

STATE OF MINNESOTA
COUNTY OF LYON

IN DISTRICT COURT
FIFTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

File No. 42-CR-08-220

vs.

OLGA MARINA FRANCO DEL CID
aka ALIANISS NUNEZ MORALES,

ORDER

Defendant.

The above-entitled matter came before this Court on Defendant's Motion for Change of Venue. Defendant was represented by Manuel Guerrero, Attorney at Law, St. Paul, Minnesota and Tamara Caban-Ramirez, Attorney at Law, Minneapolis, Minnesota. The State appeared through Rick Maes, Lyon County Attorney. The Motion has been submitted on the record and the written arguments of Counsel.

Based upon all the files and records herein,

IT IS HEREBY ORDERED:

1. Defendant's Motion for Change of Venue is GRANTED.
2. Venue in this matter shall be transferred to Kandiyohi County, Minnesota.
3. The trial shall commence at 8:00 a.m. on July 28, 2008 at the Kandiyohi County Courthouse, Willmar, Minnesota.

Dated: JUNE 11, 2008

BY THE COURT:



David W. Peterson
Judge of District Court

MEMORANDUM

Defendant has been charged in the Amended Complaint with four counts of Criminal Vehicular Homicide, in violation of Minn. Stat. § 609.21, Subd. 1(1), seventeen counts of

Criminal Vehicular Injury, in violation of Minn. Stat. § 609.21, Subd. 1(1), one count of False Name and Date of Birth to a Peace Officer, in violation of Minn. Stat. § 609.506, Subd. 2, one count of Stop Sign Violation, in violation of Minn. Stat. § 169.20, Subd. 3(a), and one count of No Minnesota Driver's License, in violation of Minn. Stat. § 171.02, Subd. 1. Defendant has requested that the Court change venue.

Rule 24.03, Subd. 1 of the Minnesota Rules of Criminal Procedure provides that:

“The case may be transferred to another county:

- a. If the court is satisfied that a fair and impartial trial cannot be had in the county in which the case is pending;
- b. For the convenience of parties and witnesses;
- c. In the interests of justice;
- d. As provided by Rule 25.02 governing prejudicial publicity.”

This Court has “wide discretion” regarding a change of venue. State v. Salas, 306 N.W.2d 832, 835 (Minn. 1981) (citing State v. Thompson, 123 N.W.2d 378, 380 (Minn. 1963) (per curiam)).

“When it appears likely that it is impossible to procure a fair trial before an impartial jury in the county in which the crime was committed, the venue ought to be changed to a county in which an impartial jury can be obtained.” Thompson, 123 N.W.2d at 380. An impartial jury is one “having no preconceived opinions as to the guilt or innocence of the accused.” Id. at 381.

I. Publicity

- a. News reports: television/radio/newspaper

Counsel for both sides has thoroughly analyzed the relevant case law along with the extensive record of media accounts. Clearly, the media coverage has been extensive and statewide. Lyon County has had coverage in addition to the statewide coverage, through newspaper and radio accounts. The Court's review of the coverage leads it to the conclusion that the state and local coverage has been fair.

b. Blogs/posts/letters

These texts range from opinion to mixed fact and opinion. While there may be disagreement about the tone or content of these texts, they are part of the long tradition of America's marketplace of ideas, envisioned by the First Amendment of the United States Constitution.

Factual news reports are not sufficient to grant a change of venue on the ground of pretrial publicity; rather opinions or implications of defendant's guilt are required. Salas, 306 N.W.2d at 835 (upholding denial of venue change). When the prejudicial publicity extends throughout the entire state, a trial court is not required to change venue. State v. Blom, 682 N.W.2d 578, 607-08 (Minn. 2004).

While these accounts clearly make jury selection more challenging in Lyon County, they do not in and of themselves require a change of venue for several reasons: (1) the news accounts as noted have been fair and are state-wide in coverage; (2) most people are able to distinguish between factual news accounts and opinions presented in a letter to the editor or on a blog; (3) blogs are accessible throughout the entire state; (4) in this Court's experience with cases involving pre-trial publicity, it has observed that numerous jurors, even after venue has been changed, have been exposed to news accounts of the case, and can then set those aside and decide the case based solely on the evidence.

However, the Court's analysis does not end here. The Court must review in turn the other grounds of Rule 24.03, Subd. 1 as applied to this case.

II. Fair and impartial trial

The Rule provides that venue may be changed "[i]f the court is satisfied that a fair and impartial trial cannot be had in the county in which the case is pending."

At the very heart of our democracy lies the right to a fair and impartial jury trial. U.S. Const. amend. VI; Minn. Const. art. 1, § 6. It is important to remember that this is not a determination about the fairness and impartiality of the Lyon County community. Lyon County is a remarkable community that has thrived in the generally tough environment of rural Minnesota. Its people are good, hard-working, and fair-minded. For nearly 30 years, this Court has observed in countless Lyon County jury trials the excellent work of intelligent, fair-minded jurors from Lyon County.

Fair and impartial means a juror must be objective. An impartial jury is one “having no preconceived opinions as to the guilt or innocence of the accused.” Thompson, 123 N.W.2d at 381. “Partiality [of a juror] may be established by showing a personal relationship with a party, or attorney in the litigation[...].” State v. Reiners, 644 N.W.2d 118, 123 (Minn. Ct. App. 2002), aff’d, 664 N.W.2d 826 (Minn. 2003). “Because [the right to a fair trial] lies at the heart of our criminal justice system, courts respond with great sensitivity to allegations that personal predisposition or outside influence has impaired a juror’s ability to render a dispassionate, unbiased, and objective verdict.” State v. Evans, 352 N.W.2d 824, 826 (Minn. Ct. App. 1984). Objectivity requires that there be some distance between the juror and the matter to be decided. With this in mind, we must examine the extraordinary factual context of this case.

1. The allegations are very serious and involve an unusually large number of child victims who suffered injury or death, virtually all from Lyon County. The Complaint lists four children killed and 16 children injured.
2. In response, a large number of area law enforcement, emergency, and medical personnel became involved in this case.

3. Lyon County is a geographically compact, close-knit community with a population of approximately 25,000. In general, the jury panel would consist of a much smaller pool of Lyon County residents between 18 and 70 years of age (residents over 70 have the right to opt out of jury service).
4. The site of this accident is along Minnesota Highway 23, a major state highway crossing Lyon County diagonally. As a practical matter, virtually every prospective jury member traveling to the northeast could conceivably pass by the scene of this accident, perhaps on several occasions.
5. If the family and close friends of those who were child victims and other child passengers of the bus are added to the family and friends of the law enforcement and medical personnel involved in the case, it is clear that a substantial number of people have a personal connection, and in many cases personal knowledge of this case. Understandably, because of the scope of this tragedy involving children, the community discusses this case in an attempt to grieve, console, and come to some understanding of this event. This very understandable process results in numerous conversations about this case within the community.

Given the magnitude of this event, the number of people involved, and the close-knit community of Lyon County, it is likely that a substantial portion of the jury pool has had person-to-person conversations about this case. The Court's experience in jury trials is that, while media accounts can readily be set aside by prospective jurors, accounts heard from friends or neighbors are not easily set aside.

Making it even more difficult to set aside any personal conversations about the case prospective jurors may have had are: (1) the fact that this case involves death and injury to

children, which understandably strikes at the very heart of any community, particularly a close-knit one; (2) the constitutional requirement of a speedy trial means that this case will be tried in less than seven months from the event. This shortened time frame means that conversations that occurred around the time of the accident are fairly fresh in memory and multiple conversations are likely still occurring. Moreover, these ongoing conversations will typically revolve around the very questions a jury will be asked to decide: what happened and who is responsible?

None of the several factors cited in and of themselves would necessarily require a venue change. However, the cumulative effect of all the factors noted above requires that venue be changed.

Lyon County has experienced a major and, for it, unprecedented tragedy involving its own children. Lyon County continues the long process of coming to terms with the dimensions of this tragedy. In the end, it is simply too much to ask a community to grieve for its children and then a few months later sit with dispassionate judgment on the very case giving rise to that grief.

III. Courthouse facility

The interests of justice require that the location selected be sufficiently distant from Lyon County to provide the detachment necessary, and yet close enough so that the many family and friends interested can conveniently attend the trial. At approximately 52 miles from Cottonwood, the Kandiyohi County courthouse is both far enough away to provide the detachment necessary and yet close enough for a convenient day trip to attend the trial.

The interests of justice in a high-profile trial also require excellent courthouse security. Understandably, very few courthouses are designed to meet the specific needs of a high-profile

trial. Fortunately, the Kandiyohi County courthouse is an exceptional courthouse with a long-standing state of the art security system and prior experience with high-profile trials.

DMP
6-11-07