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DISTRICT COURT
DONA ANA COUNTY, NM

STATE OF NEW MEXICO
IN THE THIRD JUDICIAL DISTRICT
COUNTY OF DONA ANA

STATE OF NEW MEXICO,

Plaintiff,

v.

No. D-307-CR-201100560

Judge Leslie C. Smith

MICHAEL MURPHY,

Defendant.

STATE'S MOTION FOR CHANGE OF VENUE

COMES NOW the State of New Mexico by and through its Special Prosecutor, District Attorney Matthew Chandler, and respectfully moves this Court for a change of venue pursuant to Section 38-3-3(B)(3)&(4), NMSA 1978. As grounds the State provides:

1. The State presents its affidavit in accordance with the requirements of Section 38-3-3. See Attachment 1.
2. This case has received a great deal of pre-indictment and post-indictment scrutiny in the media and in particular, local media. Multiple news accounts (including the publishing of various versions the Defendant's picture including his booking photograph) have been published in the Las Cruces Sun-News, the Albuquerque Journal, local television news stations (live and on internet), and Heath Haussamen's website, Nmpolitics.net. Internet sites invite commentary, and these various articles have not gone without eliciting extensive comment - both supportive and critical. At least one editorial column, written by a representative

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of the Dona Ana County Democratic Party has been published in the Las Cruces Sun-News.

3. The Defendant is an elected public official in Dona Ana County, and has served as a District Court judge since 2006. Prior to the 2006 gubernatorial appointment and his subsequent election to the Bench, the Defendant was involved in the practice of law in Las Cruces (Dona Ana County), New Mexico. In these capacities, the Defendant has interacted extensively in the community as an advocate, political figure, and a judge (including acting in the capacity of fact-finder).
4. The State's witness list includes a number of persons well-known in Dona Ana County, including almost every judge in the Third Judicial District and Edgar Lopez, a very prominent figure in Dona Ana County. It will be impossible, if not infeasible, to select an impartial panel because of the personal, business, and personal interconnections of the witnesses and their associates and constituents in this small county.
5. The Defendant has asserted his innocence in the press. That is expected, and is not a factor. However, his attorney has issued press statements going beyond mere protestations of innocence. For example, on August 11, 2011, Defense Counsel provided a statement to the Las Cruces Sun-News to the effect that "this conduct [prosecutor's filing of new charge] gives prosecutors a black eye", and accused the State of "publically humiliating an innocent man". **See Attachment 2**, "Attorney seeks dismissal of newest Murphy charge", Las Cruces Sun-News, August 11, 2011.

6. Further, the Defendant has chosen to try his case in the media, critiquing the judicial process and provided the media unendorsed copies of his post-indictment motions for publication. **See Attachment 3**, “Murphy seeks dismissal of charges”, Nmpolitics.net, July 6, 2011.
7. The Defendant has also released a press statement on July 29, 2011 which has the effect of undermining and manipulating public confidence in the judicial system as well as impugning the character of the prosecutor. To wit:

“The only goal of this charge and this warrant is to seek to humiliate through images of incarceration for an apparent political purpose. It has nothing to do with pursuing justice. Not only is the charge unfounded, but the warrant is improper. There is no legitimate reason for seeking the arrest of a district judge who has consistently met all of the court’s requirements for release. The presiding judge, Judge Smith, was not even aware of the warrant and previously denied the prosecutor’s request for a warrant – first for a felony and then for a misdemeanor. Before that Judge Robinson had stated that serving a warrant would be unprofessional and inappropriate. Despite being denied his requests by two district judges the prosecution continued to improperly seek a warrant, this time from a magistrate judge. The prosecution has had the information concerning this charge for many months, yet it did not present it to the grand jury when it had the chance, and now it acts as though there is an emergency when Judge Murphy’s counsel happens to be out of state. This latest gambit is yet another abuse of prosecutorial authority. The defense will address the propriety of this conduct by motions before the court.”

See Nmpolitics.net, July 29, 2011.

8. Section 38-3-3, NMSA 1978, specifically provides that venue can be changed upon motion to another county when a party believes a fair trial cannot be obtained in the county of original venue because of (3) public excitement or local prejudice in the court in regard to the case or the questions involved in the case or (4) of any other cause stated in the affidavit.
9. New Mexico case law provides that a change of venue may be ordered on application of the State over the objection of the defendant where public

excitement and local prejudice would prevent a fair trial. **See, e.g., State v. Archer**, 32 N.M. 319 (1927); **State v. Holloway**, 19 N.M. 528 (1914). **See also Deats v. State**, 80 N.M. 77 (1977).

10. The State, as the moving party, bears the burden of establishing through “**clear and convincing evidence**” that a fair trial in that district is a practical impossibility.” (Emphasis in the original). The State acknowledges that “Potential jurors exposure to pre-trial publicity, by itself, does not require a change of venue and does not raise a presumption of prejudice.” **State v. Lasner**, 2000-NMSC-037 at ¶ 26, citing **State v. House**, 1999-NMSC-014 at ¶ 43.
11. There are two types of analysis that can occur in determining prejudice, actual and presumed. In this case at bar, the proper analysis is “presumed prejudice”. In **State v. Barrera**, 2001-NMSC-014 at ¶ 13, the Court discussed these analyses and quoted from the **House** case, *supra*:

Presumed prejudice, on the other hand, addresses the effect of publicity about a crime upon the entire community where the trial takes place. Under this inquiry, a change of venue should be granted if evidence shows that the community is so saturated with inflammatory publicity about the crime that it must be presumed that the trial proceedings are tainted.

12. It is not necessary to establish that the jury venire is *totally* ignorant of the facts and issues involved in a case or about the subject matter, because with the mass communication available today, this would be a virtually impossible standard to meet. *Id* at ¶ 17.
13. However, with the vast interconnections of the defendant and witnesses with the community at large, the witness’ political significance, and defense counsel’s manipulations, it is clear that pretrial publicity, prejudicial articles, and

commentaries by a random group of community members make it infeasible and uneconomical to call a jury panel in order to voir dire them directly as to their prejudices/preconceived ideas. In the interests of judicial economy, a change of venue can be granted well in advance of the anticipated trial date in this case (October 31, 2011) without causing a delay of the trial and other proceedings.

14. The Court has the option of holding an evidentiary hearing in the matter of change of venue. **See State v. Mantelli**, 2002-NMCA-033. The trial court has broad discretion in rulings disposing of the matter, and appellate courts will not disturb that ruling absent a showing of abuse of discretion. **See State v. Chamberlain**, 112 N.M. 723 (1991).
15. Defendant opposes this Motion.

WHEREFORE the State respectfully requests, upon presentation of its affidavit and motion, that the Court order change of venue in the above-captioned case.

Respectfully Submitted,



MATTHEW CHANDLER
SPECIAL APPOINTED PROSECUTOR
NINTH JUDICIAL DISTRICT ATTORNEY

I hereby certify that a true and correct copy of this pleading was delivered to opposing counsel, Michael Stout, this 17 day of August, 2011.



MATTHEW CHANDLER

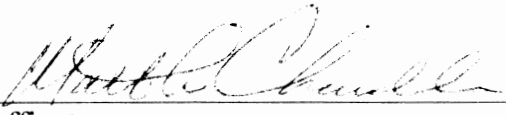
AFFIDAVIT OF MATTHEW CHANDLER, DISTRICT ATTORNEY

COMES NOW the Affiant Matthew Chandler, District Attorney, being over the age of eighteen and competent to provide a sworn statement in the above matter, states the following:

1. I am the Special Prosecutor assigned to the case of State v. Michael Murphy, D-307-CR-201100560.
2. Upon information and belief, and upon review of information and documents available to me, it is my opinion that a fair trial cannot be obtained in Dona Ana County.
3. This case has received a great deal of pre-indictment and post-indictment scrutiny in the media and in particular, local media. Multiple news accounts (including the publishing of various versions the Defendant's picture including his booking photograph) have been published in the Las Cruces Sun-News, the Albuquerque Journal, local television news stations (live and on internet), and Heath Haussamen's website, Nmpolitics.net. Internet sites invite commentary, and these various articles have not gone without eliciting extensive comment – both supportive and critical. At least one editorial column, written by a representative of the Dona Ana County Democratic Party has been published in the Las Cruces Sun-News. In addition, this case has been publically scrutinized, commented and/or referenced in media articles by former Governor of New Mexico Bill Richardson, Governor of New Mexico Susana Martinez, State Representative Joseph Cervantes (Las Cruces), New Mexico Supreme Court Chief Justice Charlie Daniels, former Court of Appeals Judge Rudy Apodaca, Third Judicial District Attorney Amy Orlando, NM State Bar President Jessica A. Perez and others.
4. The Defendant is an elected public official in Dona Ana County, and has served as a District Court judge since 2006. Prior to the 2006 gubernatorial appointment and his subsequent election to the Bench, the Defendant was involved in the practice of law in Las Cruces (Dona Ana County), New Mexico. In these capacities, the Defendant has interacted extensively in the community as an advocate, political figure, and a judge (including acting in the capacity of fact-finder).
5. The State's witness list includes a number of persons well-known in Dona Ana County, including almost every judge in the Third Judicial District and Edgar Lopez, a very prominent figure in Dona Ana County. It will be difficult, if not infeasible, to select an impartial panel because of the personal, business, and personal interconnections of the witnesses and their associates and constituents in this small county.
6. The Defendant has also released a press statement on July 29, 2011, which has the effect of undermining and manipulating public confidence in the judicial system as well as impugning the character of the prosecutor.

7. I have given this statement free of duress, promise, or coercion.

FURTHER AFFIANT SAYETH NOT.



Affiant

STATE OF NEW MEXICO)
IN THE THIRD JUDICIAL DISTRICT)
COUNTY OF DONA ANA)

I, **Matthew Chandler**, state upon oath that the Affidavit and the statements in it are true and correct as far as I know and believe.

Matthew Chandler

Signed & Sworn before me this 17th day of August, 2011 by Matthew Chandler

Joseph Carriga
Notary Public

My Commission expires: 3/07/2013