

**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

**MEMORANDUM DECISION and
ORDER**

On Defendant's Motion to Sever

Pending before the Court is Defendant Chad Guy Daybell's (hereinafter "Daybell") MOTION TO SEVER FROM DEATH-NOTICED CO-DEFENDANT IN ORDER TO ENFORCE MR. DAYBELL'S CONSTITUTIONAL RIGHTS, filed September 27, 2022. On October 6, 2022, the State filed a RESPONSE to the motion objecting any severance of this case from Fremont County Case CR22-21-1624. On October 12, 2022, the State filed an OBJECTION AND MEMORANDUM IN RESPONSE TO DEFENDANT'S SECOND MOTION TO SEVER. On November 10, 2022, the Parties appeared before the Court to argue the motion, at which time the Court took the matter under advisement. Having reviewed the record, the Parties' arguments, and relevant legal authority, the Court issues the following decision and order.

I. FACTUAL AND PROCEDURAL BACKGROUND

On May 24, 2021, a Fremont County Grand Jury returned an INDICTMENT naming Chad Guy Daybell, Lori Norene Vallow Daybell, and Alex Cox (now deceased) as co-conspirators in the commission of several crimes including, but not limited to: multiple counts of First Degree Murder and Conspiracy to Commit First Degree Murder.

On June 9, 2021, Daybell was arraigned on the charges listed in the INDICTMENT. On August 5, 2021, the State of Idaho filed a NOTICE OF INTENT TO SEEK THE DEATH PENALTY. On

August 6, 2021, this Court ordered that both Daybell and alleged co-conspirator, Lori Norene Vallow Daybell (hereinafter “Vallow Daybell”) were to be tried together in a single trial finding that joinder of the Defendants was proper under Idaho Criminal Rule 8(b). On September 7, 2021, Daybell filed an IDAHO CRIMINAL RULE 14 MOTION FOR SEVERANCE contending that severance was required to afford Daybell a fair and impartial trial and supplemented the motion with a memorandum filed February 9, 2022. On February 24, 2022, the State filed a response in objection, arguing that Daybell failed to meet a burden to warrant severance. On March 18, 2022, the Court heard the Parties in argument on Daybell’s motion to sever. On March 21, 2022, the Court issued a MEMORANDUM DECISION DENYING DEFENDANT’S MOTION FOR SEVERANCE.

On September 27, 2022, Daybell filed a second motion to sever and a 30-page memorandum in support of the motion. The State filed a response to the motion on October 6, 2022. Further, on October 12, 2022, the State filed a 34-page memorandum opposing Daybell’s motion to sever. On October 13, 2022, when the hearing was originally scheduled, the Parties agreed to continue the hearing to November 10, 2022. In the interim, the Court granted Daybell’s motion to continue trial and vacated the January 9, 2023 trial date. On November 10, 2022, the Parties appeared before the Court for argument on the Motion to Sever and the Court took the matter under advisement. For the reasons first stated in the March 21, 2022 MEMORANDUM DECISION DENYING DEFENDANT’S MOTION FOR SEVERANCE and as more fully explained herein, the Court again denies Daybell’s motion to sever his trial from Defendant Vallow Daybell’s trial.

II. STANDARD OF REVIEW

“Joinder of two or more defendants is proper if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses.” *Thumm v. State*, 165 Idaho 405, 413, 447 P.3d 853, 861 (2019).

Actions properly joined under Idaho Criminal Rule 8(b) may be severed under Idaho

Criminal Rule 14 if it appears that a joint trial would be prejudicial. *State v. Gamble*, 146 Idaho 331, 337, 193 P.3d 878, 884 (Ct. App. 2008). “A criminal defendant bears the burden to show prejudice in making a motion to sever under Idaho Criminal Rule 14.” *Thumm v. State*, 165 Idaho 405, 413, 447 P.3d 853, 861 (2019) (cites omitted). “Such motions are committed to the sound discretion of the trial court.” *Id.*

An appellate court will review a trial court’s denial of a motion to sever pursuant to Idaho Criminal Rule 14 for an abuse of discretion. *State v. Fox*, 517 P.3d 107, 116 (2022).

III. ANALYSIS

As the outset, this Court again articulates its previous finding that Fremont County Case No. CR22-21-1623 and Fremont County Case No. CR22-21-1624 are properly joined for purposes of trial, because the INDICTMENT alleges that both Vallow Daybell and Daybell “participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses.” I.C.R. 8(b). Further, trial courts are instructed to “construe the [criminal] rules ‘to secure simplicity in procedure, fairness in administration and elimination of unjustifiable expense and delay.’” *State v. Fox*, 517 P.3d at 117. “Idaho Criminal Rule 14 provides a backstop to prevent joining charges in a manner that may *unfairly* prejudice a defendant.” *Id.* (emphasis added).

In bringing a motion to sever under Rule 14, Daybell enumerates several sections of both the Idaho and Federal Constitutions as additional grounds to obtain severance. Specifically, Daybell argues five key reasons in justification of the request to sever his trial from Vallow Daybell’s trial: (1) a “heightened reliability” required in capital cases; (2) a joint trial “materially prejudices” Daybell; (3) precedent exists to sever cases subject to the death penalty; (4) judicial

economy; and (5) Daybell's need for additional time to prepare a defense.¹

The State opposes severance, first noting that this motion recycles arguments previously denied by the Court in the first Motion to Sever. The State also asserts: (1) that the defendants in the companion cases were properly joined under Idaho Criminal Rule 8(b); and (2) that Idaho Criminal Rule 14 requires the movant to establish prejudice, and that Daybell has failed to meet his burden to show how he is prejudiced, in that the Defense merely advances conclusory statements as to how Daybell has, or will be, unfairly prejudiced by a joint trial.

The Court first addresses Idaho Criminal Rule 14 before analyzing whether Daybell has shown that unfair prejudice would invariably result from a denial of his request to sever his trial from Vallow Daybell's trial.

a. Idaho Criminal Rule 14

Idaho Criminal Rule 14 provides that a court, in its discretion, may grant relief from prejudicial joinder if a moving party successfully establishes that prejudice will result from a joint trial. Rule 14 states in its entirety:

If it appears that a defendant or the state is prejudiced by a joinder of offenses or of defendants in a complaint, indictment or information, the court may order the state to elect between counts, grant separate trials of counts, grant a severance of defendants, or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney for the state to deliver to the court for inspection in camera any statements or confessions made by the defendants that the state intends to introduce in evidence at the trial.

I.C.R. 14 (2022).

Here, the Court notes that Daybell has now twice petitioned this Court for an order requiring the State to deliver to the Court all statements of the defendants it intends to introduce at

¹ At the time the motion filed, Daybell also filed a MOTION TO CONTINUE, arguing this same point. On October 28, 2022, the Court granted the motion to continue trial. Accordingly, this argument is moot and will not be addressed in detail in this decision.

trial. In so doing, Daybell has again put the proverbial cart before the legal horse. Twice now, in open court, the State has asserted it has delivered to Daybell *every* statement of the defendants in its possession. The Court is satisfied the State has complied with its duty to disclose to the Defense the statements that may be introduced at trial. There has been no motion to compel relating to an accusation that the State has failed to provide any such discovery to the defense.

The Rule expressly provides that the Court may enter an order requiring prosecutors to “deliver to the court for inspection in camera any statements or confessions made by the defendants that the state intends to introduce in evidence at the trial.” However, it is not incumbent upon the Court, before trial, to parse through all statements disclosed in discovery in an effort to surmise the State or Defendant’s theories of the case, then determine upon its own investigation if I.C.R. 14 is implicated. While the Defense has made general references to “statements,” there has been no reference to the content of any such statements, either in briefing or argument, for the Court to consider. Accordingly, the Court has (again) been provided no basis to justify the issuance of an order for *in-camera* inspection under I.C.R. 14. To reiterate the Court’s March 21, 2022 ORDER:

Despite the extensive discovery that has taken place, Defendant has not identified what statement, if any, should be ordered for *in-camera* review by this Court. [...] Furthermore, during the hearing on this matter, the Court specifically inquired of the State as to whether any concerning statements or confessions existed that would necessitate the Court’s review, including whether a *Bruton* issue exists. The State represented that such statements or confessions did not exist, and the Court has considered that representation from the Prosecutor, as an Officer of the Court, in concluding that an *in-camera* review is not necessary, and will not be required. In conjunction with the State’s representation, and in the absence of any identification of potentially harmful statements or confessions, Defendant’s request for such an order is hereby denied.²

Counsel for Daybell has argued that he is unable to articulate the content of any statements at issue because of an existing protective order limiting dissemination of discovery of this case.

² MEM. DEC. ON DEF.’S MOT. FOR SEVERANCE, p. 6. March 21, 2022.

The Court finds that argument to be unpersuasive. Any such statements can be proffered to the Court without running afoul of the protective order. The Defense is permitted to submit statements for *in-camera* review or file a motion under seal as set forth by I.C.A.R. 32 to avoid such concerns. However, this has not been done. Instead, this Court agrees with the rationale employed by the Supreme Court in denying severance in *State v. Fox*: “While we do not believe that Fox’s attorney needed to reveal his case strategy in open court, Fox needed to provide something more to the district court to establish prejudice than his bare assertion that joining the charges would confound his defenses.” *State v. Fox*, 517 P.3d 107, 121 (2022).

b. Daybell has not met his burden to establish that prejudice, if any, is unfair to Daybell or otherwise impossible to cure through less drastic measures than severance.

“Prejudice” is “damage or detriment to one’s legal rights or claims.” PREJUDICE. Black’s Law Dictionary (11th ed. 2019) “Actions properly joined under Idaho Criminal Rule 8(b) may be severed under Idaho Criminal Rule 14, which governs relief from prejudicial joinder, if it appears that a joint trial would be prejudicial.” *State v. Blake*, 161 Idaho 33, 35, 3838 P.3d 712, 714.

Daybell argues that a joint trial with Vallow Daybell would “materially prejudice” his right to a fair trial (1) by depriving him of presenting a complete defense; (2) by creating a conflict between a Fifth Amendment Right against self-incrimination and the right to an individualized sentencing determination; (3) by creating a conflict between the alleged co-conspirators’ respective constitutional rights including the rights under the Confrontation Clause; (4) by frustrating a consideration of mitigating factors in Daybell’s case; (5) by impinging upon Due Process and the right to withhold penalty phase evidence until the appropriate time; and (6) by creating an inherent risk of gender stereotyping that could taint Daybell’s right to an individualized sentence.

First Daybell argues that severance is necessary to afford him the opportunity to present a

full and complete defense by “demonstrat[ing] that [Vallow Daybell] and her brother, Alex Cox, were responsible for the crimes alleged and that they acted in their own conspiracy that did not involve Mr. Daybell.”³ Daybell then argues that he will necessarily need to introduce statements made by Alex Cox due to his unavailability to be called to testify at trial because he has since died. Daybell supports the argument by raising I.R.E. 801(d)(2)(E), which expressly allows the introductions of statements made by co-conspirators, otherwise inadmissible as hearsay. The State correctly argues that a statement made by a co-conspirator is admissible against all named co-conspirators if made in furtherance of the common scheme or plan.

Precisely for this reason, the Court finds that because of the pending Conspiracy charges, keeping the alleged co-conspirators who have been properly joined for trial together is favored and appropriate without necessarily impinging upon any alleged co-conspirator’s right to a fair trial. It stands to reason that for exactly the reasons Daybell raises, *i.e.* the need to introduce certain statements of alleged co-conspirators to mitigate accusations raised against Daybell, a joint trial is favored. “Antagonism between defenses or the desire of one defendant to exculpate himself by inculcating a codefendant, however, is insufficient to require severance.” *United States v. Sherlock*, 962 F.2d 1349, 1363 (9th Cir. 1989). The State correctly notes that this Court has already indicated that the alleged prejudice resulting from the introduction of “prior bad acts” Daybell raises can be cured through motions in limine or careful instructions given to the jury.⁴

Daybell relies on a case from South Carolina, *Holmes v. South Carolina*, to support his position. However, the case is distinguishable from the allegations raised in this case—namely, the State of Idaho has charged Daybell with conspiracy, among other crimes, whereas the *Holmes* case turned on the court finding that a defendant was prejudiced when he had not been permitted

³ MOT. TO SEVER. pp 9-10. Sept. 27, 2022.

⁴ MEM. DEC. AND ORDER. p. 5. March 21, 2022.

to introduce exculpatory evidence that a third-party was responsible for the crime. In this case, to the contrary of Daybell's assertions, keeping alleged co-conspirators joined for trial may ensure a more fair proceeding by allowing a fuller consideration of the distinct alleged individual acts of each co-conspirator by a jury, who then will determine whether or not the State has met its burden to prove beyond a reasonable doubt each element of each crime alleged against the defendant individually.

Next, Daybell argues that a joint trial would create a conflict between a right against self-incrimination and the right to an individualized sentencing. In essence, Daybell speculates that any confession of one of the co-defendants necessarily prejudices the other. However, the Court inquired and counsel for both Daybell and the State asserted that to their knowledge, no such confessions exist. Thus, the Court finds no prejudice arising from this issue, let alone unfair prejudice, in the absence of any potential for the admission of confession evidence at trial.

Daybell next raises the argument that a joint trial runs afoul of *Bruton*, 391 U.S. 123 (1968) and the protection for a defendant from out-of-court statements of a co-defendant in a joint trial where the co-defendant does not testify. As is typical, at this stage of the case it is unknown if either Daybell or Vallow-Daybell will elect to testify at trial. While that possibility remains, all parties agreed at the hearing on this motion that they are unaware of any pre-trial confessions by any defendant or co-conspirator. The State affirmed to this Court that there is no *Bruton* issue at this time and offered an alternative solution to severance should *Bruton* become germane to these cases: dual juries. While that issue is not ripe before the Court, and the Court makes no advisory opinion on the issue, the Court is persuaded that *Bruton* is not appropriately invoked to justify severing Daybell's trial from Vallow Daybell's at this juncture because there is simply no evidence that any incriminating extrajudicial statements of a codefendant will be proffered at trial.

Turning to Daybell's argument that a joint trial frustrates his right to present mitigation evidence during a sentencing phase, the Court again finds the argument is not ripe at this time. The State argues that Daybell has done nothing more than raise bare assertions that his rights will certainly be jeopardized by a joint trial and has not properly put on evidence to prove this argument before the Court. The Court agrees. The State suggests to this Court the possibility of requiring separate or sequential penalty phases for Daybell and Vallow Daybell should a single guilt phase trial jury return guilty verdicts against them. "While the court must carefully evaluate the risk of prejudice in joint trials, there is no constitutional requirement that there be a guilt phase severance of properly joined defendants and offenses." *United States v. Edelin*, 118 F.Supp.2d 36 (internal cites omitted). Relying on that rationale, the Court determines that on this issue Daybell has failed to demonstrate unfair prejudice requiring severance.

Daybell also makes several arguments that are variations of the same theme: that capital cases are scrutinized with a "heightened reliability" and therefore a joint trial in a capital case prejudices Daybell individually because the State has sought the death penalty. To be clear, both alleged co-conspirators have received notice of the State's intent to seek the death penalty. The Court, therefore, cannot find from the record before it, that Daybell is disproportionately prejudiced if required to stand trial together with his alleged co-conspirator, who faces the same maximum possible punishment as Daybell does. The Court will assess the propriety of single or separate juries, or severing the cases for any penalty phase, when the issue is properly before the Court and ripe for consideration.

In summary, the Court, fully apprised of the complexities and charges involved in this case, nevertheless is persuaded that the joinder of trials remains appropriate. The charges in the

INDICTMENT include charges for conspiracy, which necessarily involves the agreement and participation of *conspirators*. The conspiracy charges result in a distinction that matters.

The Court determines here that a joint trial of these cases will promote the administration of fairness for each case if tried together, where it is clear that there will be substantial overlap in witnesses and in evidence presented relating to both Defendants, in particular as it relates to the conspiracy charges. It further serves to avoid unnecessarily bringing to trial twice-over the same witnesses, and same evidence, bearing on the same charges raised against alleged co-conspirators. A single trial ameliorates concerns that the consecutive presentation of witnesses and evidence would result in disparate outcomes, and weighs in favor of preserving the right to a fair trial throughout the entire proceedings, from jury selection through deliberations, for each defendant. A single trial also diminishes the risk that witnesses necessary in each individual case become unavailable for one but not the other named defendant. It also serves to avoid “the scandal and inequity of inconsistent verdicts” (*United States v. Alviar*, 573 F.3d 526, 539 (7th Cir. 2009)) should separate trials, upon the same evidence, result in disparate verdicts. Finally, a single trial insures against an “unjustifiable expense” by not duplicating what can instead be accomplished through proper instructions to the jury, in navigating through the issues raised in Daybell’s severance motions.


Thus, under the totality of the circumstances and in balancing the numerous arguments raised by Daybell and the State, the Court determines that the Defense has failed to meet the burden to show prejudice as required by I.C.R. 14, and as further explained in the holding of *Thumm v. State*, 165 Idaho 405, 447 P.3d 853 (2019). The Court in its discretion finds that the interests of justice remain best served by a single trial for the crimes charged in the INDICTMENT filed against Daybell and Vallow Daybell.

IV. CONCLUSION

For the foregoing reasons, Daybell's MOTION TO SEVER FROM DEATH-NOTICED CO-DEFENDANT is DENIED.

IT IS SO ORDERED.

Dated this 17 day of November, 2022.


Steven W. Boyce
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of November, 2022, the foregoing Memorandum Decision and Order was entered and a true and correct copy was served upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be delivered to their courthouse boxes; by causing the same to be hand-delivered, by facsimile, or by e-mail.

Parties Served:

Lindsey Blake
prosecutor@co.fremont.id.us

Robert H. Wood
mcpo@co.madison.id.us

Rachel Smith
smithlawconsulting@outlook.com
Attorneys for State of Idaho

John Prior
john@jpriorlaw.com
Attorney for Defendant

Clerk of the District Court
Fremont County, Idaho

by Becky Harrington
Deputy Clerk