

**IN THE CRIMINAL COURTS OF SHELBY COUNTY, TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS
DIVISION X**

STATE OF TENNESSEE,
Plaintiff,

No. 22-04769

v.

JUSTIN JOHNSON,
Defendant.

Filed 8.9.24
Heidi Kuhn, Clerk
BY [Signature] D.C.

ORDER GRANTING DEFENDANT'S MOTION FOR CHANGE OF VENUE

Before this Court is the Defendant's Motion for Change of Venue. Defendant prays of this Court for a change of venue, or in the alternative to select a jury from another county to hear this matter, pursuant to T.C.A. § 20-4-201 and Rule 21 of the Tennessee Rules of Criminal Procedure. Defendant argues that the nature of the allegations against him coupled with the amount and nature of the pretrial publicity make it impossible for defendant to receive a fair and impartial trial by a jury in Shelby County. The Prosecution asserts that the motion should be denied. The Prosecution requests that this Court utilize other methods of securing a fair and impartial trial, such as specially formulated jury questionnaires and *voir dire* questioning of jurors as to their exposure to and impact of the pretrial publicity. After conducting a hearing on this matter, close review of the motion and state's response, and careful review of the record, this Court finds that a jury of this venue would not provide Defendant with a fair and reasonable trial. However, this Court declines to change the venue entirely and rather grants the Defendant's alternative argument to select a jury from another venue to hear this matter. The motion is therefore **GRANTED**.

RELEVANT FACTS

Defendant, Justin Johnson, is charged with several felonies. Most relevant to this discussion is the charge of First-Degree Murder (Count Two). Defendant was indicted on November 10, 2022,

by a grand jury of First-Degree Murder of Adolph Thornton, Jr., who was also known as “Young Dolph.” Mr. Thornton, Jr. (“Victim”) was a prominent rapper from the Memphis/Shelby County area. Defendant is also a known rapper from the Memphis/Shelby County area, who is also known as “Straight Drop.” This homicide occurred on November 17, 2021.

Defendant was first identified as a suspect in the murder on January 5, 2022. Defendant was arrested on January 11, 2022. There has been a surge of media coverage of this case since the date the victim was killed. That coverage continues to this day. Since Defendant was identified as a suspect and arrested, he too has been the subject of intense media coverage. Defendant supports these facts through several thorough exhibits to his motion, detailing the breadth, nature, and consistency of the coverage.

CONCLUSIONS OF LAW

The Tennessee Court of Criminal Appeals set forth seventeen (17) relevant factors to be considered in determining whether to grant a change of venue in *State v. Hoover*, 594 S.W.2d, 743, 746 (Tenn. Crim. App. 1979), which are:

1. Nature, extent, and timing of pretrial publicity.
2. Nature of publicity as fair or inflammatory.
3. The particular content of the publicity.
4. The degree to which the publicity complained of has permeated the area from which the venire is drawn.
5. The degree to which the publicity circulated outside the area from which the venire is drawn.
6. The time elapsed from the release of the publicity until the trial.
7. The degree of care exercised in the selection of the jury.
8. The ease or difficulty in selecting the jury.
9. The veniremen’s familiarity with the publicity and its effect, if any, upon them as shown through their answers on *voir dire*.
10. The defendant’s utilization of his preemptory challenges.
11. The defendant’s utilization of challenges for cause.
12. The participation by police or by prosecution in the release of publicity.
13. The severity of the offense charged.
14. The absence or presence of threats, demonstrations or other hostility against the defendant.

15. Size of the area from which the venire is drawn.
16. Affidavits, hearsay or opinion testimony witnesses.
17. Nature of the verdict returned by the trial jury.

The matter of a change of venue lies within the “sound judicial discretion of the trial judge.” *Hoover*, 549 S.W.2d at 746 (quoting *Rippy v. State*, 550 S.W.2d 636, 638 (Tenn. 1977)). Jurors need not be “totally ignorant of the facts and issues” in a case in which they may sit. *State v. Johnson*, No. E2010-00172-CCA-R3-DD, 2012 Tenn. Crim. App. LEXIS 132 (Crim. App. Mar. 5, 2012). At minimum, the jurors must be able to “lay aside their opinions or impressions and render a verdict based upon the evidence presented.” *Id.*

There are several factors above which simply do not apply currently due to the pretrial nature of this motion and no jury having been selected as of yet. For the sake of brevity, they will quickly be identified and dispatched here. The following factors do not apply: factor (7), the degree of care exercised in the selection of the jury; factor (8), the ease or difficulty in selecting the jury; factor (9), the veniremen’s familiarity with the publicity and its effect, if any, upon them as shown through their answers on *voir dire*; factor (10), the defendant’s utilization of his preemptory challenges; factor (11), the defendant’s utilization of challenges for cause; and factor (17), the verdict returned by the trial jury.

ANALYSIS¹

(1) The nature, extent, and timing of the pretrial publicity.

As referenced above, the publicity surrounding this case has been extensive since the day of the homicide, November 17, 2022. The publicity continues to pervade both local and national news. The nature of the publicity is mixed to say the least. There have been intense outcries both

¹ It should be noted that the defense supplied the Court, as an exhibit to this motion, a 3-inch bind of examples of the relevant factors in *Hoover*. In this analysis the court refers to different examples but by no means can and will refer to them all.

(3) The particular content of the publicity.

The actual content of the publicity detailed by Defendant's motion appears to be largely factual. The articles selected appear to mostly be progress reports of the case, such as when the defendant was identified as a suspect⁸, where he was arrested⁹, hearing dates and other procedural matters¹⁰, the status of co-defendants¹¹, etc. Some articles identified are more obviously in honor of the victim, such as Exhibit B2.28, where the victim's legacy was "honored with nationwide day of service on anniversary of his death." Few are identified as more general malicious wishes towards the defendants¹², where the comments section on a news story includes allusions against a co-defendant. Fewer still are outright threats against the defendant's safety¹³. This Court finds this factor weighs in favor of granting the motion.

(4) The degree to which the publicity complained of has permeated the area from which the venire is drawn.

It cannot be understated how much pretrial publicity this case has received. Given the prominence of the victim before his passing, and his connection to the Memphis/Shelby County area, it is not surprising that every major local media outlet has covered this case in some capacity over the last few years. The Prosecution does not dispute this fact. Given the sheer number of organizations that have and continue to cover this case, it is clear that the permeation in the area is significant. Exhibits B2.27, B2.29, and B2.33 explain the life and achievements of the victim, as well as, detail a "pop-up museum" that is dedicated to the victim. Additionally, defendant's motion

⁸ Exhibit B2.2

⁹ Exhibit B2.7

¹⁰ Exhibit B2.10

¹¹ Exhibit B2.3

¹² Exhibit B2.15

¹³ Exhibit B2.15

contains several affidavits from individuals in the Memphis/Shelby County area describing their knowledge of and exposure to the case thus far. This Court finds this factor weighs in favor of granting the motion.

(5) The degree to which the publicity circulated outside the area from which the venire is drawn.

Defendant's motion identifies multiple national new outlets that have covered this case in some manner. These organizations are well known throughout the country, such as TMZ¹⁴. There is no doubt that the publicity has circulated outside the Memphis/Shelby County area.

A pop-up museum celebrating the victim's life has been touring the country¹⁵, with social media posts announcing its locations with hundreds of comments¹⁶. Therefore, this Court finds this factor weighs in favor of granting the motion.

(6) The time elapsed from the release of the publicity until the trial.

The homicide occurred on November 17, 2021. As of this writing, that was approximately twenty-six (26) months ago. The publicity of this case began the day of the homicide (Exhibit B2.1). The defendant has been subject to the same level of media scrutiny since the day he was identified as a suspect, January 5, 2022¹⁷. Although the time elapsed is more than two years, the Defendant identifies articles in support of the victim or detailing his legacy as recently as mid-2023¹⁸. This Court finds that this factor weighs in favor of granting the motion.

¹⁴Exhibit B2.1

¹⁵ Exhibit B2.33

¹⁶ Exhibit B2.47

¹⁷ Exhibit B2.3

¹⁸ Exhibit B2.38, B2.50

(12) The participation by police or prosecution in the release of publicity.

The Prosecution has participated in the release of pretrial publicity¹⁹. The Prosecution has released information to the media regarding the defendant and the co-defendants that would otherwise not be immediately available to a jury pool, such as the defendant's criminal history²⁰. This Court finds this factor weighs in favor of granting the motion.

(13) The severity of the offense charged.

Defendant is charged with, among other things, First Degree Murder. Under T.C.A. 39-13202, a person convicted of first-degree murder may be punished in one of the following manners: death, life imprisonment without parole, or life imprisonment. This is of the most severe crimes with which one can be charged. There is no question of the severity. This Court finds this factor weighs in favor of granting the motion.

(14) The absence or presence of threats, demonstrations, or other hostility against the defendant.

As has been referenced above, there have been outcries of support and malice for both the victim and for the defendant. The defendant's motion includes several exhibits which detail this. Several news articles posted on social media received hundreds of comments, some of which are plainly hostile towards the defendant²¹. This Court finds that this factor weighs in favor of granting the motion.

(15) Size of the area from which the venire is drawn.

Shelby County is the largest and one of the most diverse counties in Tennessee. The Prosecution alleges that due to the sheer size and diversity of Shelby County every prospective

¹⁹ Exhibit B2.24

²⁰ Exhibit B2.24

²¹ Exhibit B2.15.

juror will have extraordinarily differing amounts of exposure to this case's pretrial publicity. The Prosecution claims that this is precisely why Shelby County is the proper venue for this matter. However, given the sheer magnitude of pretrial publicity that has permeated the area, this Court is not convinced that the geographic size of Shelby County is sufficient to gather a pool of prospective jurors with minimal exposure to this case. This Court finds that this factor weighs in favor of granting the motion.

(16) Affidavits, hearsay or opinion testimony of witnesses.

Defendant has provided multiple affidavits from individuals from the Memphis/Shelby County area²². These affidavits detail each individual's exposure to and knowledge of the case. Given the number of affidavits submitted, as well as the general content of each, this Court finds this factor weighs in favor of granting the motion.

The majority of the relevant factors from *Hoover* have been found to weigh in favor of granting Defendant's motion. The State argued that the citizens of Shelby County have the right to hear this case. The defense argues that it would be unfair to ask the citizens of Shelby County to put their feelings aside about such a beloved person and try to render a fair and impartial verdict. The State also argued that this Court should, at a minimum, try to seat a jury here in Shelby County and if this Court finds that it cannot seat a fair and impartial jury, then change the venue. This Court feels like that would be too onerous and would then delay this trial even further. This Court is wary that jurors from Shelby County will not be able to "lay aside their opinions or impressions and render a verdict based upon the evidence presented." *State v. Johnson*, No. E2010-00172-CCA-R3-DD, 2012 Tenn. Crim. App. LEXIS 132 (Crim. App. Mar. 5, 2012).

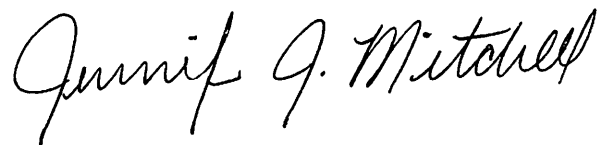
²²Exhibit C

Based on the foregoing reasons, this Court will grant the change of venue. This matter will be heard in Shelby County, but this Court will select a jury from another Tennessee county to hear this matter. This Court believes this to be the only way to ensure that the Defendant's right to a fair trial is protected.

CONCLUSION

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendant's Motion for Change of Venue is hereby **GRANTED**.

ENTERED this 9th day of February, 2024.

A handwritten signature in black ink that reads "Jennifer G. Mitchell". The signature is written in a cursive, flowing style.

Judge Jennifer Johnson Mitchell
Criminal Court Division X