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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.: CR22-21-1623 MEMORANDUM REPLY TO STATE'S MOTION TO ALLOW ADDITIONAL EVIDENCE & FOLLOW IDAHO CODE § 19-1816 BY TRANSPORTING A JURY

COMES NOW the Defendant, Chad Daybell, by and through undersigned counsel, John Prior and hereby submits this Memorandum Reply to the prosecution's Motion for the Court to Allow Additional Evidence & Follow Idaho Code § 19-1816 by Transporting a Jury. Pursuant to the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Idaho Const. Article I, Sections 6, 7, 8 and 13, the Idaho Code, as well as the legal authorities cited below, Mr. Daybell respectfully requests that this Court deny the prosecution's motion to reconsider since it has been improperly brought before the Court. In its October 8, 2021, Memorandum Decision on Defendant's Motion to Change Venue, the Court directly addressed the arguments raised in the State's motion to reconsider and ruled against them. The prosecution has not submitted any new evidence since the Court's ruling and there has been no change in circumstances that would support a reconsideration.

In the event the Court disagrees and permits the prosecution to bring additional evidence in favor of its Motion—evidence that should already have been submitted—Mr. Daybell requests an evidentiary hearing, at which the State bears the burden of providing new and material evidence that could substantially impact the Court's prior ruling. After that hearing, were the Court to determine that the prosecution satisfied this threshold burden, Mr. Daybell would request leave of the Court to obtain independent experts that can review the State's submitted evidence and testify on behalf of Mr. Daybell in this matter.

As grounds for his motion, Mr. Daybell asserts the following:

I. The Court Already Addressed the State's Arguments and Issued a Reasoned Decision on this Matter.

On July 21, 2021, Mr. Daybell moved for a change of venue in order to ensure fair trial proceedings, and a hearing was set for October 5, 2021. In support of his motion, Mr. Daybell submitted many exhibits documenting the prejudice that he would suffer if venue were not changed. On September 29, 2021, three business days before the hearing date, the prosecution submitted a response to Mr. Daybell's motion and agreed with the request for a venue change. However, the prosecution also moved to impanel a jury from another county, instead of transferring the trial itself. On October 4, 2021, Mr. Daybell filed a Reply to the State's Request to Impanel Jurors from Another County and to Sequester the Jury.[1] At the hearing held on October 5, 2021, the State presented evidence in support of its request. Two law enforcement officers testified on behalf of the State, Sheriff Len Humphries, and Chief Shane Turman. Their testimony directly addressed "the costs and hardships of transporting a jury from another county versus

[1] Mr. Daybell hereby incorporates in full the arguments and authorities in his Reply to the State's Request to Impanel Jurors from Another County and to Sequester the Jury, particularly his arguments regarding the State's burden when requesting that a jury be impaneled from another jurisdiction and the likely prejudice that Mr. Daybell would suffer as a result of doing so.

transferring the trial as a whole." *See* State's Motion to Allow Additional Evidence at 2.

On October 8, 2021, the Court issued a Memorandum Decision on Defendant's Motion to Change Venue, in which the Court explicitly addressed the State's arguments and denied the State's request to transport jurors from another county pursuant to I.C. § 19-1816. 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." *See* Court's Memorandum Decision on Defendant's Motion to Change Venue at 10. The Court further 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." *Id.*

Despite the Court's reasoned decision, the State filed a motion to allow additional evidence on November 3, 2021. In its motion, the prosecution requests permission to "present additional information, testimony and evidence regarding the costs and logistics of transporting a jury from Ada County versus transferring the case as a whole to Ada County." *See* State's Motion at 2. The prosecution argues that that they could not provide this evidence at the last hearing due to "short notice." *See id.* ("This was due, both, to the short notice of the request for this testimony before the hearing on the change of venue and lack of parameters about a change of venue"). This is unconvincing. It was the prosecution's own choice to pursue these matters conjunctively, and request that a jury be transported to Fremont County less than one week before the hearing on venue change. Then, after making this late-stage request, the prosecution failed to ask for a continuance of the hearing. Likewise, the prosecution's assertion that it could not submit more

evidence regarding costs because of a "lack of parameters about a change of venue," *id.*, reflects only the prosecution's lack of preparation on its own motion. If the prosecution believed the issue was not ripe, it should not have been raised.[2]

The procedural history is clear: the prosecution chose a strategy of blindsiding Mr. Daybell mere days before the venue change hearing, after having Mr. Daybell's motion for more than two months, and now seeks an opportunity to try again—not because they have new, material evidence, but because they failed to achieve the desired result with their last-minute litigation strategy.

II. The State Has Not Cited a Proper Basis for the Court to Reconsider Its Ruling.

In its motion to reconsider, the State cites to a single case regarding an Idaho state court's discretionary authority to reconsider a prior ruling "when new evidence or information is presented." *See id.* In that case, *State v. Montague*, 114 Idaho 319 (1988), the Court of Appeals examined whether the lack of any codified mechanism for a motion to reconsider precluded a state court's ability to consider such a motion when made. The court noted that the federal rules do not provide for a motion to reconsider, but that they may entertain such a motion when made. *Id.* at 1084 (citing *United States v. Scott*, 524 F.2d 465 (5th Cir. 1975)). The court further noted that, as part of its motion to reconsider, the State cited "authority not previously brought to the trial court's attention" and had submitted "an affidavit from the arresting officer which included information not earlier provided in opposition to the suppression motion." *Id.* at 1085. The court made clear

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[2] Indeed, prosecutors should only file motions that will impact a defendant's trial rights *after* collecting evidence and determining the proper application of the law in light of that evidence. *See* Idaho R. Prof. Cond. R. 3.1 ("A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law."). The prosecution appears to have reversed this order, arguing now that they did not have sufficient time to collect and provide the evidence necessary for their own Motion.

that the properly submitted new information did not need to be considered, and that "the state ran a risk in not making its best presentation when the suppression motion was originally heard." *Id.* Still, based on the new law and material evidence submitted, the trial judge had the discretionary authority to reconsider the prior suppression ruling. *Id.*

Here, the prosecution has not submitted any new authority or evidence. Idaho courts have repeatedly held that courts do not abuse discretion in denying motions for reconsideration when no new evidence has been submitted. *See, e.g.*, *State v. Byrum*, 167 Idaho 735, 740 (2020) (holding that the court did not abuse discretion in denying a motion to reconsider when the submitted evidence "did not provide new information"). The State has not cited any cases where a motion to reconsider has been granted despite a lack of new and material evidence. Turning to the federal courts for additional guidance, as the appellate court did in *Montague*, a motion for reconsideration is appropriate only when "exceptional circumstances require the admission of [new] evidence." *Scott*, 524 F.2d at 467 (internal citation and quotation omitted). Such exceptional circumstances exists when "the court has misapprehended the facts, a party's position, or the controlling law." *Servants of Paracelete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000). Here, there is no contention that the Court misapprehended the facts or the law in making its decision. Rather, the State requests reconsideration to rectify the earlier decision to proceed despite a lack of evidence and preparation.

In the absence of new evidence[3] submitted as part of a motion to reconsider, there is no basis for the Court to reopen litigation on its recent ruling. Therefore, Mr. Daybell respectfully requests that the Court deny the State's motion to allow additional evidence.

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[3] At various points, the State makes assertions in its motion to reconsider. The prosecution has already made these arguments in moving to impanel jurors from another county and called two witnesses in support. Moreover, far from providing any new, material evidence, the State's bald assertions about economic impact in the motion to reconsider lack any evidentiary or foundational support whatsoever.

III. The Court Followed the Law in Its Previous Ruling.

Idaho permits state courts discretionarily to "enter an order directing that jurors be impaneled from the county to which venue would otherwise have been transferred." Idaho Code § 19-1816. In order to do so, the court must first find, in part: "[t]hat it would be more economical to transport the jury than to transfer the pending action; and [t]hat justice will be served thereby." *Id.* If, after making these findings, a court decides to impanel a jury from another county, then "[t]he jury shall be summoned and impaneled as if the trial were to take place in the county where the jury was summoned. Thereafter, the jury shall be transported for purpose of the trial to the county in which the complaint, information or indictment is filed." *Id.* In its memorandum decision issue on October 8, 2021, Court considered the relevant economic factors, as well as the requirement that "justice will be served."

The State's motion to reconsider focuses on costs and local resources, without any submitted evidence supporting the claims being made. But even if the State were able to provide evidence, it would not substantially alter this Court's previous ruling about ensuring Mr. Daybell a fair and just trial. *See* Court's Memorandum Decision on Defendant's Motion to Change Venue at 10. The lack of money in state or county coffers cannot be used as a reason to deny a defendant his constitutional rights. As the Supreme Court has noted, a state's financial interests must yield to the substantial societal and individual interests in fair and accurate capital proceedings. *See 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…").

Thus, it is axiomatic that Mr. Daybell's constitutional rights cannot be short-circuited in the interests of frugality—*especially* when the State has affirmatively chosen to seek the death penalty, which results in sky-rocketing costs for both the defense and prosecution. *See, e.g.*, Idaho Statesman, "Idaho Counties Struggle With Costs of the Death Penalty" (Jan. 1, 2011) ("It costs Idaho taxpayers about $1 million to imprison somebody for life, but a death penalty case may cost five times that.")[4]; *see also* Associated Press, "County paid nearly $600,000 for expert witnesses at trial" (Nov. 28, 2017) ("Expert witnesses cost [Kootenai] county nearly $600,000 during the trial of the man convicted of killing a Coeur d'Alene police officer").[5] Both the U.S. Constitution and Idaho Constitution demand that financial interests give way to a defendant's fundamental constitutional rights in a case where his life quite literally hangs in the balance. *See 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").

Because the Court properly considered the appropriate factors and followed the law in its previous ruling, Mr. Daybell requests that the Court adhere to its prior decision and deny the State's motion to reconsider.

IV. Were the Court to Permit the Prosecution to Proceed on Its Motion to Reconsider, Mr. Daybell is Constitutionally Entitled to an Adversarial Hearing on the State's Motion, Followed by the Opportunity to Obtain Independent Experts and to Introduce Testimony and Evidence.

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[4] Available at https://deathpenaltyinfo.org/news/idaho-counties-struggle-with-costs-of-the-death-penalty.

[5] Available at https://www.ktvb.com/article/news/crime/county-paid-nearly-600000-for-expert-witnesses-at-trial/277-495213580.

Pursuant to the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 13 of the Idaho Constitution, Mr. Daybell is constitutionally entitled to proper notice of the evidence that the State intends to submit and an opportunity to respond. Accordingly, while Mr. Daybell maintains this issue is not ripe for reconsideration, if the Court does proceed on the State's motion, a hearing date should be set and the State should specify what new evidence and/or new legal authority it intends to bring regarding the costs of impaneling a jury from another county, as compared to transferring the trial. After the hearing in which the State presents additional testimony or exhibits, the Court should determine whether the State has met its threshold burden in providing new evidence or authority that was not already presented or considered by this Court. At that point, if the Court determines the prosecution has met its burden, Mr. Daybell must be given the opportunity to meaningfully respond to the State's motion and newly submitted evidence. *See Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) ("It is … fundamental that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner.").

In order for defense counsel to be effective in representing Mr. Daybell in his response, as guaranteed by the Sixth Amendment to the United States Constitution and Article I, Section 13 of the Idaho Constitution, Mr. Daybell must be able to obtain his own expert witnesses to review the State's evidence and offer contrary testimony, if appropriate. *See* American Bar Association, Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, 31 HOFSTRA L. REV. 913, 952 (2003), Guideline 4.1 (noting that capital defendants are entitled to "receive the assistance of all expert, investigative, and other ancillary professional services . . . appropriate . . . at all stages of the proceeding"). These procedural safeguards are essential to ensure protection of Mr. Daybell's rights to an impartial jury drawn from a fair cross-section of

the community and to be free from cruel and unusual punishment, pursuant to the Sixth and Eighth Amendments to the U.S. Constitution and Article I, Sections 6 and 7 of the Idaho Constitution.

MR. DAYBELL files this reply to the prosecution's motions to reconsider 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, 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 Constitutions, and Article I, sections 6, 7, 8, and 13 of the Idaho Constitution.

DATED this 19th day of November 2021.

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 19th day of November 2021.

JOHN PRIOR