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**THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF FREMONT**

STATE OF IDAHO,)	Case No.: CR22-21-1623
)	
Plaintiff,)	REPLY TO STATE’S REQUEST TO
)	IMPANEL JURORS FROM ANOTHER
v.)	COUNTY AND TO SEQUESTER THE
)	JURY
CHAD DAYBELL,)	
Defendant.)	
)	

CHAD DAYBELL, through undersigned counsel, submits this reply to the prosecution’s motions to impanel jurors from another county and to sequester the jury. Pursuant to the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Idaho Const. art. I, secs. 6, 7, 8 and 13, as well as the other authorities cited below, Mr. Daybell respectfully requests that this Court grant the parties’ joint request for change of venue, determine the jurisdiction to which the case should be transferred, and reset the hearing on the prosecution’s request for impaneling and sequestering the jury until the prosecution has sufficiently briefed the issue and defense counsel has been permitted the time necessary to respond. If the Court does not continue the prosecution’s motions to a later date, Mr. Daybell requests that the Court deny the motion to impanel a jury from another county, since doing so would prejudice Mr. Daybell and the prosecution has not met their burden regarding the costs of taking this course of action.

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

I. Introduction

1. Mr. Daybell previously moved for a change of venue in order to ensure fair trial proceedings, and a hearing was set for October 5, 2021. On September 29, 2021, the prosecution submitted a response to Mr. Daybell's motion, in which they agreed with the request for a venue change. However, the prosecution also moved to sequester the jury and to impanel a jury from another county, instead of transferring the trial itself.

2. 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.*

II. Request to Continue the Prosecution's Motions

3. In order to meaningfully respond to the prosecution's motions, Mr. Daybell is entitled to sufficient notice of the prosecution's arguments and the evidence that they intend to submit in support thereof. *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.").

4. Mr. Daybell provided this Court and the prosecution with sufficient notice regarding his motion for a change of venue. By submitting its own motions less than a week before the previously scheduled hearing date, the prosecution has deprived the defense of the time needed

to consult relevant law. Moreover, at the time of filing this reply, the prosecution has not provided evidence regarding the costs of impaneling a jury from another district. Therefore, beyond depriving Mr. Daybell of the time necessary to research relevant state and federal law, Mr. Daybell cannot respond to the prosecution's arguments about costs, because they have not yet been submitted. Before Mr. Daybell can respond sufficiently to the prosecution's motions, the prosecution must submit *some* evidence regarding the costs of impaneling a jury from another county, as compared to transferring the trial.

5. Mr. Daybell respectfully requests that the Court continue the prosecution's motions to a later date, in order to allow sufficient time to consult relevant law and to review any evidence submitted by the prosecution.

6. Furthermore, since the relevant costs are those of impaneling a jury "from the county to which venue would otherwise have been transferred," Idaho Code § 19-1816, the Court must first rule on the motion for a change of venue before turning to the issues raised by the prosecution's motions.

7. Mr. Daybell submits the below arguments without forfeiting his request continue the prosecution's motions until a later date.

III. The Prosecution's Burden to Submit Tailored Cost Estimates

8. On September 22, 2021, the Idaho Supreme Court issued new COVID-19 protocols governing court operations. These protocols—issued in response to rising COVID-19 positivity rates throughout Idaho and the corresponding stresses on the state's healthcare system—require that courthouses accommodate physical distancing, mandated face masks for those present in the courthouse, provide easy access to sanitation stations, and restrict the amount of persons

