

2. The content of the media coverage;
3. The timing of the media coverage prior to trial; and
4. The media interference with the trial or its influence on the verdict.

In *Luong, Supra*, the Alabama Supreme Court reversed the Alabama Court of Criminal Appeals decision that extensive pretrial publicity of the defendant's alleged murder of his four children by throwing them from the Dauphin Island Bridge was presumptively prejudicial. In doing so it examined each of these factors. With regard to the first, the Court recognized that in 2010 Mobile County was the second most populated county in Alabama with over 400,000 residents. The Court went on to note:

Even though the record indicates that a large percentage of Mobile County residents read the local newspaper, the size of the population of Mobile County reduces the likelihood of prejudice. In light of Mobile County's large population and its diverse pool of citizens, this Court is reluctant to conclude that 12 impartial jurors could not be impaneled.

Luong v. State, 199 So.3d at 147. According to the 2020 United States Census Mobile County has a population of approximately 414,000. (www.census.gov). Defendants do not argue the population of Mobile County has become less diverse, and it remains large in comparison to every other county in the State, save Jefferson and Madison. "[T]he smaller the community, the more likely there will be a need for a change of venue...when a heinous crime is committed." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 599-600 (1976). Here, because of Mobile County's relatively large population it is more likely than not that an impartial jury can be chosen. (See *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1044 (1991)(recognizing the likelihood of a presumption of prejudice was less because the venire was selected from a pool of over 600,000 residents).

Regarding the second factor, at the time *Luong* was decided the Mobile Press Register, the local paper referred to above, was still in print. According to the opinion of the Alabama Court of Criminal Appeals that was later reversed, the Press Register had a circulation of 219,000 readers, or roughly 53% of the adults in the Mobile area, with a Sunday circulation of 271,000, and an astounding average

weekly circulation of 335,000, or roughly 81% of all adults in the Mobile area.² *Luong v. State*, 199 So.3d 98, 113 (Ala. Crim. App. 2013). The Court of Criminal Appeals detailed no less than fifty nine separate articles in the Press Register alone concerning Luong. By comparison, Defendants claim stories or articles were run by Lagniappe Daily, Yellowhammer News, Fox 10 News, NBC 15 News, and WKRG News 5 but give no total count. Defendants attached as exhibits four (4) separate articles. Defendants do not attempt to provide circulation figures, but the Court is comfortable the combined circulation of the five respected news organizations identified above is less than the hard to believe figures cited by the Court of Criminal Appeals for the Press Register. Either way, the amount of media coverage for this civil matter is minuscule compared to the Luong trial.

In addition, the articles identified by Defendants, while not exactly flattering, mostly quote this Court's order and recount the long history of this protracted litigation. As the Alabama Supreme Court said in *Luong*:

This Court cannot conclude that, in this age of digital communication, the published opinions of certain citizens in this particular community constitute grounds for presuming that a fair trial could not be conducted in Mobile County.

...

A review of the record simply does not support a finding that the content of the media coverage incited anger, revulsion, and indignation to the degree that jurors chosen from citizens of Mobile County could not determine Luong's guilt or innocence based solely on the evidence presented at trial.

Id. at 147, 148.

Regarding the third factor, trial is set in October 19, 2026. The articles identified by Defendants appear to have all run in the first half of July, 2026 providing approximately ninety days between circulation and trial. The Court is confident this is ample time for members of the public to move their attention to other newsworthy topics.

² These numbers appear to reflect the percentage of total population, as opposed to adult population as cited in the opinion.

Finally, regarding media interference with trial or influence on the verdict, the trial has not yet occurred. There is no reason to believe normal precautions used in all high-profile cases will not work.

In sum, given Mobile County's large and diverse population, the relatively scant amount of publicity and its content, the timing, and the normal precautions the Court regularly uses to success to shield jurors from outside influence, there is no reason to transfer the venue of the trial of this civil action. The comparison to *Luong* in particular shows just how great the publicity must be to grant such a motion. The circumstances in this case do not come close to warranting such action.

Finally, in the alternative Defendants would like to conduct individual voir dire. They argue that "expanded voir dire may be insufficient as potential jurors may fail to recognize unconscious bias, may hesitate to admit preconceived opinions in open court, or may sincerely believe they can remain impartial despite extensive prior media coverage."

Defendants fail to explain how individual voir dire will help jurors realize they suffer from unconscious bias or how it will help them overcome their sincere belief they can remain impartial. The Court has now presided over at least one hundred jury trials and conducted voir dire in matters ranging from capital murder to misdemeanor appeals. In between there have been too many true high profile murder trials attendant with pretrial publicity, including several featured on the First 48 television series. Only one, a capital murder re-trial in a notorious and heinous arson death wherein the accused was a serving State Trooper, employed individual voir dire. The Court will not commit to doing so in this case. Voir dire will be employed in such a manner to insure that a fair and impartial jury is selected to decide all remaining claims.

For these reasons Defendants' motion is DENIED.

DONE this 31st day of August, 2026.

/s/ S. WESLEY PIPES
CIRCUIT JUDGE