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**03-26-2025**  
**Clerk of Circuit Court**  
**Chippewa County, WI**  
**2022CF000265**

STATE OF WISCONSIN  
CIRCUIT COURT  
CHIPPEWA COUNTY

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STATE OF WISCONSIN,

Plaintiff,

vs.

Case No. 22CF265

CARSON PETERS-BERGER,

Defendant.

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**MOTION TO CHANGE VENUE**

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The Defendant, Carson Peters-Berger, appearing specially by his attorneys, Michael R. Cohen and Alicia A. Linzmeier, Cohen Law Offices, hereby moves the Court, the Honorable Steven H. Gibbs presiding, for a change of venue/venire in this matter, pursuant to Section 971.22, Wis. Stats.

**I. INTRODUCTION**

On April 24, 2022, the victim, a 10-year-old female, was reported missing. Officers began searching for her and found her bike near a wooded area east of Leinie's Lodge in Chippewa Falls. Leinie's Lodge is approximately a quarter-mile away from the Chippewa County Courthouse. The next morning, officers were notified that her body had been found by a person who knew her and was out looking for her. The victim was deceased. A forensic autopsy was conducted. The examiner concluded that the victim had injuries consistent with sexual assault and that the manner of death was homicide. Mr. Peters-Berger was charged with First Degree Intentional Homicide, First Degree Sexual Assault – Causing

Great Bodily Harm, and First Degree Sexual Assault of a Child – Contact or Intercourse with a Person under 13, Causing Great Bodily Harm.

From the beginning, this case has generated an enormous amount of media coverage and public commentary. Every time there is a hearing in this case, there is news coverage. Every hearing that has been held in this case has been live streamed. The social media posts from local news organizations have become a place for members of the community to express their opinions that Mr. Peters-Berger is guilty of the charged offenses, should be given the death penalty, or should be subjected to sexual assault in prison. The commentary also included speculation about what the facts of this case are and discussion of information that likely would be inadmissible at trial. In addition to the media coverage, the public response to this case has included various campaigns, including the display of signs reading “Justice for [Victim]” fundraising for the victim’s family, fundraising for the placement of purple benches bearing the victim’s name, and lighting purple porchlights in honor of the victim. Some of these memorials are near the Courthouse; one of the purple benches was placed in front of Olson’s Ice Cream on Bridge Street (just 1 block away from the Courthouse) and some of the houses in the surrounding area have the “Justice for [Victim]” signs displayed.

## **II. ARGUMENT**

### **A. Applicable Principles of Law**

A criminal defendant’s “right to a change of venue because of the impossibility of a fair and impartial trial is of statutory and constitutional proportions.” Hussong v. State, 62 Wis. 2d 577, 590, 215 N.W.2d 390, 398 (1974) (citing Sheppard v. Maxwell, 384 U.S. 333

(1966), McKissick v. State, 49 Wis. 2d 537, 182 N.W.2d 282 (1971); Wis. Stat. § 971.22). The issue of jury impartiality “is an ancient one. Mr. Justice Holmes stated no more than a commonplace when ... he noted that ‘(a)ny judge who has sat with juries knows that, in spite of forms, they are extremely likely to be impregnated by the environing atmosphere.’” Groppi v. Wisconsin, 400 U.S. 505, 510 (1971). “In essence, the right to jury trial guarantees to the criminally accused a fair trial by a panel of impartial, ‘indifferent’ jurors. The failure to accord an accused a fair hearing violates even the minimal standards of due process.” Irvin v. Dowd, 366 U.S. 717, 722 (1961).

The Due Process Clause of the Fourteenth Amendment to the United States Constitution also provides the right to a fair trial, including an impartial tribunal. State v. Nutley, 24 Wis. 2d 527, 545, 129 N.W.2d 155, 162 (1964). Even in 1966, the United States Supreme Court cited “the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors” as requiring trial courts to “take strong measures to ensure that the balance is never weighed against the accused. Sheppard, 384 U.S. at 362 (1966). In addition, Article I, Section 7 of the Wisconsin Constitution guarantees the right to a “trial by an impartial jury;” Section 8 guarantees the same right to due process.

Under Wis. Stat. § 971.22(1), “[t]he defendant may move for a change of the place of trial on the ground that an impartial trial cannot be had in the county.” “If the court determines that there exists in the county where the action is pending such prejudice that a fair trial cannot be had, it shall order that the trial be held in any county where an impartial trial can be had.” Wis. Stat. § 971.22(3). Such a motion is addressed to the sound discretion

of the trial court. Briggs v. State, 76 Wis. 2d 313, 325, 251 N.W.2d 12, 17 (1977); Hussong, 62 Wis. 2d at 590, Ruff v. State, 65 Wis. 2d 715, 720, 223 N.W.2d 446, 450 (1974). However, “[t]he discretion of the judge is a sharply circumscribed one and must rest upon the consideration of evidentiary matters presented.” State v. Kramer, 45 Wis. 2d 20, 30, 171 N.W.2d 919, 923 (1969).

The question is not whether there is an actual demonstration of prejudice against a defendant as a result of pretrial publicity. Thomas v. State, 53 Wis. 2d 483, 491, 192 N.W.2d 864, 868 (1972). That is, a defendant need not prove the existence of actual prejudice. Hussong, 62 Wis. 2d at 593. Rather, the question is “whether the proof showed a reasonable probability of prejudice inherent in the situation.” Thomas, 53 Wis. 2d at 491. “If the evidence elicited, properly considered, gives rise to the reasonable likelihood that a fair trial cannot be had, it is an abuse of discretion to fail to grant a change of venue.” Kramer, 45 Wis. 2d at 30. “[S]hould any doubt arise in the mind of the trial judge, the exercise of sound judicial discretion requires that the motion for change of venue be granted.” State v. Herrington, 41 Wis. 2d 757, 763, 165 N.W.2d 120, 122 (1969).

In McKissick, the Wisconsin Supreme Court listed several factors considered by courts “as relevant in determining whether a change of venue should have been granted.” 49 Wis. 2d at 545. These factors are:

1. The inflammatory nature of the publicity;
2. The degree to which the adverse publicity permeated the area from which the jury panel would be drawn;
3. The timing and specificity of the publicity;

4. The degree of care exercised, and the amount of difficulty encountered, in selecting the jury;
5. The extent to which jurors were familiar with the publicity;
6. The defendant's utilization of the challenges, both peremptory and for cause, available to him on voir dire;
7. The participation of the state in the adverse publicity;
8. The severity of the offense charged and the nature of the verdict returned.

Id. at 545-46. These factors have been utilized frequently since. See, e.g., Briggs, 76 Wis. 2d 313 (1977); Hoppe v. State, 74 Wis. 2d 107, 246 N.W.2d 122 (1976); Kutchera v. State, 69 Wis. 2d 534, 230 N.W.2d 750 (1975); Jones v. State, 66 Wis. 2d 105, 223 N.W.2d 889 (1974); Hussong, 62 Wis. 2d 577 (1974); State v. Hebard, 50 Wis. 2d 408, 184 N.W.2d 156 (1971). The factors relating to jury selection, juror familiarity with publicity, defense challenges to jurors, and the verdict are not applicable to a motion filed at this stage. When publicity includes matters that are extraneous, or inadmissible at trial, or both, the trial court must exhibit particular caution and concern. See Marshall v. United States, 360 U.S. 310, 311-313, 79 S.Ct. 1171, 3 IL.Ed.2d 1250 (1959).

**B. Application of relevant law to the facts in this matter requires a change of venue or at minimum, an out-of-county venire.**

The coverage of this case in the local media has been nothing short of pervasive. The main local TV stations have live-streamed all of the hearings held in this case and have run news segments about this case that remain available on their websites. Local newspapers have extensively covered this case as well, with much of the coverage making the front page.

In addition to the print and TV coverage, each of the news outlets posts their coverage of this case on their Facebook pages, providing a public forum for members of the community to discuss the case. Much of the public commentary in the Facebook comments is prejudicial and/or inflammatory. Importantly, the pretrial publicity generated from the beginning of this case remains available to this day as it is available on the internet. Although the published case law on this issue generally holds that publicity occurring months before a trial is not sufficient to merit a change in venue, that case law is from a pre-internet age when newspaper articles and TV news segments were not widely available with one Google search.

In addition to the news and social media coverage, the Court must also take into account the proximity of the Courthouse to the location of the scene of the alleged offense and to various memorial activity that jurors will likely observe when traveling from their homes to the Courthouse. Even though the jury will be instructed not to go to the scene of the alleged offense or to speak with anyone about this case, it is unreasonable to expect jurors to put on the proverbial “blindens” when traveling to and from the Courthouse for their jury service.

### III. CONCLUSION

In light of the above, and in light of the accompanying affidavits and exhibits, it is clear that there is a “reasonable likelihood that a fair trial cannot be had” in Chippewa County using Chippewa County jurors, and as such, it would be an abuse of discretion not to either order a change in venue to some different Wisconsin county, or at the least, order that the venire be drawn from some different Wisconsin county. *See Kramer*, 45 Wis.2d at

29. This is particularly so where, as here, the publicity at issue is: (1) unusually pervasive for the area; (2) contains references to irrelevant and/or inadmissible matters which would only serve to prejudice Mr. Peters-Berger; and (3) the publicity takes place after each and every hearing in this matter. *See* Messelt, 178 Wis.2d at 327; *see also* Marshall, 360 U.S. at 311-13.

Indeed, where much of the publicity at issue contains references to matters which would be inadmissible at trial, “[t]he prejudice to the defendant is almost certain to be as great when the evidence reaches the jury through news accounts as when it is part of the prosecution’s evidence. . . . It may indeed be greater for it is then not tempered by protective processes.” *Id.* As such, Mr. Peters-Berger respectfully requests that the court grant his motion for a change of venue or in the alternative for an out of county venire, as otherwise there is more than a “reasonable likelihood that a fair trial cannot be had . . . .” Kramer, 45 Wis.2d at 49.

Wherefore, it is respectfully requested that this Motion be granted.

Dated this 26th day of March, 2025.

COHEN LAW OFFICES, LLC

A handwritten signature in black ink, appearing to read "Michael R. Cohen", written in a cursive style.

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A handwritten signature in black ink, reading "Alicia Linzmeier". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

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