

**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,

Defendant.

Case No. CR22-21-1624

**MEMORANDUM DECISION and
ORDER**

Before the Court is Non-Party Movant Lori A.G. Hellis' ("Hellis") MOTION TO UNSEAL ALL DOCUMENTS AND TRANSCRIPTS OR RECORDINGS OF PAST HEARINGS. Hellis was heard on her motion on October 13, 2022, at which time the Court took the matter under advisement.¹

On September 3, 2022, Hellis filed a MOTION OF NON-PARTY MOVANT TO UNSEAL DOCUMENTS AND TRANSCRIPTS OR RECORDINGS OF PAST HEARINGS with a MEMORANDUM IN SUPPORT OF MOTION, a DECLARATION IN SUPPORT OF MOTION, and a SUPPLEMENTAL DECLARATION IN SUPPORT OF MOTION. On October 13, 2022, Hellis presented argument to the Court in support of her motion. The Court then took the matter under advisement to review previously sealed hearings and documents in this case.

I. FACTUAL AND PROCEDURAL BACKGROUND

On May 25, 2021, an INDICTMENT was filed charging Defendant Lori Norene Vallow Daybell with several counts of conspiracy, multiple counts of murder in the first degree, and grand theft. Two alleged co-conspirators—Alex Cox ("Cox") and Chad Guy Daybell, were also

¹ On October 13, 2022, this case was stayed pursuant to I.C. §§ 18-210-11; however, Non-Party Movant was permitted to make argument with respect to four cases in which she filed motions to unseal, including this case. Following the lift of the stay on November 15, 2022, the Court enters this Memorandum Decision and Order without need for further hearing, as the matter is fully submitted.

named on the same INDICTMENT as Vallow Daybell. The INDICTMENT resulted in a new case filed as Fremont County Case No. CR22-21-1624.

On September 3, 2022, Hellis filed a MOTION OF NON-PARTY MOVANT TO UNSEAL DOCUMENTS AND TRANSCRIPTS OR RECORDINGS OF PAST HEARINGS with a MEMORANDUM IN SUPPORT OF MOTION, a DECLARATION IN SUPPORT OF MOTION, and a SUPPLEMENTAL DECLARATION IN SUPPORT OF MOTION. On October 13, 2022, Hellis presented argument to the Court in support of her motions. On September 30, 2022, Vallow Daybell's case was stayed as required by Idaho Code §§ 18-211-212. On November 15, 2022, the Court lifted the stay of the case and thereafter took this matter under advisement to review previously sealed hearings and documents in this case.

II. STANDARD OF REVIEW

Idaho Court Administrative Rule 32 governs the records maintained by the judicial department. The rule recognizes the public's "right to examine and copy the judicial department's declarations of law and public policy and to examine and copy the records of all proceedings open to the public." I.C.A.R. 32(a).

Certain court records are not appropriate for public examination and are expressly exempt from disclosure. I.C.A.R. 32(g). Enumerated categories under I.C.A.R. 32(g) establish which types of records are exempt from public disclosure. "Any willful or intentional disclosure or accessing of a sealed or exempt court record, not otherwise authorized under this rule, may be treated as a contempt of court." I.C.A.R. 32(g).

While many court records enjoy the presumption of openness for public inspection, a trial court has broad discretion in sealing records on a case-by-case basis. I.C.A.R. 32(i). Further, a trial court has an overarching duty to preserve rights of parties and to ensure the paramount right to a

fair trial is protected. I.C.A.R. 32(i)(2)(E). The right to a fair trial is the utmost concern.

However, I.C.A.R. 32(i) authorizes the trial court to seal or redact court records on a case-by-case basis. The rule requires the custodian judge to hold a hearing and make a factual finding as to whether the individual's interest in privacy or whether the interest in public disclosure predominates. "If the court redacts or seals records to protect predominating privacy interests, it must fashion the least restrictive exception from disclosure consistent with privacy interests." *Id.* Before entering an order redacting or sealing records, the court must make one or more of the following determinations in writing:

- (1) That the documents or materials contain highly intimate facts or statements, the publication of which would be highly objectionable to a reasonable person, or
- (2) That the documents or materials contain facts or statements that the court finds might be libelous, or
- (3) That the documents or materials contain facts or statements, the dissemination or publication of which would reasonably result in economic or financial loss or harm to a person having an interest in the documents or materials, or compromise the security of personnel, records or public property of or used by the judicial department, or
- (4) That the documents or materials contain facts or statements that might threaten or endanger the life or safety of individuals.

In determining whether to grant a request to seal or redact records, trial courts are expected to apply "the traditional legal concepts in the law of invasion of privacy, defamation, and invasion of proprietary business records as well as common sense respect for shielding highly intimate material about persons." *Id.* The decisions of the trial courts will be subject to review for abuse of discretion.

State v. Turpen, 147 Idaho 869, 871–72, 216 P.3d 627, 629–30 (2009).

The Court may make other determinations warranting sealing of pleadings, records, hearings, or transcripts include: preserving the right to a fair trial or protecting personal data identifies that should have been redacted. I.C.A.R. 32(i)(2)(E-F).

In determining whether a trial court has abused its discretion in sealing records, an appellate court asks whether the trial court "(1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of

reason.” *State v. Bodenbach*, 165 Idaho 577, 591, 448 P.3d 1005, 1019 (2019) (*quoting Lunneborg v. My Fun Life*, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)).

III. ANALYSIS

As a threshold matter, during the October 13, 2022 hearing, the State raised in argument an important point bearing on this decision. The Idaho Court Administrative Rules make a distinction between public records subject to procedural requirements before a Court may seal a record and those records which are exempt from public disclosure without the need for procedural hearings under court administrative rules. Hellis’ motion is a request to unseal “*all sealed documents or records of proceedings including but not limited to the following*” and specifically enumerates 44 records she argues were sealed in error.

Hellis predicates her motion on I.C.A.R. 32 and Idaho Code §74-101 *et. seq.* The Court previously established that Hellis has standing to bring a motion as “any person” contemplated by I.C.A.R. 32(i)(1).² However, the record is devoid of any evidence Hellis has filed a public records request upon the proper custodian of records under Idaho Code §74-101 or under I.C.A.R. 32(j). As such, the only motion properly before this Court is a request to unseal records previously sealed in Fremont County Case No. CR22-21-1624, pursuant to I.C.A.R. 32(i)(1).

As an initial holding, the Court will not unseal any record circumscribed as expressly exempt from public disclosure as set forth in I.C.A.R. 32(g). To do so would violate the express exemption provisions of the rule, and the request to do so is without legal basis or foundation. Further, the Court will not consider Hellis’ general request to review “all” documents, and instead limits its review to the 44 specific documents, hearings, or records Hellis listed in the motion. The Court will now address each of Hellis’ requests. In reviewing the documents, it is clear that some

² See ORDER in Fremont County Case No. CR22-21-1624. Aug. 18, 2022.

requested documents or hearings did not in fact involve this Defendant. Accordingly, it would be improper to unseal documents unrelated to this case and any proper requests made in the appropriate cases will be directly addressed therein.³

1. **Order Sealing State's Motion and Memorandum Objecting to the Entry of Appearance [...], July 27, 2021** – This is already a public Order. The subject motion was erroneously filed to this case and was heard and adjudicated in Fremont County Case No. CR22-21-1623. *See supra* note 3.
2. **Order, August 6, 2021** – This is already a publicly available Order. Hellis' assertion that there is nothing in the court record to indicate the purpose is belied by the plain language in the Order.
3. **Status Conference, August 30, 2021** – The Minutes of this hearing are already publicly available.
4. **Status Conference, September 8, 2021** – Hellis requests that any judicial sidebar or video conference breakout room be unsealed. The Court will deny this request. Counsel and judges routinely hold a judicial sidebar and counsel at counsel table routinely mute microphones to confer with co-counsel and those conversations are not included in the record. Given the restraints under COVID-19 protocols in limiting or entirely precluding in-person hearings, the Court will not make public certain portions of the Zoom hearing that would otherwise not be of public record for in-person hearings. Sidebar conferences involving ministerial matters are part of the Court's normal course of business, are often off the record, and are not subject to public disclosure. While Idaho has no caselaw addressing this specific issue, other jurisdictions have gone so far as to hold that even criminal defendants are not guaranteed the right to attend such conferences in their own cases ("a criminal defendant has no constitutional or statutory right to personally attend sidebar conferences involving ministerial matters such as scheduling..." *People v. Jones*, 192 A.D.3d 1656, 1657, 144 N.Y.S.3d 276, 277, leave to appeal denied, 37 N.Y.3d 957, 170 N.E.3d 379 (2021)).
5. **Motion to Seal, September 13, 2021** – Hellis argues that it is unclear whether an order entered associated to this motion. The record reflects the existence of an already publicly available Order entered on September 23, 2021, denying the motion to seal. *See infra*, ¶ 9. Hellis' request is DENIED.

³ The Court entered an Order on August 6, 2021, directing "all subsequent pleadings" in Daybell's and Vallow Daybell's respective cases to be filed "captioning only that individual Defendant's respective case number and name." Prior to the entry of that order, Daybell and Vallow Daybell's cases at times had joint hearings on separate motions. In order to maintain separate, independent and accurate case files in each individual case, the Court entered the August 6, 2021 Order.

6. **Order to Close Hearing and Seal Record, September 14, 2021-** Because the underlying motions heard on September 15, 2021 touched on information exempt from public disclosure under I.C.A.R. 32(g)(10), the Court will deny Hellis' request for judicial sidebars and video conference breakout rooms. *See supra*, ¶ 4. As to Hellis' assertion that the hearing was sealed in violation of procedure because there was no hearing on the issue, the Court reiterates that certain court records are exempt from public disclosure as enumerated in I.C.A.R. 32(g) without the need for a hearing on the issue of sealing. Hellis' argument concerning an assertion that there are no written findings is baseless as the rationale for closing and sealing the hearing is plainly stated in this Order. Hellis' request is DENIED.
7. **Status Conference, September 15, 2021 –** The Court will deny Hellis' request for judicial sidebars and video conference breakout rooms. *See supra*, ¶ 4. Upon review, the Court finds the public interest predominates over any privacy interests claimed and the court minutes will be unsealed and made available to the public.
8. **Status Conference, September 16, 2021-** The Court will deny Hellis' request for judicial sidebars and video conference breakout rooms. *See supra*, ¶ 4. Pursuant to I.C.A.R. 32(g)(10) the Court finds the hearing involved information expressly exempt from public disclosure and the court minutes will remain sealed.
9. **Proposed Order Denied Order to Seal, September 23, 2021 –** This is the Order Hellis argues the record is unclear about with respect to the September 13, 2021 Motion to Seal. *See supra*, ¶ 5. This is already a publicly available document that was clearly denied as indicated on the face of the order.
10. **Order to Seal⁴, October 8, 2021 –** Hellis argues in error that this Order is improperly entered because there was no hearing on the motion and no written findings that the related documents fall within any exception to public disclosure. To the contrary, under I.C.A.R. 32(g)(10), “[m]ental commitment case records” are expressly exempt from public disclosure without the requirement to first hold hearings and issue findings. Hellis' request is DENIED.
11. **Status Conference, October 21, 2021 –** The Court will deny Hellis' request for judicial sidebars and video conference breakout rooms. *See supra*, ¶ 4. Pursuant to I.C.A.R. 32(g)(10) the Court finds the hearing involved information expressly exempt from public disclosure and the court minutes will remain sealed.
12. **Order to Close Hearings and Seal Record, October 21, 2021-** This is already a publicly available Order explaining that the hearing would comprise discussion “relating to the mental commitment of the Defendant” accordingly, the Court entered the order to close the hearing and seal the record pursuant to I.C.A.R.

⁴ Hellis made the request styled as “Order to Seal” but the record establishes that the docket entry provides clear explanation of the Order and is better represented by articulating its full title: “Order to Seal State’s Motion Re: I.C. § 18-212 & Extension of Commitment.”

32(g)(10). Hellis' request is DENIED.

- 13. Motion to Seal, November 26, 2021** – The record establishes this is already a public order setting forth the Idaho Department of Health and Welfare's rationale for filing a motion under seal: "[t]he information in the memorandum and supporting affidavit concern the defendant's mental health records and restorative treatment" and the Court finds that the motion and supporting memorandum are expressly exempt from public disclosure under I.C.A.R. 32(g)(10). Hellis' request is DENIED.
- 14. Order to Seal, November 26, 2021** – *See supra*, ¶ 13. Hellis' request is DENIED.
- 15. Order to Close a Portion of the Hearing and Seal Record, December 8, 2021** – This is already a publicly available Order setting forth the Court's finding that the December 2, 2021 hearing contained discussion of information expressly exempt from public disclosure under I.C.A.R. 32(g)(10) and that the portions of the hearing touching on such information were closed and the transcript would be sealed. Hellis' request as to that information is DENIED.
- 16. Memorandum Decision and Order Disqualifying Counsel, December 28, 2021**– Hellis' argument challenging the procedure of this filing is baseless. This is a public order that was not sealed.
- 17. Motion Hearing, December 29, 2021** – This was a public hearing, live streamed. The Court Minutes are already publicly available. Hellis' request is baseless as there was no hearing held outside of view of the public.
- 18. Motion Hearing, December 29, 2021** – This is a duplicate docket entry that is identical to the Court Minutes mentioned immediately above. *See* ¶ 17.
- 19. Motion Hearing, January 5, 2022** – This was a public hearing. *See supra*, ¶ 4.
- 20. Order to Close Hearing and Seal Record, February 9, 2022** – This is already a public Order setting forth the Court's finding that the February 11, 2022 status conference would involve discussion of information expressly exempt from public disclosure under I.C.A.R. 32(g)(10).
- 21. Status Conference, February 11, 2022** – As set forth in an Order filed February 9, 2022, this hearing involved information expressly exempt from public disclosure. *See supra*, ¶ 20. Hellis' request to unseal the Court Minutes is DENIED. *Also see supra*, ¶ 4.
- 22. Motion to Seal, February 11, 2022** – Upon review, the Court finds the public interest predominates over any privacy interests claimed and this motion will be unsealed and made available to the public.

- 23. Order to Seal, February 11, 2022** – Upon review, the Court finds the public interest predominates over any privacy interests claimed and this Order will be unsealed and made available to the public.
- 24. Motion to Seal, February 16, 2022** – Upon review, the Court finds the public interest predominates over any privacy interests claimed and this motion will be unsealed and made available to the public.
- 25. Order to Seal, February 16, 2022** – Upon review, the Court finds the public interest predominates over any privacy interests claimed and this Order will be unsealed and made available to the public. Upon review of the motion requested to be sealed by the February 16, 2022 motion, the Court finds the motion touches on information expressly exempt from public disclosure under I.C.A.R. 32(g) and accordingly, the substantive motion will remain sealed.
- 26. Decision and Order (Sealed), March 2, 2022** – Upon review, the Court finds that the Memorandum Decision and Order are expressly exempt from public disclosure under I.C.A.R. 32(g)(10). Hellis’ request is DENIED.
- 27. Order to Seal, March 11, 2022** – Hellis argues it is impossible to identify what action this already public Order applies to and asserts any documents or proceedings sealed by this Order should be released. In reviewing the Order, the Court stated “THE COURT has considered the Motion to Seal, filed March 8, 2022 [. . .]” and the already publicly available Motion to Seal filed on March 8, 2022 expressly states: “The State of Idaho puts before the Court a motion to seal its Motion to Transport, it’s proposed accompanying Order [...]”. In reviewing the State’s Motion to Transport, the Court clarifies that it is exempt from public disclosure pursuant to I.C.A.R. 32(g)(10) and will remain sealed, as will the hearing relating thereto. Hellis’ request is DENIED.
- 28. Order to Close Hearing and Seal Record, March 11, 2022** – The Court issued this already public Order setting an expedited hearing “relating to the commitment of the Defendant [...]”; accordingly, Under I.C.A.R. 32(g)(10) the Court finds this Order and its effect to close the expedited hearing and seal the record was warranted and the March 11, 2022 hearing will remain sealed. Hellis’ request is DENIED.
- 29. Order, March 11, 2022** – Upon review, the Court finds the public interest predominates over any privacy interests claimed and this Order will be unsealed and made available to the public.
- 30. Order, March 11, 2022** – Upon review, the Court finds the public interest predominates over any privacy interests claimed and this Order will be unsealed and made available to the public.
- 31. Order to Seal, March 18, 2022** – Upon review, the Court finds the public interest

predominates over any privacy interests claimed and this Order to Seal Order for Examination will be unsealed and made available to the public. The Court clarifies that under I.C.A.R. 32(g)(10), the Order for Examination will remain sealed.

- 32. Order, March 18, 2022** – This is the Order for Examination sealed by the aforementioned Order to Seal Order for Examination. Pursuant to I.C.A.R. 32(g)(10), the contents of the Order are exempt from public disclosure. Hellis’ request is DENIED.
- 33. Status Conference, March 21, 2022** – The Court set a Status Conference in this hearing to discuss with the Parties’ information expressly exempt from public disclosure under I.C.A.R. 32(g)(10). Further, an additional purpose of the hearing was ministerial in nature, comprising information not subject to public disclosure.
- 34. Order, March 22, 2022** – Pursuant to I.C.A.R. 32(g)(10), the contents of the Order are exempt from public disclosure. Hellis’ request is DENIED.
- 35. Order to Close Hearing and Seal Record, March 22, 2022** – This is already a publicly available Order. To the extent clarity is warranted, the Court finds that the March 21, 2022 hearing contained information expressly exempt from public disclosure under I.C.A.R. 32(g)(10) and the hearing and record will appropriately remain sealed.
- 36. Motion to Seal, April 1, 2022** – Upon review, the Court finds the public interest predominates over any privacy interests claimed and this Order will be unsealed and made available to the public.
- 37. Order to Seal, April 1, 2022** – Upon review, the Court finds the public interest predominates over any privacy interests claimed and this Order will be unsealed and made available to the public.
- 38. Order to Close Hearing and Seal Record, April 6, 2022** – This is already a publicly available Order setting forth the Court’s rationale for sealing a hearing to be held April 7, 2022: “In response to the filing of sealed material regarding the mental commitment of the Defendant, and the scheduling of a hearing regarding such material [...]”; accordingly, under I.C.A.R. 32(g)(10) the Court finds that this Order was appropriately entered and the April 7, 2022 hearing was appropriately closed and sealed and will remain closed and sealed as it comprises information expressly exempt from public disclosure.
- 39. Status Conference, April 7, 2022** – See ¶ 38.
- 40. Order, April 11, 2022** – Hellis erroneously claims “there [sic] nothing in the court’s record to indicate the substance of this order or whether it is sealed.” The Order was already and still is very plainly a public Order and the substance of the Order is available to any member of the public to review.

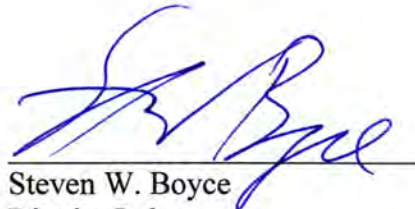
- 41. Finding[sic] of Fact, Memorandum, [sic] Decision [sic] and Order, April 11, 2022** – This document contains information expressly exempt from public disclosure under I.C.A.R. 32(g)(10). As such, it was appropriately filed under seal, and will remain sealed.
- 42. Memorandum Decision and Order, April 28, 2022** – Hellis argues it is unclear from the Court's record if this document is sealed. It is not sealed, nor was it ever sealed. It is available for public view.
- 43. Order, May 13, 2022** – Upon review, the Court finds the public interest predominates over any privacy interests claimed and this Order will be unsealed and made available to the public.
- 44. Motion Hearing, May 19, 2022** – Pursuant to I.C.A.R. 32(g)(10), the contents of the hearing are exempt from public disclosure. Hellis' request is DENIED.

IV. CONCLUSION

As set forth above, certain documents will be unsealed. Exhibits will remain sealed through the conclusion of trial, at which time the Court may consider unsealing certain exhibits. Any hearing involving expressly exempt topics under I.C.A.R. 32(g) will remain sealed.

IT IS SO ORDERED.

Dated this 8 day of December, 2022.


Steven W. Boyce
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of December, 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.

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

Jim Archibald
Jimarchibald21@gmail.com

John Thomas
jthomas@co.bonneville.id.us
Attorneys for Defendant

Lori A.G. Hellis
Lori.hellis@gmail.com
Non-Party Movant

Clerk of the District Court
Fremont County, Idaho

by Angie Wood
Deputy Clerk 12/8/2022 03:41 PM