

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.

LORI NORENE VALLOW aka LORI
NORENE VALLOW DAYBELL,

Defendants.

Case No. CR22-21-1624

**MEMORANDUM DECISION and
ORDER**

Pending before the Court is the State's Motion to reconsider this Court's decision to transfer trial in this matter from Fremont County, Idaho, to Ada County, Idaho. The Court held a hearing on April 19, 2022, and finding the matter fully briefed and argued, orders now as follows.¹

I. PROCEDURAL BACKGROUND

On May 25, 2021, a Fremont County Grand Jury returned an Indictment charging Lori Norene Vallow ("Vallow Daybell") as a co-conspirator in the commission of several crimes—including two counts of first-degree murder.² Before Vallow could be arraigned in district court, pursuant to Idaho Code section 18–212, this Court found Vallow was legally incompetent to stand trial and committed her to DHW for care and treatment.³ Accordingly, on June 9, 2021, the Court entered an order staying her case pending her commitment for restoration treatment. On April 11,

¹ The Court notes that the posture of CR22-21-1624 is that Ms. Vallow Daybell filed a motion to transfer trial through her attorney at the time on June 28, 2021 while her case had been ordered to be stayed. Her appointed attorney, Mr. James Archibald, joined in the objection Daybell raised related to the State's Motion to Reconsider the Court's order to transfer the trial to Ada County, and argument in opposition to the State's Motion was heard during the April 19, 2022 hearing.

² INDICTMENT. CR22-21-1624. May 25, 2021.

³ The original order for commitment was filed in Fremont County Case CR22-20-838. See ORDER STAYING CASE. Fremont County Case No. CR22-21-1624. June 9, 2021. The Court made a finding to the record in the Order of Commitment that the State had initially indicated it would contest the issue of Vallow's incompetency. However, the State subsequently filed a "Withdrawal of Contest Re: 18–211" and therefore, made no objection to the findings that Vallow was not competent based upon the report of the appointed examiner, by which this Court entered an order committing Vallow to the Department of Health and Welfare ("DHW") for restoration treatment.

2022, Vallow Daybell was found competent and fit to proceed to trial. This Court lifted the stay of her case and ordered her to appear before the Court to be arraigned on April 19, 2022. Earlier that same day, the Court held a hearing regarding the transfer of a jury for the trial of Chad Guy Daybell and Lori Norene Vallow Daybell as named co-conspirators on the Indictment.⁴

The Defendant filed a Motion to Change Venue on July 21, 2021. The State opposed the motion. On October 10, 2021, the Court granted the Motion to Change Venue, but as distinguished from a true change of venue, the order of the Court has the effect of granting a transfer of trial, with the remainder of the case proceedings to continue in Fremont County. The Idaho Supreme Court entered an Order on October 21, 2021, affirming the order of this Court to transfer trial to Ada County “for purposes of trial only.”

On November 3, 2021, the State filed a motion asking the Court to allow the State to present additional evidence on the issue of transporting a jury from Ada County to Fremont County. Specifically, the State argued that the cost of transporting a jury to Fremont County is significantly less burdensome than the cost of trying the case in Ada County. On November 8, 2021, Daybell opposed the motion, styling the State’s motion as a motion for reconsideration. During a status conference on March 17, 2021, the State asked for a continuance on the hearing on the motion for reconsideration of the jury transport issue. The Court agreed to a short continuation and scheduled the hearing for April 19, 2022, during which the parties presented witnesses to the Court and filed exhibits for the Court’s consideration. Vallow Daybell’s counsel, Jim Archibald, made an oral objection to the motion during the hearing and argued in favor of the trial being transferred to Ada County.

⁴ See note 1, *supra*.

II. STANDARD OF REVIEW

In civil litigation, a motion for reconsideration may be used to draw the court's attention to errors of law or fact which may have been made in the initial decision. *Johnson v. Lambros*, 143 Idaho 468, 147 P.3d 100 (App. 2006). A decision to grant or deny a motion for reconsideration generally rests in the sound discretion of the trial court. *Spur Products Corp. v. Stoel Rives LLP*, 143 Idaho 812, 153 P.3d 1158 (2007). In this criminal case, where the rules do not expressly provide for reconsideration, the Court adopts this standard as the reconsideration here is allowed as further explained below.

Under Idaho's Idaho's Criminal Procedure code, a trial court is authorized to transfer a case to another county if the court determines that a fair and impartial trial cannot be had in the county where an indictment is pending. I.C. § 19-1801, see also *State v. Sanger*, 108 Idaho 910, 702 P.2d 1370 (1985). Transferring a case is left to the discretion of the judge. *State v. Yager*, 139 Idaho 680, 85 P.3d 656 (2004).

On review, the three factors an appellate court looks to in order to determine whether there was an abuse of the trial court's discretion are: "(1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the boundaries of its discretion and consistent with legal standards applicable to the specific choices available to it; and (3) whether the trial court reached its decision by an exercise of reason." *Lincoln Land Company, LLC v. LP Broadband, Inc.*, 163 Idaho 105, 112, 408 P.3d 465, 472 (2017).

III. ANALYSIS

The State has filed a motion for the Court to reconsider its decision regarding the change of trial location. In particular, the State urges the Court to consider transporting a jury from Ada County to Fremont County for trial, and to sequester the jury in Fremont County throughout the

trial, pursuant to I.C. § 19-1816.⁵ The Defendant objects to the State's Motion.⁶

The Defense has argued that the motion is an improper motion to reconsider, as reconsideration is not contemplated by the Idaho Criminal Rules that govern this case. Defendant is correct in that while the Civil Rules expressly allow for reconsideration of interlocutory orders, the Idaho Criminal Rules do not have a corresponding provision. Generally, reconsiderations are allowed only after sentencing (*i.e.* I.C.R. 35). However, in this instance, the Court determined in earlier hearings that given the timing of the determination of this issue, it would allow for additional argument and evidence to be presented. For that reason, the Court will overrule the objection as to the procedural posture of this issue and, after a hearing that was held on April 19, 2022, the Court will determine the issue on the merits.

The State contends that the Court should transfer a jury from Ada County to Fremont County for trial, arguing primarily that the costs associated with conducting a trial in Fremont County justify the transport of jurors. Idaho Code § 19-1816 allows the Court to consider costs in making this determination. In reviewing the statute, the Court first notes that the decision to transport a jury is discretionary, as it states the court "may" follow the procedure indicated, including transporting a jury. Second, the Court notes that the statute is conjunctive and requires

⁵ I.C. § 19-1816. Impaneling jury from another county.

(a) As an alternative to entering the order of removal provided in the preceding sections of this chapter, the court may instead enter an order directing that jurors be impaneled from the county to which venue would otherwise have been transferred, if it finds:

1. That a fair and impartial jury cannot be impaneled in the county where the criminal complaint, information or indictment is filed;

2. That it would be more economical to transport the jury than to transfer the pending action; and

3. That justice will be served thereby.

(b) The 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.

(c) All court costs incurred under this section shall be paid by the county where the complaint, information or indictment is filed.

(d) The provisions of this section do not affect the power of the court to order a change of venue.

⁶ In addition to Chad Daybell's objection, named co-conspirator Lori Vallow Daybell's attorney joined in Daybell's objection to the motion at the conclusion of the hearing.

the Court to make a finding that subsections 1, 2 and 3 all weigh in favor of transporting a jury. Thus, while the economics of the decision are a factor, the Court must also determine that subsections (1), “[t]hat a fair and impartial jury cannot be impaneled in the county where the criminal complaint, information or indictment is filed;” and (3) “[t]hat justice will be served thereby” lead to the conclusion that transporting a jury is warranted.

In its October 8, 2021 Memorandum Decision on Defendant’s Motion to Change Venue, the Court found that a fair and impartial jury could not be impaneled in Fremont County, requiring a change of trial location.⁷ Thus, subsection (1) has been determined. The Court next considers whether it would be more economical to transport a jury to Fremont County from Ada County, and whether doing so would serve justice.

In support of its argument that it would be more economical to transport a jury to Fremont County, the State has presented evidence in the form of witness testimony and exhibits that were entered into evidence at the April 19, 2022 hearing on this issue. In considering costs, the State submitted information related to jury sequestration expenses (State’s Exhibit 4: “Jury Sequestration Costs – 8 weeks:”). The Court notes that at this point, there has been no order for sequestration. While the matter has been argued within the State’s Motion to Reconsider, the issue of sequestration has yet to be determined. On September 29, 2021, the State filed its Motion to Sequester the Jury, but that motion has not been called for hearing. While the Court understands that the trial in this case is still several months away, and it may be premature to make a final decision regarding sequestration, nonetheless the Court must consider that at this point in the case there is no order requiring sequestration during the trial. To be clear, the Court is aware that I.C. § 19-2126 would require sequestration during a special sentencing proceeding held pursuant to

I.C. § 19-2515, but that circumstance would likely require sequestration for a much more limited timeframe than the 10-week timeframe the State has indicated the trial will require during scheduling conferences.

The Court accepts the State's argument that a trial in Ada County with a jury sequestered throughout the proceedings would result in the greatest overall cost. However, the Court finds that making a determination incorporating costs of sequestration through the entire trial would be too speculative at this time. In addition, there is a possibility that the Court could determine that sequestration throughout the trial may be required for jurors transported from Ada County to Fremont County for 10 weeks, while sequestration of jurors throughout the trial may not be required if the trial is conducted in Ada County.

In Exhibit 4, the State projects that the jury sequestration costs for Ada County would be \$307,460.00. The State further estimates that the total costs of trial in Ada County with a sequestered jury would be \$379,355.00. Thus, if the Court considers those figures, the total cost for trial in Ada County would be \$71,895.00, if the jury was not sequestered. If a jury is required to be sequestered in Fremont County for the duration of the trial, the State projects that would cost \$187,840.00. Thus, one reasonable scenario exists where a trial in Ada County may cost less, if the Court does not sequester the jury for 10 weeks. Further, if the Court were to hold the trial in Fremont County with an Ada County jury transported, and without sequestration, those jurors would still require lodging, meals and per diem expenses that could not be avoided, as the jurors would have no ability to return home each day, given the distance between the counties. Thus, those significant expenses are guaranteed if a jury is transported to Fremont County.

Considering the figures submitted in support of the Motion as they relate to trial costs, the most expensive to least expensive determination would be: (1) Sequestered Jury in Ada County

(\$379,355); (2) Sequestered Jury in Fremont County (\$187,840 plus costs of additional supervision by law enforcement when not in trial); (3) Non-Sequestered jury in Fremont County (\$187,840); and (4) Non-Sequestered Jury in Ada County (\$71,895.00). The Court has also considered the information contained in Exhibit 3, as it relates to law enforcement and other personnel costs.

That Exhibit estimates a projected cost of \$196,350 for the attendance of State's witnesses and personnel to attend the trial for 10 weeks. However, it was determined at the hearing that the estimate also included expenses for prosecutors and their staff, even though those offices have separate budgets. In addition, the Court believes that the cost would most likely be lower if the Court conducts the trial such that the scheduling of witnesses is organized and predictable, cutting down on the time needed for witnesses to be present in Ada County.

Nonetheless, there is clearly a significant additional expense that will be incurred in conducting the trial in Ada County for the State, the Defense and the Court. Having considered the entirety of the record on this issue, the Court determines that while it may be more economical to transport a jury to Fremont County, that is not a foregone conclusion given the additional possible scenarios relating to sequestration. In particular, the Court finds that a non-sequestered jury in Ada County could result in an overall cost similar to conducting the trial in Fremont County, for reasons further explained herein.

In addition to considering expenses, the Court must consider the most important factor: that justice will be served. Of tantamount importance to the Court is selecting and maintaining a fair and impartial jury throughout a two-and-a-half month trial. The Court is well aware of the high-profile nature of this case. Nonetheless, the Court may or may not order sequestration. The first major concern of the Court entails ensuring that Daybell is protected in his Fourteenth Amendment right to due process—including the right to a fair trial. Chief to this Court is ensuring

that a jury for Daybell's trial be selected from a "fair cross section" of citizens. "In *Duren v. Missouri*, 439 U.S. 357, 99 S.Ct. 664, 58 L.Ed.2d 579 (1979), the United States Supreme Court stated the requirements for a prima facie showing of the 'fair-cross-section' requirement of the sixth amendment." *State v. Dambrell*, 120 Idaho 532, 536, 817 P.2d 646, 650 (1991).

If the Court grants the State's motion to transport a jury, then during *voir dire* it would be necessary to disclose to potential jurors that they would be required to sit as jurors in Fremont County for the duration of the case, sequestered or not. Many jurors may raise concerns of hardship rising to the level that would require their excuse from service. Asking jurors to forego family interactions, child care, employment, medical or dental appointments, and other essential and normal daily obligations will certainly result in many requests to be excused for hardship. In multi-day trials, this already presents a challenge for many people. Finding jurors that are able to serve for 10 straight weeks away from home will likely result in a significant number of the fair cross section of the community being excluded from service. The Court is concerned that this may result in a jury that does not represent a fair cross section of the community, which would run in contravention to the Defendants' paramount due process right to a fair trial.

On the other hand, if sequestration is not required and the jury is free to return home each day with admonishing instructions, the likelihood of securing a jury representing a fair cross section of the community is greatly increased. That scenario can only take place if the jury is not transported. The Court is further aware of additional challenges that can occur when a jury is sequestered or isolated from their normal lives for an extensive time, such as a "jury revolt."⁸

In full consideration of the factors the Court must determine in deciding whether justice

⁸ See, i.e.: <https://www.washingtonpost.com/archive/politics/1995/04/22/thirteen-simpson-jurors-stage-revolt/f0b8a434-5491-49bb-be5e-e1c082250cfa/>

will be served in transporting a jury in this case, the Court cannot conclude that the State has met its burden in persuading the Court to exercise its discretion in transporting a jury. While the additional costs have been considered carefully, the pervasive media coverage concerning this case resulted in the Court's initial determination that the trial would be transferred to Ada County, in order to reasonably ensure the impaneling of a fair and impartial jury. With that decision having been made, the Court now must ensure that all parties receive the best opportunity to select and maintain a jury representing a fair-cross-section of citizens throughout a protracted trial. Considering that, and while it may unfortunately lead to increased costs, that concern cannot override the other factors that this Court has considered.

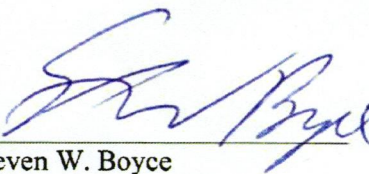
Finally, this Court has the utmost confidence in the ability of the Fremont and Madison County Sheriffs and Courthouse Staff to provide the necessary security and resources to effectively conduct this trial. No concerns regarding those issues were factored into this decision. Rather, the more cumbersome and perhaps costly approach is here determined to be the best approach, and the Court therefore determines that the State's Motion is denied. IT IS ORDERED that the trial will be conducted in Ada County.

IV. CONCLUSION

For the foregoing reasons, the State's Motion to Reconsider and Transport a Jury is DENIED.

IT IS SO ORDERED.

Dated this 28 day of April, 2022.


Steven W. Boyce
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this **28th** day of April, 2022, the foregoing 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.

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