

Meghan Benson
Michael J. Haase
Office of State Public Defender
Public Defender Division
610 N. Woody
Missoula, MT 59802
Phone: (406) 523-5140
Attorney for Defendant

LYN FRICKER
CLERK OF DISTRICT COURT
FILED BY *M. Arapman*
2020 MAY -1 P 3:57

**MONTANA TWENTIETH JUDICIAL DISTRICT COURT, LAKE COUNTY
BEFORE THE HONORABLE MOLLY OWEN**

STATE OF MONTANA, Plaintiff, v. SUNNY KATHRINNE WHITE, Defendant.	Cause No. DC-23-344 MOTION FOR CHANGE OF VENUE
---	---

COMES NOW, Sunny Katherine White, through her attorneys, moves the Court for an order changing the venue of the trial in this matter to Missoula County or other suitable venue, and for such other relief as the Court deems just.

The grounds for this Motion are Section 46-13-203, MCA, Ms. White's fundamental constitutional right to a trial by a fair and impartial jury under the Sixth and Fourteenth Amendments of the U.S. Constitution, and Article II, Section 24 of the Montana Constitution, the due process clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution, and Article II, Section 17 of the Montana Constitution, and the prohibition against cruel and unusual punishment under the Eighth and Fourteenth Amendments of the U.S. Constitution and the right to human dignity under Article II, § 4 of the Montana Constitution.

In support of this Motion, Ms. White relies on the brief that follows, the pleadings and records in this matter, the media generated by this matter, and any additional arguments or authorities that may be presented to the Court after the filing of this motion and the hearing on this motion.

I. Factual Background

Ms. White is charged with Vehicular Homicide while Under the Influence, or in the alternative, Negligent Homicide, Accidents Involving Another Person or Deceased Person, two counts of Criminal Child Endangerment, and Criminal Possession of Dangerous Drugs, all felony offenses.

In the early morning hours of March 31st, 2023, Tribal Officer T.J. Haynes discovered the body of Mika Westwolf on the shoulder of Highway 93, North of Arlee, Montana, which is in Lake County, Montana. There was debris from a vehicle littering the highway, around Ms. Westwolf's body. There were no other vehicles or persons in the vicinity. In the debris was a side mirror from a vehicle. Officers were able to pull a part number from the side mirror and believed they were looking for a silver, grey, or gold vehicle.

Later that morning, Lake County Deputy Keith Deetz came across a disabled vehicle in a parking lot outside of Polson. The driver, Sunny White, was moving items into another vehicle as hers had overheated and could not continue further. There was obvious front end damage to Ms. White's vehicle. Officers detained and questioned Ms. White, eventually taking her for a blood draw and releasing her. Ms. White was not charged with the above-entitled matter until October 18th, 2023, almost seven (7) months after the alleged accident.

Shortly after Ms. Westwolf's death, the Westwolf family created the Mika Matters movement, and along with it a website, mikamatters.com, and a Facebook page called Mika Matters. The Facebook page has over 1,400 followers. The about section of the Facebook group states that "the #MikaMatters movement aims to bring attention to this HATE CRIME." (See. Exhibit 1). It further states that Ms. White "had lost custody of her kids due to child endangerment charges pending due

to the crime,” that Ms. White has “2 kids with John Sherlock Holmes, 50. 4 year old ‘Aryan,’ and 2 year old ‘Nation,’” that Ms. White is a “suspected White supremacist, who had a mission to come the the [sic] Flathead Rez and kill a Indian.” (See Exhibit 1). There are continual calls for support at all hearings in this matter on the mikamatters.com webpage, encouraging the community to wear red in support. This call to support has led to a heavy police presence, police escorts for Ms. White’s safety, and use of metal detectors at all hearings in this matter. There are also several links to media on the website. (see Exhibit 2).

Furthermore, social media is flush with posts, videos, and articles about the perceived background of this case and perceived notions of who Ms. White is (see Exhibit 3). Each time Ms. White appears in court, there are numerous members of the media present to report on the case itself. There are news segments every time Ms. White appears in court discussing each step of the case. There have been numerous articles, videos, and even podcasts that cover the case, often giving misinformation (See Exhibit 4). There have also been a few walks lead by the Mika Matters movement to bring awareness to the case and the Missing Murdered Indigenous Women (MMIW) Movement. The nature of the media coverages, social media posts, and protests have demonstrated that Ms. White will not receive a fair trial from the Lake County community.

A change of venue should be granted because there are reasonable grounds to believe that the defendant would not receive a fair and impartial trial.

The Sixth and Fourteenth Amendments of the United States Constitution guarantee a criminal defendant the right to a fair trial by an impartial jury. *Duncan v. Louisiana*, 391 U.S. 145, 148-154 (1968). This fundamental right includes the right to a trial by a jury free from outside influences such as prejudicial pretrial publicity. *Sheppard v. Maxwell*, 384 U.S. 333, 362-363 (1966). The Due Process Clause further safeguards a defendant’s Sixth Amendment right to a fair

trial before a panel of impartial, indifferent jurors. *U.S. Const. amend. V and XIV*. Failing to provide an accused individual a fair hearing violates the standards of due process. *Irwin v. Dowd*, 366 U.S. 717, 722 (1961). An individual who is accused has the right to be tried by “a public tribunal free of prejudice, passion, excitement, and tyrannical power.” *Chambers v. Florida*, 309 U.S. 227, 236-237 (1940). If an impartial jury cannot be impaneled, the defendant is entitled to a change of venue. *See Groppi v. Wisconsin*, 400 U.S. 505, 509-511 (1971) (the failure to afford an accused a fair hearing violates even the minimum standards of due process).

A trial court may not be able to seat an impartial jury because of prejudicial pretrial publicity or an inflamed community atmosphere. In such a case, due process requires the trial court to grant a defendant’s motion for change of venue. *Rideau v. Louisiana*, 373 U.S. 723, 726 (1963); *Daniels v. Woodford*, 428 F. 3d 1181, 1210 (9th Cir. 2005).

The Montana Constitution, specifically Article II §§ 17 and 24, protects a defendant’s right to due process and fair trial. *State v. Kingman*, 2011 MT 269, ¶ 18, 362 Mont. 330, 264 P.3d 1104.

Moreover, Montana Code Ann § 46-13-203 provides the following:

- (1) The defendant or the prosecution may move for a change of place of trial on the ground that there exists in the county in which the charge is pending such prejudice that a fair trial cannot be had in the county.
- (2) If the district court determines that there exists in the county in which the prosecution is pending such prejudice that a fair trial cannot be had, the district court shall:
 - (a) transfer the cause to another county in which a fair trial may be had;
 - (b) direct that a jury be selected in any county where a fair trial may be had and then returned to the county where the prosecution is pending to try the case; or
 - (c) take any other action designed to ensure that a fair trial may be had.

A defendant can establish that jurors drawn from the community cannot judge his case impartially and unswayed by outside influence, thus necessitating a change of venue, by two methods; he can demonstrate that the jury pool is actually prejudiced against him, or he can

demonstrate that juror prejudice should be presumed from prejudice in the community and pretrial publicity. *Kingman*, ¶ 20; see also *Skilling v. United States*, U.S. 130 S. Ct. 2896, 2913 (2010) (analyzing defendant's claims of presumed and actual prejudice). The rationale underlying presumed prejudice is that "we simply cannot rely on jurors' claims that they can be impartial," and therefore declare the publicity to be "prejudicial as a matter of law," *Kingman*, ¶ 24, citing *United States v. McVeigh*, 153 F. 3d 1166, 1182 (10th Cir. 1998); see also, *Cohurn*, 202 Mont. At 32-33, 655 P.2d at 508; *State v. Paisley*, 204 Mont. 191, 663 P.2d 323 (1983); *State v. Dryman*, 127 Mont. 579, 269 P.2d 796 (1954); *State v. Spotted Hawk*, Mont. 33, 55 P. 1026 (1899).

In *Kingman*, the Montana Supreme Court indicated that presumed prejudice, necessitating a change of venue, will be found in situations where an irrepressibly hostile attitude pervades the jury pool or the complained of publicity has effectively displaced the judicial process and dictated the community's opinion as to the defendant's guilt or innocence.

In *State v. Devlin*, the Montana Supreme Court concluded a defendant proves entitled to a change of venue "when it appears there are reasonable grounds to believe the prejudice alleged actually exists and that by reason of the prejudice there is a reasonable apprehension that the accused cannot receive a fair and impartial trial." 2009 MT 18, ¶ 16 (citations omitted). The burden rests with the moving party to demonstrate fact-specific proof. *Id.* The movant must show (1) that the publicity complained of was inflammatory and (2) that the publicity actually inflamed the prejudice of the community such that a reasonable possibility exists the accused may not receive a fair and impartial trial. *Id.* at ¶ 17 (citations omitted). "The first element of this test focuses on the nature of the publicity itself, while the second focuses on its effect." *Id.*

In *Devlin*, the Montana Supreme Court expounded on the definition of "inflammatory" publicity by stating the focus must be on the publicity's likely effect on the jury pool. *Id.* at ¶ 24.

Regarding inflammatory publicity, several non-exclusive factors bear on the question whether prejudicial, inflammatory publicity about the case has so saturated the community to warrant a presumption that an impartial jury cannot be drawn from the community. *Kingman* ¶ 42. First, the size and characteristic of the community where the crime occurred proves relevant. The larger and more diverse the jury pool, the more likely that 12 impartial jurors can be impaneled. *Kingman* ¶ 42; *Skilling*, 130 S.Ct. at 2915. Second, the community sentiment regarding the case must be probed. The more demonstrably enraged or inflamed the community is, the less likely it will be to find jurors free from bias. *Kingman* ¶ 42. The third factor concerns the nature of the publicity—whether the publicity is of the type that readers or viewers could not reasonably be expected to shut from sight, and whether it invites prejudgment of the defendant’s culpability. Another relevant factor concerns the amount of time between the crime and the trial and whether the community passions diminished during that period. *Kingman* ¶ 42; *Skilling*, 130 S.Ct. at 2916.

Ms. White is entitled to a change of venue because reasonable grounds exist to believe that she would not receive a fair and impartial trial in Lake County. This is demonstrated through the publicity surrounding Ms. White’s case and its inflammatory nature. The first factor to be considered is the size and characteristic of the community where the crime occurred. Lake County is spread out across several towns, with a large portion being within the bounds of the Flathead reservation. With today’s access to media through phones and computers, the residents of Lake County have access to the internet and can easily search for this high-profile matter. Even those members that are not as connected see coverage about this case regularly on nightly news segments. In the same regard that it was difficult for Ms. White to find counsel, the pressures on the community would make it difficult for community members to sit on a jury panel and be

unbiased in the community where they live. This case, as all cases, deserves to be decided solely on merits of the facts, rather than public sentiment or outcry.

The second factor looks to community sentiment. The Mika Matters movement has been a prominent feature in several of the Facebook posts, twitter posts, and news articles written about this matter. The Mika Matters movement has tethered itself to the greater MMIW movement that has swept not only Montana, but the nation as a whole. This case has been turned into a hate crime, focusing on the names of Ms. White's children and her presumed hatred of others, rather than the facts alleged in charging documents. The MMIW movement sent representatives to the family to support them in pursuing charges in this matter. They have also appeared with MMIW in news segments to spread unfounded allegations and assumptions about the case.

The third factor considers the nature of the publicity. The articles attached in Exhibit 4 demonstrate that the nature of publicity has been primarily prejudicial against Ms. White and perceptions about her. This case has been characterized as a white supremacist looking to kill an Indigenous woman in the media. That characterization is in large part due to the Mika Matters Facebook page and the posts characterizing Ms. White and notions of the case. Exhibit 4 contains a non-exhaustive list of nearly 60 news articles about this case. There are consistently more articles being published based on hearings.

Furthermore, posting the articles on Facebook (or possibly other social media sites) invites prejudgment of the defendant's culpability---the Mika Matters website states that Mika was "murdered" by someone who "had a mission to come" to the "Flathead Rez and kill an Indian," which remains unfounded by the charging documents or charges brought against Ms. White. The nature of Facebook and other social media allows people to comment and react to posts, inviting prejudgment about a situation without any accountability or fact checking. Given how prevalent

Facebook and internet news coverage is in society, it is not the type of publicity that people could be expected to shut from sight. The nature of the publicity proves prejudicial and weighs in favor of the defendant.

The last factor probes the amount of time that has elapsed between the crime and the trial and whether the community passions diminished during that period. The community passions for this matter have not diminished. In fact, the passions and pressures of the community only increased during the investigation of this case, putting pressure on the State to charge Ms. White for the death of Ms. Whitewolf. The heightened passions are seen in every court hearing when several members of the community show up in red shirts to show support for the Westwolf family. They're seen when a metal detector and heightened police security is necessary to ensure the safety of Ms. White and her defense team. The community passions are renewed each time there is a walk or rally planned, each time there is a news segment posted, or a new podcast release, and especially when there is a new social media post by someone who has come across the case and the MMIW movements connections to it. This weighs heavily in Ms. White's favor when determining whether she can receive a fair trial in Lake County.

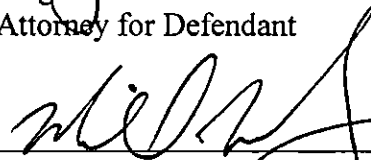
II. Conclusion

Ms. White respectfully requests a change of venue because reasonable grounds exist to believe that she would not receive a fair and impartial trial. The inflammatory nature of the publicity surrounding Ms. White's case and the effect that publicity has on the community demonstrates the need for a new venue.

Respectfully submitted this 1st day of May, 2024.



Meghan Benson
Attorney for Defendant



Michael John Haase
Attorney For Defendant