

STATE OF WISCONSIN

CIRCUIT COURT

WAUKESHA COUNTY

STATE OF WISCONSIN,
Plaintiff,

v.

CASE NO: 21-CF-1848

DARRELL E. BROOKS,
Defendant.

MEMORANDUM IN SUPPORT OF MOTION TO CHANGE VENUE

Defendants in criminal cases have a fundamental right to a fair trial before an impartial jury. The right to a fair and impartial jury trial stems from both the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment of the United States Constitution. *Groppi v. Wisconsin*, 400 U.S. 505, 509 (1971).

This right is also guaranteed by the Wisconsin Constitution, art. 1, §7. Wis. Stat. §971.22(1) provides that criminal defendants may “move for a change of the place of trial on the ground that an impartial trial cannot be had in the county.”

When reviewing a motion to change venue, the trial court’s decision is discretionary. *Tucker v. State*, 56 Wis. 2d 728, 733, 202 N.W.2d 897 (1973). However, if the evidence presented to the court rises “to a reasonable likelihood that a fair trial cannot be had, it is an abuse of discretion to deny a motion for change of venue.” *McKissick v. State*, 49 Wis. 2d 537, 545, 182 N.W.2d 282 (1971). Additionally, “any doubt in the mind of the trial court should be resolved in favor of the defendant . . .” *Id.*

Caselaw addressing change of venue focuses on an analysis of adverse pretrial publicity

and its likely effects on the area from which the jury panel would be drawn, including:¹ (1) the inflammatory nature of the publicity; (2) the timing and specificity of the publicity; (3) the state's participation in the adverse publicity; and (4) the severity of the offense charged. *McKissick*, 49 Wis. 2d at 545-46. While publicity is certainly relevant to determining this issue in the present case, additional factors also demonstrate that, in this case and in Waukesha county, the passions and prejudice negatively affecting the Defendant's constitutional right to a fair trial are so great that a change in venue is necessary to ensure a fair trial.

A defendant is not required to establish every factor listed in the caselaw, only that there is a "reasonable likelihood" that there cannot be a fair trial because of adverse community prejudice. *McKissick*, 49 Wis.2d at 545. Any doubt should be resolved in favor of granting a change of venue. *Id.*

FACTS

On Sunday, November 21, 2021, Waukesha held its annual Christmas parade. As stated in the Criminal Complaint and as testified to at the Preliminary Hearing, there were approximately 100 entries in the parade, with hundreds of participants, and thousands of spectators. It is alleged that Darrell Brooks, the above-named Defendant, drove his car through that parade, intentionally killing six people and recklessly injuring and endangering the lives of 61 others.

The victims of this tragedy are a diverse group, and include members and relatives of the Dancing Grannies, an 8-year old boy marching with the Waukesha Blazers youth baseball team,

¹ Several factors have not been listed here, as they are only relevant in reviewing a ruling on this type of motion during an appeal. The full list of factors courts have considered are as follows: "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. In addition, courts have also considered the participation of the state in the adverse publicity as relevant, as well as the severity of the offense charged and the nature of the verdict returned." *McKissick*, 49 Wis.2d at 545-46.

the Waukesha South High School marching band, the RE/MAX Services First Group, the Burris Logistics Group, the Waukesha Xtreme Dance team, members of and a priest from the Catholic Community of Waukesha, and many spectators of the parade. Participants in the parade included 67 businesses and community organizations, such as the Waukesha Police Department, Waukesha Fire Department, the Mayor of Waukesha, the County Executive, the Waukesha Democratic and Republican Parties, Catholic Community of Waukesha, Catholic Memorial High School, Carroll University, Christian Education Leadership Academy (CELA), Grace Lutheran Church, and the Waukesha Freeman. (Ex.1).

In the months following the parade, the Waukesha community rallied to provide support to the victims, including direct financial support, and to cope with the shared trauma through prayer vigils and blue light/broken heart displays of solidarity with the victims.

The Waukesha School District closed all schools on November 22 and 23, and gathered trauma counselors, who were made available to students, staff, and community members. The school district is made up of 28 pre-K through 12 schools, with 12,344 students and 829 teachers in the 2021-2022 school year. (Ex. 2). On November 30, 2021, the first day back at school after the closure and Thanksgiving break, it was reported that "more than 500 students received counseling." (Ex. 3).

The mantra "Waukesha Strong" and its accompanying broken heart drawing, created by a local Waukesha resident as a way to show support for the victims of the parade, is now ubiquitous in Waukesha County. (Ex. 4). The image is displayed across social media platforms, in storefronts and business displays, on residential and business yards, and on pieces of clothing. The hashtag "#Waukeshastrong" went viral on social media platforms and has had over 245,200 views on TikTok, and was posted over 7,000 times on Facebook and over 3,000 times on Instagram. (Ex. 5,

6, 7). Those numbers do not include other social media platforms or variations of the hashtag with misspellings or added icons, so the true numbers are even higher than that.

The "United for Waukesha Community Fund" was created to support the needs of the families affected by the parade. This Fund, established through the United Way and Waukesha Community Foundation, raised over \$3,000,000 in donations as of December 3, 2021, through 13,700 unique donations and reached \$5,600,000 as of January 7, 2022. (Ex. 8, 9). The Fund's committee members included the Waukesha County Executive, the Mayor of Waukesha, the Director of the Waukesha District Attorney's Victim/Witness Assistance Program, and the Superintendent of Waukesha Schools. In addition to the millions raised by the Fund, as of January 13, 2022, approximately 41,000 people had donated to various GoFundMe fundraisers, which were created to assist victims of the Waukesha parade incident. (Ex. 10, 11).

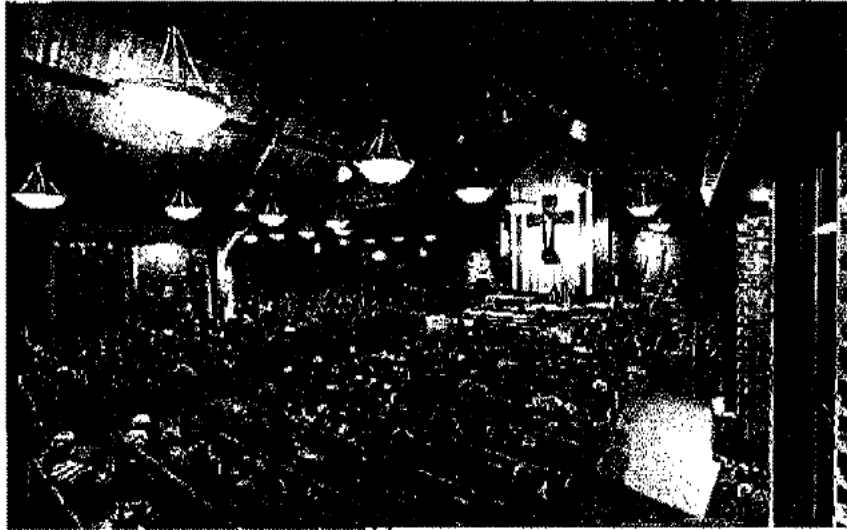
Blue lightbulbs were distributed for community members to install and display outside their homes to honor and show support for the Waukesha parade victims. Waukesha natives Joe and Megan Schobert, as well as Batteries Plus, Home Depot, TNT, and Ace Hardware, sent at least 10,000 blue lightbulbs to the City of Waukesha for distribution. Seven downtown businesses distributed the bulbs free of charge. Additionally, every member of the city council was given a supply of blue light bulbs to distribute to residents in their neighborhoods. (Ex. 12).

Prayer vigils were held at Humphrey Chapel at Carroll University on November 22 and at Hales Corners Lutheran Church on November 23, 2021. A vigil was held at Cutler Park on November 22, hosted by the Association of Waukesha Congregations, with participation by the Brookfield - Elm Grove Interfaith Network and the Interfaith Conference of Greater Milwaukee. Speakers at the vigils included Waukesha Mayor Shawn Reilly, Police Chief Dan Thompson, Fire Chief Steve Howard, a representative from the Waukesha School District, and many religious

leaders:



A prayer vigil was held at St. William Catholic Church on November 22 and services were
livestreamed on Facebook:



As can be seen from these photographs of the prayer vigils, large crowds attended. (Ex. 13, 14, 15, 16). It is unknown exactly how many community members actually attended, or who exactly attended, other than that there could have been many people from the potential jury pool for this case.

Promptly, several benefits to support the victims were held: Waukesha County Sheriff's Department sold plush K-9 dogs, with 100% of the profits donated to the United for Waukesha Community Fund. An event was planned for November 27 at the Harley-Davidson dealership in Oconomowoc. Avalon Graphics sold yard signs with the Waukesha broken heart logo, with 100% of sales benefiting the Community Fund. Culver's of Waukesha donated 50% of sales on November 24 to victims and families. Coast Car Washes donated all sales from Waukesha, Pewaukee, and West Allis locations on November 24 to families of victims. Bosco's Social Club donated 50% of proceeds between Nov. 26-28. The Coop donated all proceeds on Nov. 26. Waukesha Masonic Lodge hosted a pancake breakfast on December 4. The Saloon on Calhoun and Waukesha Skateland hosted benefits on December 14, and 15, respectively. (Ex. 17).

Social media has played a significant role in organizing the community to provide direct support for victims of the parade. As of February 8, 2022, the "Waukesha Strong Community"

Facebook group had 5,600 members. The Facebook group is one of the places where benefits to support the parade victims are posted. (Ex. 18). Listed below are events that were hosted or are scheduled to be hosted to benefit and support the parade victims:

1. Waukesha Strong Raffle Fundraiser, 12/3/21
2. Waukesha Freemasons Pancake Breakfast (Waukesha Masonic Lodge #37), 12/4/21
3. Sotarian Soft Waukesha Fundraiser (Sotarian Soft Skin Salvation), 12/10/21
4. Blue Christmas, 12/11/21
5. Bourbon Basket Raffle (Curly's waterfront Sports Bar & Grill), 12/13/21
6. Culver's Night benefitting Waukesha South Blackshirt Football Team, 12/14/21
7. #WaukeshaStrong Benefit at Waukesha Skateland, 12/15/21
8. Waukesha Rally for Justice! (Justice 4 Waukesha), 12/16/21
9. Manis For Mackenzie, 12/17/21
10. Weekend for Waukesha, 12/17/21
11. Weekend4Waukesha (Club 400 Bar & Grill), 12/17/21

12. Lantern Stroll of Light & Hope, 12/17/21
13. Christmas Parade Benefit featuring Nerve Chain, 12/17/21
14. Shady's Customer Appreciation Christmas Party, 12/18/21
15. Comfort and Joy Ornament Workshop (Broken Mirror Healing), 12/19/21

16. Waukesha Family Victim's Benefit, 12/19/21

17. Help Tucker Sparks Meet Jonathan Lucroy, 12/19/21
18. Comfort and Joy Ornament Project, 12/21/21
19. Cookies for a Cause (LindenGrove Communities), 12/22/21
20. Healing Hearts Grief Support (Waukesha Church of Christ), 1/13/22

21. A Night for Hope & Healing (Arise Milwaukee), 1/15/22

22. Wellness for Waukesha, 1/20/22

23. Play Party Book Launch, Winter Farmers' Market, 1/22/22

24. Jamboree Bags Tournament (Waukesha Elks Lodge 400), 1/22/22

25. The Wales-Genesee Lions Sportsman's Benefit, 2/5/22

26. First Responder Chili Appreciation Day, 2/5/22

27. Brew City Wrestling Presents "A Night for Tyler," 4/23/22

28. Rock n Bowl, 2/26-27/22

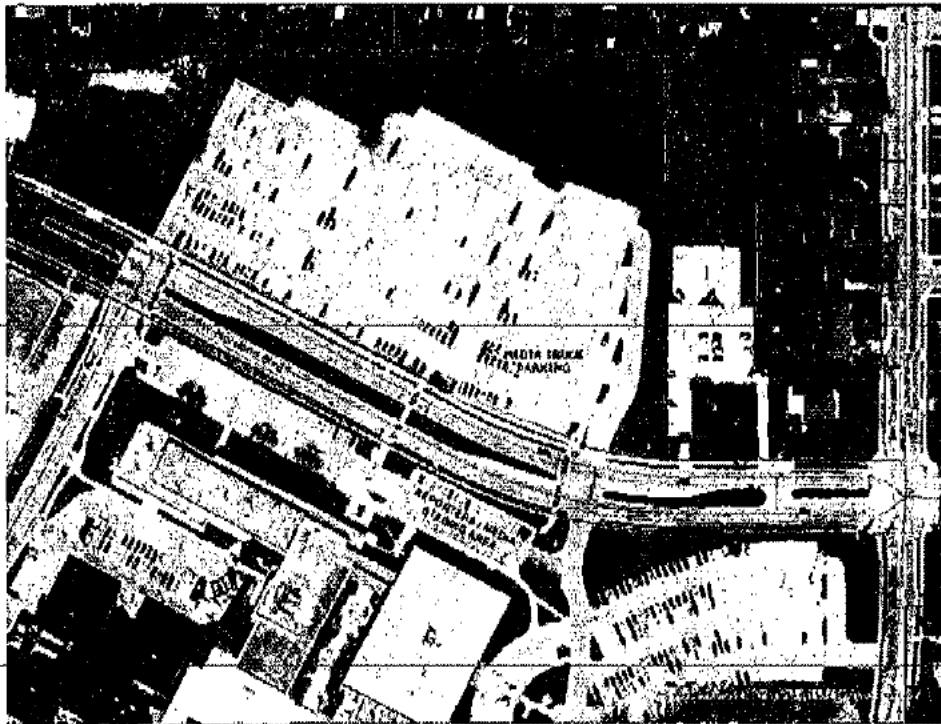
29. Valentine's Event at The Grainary, 2/11-13/22

Immediately following the incident, a temporary memorial sprung up in Veterans Park in downtown Waukesha. It was displayed for more than a month to honor the victims of the parade tragedy. At the end of December 2021, it was disassembled and relocated to the Waukesha Historical Society. Mayor Shawn Reilly reflected that "the memorial has provided a place for the community to grieve and to come together to support those who lost loved ones and those who will be dealing with the physical and emotional trauma from the events of November 21 for many years to come." (Ex. 19).

At the same time all of this support was pouring out from the community for the victims, Darrell Brooks, the Defendant, was named as the accused. The Waukesha County Circuit Courts website, on its cover page, put a link in bolded red print for the public to access the Criminal Complaint naming Darrell Brooks as the person responsible for the parade incident. This feature, with a link to a particular defendant's criminal case and the charging document, is unique to Darrell Brooks. Also on the website's cover page was a link for the court's livestream of both the initial appearance and then the preliminary hearing. The Waukesha court system's handling of the

media's interest in the case reflects the intense public interest. There remains a section on the cover page of the County Courts' website in red titled "Information regarding Darrell E. Brooks, Jr." (Ex. 20). The Court has issued a General Order in the case, publicly posted, addressing filming, seating, parking, and courtroom attire and signage, warning that "spectators will not be permitted to wear clothing or colors expressing sympathy or support for either the defendant or the victims in the case." (Ex. 35).

On November 23, 2021, in advance of Mr. Brooks' initial appearance, two areas of parking adjacent to the Courthouse were cordoned off for media trucks and reporters, as seen in the photo below. (Ex. 21)



As anticipated, the news coverage identifying Darrell Brooks as the person responsible has been extensive and pervasive. All news media in the local area have extensively covered the allegations against Mr. Brooks. In addition to regularly picturing him chained, shackled, and in a green jail smock, there has been intensive media coverage discussing his prior charges, risk

assessment, his bail, his incarceration in jail, and other pending allegations against him. Local coverage has included the following:

A widely circulated photo of Mr. Brooks (Ex. 22):



Numerous articles contained details and commented on the incident, including:

- "Darrell Brooks is the suspect in the Waukesha Christmas Parade incident. The Milwaukee man has been charged with crimes 10 times since 1999," *Milwaukee Journal Sentinel*, 11/22/2021. (Ex. 23).
- "Darrell Brooks Jr., the accused driver in the Waukesha Christmas Parade massacre, charged with 5 counts of first-degree intentional homicide" *Milwaukee Journal Sentinel*, 11/23/2021. (Ex. 24).
- "The suspect in the Waukesha Parade attack had a history of domestic violence. That's not surprising, experts say." *Milwaukee Journal Sentinel*, 11/26/2021. (Ex. 25).
"The 39-year-old Milwaukee man charged in the Waukesha Christmas Parade attack, which left six people dead and more than 60 injured, had a history of domestic violence and violence against women."

- "Woman said Darrell Brooks 'tried to kill her' when he ran over her in early November in Milwaukee." *Milwaukee Journal Sentinel*, 1/20/2022. (Ex. 26).

"The woman who Darrell Brooks Jr. is charged with punching in the face and then running over with an SUV at a Milwaukee gas station in early November told police she thought Brooks was trying to kill her.

It followed a series of other violent incidents involving Brooks against her, according to police reports.

After the gas station incident, officers found Brooks outside his mother's home and he ran from them before he was arrested, according to the reports. The reports also indicate Brooks, 39, suffers from mental health issues for which he is supposed to be taking medication."

- "Darrell Brooks Jr. should have been in jail the night of Waukesha's parade. Chisholm and the court need to explain why he was out on bail." *Milwaukee Journal Sentinel*, 12/1/2020. (Ex. 27).

"If Brooks had been kept in jail to protect the community from a dangerous career criminal, the carnage in Waukesha might have been avoided."

- "A pretrial service agency labeled Darrell Brooks a high risk for release weeks before the Waukesha parade tragedy" *Milwaukee Journal Sentinel*, 12/2/2021. (Ex. 29).

- "A mistake," Chisholm, chief judge explain low bail given to Waukesha parade suspect in earlier case. *Milwaukee Journal Sentinel*, 1/20/2022. (Ex. 30).

"I believe that that was inappropriately low given the context of what we knew about the defendant," he said."

- "'That's what being in this community means:' Waukesha Catholics come together in mourning after tragedy" *Milwaukee Journal Sentinel*, 11/23/2021. (Ex. 31).

In this article, the news left out any qualifiers like "accused of" or "alleged" and instead led with: "Just 24 hours after Darrell Brooks plowed his red SUV into the Waukesha Christmas Parade, the pews of St. William's Catholic Church in Waukesha were overflowing."

The Waukesha Freeman's Facebook page, which has over 28,000 followers, has similarly

featured regular coverage of the charges and allows for community commentary. (Ex. 32, 33). An example, on November 23, 2021, it reported "Brooks Jr. charged with 5 homicide counts in deadly Waukesha crash," and posted his jail booking photo. Public comments include:

- "There should be no bail set at all. He doesn't deserve to walk among normal human beings."

- "This is the scariest picture I've ever seen."
- "In my opinion, this was both an act of domestic terrorism and a hate crime. The death penalty, rapidly executed, should be minimum."

Illustrating the profound effect on the community, the First Lady of the United States, Jill Biden, made a special trip to Waukesha to meet with groups of victims and offer national support. There was extensive local media coverage of Dr. Biden's visit, and her remarks were widely shared in the media:

And though we have been changed by this tragedy, we are not diminished. Instead, we grow -- together -- to hold both our sorrow and joy. The grannies keep dancing.

The high school band keeps marching. And Waukesha is lit up in blue.

Remarks as Prepared for Delivery by First Lady Jill Biden at the City of Waukesha City Hall, December 15, 2021. (Ex. 34).

This incident, the charges filed, court appearances, and all happenings related to Mr. Brooks have received significant attention, usually accompanied with his jail booking photo or a photo of him shackled and wearing a green jail smock. His bail, his criminal history, his risk assessments, and allegations of domestic violence have been repeatedly and widely disseminated. On November 23, 2021, the Milwaukee Journal Sentinel's article about the effect of the incident on the Catholic Community in Waukesha led with "Just 24 hours after Darrell Brooks plowed his red SUV into the Waukesha Christmas Parade, the pews of St. William's Catholic Church in Waukesha were overflowing." (Ex. 31). Only two days after the parade incident, the news was reporting Mr. Brooks' guilt as a fact.

ARGUMENT

Mr. Brooks is entitled to trial by an impartial jury. See U.S. Const. amend. VI; Wis. Const. art.I §7. If a juror is not indifferent in the case, the juror shall be excused. Any juror who has a financial interest in the case shall be disqualified. Wis. Stat. §805.08(1). Even the appearance of bias should be avoided. *State v. Louis*, 156 Wis. 2d 470, 478, 457 N.W.2d 484, 488 (1990). As mentioned above, when considering the effect of pretrial publicity on whether to change venue, courts are to consider: (1) the inflammatory nature of the publicity; (2) the timing and specificity of the publicity; (3) the state's participation in the adverse publicity; and (4) the severity of the offense charged, in addition to several other factors. *McKissick*, 49 Wis.2d at 545-46.

The intense publicity surrounding this tragedy cannot be viewed in isolation. That publicity, and the prejudicial information courts attempt to keep from a jury when deciding a case, must be viewed through the lens that the community exposed to that news has itself been profoundly affected by this incident.

There are 67 victims identified in the criminal complaint. At least 67 businesses and other community organizations participated in the parade. Thousands of spectators in the Waukesha community personally witnessed the parade incident for which Mr. Brooks is charged. The Waukesha community has financially contributed millions of dollars to support the victims in the case for which Mr. Brooks is charged, through personal and individual financial contributions and by posting about and attending local benefits. The community has shown solidarity with the victims by displaying their blue light bulbs and by posting "Waukesha Strong" signage in their yards, on their cars, wearing it on their clothing, and posting on their social media. Recognizing the special and significant impact on the community, the impromptu memorial to the victims was relocated to Waukesha's Historical Society.

The diverse group of victims indicates many cross-sections of the community were both directly and indirectly affected by this case. For example, over 12,000 students and their parents were all directly affected when school was cancelled for two days following the incident. Recognizing the widespread trauma experienced in the community, the schools made counselors available. A church's parishioners saw its priest injured in the parade. Discussing the large congregation, its participation in the parade, and the aftermath, the injured faith leader commented, "We came together, but we'd never thought we'd come together like this, and it wasn't just us. It was Waukesha." (Ex. 36).

An impartial trial cannot be held in Waukesha County. The effects of this incident on the Waukesha Community, and its collective response, are so profound and pervasive that venue must be changed to ensure that Darrell Brooks receives an impartial jury.

CONCLUSION

The effects of the parade incident on the Waukesha community have been profound and pervasive, evidenced by the sheer number of people directly affected by the parade incident, those listed as direct victims, first-hand witnesses, their families and friends, and all those who have directly contributed, financially and otherwise, to individually support the victims and as part of the "Waukesha Strong" community. This powerful and passionate community response, in concert with the intense media coverage of the tragedy and Mr. Brooks, require a change of venue in this case to ensure a fair trial. Additionally, due to the intense media coverage anticipated for any upcoming trial and the anticipated length of trial, it is imperative that jurors be sequestered to prevent access to media reports covering the trial.

Dated at Waukesha, Wisconsin, this 10th day of February, 2022.

Respectfully Submitted,

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