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**IN THE FIFTH DISTRICT COURT**

**WASHINGTON COUNTY, STATE OF UTAH**

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STATE OF UTAH,

Plaintiff,

vs.

WARREN STEED JEFFS,

Defendant.

**DEFENDANT'S MEMORANDUM IN  
SUPPORT OF MOTION FOR  
CHANGE OF VENUE**

**Case No. 061500526**

**Judge James L. Shumate**

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**INTRODUCTION**

The Defendant is facing two counts of Accomplice to Rape in Washington County. He is a resident of Hilldale in Washington County where he is the leader and prophet of the FLDS religion. The alleged victim is a former resident of the same community, and a former member of the FLDS religion, who claims she was raped by

her husband when she was fourteen years old. Washington County and Hilldale are small, close-knit and fairly homogeneous communities. Additionally, *The Spectrum*, a widely-circulated newspaper in Washington County, has published numerous articles about the allegations against the Defendant that have created a demonstrable prejudice against the Defendant within his community. For the following reasons, the Defendant moves for a change of venue from Washington County to Salt Lake County.

### **ARGUMENT**

Utah Code Annotated § 77-1-6, the Utah Constitution, Article 1, Sections 7 and 12, and the United States Constitution all guarantee a defendant the right to be tried by a fair and impartial jury. If a criminal defendant believes that his right to a fair and impartial jury trial will be jeopardized in the jurisdiction where the trial is pending, he may move “to have the trial of the case transferred to another jurisdiction.” URCrP Rule 29(d)(1) (2006). Such a motion must be accompanied by an affidavit, *Id.*, and “[i]f the court is satisfied that the representations made in the affidavit are true and justify transfer of the case, the court shall enter an order for the removal of the case to the court of another jurisdiction,” URCrP Rule 29(d)(2).

The requirement “that the trial court should be ‘satisfied’ that a fair and impartial trial cannot be had... [places] the burden on the defendant... [to] raise a ‘reasonable likelihood’ that such a trial cannot be afforded him.” *State v. James*, 767 P.2d 549, 552 (Utah 1989). The reasonable likelihood standard “does not mean that the prejudice must be more probable than not,” *Id.*, 767 P.2d at 552, but rather, “the judge should grant the motion whenever he or she finds a reasonable likelihood that a fair trial cannot

be had,” *Id.* To make such a determination, the court should considering the totality of the circumstances, and the Utah Supreme Court has “delineated four factors to be considered... in deciding whether to order a change of venue: ‘(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.’” *State v. Cayer*, 814 P.2d 604, 608-09 (Utah Ct. App. 1991) (quoting *State v. James*, 767 P.2d 549, 552 (Utah 1989)). In the present case, these four factors illustrate circumstances that are reasonably likely to prevent the Defendant from obtaining the fair and impartial trial to which he is entitled, and the Defendant seeks a change of venue accordingly.

**I. THE STANDING OF THE ALLEGED VICTIM AND OF THE DEFENDANT IN THE COMMUNITY PRECLUDE A FAIR AND IMPARTIAL JURY TRIAL IN WASHINGTON COUNTY**

The standing of the Defendant, a prominent leader of the FLDS religion in Washington County, contributes to the likelihood that he will not be afforded a fair and impartial jury trial in Washington County. In *James*, the court was troubled by the defendant’s standing because his unique lifestyle “tend[ed] to depict him as being different from most residents.” *James*, 767 P.2d at 552. In the instant case, the Defendant’s distinctive standing results from his status as a well-known public figure in the FLDS community. As a prominent religious leader, he stands out as markedly different from other residents of Washington County. There is widespread disapproval and condemnation of the FLDS church in Washington County. Fundamental tenets of this religious tradition include arranged marriages and polygamy. These cornerstone principles place the FLDS church at odds with residents of Washington County. The

widespread condemnation of the FLDS church is focused in particular on Warren Jeffs, the leader and prophet of this unpopular religion. (See Dan Jones and Associates Public Opinion Survey, comments about Warren Jeffs, attached hereto as **Exhibit A**.) Regardless of what evidence may be presented at trial, the residents of Washington County are likely to be intolerant of Mr. Jeffs as the leader of such a unique religion and will likely be inflamed against him.

The standing of the alleged victim in the present case further detracts from the Defendant's ability to obtain a fair and impartial jury trial. The *James* court expressed additional concern over the community's reaction to the age and vulnerability of the victim. *Id.*, 767 P.2d at 552-53. The alleged victim in the present case is a former member of the FLDS community who was 14-years-old at the time of the alleged crime. Her standing as a vulnerable girl and former member of the Defendant's unique religious community will further contribute to an atmosphere of community hostility and intolerance towards the Defendant, and will preclude the Defendant from receiving a fair and impartial trial in Washington County.

## **II. THE SIZE OF THE COMMUNITY AND THE FAMILIARITY OF MOST CITIZENS WITH THE DEFENDANT WILL PRECLUDE THE POSSIBILITY OF A FAIR AND IMPARTIAL JURY**

The small, tight-knit nature of the community in Washington County will further impair the fairness and impartiality of the Defendant's trial. In *James*, the court noted that "[t]he smaller the community, the more likely there will be a need for a change of venue in any event when a heinous crime is committed." *James*, 767 P.2d at 553 (quoting *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 599-600 (1976) (Brennan, J.,

concurring in judgment)). In the instant case, the charged crimes allegedly occurred in Hilldale, in Washington County. In 2005, the population of Washington County was estimated at 118,885, and in the 2004 census the population of Hilldale was only 1,980. These communities are quite small, particularly compared to Salt Lake County, which was estimated by the U.S. Census Bureau in 2005 to have a population of 948,172.

The *James* court was also concerned with the widespread effect of the defendant's crimes on the small community, noting that it "touched many adults, schoolchildren and businesses." *Id.*, 767 P.2d at 554. Moreover, in such cases, "a major crime is likely to be embedded in the public consciousness with greater effect and for a longer time than it would in a large, metropolitan area." *Id.* The effect on the community in *James* can be likened to the effect on the community in the instant case. As a recognizable public figure, the Defendant is known by most residents throughout the small community of Washington County, irrespective of their religious affiliations. In essence, the Defendant's high-profile position as the prophet and leader of the FLDS religion in a small, close-knit community "accentuates the difficulty in seating a jury which has not been touched in some way, either directly or through family or friends, with this crime," *Id.*, 767 P.2d at 555, and the Defendant will therefore be unlikely to receive an impartial and fair trial by jury in the small community of Washington County.

### **III. THE GRAVITY OF THE ALLEGED OFFENSE WILL PREJUDICE THE COMMUNITY AGAINST THE DEFENDANT AND PREVENT A FAIR AND IMPARTIAL JURY TRIAL IN WASHINGTON COUNTY**

The Defendant will probably not be afforded a fair and impartial jury trial in Washington County because of the seriousness of the allegations against him. The

Defendant has been charged with two counts of being an accomplice to the rape of a young girl. In *State v. Stubbs*, 84 P.3d 837 (Utah Ct. App. 2004), the court granted a change of venue because, among other things, the seventeen year-old victim was a “defenseless juvenile, a virgin who was allegedly raped by a near-stranger eight years older than she was.” *Id.*, 84 P.3d at 840. The *Stubbs* court noted that the county where the alleged rape occurred was small and that, in such a community, “a single instance of rape is certainly a notable, memorable, and heinous crime.” *Id.*, 84 P.3d at 840-41.

In the instant case, the allegations against the Defendant are similarly notable and memorable, if not more so. First, the alleged victim in the present case was not seventeen, as in *Stubbs*, but was only fourteen years old when she was allegedly raped. Second, she was allegedly raped not by a stranger, but by her older husband. And third, Washington County has never encountered a more notable, notorious, or memorable allegation than this one in which the head of a prominent, controversial and reviled religion stands charged as an accomplice to the rape of a young girl. Like the allegations in *Stubbs*, the gravity of the allegations in the instant case will likely prejudice the small Washington County community against the Defendant and prevent him from exercising his right to a fair and impartial jury trial.

Finally, the comments from the Dan Jones survey are illustrative of the bias against the Defendant for conduct that is not the actual crime charged, but instead for tenets and practices common to the FLDS faith. For example, many surveyed respondents identified the Defendant as a polygamist and as someone that married underage girls to older men. The Defendant is not on trial for either polygamy or performing the marriage of an underage girl. Nevertheless, these prevalent views are a

barometer of the bias against the Defendant based on the gravity of both the charged offense and uncharged practices common to the FLDS faith. These widespread views will deprive the Defendant of a fair and impartial jury.

#### **IV. THE AMOUNT AND BIAS OF THE PUBLICITY SURROUNDING THE CHARGES WILL CONTRIBUTE TO AN ATMOSPHERE OF HOSTILITY IN WASHINGTON COUNTY AND PREVENT A FAIR AND IMPARTIAL JURY TRIAL**

The significant media coverage and bias towards the Defendant in Southern Utah has created prejudice toward the Defendant that will make it impossible for him to be afforded a trial in front of a fair and impartial jury. This “fourth factor examines the nature and extent of pretrial publicity.” *Cayer*, 814 P.2d at 609. The media coverage of the allegations against the Defendant has been extensive. Numerous articles about the Defendant’s arrest and about the crimes with which he has been charged have been circulated in *The Spectrum*, which reaches over 18,000 residents of Washington County on a daily basis.

This extensive media coverage has created a demonstrable atmosphere of prejudice against the Defendant in Washington County. See *The Spectrum* articles attached hereto as **Exhibit B** and Affidavit of David Hawk, Circulation Director for *The Spectrum*, attached hereto as **Exhibit C**. In a recent independent public opinion poll conducted by Dan Jones & Associates (attached hereto as **Exhibit A**), 52% of respondents in Washington County believe the Defendant is definitely guilty, and 23% believe he is probably guilty. Out of those polled, 94% stated that they obtain their information surrounding this case from news media, and 78% believed the news information to be either somewhat or very accurate. In Salt Lake County, on the other

hand, only 39% of those polled believe that the Defendant is definitely guilty. The significantly higher percentage of individuals who have already condemned the Defendant in Washington County substantially jeopardizes his right to a fair and impartial trial, and the publicity surrounding this case has clearly had a detrimental effect on the presumption of innocence within the Defendant's community. See Affidavit of Dan Jones attached hereto as **Exhibit D**.

### **CONCLUSION**

A trial court has the discretion, considering the totality of the circumstances, to order a change of venue in a criminal case, and should do so when it is reasonably likely that the defendant will not be afforded a fair and impartial trial by jury. The Utah Supreme Court has delineated four factors to consider when determining whether a jury seated from a certain community will not be fair and impartial. In this case, all four factors show that Washington County residents will be prejudiced against the Defendant and that a fair and impartial jury cannot be seated. For the foregoing reasons, the Defendant moves to have the venue of this case changed to Salt Lake County.



DATED this \_\_\_\_\_ day of March, 2007.

BUGDEN & ISAACSON, L.L.C.

By: \_\_\_\_\_  
WALTER F. BUGDEN, JR.  
TARA L. ISAACSON

WRIGHT, JUDD & WINCKLER  
RICHARD A. WRIGHT

Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that, on the \_\_\_\_ day of March, 2007, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Brock R. Belnap  
Washington County Attorney  
178 North 200 East  
St. George, UT 84770

\_\_\_ HAND DELIVERY  
\_\_\_ U.S. MAIL  
\_\_\_ OVERNIGHT MAIL  
\_\_\_ FACSIMILE:

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