

**IN THE CIRCUIT COURT OF THE STATE OF OREGON**  
**FOR MULTNOMAH COUNTY**

No. 19CR53042

STATE OF OREGON

Plaintiff,

STATE'S RESPONSE IN OPPOSITION  
TO JOSEPH GIBSON'S  
MOTION TO CHANGE VENUE

v.

JOSEPH GIBSON

Defendant.

The State of Oregon, through Sean Hughey, Deputy District Attorney, hereby submits the following Response in Opposition to Defendant's Motion to Change Venue ("Motion") for the Court's review.

**I. INTRODUCTION**

Defendant argues that he cannot receive a fair and impartial trial in Multnomah County. He suggests that he is both so widely known and so strongly disliked in Multnomah County (a county of over 800,000 residents), that "[i]t is hard to imagine the volume and vitriol of pretrial publicity, and community contempt, needed to justify a change of venue if what is found here does not suffice." Motion at p. 2, ¶ 2. However, his Motion lacks evidence to establish that he cannot receive a fair and impartial juror and should be denied.

**II. POINTS AND AUTHORITIES**

The Court may order a trial moved to a different county when "there is so great a prejudice against the defendant that the defendant cannot obtain a fair and impartial trial." ORS 131.355. The Court may also change venue "in the interest of justice." ORS 131.363.

1 However, the mere fact of adverse publicity surrounding a high profile criminal case is  
2 insufficient to demonstrate prejudice or establish that venue should be changed in the “interest of  
3 justice.” *State v. Sparks*, 336 Or 298 (2004). In *Sparks*, defendant was charged with raping and  
4 killing a 12 year old girl in Yamhill County. News coverage included details of the defendant’s  
5 personal and criminal history and the impact of the gruesome crime on a small community.  
6 Nevertheless, the Oregon Supreme Court upheld the trial court’s finding that the jury selection  
7 process “would provide a sufficient safeguard to ensure the defendant would receive a fair and  
8 impartial trial.” *Sparks* at 305.

10 Adverse pre-trial publicity can of course be quite common in certain criminal cases, but it  
11 rarely rises to a level where a defendant cannot receive a fair trial in a particular county. Over  
12 half a century ago, an accused mass murderer in Indiana was deprived the right of an impartial  
13 jury where extraordinary media coverage caused more than half of the jury pool to be excused  
14 for cause because they had fixed opinions about the guilt of the defendant. *Irvin v. Dowd*, 366  
15 US 717 (1961), *cited by State v. Fanus*, 336 Or 63 (2003). Eight of twelve of the impaneled  
17 jurors in *Irvin* stated that they believed the defendant was guilty but affirmed impartiality  
18 notwithstanding such opinions. The Court noted that defendant’s case had caused “great  
19 excitement and indignation” in the community and that coverage of the case included a “roving  
20 reporter” who asked townspeople their opinion of the appropriate sentence before the trial had  
21 even commenced. The result, the U.S. Supreme Court concluded, was a pattern of “deep and  
22 bitter prejudice” against the defendant. *See Irvin* at 725-728.

24 In *Fanus*, *supra*, the defendant presented over 40 news articles about his Douglas County  
25 aggravated murder case, a poll showing that more Douglas County residents thought he was  
26 guilty than residents polled in Multnomah County, and testimony from an expert who testified  
27

1 that a fair trial in Douglas County was unlikely. Nonetheless, on review the Oregon Supreme  
2 Court distinguished *Fanus* from the *Irvin* court's finding a lack of "deep and bitter" prejudice"  
3 within the community. Three factors identified in *Fanus* for the court's consideration in  
4 weighing a defendant's motion for change of venue are: (1) The character and the extent of  
5 pretrial publicity; (2) the degree of difficulty in securing impartial jurors; and (3) any other factor  
6 that might indicate prejudice against the defendant. *Fanus* at 79.  
7

8 In this case, Defendant has demonstrated the existence of some media interest in him and  
9 his platform, including some negative commentary from local politicians. His motion fails  
10 because there is an absence of evidence to suggest that there would be any degree of difficulty in  
11 securing impartial jurors. Defendant's assertion that potential jurors have been rendered  
12 impartial is completely speculative and he has offered no information regarding the views of  
13 potential jurors in Multnomah County regarding this case. As a result, the Court is left only to  
14 guess what prospective jurors may think about the allegations against Defendant and the impact  
15 of any media coverage. Put differently, the fact that he may be known by journalists and local  
16 officials cannot be equated with a broader County-wide prejudice.  
17

18 The appropriate approach is to proceed with *voir dire*. If, based on the responses of  
19 prospective jurors, "so great a prejudice [exists] that the defendant cannot obtain a fair and  
20 impartial trial" it may be appropriate to grant Defendant's request. Absent this unlikely  
21 eventuality taking place, Defendant's motion is premature and speculative and should be denied.  
22

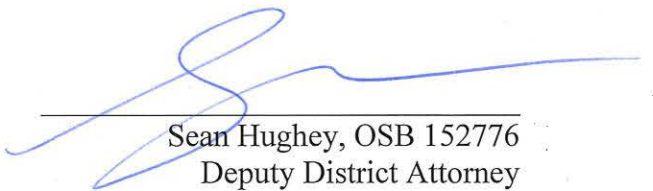
### 23 III. CONCLUSION

24 For the aforementioned reasons, The State respectfully requests that this Court deny  
25 Defendant's Motion to Change Venue.  
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Submitted this 1<sup>st</sup> day of March, 2020.

ROD UNDERHILL  
District Attorney  
Multnomah County, Oregon



Sean Hughey, OSB 152776  
Deputy District Attorney

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2 I certify I served a true copy of this STATE'S RESPONSE on counsel for Defendants by  
3 e-mailing a true copy thereof to opposing counsel.  
4  
5  
6

7 **James Buchal, attorney for Defendant Joseph Gibson**  
8 [jbuchal@mbllp.com](mailto:jbuchal@mbllp.com)

9 **Angus Lee, attorney for Defendant Joseph Gibson**  
10 [angus@angusleelaw.com](mailto:angus@angusleelaw.com)

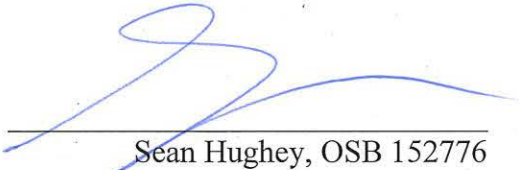
11 **Jason Steen, attorney for Ian Kramer**  
12 [jason@dickisonsteen.com](mailto:jason@dickisonsteen.com)

13 **Aubrey Hoffman, attorney for Russell Schultz**  
14 [aubrey@aubreyhoffmanlaw.com](mailto:aubrey@aubreyhoffmanlaw.com)

15 **Mackenzie Lewis – pro se**  
16 [Mack.lewis16@yahoo.com](mailto:Mack.lewis16@yahoo.com)

17 **Kelly Doyle, advisory counsel for Mackenzie Lewis**  
18 [kdoyleatty@aol.com](mailto:kdoyleatty@aol.com)

19 Submitted this 1<sup>st</sup> day of March, 2020.  
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22 Sean Hughey, OSB 152776  
23 Deputy District Attorney  
24 Multnomah County DA's Office  
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