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SUPERIOR COURT CLERK

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MOHAVE**

9 STATE OF ARIZONA,

10 Plaintiff,

11 vs.

12 **JUSTIN JAMES RECTOR,**

13 Defendant.

No. CR-2014-1193

**RESPONSE DEFENDANT'S
MOTION FOR CHANGE OF VENUE**

14 COMES NOW, the State of Arizona, by the Mohave County Attorney and through
15 the undersigned deputy, Gregory A. McPhillips, respectfully requests defendant's Motion
16 for Change of Venue be denied. Defendant's motion lacks factual merit.

17 **Facts**

18 The factual basis defendant asserts, as supporting his motion to change venue, is
19 limited to the following passages of Defendant's Motion:

- 20 • "While local television coverage has been sporadic, and originated in the
21 Phoenix and Las Vegas television markets, local newspaper coverage has
22 provided in-depth coverage of the case itself, and the pretrial maneuvering
23 inherent in criminal cases."¹
24 • "This is directly analogous to the release of a jail call purportedly from Mr.
25 Rector regarding his "confession" to the crime at hand."²

¹ Defendant's motion for change of venue page 2, lines 15-18.

² Defendant's motion for change of venue page 3, lines 20-23.



1 Law and analysis

2 Defendant moves the court for a change of place of trial due to pretrial publicity.

3 The grounds for change of the place of trial are defined in 16(A) A.R.S. Rules of
4 Crim.Proc., Rule 10.3(a):

5 In any criminal case, the state or any defendant shall be entitled to a change
6 of the place of trial to another county, if a fair and impartial trial cannot be
had for any reason other than the interest or prejudice of the trial judge.

7 The standard of proof for prejudicial pretrial publicity is defined in 16(A) A.R.S. Rules of
8 Crim.Proc., Rule 10.3(b):

9 Whenever the grounds for change of place of trial are based on pretrial
10 publicity, the moving party shall be required to prove that the dissemination
of the prejudicial material will probably result in the party being deprived of a
11 fair trial.

12 The comment to Rule 10.3(b) states:

13 See *Elias v. Territory*, 9 Ariz. 1, 76 P. 605 (1904), in which the supreme
14 court has imposed on the defendant the obligation to show "affirmatively"
that there is prejudice in the community "reasonably certain to prevent a fair
15 and impartial trial." See *State v. Woolery*, 93 Ariz. 76, 378 P.2d 751 (1963);
State v. McGee, 91 Ariz. 101, 370 P.2d 261 (1962); *State v. Hunt*, 2 Ariz.
App. 6, 406 P.2d 208 (1965).

16 In order to prove that the dissemination of the prejudicial material will probably
17 result in the party being deprived of a fair trial, the defense may either rely on presumed
18 prejudice or demonstrate that the pretrial publicity was actually prejudicial.³ The decision
19 on whether to grant a motion for a change of venue is within the sound discretion of the
20 trial court.⁴

21 • **Presumption of Prejudice**

22 Defendant's Motion focuses on alleging presumed prejudice. Essentially,
23 defendant is asserting that, due to pretrial publicity, defendant can never obtain a fair and
24 impartial trial in Mohave County.

25 ³ *State v. Cruz*, 218 Ariz. 149 (2008).

⁴ *State v. Endreson*, 109 Ariz. 117 (1973), *State v. Greenawalt*, 128 Ariz 150 (1981), *State v. Woolery*, 93 Ariz. 76 (1963).

1 To raise to the level of presumed prejudice the publicity must be so unfair, so
2 prejudicial, and so pervasive that the court cannot give any credibility to the jurors'
3 answers during voir dire.⁵ As such, courts will presume prejudice only if the media
4 coverage was so extensive and outrageous that it permeated the proceedings or created
5 a carnival-like atmosphere.⁶ Furthermore, in order for prejudice to be presumed, the
6 defendant must show that the pretrial publicity was so outrageous that it promises to turn
7 the trial into a mockery of justice or mere formality.⁷ The fact that one-third of the
8 respondent county residents formed an opinion about the guilt or innocence of the
9 defendant would not support a claim of "pervasive or outrageous" media coverage.⁸

10 For example in *State v. Cruz*, hundreds of television broadcasts and newspaper
11 articles covered the case.⁹ A poll submitted by the defense showed that 51 percent
12 thought that the defendant had committed the crime.¹⁰ However, the court reasoned that
13 the defendant had failed to show presumed prejudice.¹¹

14 In *Skilling v. United States*,¹² the U.S. Supreme Court speaks of overturning
15 convictions "obtained in a trial atmosphere that [was] utterly corrupted by press coverage"
16 but the U.S. Supreme Court warned that those decisions "cannot be made to stand for the
17 proposition that juror exposure to ... news accounts of the crime ... alone presumptively
18 deprives the defendant of due process."¹³ The U.S. Supreme Court warned that
19 "[p]rominence does not necessarily produce prejudice, and juror *impartiality*, we have

20 ⁵ *State v. Cruz*, 218 Ariz. 149 (2008).

21 ⁶ *State v. Cruz*, 218 Ariz. 149 (2008), *State v. Davolt*, 207 Ariz 191 (2004), *State v.*
Blakeley, 204 Ariz. 429 (2003).

22 ⁷ *State v. Murray*, 184 Ariz. 9 (1995).

23 ⁸ *State v. Jackson*, 186 Ariz. 20, 918 P.2d 1038, cert. denied, 519 U.S. 1015, 117 S. Ct.
527, 136 L. Ed. 2d 413 (1996).

24 ⁹ See *Cruz*, 218 Ariz. at 157, 181 P.3d at 204.

25 ¹⁰ *Id.*

¹¹ *Id.*

¹² *Skilling v. United States*, 561 U.S. 358, 380, 130 S. Ct. 2896, 2914, 177 L. Ed. 2d 619
(2010).

¹³ *Skilling v. United States*, 561 U.S. 358, 380, 130 S. Ct. 2896, 2914, 177 L. Ed. 2d 619
(2010); citing *Murphy v. Florida*, 421 U.S. 794, 798-799, 95 S.Ct. 2031, 44 L.Ed.2d 589
(1975).

1 reiterated, does not require *ignorance*.”¹⁴ The U.S. Supreme Court noted that “[a]
2 presumption of prejudice, our decisions indicate, attends only the extreme case.”¹⁵

3 Defendant’s case is not such an extreme case. An analysis of *US v. Skilling*
4 illustrates why there is no prejudice. The size and geographic diversity of our county
5 community shows that the defendant’s story has not reached everyone who would be a
6 potential juror. Mohave County has many areas that are geographically remote from
7 Bullhead City; such as Kingman, Lake Havasu City, Dolan Springs, Valley Vista, Butler,
8 Moccasin, Colorado City, Chloride, Golden Valley, Hackberry, Meadview, Oatman,
9 Topock, Scenic, Wikieup. Further, not everyone reads everything in the paper and few
10 memorize and follow the cases reported through time. At time of trial, years will have
11 passed since the more informative articles were published. The jury will not be tainted by
12 years old articles which many citizens of Mohave County never read.

13 The defendant’s case does not come close to the type of media coverage that
14 occurred in the “media circuses” cited in the above cases. If the hundreds of TV, radio,
15 and newspaper reports in *Cruz* were insufficient to create a presumed prejudice, there is
16 hardly sufficient prejudice in this case. Defendant has not shown that the pretrial publicity
17 is so unfair, so prejudicial, and so pervasive that this court cannot give any credibility to
18 the jurors’ answers during voir dire.

19 Defendant has not presented inflammatory articles or articles using the
20 newspaper’s voice as an authority calling for the defendant’s conviction or death.
21 Defendant has not shown a media “frenzy.” Defendant’s motion is based on coverage,
22 that in their own words: ... “has provided in-depth coverage of the case itself, and the
23 pretrial maneuvering inherent in criminal cases.”¹⁶ The articles mostly explain what is
24 going on in the case and generally what the charges and allegations against defendant

25 ¹⁴ *Skilling v. United States*, 561 U.S. at 380 citing *Irvin v. Dowd*, 366 U.S. 717, 722, 81
S.Ct. 1639, 6 L.Ed.2d 751 (1961).

¹⁵ *Skilling*, 561 U.S. at 381, 130 S. Ct. at 2915.

¹⁶ Defendant’s motion for change of venue page 2, lines 15-18.

1 are. There is no daily commentary or nightly coverage of the case through print, radio or
2 television media. Lastly, the court hearings have not devolved into a media circus.

3 Presumed prejudice is not shown. The media coverage has been chiefly factual
4 and noninflammatory. There is yet a year before trial. Mohave County should remain the
5 trial venue. Defendant's motion, to change venue, should be denied.

6 • **Actual Prejudice**

7 Defendant's motion does not raise a claim of actual prejudice but those concepts
8 are worth discussing to give this discussion context as to how actual prejudice is occurred.

9 If presumed prejudice is not shown, defendant is required to show actual
10 prejudice. In order to show actual prejudice, the Defendant must show the effect of the
11 publicity on the objectivity of the jurors actually seated. This prejudice can be discovered
12 and/or avoided by extensive voir dire questioning, including individual questioning, and
13 questionnaires.¹⁷

14 At this time, it is premature to determine whether actual prejudice exists. The trial
15 has not taken place yet. However, there are things that can be done in order to minimize
16 any potential actual prejudice. These include extensive voir dire, individual voir dire,
17 questionnaires, etc. The defendant is being afforded these protections in this case, and
18 weeks can be set aside for voir dire. However, since actual prejudice analyzes the effect
19 of media coverage on the jurors actually seated, and no jury has been seated, this court
20 cannot find that *actual* prejudice exists.

21 **CONCLUSION**

22 It cannot be assumed and evidence fails to show an inherent bias of the jury
23 population in Mohave County. Defendant's motion should be denied because presumed
24 prejudice has not been shown and it is premature to show actual prejudice. Further, voir
25 dire can be utilized to minimize any potential actual prejudice.

¹⁷ See *Cruz*, 218 Ariz at 158, 181 P.3d at 205 and *State v. Nordstrom*, 200 Ariz. 229, 25
P.3d 717 (2001).

1 Defendant's Motion should be denied, Mohave County should remain the trial
2 venue.

3 RESPECTFULLY SUBMITTED THIS 25TH DAY OF AUGUST, 2015.

4 MOHAVE COUNTY ATTORNEY
5 MATTHEW J. SMITH

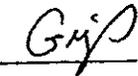
6
7 By 
8 DEPUTY COUNTY ATTORNEY
9 GREGORY A. MCPHILLIPS
10

11 A copy of the foregoing
12 sent this same day to:

13 HONORABLE LEE F. JANTZEN
14 SUPERIOR COURT JUDGE

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