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MAR 30 2017

JEFFREY E. LEWIS, CLERK OF COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KINGS
ROSAVALVA CRUZ, DEPUTY
ROSALVA CRUZ

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5 SUPERIOR COURT OF THE STATE OF CALIFORNIA

6 COUNTY OF KINGS

7 PEOPLE OF THE STATE OF)
8 CALIFORNIA,)
9 V.)

10 TODD DOUGLAS PATE)
11 Defendant,)
12)
13)

) Case Number: 13CM3538HTA

) **DEFENDANT'S MOTION FOR CHANGE OF VENUE.**

) DATE: April 4, 2017

) TIME: 8:15am

) LOCATION: DEPT.5

14
15 **I.**

16 **DUE TO THE DISSEMINATION OF PREJUDICIAL MATERIAL**
17 **IN THE MEDIA THERE IS A REASONABLE LIKELIHOOD THAT A FAIR**
18 **TRIAL CANNOT BE HAD.**

19 "A motion for change of venue shall be granted whenever it is determined that because of the
20 dissemination of potentially prejudicial material, there is a reasonable likelihood that in the absence
21 of such relief, a fair trial cannot be had." Maine v Superior Court (1968) 68 Cal.2d 375, 383. (See
22 Penal Code section 1033) "The factors to be considered are the nature and gravity of the offense,
23 the nature and extent of the news coverage, the size of the community, the status of the defendant in
24 the community, and the popularity and prominence of the victim." People v. Harris (1981) 28
25 Cal.3d 935, 948. These factors are referred to as the *Maine* factors. As the moving party, the
26 criminal defendant seeking the change of venue bears the burden of proof. People v. Bonin (1988)
27 46 Cal.3d 659, 673.

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1 As will be shown below, all but one of these *Maine* factors are present in this case.

2 **1. THE NATURE AND GRAVITY OF THE OFFENSE:**

3 It goes without saying that, but for seeking the death penalty, the charges in this case are
4 of the most serious possible. First degree murder, a life offense.

5 **2.THE NATURE AND EXTENT OF THE NEWS COVERAGE:**

6 From the Hanford Sentinel the following articles have been published to date:

- 7 1. (9/2/13) "Hanford Woman Killed By Husband."
- 8 2. (9/3/13) "Candlelight Vigil Wednesday for Melanic Pate."
- 9 3. (9/5/13) "Services Planned for Melanie Pate."
- 10 4. (9/5/13) "Candlelight Vigil for Melanie Pate."
- 11 5. (9/5/13) "Melanic Pate Was an 'Angel In the Outfield.'"
- 12 6. (9/6/13) "Pate Pleads Not Guilty In Wife's Murder."
- 13 7. (9/6/13) "Divorce Filing Offers Clues Into Melanic Pate Murder."
- 14 8. (9/7/13) "Insanity Defense for Pate?"
- 15 9. (9/7/13) "Pate Pleads Not Guilty In Murder."
- 16 10. (9/12/13) "Mental Competency Concern Derails Pate Murder Hearing."
- 17 11. (9/13/13) "Competency Concerns Delay Pate Case."
- 18 12. (10/31/13) "Jurors To Decide Pate's Mental Competency."
- 19 13. (12/12/13) "Pate Hearing Focuses On Competency."
- 20 14. (12/28/13) "Year in Review: Crime" (article contains a picture of Mr. Pate)
- 21 15. (1/23/14) "Pate Deemed Competent, Will Stand Trial."
- 22 16. (2/12/14) "Pate To Appear In Court This Week."
- 23 17. (2/13/14) "Preliminary Hearing Set For Pate."
- 24 18. (3/26/14) "Trial Date Set For Pate Case."
- 25 19. (6/10/15) "Pretrial Hearing Set For Pate Case."
- 26 20. (7/17/15) "Court Deliberations Continue In Pate Case."
- 27 21. (3/2/16) "Pate Still Awaiting Trial In 2013 Killing."
- 28 22. (3/22/16) "Todd Pate Jury Trial Set For August."

- 1 23. (8/6/16) "Pate Homicide Trial To Begin Next Week."
- 2 24. (8/10/16) "Pate Trial Waits On Jury Selection."
- 3 25. (8/10/16) "Pate Trial Postponed For 'Proccdural Issues.'"
- 4 26. (8/12/16) "Pate Trial Scheduled To Begin Monday."
- 5 27. (8/15/16) "Attorneys Paint Different Pictures Of Todd Pate."
- 6 28. (8/16/16) "Pate Trial: Lead Investigator Testifies About Crime Scene."
- 7 29. (8/18/16) "Trial: Testimony Focuses On Pate's Emotional State."
- 8 30. (8/18/16) "Defense Rests In Todd Pate Homicide Trial."
- 9 31. (8/19/16) "Jury Deliberations In Todd Pate Trial; No Verdict Yet."
- 10 32. (8/22/16) "Pate Case Ends In Mistrial After Jury Deadlocks."
- 11 33. (8/24/16) Prosecutors To Keep Homicide Charge In Pate Retrial."
- 12 34. (9/16/16) "Todd Pate Retrial Postponed Until 2017."
- 13 35. (12/31/16) "Local Courts Hear Homicide Cases In 2016."
- 14 36. (2/14/17) "Todd Pate Enters Insanity Plea."

15 The extent of the coverage is self evident from the quantity of the articles from this
16 community's leading local newspaper. Literally, every day of this case's court proceedings are
17 front page news. But it's not just the extent of coverage that has prejudiced this case, it's the nature
18 of the coverage and the People's inappropriate comments to Mr. Pate's prospective jurors that has
19 created a reasonable likelihood that we cannot obtain a fair trial, especially as it relates to Mr. Pate's
20 recent change of plea to not guilty by reason of insanity.

21 On 2/14/17 Mr. Pate entered a change of plea to include a not guilty by reason of insanity.
22 Given this was not part of his defense in the first trial, and that literally every day of the trial was
23 covered by the paper, there is a high probability that the jurors in the pending trial will know that
24 this defense was not pursued initially. This is a huge problem for the defense. It is highly probable
25 that a juror might think something to the affect that "if this was really their defense, why didn't they
26 bring it up the first time. This is just fancy lawyer tactics brought up because they need to try
27 something different the second time around." I cannot comment on why this defense was not
28 pursued initially as I was not the attorney of record. I can say that this is a major defense in the

1 second trial, and any such thoughts by future jurors created by comparing Mr. Pate's first and
2 second trial tactics will render our defense ineffective, resulting in a reasonable likelihood we
3 cannot receive a fair trial. Furthermore, this situation cannot be completely remedied in the voir
4 dire stage of the trial due to the bifurcated nature of the NGI trial proceedings. While the insanity
5 portion is an important defense to Mr. Pate, it is secondary to our primary defense that the crime
6 committed was a voluntary manslaughter. Our primary defense and focus is first and foremost that
7 this is a voluntary manslaughter. The bifurcating of the NGI portion of the trial would typically
8 give the defense the ability to focus on the guilt portion of the trial first, and then deal with
9 subsequent insanity defenses. But because this defense was not raised in the first trial, a fact widely
10 published to our future jurors, the defense is now in a position that we must put the insanity
11 defenses to the forefront when we normally could focus on our primary defense that this is a
12 voluntary manslaughter. Only by relocating this case to a venue where jurors are unaware that there
13 was an earlier trial with different trial tactics can we obtain a fair trial.

14 A second problem relating to the 2/14/17 change of plea was the People's comments
15 published in the Hanford Sentinel article. Specifically, I refer to the following quotes:

16 "Kings County District Attorney Keith Fagundes said insanity pleas are
17 very rare because of the difficulty of proving the plea to a jury.

18 Fagundes said the new plea simply marks a change in defense strategy."

19 This comment is outrageous, wrong, and simply put, prejudicial. No juror having read this
20 quote can be fair and impartial. But the prejudicial quotes did not stop there, as Mr. Fagundes
21 further said, "It's unusual because the threshold to be successful is pretty high." Again, this could
22 not be legally more wrong or prejudicial. The burden of proof actually born by the defense in
23 raising this defense is merely a **preponderance** standard, not this "high threshold" erroneously put
24 forth to the public by the People. Mr. Fagundes goes on. "Fagundes said a plea of not guilty by
25 reason of insanity means the defendant was insane during the crime and should not be held
26 accountable." Not be held accountable! The prospective jurors were just told by the District
27 Attorney that should they find Mr. Pate was legally insane that he would not be held accountable,
28

1 that he would, in essence, be getting off. Nothing could be farther from the truth, and nothing could
2 be more prejudicial.

3 **3. THE SIZE OF THE COMMUNITY:**

4 No demographic expert is needed to establish the fact that Kings County is a relatively small
5 rural community.

6 **4. THE STATUS OF THE DEFENDANT IN THE COMMUNITY:**

7 The Defense concedes that but for the notoriety gained from the publicity of this trial there
8 was nothing particularly noteworthy about Mr. Pate's status in the community.

9 **5. THE POPULARITY AND PROMINENCE OF THE VICTIM:**

10 Unlike Mr. Pate, Melanie did and does maintain a high degree of popularity and prominence
11 in the community as evidenced in the 9/5/13 article entitled "Melanie Pate Was An 'Angel
12 In The Outfield.'" Furthermore, the community held a candlelight vigil for her which was
13 publicly announced in the newspaper, as was her services.

14
15 **II.**

16 **CONCLUSION**

17 Of the 5 Maine factors set forth, 4 are clearly present in this case. Given the extent of the
18 coverage of this case from the beginning, the unique problems facing the defense as a result of
19 raising new defenses in the second trial, and the highly prejudicial statements made to the public by
20 the People regarding these new defenses, there is a high likelihood that, absent a change of venue, a
21 fair trial will not be possible. Accordingly, the defense requests this case be transferred to a new
22 venue.

23 Respectfully submitted

24 Dated: 3/29/17

25 
26 ADAM NELSON
27 ATTORNEY FOR MR. PATE
28

Proof of Service

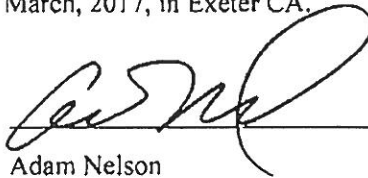
People v. TODD DOUGLAS PATE, Case Numbers 13CM3538HTA

I, the undersigned, state that on today's date, I served the attached motion for change of venue on the following parties:

Kings County District Attorney's Office, 1400 West Lacey Blvd, Hanford, Ca. 93230

I further state that I am over the age of 18, my business address is P.O. BOX 7751, Visalia, CA 93290, and I am not a party to this action.

Stated under penalty of perjury this 30th Day of March, 2017, in Exeter CA.



A handwritten signature in black ink, appearing to read 'Adam Nelson', is written over a horizontal line.

Adam Nelson

Declarant.