

1 HON. MOLLY OWEN  
2 20<sup>th</sup> Judicial District Court, Dept. 1  
3 Lake County Courthouse  
4 106 Fourth Avenue East  
5 Polson, MT 59860  
6 (406) 883-7250

LYN TRICKER  
CLERK OF DISTRICT COURT  
FILED BY *[Signature]*  
2024 JUN 21 A 10:00

7 **MONTANA TWENTIETH JUDICIAL DISTRICT COURT, LAKE COUNTY**

8 STATE OF MONTANA,  
9 Plaintiff,  
10 vs.  
11 SUNNY KATHRINNE WHITE,  
12 Defendant.

Cause No. DC-23-344

**ORDER  
DENYING CHANGE OF VENUE**

13  
14 The Defendant filed her *Motion for Change of Venue* on May 1, 2024. The State filed their  
15 response on May 15, 2024. The Defendant did not file a reply. The Parties did not request a hearing on  
16 this matter. The Court, having considered the parties' arguments, hereby rules as follows: the *Motion for*  
17 *change of Venue* is DENIED.

18 **FACTS**

19 The State alleges that the Defendant hit the victim, M.W., during the early morning of March 31,  
20 2023, on the shoulder of Highway 93 in Arlee, Montana. On October 20, 2023, the State filed their  
21 information charging the Defendant with Vehicular Homicide While Under the Influence, under § 45-5-  
22 106, MCA, or in the alternative, Negligent Homicide, under § 45-5-104, MCA; Accidents Involving  
23 Another Person or Deceased Person, under §§ 61-7-103, 105 and 118, MCA; two counts of Criminal  
24 Child Endangerment, under § 45-5-628, MCA; and Criminal Possession of Dangerous Drugs, under §  
25 45-9-102, MCA.

26 This case gained news attention around April 6, 2023. [See Def.'s Mot. Ex. 4 at 1] Eventually,  
the incident and the Defendant's charges became international news. [See Def.'s Mot. Ex. 4 at 1-2]  
M.W.'s family also created a Facebook page and website dedicated to her, both titled Mika Matters. [See

1 Def.'s Mot. Ex. 1 and 2] Furthermore, a multitude of people commented on the Facebook page and  
2 Tweeted about the incident on Twitter. [See Def.'s Mot. Ex. 1 and 3] The comments expressed a negative  
3 view towards the Defendant. [See Def.'s Mot. Ex. 3] Additionally, M.W.'s family started the Mika  
4 Matters Movement, which is dedicated to bringing justice and attention to this case through walks,  
5 rallies, and joining with the Missing Murdered Indigenous Women Movement.

6 Furthermore, since the start of this case, various news reporters have attended the hearings. Also,  
7 M.W.'s family and their supporters frequently attend the hearings. Finally, court security uses metal  
8 detectors during these hearings.

### 9 ANALYSIS

10 The Defendant asserts that she is entitled to a change in venue under § 46-13-203, MCA, because  
11 of her right to a fair and impartial jury, due process of law, and the protection against cruel and unusual  
12 punishments. *See* U.S. Const. Amend. 5, 6, 8, & 14; Mont. Const. Art. II §§ 4, 17, & 24. Defendant  
13 asserts four factors in her favor to change venue. *State v. Kingman*, 2011 MT 269, ¶ 42, 362 Mont. 330,  
14 348, 264 P.3d 1104, 1118.

15 The first factor is the size and characteristics of Lake County. *See Kingman*, ¶ 42. Lake County  
16 contains numerous towns and the Flathead Reservation. She argues that it would be difficult to seat a  
17 jury with the community members because a large portion of Lake County lies within the Flathead  
18 Reservation, and the Lake County populace has access to the internet and the media. The second factor  
19 is the community sentiment regarding her case. *See Kingman*, ¶ 42. The Defendant argues that the Mika  
20 Matters movement has been featured on several Facebook and Twitter posts and news articles, and the  
21 focus of the case is on the hate crime allegation rather than on the alleged facts. The third factor is the  
22 nature of the publicity her case is receiving. *See Kingman*, ¶ 42. She asserts that the news articles show  
23 how the case has been characterized as a white supremacist looking to kill a native woman. She further  
24 argues that the Facebook and Twitter posts further support this narrative. The final factor is the amount  
25 of time that has elapsed between the crime and the trial. *See Kingman*, ¶ 42. She asserts that the passions  
26 of the community are only increasing, which is shown by the presence of M.W.'s family at the hearings,  
the use of a metal detector, heightened police security, and the walks and rallies.

1 The State asserts that the Defendant does not meet any of the factors. They argue that the Mika  
2 Matters movement and website, the Facebook and Twitter posts, and news articles are not indicative of  
3 the Lake County populace. They contend that the Defendant has not established that the Lake County  
4 populace has substantial prejudice meeting the threshold required for a change of venue. Finally, they  
5 assert that the Defendant has not established how much of the Lake County populace is viewing this  
6 online information, commenting on it, and showing presumed prejudice.

7 Section 46-13-203(1), MCA states “[t]he defendant or the prosecution may move for a change  
8 of place of trial on the ground that there exists in the county in which the charge is pending such prejudice  
9 that a fair trial cannot be had in the county.” A motion for change of venue requires the court to make a  
10 fact-specific inquiry, and the moving party must provide fact-specific proof. *State v. Devlin*, 2009 MT  
11 18, ¶ 30, 349 Mont. 67, 77-78, 201 P.3d 791, 798. The court may grant a change of venue based on  
12 “presumed prejudice or on actual prejudice, and different standards apply depending on which sort of  
13 prejudice is claimed.” *Kingman*, ¶ 19.

14 “[A]ctual prejudice exists when voir dire reveals that the jury pool harbors actual partiality or  
15 hostility against the defendant.” *Kingman*, ¶ 25. Furthermore, actual prejudice applies when the  
16 “circumstances are not so extreme as to warrant a presumption of prejudice.” *Kingman*, ¶ 25.

17 Next, presumed prejudice is “where pretrial publicity is so pervasive and prejudicial that we  
18 cannot expect to find an unbiased jury pool in the community.” *Kingman*, ¶ 21. This publicity “must be  
19 both extensive and sensational in nature.” *Kingman*, ¶ 21. The Defendant must “show that an  
20 irrepressibly hostile attitude pervades the community[,] and the publicity dictates the community’s  
21 opinion as to guilt or innocence” to establish presumed prejudice. *Kingman*, ¶ 24. This is an extremely  
22 high bar to pass and will only be found in “circumstances amounting to a circus atmosphere or lynch  
23 mob mentality.” *Kingman*, ¶ 32.

24 The Court must focus on the publicity’s effect on the jury pool in determining presumed  
25 prejudice. *Devlin*, ¶ 24. A non-exhaustive list of factors are the size of the jury pool, nature of the charges,  
26 type and content of the media reports, readership of the publication, the size of the audience, the time  
lapse between the publicity and the trial, perceived position the reports take on the defendant’s guilt,

1 whether the reports contain statements from the Prosecutor or law enforcement, and whether there is  
2 actual negative community reaction to the publicity. *Devlin*, ¶ 24.

3 For the Court to grant the Defendant's motion for change of venue under § 46-13-203(1), MCA,  
4 the Court must make a fact-specific finding whether the Defendant faces prejudice from the community  
5 which would prevent a fair trial. *Devlin*, ¶ 30. First, actual prejudice does not exist because the case is  
6 not at the voir dire stage. *See Kingman*, ¶ 25. Therefore, the Court will only analyze whether presumed  
7 prejudice exists within the facts.

8 The Defendant relies on the Mika Matters webpage, the Facebook and Twitter comments, and  
9 the forty-four news articles from twenty-one different newspapers to show prejudice within Lake  
10 County. However, these items do not support the claim that the Lake County populace has a prejudice  
11 because it is unknown whether the commenters or readers are Lake County residents. The fact that the  
12 Lake County populace has internet access, which is essentially now ubiquitous, does not mean that the  
13 community is posting or reading any of this online content. Instead, these comments show that the case  
14 has gained national and international attention. However, such attention does not mean there is presumed  
15 prejudice within the local community.

16 Furthermore, the Court does not know who in the Facebook and Twitter comments are Lake  
17 County residents. The Facebook and Twitter comments fail to show that an "irrepressibly hostile attitude  
18 pervades the community." *Kingman*, ¶ 24. Even if the Court assumes that all the commenters are Lake  
19 County residents, their comments still do not reach the "lynch mob mentality" needed to establish  
20 presumed prejudice. *Kingman*, ¶ 32.

21 The news articles have a similar flaw as the Facebook and Twitter comments. The Defendant  
22 listed forty-four news articles from twenty-one different publications, and only four articles are from  
23 local newspapers. The Court does not have information regarding the readership of these news articles,  
24 the size of the audience, or whether there is actual negative community reaction to this publicity. *See*  
25 *Devlin*, ¶ 24. Furthermore, these local articles are not inflammatory. [See Def.'s Mot. Ex. 4] One article  
26 did not state the Defendant's name. [Def.'s Mot. Ex. 4 at 18-20] Two others provide a mere procedural  
update of the case. [Def.'s Mot. Ex. 4 at 185-188 and 241-243] Only one article mentioned the  
Defendant's children's names, her possible association, and past criminal history. [Def.'s Mot. Ex. 4 at

1 241-243] None of the articles were extensive or sensational in their nature. *See Kingman*, ¶ 21. None of  
2 the articles take a position on the Defendant’s guilt, nor do they contain statements from law enforcement  
3 or the prosecutor. *See Devlin*, ¶ 24. These articles report on basic criminal procedures, updates of this  
4 case, and provides basic information that is a part of the public record.

5 Finally, the Defendant argues that the time lapse between the crime and the future trial has not  
6 diminished the community’s passion. Specifically, they assert that the manner that M.W.’s family attends  
7 court, the use of metal detectors before court hearings, and the number of walks or rallies in support of  
8 the Mika Matters movement renew community passions each time they take place. However, these  
9 hearings are open to the public, which includes M.W.’s family. Metal detectors are frequently used when  
10 Court is in session. And, the Defendant has not shown how the walks and rallies enflame the Lake County  
11 populace. Altogether, the facts the Defendant relied upon do not establish that the Lake County populace  
12 has an irrepressibly hostile attitude that dictates their opinion to the guilty or innocence of the Defendant.  
13 *See Kingman*, ¶ 24.

14 A change of venue requires a showing of presumed prejudice, which is a high bar to overcome.  
15 *Kingman*, ¶ 24. The Facebook and Twitter comments, and the news articles, provide support that the  
16 case has reached national and international attention but do not show that the Lake County populace is  
17 irrepressibly hostile towards the Defendant. The Mika Matters website also does not support a finding  
18 of prejudice within the community. Finally, the Court does not find that the time lapse between the crime  
19 and the Defendant’s future trial, nor M.W.’s family attending court, the use of metal detectors, and the  
20 walks and rallies, incite the community’s passion or establish a lynch mob mentality. Therefore, the  
21 Court denies the *Defendant’s Motion to Change Venue*.

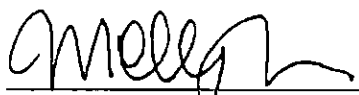
## 22 CONCLUSION

23 Section 46-13-203(1), MCA, allows a change of venue if “the county in which the charge is  
24 pending such prejudice that a fair trial cannot be hand in the county.” Two types of prejudice exist—a  
25 actual prejudice and presumed prejudice. *Kingman*, ¶ 19. Actual prejudice occurs at voir dire and thus is  
26 not applicable here. *Kingman*, ¶ 25. The Court finds the Lake County populace does not have an  
irrepressibly hostile attitude towards the Defendant, or a lynch mob mentality, which would prevent a

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fair trial for the Defendant. The Court expects to find an unbiased jury pool in the Lake County populace for this trial. Therefore, the Court denies the Defendant's *Motion to Change Venue*.

DATED this 21st day of June, 2024.

  
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MOLLY OWEN  
District Court Judge

cc: LCAO – James Lapotka  
OPD-M – Meghan Benson / Michael Haase  
06/21/24 AeJ