IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO
CRIMINAL DIVISION

STATE OF OHIO	)	CASE NO. 21 CR 1607 21 CR 451
	)	
Plaintiff,	)	JUDGE MCINTOSH
	)	
v.	)	STATE OF OHIO'S OPPOSITION
	)	TO DEFENDANT'S MOTION FOR
ADAM COY	)	CHANGE OF VENUE
	)	
Defendant.	)	

Now comes Assistant Attorney General Anthony D. Pierson on behalf of the State of Ohio, and respectfully submits its brief in opposition to Defendant's Motion for Change of Venue. For the following reasons, Defendant's motion lacks merit and should be overruled.

DAVE YOST
Ohio Attorney General

/s/ *Anthony D. Pierson*

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MEMORANDUM IN SUPPORT

At the heart of the of Defendant's Motion for Change of Venue is that pretrial publicity impairs his right to a fair trial. Aside from media and news outlets, Defendant does not, however, provide any evidence to support his claims. Because his motion for a change of venue lacks merit and is not supported by law, it should be dismissed.

Defendant's motion is premature. Crim. R. 18(B) does not require a change of venue merely because of extensive pretrial publicity. It is within the sound discretion of the trial court to determine whether a change of venue is necessary. *See State v. Landrum*, 53 Ohio St.3d 107, 116-17, 559 N.E.2d 710 (1990). In order to prevail on such a motion, the defendant must show that due to pretrial publicity, he will not be afforded a fair and impartial trial.

Courts rarely presume prejudice based upon pretrial publicity. *State v. Lundgren*, 73 Ohio St.3d 474, 479, 653 N.E.2d 304 (1995). "Cases of presumed prejudice 'are relatively rare. * * * [P]retrial publicity—even pervasive, adverse publicity—does not inevitably lead to an unfair trial.'" *Id.*, quoting *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 554, 96 S.Ct. 2791, 2800 (1976). The *Lundgren* Court explained:

> A trial court can change venue "when it appears that a fair and impartial trial cannot be held" in that court. Crim.R. 18; R.C. 2901.12(K). However, " '[a] change of venue rests largely in the discretion of the trial court, and * * * appellate courts should not disturb the trial court's [venue] ruling * * * unless it is clearly shown that the trial court has abused its discretion.' " *State v. Maurer* (1984), 15 Ohio St.3d 239, 250, 15 OBR 379, 388-389, 473 N.E.2d 768, 780, quoting *State v. Fairbanks* (1972), 32 Ohio St.2d 34, 37, 61 O.O.2d 241, 243, 289 N.E.2d 352, 355. " '[A] careful and searching *voir dire* provides the best test of whether prejudicial pretrial publicity has prevented obtaining a fair and impartial jury from the locality.' " *State v. Landrum* (1990), 53 Ohio St.3d 107, 117, 559 N.E.2d 710, 722, quoting *State v. Bayless* (1976), 48 Ohio St.2d 73, 98, 2 O.O.3d 249, 262, 357 N.E.2d 1035, 1051, death penalty vacated(1978), 438 U.S. 911, 98 S.Ct. 3135, 57 L.Ed.2d 1155.

Lundgren at 479.

The Ohio Supreme Court has held that "the fact that prospective jurors have been exposed to pretrial publicity does not, in and of itself, demonstrate prejudice." *State v. White*, 82 Ohio St.3d 16, 21, 693 N.E.2d 772 (1998). Moreover, the effects of such pretrial publicity—if any—can be cured. The Ohio Supreme Court has stated that "a careful and searching voir dire provides the best test of whether prejudicial pretrial publicity has prevented obtaining a fair and impartial jury from the locality." *State v. Bayless*, 48 Ohio St.2d 73, 98, 357 N.E.2d 1035 (1976). If the "record on voir dire establishes that prospective veniremen have been exposed to pretrial publicity but affirmed they would judge the defendant solely on the law and the evidence presented at trial, it is not error to empanel such veniremen." *State v. Maurer*, 15 Ohio St.3d 239, 252, 473 N.E.2d 768 (1984) (holding that the trial court did not abuse its discretion in denying a motion for change of venue on the basis of pretrial publicity where there was a thorough voir dire and proper later precautions were taken). Simply asserting that there has been extensive pretrial publicity is not enough to demonstrate the defendant will suffer any prejudice. *See State v. McKnight*, 107 Ohio St.3d 101, 2005-Ohio-6046, 837 N.E.2d 315, ¶¶ 59-62 (finding that even though "[e]xtensive pretrial publicity surrounded [the] case on television and in the newspapers, and "[n]ational media focused on the case," individual questioning of each juror regarding pretrial publicity resulted in a jury unaffected by pretrial publicity).

Further, the interests of judicial economy, convenience, and reduction of public expenses necessitate that judges make a good faith effort to seat a jury before granting a change in venue. *State v. Fox*, 69 Ohio St.3d 183, 189, 631 N.E.2d 124 (1994). The best practice is to analyze whether there is actual prejudice through voir dire examination. A defendant must demonstrate that one or more jurors was actually biased in order to show that pretrial publicity deprived him of a fair trial. *State v. Beasley*, 153 Ohio St.3d 497, 2018-Ohio-493, 108 N.E.3d 1028, ¶ 114. "Even if

virtually all the prospective jurors had read or heard media reports about the case, a court need not grant a change of venue if 'each empaneled juror confirmed that he or she had not formed an opinion about the guilt or innocence of the accused, or could put aside any opinion, and that he or she could render a fair and impartial verdict based on the law and evidence.'" *State v. Riddle*, 7th Dist. Mahoning No. 99 CA 147, 99 CA 178, 99 CA 204, 2001-Ohio-3484, ¶ 80, citing *State v. Treesh*, 90 Ohio St. 3d 460, 464, 739 N.E.2d 749 (2001).

Defendant cites various media articles of the killing of Andre Hill by Adam Coy as sufficient justification for this Court to change the venue of the trial. However, media coverage alone is not sufficient to support a change of venue. His motion fails to even make a threshold showing under Crim. R. 18 that publicity "appears" to have affected "a fair and impartial trial."

Moreover, Defendant's motion begs the question of what venue would be appropriate to hold this trial, if not Franklin County. Defendant belabors the fact that this case has garnered national media attention. To be sure, the majority of the news articles attached to his motion are from national outlets. This does not support his argument to change venue. If media coverage of the case has been so extensive that individuals nationwide are privy to it, then certainly the same holds true of those in all counties in Ohio. This does not, however, mean that the publicity is so pervasive that a fair and impartial jury cannot be found in Franklin County, the most populous county in the state. It would be futile to change venue in this case. There is no reason to believe that a resident of another county is less likely to have read these articles than a resident of Franklin county, particularly given the manner that such information is distributed and accessed online.

Defendant's mention of comments made about the case on social media is likewise misguided. Unlike news media coverage, which a citizen may stumble upon without actively

seeking it out, citizens of Franklin County are not automatically privy to comments made on social media; only those who seek out such comments are aware of them.

Defendant acknowledges the Ohio Supreme Court's holding in *Lundegren* that a careful voir dire provides the best test of whether prejudicial pretrial publicity has prevented obtaining a fair and impartial jury from the locality. Defendant, however, goes on to argue that according to *State v. Potter,* 64 Ohio App. 3d 549, 553 N.E.2d 30 (3d Dist. 1989) that conducting voir dire would be a "vain act," and therefore this Court should not waste its time by trying.

There are major differences in the facts of the *Potter* case that should prevent its application to the case before this Court. The court in *Potter* held that attempting to seat a jury would be futile. However, according to the United States Census, in 1990 (one year after *Potter* was decided) Paulding County had a population of 20,488. Conversely, Franklin County currently has roughly 1.3 million residents. Therefore, Defendant's reliance on *Potter* is extraordinarily misplaced. Attempting to find 14 jurors (12 jurors plus 2 alternates) within a pool of 21,000 is not comparable to finding 14 jurors within a pool of 1.3 million persons.

The Ohio Supreme Court has recognized the same. One of the factors to be considered when determining whether pretrial prejudice can be presumed is "the size and characteristics of the community in which the crime occurred." *State v. Mammone*, 139 Ohio St.3d 467, 2014-Ohio-1942, 13 N.E.3d 1051, ¶ 59. This factor weighs against any alleged presumed prejudice in trying this case in Franklin County over another venue, as Franklin County is the most populous county in the state and one of the most diverse. Similarly, there is no indication that media coverage about the defendant contained "blatantly prejudicial information of the type readers or viewers could not reasonably be expected to shut from sight," and the passage of time has

lessened media attention. *Id.* The news coverage of this case is not such that prejudice can be presumed.

Defendant fails to demonstrate why a "careful and searching *voir dire*" would not remove any potential jurors who cannot be fair or impartial. Drawing from a population of 1.3 million residents, the probability of not being able to find 14 persons who can be fair and impartial is extremely low. This Court should address this issue during voir dire when the effects of pretrial publicity, if any, on Defendant's right to a fair trial can be determined. Because Defendant fails to meet the legal standard to justify a change of venue, his motion for a change of venue lacks any merit and should be overruled.

Conclusion

Defendant's Motion for Change of Venue lacks merit and should be denied. Defendant has produced no compelling evidence whatsoever to warrant changing the venue of this trial due to pretrial publicity. Accordingly, the State respectfully requests that this Honorable Court overrule defendant's Motion for Change of Venue.

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Certificate of Service

Copy of the State's Opposition to Defendant's Motion for Change of Venue will be sent by regular U.S. mail to defense counsel Mark C. Collins and Kaitlyn C. Stephens, MARK C. COLLINS, CO, LPA, 150 E. Mound St., Suite 308, Columbus, Ohio 43215, by Anthony Pierson.

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