

FILED

STATE OF NORTH CAROLINA  
COUNTY OF RUTHERFORD

2015 AUG -6 PM 3: 23

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 15-CRS-153-156, 164

RUTHERFORD COUNTY, C.S.C.

STATE OF NORTH CAROLINA, #

95

Plaintiff,

vs.

BROOKE MCFADDEN COVINGTON,  
SARAH COVINGTON ANDERSON,  
JUSTIN BROCK COVINGTON,  
ROBERT LOUIS WALKER, Jr., and  
ADAM CHRISTOPHER BARTLEY,

Defendants.

MOTION FOR A SPECIAL  
VENIRE FROM ANOTHER COUNTY

§ 15A-958; § 9-12

NOW COMES the State of North Carolina and moves the Court to issue an Order for a special venire of jurors from another county as authorized by G.S. § 15A-958 and § 9-12. This motion is made *in the alternative* to the State's objection to the defendants' Motion for Change of Venue and the State requests this relief *only upon* the Court finding that the defendants cannot receive a fair trial in Rutherford County. In support of this alternative and contingent motion, the State shows the following:

*Introduction*

1. The defendants have previously moved for a change of venue and have alleged an inability to obtain a fair trial in Rutherford County, North Carolina, due to excessive pretrial publicity.
2. The State will reply to the specific allegations contained in the defendants' motion to change venue by a separate pleading.
3. A motion for a special venire is a pretrial order, the granting or denial of which is within the trial court's sound discretion. *State v. Boykin*, 291 N.C. 264, 229 S.E.2d 914 (1976); *State v. Duvall*, 50 N.C. App. 684, 275 S.E.2d 842, *rev'd on other grounds*, 304 N.C. 557, 284 S.E.2d 495 (1981); *State v. Harrill*,

289 N.C. 186, 221 S.E.2d 325, *death sentence vacated*, 428 U.S. 904, 96 S.Ct. 3212, 49 L.Ed. 2d 1211 (1976).

*The Defendants can receive  
a Fair Trial in Rutherford County*

4. The prosecution believes that jurors summoned from Rutherford County to hear this case would be completely fair to both the State and to the defense. Any citizen of Rutherford County who might be called to serve as a juror in any of these cases would undoubtedly try his or her very best to serve faithfully and to be fair to both the State and to the respective defendant on trial. This is so despite any coverage these matters may receive in the media.
5. The North Carolina Supreme Court has held that the existence of pretrial publicity by itself does not establish a reasonable likelihood that a defendant cannot receive a fair trial in the county where the crime was committed. *State v. Knight*, 340 N.C. 531, 459 S.E.2d 481 (1995).
6. The State alleges that the potential jurors' responses to questions on voir dire are the best evidence of whether pretrial publicity is prejudicial or inflammatory; if each juror states unequivocally that he or she can set aside pretrial information about a defendant's guilt and arrive at a determination based solely on the evidence present at trial, then the trial court does not err in refusing to grant a change of venue. *Id.* Furthermore, there is no showing of prejudicial pre-trial publicity when "jurors who served in [a] case all indicate[ ] unequivocally that they [will] decide the case based on the evidence at trial and [ ] not [on a] formed [ ] impression of preconceived opinion about the guilt or innocence of the defendant." *State v. Hunt*, 325 N.C. 187, 199, 381 S.E.2d 453, 461 (1989).
7. It is logistically impracticable to hold the trial in another county. Witnesses for both the State and the defendants reside primarily in Rutherford County and proximity to the scenes involved will be important.
8. It is proper and desirable that Rutherford County be the site of justice in this matter. It is important that the trial and verdict occur here primarily to avoid the appearance that these defendants are being given special treatment or are being treated any differently than any other defendants who are alleged to have committed similar crimes.

9. The State has a compelling interest in rendering a just judgment in accordance with law. *In re Williams*, 269 N.C. 68, 152 S.E.2d 317, 1967 N.C. LEXIS 1027 (1967). If the State believed that a fair trial could not be afforded the defendants in these cases, then it would be the State requesting affirmative relief to remedy the situation, either on its own or together with the defendants. The State is very concerned about prosecuting these cases in a fair manner and in preserving the due process rights of the defendants under the State and federal Constitutions. This fact was perhaps best illustrated by the State's previous filing of its Motion to Disqualify Counsel to discontinue a major conflict of interest by defense counsel in representing the defendants in the instant cases.
10. As previously stated in open court during the State's Motion to Disqualify Counsel, the State desires to have trials for each of the defendants in these cases which are free from prejudicial error. The State desires to try each of these cases one time only and, in event of an appeal, to present the appellate courts of this State with a record free from reversible error.
11. The State does not agree with the defendants' contention, which is essentially that every potential juror in Rutherford County who does not attend the Word of Faith Fellowship Church is prejudiced against the defendants.
12. A defendant seeking a new trial on the basis of a trial courts' denial of a motion for a change of venue or special venire must ordinarily establish specific and identifiable prejudice against him as a result of pretrial publicity. As the North Carolina Supreme Court has stated in numerous cases, for a defendant to meet his burden of showing pretrial publicity prevented him from receiving a fair trial, he ordinarily must show, *inter alia*, (1) that jurors with prior knowledge decided the case; (2) that he exhausted his preemptory challenges; and (3) that a juror objectionable to him sat on the jury. *State v. Barnes*, 345 N.C. 184, 204, 481 S.E.2d 44, 54, *cert. denied*, 522 U.S. 876, 118 S.Ct. 196, 139 L.Ed.2d 134 (1997), *cert denied*, 523 U.S. 1024, 118 S.Ct. 1309, 140 L.Ed.2d 473 (1998); *State v. Jarrett*, 309 N.C. 239, 255, 307 S.E.2d 339, 347-48 (1983).

*The Defendants Themselves have the Remedy  
for what They Complain of:*

***Competent Jury Selection***

13. Jury selection is the answer to the concerns the defendants complain of here - not a change of venue. Competent jury selection would effectively eliminate

those persons whom the defendants arbitrarily deem to be unacceptable to hear and decide this case. The defendants have the ability to challenge an unlimited number of jurors for cause. This is a powerful tool which is specifically designed to remedy the concerns the defendants complain of. The defendants *themselves* have the power to correct any perceived unfairness in the jury trial process by virtue of competent jury selection and the skilled use of challenges for cause. In addition, each defendant has an ample number of preemptory challenges to use to strike those prospective jurors from the panel for reasons not rising to the level of a challenge for cause.

*If the Court Disagrees, then the Court should Order  
a Special Venire from Another County*

14. Without waiving the State's objection to a change of venue, the State desires to present the Court with an alternative to the defendants' requested relief. Should the Court find the foregoing arguments unpersuasive and determine that the defendants cannot receive a fair trial in the county where nearly all of them reside and wherein the crime is alleged to have occurred, then the State requests a special venire from Buncombe County, North Carolina, a county which adjoins and borders Rutherford County and which is an authorized county under § 9-12.
15. North Carolina General Statute § 9-12 provides that the venire be summoned from any county or counties in the district in which the trial is located or in any adjoining district or set of districts.
16. The State alleges that the defendants can receive a fair trial before a special venire drawn from Buncombe County.
17. The State requests that the special venire from Buncombe County be compensated for mileage at the current lawful rate which is the default method of compensation for special venire jurors contemplated by G.S. § 9-12 (b). The State respectfully shows that the jury pool for the United States District Court for the Western District of North Carolina is comprised of various counties of Western North Carolina and that requiring jurors to travel to a county different from their residence in the region is not unusual and, in this instance, is expressly authorized by statute.
18. North Carolina General Statutes §§ 15A-958 and 9-12 are attached to this motion for ease of reference by the Court and are identified as "State's Exhibits 1 & 2."

*Conclusion*

Wherefore, the State of North Carolina:

1. Objects to the defendants' Motion for Change of Venue;
2. In the alternative, and contingent upon a finding by the Court that the defendants cannot receive a fair trial:
  - a. Moves the Court for a special venire from Buncombe County for all of these cases; and
  - b. Moves that the special venire be compensated for mileage at the current lawful rate for their jury service; and
3. Moves that the Court deny the defendants' Motion for Change of Venue.

This the 6<sup>th</sup> day of August, 2015.

Respectfully submitted,

TED BELL  
District Attorney  
N.C. Prosecutorial District 29-A

By: Garland F. Byers, Jr.  
GARLAND F. BYERS, JR.  
Assistant District Attorney  
N.C. State District Attorney's Office  
Rutherford County  
P.O. Box 70  
Rutherfordton, North Carolina 28139  
Telephone: (828) 288-6110  
Facsimile: (828) 288-6111  
Email: [Garland.F.Byers@nccourts.org](mailto:Garland.F.Byers@nccourts.org)

CERTIFICATE OF SERVICE

I hereby certify that I served the attached Motion upon the Defendants as follows:

Service was obtained upon Defendant Adam Christopher Bartley, by and through his attorney of record, Rob Denton, by depositing a copy of the motion enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the Postal Service of the United States.

Service was obtained upon all remaining defendants by and through their attorneys of record, Josh Farmer, Mark Morris, and the Law Firm of TOMBLIN, FARMER & MORRIS, PLLC, by depositing a copy of the motion enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the Postal Service of the United States.

This the 6<sup>th</sup> day of August, 2015.

Respectfully submitted,

TED BELL  
District Attorney  
N.C. Prosecutorial District 29-A

By: Garland F. Byers, Jr.  
GARLAND F. BYERS, JR.  
Assistant District Attorney  
N.C. State District Attorney's Office  
Rutherford County  
P.O. Box 70  
Rutherfordton, North Carolina 28139  
Telephone: (828) 288-6110  
Facsimile: (828) 288-6111  
Email: [Garland.F.Byers@nccourts.org](mailto:Garland.F.Byers@nccourts.org)