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**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

**STATE'S RESPONSE AND BRIEF IN
SUPPORT OF RESPONSE TO
DEFENDANTS' MOTIONS TO
CHANGE VENUE**

The State of Idaho, by and through the Fremont County Prosecutor's Office, hereby provides the following Response and Brief in Support of Response to Chad Daybell and Lori Daybell's ("Defendants' hereinafter) Requests for Change of Venue:

I. INTRODUCTION

To limit issues on appeal, and in an abundance of caution, the State would not object to a partial change of venue under Idaho Criminal Rule 21 and requests pursuant to Idaho Code §19-1816 to allow for jury selection to occur in another county within the State of Idaho.

II. LEGAL STANDARD

A defendant's constitutional right to a fair trial and to an impartial jury are granted by the Sixth Amendment of the Constitution of United States of America and Article 1 §13 of the Idaho Constitution. Idaho Criminal Rule 21 provides the trial court must transfer criminal proceedings to another county when the court is satisfied that a fair and impartial trial cannot be held in the county where a case is pending. The standard for making such a determination has been discussed in numerous cases including *State v. Yager*, 139 Idaho 680, 85 P.3d 656 (2004); *State*

v. *Hadden*, 152 Idaho 371, 271 P.3d 1227 (2012); *State v. Hall*, 111 Idaho 827, 727 P.2d 1255 (1986); *State v. Needs*, 99 Idaho 883, 591 P.2d 130 (1979); *State v. Jones*, 125 Idaho 477, 873 P.2d 122 (1994) (overruled on other grounds by *State v. Montgomery*, 163 Idaho 40, 408 P.3d 38 (2017)). In *Jones*, the Court said the following:

“A motion to change the venue of a criminal trial is addressed to the sound discretion of the trial court. *State v. Bainbridge*, 108 Idaho 273, 276-77, 698 P.2d 335, 338-396 (1985); *State v. Needs*, 99 Idaho 883, 890, 591 P.2d 130, 137 (1979). Well-settled case law holds that “where it appears that the defendant actually received a fair trial and that there was no difficulty experienced in selecting a jury, refusal to grant a change of venue is not a ground for reversal.” *State v. Thomas*, 94 Idaho 430, 432, 489 P.2d 1310, 1312 (1991). See also *Bainbridge*, 108 Idaho at 277, 698 P.2d at 339; *Needs*, 99 Idaho at 890, 591 P.2d at 137. Factors to consider in determining whether the defendant has received a fair trial, and thus whether an abuse of discretion has occurred, are the existence of affidavits indicating prejudice in the community; testimony at voir dire as to whether any juror has formed an opinion of the defendant’s guilt or innocence based on pretrial publicity; whether the defendant challenged for cause any of the jurors finally selected; the nature and content of the pretrial publicity; the length of time elapsed between the pretrial publicity and the trial; and any assurances given by jurors themselves concerning their impartiality.” *Needs*, 99 Idaho at 890-91, 591 P.2d at 137-38.

Additionally, the Idaho Supreme Court has reiterated, “[p]ublicity by itself does not require change of venue, *State v. Bitz*, 93 Idaho 239, 460 P.2d 374 (1969) and error cannot be predicated on the mere existence of pretrial publicity concerning a criminal case. *State v. Hyde*, 127 Idaho 140, 145, 898 P.2d 71, 76 (Ct.App. 1995).” When reviewing pretrial publicity, a court is concerned with the accuracy of the pretrial publicity, the extent to which the articles are inflammatory, inaccurate, or beyond the scope of admissible evidence, the number of articles, and whether the jurors were so incessantly exposed to such articles that they had subtly become conditioned to accept a particular version of the facts at trial. *State v. Hadden*, 152 Idaho 371, 377, 271 P.3d 1227, 1233 (Ct.App. 2012).

As the Court is aware, pretrial publicity is only one of the factors the Court must take into consideration when determining whether a change of venue is appropriate. Most cases determine whether venue was proper in light of pretrial publicity based on information learned during *voir dire*, jury pool polling, or affidavits from community members. The record in this case includes no such information. The Sixth Amendment right to a fair trial does not require that jurors be completely ignorant and unaware of the facts and circumstances involved in a criminal case. In fact, the Idaho Supreme Court has recognized:

