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STATE OF MINNESOTA
COUNTY OF WINONA

DISTRICT COURT
THIRD JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

v.

Adam Taylor Fravel,

Defendant.

Case File No.: 85-CR-23-937

DEFENDANT'S RESPONSIVE MEMORANDUM REGARDING CHANGE OF VENUE

INTRODUCTION

Defendant submits this reply to the State's Memorandum in Opposition to Defendant's Motion for Change of Venue. On January 19, 2024, Defendant filed his Motion for a Change of Venue based on evidence that a fair trial cannot be had in Winona County due to potentially prejudicial pretrial publicity. On May 29, 2024, the State of Minnesota filed its brief in opposition to Defendant's Motion to Change Venue.

ARGUMENT

I. The Standard for Granting a Motion to Change Venue

The standard by which this Court decides whether to grant a motion to change venue is that a motion for change of venue "must be granted whenever potentially prejudicial material creates a reasonable likelihood that a fair trial cannot be had." Minn. R. Crim. P. 25.02, subd. 3. In its opposition briefing, the State incorrectly and prematurely proffers the standard of review on appeal

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from a district court's ruling on a motion to change venue.[1] Since this case is not at the appellate level, the standard is whether "potentially prejudicial material creates a **reasonable likelihood** that a fair trial cannot be had" in the County where the offense was allegedly committed. *Id.* The State also argues that "[u]ntil the source, extent, and impact of any pretrial media coverage on the ability of the Court to impanel a fair and impartial[] jury in the case can be fully assessed, the Court should not make a determination as to the reasonable likelihood that a fair and impartial jury can be selected in the instant case." (State of Minnesota's Memorandum in Opp. to Change of Venue at 4.) This is, again, the incorrect standard for the Court's granting a motion for a change of venue. In his motion for change of venue, Defendant does not argue in isolation that exposure to pretrial publicity will result in an impartial jury panel. In fact, Defendant dedicates a portion of his briefing to Defendant's understanding of Minnesota common law and practical knowledge that a panel can be exposed to pretrial publicity and ultimately serve as an impartial jury. What Defendant narrowly argues in his brief is that residents of Winona County have been exposed to potentially prejudicial material creating a reasonable likelihood that a fair trial cannot be had in Winona County. Defendant provided evidence through a qualified public opinion survey that 89% of people surveyed in Winona County have been exposed to a news story, and Defendant entered into evidence screenshots of potentially prejudicial news report titles, and screenshots and testimony from Winona County Emergency Management of potentially prejudicial materials Winona Emergency Management published to the public.

[1] The State incorrectly raises the appellate standard of review that the district court's decision on a motion for change of venue will only be reversed on a finding of abuse of discretion. This is the appellate standard, not the district court standard.

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II. Qualified Public Opinion Survey

The State argues that Defendant's qualified public opinion survey fails as a method of proof of grounds for a motion to change venue because of prejudicial publicity. *See* Minn. R. Crim. P. 25.02, subd. 2(b). The State specifically asserts that "there was no attempt by the survey provider to identify the media sources the survey participants accessed and what information regarding the case was accessed by the participant in the media report." (State's Opp. to Change of Venue at 4.) In making this argument, the State is trying to create a causality dilemma that is neither relevant nor present in Minnesota rules or common law. The State is trying to argue that we cannot know whether the publicity survey respondents interacted with was *actually* prejudicial. This argument goes against the very nature of the rules surrounding a motion for a change of venue. Namely, the Minnesota rules demonstrate the legislature's understanding that the legal issues would not exist if pretrial publications and materials were released in a vacuum. The legal issues arise because the relevant inquiry is how potential jurors perceive the potentially prejudicial materials and whether that material tends to make potential jurors form opinions before they have heard the evidence. Defendant's qualified public opinion survey cut to the heart of those issues when it asked respondents whether they have seen, heard, or read a news story related to the upcoming criminal trial, and whether, based upon the news stories they have interacted with, they have formed an opinion on who caused the death of Madeline Kingsbury. Finally, the survey asked of those who had interacted with a news story and formed an opinion on who caused the death of Ms. Kingbury, whether it is their opinion that Adam Fravel or someone else caused the death of Madeline Kingsbury. As the Court learned through Defendant's briefing and in-person testimony on April 30, 2024, 98.5% of those surveyed who had interacted with a news story and formed an opinion

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based on those stories about who caused the death of Ms. Kingsbury formed the opinion that Defendant is responsible for Ms. Kingsbury's death.

The State also claims that because the qualified public opinion survey is a snapshot in time, future facts and circumstances may cause opinions regarding the case to change as potential jurors forget the contents of early and more recent reporting. As demonstrated by Defendant's investment in a qualified public opinion survey, and in providing this Court with direct evidence of potentially prejudicial materials that have circulated in Winona County, Defendant vehemently opposes the State's venture to argue in hypotheticals. There is no way to know what the future holds, but the Court is charged with ruling on the change of venue motion at the present time. The State is also misguided in its argument that potential jurors may forget the contents of early and more recent reporting. This is no longer a society where county and city residents might read an article in a printed publication only to discard the publication after reading. This is a society where news articles are posted online indefinitely and circulated on social media and via electronic correspondence, usually accompanied by comments and opinions. Whether fortunately or unfortunately, we are not in a society where materials and publications are altogether forgettable.

Finally, the State argues that "from information contained in Defendant's survey, the Court can draw no conclusions as to the strength of the potential juror's preexisting opinion, the willingness and ability of the potential juror to set aside any prior information or preconceived opinions, and a juror's ability to judge the case based upon evidence presented at trial and instructions of the Court." (State's Opp. to Change of Venue at 5.) This is, yet again, not the standard for granting a motion for a change in venue. The standard is that the motion "must be granted whenever potentially prejudicial material creates a reasonable likelihood that a fair trial cannot be had." Minn. R. Crim. P. 25.02, subd. 3. A reasonable likelihood is far from an "absolute

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standard." The Defendant has proven through a qualified public opinion survey that there is a reasonable likelihood that a fair trial cannot be had in Winona because of those who interacted with a news story and formed an opinion based on the news story, 98.5% believe Defendant caused the death of Madeline Kingsbury.

III. Screenshots of Media Report Titles

The State argues that screenshots of media report titles that Defendant put in evidence fails to "provide the Court with necessary information as to whether and to what extent a potential juror accessed the specific reports." The State goes on to say that "[e]ven if the Court were to assume that a potential juror had likely accessed one or more of the media reports listed in the screenshots, it is unknown to what factual information about the case was included in the reports, or whether there was any, overwhelming prejudicial, false or misleading information . . . ." (*Id.* at 5.) Whether and to what extent a potential juror accessed a news report is not at issue in this matter. As Defendant discussed in his motion for change of venue, the most prejudicial material is a headline from a KTTC story published July 31, 2023. The story is titled, "'Know that Adam did it', unsealed documents detail new evidence in Kingsbury case." The inference drawn from this title is that new evidence released by law enforcement contains a statement "that Adam did it." When there are publication titles like "Know that Adam did it," the extent a potential juror accessed news reports becomes far less important. This is a case where materials and even the titles of publications are providing a narrative to Winona County residents that "Adam did it."

IV. Winona County Steamboat Days Parade Materials and Publications

The State claims that there is "no evidence that [Winona Emergency Services Coordinator Ben Klinger] expressed any opinion or the opinion of law enforcement or any other official opinion as to whether Defendant or anyone else may be responsible for the disappearance and death of

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Madeline Kingsbury." (*Id.* at 6.) Contrary to the State's claim, Winona County's Emergency Management posted on social media and advertised at the 2023 Steamboat Days Parade statements like "Justice for Maddi," "End Domestic Violence," and "Domestic Violence IS a Community Issue." These statements were on posters carried at the front of the Steamboat Days Parade, and those holding the posters were walking beside the Winona County Emergency Management vehicle which had a "Justice for Maddi" sign affixed to it. The posters were clustered together in photographs posted to social media and during the parade in such a way as to create the prejudicial inference that domestic violence against Ms. Kingsbury caused her death, thus the call for justice. The second prejudicial inference is that Defendant caused the death of Ms. Kingsbury because Defendant was her domestic partner at the time. Mr. Klinger testified that the Winona County Emergency Management vehicle led the pre-parade for fifteen blocks with streets full of Winona County residents. This is not only evidence of the opinion of Winona County officials and law enforcement, but also sufficient evidence to require this Court grant a change of venue because these prejudicial signs associated with a Winona entity so closely tied to law enforcement and emergency services creates a reasonable likelihood that a fair trial cannot be had.

The State claims that "Defenant failed to provide evidence that Winona County Emergency Services [sic] vehicles or websites displaying anti-domestic violence messages or "Justice for Maddi" or search updates was intentionally created for the purpose of creating an impression that Defendant is responsible for Madeline Kingsbury's death." (*Id.* at 6.) This is another instance in which the State misrepresents the standards for granting a change of venue. There is no requirement that potentially prejudicial materials or publications be created or published with the intent of prejudicing a Defendant.

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Finally, the State claims that "any potential prejudice that could possibly derive from displays on Winona County Emergency Service [sic] websites or vehicles is minimal given the widespread public knowledge that Defendant had been previously indicted by a Winona County Grand Jury with the murder of Madeline Kingsbury." (*Id.* at 6.) This argument fails for two reasons. First, the parade occurred on June 18, 2023, in Winona County, and the Grand Jury indictment of Mr. Fravel was reported in the media on October 2, 2023—nearly four months after the parade. Second, this argument fails because the prejudice against Defendant during the parade on June 18, 2023, comes from the materials themselves, but the vice of the publicity during the parade is the printing and broadcasting of what purports to be the opinions of people who are supposed to know the facts—Winona County Emergency Management. *See State v. Thompson*, 123 N.W.2d 381, 388 (Minn. 1963).

V. Whether Prospective Jurors Can Set Aside Their Impression or Opinion and Render an Impartial Verdict

The State makes a final appeal to the Court that the ultimate test of whether a potential juror has been impacted "by advanced knowledge of a case of a preconceived opinion to the extent that they cannot be fair and impartial in decided [sic] the case" is "'whether prospective juror[s] can set aside [their] impression or opinion and render an impartial verdict.'" (State's Opp. to Change of Venue at 6) (quoting *State v. Warren*, 592 N.W.2d 440, 447–48 (Minn. 1999)). This is the standard during voir dire and on appeal from the district court's decision on change of venue. In *State v. Warren*, the Supreme Court makes this clear:

> *To receive a new trial based on a trial court's failure to grant a change of venue because of pretrial publicity*, the defendant must show that the pretrial publicity "affect[ed] the minds of the specific jurors involved in the case." The mere fact that a juror has been exposed to pretrial publicity is insufficient to show prejudice. "The test is whether a prospective juror can set aside his impression or opinion and render an impartial verdict."

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State v. Warren, 592 N.W.2d at 447–48 (emphasis added) (quoting *State v. Kinsky*, 348 N.W. 2d 319, 323 (Minn. 319)). The State's interpretation of the case law is incorrect. The test of whether a prospective juror can set aside their impressions and opinions is a test that can only be run after asking a juror whether they can set aside their impressions and opinions. When one reads the *Warren* opinion with the *Kinsky* opinion, it is clear that the Supreme Court is emphasizing the standard at the time of voir dire and on appeal because, in *Kinsky*, the prospective jurors that were ultimately impaneled revealed that they had been exposed to pretrial publicity and had formed opinions about Defendant's guilt, but the issue was that Defendant had to "do more than elicit an admission from the potential juror that he has been exposed to pretrial publicity." *Kinsky*, 348 N.W.2d at 323 (quoting *State v. Bier*, 263 N.W.2d 622, 626 (Minn. 1978)).

Simply put, discussing issues that may arise during voir dire, and looking toward voir dire at this stage is incompatible with the Court's standard at this time. The standard at this time is whether the Court must grant a motion for a change of venue because potentially prejudicial material creates a reasonable likelihood that a fair trial cannot be had. Minn. R. Crim. P. 25.02, subd. 3. Defendant's motion for a change of venue comes before the jury has been sworn in and thus the motion will be determined before the jury is sworn in. This motion, then, only concerns the prejudicial and potentially prejudicial materials that have been circulated in this case, and the reasonable likelihood that a fair trial cannot be had based on the evidence Defendant provided through a qualified public opinion survey and through a showing that Winona County Emergency Management held out to the public that Ms. Kingsbury was killed by an act or acts of domestic violence and that Defendant was Ms. Kingsbury's domestic partner at the time.

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CONCLUSION

Based on the evidence submitted and the arguments in this memorandum and other briefing by Defendant on this issue, the Defendant respectfully requests that the Court find that there is a reasonable likelihood a fair trial cannot be had in Winona County given the prejudicial pretrial materials and publications in this case.

Dated: June 7, 2024

MESHBESHER & SPENCE, LTD.

By: _____

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