if the court first finds that "it would be more economical to transport the jury than to transfer the pending action; **and [t]hat justice will be served** thereby." I.C. § 19-1816 (emphasis added).

Contrary to § 19-1816's plain language, the prosecution asserts that "§ 19-1816 provides the Court the opportunity to balance a Defendant's right to an impartial panel of their peers with the public's right to seek justice in the most efficient and economical manner." Supplement at 2. The prosecution does not cite any cases for the proposition that § 19-1816 creates a balancing test; it does not. Relatedly, the prosecution cites no source for its claimed "right to seek justice in the most efficient and economical manner," and no such *right* exists. Indeed, the U.S. Supreme Court has repeatedly held that a state's *interest* in expediency and cost-efficiency "is not substantial, in light of the compelling interest of both the State and individual" in fair and reliable capital trial proceedings. *See, e.g., Ake v. Oklahoma*, 470 U.S. 68, 78-79 (1985) ("Oklahoma asserts that to provide Ake with psychiatric assistance . . . would result in a staggering burden to the State. We are unpersuaded . . . [I]t is difficult to identify any interest of the State, other than in its economy, that weighs against recognition of this right . . . We therefore conclude that the governmental interest in denying Ake the assistance of a psychiatrist is not substantial, in light of the compelling interest of both the State and the individual. . .").

The prosecution's misconstruction of § 19-1816 serves as the foundation for all their submitted arguments and evidence, and the prosecution's arguments crumble without this false foundation. For example, the prosecution claims that "[t]he economic benefits to the people of Fremont and Madison County *outweigh* any benefits for trying the above-referenced matter in a single case in Ada County."[1] Supplement at 2 (emphasis added). Even were this claim to be true, it would be irrelevant under § 19-1816. Transporting a jury from another county is appropriate only if it would lead to *both* greater economic efficiency *and* equal or greater justice and fairness. Especially because the prosecution continues to seek the death penalty in this case, both the U.S. and Idaho Constitutions prohibit the type of balancing test urged by the prosecution, and instead demand that financial interests give way to Mr. Daybell's fundamental trial rights. *See Ake*, 470 U.S. at 78-79; *Gilmore v. Taylor*, 508 U.S. 333, 342 (1993) ("The Eighth Amendment requires a greater degree of accuracy and factfinding than would be true in a noncapital case."); *Gardner v. Florida*, 430 U.S. 349, 357 (1977) (describing the death penalty as "unique in both its severity and finality").

b. The Supplement Fails to Acknowledge that Death Is Different and Misleadingly Characterizes the Relevant Case Law.

The prosecution's Supplement further misconstrues the law by failing to acknowledge that death is different and thereby failing to account for the heightened reliability demanded by the U.S. and Idaho Constitutions. *Ford v. Wainwright*, 477 U.S. 399, 411 (1986) (describing these heightened demands as "a natural consequence of the knowledge that execution is the most irremediable and unfathomable of penalties; that death is different"); *see also Lockett v. Ohio*, 438 U.S. 586, 604 (1978) (noting that the Due Process and Cruel and Unusual Punishment Clauses of

[1] Notably, the prosecution never actually explains those benefits—thereby ignoring the basis for the Court's October 8 Memorandum Decision—and simply asserts that there would be no prejudice to Mr. Daybell's trial rights.

the U.S. Constitution guarantee capital defendants a "greater degree of reliability when the death sentence is imposed"); *Mills v. Maryland*, 486 U.S. 367, 376 (1988) ("[I]n reviewing death sentences, the Court has demanded even greater certainty [than in other criminal cases] that the jury's conclusion rested on proper grounds."); *California v. Ramos*, 463 U.S. 993, 998-99 (1983) (explaining that qualitative difference of death from all other punishments "requires a correspondingly greater degree of scrutiny of the capital sentencing determination").

Because death is different, the U.S. Constitution requires that "extraordinary measures [be taken] to insure that" Mr. Daybell "is afforded process that will guarantee as much as is humanly possible, that [a sentence of death not be] imposed out of whim, passion, prejudice, or mistake." *Caldwell v. Mississippi*, 472 U.S. 320, 329 n.2 (1985) (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 118 (1981) (O'Connor, J., concurring)). Justice O'Connor's concurrence in *Thompson v. Oklahoma*, 487 U.S. 815 (1988), further emphasizes why a trial court must apply heightened scrutiny to *all* decisions that may lead to the imposition of a death sentence:

> Under the Eighth Amendment, the death penalty has been treated differently from all other punishments. . . Among the most important and consistent themes in this Court's death penalty jurisprudence is the need for special care and deliberation in decisions that may lead to the imposition of that sanction. The Court has accordingly imposed a series of unique substantive and procedural restrictions designed to ensure that capital punishment is not imposed without the serious and calm reflection that ought to precede any decision of such gravity and finality.

Id. at 856. To satisfy the constitutionally heightened demand for reliability in capital cases, prosecutors must satisfy their duty of candor and avoid asserting inaccurate or misleading statements of the law. *See* ID. R. Prof. Cond. 3.3(a).

In the Supplement, the prosecution addresses case law in only sentence, asserting that "[t]he State has reviewed applicable cases and to date has not found a single situation where the

Court's application of § 19-1816, with jury selection in a new venue but trial in the county where the crimes occurred, was reversed due to the transportation of a jury." Supplement at 2. The prosecution does not cite any specific cases that have been reviewed, but the prosecution's assertion that there are "applicable cases" necessarily implies that appellate courts have examined the issue multiple times, which is not true. Defense counsel has reviewed the appellate cases that cite § 19-1816 and has not found a single case where an appellate court examined whether a defendant was constitutionally prejudiced by the transportation of a jury. Thus, while it is technically true that there have been no instances of reversal "due to the transportation of a jury," it is equally true that no appellate court has affirmed a lower court's decision to transport a jury. Accordingly, the prosecution has characterized the case law in a highly misleading manner.

That said, three appellate cases cite § 19-1816. In *State v. Lewis*, 848 P.2d 394 (Idaho 1993)—a noncapital case in which the trial and deliberation lasted a total of six days—the Idaho Supreme Court examined whether the trial court had the authority to order jury transportation *sua sponte*. *Id.* at 406-07. Because of the focus on judicial authority, the *Lewis* Court did not address whether any constitutional prejudice resulted from the jury transportation and did not even describe the trial court's consideration of § 19-1816's criteria. The only other two appellate cases that cite § 19-1816 did not even involve challenges to the provision. *See State v. Thomasson*, 832 P.2d 743, 744-45 (Idaho 1992) (noting, but not reviewing, § 19-1816's application in a trial lasting seven days); *Davis v. State*, 775 P.2d 1243, 1251 (Idaho App. 1989) (noting, but not reviewing, § 19-1816's application in a trial for "possession of controlled substances and drug paraphernalia"). Accordingly, these three cases do not support the prosecution's motion to reconsider, and it was highly misleading for the prosecution to imply that multiple appellate cases have addressed challenges to § 19-1816.

Moreover, the dearth of appellate cases citing § 19-1816 demonstrates how rarely it is employed, particularly since appellate courts appear likely to note its application even when the provision is not the focus of appellate review. But even were it be more commonly employed, a more detailed and careful application would be required in this case than in non-capital cases. "[T]ime and again the [Supreme] Court has condemned procedures in capital cases that might be completely acceptable in an ordinary case." *Caspari v. Bolden*, 510 U.S. 383, 393 (1994) (*quoting Strickland v. Washington*, 466 U.S. 668, 704-05 (1984) (Brennan, J., concurring in part and dissenting in part)).

Because the Court previously applied the proper legal standard and the prosecution has moved for reconsideration under an improper legal standard, the Court should deny the prosecution's request.

III. The Supplement Has Not Provided Evidence that It Is *More* Economically Efficient to Transport a Jury from Ada County.

§ 19-1816 requires the moving party to establish that it would be *more* economically efficient to transport the jury than to move the trial. As applied to the prosecution's request, § 19-1816 requires the prosecution to provide sufficient information to compare the costs of holding the trial in Ada County as opposed to transporting a jury from Ada County to Fremont County. As discussed below, the prosecution's Supplement—including three exhibits that the prosecution intends to introduce through Fremont County Sheriff Len Humphries and Rexburg Police Chief Shane Thurman—do not provide the Court with sufficient information to conduct the cost comparison required under § 19-1816. Moreover, the Supplement includes cost estimates based on unnecessary and costly prosecutorial decisions.

a. The Lack of a Relevant Cost Comparison Prevents an Analysis under §19-1816.

The Supplement's Exhibit 2 lists five categories of relevant costs to the Fremont County

Sheriff's Department: lodging, travel costs, meals/food, overtime, and jail costs. However, none of the prosecution's filings or exhibits discuss these five categories in relation to transporting a jury from Ada County to Fremont County. Nowhere in the Supplement or in any of the prosecution's previous filings is there a discussion of the cost of transporting, lodging, feeding, and providing security for jurors transported from Ada County.[2] As a result, the Court cannot conduct the analysis required under § 19-1816, and the prosecution has not provided a proper basis for reconsideration of the Court's prior decision.

Moreover, Sheriff Humphries' estimates demonstrate a high likelihood that it would cost *more* to transport a jury from Ada County than to hold a trial in Ada County. In particular, Sheriff Humphries estimates that $201,800—of the total $269,430 that he estimates an Ada County trial would cost the department—would be due to food and lodging for fourteen deputies. But the County would be required to pay for the food and lodging of jurors and their alternates, which would presumably be sixteen or more individuals, for a trial in Fremont County. It seems likely that transporting, feeding, lodging, and guarding sixteen jurors in Fremont County would cost more than feeding and lodging fourteen deputies in Ada County. Additionally, even as to jail costs, Sherriff Humphries' estimates, in conjunction with his past public statements, also suggest that an Ada County trial would save money in jail costs.[3]

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[2] Counties participating in Idaho's Capital Crimes Defense Fund still bear the burden for all costs associated with jury service, including lodging, meals, per diems, security, and transportation reimbursement. *See Capital Crimes Defense Fund Policies and Procedures*, Idaho Assoc. of Counties (2020), available at https://idcounties.org/wp-content/uploads/2020/09/CCDF-Manual-Update-Sept-2020.pdf (last visited Feb. 28, 2022).

[3] Sheriff Humphries estimates that it will cost $55/day for Mr. Daybell to be jailed in Ada County. But as recently as 2019, Sheriff Humphries stated that it costs "$100 a day per inmate" to jail someone in Fremont County. *See* Lisa Dayley Smith, *Fremont County seeking feasibility study on new or upgrade jail*, Rexburg Standard Journal (Jan. 22, 2019), available at https://www.postregister.com/news/local/fremont-county-seeking-feasibility-study-on-new-or-upgraded-jail/article_03e73386-e3c8-5684-ad0e-2b6291c1ef2c.html (last visited Feb. 25, 2022).

Ultimately, the Supplement's exhibits do not account for any of the costs that would arise from transporting a jury from Ada County. Because the prosecution has not provided the Court with even the basic information necessary to conduct a cost comparison under § 19-1816, the prosecution certainly has not provided a proper basis to reconsider the Court's October 8 Memorandum Decision.

b. The Prosecution's Submitted Estimates Are Distorted by the State's Apparent Decision to Manage an Ada County Trial in the Costliest Manner Possible.

The prosecution's submitted cost estimates include numerous unnecessary costs that stem directly from the State's decision to manage an Ada County trial in the costliest manner possible. Most significantly, Sheriff Humphries' cost estimates are based on the asserted need for fourteen Fremont County deputies to be present in Ada County throughout trial. *See* Supplement Ex. 2 at 9. However, there is no reason to believe that *any* Fremont County deputies would be necessary. As the prosecution notes, when there is a change of venue, "financial reimbursement to the new venue" is one way that the county of origin can remain responsible for the litigation. *See* Supplement at 2. Because financial reimbursement is appropriate, the new venue typically provides the necessary law enforcement services.[4] Indeed, it would be strange for Fremont County deputies to provide many of the necessary services, especially those that relate to the Ada County Courthouse and the Ada County Jail.

The prosecution has provided no reasons to deviate from the norm of relying on the deputies in the new venue, but has instead simply decided that such services would be provided

[4] *See, e.g.*, Bill Chappell, *Jurors in Chauvin Trial Have Security Escort, Are Partially Sequestered*, Nat'l Pub. Radio (Apr. 12, 2021), available at https://www.npr.org/sections/trial-over-killing-of-george-floyd/2021/04/12/985803829/jurors-in-chauvin-trial-have-security-escort-are-partially-sequestered (last visited Feb. 28, 2022) (describing the security for jurors during the Chauvin trial and noting that the Hennepin County Sheriff's Office provided the security, following a venue change to Hennepin County).

by Fremont County deputies, thereby drastically increasing the submitted estimates. Based on Sheriff Humphries' estimates, it would cost Fremont County $207,030 to feed, house, and transport Fremont County deputies for a ten-week trial. *See* Supplement Ex. 2 at 9. Additionally, the overtime pay required for traveling deputies is estimated to cost $17,500. *See id.* at 7, 9 (noting that overtime increases average hourly pay from $25 to $37.50, resulting in a total estimate of $52,500, which would reduce to $35,000 without overtime). In sum, $224,530 of Sheriff Humphries' estimated costs—83% of his total projected costs—are based on the State's own decision to employ Fremont County deputies for an Ada County trial.

Similarly Chief Thurman's estimates in Exhibit 3 reflect unnecessary prosecutorial decisions that drastically increase costs. For example, he claims that "[t]welve (12) individuals from the Prosecuting Attorney's Office, applicable staff and Law Enforcement witnesses [will] be required for the full 10-week trial period."[5] *See* Ex. 3 at 6. It is hard to fathom why law enforcement witnesses would be required in Ada County for a full ten weeks of trial; this is not the norm for out-of-town witnesses and there are no reasons provided by the prosecution for the continuous presence of witnesses. Even reducing that number by half, which would still result in an outsized prosecutorial staff, would result in saving $107,652. *See id.* Chief Thurman goes on to estimate that three more law enforcement witnesses will be needed for five weeks of trial, again without any supporting reasons for this lengthy stay that he estimates will cost $27,504.60. *See id.* at 7.

[5] Chief Thurman's estimates, contained in Exhibit 3, do not all relate to duties of the Rexburg Police Department and thus cannot properly be introduced through Chief Thurman. For example, Chief Thurman's estimates include assertions about the number of prosecutors and corresponding staff needed throughout trial, the availability of office space in Ada County, and the transporting of witnesses. *See* Supplement Ex. 3 at 6, 8, 9. Chief Thurman is not responsible for deciding how many prosecutors will be involved in this case or the office space that they will work in. He is not responsible for determining the number of witnesses that will be necessary and how long they will be needed. Therefore, these estimates are outside the scope of Chief Thurman's knowledge.

Ultimately, the costs stemming from law enforcement witness' unnecessarily lengthy stays in Ada County account for over half of Chief Thurman's estimated costs. *See id.* at 11.

Additionally, the submitted estimates assume that an Ada County jury would be sequestered. *See* Supplement Ex. 2 at 1 (including "sequestration" in Sheriff Humphries' list of "[s]taffing considerations"). The prosecution has provided no basis for this assumption. Indeed, the Court has explicitly stated that it has not yet ruled on this issue, and only the prosecution has thus far requested that the jury be sequestered. But sequestration is quite rare. The Idaho Supreme Court's Jury Committee has defined "sequester" as "[a] seldom used procedure protecting the jury from outside influence during the time of trial and/or deliberation." *See Idaho Supreme Court Handbook for Jurors*, Idaho Supreme Court Jury Committee, at 17.[6] Accordingly, sequestered "jurors do not go home at the end of the day, but stay in a hotel, where their access to other people and to radio and television news or newspapers is limited." *Id.* at 12. To limit access in the modern era, sequestration also requires limiting phone and internet access, which would clearly cause severe distress to jurors removed from their families and friends for a lengthy capital trial. It is thus not surprising that sequestration is so "seldom used," including in high-profile capital trials. The highest profile capital trials in the past decade have not involved sequestered juries, including James Holmes' trial in Colorado, Dylann Roof's trial in South Carolina, Jodi Arias' trial in Arizona, and Dzokhar Tsarnaev's federal trial in Massachusetts.[7]

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[6] Available at https://isc.idaho.gov/jury/IdahoHandbookForJurors.pdf (last visited. Feb. 28, 2022).

[7] *See* John Ingold, *No jury sequestration in Aurora theater shooting, trial judge rules*, The Denver Post (June 27, 2013), available at https://www.denverpost.com/2013/06/27/no-jury-sequestration-in-aurora-theater-shooting-trial-judge-rules/ (last visited Feb. 28, 2022); Alex Johnson, *Charleston Church Shooting: Jury Selection Begins in Dylann Roof Federal Trial*, NBC News (Sep. 26, 2016), available at https://www.nbcnews.com/storyline/charleston-church-shooting/charleston-church-shooting-jury-selection-begins-dylann-roof-federal-trial-n654696 (last visited Feb. 28, 2022); Brian Skoloff, *Arias Trial: Judge denies motion to sequester jurors*,

Moreover, while there is no reason to estimate sequestration-associated costs for an Ada County trial, a jury transported to Fremont County would *necessarily* involve many of those same costs regardless of sequestration. Because jurors could not possibly travel between Ada and Fremont Counties every weekday, the jurors and alternates would need to be provided with lodging and food for at least five days per week, and would also need the same level of nighttime security that would be required in sequestration. Jurors would also need to be reimbursed for their travels between the counties on the weekends. As such, the prosecution not only inflated the cost estimates for an Ada County trial by improperly including sequestration-associated costs, but also ignored those same types of costs stemming from a jury transported to Fremont County.

In sum, the prosecution's Supplement provides misleadingly inflated cost estimates for an Ada County trial, while simultaneously providing no relevant information for a Fremont County trial. Rather than listing the available options to reduce costs—e.g., relying on Ada County deputies or lessening the amount of unnecessary time that witnesses spend in Ada County—and then conducting an analysis that compares costs, the State has chosen the most expensive options and then argued that Mr. Daybell's constitutional rights are counterbalanced by the resulting costly estimates. The State's choice to manage an Ada County trial in a costly manner is no reason to prejudice Mr. Daybell's trial rights.

IV. The Prosecution Has Not Addressed the Prejudice to Mr. Daybell's Constitutional Rights.[8]

The Associated Press (Apr. 4, 2013), available at https://www.eastvalleytribune.com/local/mesa/arias-trial-judge-denies-motion-to-sequester-jurors/article_591e4786-9d5c-11e2-9021-001a4bcf887a.html (last visited Feb. 28, 2022); Laurel Sweet, *File shows protocol for guarding Tsarnaev jurors*, Boston Herald (May 29, 2017), available at https://www.bostonherald.com/2017/05/29/file-shows-protocol-for-guarding-tsarnaev-jurors/ (last visited Feb. 28, 2022).

[8] Mr. Daybell hereby fully incorporates the arguments regarding prejudice contained in his previously filed Reply to State's Request to Impanel Jurors from Another County and to Sequester the Jury.

In the Supplement, the prosecution continues to ignore the prejudicial impact on Mr. Daybell's fundamental constitutional rights that would result from transporting a jury for a lengthy and high-profile capital trial. While it is not Mr. Daybell's burden to establish prejudice—but rather the prosecution's burden to establish that "justice will be served" through its request, I.C. § 19-1816—he asserts that it would be impractical and prejudicial to transport a jury from Ada County for at least ten weeks of trial in Fremont County.

Were the Court to require that jurors be absent from their families and friends for at least ten weeks of trial, it would substantially skew the jury pool and undermine the reliability of jury deliberations. Few people can be absent from their obligations for such a long period of time. And for those that ultimately serve on the jury, it is only common sense that they would be deeply emotionally impacted by being removed from their loved ones and communities during such a stressful period, thereby impacting their abilities to deliberate thoroughly. And this commonsense conclusion is supported by studies and narrative reports from hundreds of capital jurors, which have confirmed that jurors are often adversely affected by sitting on a capital trial and making a life-or-death decision about another human being. *See, e.g.*, Michael Antonio, *Stress and the Capital Jury: How Male and Female Jurors React to Serving on a Murder Trial,* 29 THE JUST. SYST. J. 396, 399-403 (2008) (explaining that most jurors found the experience of serving as a capital juror emotionally upsetting; many reported long-term effects such as chronic physical or emotional problems and difficulties relating to family, friends, or coworkers; some jurors reported nightmares; some found the stress so much to bear that they used prescription drugs, drinking, and smoking to cope; and some jurors developed eating disorders or became physically ill).

The adverse effects of sitting on a months-long, emotionally exhausting capital trial will only be magnified if the jury is removed from their home and families during this time. In a capital

trial, where the defendant presents his evidence only after the government's presentation of their case, both at the merits and penalty phases, jurors would likely hold any perceived "delay" in the proceedings against the defendant—who, to them, is requiring the jurors to stay longer with each day that the defense is presenting its evidence. When jurors are resentful about having to sit through an emotionally exhausting trial and make an extremely distressing decision about whether to sentence to someone to death, that resentment is almost always directed towards the defendant. This situation would impermissibly "plac[e] a thumb [on] death's side of the scales." *Sochor v. Florida*, 504 U.S. 527, 532 (1992).

Thus, transporting an Ada County jury to Fremont County would result in a violation to Mr. Daybell's right to a jury drawn from a fair cross-section of the community, as well as his right to an individualized sentencing determination made by an impartial jury that is free from improper influence or distraction. *See* U.S. Const. Am. VI, VIII, XIV; ID Const. Art. 1, Sections 6, 7, 13; *see also, e.g.*, *Taylor v. State*, 498 So. 2d 943, 945 (Fla. 1986) ("The right of a defendant to have a jury deliberating his guilt or innocence free from any distractions, outside or improper influences is a paramount right which must be closely guarded."); *In re Pilot Project for Elec. News Coverage in Ind. Trial Courts*, 895 N.E.2d 1161, 1165 (Ind. 2006) ("We want participants who will give their full attention to the courtroom proceedings . . . [including] jurors who can without preoccupation be completely attentive to testimony and evidence [and] people who will not seek to avoid service as jurors or witnesses. . ."); *Interpool Ltd. v. Patterson*, 874 F. Supp. 616, 618 (S.D.N.Y. 1995) (affirming excusal of juror whose "preoccupation with his personal concerns was so great that he was unlikely to fulfill his responsibilities as a juror in an appropriate manner.").

CONCLUSION

MR. DAYBELL files this Reply to the prosecution's Supplement and Disclosure for the State's Motion for the Court to Allow Additional Evidence & Follow Idaho Code § 19-1816 by Transporting a Jury on the following grounds and authorities: the Due Process Clause, the Right to a Fair Trial by an Impartial Jury, the Right to a Trial before a Fair Cross-Section of the Community, the Right to Effective Assistance of Counsel, the Right to Equal Protection, and the Right to be Free from Cruel and Unusual Punishment, pursuant to the Federal and Idaho Constitutions generally, and specifically, the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 6, 7, 8, and 13 of the Idaho Constitution. Because the Court considered the appropriate factors and properly applied the law in its previous ruling, Mr. Daybell requests that the Court adhere to its prior decision and deny the prosecution's motion to reconsider.

DATED this 2nd day of March 2022.

JOHN PRIOR
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered to the FREMONT COUNTY PROSECUTING ATTORNEY'S OFFICE, by efiling and service to prosecutor@co.fremont.id.us on this date.

DATED this 2nd day of March 2022.

JOHN PRIOR
Attorney for Defendant