

**STATE OF SOUTH CAROLINA
COUNTY OF COLLETON**

State of South Carolina,

v.

Richard Alexander Murdaugh,

Defendant.

**COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT**

Indictment Nos. 2022-GS-15-00592,
593, 594, and -595

**RESPONSE TO DEFENDANT'S
MOTION TO TRANSFER VENUE**

Defendant has moved this Court to transfer venue in this case due to publicity surrounding it, which undeniably is unique in the history of South Carolina. Defendant further argues that the high degree of publicity mandates a change of venue when combined with the interconnected community within counties comprising the Fourteenth Circuit.

Pursuant to the Court's instructions, the State attempted to negotiate with the defense as to other counties at least for purposes of consideration. However, from the June 29 hearing on, the defense's ultimate position always returned to Charleston and Charleston only. Now, Defendant has filed his memorandum in support of his motion for change of venue in which he formally identifies Charleston as the only alternative he will consider.

Charleston is of course the State's oldest city and one of the premiere cities in the nation for industry, business, the arts, and tourism. But considering logistics and expense, the "Holy City" makes Charleston the most difficult county in the State to handle this particular matter. The downtown area is beautiful and historic, but traffic and parking there are already extremely difficult on a normal business day without the massive influx of jurors, witnesses, attorneys, staff, media, and onlookers that this case would bring.

The spring tourist season is already the busiest tourist time of the year in Charleston, and with the trial set to begin on Masters week, many people will go to Charleston to vacation the following week. A review of hotel rates indicates the expense of staying in Charleston reasonably close to the courthouse would be more than double or triple the costs of comparable areas. Unfortunately, heavy spring storms and king tides can and all too often do completely paralyze the already heavily congested downtown area with flooding.

Moreover, Defendant cites case law that would seemingly rule out Charleston. (See Motion at 2 "Irvin v. Dowd, 366 U.S. 717, 720, 727 (1961) (transfer to an adjoining county within the same media market held constitutionally inadequate).” Charleston County is *both* adjoining and *is* the media market for Colleton County.

At the first trial in Colleton, the procedure agreed to by the parties worked seamlessly and efficiently and resulted in qualification and selection of a jury in just over *two days*. The parties agreed to a detailed juror questionnaire, followed by mutually agreed-upon exclusions, followed by a voir dire process with specific questioning in private for those jurors whose responses necessitated it. While the defense in its motion notes 123 jurors were qualified from 900 original summonses, this is of course because many did not respond, hundreds were excused for exemptions or nonresidency, others were excused for disqualifications, and others excused by consent of the parties even prior to jury selection. While the defense’s motion cites instances during voir dire in which the State noted the publicity and connections within the community, these were in the context of State’s questions to jurors as to their ability to “put all of that out of their minds and just base their decisions on the evidence”. See, e.g. 250-51. While certainly some jurors said they couldn’t, most said they could, which is the sign of a process working as

it was intended. Indeed, the defense never once complained about the selection process at the first trial, and far more than enough jurors were qualified to the satisfaction of both sides. And, frankly, the publicity was as much then if not more so than now.

Therefore, if the *only* county in the entire state of South Carolina the defense is willing to consider is Charleston, which undoubtedly would be the most expensive and logistically difficult county to pick, then the State is compelled to oppose a change of venue. This is especially so where other counties would be much better suited to accommodate a case like this, with modern courthouses, easy access, nearby amenities, lower expense, and easier logistics, such as Spartanburg, Newberry, Lancaster, York or Florence.¹ The State remains open to discussion with the Court and the defense as to any reasonable options -- *if* the defense was willing to consider any one other than the most expensive and logistically challenging county in the entire state of South Carolina - for a case that already is logistically challenging enough.

A. Relevant Law

The South Carolina Constitution in Article V Section 23 provides:

It shall be the duty of the General Assembly to pass laws for the change of venue in all cases, civil and criminal, upon proper showing, supported by affidavit, that a fair and impartial trial cannot be had in the county where such action or prosecution was commenced. The State shall have the same right to move for a change of venue that a defendant has for such offenses as the General Assembly may prescribe.

Pursuant to this provision, the procedure for changing venue in a criminal case is governed by statute. S.C. Code Ann. § 17-21-80 provides:

The circuit courts *shall have power to change the venue in all criminal cases pending therein, and over which they have original jurisdiction, by ordering the record to be removed to another county in the same circuit.* The

¹ Midlands counties like Richland and Lexington and Aiken would likely be difficult because of Masters week.

application for removal must be made to the judge sitting in regular term by some party interested, by the solicitor of the circuit or by the accused, *supported by affidavit that a fair and impartial trial cannot be had in the county where such action or prosecution was commenced.* The State shall have the same right to make application for a change of venue that a defendant has in cases of murder, arson, rape, burglary, perjury, forgery or grand larceny; provided, that no change of venue shall be granted in such cases until a true bill has been found by a grand jury. Four days' notice of such application in civil and criminal cases shall be given to the adverse party, *and if a change is ordered, it shall be to a county in the same judicial circuit; provided, further, that such adverse party to whom notice is given shall have the right to waive it.* The circuit judge shall have the power, upon application made to him by either party, upon proper cause shown, to shorten or extend the time for the hearing of the application for a change of venue.

(emphasis added).

Another statute, S.C. Code Ann. § 17-21-85, provides another mechanism to effectuate change of venue without physically moving the trial to another county; and it provides additional mandatory considerations for the trial court to make when making a decision on an application for a change in venue as contemplated in § -80. It provides:

A circuit judge *may*, in a criminal case *in which he determines that an unbiased jury cannot be selected in the county in which the defendant was indicted*, order that jury selection go forward in some other county and the jury, when selected, be transported to the county in which the indictment was returned for the duration of the trial. In making a determination whether to proceed as allowed by this section *or to order a change of venue for a trial*, the court *shall consider* all the logistical and expense elements and, consistent with the demands of justice, choose the method that results in the least expense and greatest convenience for all parties involved in the case. All expenses of jury selection in another county must be paid by the county in which the trial occurs.

Id. (emphasis added).

Case law provides additional guidance. Our courts have been clear that the test is NOT whether jurors have been exposed to pre-trial publicity, but whether they had “the ability to set aside any impressions or opinions and render a verdict based on the

evidence presented at trial." State v. Manning, 329 S.C. 1, 7, 495 S.E.2d 191, 194 (1997) (citing State v. Patterson, 324 S.C. 5, 482 S.E.2d 760 (1997); State v. Caldwell, 300 S.C. 494, 388 S.E.2d 816 (1990)). "[M]ere exposure" to pre-trial publicity is not enough to disqualify a prospective juror. Id. (citing Caldwell, supra). The relevant question is not whether the community "remembered the case, but whether the jurors . . . had such fixed opinions that they could not judge impartially the guilt of the defendant." State v. Tucker, 324 S.C. 155, 166, 478 S.E.2d 260, 266 (1996) (cleaned up). Manning additionally notes that the moving party is required to show actual juror prejudice as a result of such publicity, which implicitly requires in most cases that an actual jury panel be assembled and voir dire attempted *before* ruling on the motion. 329 S.C. at 8, 495 S.E.2d at 194 (citing Caldwell, supra; State v. Easler, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996)).

Manning did state that because the defendant has the right to be tried in the county where the crime was committed, the State's right to request a change of venue must be balanced against the defendant's rights. Id. at 8–9, 495 S.E.2d at 194–95. Manning directs trial courts to exercise "great care and deliberation when changing venue at the request of the prosecution." In Manning the State argued that almost all of the prospective jurors had knowledge of the case from pre-trial publicity, and four witnesses testified at the hearing that a fair trial would be impossible from a Dillon County jury because of news coverage. Id. at 4–5, 495 S.E.2d at 192–93. The trial court changed venue, concluding "there was widespread knowledge of this case among the residents of Dillon County and appellant had extensive family in Dillon County". Id.

The Supreme Court reversed, finding "no evidentiary facts supported a finding of actual juror prejudice toward the State." Id. at 9, 495 S.E.2d at 195. The Court opined that

the State “only offered their opinions and conclusions that the State and appellant could not receive a fair trial” because of pre-trial publicity, and also noted that the testimony presented at the hearing was “ambivalent and vague about which party was prejudiced by the publicity.” Id. at 9–10, 495 S.E.2d at 195. The Court further emphasized that the decision to change venue was premature -- being made seven months *before* the third trial. Id. at 10, 495 S.E.2d at 195–96. The court reiterated the general requirement of voir dire to assess prejudice:

Without voir dire of actual potential jurors, it was impossible to determine an unbiased jury could not be seated from Dillon County residents based on the evidence presented by the State to support its motion. See State v. Easler, supra; Beckwith v. State, 386 So.2d 836 (Fla. Dist. Ct. App. 1980) (the court must attempt to seat a jury before concluding it is impossible to obtain an impartial jury when deciding a State’s motion to change venue over the objection of the defendant).

Id. at 10–11, 495 S.E.2d at 196 (emphasis added). Thus, Manning provides that the burden is on the moving party, but did also provide:

Although we think the better practice is to attempt to seat a jury prior to ruling on a motion to change venue based on pretrial publicity, it is not absolutely essential that the trial judge always conduct voir dire before granting this motion. *However, if the judge considers the motion prior to voir dire, the moving party must demonstrate the facts and circumstances warrant a finding of actual juror bias.* Here, the solicitor failed to present any evidence of actual juror bias to support the motion.

329 S.C. at 10, n.5, 495 S.E.2d at 196 (emphasis added).²

Aside from the statutory provisions discussed above, State v. Law, 265 S.C. 111,

² Defendant has also argued in his memo that the rule in Manning requiring the proof of facts showing actual juror bias before changing venue only applies to the State. (Memo at 13). Respectfully, this reading is not supported by the text of the case and would otherwise contradict the rest of the caselaw and the statutes on venue. The moving party must show actual juror bias, regardless of whether it is the State or the Defendant, even if the State’s motion would be viewed more strictly because of the Defendant’s right to have the case heard in the venue where it occurred. Indeed, one might argue there is a general preference that the people of the county have a right to pass on crimes that occurred within their borders. See generally S.C. Const. Art. I Section 11 (“No person may be held to answer for any crime the jurisdiction over which is not within the magistrate’s court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed . . .”).

217 S.E.2d 22 (1975) does provide that the circuit court retains the common law power to change venue to a county outside the circuit where the facts support a finding that a fair trial cannot be had in any county within that circuit – essentially to operate outside the statutory structure when it is insufficient. In Law, the trial court pursuant to statute moved the trial from Florence to the only other county in the Twelfth Circuit, but then in a separate hearing found a fair trial could not be had in Marion either. The State appealed based only on the claim the statute did not allow change out of circuit. In response, the state supreme court recognized the general common law power of the court to ensure a fair trial as guaranteed by the state and federal constitutions, and noted the State did not challenge the trial court findings that a fair trial was impossible in either Twelfth Circuit county, and cited State v. Harvey, 128 S.C. 494, 122 S.E. 860 (1924), where venue outside of the Ninth Circuit because Charleston was the only Ninth Circuit county at the time. Both Law and Harvey's power depend on the statute failing to provide an adequate remedy due to lack of viable alternative counties in a circuit.³

B. Discussion

Regardless of whether considering the statutory framework and relevant caselaw, or the common law exception from Law, there are simply no facts supporting a finding of *actual* juror bias per Manning that would support a change of venue. Undoubtedly, the publicity surrounding this case has been unique. But the experience of the prior trial

³ On the flip side, the appellate record appears to be more lenient on the trial court's decision to *deny* a defendant's motion for change of venue based on pre-trial publicity. See State v. Stanko, 402 S.C. 252, 741 S.E.2d 708 (2013); State v. Evins, 373 S.C. 404, 645 S.E.2d 904 (2007); Sheppard v. State, 357 S.C. 646, 594 S.E.2d 462 (2004); State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996); see also State v. Woods, 382 S.C. 153, 676 S.E.2d 128 (2009) (finding no error in empaneling originating county jury where State withdrew consent for change of venue after a mistrial—thereby resetting the proceedings—and where no evidence was presented showing jury was biased); State v. Patterson, 324 S.C. 5, 482 S.E.2d 760 (1997) (finding no error in denying defendant's motion for change of venue where defendant failed to show evidence of actual jury racism in Lexington County).

shows that an appropriate voir dire process can identify plenty of qualified jurors who will meet the appropriate test – which is NOT whether they know of the case or have seen publicity – but whether they can put that aside, rely only on the evidence, and be fair to both sides. The defense never complained once about the prior jury selection process, and this was aside from the fact that the publicity was just as much if not moreso prior to the first trial. Defendant's conclusory statements about publicity in the Fourteenth Circuit precluding jury selection are not only inconsistent with actual experience in this very case but also insufficient under the caselaw.

Moreover, Defendant's claim about media coverage in the Fourteenth of course overlooks that the general publicity of this case is not geographically limited to the Fourteenth Circuit. Rather, in the modern era of the Internet, i.e. Netflix, Hulu, YouTube, HBO, Facebook, Instagram, X (formerly Twitter), etc., publicity has been extensive throughout South Carolina, the nation, and indeed the world. All of this digitally stored media is available to anyone in the world with a reliable internet connection. Long gone are the days of reading the morning paper to get up to speed on current events.

This is the world we live in, and the genie is not going back in the bottle. That is why the appropriate test is not exposure to publicity but the ability to put it aside and honor the oath to be fair and impartial. Like any good legal test that stands the test of time, this longstanding test adapts and evolves well to the modern conditions of media prevalence and consumption. The Defendant is certainly not entitled to a windfall because the crimes he allegedly committed generate a lot of media attention. There has to be a trial somewhere – and media attention has been everywhere. Careful voir dire and relying on citizens to faithfully and fairly do their duty is the only remedy in the modern world of

publicity – indeed, it was *always* the best remedy.

C. Conclusion

The change of venue appears to be limited to another county within the same judicial circuit unless the adverse party waives the same. The defense has advised the State in discussion, and now this Court formally, that for them it is Charleston or bust. While downtown Charleston is a wonderful place, considering that Charleston is in the same media market as Colleton, is a neighboring county, has uniquely difficult logistics, and the highest expense, Charleston is almost certainly the most complicating choice of any county that could be chosen. The State therefore is compelled to object to the defense's "take-it-or-leave-it" approach, particularly given the viability of other counties throughout the state, and more importantly the fact that a careful voir dire process successfully and efficiently picked a jury despite just as much if not more publicity.

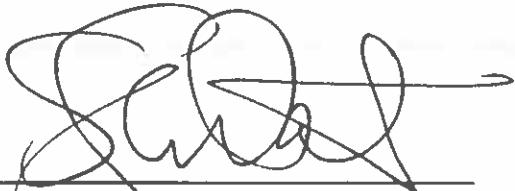
Respectfully submitted,

ALAN WILSON
ATTORNEY GENERAL
STATE OF SOUTH CAROLINA

DONALD J. ZELENKA
Deputy Attorney General

S. CREIGHTON WATERS
Sr. Assistant Deputy Attorney General

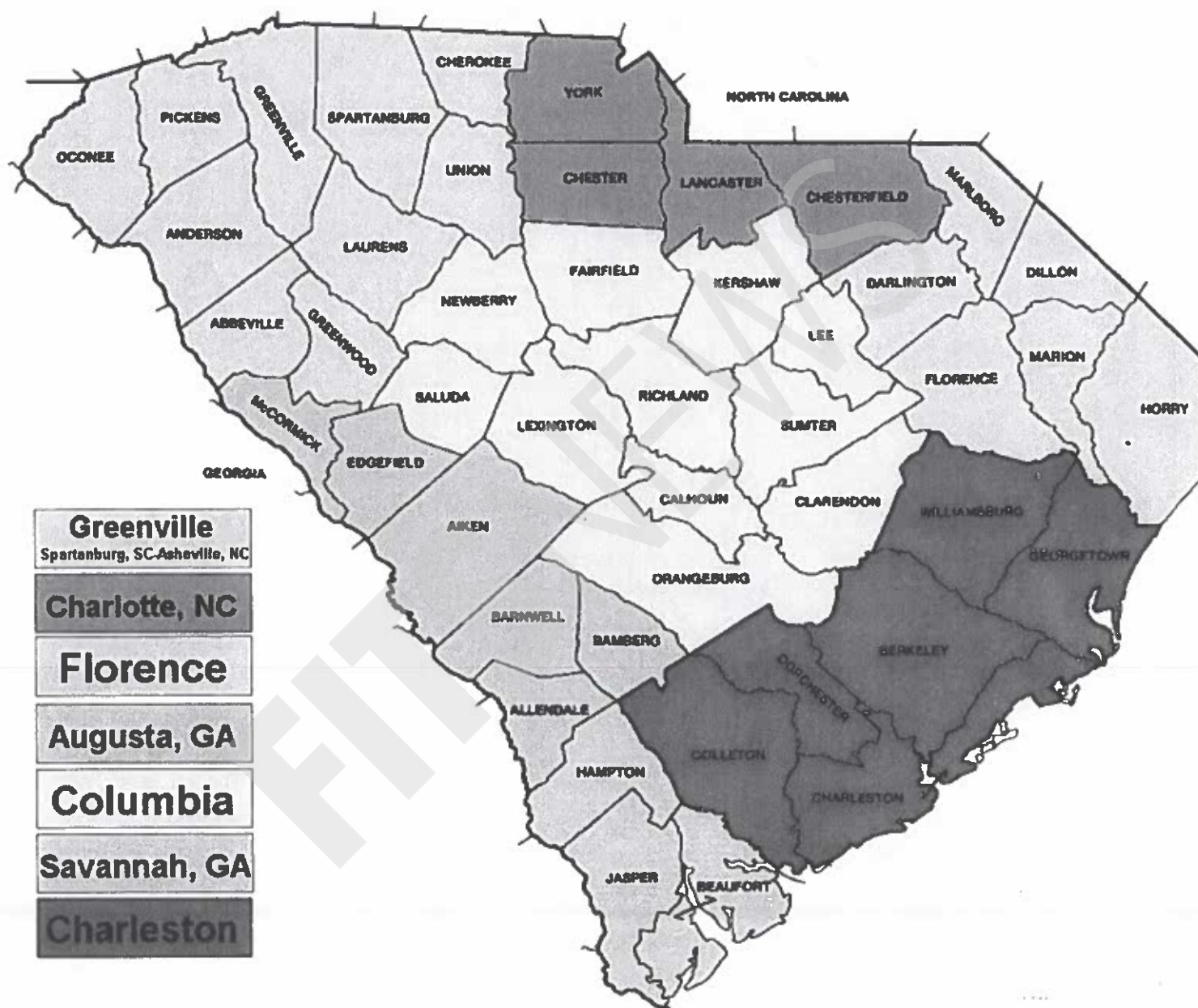
By:



S. Creighton Waters
Sr. Assistant Deputy Attorney General

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COLLETON CO GS, GARY HALE