

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

THE STATE OF OREGON,

No. 19CR53042

Plaintiff,

v.

STATE'S RESPONSE TO DEFENDANT'S RENEWED
MOTION FOR A CHANGE OF VENUE

JOSEPH GIBSON,

Defendants.

Comes now Mike Schmidt, by and through Brad Kalbaugh, Deputy District Attorney, and respectfully moves the court for an order denying Defendant's renewed motion for a change in venue on the basis that the motion is premature because we have not yet completed voir dire. Defense's motion presupposes that the court cannot empanel a group of 12 impartial jurors plus 1 or more alternate jurors on the case at bar in accordance with Article I, section 11 of the Oregon Constitution and ORS 136.001. In support of this position, Defense relies on dozens of catch phrases and excerpts copied from questionnaires that were completed by more than 200 potential jurors who responded to a summons and were not otherwise excused for cause by the court. The fact that a juror has preconceived ideas about a matter relevant to a criminal case does not per se mean that a juror cannot be fair impartial. *State v. Evans*, 344 Or 358, 362 (2008). The touchstone of impartiality is the juror's ability to set aside any preexisting opinions or impressions and to decide the case impartially. *Id.* The examination of a juror on voir dire serves two purposes: 1) to ascertain whether a cause for challenge exists, and 2) to ascertain whether the parties desire to exercise their legal right of peremptory challenge. *State v. Nefstad*, 309 Or

1 523, 526 (1990). Here, because voir dire has not yet occurred, the court does not know whether it is
2 possible to empanel an impartial group of jurors to hear the case against Defendant Gibson. Therefore, the
3 motion should be denied.
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5 Respectfully submitted this 8th day of July 2022.
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7 Respectfully Submitted,

8 MIKE SCHMIDT
9 District Attorney
Multnomah County, Oregon
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11 By /s/ Brad Kalbaugh
12 Brad Kalbaugh, 074335
13 Deputy District Attorney
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Certificate of Service

I certify that on July 8, 2022, I caused the foregoing motion to join cases to be served upon the parties hereto by the method indicated below, and addressed as follows:

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