

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

STATE OF MISSOURI,)	
)	
Plaintiff)	
)	
v.)	Case No. 19BA-CR04782-01
)	
JOSEPH DUANE ELLEDGE,)	
)	
Defendant.)	

DEFENDANT'S APPLICATION FOR CHANGE OF VENUE

COMES NOW the defendant, Joseph Duane Elledge, through undersigned counsel, moving this Court for a change of venue. The state has charged Mr. Elledge with one count of abuse or neglect of a child under Section 568.060.5(1)-no sexual contact and two counts of first degree endangering the welfare of a child creating substantial risk, for which a trial date of February 25, 2020 has been scheduled.

Mr. Elledge seeks a change of venue in accordance with Missouri Supreme Court Rule 32.04, which reads:

(a) Upon written application of the defendant, a change of venue may be ordered in any criminal proceeding triable by jury for the following reasons:

(1) that the inhabitants of the county are prejudiced against the defendant;

or

(2) that the state has an undue influence over the inhabitants of the county.

This brief will provide evidence suggesting that the inhabitants of Boone County are prejudiced against Mr. Elledge. Because such evidence exists, this Court has the power to order a change of venue, thereby ensuring Mr. Elledge's rights as guaranteed by the Sixth and

Fourteenth Amendments of the U.S. Constitution. Though this motion does not meet the time requirement set forth in Rule 32.04(b)—that is, within ten days after the initial plea is entered—a trial court may still order a change of venue “when fundamental fairness so requires.” Rule 32.09(c).

REASONS FOR CHANGE OF VENUE, RULE 32.04(d)

I. Procedural History

1. Defendant is charged with abuse or neglect of a child, punishable upon conviction under Section 558.002 and 558.011, RSMo, in that on or about January 1, 2019 through February 12, 2019, in the County of Boone, State of Missouri, the defendant was eighteen years of age or older, and knowingly caused A.E., a child less than eighteen years of age, to suffer physical injury as a result of abuse by grabbing or striking A.E., and
2. Defendant is charged with endangering the welfare of a child in the first degree, punishable upon conviction under Sections 558.011 and 558.002, RSMo, in that on or about January 1, 2019 through February 12, 2019, in the County of Boone, State of Missouri, the defendant knowingly acted in a manner that created a substantial risk to the life and body and health of A.E., a child less than seventeen years old, by grabbing or striking A.E., and
3. Defendant is charged of endangering the welfare of a child in the first degree, punishable upon conviction under Sections 558.011 and 558.002, RSMo, in that on or about October 8, 2019 or October 9, 2019, in the County of Boone, State of Missouri, the defendant knowingly acted in a manner that created a substantial risk to the life and body and health of A.E., a child less than seventeen years old, by separating Mengqi Ji from A.E.

4. Mr. Elledge's trial is currently set for February 25, 2020.
5. At defendant's bond hearing in which he is being held on \$500,000 cash only bond, it was alleged by the Prosecuting Attorney for Boone County that my client was responsible for the disappearance and death of his wife.

II. Suggestions in Support of Rule 32.04(a)(1).

In addition to traditional newspaper and television coverage surrounding Mr. Elledge's case, interactions of Boone County social media locales and its followers warrant judicial examination, with an emphasis on whether Boone County could provide a fair venue for Mr. Elledge's trial. Article I, Section 18(a) of the Missouri Constitution provides that an accused has a right to "a speedy and public trial **by an impartial jury of the county.**"

When a defendant is at risk of a predisposed jury, a change of venue is required to assure a fair and impartial trial. *State v. Kinder*, 942 S.W.2d 313, 323 (Mo. 1996). The decision to grant or deny a request for change of venue for cause rests within the trial court's discretion, and its ruling will not be reversed absent abuse of discretion. *State v. Feltrop*, 803 S.W.2d 1, 6 (Mo. 1991). A trial court can abuse its discretion, however, when the record shows that the inhabitants of the county are so prejudiced against the defendant that a fair trial cannot occur there. *State v. Baumruk*, 85 S.W.3d 644, 648 (Mo. 2002) (finding the trial court abused its discretion when it denied the defendant's motion for change of venue because polling data revealed that roughly 80% of the community believed the defendant was guilty three years before the trial, and his trial was held in the same courtroom where he allegedly committed murder).

In assessing the impact of prejudicial publicity on prospective jurors, the critical question is whether the potential jurors have such fixed opinions regarding the case that they could not

impartially determine the guilt or innocence of the defendant. *State v. Deck*, 994 S.W.2d 527, 532-33 (Mo. 1999). Though the existence of news coverage about a case does not automatically prejudice the jury and necessitate change of venue, supplementary evidence demonstrating a **“wave of public passion”** increases the likelihood that a change of venue is necessary to avoid infringing on the defendant’s rights. *Baumruk*, 85 S.W.3d at 649; *State v. Johns*, 34 S.W.3d 93, 108 (Mo. 2000).

News coverage, including TV and print media has been extra ordinary in this case. I have personally spoken with a dozen civil and criminal lawyers Columbia, Missouri, who advised me that the intense coverage in this case is like no other case that they have seen in Boone County, Missouri in over 25 years. The media coverage in this case has been constant and on a daily basis regarding the search for the defendant’s wife.

Prosecuting Attorney in this case, Mr. Knight, has publicly identified and publicly commented on my client as a prime suspect in the disappearance of his wife and in court at a bond hearing, alleged that my client was responsible for the disappearance and murder of his wife.

I have attached for the Court’s consideration exhibits 1 – 71. Those exhibits, I think, speak for themselves not only in terms of the volume of the coverage, but the amount of information and prejudicial information put out about my client which will prevent him from getting a fair trial in Columbia, Boone County, Missouri. Exhibits 1 – 4 show comments made by citizens of Boone County about this case on various online platforms. The comments clearly display a wave of animosity toward the defendant that would make it impossible to have a fair trial.

Mr. Elledge reasonably anticipates that, as this case approaches trial, media coverage will intensify and then peak contemporaneously with jury selection. The nature and extent of the coverage will substantially impair Mr. Elledge's constitutional right to a fair and impartial jury as guaranteed by both the federal and state constitutions.

If this case is tried with a Boone County jury, during jury selection, Mr. Elledge will be handicapped with a venue already prejudiced against him because of the substantial media buzz surrounding his case.

This Court should order a change of venue in order to avoid a violation of Mr. Elledge's fundamental right to a fair trial and his constitutional right to be judged by a fair and impartial jury of his peers, which are guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Art. I, Section 22(a) of the Missouri Constitution.

Under the totality of the circumstances, the failure to grant a change of venue will violate principles laid down by the Supreme Court in *Murphy v. Florida*, 421 U.S. 794 (1975); *Sheppard v. Maxwell*, 383 U.S. 333 (1966); *Estes v. Texas*, 381 U.S. 532 (1965); *Rideau v. Louisiana*, 373 U.S. 723 (1963); and *Irwin v. Dowd*, 366 U.S. 717 (1961).

Defendant respectfully requests a hearing to present evidence and exhibits to the Court to make a further record demonstrating the need for a change of venue in this case to ensure the defendant a fair public trial is needed.

WHEREFORE, Mr. Elledge asks that the Court sustain this motion for change of venue, or in the alternative change of venue for purposes of jury selection. If the state files a denial of reasons for a change of venue, Rule 32.04(e), then Mr. Elledge will request an evidentiary hearing.

Respectfully submitted,

/s/ John P. O'Connor

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of January, 2020, a true copy of the foregoing document was filed utilizing this Court's ECF system, and that a copy of the foregoing document was then served via this Court's system for electronic distribution to all counsel and parties of record.

/s/ John P. O'Connor

Exhibit 4



ABC 17 News KMIZ

3 hrs · 🌐



As authorities try to find a missing Columbia woman, we asked Boone County's top prosecutor whether a body is needed to bring murder charges. Find out what he said on ABC 17 News at 6.



ABC17NEWS.COM

Boone County prosecutor: No body needed to file murder charges - ABC17NEWS



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Boone County prosecutor: No body needed to file murder charges - ABC17NEWS

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All Comments ▾



Write a comment...



Dave Cunningham Since when can you file a murder charge without PROOF? Meaning you need a body. It's not what you think you know, but what you can prove. PROVE being key word.

Like · Reply · 3h



Amy Banuet Kempf Dave Cunningham if there is DNA(blood) that can be linked to her they can

Like · Reply · 2h



Lynn Wagner Happens a lot

Like · Reply · 2h



Jess Tapia-Millan Proof beyond a reasonable doubt is different. I mean haven't you seen the movie "Double Jeopardy" lol

Like · Reply · 32m



Amanda Mae Brundage Wow just wow!!! No proof lets just wrongly charge him now so tax payers can pay for him to sit there... Your innocent until guilty. With out probable cause they should not be able to hold him! Happens all the time tho and its wrong!!!!

Like · Reply · 1h



Virgil Kent Jeffery Who's footing the bill for all of this ? What if she shows up tomorrow unharmed ?

Like · Reply · 2h



Shonda White Virgil Kent Jeffery shut up!!

Like · Reply · 1h



Virgil Kent Jeffery Shonda White
They have no proof that harm has been done. Only suspicions.

Like · Reply · 1h



Kyle Deere Virgil Kent Jeffery exactly

Like · Reply · 1h



Kyle Deere Virgil Kent Jeffery exactly

Like · Reply · 1h



Top Fan

Melinda Prince Virgil Kent Jeffery your not footint the bill so shut up!!!! Clearly some thing happened to her . If it was your loved one you would most definitely be saying something different. So take a seat sir and shut up!!!

Like · Reply · 1h



Write a reply...



Theresa Wallsmith He knows where she is..

Like · Reply · 1h



Gina Nolan No body needed. But sure will be alot harder to get a conviction

Like · Reply · 2h



Theresa Wallsmith Charge Him Already!!!!

Like · Reply · 1h



Top Fan

Like · Reply · 1h



Top Fan

Rachel Jenkins Interesting 🤔

Like · Reply · 3h



Nici Jones #JusticeForMengqi

Like · Reply · 3h



Jessica Pirtle Donna Franklin Moore we just talked about this today!

Like · Reply · 1h



Top Fan

Madeline Miller Yancey I bet he watched the news saw that other guy threw that lady in the garbage and told on his self and he probably did the same thing maybe they should search the land field every thing shouldn't be put on 🗑!!!!

Like · Reply · 51m

Write a comment...

