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Ramsey County, MN

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF RAMSEY | SECOND JUDICIAL DISTRICT
Court File No: 62-CR-16-8110

State of Minnesota,

Plaintiff,

v.

Jeronimo Yanez,

Defendant.

MEMORANDUM IN SUPPORT MOTION FOR CHANGE OF VENUE

BACKGROUND

Within minutes of Mr. Castile's death, his case became a omnipresent spectacle. His passing posted on social media as it happened, the incident soon and then constantly was reported in the Twin Cities news media. Officer Yanez's name would be become part and parcel of the headlines for the months to come, and still will be.

The news stories were, in our reading, slanted against him, written and voiced on the air with nary a mention of due process, the presumption of innocence, the importance of a trial, the jury, or of what the defense will be. Instead, Mr. Castile's death was more often than not, indeed instantly, categorized as one of perverse racial profiling. The articles in the local Pioneer Press and Star

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Tribune were/are headlines and front page articles. The stories on the local news stations (4, 5, 9, and 11) were/are deemed "breaking news" or priority topics. The press has been continual now for over 8 months. The prospective jurors in this particular county will have heard the media's version of the facts repetitively for months.

The headlines alone are revealing, prejudicial:

St. Anthony Police Data Shows Disproportionate Arrests Of Blacks

Cops And Racial Disparity: Is There A Double Standard?

Minnesota Police Have $1.5 Million For Racial Sensitivity Training – But No Training, Yet

Roseville Talks Race And Police, In Wake Of Philando Castile Shooting

St. Paul Officers Stop Black Motorists At Higher Rates Than Whites, Data Show

The comments, opinions, and blogs have been even more outrageous, the readers near akin to our prospective jurors in Ramsey County, if not jurors. Here is a sampling:

> "Let's hope that Yanez takes up residence at the Oak Park Heights Inn soon. Lots of opportunities there to react to things that are wide and black."
>
> "At this point, I could give a hoot about the civil rights of Yanez. He created a mess for the Twin Cities community."
>
> "CORRECT the video shows the TRUTH a cold blooded murder"
>
> "I hope we can hurriedly enact the death penalty so the cop can get an appropriate punishment for this racist murder."

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> "Jeronimo Yanez was not psychologically qualified to be a cop or his training was abysmal. There is culpability among the people who hired him. Either way, the inevitable civil case is going to be a slam dunk. I hope St. Anthony has good insurance. They are going to pay big time."
>
> "I wish I could be on that jury. I would act like a cop be unreasonable, make up stuff that wasn't true and I would make my own rules as I go. I would imagine a story inside my head that would make it look so good it would all go away and then I would make a split second decision to find Yanez guilty of murder."
>
> "I don't envy the defense attorneys, they have a mountain to climb. This senseless killing is an example of very poor police procedures and an overreaction by the officer charged."

These comments are representative. See the attached Affidavit of Amanda J. Montgomery.

Black Lives Matter (BLM) and other groups commenced protesting at the scene, this only hours after the shooting. Within a day the protest moved to the Governor's mansion in St. Paul, where Governor Mark Dayton gave a statement to media outside of his residence, on July 7, 2016. Without reading a report, talking to an investigator, or listening to Officer Yanez's own version of what happened, Governor Dayton announced the Castile shooting was race-based; he did not personally think the incident would have happened had the driver been white.

The Governor's quotes:

> "Shocked and horrified by what occurred last night, a horrible horrible tragedy, a senseless tragedy"

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He reached out to President Obama's chief of staff, and the President "knew of the situation, he was shocked and concerned as well"

"I agree this kind of behavior is unacceptable"

"Justice will be served in Minnesota"

"Shock and horror by what transpired last night"

"Nobody should be shot and killed in Minnesota for a traffic, a tail light being out of function"

"Nobody should be shot and killed while they are seated still in their car without a very very difference kind of response"

African American individuals who have been pulled over and singled out and "treated very differently because of their race"

"Would this have happened if the driver and passenger were white? I don't think it would have"

"This kind of racism exists"

"Deeply deeply offended that this would occur in Minnesota"

"Totally unacceptable it is by all of the values and standards that I hold dear"

"Told [D.R.] how extraordinary her poise and presence was to make that recording in the way she responded to police"

These well publicized comments, coming now from our highest elected official, reflect a common pre-judgement of the facts and, needless to say, are highly prejudicial against Yanez.

The BLM protests continued daily, at one point shutting down Interstate 94 and other widely used roads in St. Paul. On July 9th and 10th violence broke out

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between protesters and police in which over one hundred people were arrested. Further protests continued in front of the governor's residence all month long. Demonstrations spread to Minneapolis where more people were arrested for their involvement.

One of the prominent BLM members made these typical comments: "Philando Castile should be alive today, I don't know what else to say," … "He should be alive today. He is not alive because a police officer murdered him in cold blood."

Other government officials have chimed in. Notably, sadly, Representative Keith Ellison, Democrat of Minnesota, whose district is about two miles from the scene, told CNN that the shooting was not an isolated incident. "There is a systematic targeting of African Americans and a systematic lack of accountability when police use excessive force." Washingtonpost.com July 7, 2017.

On November 16, 2016, Officer Yanez was charged. In the resulting press conference, John Choi, Ramsey County Attorney, stated to the media, "I would submit that no reasonable officer knowing, seeing, and hearing what Officer Yanez did at the time would have used deadly force under these circumstances," a prejudicial comment that suggests no trial will be is necessary, the demand to even see a jury unwarranted.

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By way of contrast, the media has portrayed Castile as an obedient African American male who has been racially profiled his entire life, having been stopped over 50 times in the past for minor traffic violations. The media also mentions the lack of care that was offered to Castile the night he died, and the harsh treatment of his passenger, D.R., whose video commentary offers information that is demonstrably false. Mr. Castile, the facts will show, reached for his loaded gun, was told not to, reached, was told not to, reached.

ARGUMENT

The media coverage and protests have never suggested an iota of fault in Mr. Castile's conduct. That one-sidedness is "potentially prejudicial." Rule 25.03, Subd. 3. When viewing the coverage as whole, it's too easy for a potential juror to believe Officer Yanez arrived at, and then stepped over, the criminal fault line.

We recognize the statutory preference that this case be tried "in the county where the offense was committed." Minn. Stat. 627.01. But the statute offers an exception where, as here, if there has been "potential publicity" harmful to the defendant. And if so, Rule 24.03, holds that a "case may be transferred"

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

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Rule 25.02 sets one "method" of proof" in support of our motion:

> (a) Testimony, affidavits, or written statements signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, from individuals in the community;

Whether a change of venue should be granted for reasons of pretrial publicity is a matter over which the trial court has wide discretion. See, e.g., State v. Thompson, 123 N.W.2d 378, 380 (1963). "Before it can be concluded that the trial court has abused this discretion, it must be shown that a real possibility exists that the jury will not render an unprejudiced or unbiased verdict." State v. Hogan, 212 N.W.2d 664, 669 (1973). Change of venue to a less volatile location is a favorable alternative to press restraint. Minn. R. Crim. P. 25.02; Bangert v. State, 282 NW.2d 540 (Minn. 1979).

Whenever it is determined that the dissemination of potentially prejudicial material creates a reasonable likelihood that in the absence of such relief, a fair trial cannot be had. State v. Salas, 306 N.W.2d 832, 835 (Minn. 1981). A showing of actual prejudice is not be required, however. Id.; Rule 25.02, Subd. 3. Massive adverse publicity may, as here, create a presumption of prejudice. Sheppard v. Maxwell, 384 U.S. 333, 344-350 (1966).

Had Officer Yanez's publicity faded, our request would have less persuasive force. The Minnesota Supreme Court has recognized the lapse of time as a factor in evaluating the prejudicial effect of pretrial publicity. State v. Fratzke, 354

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N.W.2d 402, 407 (Minn. 1984); see also State v. Hogan, 212 N.W.2d 664, 669 (1973) (3-month interval); State v. Swain, 269 N.W.2d 707, 720 (Minn.1978) (6-month interval). But there has been diminution, the coverage consistent from July 2016 to present. That constancy alone supports a venue change. Sheppard, 384 U.S. at 338-42.

The articles have been published sometimes daily since July; at times there are multiple articles a day. The articles uniformly mention Officer Yanez's name. However, the media does not have all of the relevant and pertinent facts in order to give the readers a full and accurate picture what actually happened. Indeed, some of the articles include false "facts" prejudicial to Yanez. The adverse publicity has in turn portrayed Mr. Castile in a false light, offering racial profiling and Officer's Yanez's overwhelming guilt as attractive predicates, masking Mr. Castile's own fault. The plethora of articles concerning the protests, insufficient police training, and memorials contribute to the animus.

The damaging opinions of public officials, particularly the Governor's live video the day after the incident, have likewise suggested overwhelming guilt. In Thompson, the Supreme Court ordered change of venue because news reports quoted officials as saying, inter alia, that Mr. Thompson, a prominent lawyer, could have been arrested weeks earlier, but police chose to wait until case was sufficiently concrete to foreclose any "possible chance of acquittal." 123 N.W.2d

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at 381. Governor Dayton announced much the same message: that surely Officer Yanez should be found guilty, that he surely should be arrested, and that had Mr. Castile been white, he surely would not have been shot.

After seeing the initial news coverage, our own Governor became biased. The local jurors, who have read the ongoing deluge, will reach a similar disposition. We live in a big state. Venue should be removed from where the Governor lives, where the BLM protests have been frequent, away from the prominent media outlets, away, too, from I94 which has been shutdown, from Mr Castile's personal memorial near where the shots were fired. We suggest Duluth, Hastings, St. Cloud, or Brainerd

March 14, 2017

Respectfully Submitted,

/s/ Earl Gray

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