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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**

THE STATE OF IDAHO, )  
 )  
 Plaintiff, )  
 )  
 -vs- )  
 )  
 CHAD GUY DAYBELL, )  
 )  
 Defendant. )  
 )  
 )  
 )  
 )  
 )  
 )  
 )

CASE NO. CR22-21-1623

**MEMORANDUM IN SUPPORT OF  
MOTION FOR SEVERANCE  
ICR 14**

COMES NOW, The Defendant, by and through his attorney, JOHN PRIOR, and hereby submits this Memorandum in Support Motion for Severance. The motion is brought pursuant to ICR 14.

**APPLICABLE LAW**

IDAHO CRIMINAL RULE 14. Relief from Prejudicial Joinder:

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

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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.

The court addressed this issue in State v. Nava, 166 Idaho 884, 465 P.3d 1123 (Idaho 2020) in part “As noted above, in analyzing whether joinder is prejudicial, Idaho courts have considered three potential sources of prejudice when considering a motion to sever based on I.C.R. 14: (1) the jury may confuse and cumulate the evidence, and convict the defendant of one or both crimes when it would not convict him of either if it could keep the evidence properly segregated; (2) the defendant may be confounded in presenting defenses, as where he desires to assert his privilege against self-incrimination with respect to one crime but not the other; or (3) the jury may conclude that the defendant is guilty of one crime and then find him guilty of the other because of his criminal disposition. *State v. Field* , 144 Idaho 559, 565, 165 P.3d 273, 279 (2007) ; *State v. Anderson* , 138 Idaho 359, 361, 63 P.3d 485, 487 (Ct. App. 2003).” The court further noted: “In contrast, I.C.R. 14 provides a different procedural mechanism. Pursuant to I.C.R. 14, a defendant may move to sever charges, even if the requirements of I.C.R. 8 have been satisfied if the joinder of those charges prejudiced the defendant. See *State v. Caudill* , 109 Idaho 222, 226, 706 P.2d 456, 460 (1985) (italics added) (“Parties properly joined under I.C.R. 8(b) may be severed under I.C.R. 14 if it appears that joint trial would be prejudicial[.]”); *Anderson* , 138 Idaho at 361 n.1, 63 P.3d at 487 n.1 (italics in original) (“ Rule 14 permits a trial court to sever defendants, or grant separate trials of counts, if a party is prejudiced by an otherwise permissible joinder under Rule 8(a).”). Generally, to get to the question of whether joinder was

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prejudicial, it is "presume[d] joinder was proper in the first place." State v. Field , 144 Idaho 559, 565, 165 P.3d 273, 279 (2003)

In sum, a defendant may file a motion to sever charges he contends were improperly joined under I.C.R. 8. Consequently, a motion to sever is not limited to I.C.R. 14. Separately, I.C.R. 14 allows a defendant to sever the charges if the joinder of the charges was prejudicial , regardless of whether joinder was proper under I.C.R. 8. State v. Nava, 166 Idaho 884, 465 P.3d 1123 (Idaho 2020) Williams , 163 Idaho at 293, 411 P.3d at 1194 (citation omitted). As noted in Nava the court looks at more than just the analysis used in a 404 (b) motion.

### ARGUMENT

The Defendant Chad Guy Daybell is scheduled for trial commencing in early January 2023. At the present time, co-defendant Lori Vallow Daybell has her case stayed. Counsel for the Defendant Chad Guy Daybell has not been provided medical information or updates as they relate to the Defendant Lori Vallow Daybell. It is presumed by this counsel, that at the time of this memorandum her status has remained unchanged. The difficulty in preparing the defense and doing the necessary preparation when there is uncertainty as to whether one of the co-defendants will be present for trial creates a number of evidentiary challenges. In addition, preparation as it relates to asserting the defenses further complicates tis case given the severity of the charges. In the event she is deemed unavailable because of her status, the defense would need to file several motions to exclude evidence as it relates to only Defendant Lori Vallow Daybell. In addition, evidence under 404 (b) as it relates to Defendant Lori Vallow Daybell as to other crimes wrongs or acts as would need to be addressed by the court and an evidentiary ruling would need to be made prior to trial. The outcome of such 404 (b) evidence ruling could be

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