

PSG

1 Matthew J. Smith  
Mohave County Attorney  
2 Victoria Stazio  
Deputy County Attorney  
3 State Bar No. 024838  
315 N. 4th Street  
4 P O Box 7000  
Kingman, AZ 86402  
Telephone: (928) 753-0719  
5 Fax No.: (928) 753-2669  
CAO.Court@co.mohave.az.us  
6 Attorney for Plaintiff

FILED  
BY: Dle  
2010 NOV -1 PM 4: 32  
VIRLYNN TINNELL  
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 JOHN CHARLES MCCLUSKEY,  
13 Defendant.

No. CR-2010-0823  
**RESPONSE TO MOTION TO  
CHANGE VENUE**

14 COMES NOW, the State of Arizona, by the Mohave County Attorney and through  
15 the undersigned deputy, requests this Court deny Defendant's motion. Defendant has  
16 not shown actual prejudice.

17 LAW

18 The State agrees with Defendant that in order to be granted a change of venue,  
19 he must meet a two pronged test. *State v. Jones*, 197 Ariz 290, 307 (2000). The  
burden of proof is on the Defendant and it is "extremely heavy". *Id.* at 362.

20 Juror exposure to facts of the case do not raise a presumption that Defendant is  
21 denied a fair trial. *Id.* A carnival atmosphere surrounding a trial has been found in  
22 extreme situations where news reporters "took over" the courtroom, "hounding"  
23 participants in the trial. See *Sheppard v. Maxwell*, 384 U.S. 333 (1966).

24 In order to show identifiable prejudice the test is whether the juror can lay aside  
25 knowledge of the case and render the verdict based solely upon evidence presented at  
trial:



1 "Furthermore, a change of venue is not required unless the defendant can  
2 demonstrate that the publicity has reached the jury panel and that jurors both  
3 have formed and are unable to lay aside preconceived notions regarding the  
4 defendant's guilt. State v. Endreson, 109 Ariz. 117, 506 P.2d 248 (1973)." State  
5 v. Smith, supra, 116 Ariz. at 390, 569 P.2d at 820. See also State v. Gretzler,  
6 126 Ariz. 60, 612 P.2d 1023 (No. 3750, filed 21 April 1980); State v. Lacquey,  
7 117 Ariz. 231, 571 P.2d 1027 (1977); Northern California Pharmaceutical  
8 Association v. United States, 306 F.2d 379 (9th Cir.), cert. denied 371 U.S. 862,  
9 83 S.Ct. 119, 9 L.Ed.2d 99 (1962).

10 *quoted in State v. Mulligan* 126 Ariz. 210, 214, 613 P.2d 1266, 1270 (Ariz., 1980).

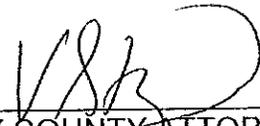
11 When judges voir dire potential jurors on the subject of publicity and their impartiality,  
12 and admonish them not to be swayed by publicity about the case, Courts are reluctant  
13 to grant a change of venue. See *Id.* at 213-214; See also *State v. Jones, Id.* at 362.

#### 14 ARGUMENT

15 Defendant has not met its "extremely heavy" burden in showing that there is a  
16 presumption of prejudice, or actual prejudice. The comments made in the Daily Miner  
17 show neither a carnival atmosphere nor actual prejudice to the Defendant. They are  
18 merely anonymous editorials made by a limited number of folks who read the Kingman  
19 Daily Miner via the internet and then feel compelled to comment. They are in no way a  
20 representation of the community as a whole. Furthermore, there is no evidence that the  
21 information contained in them has or will reach the potential jury in this case. And, if  
22 after voir dire it is found that a potential juror has read these comments, the Court can  
23 carefully question and admonish the juror to ensure fairness and impartiality.

24 RESPECTFULLY SUBMITTED THIS 1ST DAY OF NOVEMBER, 2010.

25 MOHAVE COUNTY ATTORNEY  
MATTHEW J. SMITH

By   
DEPUTY COUNTY ATTORNEY  
VICTORIA STAZIO

1 A copy of the foregoing  
sent this same day to:

2  
3 HONORABLE STEVEN F. CONN  
SUPERIOR COURT JUDGE

4 JOHN A. PECCHIA  
PUBLIC DEFENDER  
5 Mohave County Public Defender's Office  
P O Box 7000

6  
7 Kingman AZ 86402

8 By VS

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25