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FIFTH DISTRICT COURT
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WASHINGTON COUNTY
BY CPS

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WASHINGTON COUNTY FIFTH DISTRICT COURT
STATE OF UTAH

STATE OF UTAH,
Plaintiff,

vs.

WARREN STEED JEFFS,
Defendant.

FINDINGS AND FINAL ORDER
DENYING DEFENDANT'S MOTION TO
CHANGE VENUE WITHOUT PREJUDICE

Criminal No. 061500526

Judge James L. Shurnate

The Defendant's Motion to Change Venue came before the court on Tuesday, March 27, 2007. The court, having carefully considered the briefs, arguments, and submissions of counsel as well as testimony of witnesses, hereby enters the following findings and order:

FINDINGS

The court is required to apply *State v. Stubbs*, 2005 UT 65. *Stubbs* provides powerful guiding authority which requires the court to analyze the testimony and evidence before it under *State v. Widdison*, 2001 UT 60 and the factors set forth in *State v. James*, 767 P.2d 549 (Utah 1989). *Stubbs* directs the court to consider both cases in determining the vital question: whether

there is a reasonable likelihood that a fair and impartial trial cannot be had here in Washington County.

Regardless of whether we proceed in Salt Lake County or Washington County, after considering the evidence in light of the *James* factors, the court finds that the jury selection process must be driven by the general idea that we begin with potential jurors who have expressed no opinion regarding the guilt or innocence of the defendant. The press coverage has been unprecedented in Washington County but also throughout the entire region—including areas outside of Utah. If we were talking about another case without the extensive press coverage, the court would feel a lot more comfortable including potential jury members who expressed an opinion of "probably guilty" at least long enough to engage them in *voir dire* questioning regarding setting aside their opinions. But, in this case, regardless of which county we are in, we will begin the selection process with potential jurors who have expressed no opinion whatsoever and then work to select eight jurors and perhaps three alternates. From the polling data submitted by the defense, if we begin with 300 potential jurors in Salt Lake County, we can expect approximately 60 jurors with no opinion. If we begin with 300 potential jurors in Washington County, we will get approximately 60 jurors with no opinion.

The first *James* factor addresses the standing of the defendant and victim within the community. The defendant has substantial standing by virtue of press attention that he has received. This is a unique circumstance because he is not known personally, and were it not for the press attention, he has made no effort to make himself personally known outside the Hildale/Colorado City area. But the spotlight of media attention has given him a standing in the

community that he otherwise would not have and there is no evidence that he has sought that attention. The victim has no standing in the community at all. She is a young woman, unknown in Washington County outside of her own community, which is a very closed and insular society. She simply is not like the victim in *Stubbs* who was the granddaughter of the football coach in a county of 6,000 people. The circumstances here are substantially different from those that concerned the court in *Stubbs* under the first *James* factor.

The second *James* factor is the size of the community. *Stubbs* and *Widdison* involved Beaver and Willard Counties respectively; both of their populations together do not make a high percentage of the citizenry of Washington County. The court is impressed with the fact that Washington County has the highest percentage in Utah of persons not born in the state of Utah. Washington County has less likelihood of being an insular community than might be the case in other parts of the State. Washington County is remarkably diverse considering the history of the area.

The third *James* factor is the gravity of the offense. The gravity of the offense is high. But, the impact of the gravity of the offense on the mind of potential jurors can only be revealed in the *voir dire* process. With sixteen years on the bench and fifteen years as a trial lawyer, it is amazing to this court that cases the legal community considers as high profile or important are so rarely known by people coming in for jury *voir dire* in Southern Utah. It is difficult for a sitting judge or a practicing attorney to look at the gravity of the offense as a jury probably does. In the court's experience of 400 to 500 jury trials, potential jurors view all crime as an important matter and whether a specific crime is heinous or non-heinous carries very little weight.

The fourth *James* factor addresses pretrial publicity. The bias of media attention in Washington County has been the court's greatest concern throughout this proceeding. The evidence the court has received, which are photocopies of articles, letters to the editor, and op-ed pieces from the local paper, constitute an unjustifiable drum beat to impact this case in an inappropriate fashion that is an abuse of the nearly unfettered power of the press. The press has an obligation within the needs of its required job to avoid attempting to impact the outcome of an important dispute between the State of Utah and a criminal defendant. There is no place in American society for those who buy their ink by the barrel to try to convict someone prior to trial.

Of the four *James* factors, the bias and publicity is the weightiest. The court is most concerned about whether a fair and impartial jury can be impaneled here in Washington County. When the court sees the kind of language submitted to it from the local media, the court's ability to find a reasonable likelihood that a fair trial can be had is substantially impaired. What the court does not know is whether or not it is fatally impaired. The court cannot know whether there is a reasonable likelihood that the defendant cannot obtain a fair and impartial jury until the court attempts to impanel a jury locally.

In considering the totality of the circumstances, the court has introduced a factor that has not been addressed by the appellate courts of this State in *James*, *Stubbs*, or *Widdison*. From the reliable and substantive information drawn from the polling data, the only reasonable way to impanel a jury in either Washington or Salt Lake County is to disqualify those who have expressed any opinion as to Mr. Jeff's innocence or guilt. As we go through that process, we

will not subscribe to the idea that a potential juror can be rehabilitated by the leading question "yes, but you can set that aside couldn't you?" The *voir dire* process will be done on an individual basis and it will be done with very careful attention.

ORDER

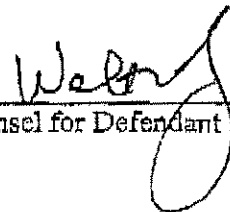
Therefore, the motion for change of venue is denied without prejudice, but it may be granted immediately during the *voir dire* process if the court cannot identify a sufficient number of potential jurors to seat a fair and impartial jury. If we bring in 300 potential jurors, and cannot qualify at least 25, in order to get the necessary alternates and eight jurors given peremptory challenges, this motion will be granted and we will leave Washington County.

This is a final order. The motion to stay proceedings pending an interlocutory appeal is denied. Unless directed otherwise by a superior court, the court intends to move forward in the interest of justice because the defendant is presumed innocent and remains incarcerated.

Dated this 3 day of Apr, 2007.


James L. Shumate
DISTRICT COURT JUDGE

Approved as to form:


Counsel for Defendant