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IN THE ELEVENTH JUDICIAL CIRCUIT, STATE OF MISSOURI
ASSOCIATE/CIRCUIT JUDGE DIVISION

STATE OF MISSOURI,

vs.

PAMELA MARIE HUPP.

)
) CAUSE NO. 1611-CR04519-01
)
) DIVISION NO. 5
)

FILED
FEB 15 2017
JUDY ZERR
CIRCUIT CLERK
ST. CHARLES CO.

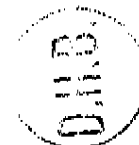
STATES RESPONSE IN OPPOSITION TO DEFENDANTS APPLICATION FOR A
CHANGE OF VENUE AND DENIAL OF THE REASONS ALLEGED IN DEFENDANTS
APPLICATION

COMES NOW the State of Missouri, by and through Philip W. Groenweghe, Assistant Prosecuting Attorney, files this response denying of existence of the reasons cited in defendant's application of a change of venue pursuant of Missouri Supreme Court Rule 32.04 (e).

Defendant claims that a change of venue should be granted because the inhabitants of St. Charles County are prejudiced against her and/or the State has undue influence over the inhabitants of the county. However, defendant has offered no evidence or offered any specifics to support her assertion that the State has undue influence over the citizens of St. Charles County.

As for defendant's assertion that the inhabitants of St. Charles County are prejudiced against her, it is the State's position that in a county with a population of over 373,000, a jury could be selected of individuals who have formed no opinion about Pam Hupp's guilt or innocence in the case and who could provide her a fair trial.

Defendant cites news articles that have appeared in the St. Louis Post Dispatch; however, the total circulation of that newspaper is only 137,380. The population of the entire St. Louis Metropolitan area is over 2,811,000, indicating there are a good many people who do not read the St. Louis Post Dispatch.



While there have been television reports on this case in the St. Louis area, there has also been media coverage in Springfield, Joplin, Columbia, Jefferson City and Kansas City.

The most notable TV coverage of this case came from the NBC television show "Dateline", which broadcast nationwide.

Accordingly, it is the States position that no change of venue within the state of Missouri would produce a venue panel unfamiliar with media coverage of this case. Further, a total lack of familiarity of media coverage concerning this case is not the standard the Court should apply.

The test under 545.450 RSMo, is that a change of venue should be granted if "the inhabitants of the entire circuit are so prejudiced against defendant that a fair trial cannot be heard therein."

Defendant has the burden of proving allegations of his motion by legal and competent evidence. State v. Hayes, 624 SW2d 16, 19 (Mo. 1981). Whether to grant or deny a change of venue because of pretrial publicity is a matter left with the trial court's sound discretion. State v. Leisure, 749 S.W.2d 366, 376 (Mo. Banc 1988) *citing* State v. Boggs, 634 S.W.2d 447, 457 (Mo. Banc 1982). An abuse of discretion exists only when the record shows the inhabitants of the county are so prejudiced against the defendant that a fair trial cannot occur there. State v. Fcltroy, 803 S.W.2d 1, 6 (Mo. Banc 1991), *citing* Leisure at 376.

The relevant question is not whether there was publicity surrounding the crime, nor whether the prospective jurors in a case remembered the publicity or the crime; the critical question is whether the jurors had such fixed opinions that they could not judge impartially the guilt of the accused. Leisure at 376, Patton v. Yount, 467 U.S. at 1035. In Leisure, more than a third of the panel had either not heard of the crime or recalled hearing nothing about it in the six and one-half years prior to the trial. The Court, in Leisure, found the publicity did not reach a

level of prejudice rendering a fair trial impossible. Similarly in U.S. v. Timothy McVeigh, 153 F.3d 116, 183 (10th Circuit, 1998); The Court held, "impartiality does not mean jurors are totally ignorant of the case. Indeed, it is difficult to imagine how an intelligent venireman could be completely uninformed of significant events in his community. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court."

Defendant cites to State v. Kinder, 942 S.W.2d 313 (Mo. Banc 1997) wherein the Court upheld the trial court's denial of the defendant's change of venue. In Kinder, the defendant argued several newspaper articles concerning the crime were published and voir dire revealed venirepersons were familiar with the media coverage. Only one of those venirepersons served as a juror and she indicated she had not formed an opinion and could be fair and impartial. In Kinder, the Court found there is no abuse of discretion in denying a change of venue where jurors who had been exposed to pretrial publicity state and they could try the case in a fair and impartial manner. Id. at 323.

Defendant also cites State v. Baumruk, 85 S.W.3d 644 (Mo. Banc 2002) in support of her application for a change of venue. In doing so counsel leaves out one very important point; the trial occurred at the scene of the murder, i.e., in the very St. Louis County Courthouse where the murder and shooting was committed. Thus, in that case the Missouri Supreme Court held that, "the circumstances of this trial, held where the shootings occurred, are inherently prejudiced and denied, Baumruk has his right to a fair trial." Id. at 649. It also expressly stated it was "not just a pretrial publicity improper venue case. At its core, this case raises a serious question as to the impartiality of the adjudicator because of the environment in which the trial was held. Id. at 650 citing Gray v. Mississippi, 481 U.S. 648, 668 (1987).

The fact that potential jurors may have heard of the case does not alone mandate a change of venue. State v. Davis, citing State v. Deck, 994 S.W.2d 527, 533 (Mo. Banc 1999) (69% of county residents exposed to publicity not grounds for change of venue); State v. Johns, 34 S.W.3d 93, 107-108 (Mo. Banc 2000) (over 80% of potential jurors exposed to publicity not grounds for change of venue). It is not required that jurors be totally ignorant of the facts and issues involved.

As the 3rd largest county in the state, the clerk of the 11th Judicial Circuit has the ability to assemble a large enough venire panel to ensure that the defendant receives a fair trial with jurors who can judge the case impartially. Indeed the ability and resources of St. Charles County to assemble large venire panels to ensure such impartiality is superior to many smaller counties.

WHEREFORE, the States denies that the inhabitants of St. Charles County, Missouri are prejudiced against the defendant or that the State has any undue influence over the inhabitants of St. Charles County, Missouri. Accordingly, the State moves the defendant's petition for a change of venue be denied.

/s/ Philip W. Groenweghe
Philip W. Groenweghe
Assistant Prosecuting Attorney
Missouri Bar No. 32509

Certificate of Service

State certifies that a copy of the foregoing document was e-filed and has been transmitted to Counsel of record via the Missouri e-filing system on February 13, 2017.

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