COMMONWEALTH OF KENTUCKY
50TH JUDICIAL CIRCUIT
BOYLE CIRCUIT COURT
CASE NO. 13-C00204

COMMONWEALTH OF KENTUCKY **PLAINTIFF**

v. **ORDER**

KENNETH ALLEN KEITH **DEFENDANT**

This matter having come before the Court on Defendant's motion for change of venue. The Defendant being present in person and represented by Hon. Samuel Cox and Hon. Teresa Whitaker, the Commonwealth being represented by Hon. Richard L. Bottoms and testimony having been heard and evidence presented, the Court hereby makes the following findings.

The defense called two witnesses who gave testimony concerning the survey conducted by counsel for the defense with regard to potential juror bias created by pre-trial publicity. The first witness from Thoroughbred Research Group was the director for market research. She testified as to how their survey was conducted. She indicated the survey was completed by 401 individuals from a potential base of 30,000 telephone numbers. She noted that 11,000 of said numbers had been disconnected. The second witness for the defense was the psychologist hired by the Department of Public Advocacy to conduct said survey. That individual was Dr. M. C. Hamilton. Dr. Hamilton discussed how she had formulated the questions involved in the survey. In testimony she described the reason for many of her questions and her belief that pre-trial publicity in almost all cases creates bias and that jurors will be unable to set aside said biases. She further testified that she has conducted approximately eleven such surveys and has, in all instances, found that a

change of venue was necessary. She further testified that she had never conducted a survey in which she found that change of venue was not needed.

After listening to the testimony the Court was able to determine that the survey had in itself under-sampled an age group between eighteen and forty-nine years old. Further, that it had also over-sampled women, and had over-sampled individuals in the lower income ranges. Further the said survey did not ask if individuals were able to listen to evidence and facts and make a decision based on same rather than upon their pre-conceived notions. Dr. Hamilton explained that she did not believe that people could do same and opined that people on voir dire were basically dishonest. Further, the Court would note that Dr. Hamilton testified that she believed the Court would be unable to obtain an unbiased jury in Boyle County.

Under cross examination Dr. Hamilton further testified that she believed that 97% of the people of Boyle County had a knowledge about the facts of the case and, therefore, said knowledge created a bias. The Court would note that the Kentucky Supreme Court held in Grooms v. Commonwealth, 756 S.W.2d 131 (Ky. 1988), that a change of venue was not required despite the fact that 98 percent of prospective jurors knew about the case. Similarly, the Supreme Court of Kentucky held in Woods v. Commonwealth, 178 S.W.3d 500 (Ky. 2005) that a change of venue was not required when approximately 95% of the jury pool had been exposed to pretrial publicity. And finally, that same Court, in Foster v. Commonwealth, 827 S.W.2d 671 (Ky. 1991) held that change of venue was not required when all potential jurors had heard about the case.

Dr. Hamilton further indicated on cross examination that a larger jury pool would help change the statistics and that it could be possible under ideal situations to seat a fair jury. Under further examination she noted that in none of the questions of the survey was there an

opportunity for an individual to respond in such a manner as to note that they did not know about a particular circumstance or they weren't sure about a particular question or that they had not yet made up their mind about certain issues within the survey. Dr. Hamilton stated that she did not put those options in her survey questions because she would consider responses of this kind to be a "cop-out".

On a personal note, the Court would find it unusual in a small community for citizens within that community not to have heard of, or to have read about or seen something involving a "sensational" case. Nothing, however, within the testimony or the survey has convinced the Court that fair minded people would not be able to truthfully answer questions on voir dire or to set aside any preconceived notions that they may have had once the facts of the case are presented, under oath, in the Courtroom.

Kentucky Courts have long held that the fact that a juror may have heard or talked or read about a case is not a sufficient reason to change venue absent a showing that there was no reasonable likelihood that accounts or descriptions of the investigation and proceedings had substantially prejudiced the Defendant in some way. Thurman v. Commonwealth, 975 S.W.2d 888, 899 (1998). At this point no such prejudice has been shown and same cannot be clearly implied in the totality of circumstances in the instant case. Further, whatever an individual has heard or read or seen about a case would be subjected to extensive voir dire examination. Such examination will determine if a juror's ability to profess, under oath, to try this case solely on the law and the evidence is somehow compromised. As the Commonwealth correctly points out, when the Court allows extensive voir dire and a hearing so as to seat jurors free of prejudice against the defendant in view of the record and totality of the circumstances, there is no abuse of discretion and no necessity for a change of venue. Whitler v. Commonwealth, 810 S.W.2d 505 (Ky. 1991).

Undoubtedly this case has caused a considerable amount of publicity in Boyle County and the area. Boyle County, though not a large county, has numerous potential jurors available and it would appear to be able to choose from a pool of approximately 25,000 individuals at this point. In Wood v. Commonwealth, 178 S.W.3d 500 (2005), the Kentucky Supreme Court found that "[v]oir dire on the issue of pretrial publicity was extensive and thorough", and as such, the trial court was able to empanel a fair and impartial jury. This Court believes such a result is entirely possible in Boyle County.

Finally, the Court would point out that 74% of those surveyed agreed or strongly agreed that the defendant will receive a fair trial in Boyle County. Although Dr. Hamilton states that she does not "personally or professionally put stock in responses to this statement", this Court would find otherwise. "To obtain a change of venue, '[p]rejudice must be shown unless it may be clearly implied in a given case from the totality of the circumstances'". Sluss v. Commonwealth, 450 S.W.3d 279 (2014), [*citing* Brewster v. Commonwealth. 568 S.W.2d 232 (1978)]. The testimony presented at the hearing and the results of the survey fail to clearly show prejudice. A change of venue motion should be granted only in cases where the trial court reaches a conclusion, based upon affidavits and the evidence presented at a pretrial hearing, that it is relatively impossible to empanel a jury that has not preconceived an opinion as to the guilt of the accused because of pretrial publicity. Elswick v. Commonwealth, 574 S.W.2d 916 (Ky. App. 1978).

The events which have transpired in this case occurred almost three years ago which has allowed for some of the strong sentiment to subside, at least to some degree. This Court is confident that a thorough and careful voir dire examination can insure that only impartial jurors will be selected for trial.

For the above reasons it is hereby **Ordered** and **Adjudged** that Defendant's motion for a change of venue shall be and hereby is denied.

Done this 6th **, day of** Sept. **, 2016.**

HON. DARREN W. PECKLER, JUDGE
BOYLE CIRCUIT COURT

HO: Comm
Pcm: Cox
Whitaker
9-6-16 dc