



**IN THE CIRCUIT COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT
 MONTGOMERY COUNTY, ALABAMA**

STATE OF ALABAMA,
Plaintiff,

v.

Aaron Smith,
Defendant.

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CC-2016-1397

STATE'S MOTION TO RECONSIDER VENUE

Comes now the State of Alabama, by and through its District Attorney for the Fifteenth Judicial Circuit, Daryl D. Bailey, and files this motion to reconsider the current venue and states as follows:

1. The defendant is charged with the offense of Murder.
2. The defendant filed a motion for change of venue which was denied by Montgomery County Circuit Judge Greg Griffin. The basis of his motion was that he could not receive a fair trial in Montgomery county due to (1) general pre-trial publicity and news coverage of the shooting, and (2) publicity of comments made by Judge Griffin at the immunity hearing and reported by the news media.
3. The defendant filed a writ of mandamus with the Alabama appellate courts seeking an order directing Judge Griffin to recuse as well as change the venue of the trial.
4. The Alabama Supreme Court ultimately issued a mandamus removing Judge Griffin from the case and directing the Trial Court to change the venue.
5. The Supreme Court's stated reason for ordering the change of venue was because "[T]he trial judge assigned to try the case has stated publicly -- in open court --

that he does not find the defendant to be credible, combined with that statement being widely reported in the media . . .” *Ex Parte Smith*, --- So. 3d ---, 2019 WL 168425 (Ala. 2019). Based on that finding the Court reasoned that “The trial judge's statement equates to a judicial decision, and it could undoubtedly negatively influence potential jurors' opinions of Smith, and potentially cast a negative pall over the presumption of innocence that should be accorded Smith.” *Id.* The Court proceeded to hold that “The risk of prejudice under these circumstances is evident where the trial judge has already stated that he does not find Smith to be credible and that statement has been widely reported in the local community from which the jury pool would be drawn.” *Id.*

Ultimately the Court ordered a change of venue expressly because “There is no dispute that this case has generated much attention in Montgomery County, and it seems likely to generate continued attention moving forward. It is reasonable to assume that Judge Griffin's comments regarding Smith's credibility will continue to be dispersed in the local media.” *Id.*

6. WSFA, WAKA, and WCOV are the primary television news outlets in the Montgomery media market. Each of them has covered this case.
7. The Montgomery Advertiser is the primary source of print journalism in Montgomery and has covered this case extensively. Based on information and belief The Advertiser’s distribution also extends to Dale county and much of the surrounding area.
8. Based on information and belief, the State of Alabama avers that Dale County, and much if not all the surrounding Wiregrass area, are within the media footprint

- of both WSFA and The Montgomery Advertiser. These counties receive broadcasts of nightly television news programs as well as delivery of The Montgomery Advertiser. Both news sources would have covered the shooting as well as the judge's comments with which the defendant and the Alabama Supreme Court take issue.
9. "When a change of venue is authorized, the trial must be removed to the nearest county free from exception, and it can be removed but once. §15-2-24, Code of Alabama, 1975 (emphasis added).
 10. Conducting the trial in a county which receives the same news as Montgomery County does not address the "exception" which caused the trial to be moved in the first place i.e. news reportage of Judge Griffin's supposed prejudicial comments. Stated differently, Dale County is no different than Montgomery County in terms of the Supreme Court's rationale for ordering that the trial be moved.
 11. Should the State prevail at a trial conducted in Dale county (or a county similarly situated) the defendant will no doubt appeal that conviction. Holding the trial in such a county would allow him to have the appellate courts order a change of venue prior to trial, and then raise the exact same argument on post-conviction appeal. He should not be allowed two bites at the change of venue apple.
 12. Caselaw is clear that the State cannot ask for a change of venue. The State has not so asked and still believes that a fair trial can be had in Montgomery county.
 13. Section 15-2-24, Code of Alabama, 1975 says that the venue can only be changed once. It is the State's position, supported above, that Dale county does not comport with the decision of the Alabama Supreme Court. Therefore, this would

not be a second change of venue, it would simply be correcting the original change of venue.

14. This motion is not made for purposes of delay. The State will be prepared for trial on the date currently scheduled regardless of the venue for the trial.

Wherefore, the above premises considered, the State of Alabama now moves this Honorable Court to reconsider its selection of Dale county for venue and allow the parties to present to the court viable alternatives.

Respectfully submitted this the 26th day of September, 2019.

DARYL D. BAILEY
DISTRICT ATTORNEY

By:

/s/ Benjamin H. McGough
Benjamin H. McGough
Deputy District Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above and foregoing was served upon Counsel for the Defendant via Alafire on today's date.

/s/ Benjamin H. McGough
Benjamin H. McGough
Deputy District Attorney