

State of Wisconsin,

Plaintiff,

v.

Case No. 2013CF000461

Ron Allen,

Defendant.

**Motion for Change of Venue or to Empanel a Jury From Another County
Motion for Jury Sequestration**

Now comes the above-named defendant, by his attorney, Jeffrey W. Jensen, and hereby moves the court as follows:

A. Pursuant to Sec. 971.22, Stats., and 971.225, Stats., to find good cause to permit the defendant, Ron Allen (hereinafter "Allen") to file this motion at this time; the motion being to either change the venue of this trial or, in the alternative, to order that a jury be selected from another county for the reason that due to massive pretrial publicity concerning this case, including coverage of the trials of two codefendants, has made it impossible for the court to empanel a fair jury in Milwaukee County;

B. Pursuant to Sec. 972.12, Stats., to sequester the jury during the trial of this matter; and,

C. To begin the voir dire process with individual voir dire of each venireman to determine the extent to which the venireman has seen pretrial publicity.

This motion is further based upon the attached Memorandum of Law, and Affidavit of Prejudice.

Wherefore, it is respectfully requested that the court order:

1. That a jury be selected from a county where the public is likely to have not been

interested in the news coverage concerning the case;

2. To sequester the jury during trial; and,

3. To begin voir dire with individual questioning of the veniremen concerning their prior knowledge of the case.

Dated at Milwaukee, Wisconsin, this _____ day of _____, 2013

Law Offices of Jeffrey W. Jensen
Attorneys for the Defendant

By: _____

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State of Wisconsin,

Plaintiff,

v.

Case No. 2013CF000461

Ron Allen,

Defendant.

Memorandum of Law

I. Due to pretrial publicity, it is impossible to pick a fair jury in Milwaukee County.

Sec. 971.22, Stats., provides:

(1) The defendant may move for a change of the place of trial on the ground that an impartial trial cannot be had in the county. The motion shall be made at arraignment, but it may be made thereafter for cause.

(2) The motion shall be in writing and supported by affidavit which shall state evidentiary facts showing the nature of the prejudice alleged. The district attorney may file counter affidavits.

(3) If the court determines that there exists in the county where the action is pending such prejudice that a fair trial cannot be had, it shall order that the trial be held in any county where an impartial trial can be had. Only one change may be granted under this subsection. The judge who orders the change in the place of trial shall preside at the trial. Preliminary matters prior to trial may be conducted in either county at the discretion of the court. The judge shall determine where the defendant, if he or she is in custody, shall be held and where the record shall be kept. If the criteria under s. 971.225(1)(a) to (c) exist, the court may proceed under s. 971.225(2).

Additionally, Sec. 971.225, Stats., permits the court to order that a jury be selected from another county rather than to conduct the trial in another county.

A. Good cause exists to entertain this motion

As noted, a motion for change of venue must be made at the arraignment; however, for good cause shown, the court may permit the motion to be made at any other time. At the time of the arraignment in this case, there had been some pretrial publicity; however, the nature of the publicity was not very different from the publicity in any other newsworthy homicide case. However, the jury trials of Billy Griffin and Ashanti McAlister in June, 2013, prompted a spate of new coverage that made it impossible to pick a fair jury in Milwaukee County. Therefore, the court should permit Hamilton to make this motion at this time.

B. Prejudice due to pretrial publicity

A criminal defendant's "right to a change of venue because of the impossibility of a fair and impartial trial is of statutory and constitutional proportions." *Hussong v. State*, 62 Wis.2d 577, 590, 215 N.W.2d 390, 398 (1974) (citing *Sheppard v. Maxwell*, 384 U.S. 333 (1966); *McKissick v. State*, 49 Wis.2d 537, 182 N.W.2d 282 (1971); Wis. Stat. § 971.22)). The issue of jury impartiality "is an ancient one. Mr. Justice Holmes stated no more than a commonplace when . . . he noted that '(a)ny judge who has sat with juries knows that, in spite of forms, they are extremely likely to be impregnated by the enviroing atmosphere.'" *Groppi v. Wisconsin*, 400 U.S. 505, 510 (1971). "In essence, the right to jury trial guarantees to the criminally accused a fair trial by a panel of impartial, 'indifferent' jurors. The failure to accord an accused a fair hearing violates even the minimal standards of due process." *Irvin v. Dowd*, 366 U.S. 717, 722 (1961). The Due Process Clause of the Fourteenth Amendment to the United States Constitution also provides the right to a fair trial, including an impartial tribunal. *State v. Nutley*, 24 Wis.2d 527, 545, 129 N.W.2d 155, 162 (1964). Even in 1966, the United States Supreme Court cited "the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors" as requiring trial courts to "take strong measures to ensure that the balance is

never weighed against the accused.” *Sheppard v. Maxwell*, 384 U.S. 333, 362 (1966). In addition, Article 1, Section 7 of the Wisconsin Constitution guarantees the right to a “trial by an impartial jury,” Section 8 guarantees the same right to due process.

Under Sec. 971.22, Stats., “[t]he defendant may move for a change of the place of trial on the ground that an impartial trial cannot be had in the county.” Wis. Stat. § 971.22(1). “If the court determines that there exists in the county where the action is pending such prejudice that a fair trial cannot be had, it shall order that the trial be held in any county where an impartial trial can be had.” Wis. Stat. § 971.22(3). Such a motion is addressed to the sound discretion of the trial court. *Briggs v. State*, 76 Wis.2d 313, 325, 251 N.W.2d 12, 17 (1977); *Hussong v. State*, 62 Wis.2d 577, 590, 215 N.W.2d 390, 398 (1974); *Ruff v. State*, 65 Wis.2d 715, 720, 223 N.W.2d 446, 450 (1974). However, “The discretion of the judge is a sharply circumscribed one and must rest upon the consideration of evidentiary matters presented.” *State v. Kramer*, 45 Wis.2d 20, 30, 171 N.W.2d 919, 923 (1969).

The question is not whether there is an actual demonstration of prejudice against the defendant as a result of pretrial publicity. *Thomas v. State*, 53 Wis.2d 483, 491, 192 N.W.2d 864, 868 (1972). That is, the defendant need not prove the existence of actual prejudice. *Hussong*, 62 Wis.2d at 593, 215 N.W.2d at 399. Rather, the question is “whether the proof showed a reasonable probability of prejudice inherent in the situation.” *Thomas*, 53 Wis.2d at 491, 192 N.W.2d at 868. “If the evidence elicited, properly considered, gives rise to the reasonable likelihood that a fair trial cannot be had, it is an abuse of discretion to fail to grant a change of venue.” *Kramer*, 45 Wis.2d at 30, 171 N.W.2d at 934. “[S]hould any doubt arise in the mind of the trial judge, the exercise of sound judicial discretion requires that the motion for change of venue be granted.” *State v. Herrington*, 41 Wis.2d 757, 763, 165 N.W.2d 120, 122 (1969). In *McKissick v. State*, 49 Wis.2d 537, 182 N.W.2d 282 (1971), the Wisconsin Supreme Court listed several factors considered by courts “as relevant in determining whether a change of venue should have been granted.” *Id.* at 545, 182 N.W.2d at 286. These factors are:

- the inflammatory nature of the publicity;

- the degree to which the adverse publicity permeated the area from which the jury panel would be drawn;
- the timing and specificity of the publicity;
- the degree of care exercised, and the amount of difficulty encountered, in selecting the jury;
- the extent to which the jurors were familiar with the publicity; and
- the defendant's utilization of the challenges, both peremptory and for cause, available to him on voir dire;
- the participation of the state in the adverse publicity . . .
- the severity of the offense charged and the nature of the verdict returned.

Id. at 545-46, 182 N.W.2d at 286. These factors have been utilized frequently since. See, e.g., *Briggs v. State*, 76 Wis.2d 313, 326, 251 N.W.2d 12, 17-18 (1977); *Hoppe v. State*, 74 Wis.2d 107, 110, 246 N.W.2d 122, 125 (1976); *Kutchera v. State*, 69 Wis.2d 534, 548, 230 N.W.2d 750, 758 (1975); *Jones v. State*, 66 Wis.2d 105, 109, 223 N.W.2d 889, 891 (1974); *Hussong v. State*, 62 Wis.2d 577, 591-92, 215 N.W.2d 390, 398-99 (1974); *State v. Hebard*, 50 Wis.2d 408, 427-27, 184 N.W.2d 156, 166 (1971). The factors relating to jury selection, juror familiarity with publicity, defense challenges to jurors, and the verdict are not applicable to a motion filed at this stage.

C. Prejudice in this case

When one applies the factors to the facts of this case, the inescapable conclusion is that a fair jury cannot be selected in Milwaukee County. The coverage of the Griffin and McAlister trials was very specific in that it recounted the testimony of Victor Stewart in detail. Much of the coverage identified Allen by name. Thus, if a venireman read or heard any of this news coverage, he or she has had a preview of the testimony that the state will present at trial. Because the news coverage was of actual trial testimony, the authors dispensed with the customary euphemism of “allegedly” in describing the facts of the case.

This is particularly unfair, because if a jury is picked in Milwaukee County, the jurors

are likely to have heard an accounting of Stewart's testimony several times, without ever having heard Allen's defense to Stewart's claims. This is the very definition of "pre-judgment" (prejudice).

Additionally, the pretrial publicity was extremely inflammatory. The articles almost always mentioned that the victim, Evon Young, was "transgender", as though this were some sort of hate crime. One article in the *Milwaukee Journal Sentinel* reported the testimony of Young's mother, where the mother "sobbed into a tissue" as she described Evon's difficulty with gender identification.

There is no suggestion anywhere in the discovery, nor in the trial testimony, that Evon Young was killed because she was transgender. That fact simply played no role in the case; yet, the reporters harped on the fact. Not surprisingly, when one surveys the Google results for the search phrase "Evon Young", many of the links are to websites devoted to gay/lesbian/transgender interests. It is doubtful whether, during voir dire, the attorneys may properly ask the panel about sexual orientation. Thus, there is the possibility that, if a jury is selected in Milwaukee County, the jury will contain individuals who are prejudiced against Allen because of the sexual orientation issue that was manufactured by the media.

The pretrial publicity was also inflammatory because it described the manner and cause of death for Young. According to the reports, Allen placed a plastic bag over Young's head in an effort to suffocate her; and, when that did not work, he wrapped a chain around her neck. In reality, Young most likely died because of the gunshots that McAlister fired into her body.

Finally, the images of the defendants presented on the television station web sites was utterly prejudicial. In one, Allen is depicted in jail garb. In others, mugshots of the defendants are shown together in one image, suggesting that the group worked together.

For these reasons, the court must order either that the trial take place in another county, or that a jury be selected from another county.

II. The court should order that, during the trial of this matter, the jury be sequestered.

Regardless of whether a jury is selected from another county, the court must order that the jury in this matter be sequestered during trial. Sec. 972.12, Stats., provides, “The court may direct that the jurors sworn be kept together or be permitted to separate. The court may appoint an officer of the court to keep the jurors together and to prevent communication between the jurors and others.”

Plainly, Sec. 972.12 grants the circuit court the broadest possible discretion in deciding whether to sequester the jury. There is little case law to guide the exercise of the court’s discretion.

Here, though, it is absolutely imperative that the jury be sequestered during trial. This is true whether or not the court grants Allen’s motion to pick a jury from another county.

To a certain extent, the World Wide Web has made the selection of a jury from another county a bit of an anachronism. That is, the reach of the media is not limited geographically any more. A person in California may as easily access the *Milwaukee Journal Sentinel* online as a person in Milwaukee. It is really only a question of interest. People in Milwaukee are more interested in what happens in their city than are people in California. Thus, a jury from LaCrosse County, for example, might be less likely to have consumed news coverage of this case than would a jury from Milwaukee, even though the people in each county have equal access to the news.

This fact, though, makes it utterly imperative that, during the course of a trial of this nature, that the court sequester the jury. As mentioned earlier in this brief, anyone, anywhere in the world, who has an internet connect may almost instantly access thousands of articles recounting the events in this case. A regular person from La Crosse county may not have had an interest in consuming media coverage of this case. A *juror* from La Crosse County, though, or even one from Milwaukee County, may be very interested in reading the media coverage of a case in which he or she is sitting.

An order from the court that, while at home, the jurors not access media accounts of

the case, is a bit like trying to scare ants away from a picnic by sprinkling sugar on them. This is especially true given what is at stake for Allen.

For these reasons, the court should order that the jury be sequestered during the trial of this matter.

III. The court should order that the voir dire process begin with individual voir dire of each panel member to privately determine the extent of his or her familiarity with the case.

Again, the conduct of voir dire is left to the sound discretion of the court. Little needs to be written concerning this issue. It makes no sense to conduct questioning of the entire panel concerning the panel members familiarity with the media coverage. If that were to occur, very shortly, everyone on the panel-- including those who had never heard of the case before- would be intimately familiar with how the case was reported in the media.

Dated at Milwaukee, Wisconsin, this _____ day of _____,
2013

Law Offices of Jeffrey W. Jensen
Attorneys for the Defendant

By: _____
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State of Wisconsin:

Circuit Court:

Milwaukee County

State of Wisconsin,

Plaintiff,

v.

Case No. 2013CF000461

Ron Allen,

Defendant.

Affidavit of Jeffrey W. Jensen

State of Wisconsin :

: ss

Milwaukee County :

Jeffrey W. Jensen, being duly sworn on oath, deposes and says:

1. That I am an attorney duly licensed to practice law in the State of Wisconsin. I represent the defendant, Ron Allen, in this matter, and I make this affidavit in support of Allen's motion for change of venue and sequestration of the jury.

2. That good cause exists to permit Allen to make this motion at the present time because it was the news coverage of the trials of Billy Griffin and Ashanti Hamilton in June, 2013, that has substantially contributed to the publicity surrounding this matter. The media recounted the specific testimony of the witnesses during the trial, including the testimony of Victor Stewart and Devon Seaberry, both of whom are on the state's witness list in this case. News stories recounted the witnesses' testimony concerning Allen's alleged involvement in the incident.

3. That, given the amount of information that is available online concerning this case, it is impossible to catalog the information in any meaningful way. On August 13,

2013, a Google search using the phrase “Evon Young” yielded 23,500 results (see Appendix Disk for results). The undersigned did not read all of the articles, but the first hundred, or so, were specifically about this case.¹

4. That the publicity concerning this case is on-going in that nearly all accounts of the case published on the web are still available. Members of the jury may conduct web searches for all archived news coverage going back to the date of the homicide.

5. That, filed along with this motion, is a CD which contains a fair sampling of the publicity concerning the case that is available on the web. By way of summary, the articles are as follows:

A. *Milwaukee Journal Sentinel*

i. **January 31, 2013:** The article recounts the preliminary hearing in this case. The article summarizes the testimony of Detective Timothy Graham, who testified as to the statement Victor Stewart made. Specifically, the article reads, “The group then took Young to the basement But after Allen tried to suffocate him [Young] with a plastic bag, Young began fighting back. He was thrown to the floor. Then Allen, straddling the victim’s back, took a three-foot length of chain that was in the basement, wrapped an end around both his hands and used the rest to strangle Young.”

ii. **June 10, 2013:** The article recounts the testimony of Evon Young’s mother, Annette Cross-Perry at the trial of Billy Griffin. The article begins by summarizing Cross-Perry’s emotional testimony concerning the fact that Young, as a child, had been diagnosed with gender identity disorder. The article specifically mentions that Cross-Perry was sobbing into a tissue during her testimony. Then the article reads, “Police said that, after the killing in the basement, Griffin helped four other men-- Victor Stewart, Ashanti McCalister, Ron Allen and Devon Seaberry-- clean up evidence after the crime, roll Young’s body up in a bed sheet and haul it to Stewart’s car.”

iii. **June 11, 2013:** The headline of the article is, “Dead rapper’s roommate says Chicago gang leader ordered slaying.” The article then goes on to describe the alleged motive for killing Young (he allowed a burglary in Griffin’s home), and

¹ Fairness requires that counsel point out that not every article was original reporting. Rather, there were, perhaps, hundreds of copies of each article, with the same article appearing on numerous web sites.

claims that Young's execution was ordered by a Chicago gang leader.

iv. **June 12, 2013:** The article does not mention Allen by name, but it does summarize parts of Victor Stewart's testimony at the Billy Griffin trial

v. **June 13, 2013:** The article does not mention Allen by name, but it does describe Stewart's testimony at the Billy Griffin trial as follows: "Stewart's associates wound up beating Young, suffocating him with a plastic bag, strangling him with a heavy chain and finally shooting him three times before wrapping up his body and putting it in a trash bin behind an apartment complex"

vi. **June 23, 2013:** The article reports that, with regard to the Griffin trial, which ended with a hung jury, that, "One of the jurors said a majority first favored acquittal, but the final vote was 8-4 in favor of conviction. Sharon Ellestad, 44, an electrical engineer, said she and two others thought Griffin was guilty of first degree intentional homicide, party to a crime. Five favored conviction of reckless homicide."

vii. **June 27, 2013:** The article reports that Ashanti Mcalister was convicted by a jury of first degree intentional homicide. The article claims that, "The state's prize witnesses were Victor Stewart and Devin Seaberry, two members of the Chicago-based Black P. Stones gang They said four gang members — both of them, Mcalister and Ron Allen — drove on New Year's Day in search of marijuana to the home of Billy R. Griffin, Young's roommate . . . Mcalister and Allen began tussling with Young when Stewart, the gang "general," fired a shot into the kitchen floor to assert his authority,"

viii. **July 2, 2013:** The article reports that Devon Seaberry pleaded guilty to second degree reckless homicide in exchange for his testimony in the Griffin and Mcalister trials.

B. Fox 6 News (television and web coverage)

i. **January 31, 2013:** Video and web coverage of the preliminary hearing. The web coverage shows a clear image of Ron Allen in jail clothing and, apparently, handcuffs. The web coverage reads, "Graham also said Allen put a plastic bag over Young's head that broke, and then choked Young with a chain."



ii **May 28, 2013:** Video and web coverage concerning the case. The web coverage contains an image containing mug shots of Allen, Griffin, McAlister, and Stewart.



iii. **June 24, 2013:** Video and web coverage of the start of the Ashanti Hamilton case. The web article reads, “According to the criminal complaint in the case, the five defendants were at Young’s home when his roommate (Griffin) accused Young of stealing. Investigators say the defendants took Young to the basement, put a bag over his head, beat him with tools and took turns strangling him with a chain before ending his life with three gunshots.”

iv. **June 26, 2013:** Coverage of the Ashanti Hamilton trial. The web coverage presents a variation of the mug shot photo:



v. **June 27, 2013:** Video and web coverage of Ashanti Hamilton's conviction. The web coverage reads, "Then, Allen is accused of leaving the house and returning with duct tape and bleach, and a change of clothes for himself and Allen. Allen is accused of duct taping Young's feet and hands."

vii. **July 2, 2013:** Coverage of Devon Seaberry's guilty plea.

C. WTMJ 4 (video and web coverage)

i. **January 23, 2013:** Video and web coverage. The web headline reads, "Five suspects now charged with killing missing transgender rapper" The article goes on to recount the allegations of the criminal complaint.

ii. **June 23, 2013:** Video and web coverage of the start of the Ashanti McAlister trial. The web contains a link to video which begins with mug shots of the five defendants.

6. Television CBS-58 in Milwaukee did approximately seventeen segments on air and on the web concerning the case. The segments are of a similar nature to those outlined above. The list of segments may be located at:

<http://www.cbs58.com/results?keywords=Evon+Young&searchType=gen&submit=Search>

Dated at Milwaukee, Wisconsin, this _____ day of August, 2013.

Jeffrey W. Jensen

Subscribed to and sworn before me this _____ day
of August, 2013:

Notary Public
State of Wisconsin

My commission: