

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH**

STATE OF IDAHO,	)	
	)	Case No. CR29-22-2805
Plaintiff,	)	
	)	<b>ORDER GRANTING DEFENDANT'S</b>
vs.	)	<b>MOTION TO CHANGE VENUE</b>
	)	
BRYAN C. KOHBERGER,	)	
	)	
Defendant.	)	
_____	)	

**I. INTRODUCTION**

On January 30, 2024, Defendant Bryan C. Kohberger filed a Motion for Change of Venue pursuant to Idaho Criminal Rule 21, Idaho Code § 19-1801, Article I, sections 1, 6, 7, 13, and 18 of the Idaho Constitution, and the 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> Amendments of the United States Constitution. On February 8, 2024, the State filed an Objection to Kohberger's motion. The hearing on Kohberger's motion was originally scheduled for June 27, 2024. Thereafter, the parties stipulated to continuing the hearing to August 29, 2024. On July 22, 2024, Kohberger filed a Memorandum in Support of Motion for Change of Venue with various exhibits attached. The State filed an additional objection on August 12, 2024, and Kohberger filed a reply on August 19, 2024, with additional exhibits.

A change of venue hearing was held on August 29, 2024. Kohberger was present and represented by Anne Taylor, Elisa Massoth, and Jay Logsdon. The State was represented by William Thompson, Jr., and Ashley Jennings, Latah County Prosecutor's Office, and Ingrid Batey and Jeff Nye, Office of the Attorney General.

At the hearing, Defendant presented expert testimony from James Todd Murphy, Dr. Amani El-Alayli, Dr. Bryan Edelman, and Dr. Veronica Dahir. The State did not call any witnesses. The court has spent many months carefully considering the legal and logistical concerns with a trial of this length and magnitude, carefully reading each submission, listening to each expert, and evaluating each party's position. Based upon the totality of the factors, Defendant's Motion for Change of Venue is granted.

## **II. BACKGROUND**

On November 13, 2022, four University of Idaho students, Kaylee Goncalves, Madison Mogen, Xana Kernodle, and Ethan Chapin, were found deceased in Goncalves, Mogen, and Kernodle's off-campus home in Moscow, Idaho. The cause of death for each was ruled a homicide. As news of the tragedy broke, media outlets from around the country descended upon Moscow. As law enforcement investigated, news stations, newspapers, and social media were flooded with stories and speculation about the homicides. Throughout the course of the investigation, the Moscow Police Department, in partnership with the University of Idaho, the Latah County Prosecutor's Office, and the Idaho State Police, held press briefings to answer questions and reassure the public. Appropriately, the information released was limited to protect the integrity of the ongoing investigation.

On December 30, 2022, Kohberger was arrested and charged with four counts of Murder in the First Degree and one count of Burglary. Again, media outlets descended upon Moscow and the news coverage quickly focused on Kohberger. That same day, an Order Governing Courthouse and Courtroom Conduct was entered to help alleviate any potentially prejudicial photography, audio or video recordings, and interviews within the courthouse. The conduct order has remained in place throughout the proceedings.

Because of the extensive media coverage from the outset of the homicides, a non-dissemination order was also quickly put into place by stipulation of the parties on January 3, 2023, to help protect Kohberger's right to a fair trial by an impartial jury. The non-dissemination order, as amended, has remained in place throughout the duration of this case.

In an additional effort to help protect Kohberger's right to a fair trial, on November 17, 2023, this Court entered an order removing cameras from the courtroom. Since that time, the proceedings have been streamed via the Court's YouTube channel, which in theory allows the public access to the proceedings while minimizing prejudicial photographs and videos focusing solely on Kohberger and his every move.

Despite efforts by the parties and the Court to protect the jury pool from being inundated with information that is potentially prejudicial and false, extensive media coverage by mainstream media sources such as newspapers, radio stations, and television news outlets has continued throughout the state and nationally. Additionally, and perhaps more challenging, is the ongoing spread of prejudicial misinformation, rumors, and patently false theories of the case on social media outlets such as Facebook, podcasts, and blogs. There have also been numerous television shows and "documentaries" produced about the homicides and at least one book has already been published.

The parties agree the case has generated extensive coverage by the media, internet sleuths, and others trying to capitalize on the tragedy, but disagree on how the Court should attempt to remedy the issue to ensure Kohberger is tried by a fair, impartial jury. In sum, Kohberger argues that venue must be changed from Latah County to a location with a larger population that is geographically distant from where the homicides occurred. The State asserts that a larger juror pool, extensive juror questionnaires, and *voir dire* are sufficient remedies that will result in a fair and impartial jury in Latah County.

In addition to the issue of juror prejudice resulting from extensive coverage of the homicides and Kohberger by the media and others and the smaller population of Latah County, the defense also asserts the trial should be moved outside of Latah County “for the convenience of the parties and witnesses, and in the interest of justice.” The State disagrees that moving the trial would be in the interest of justice or convenient to the parties and witnesses.

### **III. EVIDENCE**

As noted above, at the change of venue hearing, Kohberger presented expert testimony from James Todd Murphy, Dr. Amani El-Alayli, Dr. Bryan Edelman, and Dr. Veronica Dahir. Additionally, Kohberger submitted several exhibits depicting news stories, news clips, and social media posts for this Court’s review. The State did not call any witnesses or submit any evidence.

The Court will summarize the key takeaways from the testimony offered by each of Kohberger’s experts.

#### **1. James Todd Murphy**

James Todd Murphy is the President of Truescope North America. Truescope provides media monitoring services that offer information to help understand the impact of media coverage on a particular community. Truescope looks only at mainstream media sources such as newspapers and news stations.

Of the mainstream media coverage in Idaho of this case, 36% of that coverage has been within Latah County. This would include media like the Moscow Pullman Daily News, Lewiston Tribune, and the television news stations out of Spokane, Washington. Kohberger requests this case be moved to Ada County, which has 34% of the mainstream media coverage in Idaho. While the media coverage percentages are similar between the two counties, Ada County has a much larger population than Latah County. According to Murphy, this means that the media coverage in Ada

County is much more diluted while Latah County is saturated with such coverage. Stated differently, “[m]edia coverage in Latah County offered twice as many opportunities to be seen per person than in Ada County. The higher volume of coverage in Latah County coupled with the smaller pool of eligible jurors, means people in Latah County had twice as many chances to be exposed to this case versus those residing in Ada County.” Ex. C attached to Def.’s Mem. in Supp. of Change of Venue. When looking at the volume of media coverage over time, Ada County had a higher volume of media coverage from February 2023 to June 2023; however, since that time, Latah County has consistently had the higher volume of media coverage with the two counties being similar overall in their current coverage of the case. All of this taken together means that the probability of a Latah County resident being exposed to media coverage of the case is much higher than the probability of an Ada County resident being exposed to media coverage of the case.

## **2. Dr. Amani El-Alayli**

Dr. Amani El-Alayli is a social psychologist and social cognition researcher. As part of her research, Dr. El-Alayli evaluates how publicity about a case can shape potential jurors’ attitudes. Dr. El-Alayli has found that the more publicity a case generates, the more likely potential jurors are to dislike the defendant and view that defendant as guilty. Dr. El-Alayli believes that the publicity Latah County residents have been exposed to makes them biased against Kohberger for several reasons, even if that bias is subconscious. First, Latah County authority figures have publicly spoken about Kohberger’s guilt in absolute terms. The former Moscow Police Department Chief James Fry, who was the Police Chief during the investigation into the homicides, publicly declared he had no doubts that the “right guy” had been arrested for the crimes. After Kohberger’s arrest, the University of Idaho President Scott Green stated publicly that the University community once again “felt safe.” Generally speaking, individuals are more likely to trust and believe authority figures, so

these statements by Latah County authority figures are particularly impactful to Latah County residents.

Second, because Latah County is a small, close-knit community, community members feel a sense of loyalty to community views and fellow community members. For example, Latah County jurors may feel an inner clash or conflict if they felt the State had not proven Kohberger's guilty beyond a reasonable doubt because they may feel voting not guilty would cause community outrage or once again cause fear within the community. Thus, the inner clash may cause jurors to vote guilty even when they believe there is reasonable doubt as to guilt. This inner clash may be even greater when personal connections within Latah County are considered (i.e., my neighbor who is a police officer may be upset with me if I don't vote guilty).

Similarly, given the small size of Latah County, Latah County residents had a much more emotional experience surrounding the homicides, and, therefore, are much more invested in the case. For example, when Kohberger was arrested, Latah County residents who had been fearful experienced a sense of relief, which equates to believing Kohberger is guilty.

Next, the extensive negative publicity surrounding Kohberger leads potential jurors to think of Kohberger negatively. Stated differently, before Kohberger's arrest, if one was to hear the name Bryan Kohberger, the reaction would have been neutral. Now, after Kohberger's name and picture have been associated with terms like "murderer," "evil," "killer," and "stalker," when individuals hear that name there is a negative association. This impact is greater in Latah County because of the saturation of the extensive media coverage.

Finally, given all of this, Dr. El-Alayli opined that it was arguably impossible for residents of Latah County to be asked to serve as impartial jurors because they are biased against Kohberger, even if they do not want to be biased or think they are biased. This is particularly difficult for the

defense to overcome because when humans process information while experiencing emotions like fear and anger, it is difficult to change the initial opinions formed even in the face of contradictory evidence. Instead, we as humans pay greater attention to information that backs up our initial preconceived ideas and opinions.

Taken together, Dr. El-Alayli stated that in her expert opinion the best way to ensure Kohberger is tried by a fair and impartial jury is to find jurors who are both physically and psychologically removed from Latah County.

### **3. Dr. Bryan Edelman**

Dr. Bryan Edelman is a social psychologist who works as a trial consultant for jury selection and pre-trial research. In this case, the defense hired Dr. Edelman to conduct a survey of Latah County residents, Ada County residents, Canyon County residents, and Bannock County residents to determine if a change of venue motion was warranted.

The key findings from the survey show that case recognition is high throughout Idaho. Ninety-eight percent of survey respondents in Latah County recognized the case, 93% of survey respondents in Ada County recognized the case, 90% of survey respondents in Canyon County recognized the case, and 84% of survey respondents in Bannock County recognized the case.

In Latah County, of the 98% of respondents that recognized the case, 67% reported they believe Kohberger is guilty (24.7% reported they believe Kohberger is “definitely guilty”). Similarly, in Ada County 68% of respondents who recognized the case believe Kohberger is guilty (22% reported believing Kohberger is “definitely guilty”), 69% of respondents in Canyon County believe Kohberger is guilty (23% reported Kohberger is “definitely guilty”), and 76% of respondents in Bannock County believe Kohberger is guilty (19% reported Kohberger is “definitely guilty”).

In Latah County, 51% of respondents reported Kohberger would have a difficult time convincing them he is not guilty. The percentage of respondents who reported that Kohberger would have a difficult time convincing them he is not guilty was actually higher in all the other counties surveyed: 56% in Ada County, 57% in Canyon County, and 53% in Bannock County.

In Latah County, 51.5% of respondents who recognized the case felt that the death penalty was the appropriate punishment, and 23.5% felt that life without parole would be appropriate. In Ada County, 49% reported they believed death was the appropriate sentence, 57% of respondents in Canyon County reported they believed death was the appropriate sentence, and 53% in Bannock County reported they believed death was the appropriate sentence.

In Latah County, 29% of survey respondents reported following the case “very closely” and 38.5% reported following the case “somewhat closely.” In Ada County, 58% of respondents reported following the case “very closely” or “somewhat closely,” while that number fell to 51% in Canyon County and 46% in Bannock County.

Thirty-nine percent of survey respondents in Latah County indicated they experienced higher levels of stress, anxiety, or fear during the search for the person responsible for the killings. This contrasts with the 17% of Ada County respondents who answered yes to the question, 11% of Canyon County respondents who answered yes, and 11% of Bannock County respondents who answered yes. Additionally, a higher number of Latah County residents reported talking about the case with others, living in Moscow when the homicides occurred, having ties to the University of Idaho, and having ties to law enforcement who investigated the crimes.

Finally, Dr. Edelman considered the population sizes of the counties surveyed with Ada County having 406,068 residents, Canyon County having 184,660 residents, Bannock County having 66,911 residents, and Latah County having 32,515 residents.



Based on all the information obtained from the surveys, Dr. Edleman opined that case recognition and presumption of guilt is and will continue to be high throughout Idaho given the extensive media coverage the case has generated. In his opinion, population size matters. For example, if roughly 50% of Latah County residents presume Kohberger is guilty, that leaves approximately 15,000 Latah County residents who do not hold this presumption. Of those, not all are eligible to serve as a juror. In contrast, if 50% of Ada County residents presume Kohberger is guilty, that leaves over 200,000 residents who do not hold such a presumption. Thus, Ada County has a much larger pool of nonbiased potential jurors.

Even more important to Dr. Edelman though was the issue of personal connections within Latah County, and the personal impact this case has had on Latah County residents. The feelings of fear, stress, and anxiety surrounding the homicides were significantly greater in Latah County than in the other counties. This was also true for the connections to the University of Idaho and local law enforcement. Dr. Edelman testified that these connections and experiences are the real issue when it comes to seating an impartial jury in Latah County.

Based on the results of his surveys, Dr. Edelman opined that in his expert opinion there is a reasonable likelihood the presumption of guilt prevails in Latah County and that a change of venue is appropriate.

#### **4. Dr. Veronica Dahir**

Dr. Veronica Dahir was called by the defense to offer her expert opinion as to the validity of the survey work done by Dr. Edelman in this case. Dr. Dahir testified that the surveys were conducted in accordance with applicable standards and the results are sound.

## **5. Media Articles and Video Clips**

The defense also submitted numerous media articles and video clips demonstrating the sheer volume of coverage this case has generated. The Court agrees, and the State does not dispute, that coverage of this case by both mainstream media and social media outlets has been extensive in Latah County, throughout Idaho, and nationally. While some of the mainstream reporting has been appropriate and based on information from the Court record, there has been extensive coverage that is prejudicial to Kohberger and likely inadmissible at trial.

## **IV. STANDARD**

Both the Idaho Constitution and the United States Constitution protect a defendant's right to a fair trial by an impartial jury. To help achieve a constitutionally sound trial, Idaho Criminal Rule 21 allows transfer of a case for trial in certain instances. Idaho Criminal Rule 21(a) states that “[o]n motion of either party, the court must transfer the proceeding to another county if the court is satisfied that a fair and impartial trial cannot be had in the county where the case is pending.” Similarly, Idaho Code § 19-1801 states that “[a] criminal action, prosecuted by indictment, may be removed from the court in which it is pending, on the application of the defendant, on the ground that a fair and impartial trial cannot be had in the county where the indictment is pending.” Idaho Criminal Rule 21 also allows a transfer for convenience. “On motion of the defendant, the court may transfer the proceeding to another county, for the convenience of parties and witnesses, and in the interest of justice.” I.C.R. 21(b).

A motion for change of venue pursuant to Idaho Criminal Rule 21 is left to the discretion of the trial court. *State v. Hadden*, 152 Idaho 371, 376, 271 P.3d 1227, 1232 (2012); *State v. Ish*, 551 P.3d 746, 762 (Idaho 2024).

## V. ANALYSIS

### 1. Prejudice

In deciding a motion for change of venue, “the Court determines whether, in the totality of the circumstances, juror exposure to pretrial publicity [will result] in a trial that [is] not fundamentally fair.” *Ish*, 551 P.3d at 762. “The critical inquiry is whether the nature of their exposure to pretrial publicity caused the prospective juror to form an opinion about the defendant's guilt and, as a result, they are unable to serve as an unbiased juror.” *Id.* In determining whether a criminal defendant actually received a fair trial, the Idaho Supreme Court considers the following factors: “[1] the existence of affidavits indicating prejudice or an absence of prejudice in the community where the trial took place; [2] the testimony of the jurors at jury selection regarding whether they had formed an opinion based upon adverse pretrial publicity; [3] whether the defendant challenged for cause any of the jurors finally selected; [4] the nature and content of the pretrial publicity; and [5] the amount of time elapsed between the pretrial publicity and the trial.” *Id.* (quoting *State v. Sheahan*, 139 Idaho 267, 278, 77 P.3d 956, 967 (2003)). Some of these factors can only be evaluated during or after jury selection, while others can be evaluated by the trial court in deciding an earlier motion to change venue.

#### a. Actual Prejudice

In evaluating actual juror prejudice, the “relevant question is not whether the community remembered the case, but whether the jurors at . . . trial had such fixed opinions that they would not judge impartially the guilt of the defendant.” *Patton v. Yount*, 467 U.S. 1025, 1035, 104 S.Ct. 2885, 2891, 81 L.Ed.2d 847 (1984). Stated differently, courts must evaluate whether, “in the totality of the existing circumstances, juror exposure to pretrial publicity resulted in a trial that was not fundamentally fair.” *Hadden*, 152 Idaho at 376, 271 P.3d at 1232. The defendant bears the burden

of proving prejudice or showing a reasonable likelihood that there was prejudice. *Ish*, 551 P.3d at 764.

In reviewing case law, a finding of actual juror prejudice rests on an examination of the jury selection process. This includes evaluating how jurors answered screening questionnaires, the testimony during *voir dire* of the venire as a whole and the jurors eventually seated, and any jurors seated despite a “for cause” challenge by the defense. *See id.*; *Skillings v. U.S.*, 561 U.S. 358, 385-399, 130 S.Ct. 2896, 2917-2925, 177 L.Ed.2d 619 (2010); *Hadden*, 152 Idaho at 377, 271 P.3d at 1233 (In reviewing a trial court’s decision denying a change of venue motion, the Idaho Supreme Court considers: “the testimony of the jurors at jury selection regarding whether they had formed an opinion based upon adverse pretrial publicity; whether the defendant challenged for cause any of the jurors finally selected”). These factors are considered along with evaluating the pretrial publicity itself and the timing of the publicity. *Hadden*, 152 Idaho at 377, 271 P.3d at 1233.

Here, the defense argues that the survey work of Dr. Edelman establishes actual prejudice within Latah County. However, actual prejudice cannot be evaluated at this juncture based on a survey on some 400 Latah County residents who are anonymous, did not answer questions in Court, and were not subject to questioning by the State. Without attempting to seat a jury, there is no real evidence, such as juror screening questionnaires and testimony during *voir dire*, for this Court to evaluate actual prejudice.

**b. Presumed Prejudice**

“[A]dverse pretrial publicity can create such a presumption of prejudice in a community that the jurors’ claims that they can be impartial should not be believed.” *Patton v. Yount*, 467 U.S. 1025, 1031, 104 S.Ct. 2885, 2889, 81 L.Ed.2d 847 (1984) (discussing the holding in *Irvin v. Dowd*, 366 U.S. 717, 81 S.Ct. 1639, 6 L.Ed.2d 751 (1961)). However, “[a] presumption of prejudice . . .

attends only the extreme case” and juror exposure to news accounts of the crime alone does not presumptively deprive the defendant of due process. *Skillings*, 561 U.S. at 380-381, 130 S.Ct. at 2914-2915; *Hadden*, 152 Idaho at 376, 271 P.3d at 1232 (“Publicity by itself does not require a change of venue.”). Indeed, “[p]rominence does not necessarily produce prejudice, and juror *impartiality*, . . . does not require *ignorance*.” *Id.* (italics in original).

Unlike with actual prejudice, a finding of presumed prejudice means that the court need not consider juror screening questionnaires or testimony during *voir dire* before declaring a jury verdict void, or, in this case, declaring a change of venue appropriate based on prejudice. *Id.* It is the defendant’s burden to establish “a reasonable likelihood prejudicial news coverage prevented [or will prevent] a fair trial in violation of the Sixth Amendment to the United States Constitution.” *Hadden*, 152 Idaho at 376, 271 P.3d at 1232. “This is not an unreasonably high hurdle for a defendant to clear.” *Ish*, 551 P.3d at 764.

In cases where juror prejudice has been presumed, the following factors have been examined: 1) the size and characteristics of the community in which the crime occurred; 2) whether news stories contained a “confession or other blatantly prejudicial information of the type readers or viewers could not reasonably be expected to shut from sight;” 3) the lapse of time between the prejudicial news coverage and the trial; and 4) what the jury actually found as far as guilt is concerned (i.e., was the defendant acquitted of some charges). *Skillings*, 561 U.S. at 382, 130 S.Ct. at 2915. In Idaho, courts consider 1) the existence of affidavits indicating prejudice or an absence of prejudice in the community where the trial took place; 2) the nature and content of the pretrial publicity; and 3) the amount of time elapsed between the pretrial publicity and the trial. *Hadden*, 152 Idaho at 377, 271 P.3d at 1233; *Ish*, 551 P.3d at 763. “When reviewing the nature and content of the pretrial publicity, [the trial court should be] concerned with the accuracy of the pretrial

publicity, the extent to which the articles are inflammatory, inaccurate, or beyond the scope of admissible evidence, and 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.” *Hadden*, 152 Idaho at 377, 271 P.3d at 1233.

First, as to the size and characteristics of the community, Latah County is a relatively small community with a population of approximately 41,000 (24,963 who are eligible to serve on a jury). Ex. C, Mem. in Supp. of Mot. for Change of Venue. The State argues that this is enough to impanel 18 impartial individuals. The defense argues that the small, tight-knit community makes it impossible to find impartial individuals because of the extensive publicity Latah County residents have been exposed to, the emotional experience and feelings of fear residents experienced in the wake of the homicides, feelings of loyalty to the community, and community connections. The defense’s position is supported by the testimony of Todd Murphy, Dr. El-Alayli, and Dr. Edelman.

As Mr. Murphy testified, 36% of all mainstream news coverage of this case throughout Idaho has been in Latah County. This, coupled with the smaller population in Latah County, makes the probability of Latah County residents’ exposure to such coverage higher than in Ada County, Bannock County, or Canyon County. Dr. El-Alayli testified that the more publicity one is exposed to the more likely an individual is to dislike Kohberger and view him as guilty. While Dr. Edelman’s survey results suggest that similar percentages of survey respondents throughout the counties surveyed knew of the case and presumed Kohberger was guilty, the sheer number of individuals in the larger counties increase the chances of impaneling a fair and impartial jury.

Further, both Dr. El-Alayli and Dr. Edelman expressed great concern over the emotional experiences, feelings of fear, and personal connections of Latah County residents. These issues are unique to Latah County and exacerbated by the small size of the community. Potential jurors in Ada

County, for example, did not experience the same level of fear caused by the homicides as Latah County residents. Similarly, it is far more likely for jurors in Latah County to know someone involved in the investigation of the case or otherwise related to the case, and more likely that Latah County residents have discussed the case with each other. Additionally, the smaller community makes it more difficult to keep the identity of jurors private, which, as Dr. El-Alayli testified to, may hinder some jurors in their decision-making because of feelings of loyalty to the community.

Next, as discussed above, it is undisputed that there has been significant media coverage in this case throughout the State and nationally. While some of the coverage has been neutral reporting of the Court proceedings, much of the coverage has been sensationalized and prejudicial to Kohberger. By way of example, the defense provided the Court with 1,222 pages of news articles covering the case from one local newspaper. One article published after Kohberger's arrest includes statements from Washington State University students who reported feeling "weird" having sat in class with Kohberger and felt relieved knowing Kohberger had been arrested. Another article starts out by referring to Kohberger as "[t]he man accused of slaughtering four University of Idaho students." The title of yet another article refers to Kohberger as the "UI killer." While the issue of extensive, sensationalized coverage is not unique to Latah County, it is potentially more impactful given the volume of coverage coupled with the smaller population.

As to the lapse of time between the coverage and trial, the information provided by Mr. Murphy demonstrates that coverage has overall waned since February 2023; however, there is an uptick in coverage before and after hearings and Court decisions. This is especially true for Latah County, with Ada County following a similar trajectory. The Court does not anticipate this trend will change leading up to trial and anticipates the coverage will substantially increase in the weeks and days before the start of the trial.

Finally, while this Court does not have affidavits demonstrating prejudice in Latah County, the Court must consider the results of the survey Dr. Edelman prepared. Again, while the presumption of guilt was similar across all the counties surveyed, the number is more impactful in Latah County given the smaller population. Some 67% of Latah County survey respondents reported believing Kohberger is guilty, with 51% of those indicating it would be hard for Kohberger to convince them of his innocence. While a similar percentage answered these questions the same in Ada County, the impact of these numbers when considering population size are drastically different. Latah county has approximately 24,000 residents who are eligible for jury service. If 50% of those are disqualified for having fixed opinions as to Kohberger's guilt, only 12,000 individuals remain. This is before any have been excused for hardship such as illness, breastfeeding, loss of wages for a 3-month long trial, sole childcare provider for young children, etc. Thus, when considering the prejudice in Latah County demonstrated in Dr. Edelman's survey and the population size of Latah County together, the Court is concerned that if venue is not changed now, it will be asked to reconsider its decision during jury selection which, if granted at that juncture, would very likely result in the trial being delayed many months.

Considering the undisputed evidence presented by the defense, the extreme nature of the news coverage in this case, and the smaller population in Latah County, the defense has met the rather low standard of demonstrating "a reasonable likelihood" that prejudicial news coverage will compromise a fair trial in Latah County. Thus, the Court will grant Kohberger's motion to change venue for presumed prejudice.

## **2. Convenience and Interest of Justice**

Even without a finding of presumed prejudice, venue in this case must be changed "for the convenience of parties and witnesses, and in the interest of justice." I.C.R. 21(b). While this issue



was summarily addressed by the parties, the Court has considered the logistics while the motion for change of venue was pending. While Latah County court staff and court security are ready and willing to facilitate this trial to the best of their ability, there are serious issues that cannot be resolved no matter how much planning and preparation is done.

First, and perhaps most important, is the issue of safety and security for the parties, witnesses, victims' families, jurors, and the Latah County community. The Latah County Sheriff's Office, which is currently fully staffed, simply lacks the number of officers needed to provide security for the trial while also continuing to perform their day-to-day duties of patrol and responding to calls. One solution is to ask the Idaho State Police ("ISP") and the Moscow Police Department ("MPD") to help. However, officers from both ISP and MPD were heavily involved with investigating the homicides and it is anticipated that several officers will be called to testify at trial. Additionally, it is the Court's understanding that both of those agencies are currently understaffed. Pulling local officers away from their normal duties for three months to provide trial security would potentially put the Latah County community at risk. Further, in the event of a natural disaster, such as a wildfire, or a large emergency, like an active shooter or multi-vehicle wreck, there is a very real possibility that officers tasked with trial security would be pulled away to deal with other issues. Thus, while our local law enforcement is ready and willing to do what they need to do to ensure a safe trial, there are not enough officers to ensure the safety of the parties, witnesses, victims' families, jurors, and community for a 3-month period.

Similarly, Latah County does not have enough court clerks to efficiently manage the jury selection process. It is anticipated that general qualification questions will need to be sent out to some 6,000 individuals. The court clerks will be tasked with then entering juror information from those 6,000 individuals into an electronic system. This task alone will require several clerks and will

take time. Latah County has only one court clerk currently familiar with the process, and she has several other day-to-day responsibilities outside of her role as jury commissioner. Thus, to accomplish this task, Latah County would have to bring in clerks from other counties to help, along with extra computer equipment for those clerks to perform their work. After the initial process, the Court would summons in some 1,800 individuals to fill out extensive juror questionnaires. Again, this process would require both court clerks and court security to take attendance, manage and move the individuals where they need to go to fill out questionnaires in privacy, scan questionnaires, and quickly get the questionnaires to the Court and counsel. Again, while Latah County court staff are willing to do what needs to be done, the reality is that we do not have enough individuals to perform the task of jury selection effectively and efficiently.

Further, the Latah County courthouse itself poses significant issues for a trial of this length and magnitude. The courthouse lacks the space needed by both the State and the defense. While the State has a dedicated space within the courthouse, the State would still be faced with the challenge of escorting sensitive witnesses through public spaces in the courthouse to get to the courtroom. Meanwhile, the defense does not have a dedicated space within the courthouse and there are limited options available. The few options available (i.e., the District Court meeting room or a pretrial room) are small, located in public areas, and are not soundproof. These locations do not provide the defense with the privacy it needs during trial to meet with each other and witnesses. Further, the jury room itself is problematic in terms of its size. Fitting 12-13 jurors in the jury room for a routine trial is crowded; fitting 18 jurors in the jury room for 3 months would be uncomfortable at best. Additionally, the door between the jury room and courtroom is not soundproof. Further, court security would be tasked with trying to bring the jury into the courthouse in a fashion that ensured the jurors' privacy, while also ensuring the Court's privacy. The only options for bringing the jury

into the courtroom is through the public hallway or directly past the Court's chambers. Neither are good options.

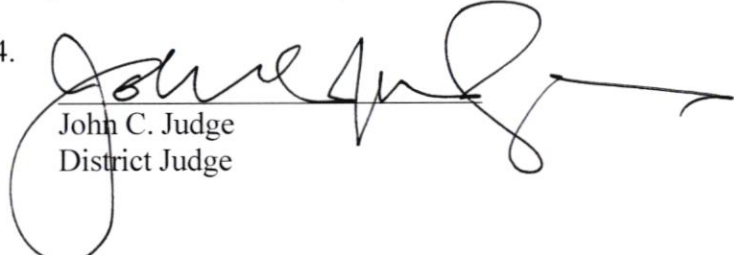
Further, there is also the issue of the continuing day-to-day operations at the Latah County courthouse. The magistrate judge will continue to have daily hearings, a district judge will continue with the day-to-day operations of the district court, and the juvenile and CPS caseloads will have to continue. Additionally, the clerk's office must continue with its day-to-day operations of processing case filings, taking payments, and assisting the public. All these normal court operations will undoubtedly be strained by the resources required for this trial in terms of space and personnel.

While traveling to another county for three months is indeed inconvenient for the attorneys, the Court, some family members of the victims, and some witnesses, having the trial at the Latah County courthouse would also be inconvenient in numerous ways and, beyond that, would present serious safety risks. Thus, the interest of justice requires that the trial be moved to a venue with the resources, both in terms of personnel and space, necessary to effectively and efficiently handle a trial of this magnitude and length so that the parties and the Court can focus on the case and not on peripheral issues.

## VI. CONCLUSION AND ORDER

Kohberger's Motion to Change Venue is granted pursuant to Idaho Criminal Rule 21(a) and 21(b). Consistent with the language of Idaho Criminal Rule 21(c)(2)(B), this Court orders a transfer of venue "without specifying the new place of venue" and refers "the case to the administrative director of the courts for assignment by the Supreme Court to a court of proper venue in another judicial district and assignment of a specific judge to preside in the criminal proceeding."

DATED this 6<sup>th</sup> day of September 2024.

  
John C. Judge  
District Judge

CERTIFICATE OF SERVICE

I certify that copies of the ORDER GRANTING DEFENDANT'S MOTION TO CHANGE VENUE were delivered by email to:

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on this 6 day of September 2024.

County Clerk of the Court

By:   
Deputy Clerk