

Hear it From the Judge

Judge Randall J. Slieter

8th Judicial District Judge

Olivia, MN

A Different Jury of “My Peers”

It is often stated and understood that all individuals charged with a crime have a right to a jury comprised of “my peers”. In the typical situation, this jury trial will occur in the county in which the Defendant has been charged with a crime. The Minnesota Constitution, Article 1, Bill of Rights, Section 6, states: “the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county or district wherein the crime shall have been committed”.

However, what is to occur when there is such a high level of publicity regarding a criminal charge such that it is presumed to be very difficult to find an impartial jury in the county within which the Defendant has been charged? If that is true, how far away from the county of residence should the trial be moved? Who will be the Judge and jurors if the trial is moved? How does the Judge make that decision?

These questions are perhaps among those you asked yourself as you followed the recent news of a relatively high profile case (State vs. Olga Franco Del Sid) in which the location of the trial was moved from outside our judicial district (Lyon County) to within our judicial district (Kandiyohi County). For those of you whom are most interested, you will be able to access the Judge’s Order and reasoning in granting the request to move the trial. You may contact the State’s Judicial Court website located at www.mncourts.gov , Media Resource Center, High Profile Case Information, (this is an excellent resource, by the way, for many court related questions you may have and I encourage you to view this site). I will also attempt to address these questions in this column.

Whenever a party, typically the Defendant though it could include the State, believes that it is not likely that the Defendant (or the State) will be able to receive a fair trial due to pre-trial publicity, the Defendant (or the State) may formally ask the Court to order the location, or venue, of the trial be moved. The criminal rule which the Judge must apply states that the Judge must grant the change if “the dissemination of potentially prejudicial material creates a reasonable likelihood that in the absence of such relief, a fair trial cannot be had.”

As one can see from the language of this Rule, the key phrases are: potentially prejudicial; reasonable likelihood; and fair trial. The answer to the first two phrases will typically indicate to the Judge whether the third phrase has been met. It is the goal of all jury trials, and critical to the effective justice system we have, to assure that a fair trial is held.

What is “potentially prejudicial” material? The Minnesota Supreme Court has deter-

mined that factual news reports regarding a criminal matter are not sufficient to be considered potentially prejudicial. It must first be shown that such news reports include opinions or implications of the Defendant's guilt. In summary, even a very high profile case in which there is a high level of factual news reporting, will not be sufficient to warrant changing the location of the jury trial.

The Minnesota Supreme Court has also determined that if the trial publicity is state wide, there is no obligation to move the trial. The practical reason for this is that there is no location to move the trial at which jurors are less likely to be affected by the publicity.

A Judge must also consider whether, in addition to considerations of trial publicity, other circumstances exist such that the Defendant (or the State) is unable to receive a fair and impartial trial. As described above, critical to this determination is the ability of jurors to remain impartial to both the Defendant and the State.

Impartiality has been defined as lacking bias or "having no direct involvement or interest and not favoring one person or side more than another". There are many factors a Judge will consider in determining whether a particular case and all the circumstance surrounding it will make it very difficult to impanel an impartial jury. Further, in some cases, these circumstances may be impossible to consider until the potential jurors are called to the courthouse to take part in the questions which the Judge and the attorneys for each party will ask.

If a change of the trial location is ordered by the Judge, the Judge will determine where the change should occur. The location chosen will depend upon a number of factors including: how widespread is the publicity, are there security concerns, will there be space needs, and does the county courthouse to which the trial will move have the space to accommodate the new trial plus the regular matters in that county. The Judge who was originally assigned to the case in the first county will remain as the presiding Judge and typically, the prosecutor and defense attorney will also remain the same. However, the same is not true for the jury.

The jury will be comprised of the citizens of the new county to which the Judge ordered the trial moved. This is so precisely because it is presumed that the new jury panel has not been affected by pre-trial publicity as would be the case in the original county.

It has been my experience that the jurors in our area do an excellent job fulfilling their obligation to remain impartial and to apply the law as instructed by the Judge to the facts of the case presented to them. Because it is critical that a trial occur before an impartial jury, it is necessary for the Judge to carefully consider requests to change the trial venue. Though such requests seldom occur, careful consideration of such a request is of critical importance. "Hear it From the Judge".