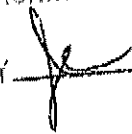


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FIFTH DISTRICT COURT
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WASHINGTON COUNTY

BY 

Brock R. Belnap #6179
Washington County Attorney
Ryan Shaum # 7622
Deputy Washington County Attorney
178 North 200 East
St. George, Utah 84770
(435) 634-5723

WASHINGTON COUNTY FIFTH DISTRICT COURT
STATE OF UTAH

STATE OF UTAH,
Plaintiff,

vs.

WARREN STEED JEFFS,
Defendant.

STATE'S MEMO OPPOSING MOTION TO
CHANGE VENUE

Criminal No. 061500526

Judge James L. Shumate

The Court should deny defendant's motion to change venue because Washington County is sufficiently large and free from prejudice to impanel a fair and impartial jury. Moreover, there is no county within Utah free from the objection that allegedly taints the citizens of Washington County.

STANDARD OF REVIEW

A defendant is entitled to "trial by an impartial jury of the county or district in which the offense is alleged to have been committed..." Utah Const. art. I, § 12. To protect that right, rule 29(d) of the Rules of Criminal Procedure permits a trial court to change venue "to a jurisdiction *free from the objection*" if the court believes that a fair and impartial trial cannot be

had where the case is pending. Utah R. Crim. P. 29(d) (emphasis added). The Court should change venue if it “finds a reasonable likelihood that a fair trial cannot be had unless the motion is granted.” *State v. James*, 767 P.2d 549, 552 (Utah 1989). If the court grants the motion, the case should go forward “in another county where a jury can be selected *free from any taint of prejudice*.” *Id.* at 556 (emphasis added). “A decision to grant or deny a motion to change venue is within the trial court’s sound discretion and will not be disturbed absent a finding that the court exceeded its discretion.” *State v. Widdison*, 2001 UT 60, ¶ 38.

ARGUMENT

The Court Can Impanel a Fair and Impartial Jury in Washington County

In considering a motion to change venue, the trial court should assess four factors “in the context of the totality of the circumstances.” *State v. Stubbs*, 2005 UT 65, ¶¶ 11-13 (*hereafter Stubbs II*) (citing *State v. James*, 767 P.2d 549, 551 (Utah 1989) (referring to “the *James* venue test” and “the *James* factors.”)). Those factors include:

- (1) the standing of the victim and the accused in the community; (2) the size of the community; (3) the nature and gravity of the offense; and (4) the nature and extent of publicity.

Id. The court should consider these “guidelines to assess whether a jury selected from the prospective juror population would be reasonably likely to fall short of the standards for fairness and impartiality to which a defendant is entitled.” *Id.* at ¶ 14.

1. The victim and the defendant share relatively comparable standing in the community and both are “different” from most residents of any county.

The first *James* factor provides no basis to change venue. The first factor calls for the Court to consider the “standing of the victim and the accused in the community.” *State v. James*, 767 P.2d 549, 552 (Utah 1989). This factor addresses a concern with potential prejudice against defendants who are “outsiders” in favor of victims who are well-known “insiders” or prominent members of the community. See *State v. Stubbs*, 2004 UT App 3, ¶¶ 15-16 (hereafter *Stubbs I*). In *Stubbs I*, the defendant was an itinerant construction worker while the victim was a young member of a socially and politically prominent family. *Id.*

In the present case, both the defendant and the victim were residents of Washington County for similar periods of time. They both hail from the FLDS community on the border of Utah and Arizona in southeast Washington County. Both are members of a cultural minority. Neither has relatively greater standing among the population at large than the other. Neither is likely to benefit or suffer from “connections between the chosen jurors and the victim’s family,” which was an express concern of the Utah Supreme Court. *Stubbs II*, at ¶ 19.

The first *James* factor also addresses concerns regarding the uniqueness of the defendant. For example, the Utah Supreme Court noted that certain behavioral characteristics of the defendant in *James* tended to “depict him as different from most residents of Cache County.” *State v. James*, 767 P.2d 549, 552 (Utah 1989).

However, to the extent that the defendant in this case may be characterized as “different from most residents” of Washington County, the victim is also a product of the same unique

culture. Moreover, those alleged "differences" would distinguish the defendant and the victim from most residents of *any* county in Utah. Therefore, the Court should not change venue based upon the first *James* factor.

2. Washington County has a large and diverse population that was not involved in the circumstances of the crime.

The second *James* factor is "the size of the community." *Id.* at 553. The size of a community affects "the difficulty in seating a jury which has not been touched in some way, either directly or through family or friends, with [the] crime...." *James*, at 555. "The smaller a community, the more likely there will be a need for a change of venue in any event when a heinous crime is committed." *Id.* (citations omitted).

The Court should not change venue in this case because Washington County has a large enough population that most Washington County residents have not been "touched in some way" with the crime.

In *James*, the disappearance of a baby dominated the lives of residents of Cache County for a month and a half until the deceased infant was found. *Id.* There was "a widespread community effort to locate the missing child" that involved schools, churches, and volunteers throughout the community. *Id.* at 553-554. Thousands of flyers and brochures were distributed and numerous individuals and businesses donated labor and supplies. *Id.* "This community involvement brought many people much closer to this alleged crime than ordinarily occurs." *Id.* at 554.

Unlike the residents in Cache County who had been “exposed to the events surrounding the alleged crime” which “played a prominent part in [their] lives,” the residents of Washington County are unlikely to have personal contact with the circumstances of this case. *Id.* at 555. This case did not touch the lives of numerous volunteers or organizations; indeed, the alleged crime’s occurrence was isolated and did not come to light for several years. *See State v. Cayer*, 814 P.2d 604, 609 (Utah App. 1991) (change of venue unnecessary because, “except for reading about the case, the residents of Box Elder County were not involved.”).

Moreover, Washington County is the fifth largest of Utah’s 29 counties.¹ According to the Governor’s Office of Planning and Budget, Washington County had a population of 134,899 as of July 1, 2006.² Between 2000 and 2006, Washington County added 43,795 residents and grew 48.1%.³ In terms of residents born outside Utah, Washington County is the most diverse of the State’s large counties, with a higher percentage of residents from outside Utah than Salt Lake, Weber, Davis, Utah, and Cache counties.⁴

Because the population of Washington County is large and diverse and because there was no direct or indirect community involvement in the case, a fair and impartial jury can be impaneled in Washington County. Hence, the Court should not change venue based on the second *James* factor.

¹ <http://governor.utah.gov/dea/Rankings.html>, Population Estimates – 2006.

² *Id.*

³ *Id.*

⁴ *See* Attachment A.

3. The nature of the crime in comparison to other pending cases is not so heinous as to embed itself in the minds of potential jurors.

The third *James* factor is “the nature and gravity of the offense.” *James* at 552. This factor addresses the Supreme Court’s concern that “heinous” crimes are more “likely to be embedded in the public consciousness with greater effect and for a longer time...” *Id.* at 553. For example, in *Stubbs I*, the Court of Appeals noted that “[c]onsidering that Beaver County has averaged only 1.09 rapes per year from 1990-2000, a single instance of rape is certainly a notable, memorable, and heinous crime.” *Stubbs I*, at ¶ 18.

While any rape is a heinous crime, the circumstances of this case do not involve overt acts of violence or horrific details—especially in comparison to other cases currently or recently pending in Washington County. For example, since this case was filed, Washington County courts have conducted proceedings in the rape and murder of a fifteen year old girl in a city park, three aggravated murders, two first degree murders, an attempted murder, the stabbing of an infant during a hostage situation, and a shaken baby case.⁵ Each of these cases involves brutal details in excess of the circumstances of the present case. In addition, since 2006, there have been multiple cases of sexual crimes against women and children, including at least five cases of rape; two cases of rape of a child; twelve cases of sexual abuse of a child; two cases of sodomy upon a child; four cases of forcible sex abuse; thirteen cases of unlawful sexual activity with a minor; and, four cases of aggravated sexual abuse of a child.⁶

⁵ See Attachment B.

⁶ See Attachment C. This list does *not* include Fifth District Juvenile Court cases in Washington County.

While the present case has attracted atypical media attention, its nature and gravity are not so unique or heinous as to render “the *entire* jury pool ... so tainted that a fair and impartial jury could not be assembled.” *Stubbs II*, at ¶ 18 (emphasis added). Consequently, the Court should not change venue based on the “nature and gravity” of the offense.

4. Washington County can impanel a fair and impartial jury despite the nature and extent of publicity.

The fourth *James* factor requires the court to consider “the nature and extent of publicity.” *James*, at 552. The amount of pretrial publicity in this case is unusual. However, that publicity has extended throughout the entire State of Utah. Given 24-hour cable news programming, Internet access, radio, and newspaper coverage, there is no “place far enough away where such influence would be a negligible factor if present at all.” *Id.*

Moreover, the Utah Supreme Court has recognized that even when pretrial publicity “may lead jurors to form opinions about the defendant’s guilt ... that does not necessarily disqualify the jurors.” *State v. Lafferty*, 749 P.2d 1239, 1250 (Utah 1988) *habeas granted on other grounds*, 949 F.2d 1546 (10th Cir. 1991). Adopting language from the United States Supreme Court, the Utah Supreme Court explained:

To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror’s impartiality *would be to establish an impossible standard*. It is sufficient if the juror can lay aside his or her impression or opinion and render a verdict based on the evidence presented in court.

Id. at 1250-1251 (quoting *Murphy v. Florida*, 421 U.S. 794, 800 (1975) (additional citations omitted) (emphasis added); see also *State v. Bishop*, 753 P.2d 439, 458-59 (Utah 1988) (“qualified jurors need not be totally ignorant of the facts and issues involved.”).

In fact, the Utah Supreme Court has rejected arguments that a “random telephonic survey of 400 Salt Lake County voters” showing that eighty percent “believed defendant to be guilty” required a change of venue. *State v. Bishop*, 753 P.2d 439, 459 (Utah 1988). The Utah Supreme Court held:

First, it is doubtful whether surveys such as the one in this case have any predictive value concerning qualified jurors who report for jury service. Second, defendant’s survey did not ask whether the respondents could set their opinions aside. Third, the trial court was free to reject the validity of the opinion poll in exercising its sound discretion.

Id. Thus, pretrial publicity does not equate to the inability to seat a fair jury. The fact that members of the potential jury pool had knowledge of the case from media accounts is not sufficient to establish prejudice. *Irwin v. Dowd*, 366 U.S. 717, 722 (1961).

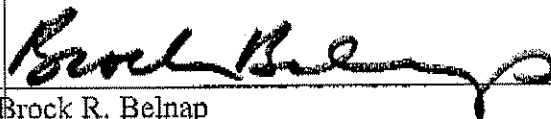
The purpose of a change of venue is to go forward in another jurisdiction “free from the objection...” Utah R. Crim P. 29(d)(ii). Because there is no other county free from media exposure, the Court should not change venue based upon the fourth *James* factor. *James*, at 556.

CONCLUSION

The Court should deny the motion to change venue because a fair and impartial jury can be impaneled in Washington County. None of the four *James* factors applies to this case. Hence, the Court should maintain jurisdiction in Washington County and exercise its authority to

carefully qualify all potential jurors to assure a fair and impartial trial for both the defendant and the prosecution.

Respectfully submitted this 22nd day of March 2007,



Brock R. Belnap
Washington County Attorney

CERTIFICATE OF DELIVERY

I hereby certify that, on the 22 day of March 2007, I caused a true and correct copy of the foregoing document to be served as follows:

Walter F. Bugden, Jr.
Tara L. Isaacson
Bugden & Isaacson
623 East 2100 South
Salt Lake City, UT 84106
(via facsimile & 1st Class mail)

Richard A. Wright
Wright Judd & Winckler
Bank of America Plaza
300 South Fourth Street, Suite 701
Las Vegas, NV 89101
(via 1st Class mail)



Percentage of Residents By Place of Birth

	Total Population	Born in Utah	Born outside Utah	Percentage born outside Utah
Washington	117,385	67,091	50,294	42.8%
Salt Lake	933,416	562,180	371,236	39.7%
Weber	207,711	132,913	74,798	36.0%
Utah	434,677	280,077	154,600	35.5%
Davis	264,676	172,498	92,178	34.8%
Cache	94,697	61,792	32,905	34.7%

Source: 2005 American Community Survey, Selected Social Characteristics in the United States: 2005; <http://www.census.gov>

Recent High Profile Cases in Washington County

In re C.H., Fifth District Juvenile Case No. 521869, teenage juvenile charged with alleged murder, rape, and aggravated sexual assault of a 15-year-old girl at an elementary school playground.

State v. Edgar Ghermon Navarro-Moreno, Fifth District Case No. 071500216, charged with murder in connection with execution style slaying of Mark Batin in the desert.

State v. Jaime Antonio Lopez, Sr., Fifth District Case No. 061501485, charged with aggravated murder, aggravated burglary, aggravated assault, and child abuse for allegedly stabbing his wife in the throat in front of their teenage son.

State v. Jack Daniel Brown, Fifth District Case No. 061600626, charged with aggravated murder, aggravated kidnapping, and obstruction of justice for the alleged beating and execution style murder of 20-year-old Trisha Stubbs in retaliation for her cooperation with police.

State v. Floyd Corry Robinson, Fifth District Case No. 051500271, charged with aggravated murder, aggravated kidnapping, aggravated robbery and child abuse for the slaying of Brea Kirchoff in the presence of her three young children, ages 10, 6 and 4.

State v. Daniel Robert Campbell, Fifth District Case No. 051500149; State v. Todd Wayne Mulder, Fifth District Case No. 0515050, charged with felony murder, aggravated robbery and aggravated kidnapping in connection with the shooting death of Jordan Allgood, owner of the Allgood Coin Shop.

State v. Jesse Adrian Rabadan, Fifth District Case No. 051501088, charged with child abuse homicide in connection with the alleged shaking death of an infant.

State v. Michael E. Hester, Fifth District Case No. 051500832, charged with attempted aggravated murder and aggravated kidnapping in connection with an alleged effort to poison his wife with a mixture of ammonia and chlorine gas.

State v. Valentin Saldana Echeverria, Fifth District Case No. 041500756, charged with attempted aggravated murder, aggravated kidnapping, and aggravated assault in connection with the kidnapping of his girl friend and stabbing her infant baby in the stomach during a hostage standoff.

**Sex Crimes Against Women & Children
Fifth District Court – Washington County Division Cases Since 2006**

<u>Crime Charged</u>	<u>Defendant's Name</u>	<u>Fifth District Court Number</u>
76-5-402 ~ Rape:	Ubaldo Morales-Sotelo	061501116
	Daniel Zavala	061501196
	Michael Kevin Crawford	061500231
	Hyrum Dale Darger	061501727
	Deimond Herrera	071500287
76-5-402.1 ~ Rape of a Child:	Richard Kyle Warner	061501853
	Nestor Jesus Cabada	061501715
76-5-403 ~ Sodomy Upon a Child:	Marcos Ernesto Segarra	061500541
	Juan Carlos Solorzano	061500913
76-5-404.1(3) ~ Aggravated Sexual Abuse of a Child:	Douglas Alexander Ford	061500963
	Richard Kyle Werner	061500756
	Gabriel E. Carlin	061500404
	Jorge Luis Gallegos-Garduza	061501614
76-5-404.1(1) ~ Sexual Abuse of a Child:	Filberto Chico Delgado-Valquez	061501243
	Jose Lopez Diaz	061500328
	Angela Camarena	061500588
	Jeremy Scott Reitkerk	061501570
	Jose E. Rivas	061500318
	Scott A. Beasley	061500317
	Antonio Martinez Tinsley	061501209
	Christian D. Peterson	061501189
	James M. Beacham	061501545
	Eugenio Tapia Vichi	061501218
	Octavio Lacama Munz	061501641
	Levi Lawrence Yoder	061501544
76-5-401 ~ Unlawful Sexual Activity with a Minor:	Cesar Aleman-Lopez	061500797
	Amanda Willard	061501659
	Eric Wayne Chavis	061501680
	Nicholas Ryan Wolsteger	061500314
	Buddy Allen Cardenas	061500463
	Tyson Carl Smith	061500476
	Brian C. Cool	071500335
	Kurtis Edward Jones	061500868
	Alberto Ayunga	061500946
	Jerado Garcia-Capire	061501357
	Kurtis Edward Jones	061500866
	Preston Hanna	061501275
	Kurt John McMahan	071500338
76-5-404 ~ Forcible Sexual Abuse:	Alejandro Coello	061501314
	Thomas Patrick Crump	061501918
	Mamoe Mark Segal	061501152
	Edgar Haroldo Isales	071500071