IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

STATE OF IOWA,

Plaintiff,

vs.

STANLEY LAVELL DONAHUE,

Defendant.

NO. FECR141090

RULING RE: MOTIONS FOR CHANGE OF VENUE AND TO SEVER

On December 10, 2021, the court heard the Defendant's motions for change of venue and to sever. The State appeared by First Assistant Linn County Attorney Nicholas Maybanks and by Assistant Linn County Attorney Molly Edwards. The Defendant appeared personally and with his counsel, John Bruzek and Peter Stiefel. A formal record was made. The court received multiple exhibits and heard argument from counsel. The list of the exhibits admitted is set forth in a separate exhibit management order.

MOTION FOR CHANGE OF VENUE

Iowa Rule of Criminal Procedure 2.11(10)(b) provides that upon motion of the Defendant, the trial court may transfer venue to another county "if the Court is satisfied. . . that such degree of prejudice exists in the county in which the trial is to be had that there is a **substantial likelihood** a fair and impartial trial cannot be preserved with a jury selected from that county. . . ." Iowa R. Crim. Pro. 2.11(10)(b) (2021) (emphasis added). The test developed by the Iowa appellate courts is whether "(1) publicity attending the trial is so pervasive **and inflammatory** that prejudice must be presumed, or (2) actual prejudice on the part of the jury." *State v. Siemer*, 454 N.W.2d 857, 860 (Iowa 1990) (emphasis added) (quoting *State v. Spargo*, 364 N.W.2d 203, 207 (Iowa 1985)).

Proof of extensive publicity and that jurors have been exposed to news accounts does not prove a substantial likelihood of prejudice. *State v. Cornelius*, 293 N.W.2d 267, 268 (Iowa 1980). Many of the considerations the court must weigh are set out in *State v. Lanscak*, 404

N.W.2d 192, 193-4 (Iowa App. 1987). They include consideration of the passage of time between the news accounts and the trial, whether the news reports are largely accounts of the alleged facts of the offense, whether there are any opinions expressed as to guilt and whether anything in the contents of the accounts could be considered as inflammatory. For example, publication of emotional stories regarding the defendant or victim is an important consideration. *State v. Walters*, 426 N.W.2d 136, 139 (Iowa 1988) (citation omitted). Further, the utility of rigorous *voir dire* is important in providing a fair trial for the defendant. *See State v. Atwood*, 602 N.W.2d 775, 781 (Iowa 1999) (citing *State v. Wagner*, 410 N.W.2d 207, 211 (Iowa 1987)).

Defendant has introduced evidence of approximately 30 Internet, newspaper, and television stories concerning the crimes at issue in this case and the alleged victim of those crimes. Defendant also offered evidence of some social media posts regarding this case and/or the alleged victim. It is clear that there has been publicity regarding the events of this case and the prosecution of the Defendant. There has also been publicity tending to produce at least some level of sympathy or admiration for the alleged victim.

The extent to which potential jurors have been exposed to this publicity is not yet known. Defendant's arguments assume that the publicity regarding this case has reached a huge number of citizens in Linn County. Defendant has also assumed that any social media posts have reached a huge number of citizens. Based on experience with prior cases that have received extensive media coverage, the court anticipates that a majority of potential jurors in Linn County will either have heard nothing about this case because they do not closely follow the news or will remember nothing about what they may have heard. Linn County is a populous county, the second largest in the state. In today's world many people do not follow the news. Further, although this case is somewhat more remarkable than others because the alleged victim is a law enforcement officer, the number of violent crimes in Linn County has reached a point where for many citizens it may not be that remarkable.

The State argues that this publicity has been primarily factual in nature. The court agrees that there is no clear editorial bent to the articles introduced into evidence. Some of the coverage did not reference Defendant as being "alleged" to have committed the crimes at

issue. Some reference his criminal history. Some refer to the alleged victim as a "hero" or in other terms that might engender sympathy or admiration for him. This publicity, however, has not been so pervasive and inflammatory that there is a substantial likelihood that a fair and impartial jury cannot be presumed.

The court agrees that, based on exhibits offered by Defendant, some jurors may have heard about this case and/or have read news articles about the case. That, however, does not equate to proof of a substantial likelihood of prejudice. The presentation at hearing did not establish a substantial likelihood of prejudice. As a result, it is not appropriate to grant the Defendant's motion at this time.

The court notes that at this time it does not have the benefit of having seen and heard voir dire. If jury selection in this case establishes a substantial likelihood that a fair and impartial jury cannot be empaneled, the court will allow Defendant to renew the motion and a change of venue can be ordered to ensure that a fair and impartial trial will be preserved. The court will require the use of a jury questionnaire to aid in assessing whether this may need to be done.

IT IS THEREFORE ORDERED that Defendant's motion for change of venue is denied without prejudice. The motion may be renewed if jury selection provides additional basis for the motion.

MOTION TO SEVER

Under Iowa Rule of Criminal Procedure 6(1) multiple offenses:

> which arise from the same transaction or occurrence ... when alleged and prosecuted contemporaneously, shall be alleged and prosecuted as separate counts in a single complaint, information or indictment, unless, for good cause shown, the trial court in its discretion determines otherwise.

Iowa R. Crim. Pro. 6(1) (2021). This court's decision under the rule is subject to reversal only upon proof of abuse discretion. *State v. Owens*, 635 N.W.2d 478, 482 (Iowa 2001) (cited authority omitted).

In deciding whether to sever counts under rule 6(1), the court balances the State's and the court's interest in judicial economy with the Defendant's right to a fair

trial. *Id.* If, as in the present case, evidence that the Defendant was a convicted felon at the time of the crimes alleged is an element of one or more of the charges, the Defendant may show good cause for severance by establishing that "the jury is unable to compartmentalize the evidence offered to prove each consolidated charge." *Id.* (quoting *State v. Smith*, 576 N.W.2d 634, 637 (Iowa Ct. App. 1998)).

Where the evidence can be limited to simple proof that the Defendant had been convicted of a felony prior to the date of the felon in possession offense and the court gives an appropriate limiting instruction, the jury should be able to compartmentalize the evidence. *Owens*, 635 N.W.2d at 482-483; *State v. Smith*, 576 N.W.2d at 637 (finding no good cause for severance even where the limiting instruction was not given).

In the present case, the court can and will limit the State to either a stipulation or simple proof of a prior felony conviction. The court will not allow any evidence as to the nature of any prior felony, the number of any prior felonies, or any other details regarding those crimes unless the Defendant testifies and that evidence meets the requirements for admission for other purposes related to the Defendant's testimony. The court will give an appropriate limiting instruction unless the Defendant objects to doing so.

Although the court does not agree that proof of a separate felon in possession case would be as extensive as the evidence the Defendant must offer in the present case, there would be significant overlap. At a minimum, the court would expect the State to offer evidence that Defendant had a firearm in his possession when he first encountered the alleged victim of the attempted murder charge (Count 1), when he committed the robberies alleged in Counts 2 and 3, when he committed willful injury as alleged in Count 4, and when trafficking in stolen weapons as alleged in Count 6. Such evidence would also be admitted on Count 7 which alleges Defendant disarmed a peace officer. Such proof would go to whether Defendant was in possession of a firearm at the various points in time alleged in the trial information.

In light of the court's ability to limit evidence as to Defendant being a felon and to give a limiting instruction as to that evidence, the route taken in *Owens* would result

in a very significant amount of judicial economy. The interest in judicial economy is not outweighed by any prejudice that would result if the court limits any evidence or stipulation as set forth above and uses a limiting instruction. As a result, the motion to sever should be denied.

IT IS THEREFORE ORDERED that the motion to sever is denied in its entirety.

Clerk to notify.

State of Iowa Courts

Case Number	**Case Title**
FECR141090	STATE OF IOWA VS DONAHUE, STANLEY LAVELL
Type:	Other Order

So Ordered

Christopher L. Bruns

Christopher L. Bruns, District Court Judge
Sixth Judicial District of Iowa

Electronically signed on 2021-12-17 08:43:54