

2010 OCT 6 11:53 AM  
CLERK OF COURTS

**STATE OF OHIO, WARREN COUNTY  
COMMON PLEAS COURT**

**STATE OF OHIO,**

**Plaintiff,**

**v.**

**RYAN K. WIDMER,**

**Defendant.**

\* **CASE NO. 08CR25254**  
\*  
\* **JUDGE BRONSON**  
\*  
\* **MOTION FOR A CHANGE**  
\* **OF VENUE PURSUANT TO**  
\* **CRIM.R. 18(B) AND**  
\* **R.C. § 2901.12(K) AND**  
\* **MEMORANDUM IN**  
\* **SUPPORT**  
\*  
\* **AFFIDAVITS ATTACHED**  
\*

Now comes the State of Ohio, by and through the Warren County Prosecuting Attorney, and moves this Court, pursuant to Crim.R.<sup>1</sup> 18(B) and R.C.<sup>2</sup> § 2901.12(K), for a Change of Venue.

In this present case, local news media, national news media, numerous online news media and other numerous online social media have intruded into every aspect of this case. Every pleading, whether substantive or procedural, has been the subject of numerous articles in which every action taken by the State or the Defense is dissected and analyzed, becoming fodder for rampant speculation. Every moment of both trials was extensively documented and commented upon

<sup>1</sup> Ohio Rules of Criminal Procedure.


<sup>2</sup> Ohio Revised Code.

by various media outlets—some traditional news outlets, others online social media. This media coverage has become so continuous and pervasive that the Defendant in this case has become a virtual celebrity in southwestern Ohio.

In addition to the media coverage, the Defense has made numerous pretrial comments regarding this case and has publicly attacked the credibility of many of the State's witnesses, including the mother of the victim and the investigators, prompting this Court to enter a gag order to curtail such activity.

The actions of the media, both traditional and non-traditional, and the actions of the Defense clearly and manifestly demonstrate that the publicity in this case is so pervasive and prejudicial that any attempt to seat a jury in Warren County would be futile. Consequently, the State respectfully requests a change of venue.

Respectfully Submitted,

  
RACHEL A. HUTZEL, #60557#  
Prosecuting Attorney,  
Warren County, Ohio  
500 Justice Drive  
Lebanon, Ohio 45036  
(513) 695-1325

**MEMORANDUM IN SUPPORT OF MOTION**

Criminal Rule 18(B) provides:

Upon the motion of any party or upon its own motion the court may transfer an action to any court having jurisdiction of the subject matter outside the county in which trial would otherwise be held, when it appears that a fair and impartial trial cannot be held in the court in which the action is pending.

R.C. § 2901.12(K), which also governs change of venue, uses almost identical language as Crim.R. 18. The resolution of a motion for change of venue falls within the trial court's sound discretion and will not be disturbed on appeal absent abuse of that discretion. *State v. McCullough*, Fayette App. No. CA2003-11-012 & CA2007-04-014, 2008-Ohio-6384, ¶80.

Traditionally, voir dire has been considered the best means to determine whether prejudicial pretrial publicity will prevented the seating of a fair and impartial jury. *State v. Herring* (1984), 21 Ohio App. 3d 18, 486 N.E.2d 119. However, a trial court does not have to attempt to impanel a jury if there has been a clear and manifest showing that the **pretrial publicity was so pervasive and prejudicial that any attempt to impanel a jury would be futile.** *Id.*, see also *State v. Potter* (1989), 64 Ohio App. 3d 549, 553-554, 582 N.E.2d 30 (Emphasis added). This Court has the advantage of having presided over jury selection in two preceding trials and can readily judge the futility of attempting to impanel a third jury.

**I. MEDIA COVERAGE HAS CAUSED PRETRIAL PUBLICITY THAT IS BOTH PERVASIVE AND PREJUDICIAL.**

*"A bizarre case that has captured national attention"*<sup>3</sup> is how one local newspaper describes this case. Such a comment indicates the extensive media coverage of this case, which has been so pervasive, that any attempt to seek a fair and impartial jury for the third time will be futile. The Defense has already conceded the "strong probability" that future juries may be unable to reach a verdict.<sup>4</sup>

From day one, extensive publicity has surrounded the death of Sarah Steward Widmer and the subsequent investigation which led to the indictment of Ryan Widmer for Aggravated Murder. Prior to the first trial, the media coverage was intense, and it significantly intensified with the start of the first trial. The first trial, and subsequent sentencing, received daily coverage in all local electronic and print media outlets, as well as extensive discussion on talk radio. Moreover, for the first time in Warren County, a media representative created a weblog—better known as a blog—documenting the entire trial, as well as the events while waiting for a verdict.<sup>5</sup> This blog allowed almost real time coverage of trial testimony and events. Reportedly, thousands of people followed the first trial and deliberations, including lunch with the defense attorneys, on the blog.

Thereafter, accusations of jury misconduct arose, which lead to a motion for a new trial, as well as extensive post pleadings. During post trial motions,

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<sup>3</sup> [www.MiddletownJournal.Com](http://www.MiddletownJournal.Com), Aug. 31, 2010.

<sup>4</sup> See Motion for Judgment of Acquittal, T.d. 444, p. 12.

<sup>5</sup> See [www.livewire.wlwt.com](http://www.livewire.wlwt.com).

there was extensive media coverage, including juror interviews as well as the publication of affidavits from at least 10 of the 12 jurors. Some jurors complained the defense investigator's had mislead or intimidated them, while others complained of unwanted media attention.

From early fall 2009 until the second trial commenced in May, 2010, the case was constantly the subject of extensive and exhaustive media coverage, and this Court is aware of such attention, beginning with the "jury view" that became a media spectacle.<sup>6</sup> A three week trial resulted in a hung jury. The post trial motions and hearings which followed the second trial and resulted in a denial of the Defense Motion for Acquittal were also the subject of extensive and pervasive media coverage.

This Court has presided over felony trials in Warren County since 1987. Members of the defense and prosecution have practiced in this area for more than 30 years. It is respectfully submitted that this Court can and should take notice, that no case that has come before this Court or any Court in southwestern Ohio has generated more publicity and received more media attention than this case. In fact, the only case in which media and publicity may rise to the level of this case was the Easter Sunday, 1975, murder of 11 family members by James Ruppert,<sup>7</sup> a case which was ultimately tried in Hancock County, as a result of a change of venue.

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<sup>6</sup> [www.journal-news.com](http://www.journal-news.com), April 8, 2010.

<sup>7</sup> See *State v. Ruppert* (1984), 14 Ohio App. 3d 74, 470 N.E. 2d 239. Ruppert was originally tried in Butler County by a 3 judge panel. Following reversal, Ruppert was retried by a jury in Hancock County, following a Change of Venue.

By comparison, recent cases involving serial rapists<sup>8</sup> and individuals charged with arson and the murder of family members<sup>9</sup> have not led to such extensive publicity. It is respectfully submitted that even multi-state serial killers<sup>10</sup>, or the so-called "Angel of Death"<sup>11</sup>, or defendants, who murdered a child and feigned abduction to cover up the murder,<sup>12</sup> have received less pervasive publicity and media attention than this current prosecution.

In addition to the unusual fact of this case, one of the reasons that the pretrial publicity about this case has been so pervasive is the nature of the modern media and online social media. In addition to the traditional print media (3 daily papers and 1 weekly paper) this case has been followed extensively by several local TV and Radio Stations, saturating the Cincinnati-Dayton area. In addition to live broadcasts, local media outlets have consulted with and reported the opinions of former prosecutors, defense attorneys and law professors, who may or may not have actual knowledge about the facts of the case. As mentioned above, one local TV station had a blogger who covered both trials, providing nearly real time reports during the entirety of both trials. Reportedly, thousands of people monitored "the Blog" as both trials progressed.

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<sup>8</sup> See *State v. David Hopper*, the so-called "blue-eyed rapist", Warren County, 08CR25107.

<sup>9</sup> See *State v. Michel Veillette*, Warren County, 08CR24789.

<sup>10</sup> See *State v. Alton Coleman* (1988), Hamilton County, 37 Ohio St. 3d 286, 525 N.E.2d 792 and *State v. Debra Denise Brown* (1988), Hamilton County, 38 Ohio St. 3d 305, 528 N.E.2d 523.

<sup>11</sup> See *State v. Donald Harvey*, Hamilton County.

<sup>12</sup> See *State v. Liz & David Carroll*, Clermont County, 2006 CR 000729.

The impact of the internet on this case cannot be understated. For every printed article about this case, a virtual version exists and is readily accessible on the internet. In addition, a blogger sat through each trial giving nearly real time updates as to the evidence and the witnesses and inviting comments from the members of the public who followed the blog. That, in and of itself, is without precedence in Warren County and is a relatively new phenomena. But in addition to the news media's use of the internet, private citizens have used, and are still using, online social media to not just distribute information about the case but to actively criticize the State's case and to garner sympathy for the Defendant.

It may be tempting to dismiss these activities as only reaching a small handful of individuals who already support the Defense's cause, but, before summarily dismissing the effect of these activities; this Court should consider that 3 out of every 4 Americans now use online social media. It has become the fourth most popular online activity, even more popular than the ubiquitous use of email.<sup>13</sup> This is not merely the Defendant using the internet to preach to the choir, so to speak. This is the Defendant using the internet to directly influence—or, as better stated, manipulate—the population of southwestern Ohio. This population also happens to be the pool of potential jurors. This is also unprecedented in Warren County.

As the Court is aware, a national news program "*Dateline*" filmed both trials, with the Court's permission. On September 18, 2009, *Dateline* aired a one

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<sup>13</sup> Presentation by Chris Davey, Director of Public Information, Ohio Supreme Court Ohio Jury Management Association, April 23, 2010.

hour prime time news special entitled "*The Mystery in the Master Bedroom*" on the trial. This primetime news special featured numerous defense witnesses and defense lawyers, who all proclaimed the Defendant's innocence and derided the jury's verdict. Apparently, "*Dateline*" intends similar coverage of the second trial to be broadcast sometime in the future.

According to one local talk show host,

***There has never been a case where hundreds of Americans come out of their homes carrying candle lights to listen to prayers about a condemned, convicted killer. It's never happened before.***<sup>14</sup>

And in fact, candlelight vigils, golf outings and other fund raising activities,<sup>15</sup> including meeting to plan other defense activities, have received extensive coverage by the news media. For example, following the Court's recent decision denying the Defense's Crim.R. 29 motion, the Defendant's mother, father and one of his attorneys, Jay Clark, held a live news conference within a few hours of the Court's ruling. A professor at the University of Cincinnati, College of Law, who has never withdrawn as counsel in the case, continues to openly discuss the case, offering his opinion whenever asked, including serving as a panelist at Northern Kentucky University, Chase College of Law, panel discussion on this case, held on Oct. 5, 2010<sup>16</sup>.

There has been extensive coverage not only about the trial but about collateral issues, such as the real estate foreclosure on the Widmer residence and

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<sup>14</sup> Bill Cunningham, as quoted on *Dateline*, Sept. 16, 2009.

<sup>15</sup> [www.journal-news.com](http://www.journal-news.com), June 4, 2009.

<sup>16</sup> *Cincinnati Enquirer*, Oct. 4, 2010, "*NKU to host panel on Widmer Case*", Page C3.

individual witnesses, which have become news stories in their own right. For example, multiple media outlets accused the 911 dispatcher of "sleeping" while on duty. Some of the publicity, particularly in the non-traditional media and online media, were degrading and, in some instances, utterly malicious. Of course, when it was determined that he had taken another call, only minutes before, and the dispatcher was exonerated, media coverage was much less significant.

Furthermore, numerous media outlets attacked the senior detective for the Hamilton Township Police Department regarding his personnel records. After extensive coverage, these personnel records were a subject of a several hour hearing on May 5, 2010, which led the Court to grant Motions to quash several subpoenas duces tecum for his records and to rule that the detective's records were inadmissible at trial. Despite the Court's ruling, the detective's records have remained the subject of public records requests and extensive media discussion, both in traditional and online social media.

Additionally, a defense-oriented website was created, and it, along with its creator, has been the subject of media attention. Moreover, public records requests, and the "gag order" previously issued by the Court, has led to additional litigation, including Mandamus actions. Even the recent hearing to schedule a date for the third trial was deemed worthy of several columns of print and both TV and Radio coverage.

In addition to all the above, the discussion of alleged "juror misconduct" following the first trial has also contributed to the extensive and pervasive media coverage. Numerous juror affidavits, and in some cases, counter-affidavits, were filed, discussing the jury deliberations during the first trial. In some of these

affidavits, jurors suggested that Defense attorneys misled them in order to obtain affidavits. Again, the Court is invited to draw upon its considerable experience to determine whether any other case in recent memory has lead to such an "Affidavit War" between jurors.

Likewise, following the second trial, jurors were quoted in the media and the status of their final vote, whether 10-2 for guilty or 7 guilty, 4 not guilty and 1 undecided, was widely reported and subject to media commentary. Again this collateral issue gave rise to an entirely new story line which seemed to have a life of its own.

More so than in any previous criminal trial in this area, prospective jurors have had instant access to media coverage of the case through the internet. TV stations and newspapers have instantly uploaded video, photographs and stories about the trial to the internet. The result of this relentless media coverage is readily apparent given the great difficulty experienced in seating the second jury.

On May 5, 2010, after numerous jurors were excused for hardship and other good cause, this Court was forced to excuse several other jurors after possible attempts were made by a defense witness to intimidate or influence the jurors.<sup>17</sup> Then, commencing on May 10, 2010, an additional 79 jurors were interviewed and excused, over a period of 2 days, before a panel of 12 jurors and 3 alternates were selected. During voir dire, many potential jurors admitted to having preconceived opinions that they could not set aside. Other potential jurors admitted to having already reached a conclusion, based upon considerable

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<sup>17</sup> The matter of Contempt of Court for Jill Widmer is still pending before the Court.

thought, regarding the Defendant's guilt or innocence but conveniently claimed that they could be "fair" even though they had already made up their minds. Both parties exhausted all preemptory challenges. In comparison, during the first trial, the parties were able to pick a jury in one day, and neither side exhausted their preemptory challenges.

Ultimately, it appears that the prosecution and the Defense were unable to select a jury that could reach a verdict. From discussions with the members of the second jury, it also appears that both parties unintentionally chose jurors who were biased or who failed to remain impartial.

The State contends that the pervasive publicity in this case caused the extreme difficulty encountered in selecting the second jury. That publicity has not abated. In fact, it has intensified. The media frenzy surrounding this case has created publicity that is both pervasive and prejudicial. Prior to the second trial, the Defense acknowledged this when one of the Defendant's attorneys told the Middletown Journal that the Defense was concerned about the ability to seat a fair and impartial jury in Warren County due to "the national notoriety the trial has garnered."<sup>18</sup> And the Defense reiterated this concern when it conceded the "strong probability" that future juries may be unable to reach a verdict.<sup>19</sup>

Attached hereto is the Affidavit of the Warren County Prosecuting Attorney, demonstrating that there have been more than 220 articles published about this case, in local newspapers. (See Exhibit A). In addition, Thaddeus Hoffmeister, a Professor of Law at the University of Dayton and an expert on

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<sup>18</sup> www.MiddletownJournal.Com, March 28, 2010.

<sup>19</sup> See Motion for Judgment of Acquittal, T.d. 444, p. 12.

juries, opines that due to the overwhelming news coverage that this case has received, it will be very difficult, if not impossible, to seat an impartial jury, for the reasons noted in his Affidavit, attached hereto as Exhibit B. Specifically, Professor Hoffmeister relies upon "(1) the level of publicity surrounding the case; (2) the entrenched opinions that many potential jurors are likely to have; (3) the population of Warren County; and (4) the truncated voir dire process used by the court", to conclude that a change of venue is proper<sup>20</sup>. Consequently, the State argues that it has clearly and manifestly demonstrated that the publicity in this case is so pervasive and prejudicial that any attempt to seat a jury in Warren County would be futile. So, the State contends a change of venue in this case is necessary

## **II. THE DEFENSE HAS CAUSED PRETRIAL PUBLICITY THAT IS BOTH PERVASIVE AND PREJUDICIAL.**

According to the Ohio Rules of Professional Conduct, Rule 3.6(a), a lawyer who is participating in the litigation of a matter is prohibited from making extrajudicial statements that the lawyer knows or reasonably should know will be disseminated by means of public communication, i.e., the press and online media, and will have a substantial likelihood of materially prejudicing a trial of the matter. In addition, Comment 5 to Rule 3.6 points out that certain subjects are more likely than not to have a material prejudicial effect on the trial of a criminal matter. One of those subjects is the credibility of a witness and another

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<sup>20</sup> Even Professor Hoffmeister's comments have proven to be media worthy, as his affidavit was the subject of media coverage, even before it was filed. This illustrates the pervasive media coverage of this case.

is information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence and that would, if disclosed, create a substantial risk of prejudicing an impartial trial.

In *State v. Ross* (1973), 36 Ohio App. 2d 185, 190-191, 304 N.E.2d 396, the Franklin County Court of Appeals, Tenth Appellate District, reviewed the trial court's decision to deny *pro hac vice* status to an out-of-state attorney who had engaged in unprofessional conduct by holding a press conference regarding and a rally for the defendant in his pending criminal case.

When the Tenth District analyzed the issue, it noted that

[a] goal of our legal system is that each party shall have his case, criminal or civil, adjudicated by an impartial tribunal. The attainment of this goal may be defeated by dissemination of news or comments which tend to influence judge or jury. Such news or comments may prevent prospective jurors from being impartial at the outset of the trial and may also interfere with the obligation of jurors to base their verdict solely upon the evidence admitted in the trial. The release by a lawyer of out-of-court statements regarding an anticipated or pending trial may improperly affect the impartiality of the tribunal. For these reasons, standards for permissible and prohibited conduct of a lawyer with respect to trial publicity have been established.

*Id.*, quoting Canon 7 of the Code of Professional Responsibility, EC 7-33. In affirming the trial court's decision, the Tenth District held that the trial court was justified when it concluded that the out-of-state attorney would not comply with the standards established by the Supreme Court of Ohio regarding out-of-court statements. *Ross*, 36 Ohio App. 2d at 195.

The State submits that the Defense has engaged in activities independent of, but in conjunction with, the media that have compounded the publicity in this case. The State contends that if a trial court can consider such out-of-court

activities in deciding whether or not to grant *pro hac vice* status, then a trial court should be able to consider such activities in resolving a motion for change of venue. Consequently, in light of Rule 3.6 and the *Ross* case, this Court can and should consider the Defense's actions in deciding whether or not to grant a change of venue. Furthermore, the State contends that the Defense's actions in this case, as discussed below, weigh in favor of a change of venue.

For example, as previously mentioned, numerous media outlets attacked the detective for the Hamilton Township Police Department regarding his personnel records. This came about when, in March of this year, the Defense very publicly began issuing multiple subpoenas duces tecum seeking the employment records of the detective.<sup>21</sup> The Defense was particularly keen on obtaining the detective's employment applications and discipline records from both the Hamilton Township Police Department and Hamilton Township Fire Department.

In response, the detective, through private counsel, filed motions to quash the various subpoenas. This Court specifically ordered that any documents regarding the various subpoenas were to be retained and sealed pending a hearing. However, the Defense then filed a response and attached the copies of the documents that this Court had ordered to be sealed. These documents contained personal identifying information about the detective, i.e., his address and social security number. The Defense then distributed copies of its response, including the documents that contained the sensitive personal information, to various media outlets and held a press conference. After filing the objectionable

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<sup>21</sup> [www.journal-news.com](http://www.journal-news.com), April 8, 2010.

documents, an attorney for the Defense gave an interview with WKRC, a Cincinnati TV station, at which the attorney publicly attacked the detective's credibility.

The Defense's activities resulted in extensive media coverage regarding the detective's personnel documents and intense speculation regarding the detective's credibility as a witness. And, while this Court ultimately quashed subpoenas and ruled that the detective's records were inadmissible at trial, the detective's records have remained the subject of public records requests and extensive media discussion, both in traditional and online social media.

As for another example, there is the issue of the alleged "heart murmur". As this Court well knows, during trial, it came to light that Sarah may have had a heart murmur at birth and, if so, that condition disappeared shortly after her birth. One of the Defendant's attorneys reported to the Court, in chambers, that he had discussed the matter with one of the Defense's medical experts and represented that it "probably" did not have any connection to Sarah's death. As a result, there was no testimony given during the second trial about the alleged heart murmur, and it was thought that the issue was laid to rest. However, the Defense "grabbed headlines", by arguing in the Crim.R. 29 motion that the "possibility" of a heart murmur weakened the State's case, making it likely that a third jury could not reach a verdict. This led to extensive media attention regarding the "heart murmur" and to speculation as to why there was no evidence presented to the jury regarding it.

In addition, the Defense stated in the Crim.R. 29 motion that Sarah's widowed mother, Ruth Ann Steward, "will have to explain forgetting Sarah's

heart murmur.” Motion for Judgment of Acquittal, T.d. 444, p. 11. The Defense also stated, “Future jurors who are also mothers my (sic) find it difficult to believe a mother forgetting their child had a heart murmur.” *Id.* With these statements, the Defense once again publicly attacked the credibility of one of the State’s witnesses.

Throughout the current proceedings, the Defense has repeatedly and publicly attacked the credibility of the State’s witnesses. These attacks go far beyond what would be considered normal “fair comment” under the rules of professional conduct. In many cases the attacks were clearly personal and intended to inflame potential jurors. Furthermore, the Defense has publicly disclosed information, i.e., the “heart murmur” and the employment documents of a police officer, knowing that such information was inadmissible.

Notwithstanding the provisions of Rule 3.6 of the Rules of Professional Conduct, media comments by the Defense, as well as defense witnesses, prior to the Court’s “gag order” have had the unintentional effect of creating a “substantial likelihood of materially prejudicing an adjudicative proceeding in the matter” and have contributed to the prejudicial nature of the publicity that any attempt to seat a third jury in Warren County would be futile.

In addition, the Supreme Court of Ohio has noted that “[a] small amount of publicity, published during trial and containing prejudicial information not in evidence, may violate an accused’s due process rights.” *State v. Landrum* (1990), 53 Ohio St. 3d 107, 117, 559 N.E.2d 710. If this is so, then the State submits that where there has been an extensive amount of publicity that has published prejudicial information, i.e., public attacks on the credibility of the State’s

witnesses, personal information of a police officer that was deemed irrelevant by the Court and information regarding an irrelevant and possibly non-existent medical condition, that was not introduced in evidence has irreparably damaged the ability to impanel a fair and impartial jury in this case and warrants a change of venue.

### CONCLUSION

Federal courts have recognized that when a trial court has learned that an extrinsic influence, such as newspaper articles and media attention, has reached the jury and has the reasonable potential to taint the jury, the trial court has a duty to determine the effect of that extraneous information. *Williams v. Bagley* (6<sup>th</sup> Cir. 2004), 380 F.3d 932. And, in those extraordinary cases, where media coverage has "utterly corrupted" the atmosphere of the trial, the trial court must presume that pretrial publicity has had a prejudicial effect on the pool of potential jurors. *Id.*, citing *Sheppard v. Maxwell* (1966), 384 U.S. 333, 358, 363, 86 S.Ct. 1507, 16 L.Ed.2d 600.

In fact, the United States Supreme Court, in *Sheppard*, explained

From the cases coming here we note that unfair and prejudicial news comment on pending trials has become increasingly prevalent. Due process requires that the accused receive a trial by an impartial jury free from outside influences. Given the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors, the trial courts must take strong measures to ensure that the balance is never weighed against the accused. . . . Of course, there is nothing that proscribes the press from reporting events that transpire in the courtroom. But where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue the case until the threat abates, or transfer it to **another county not so permeated with publicity**. . . . If publicity during the proceedings threatens the fairness of the trial, a new trial should be ordered. But we must remember that reversals

are but palliatives; the cure lies in those remedial measures that will prevent the prejudice at its inception. The courts must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences. Neither prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function. Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation, but is highly censurable and worthy of disciplinary measures.

*Sheppard*, 384 U.S. at 362-363 (Emphasis added).


The United States Supreme Court's reasoning in *Sheppard* regarding the pervasiveness of modern communication and the increasing prevalence of unfair and prejudicial news comment on pending criminal trials is as true today as it was in 1966. And the high court's recognition of the collaboration between counsel and the media affecting the fairness of a criminal trial has truly become prophetic. In this case, the Defense and the media have forged a close collaboration in which the Defense provides information to various media outlets, and these media outlets then use that the information to generate sensationalized stories for public consumption. The media benefits by having a constant source for new stories while the Defense benefits by having an effective means to influence the pool of potential jurors, which detrimentally affects the fairness of the trial. The result of this collaboration has been publicity that is so pervasive and prejudicial that it has utterly corrupted the atmosphere surrounding this case and has affected the pool of potential jurors to such an extent that any attempt to seat a third jury in Warren County will be futile. And, since the media attention in this case has only intensified, the only remedy is for

this Court to transfer this case to another county "not so permeated with publicity."

In addition, the Defense has publicly attacked the credibility of the State's witnesses and publicly disseminated information that was both irrelevant and inadmissible. Moreover, one of the Defense's witnesses has publicly attacked the criticized the State's case, has publicly attacked the credibility of the State's witnesses and has seemingly tried to influence potential jurors. These activities, in and of themselves, have irreparably harmed the jury selection process that any attempt to seat an impartial jury in Warren County will be futile.


Consequently, for the reasons set forth above, and in the attached Affidavits, the State respectfully requests this Court for a change of venue.

Respectfully Submitted,

  
RACHEL A. HUTZEL, #0055757  
Prosecuting Attorney,  
Warren County, Ohio  
500 Justice Drive  
Lebanon, Ohio 45036  
(513) 695-1325

**Certificate of Service**

I, hereby certify that a copy of the foregoing was mailed by Electronic Transmission & Ordinary mail to Ravert J. Clark, Hal Arenstein & Lindsey Guitierrez, Attorneys at Law, 114 E. 8th Street, Cincinnati, Ohio 45202 on this 6 day of October, 2010.

  
RACHEL A. HUTZEL, #0055757  
Prosecuting Attorney,  
Warren County, Ohio

STATE OF OHIO, WARREN COUNTY  
COMMON PLEAS COURT

STATE OF OHIO,  
Plaintiff,  
vs.  
RYAN WIDMER,  
Defendant.

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CASE NO. 08CR25254  
JUDGE BRONSON  
AFFIDAVIT

Comes now, Rachel A. Hutzal, being duly sworn, who says as follows:

1. I am the elected Prosecuting Attorney for Warren County, Ohio;
2. I am an attorney at law, licensed to practice in the State of Ohio since 1991;
3. I have actively worked in criminal prosecution since 1993, and have been the Warren County Prosecutor since 2003;
4. As the Warren County Prosecutor, I am responsible for the prosecution of *State of Ohio vs. Ryan Widmer*, Warren County Case No. 08CR25254, who, in August 2008, was indicted for Aggravated Murder;
5. Since the death of Sarah Steward Widmer, which occurred on August 11, 2008 in Hamilton Township, Warren County, Ohio, there has been extensive media coverage of this case;



case. The broadcast included extensive discussions with Ryan Widmer's mother, close friends and Attorney Charles Rittgers, who represented the Defendant. During the *Dateline* presentation, a local talk radio host proclaimed "There has never been a case where hundreds of Americans come out of their homes carrying candle lights to listen to prayers about a condemned, convicted killer. It's never happened before." *Dateline* also filmed the second trial, presumably with the purpose to broadcast future information about the case.

12. In addition to newspaper, television and radio coverage of the case, there has been extensive coverage of the case on the internet. Most of the TV, radio and newspapers that covered the case also maintain online editions which extensively reported on the case, often inviting comments from online viewers. One TV station had a "blogger" who covered both trials, providing nearly real time coverage of the proceedings, while inviting comments from online viewers. Apparently, supporters of the Defendant have established their own website, which has repeatedly attacked the prosecution;

13. In my nearly 20 years of prosecutorial experience in Warren County, I have not witnessed any case with such extensive and pervasive media coverage. Every aspect of the case and every witness has been the subject of extensive scrutiny, commentary and speculation;

14. Due to this continual and pervasive publicity, jury selection during the second trial was far more difficult than during the first trial. Although the prosecution exercised all of its peremptory challenges during the second trial, it could have used more. During voir dire, many jurors admitted to having preconceived opinions that they could not set aside. Other jurors admitted to

6. Attached hereto are copies of over 220 newspaper articles, mostly appearing in The Cincinnati Enquirer, The Middletown Journal or The Western Star, as well as other papers. These articles are not submitted for the truthfulness of the statements contained therein, but to demonstrate how pervasive media coverage of this trial has been. The attached articles are a sampling of written coverage concerning this case and by no means all inclusive;

7. The Cincinnati Enquirer and The Middletown Journal are daily newspapers which circulate widely in Warren County. The Western Star is a weekly newspaper which circulates widely in Warren County;

8. Whether the Court believes these articles as pro-defense or pro-prosecution, they demonstrate how media coverage has saturated the pool of potential jurors. Further, whether the Court believes these articles are accurate or inaccurate, biased or impartial, they clearly and manifestly demonstrate how pervasive media coverage has been and why any jury pool in this area would be tainted;

9. The articles attached are by no means all of the newspaper articles written about this case. Other newspapers have covered the case or reprinted articles which appeared in local papers;

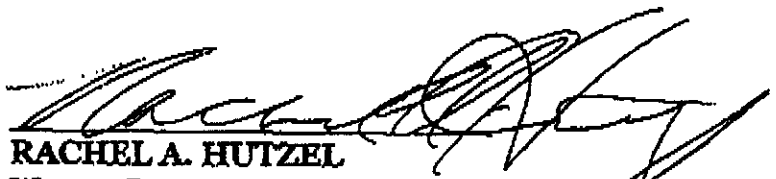
10. In addition to newspaper coverage, the case has been extensively covered by all local TV stations covering the Cincinnati-Dayton area. It has been the subject of extensive radio coverage, including talk radio programs on local radio channel.

11. On September 18, 2009, the national news program *Dateline* aired a one hour special, entitled "*The Mystery in the Master Bedroom*" concerning the

having already made a decision, based upon considerable thought, about the Defendant's guilt or innocence but conveniently claimed that they could be "fair" even though they had already made up their minds. Ultimately, we were unable to select a jury that could reach a verdict. From discussions with the members of the second jury, it also appeared that we were unsuccessful in choosing jurors that were unbiased and who remained impartial;

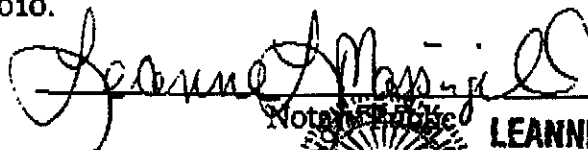
15. In my opinion, based upon my experience, it is unlikely that we will be able to seat a fair and impartial jury drawn from Warren County. It is more likely that we will encounter jurors with preconceptions, who will be unable to proceed fairly, despite their best efforts. Due to the extensive and pervasive pretrial publicity, I feel it would be futile to attempt to seat a third jury in Warren County, Ohio.

**Further affiant sayeth naught.**

  
**RACHEL A. HUTZEL**  
Warren County Prosecutor

State of Ohio, Warren County, SS:

Sworn to and subscribed in my presence on this 4<sup>th</sup> day of October, 2010.





**LEANNE L. MASSINGILL**  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES  
7/14/2015