

KRISTIN K. MAYES  
Attorney General  
Firm State Bar No. 14000

KRISTA WOOD  
State Bar No. 025503  
CATHERINE FERGUSON-GILBERT  
State Bar No. 031326  
Assistant Attorneys General  
2005 N. Central Avenue  
Phoenix, AZ 85004-1592  
Telephone (602) 542-3881  
CRMFraud@azag.gov  
*Attorney for the Plaintiff*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
**IN AND FOR THE COUNTY OF APACHE**

STATE OF ARIZONA,  
  
Plaintiff,

v.

**MICHAEL WHITING (230),  
JOYCLYNN WHITING (231),**  
  
Defendants.

Cause Nos.  
**CR2024-00230 &  
CR2024-00231**

**STATE'S OMNIBUS REPLY TO  
DEFENDANTS' RESPONSE TO  
STATE'S MOTION FOR CHANGE  
OF VENUE**

(Assigned to the Honorable Daniel Martin)

The State's motion to change venue should be granted because the State is unable to receive a fair and impartial trial in Apache County.<sup>1</sup> For the reasons stated below, Defendants' arguments the State filed an untimely motion or that Defendants would suffer a constitutional violation are meritless. The State asks this Court to grant its Motion.

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<sup>1</sup> On April 4, 2025, the Court granted the State's request to file its omnibus reply to the Defendants' responses to the State's Motion for Change of Venue. See ME filed 4/9/2025.

A. The Motion Was Timely Filed, but the Court Can Waive Any Untimeliness.

The State filed a timely motion. The State's request is based on prejudicial publicity, an incident that took place at the end of 2024 that required time to get additional information, election results that took time to determine the implications, and failed plea negotiations.

Looking first to the publicity, the prejudicial article—"Whiting's defense claims political plot behind indictment"—was published on February 12, 2025<sup>2</sup> where Michael Whiting asserted the State worked with a witness for two years in a political plot to remove him, among several other negative allegations. After the next court hearing on February 14, 2025, the State became aware of this prejudicial article. The State then timely filed its motion on March 13, 2025, one day before the next court hearing on March 14, 2025. This pretrial publicity was one of many articulated reasons for the State's motion. Michael Whiting claims this newspaper article was not a *recent* incident giving rise to filing the motion.<sup>3</sup> However, the facts show otherwise.

As for the December incident at the clerk's office, the election results, and the failed plea negotiations, those all had complete information obtained in early 2025. The State filed its motion as soon as it had sufficient information to provide a reasoned basis to this Court.

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<sup>2</sup> See State's Motion for Change of Venue, p. 5-6 and Exhibit 1 of the motion.

<sup>3</sup> See Michael Whiting's Resp. p. 3.

The Motion was timely. It is also worth noting that Joyclynn Whiting (“Joy Whiting”) does not argue untimeliness. Yet, even if this Court finds the State could have filed its Motion to Change Venue sooner, this Court has power to extend the deadline for filing motions and to hear untimely filed motions. *See State v. Bolivar*, 250 Ariz. 213, 223-24, ¶ 33, fn. 8 (2020).

B. Granting the Motion Does Not Violate the Defendant’s Constitutional Rights.

Second, granting the motion would not violate Defendants’ constitutional rights. Defendants’ rights are conditioned on the “possibility of empaneling ‘an impartial jury’ in that county, and in order for a jury to be ‘impartial’ its constituents must be partial neither to the state nor the defendant.” *Mast v. Superior Court In and For Yavapai Cty.*, 102 Ariz. 225, 226 (1967) (holding that the state produced “no evidence” to indicate that a jury would be partial the accused, introduced news articles that would tend to show the jury was partial in favor of the state, and the defendant strongly objected against the change of venue); *see also State ex rel. Sullivan v. Patterson*, 64 Ariz. 40, 46-47(1946) (there is no guarantee of a trial in the county where the offense is alleged to have been committed, but rather is a guarantee of an impartial trial by jury, and if that is not possible in the county, then it is constitutional to be removed). *Mast* also indicated, “[a]n accused should not be deprived of the advantage of a good reputation in the community or the ready accessibility of witnesses without a clear and persuasive showing that the State would be unable to find a jury that could consider the stated charge against the defendant objectively.” 102 Ariz. at

226.<sup>4</sup> Granting the motion to change venue will not result in a violation of Defendants’ constitutional rights.

C. The State is Entitled to a Change of Venue Because the State Cannot Have a Fair and Impartial Trial in Apache County.

A party is entitled to a change of venue if the party shows they cannot have a fair and impartial trial in that county “for any reason other than the trial judge’s interest or prejudice.” Ariz. R. Crim. P., Rule 10.3(a). Pretrial publicity is not the only ground for the State’s motion for a change of venue. *See* Ariz. R. Crim. P., Rule 10.3(a) and (b). These other reasons were articulated in the State’s motion and include the fact that the Apache County Clerk’s Office allowed a *party defendant* to a criminal cause of action, filed in her office, into a secure area and gave him a gift, despite reportedly not being biased in this case.<sup>5</sup> This is the same clerk’s office that is responsible for the filing of pleadings, handling of exhibits, and summoning potential jurors for trial in this case.<sup>6</sup> This includes

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<sup>4</sup> While Joy Whiting claims that the State left out the most important parts of the *Mast* opinion, the State did in fact include these in its motion. Def. Resp. p. 3. *See* State’s Mtn. p. 7, citing *Sullivan* and *Mast* for the same principles.

<sup>5</sup> *See* Michael Whiting’s Resp. p. 4. *See* also Joy Whiting’s Resp. p. 2 claiming to have no record of this incident and misunderstanding the State’s claims at oral argument on the motion to remand.

<sup>6</sup> Joy Whiting claims the State’s argument regarding the clerk “is bizarre and irrelevant” unless she is summoned for jury duty. However, it is relevant when the clerk’s office is treating party defendants with *ex parte* favoritism, and the clerk’s office is responsible for filing pleadings and exhibits and summoning potential jurors. *See Online Director: Arizona Jury Information, Find local jury info here, <https://www.azcourts.gov/jury-service/Contacts>; Jury Duty, <https://www.apachecountyaz.gov/Jury-Duty>; and Personnel Directory: Clerk of Court, <https://www.apachecountyaz.gov/Personnel-Directory>.*

the *State's* pleadings and the *State's* exhibits. There is concern there may be issues based on the clear favoritism shown to Michael Whiting. Additionally, this is the same clerk's office not posting Defendants' pleadings to eAccess for public viewing—but was posting the Co-Defendant Daryl Greer's pleadings. Finally **not only are the Defendants elected officials in Apache County,<sup>7</sup> but at least 24 witnesses in this case are or were employees of different Apache County offices.<sup>8</sup>** *Cf. State v. Woolery*, 93 Ariz. 76, 82 (1963)<sup>9</sup> (upholding denial of defendant's motion for change of venue when some of the jurors knew *one or more* of the doctors listed as witnesses, the pretrial publicity was primarily factual, and the defendant passed the panel of jurors without challenging them). The State cannot have a fair and impartial trial. The motion to change venue should be granted.

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<sup>7</sup> Defendants were both elected officials. Michael Whiting is no longer a public official due to his inability to hold elected office, but Joy Whiting remains a public official. The State only became aware of the significant number of voters, *who are part of the jury pool* in this small county, who voted for Michael Whiting when he presented the State with his draft motion to remand during plea negotiations on January 27, 2025. The State only became aware of the significant number of voters who voted for Joy Whiting and are part of the jury pool before the State filed its response to Joy Whiting's remand motion.

<sup>8</sup> *See* State's Notice of Disclosure and Request for Disclosure (15.1), filed on September 23, 2024, identifying 24 witnesses who currently work at, or previously worked for, different Apache County offices. This is a significant number of Apache County employees, more than merely "some witnesses" claimed in Michael Whiting's Resp. 4. These 24 Apache County government employee witnesses are more than just having "witnesses who are employed" somewhere within a small justice court's jury pool. Joy Whiting Resp. p. 5.

<sup>9</sup> *See* Joy Whiting's Resp. p. 5.

a. Pretrial Publicity.

Rule 10.3(b) requires proof “that the dissemination of the prejudicial material will probably result in the party being deprived a fair trial.” *State v. Salazar*, 173 Ariz. 399, 406 (1992). The State recognizes that when considering the motion for change of venue for *pretrial publicity*, the Court should assess whether the pretrial publicity created a presumption of prejudice, and whether the pretrial publicity created actual prejudice.<sup>10</sup> *See State v. Carlson*, 202 Ariz. 570, 576-80 (2002) (pretrial publicity which was mainly about defendant’s counsel was not presumptively or actually prejudicial); *see also State v. Bible*, 175 Ariz. 549, 563-567 (1993) (prejudice should not be presumed where pretrial publicity was mostly factual and tapered off before trial, and the *voir dire* record showed no actual prejudice when defendant did not object to proposed jury instructions or to empaneling the jury).

To prove actual prejudice, the State is required to show that jurors “have formed preconceived notions concerning the defendant’s guilt and cannot lay those notions aside.” *State v. Chaney*, 141 Ariz. 295, 302 (1984); *see also State v. Greenawalt*, 128 Ariz. 388, 392 (1981). Here, jury questionnaires have not yet been sent out and *voir dire* has not yet been conducted. However, prejudice is presumed for pretrial publicity if it pervades the court proceedings to the extent that the proceedings deny the usual judicial serenity and calm or develop into a carnival like atmosphere. *State v. Bigger*, 227 Ariz. 196, 201 ¶ 11

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<sup>10</sup> *See Michael Whiting’s Resp.* pp. 4-6 and *Joy Whiting’s Resp.* pp. 7-9.

(App. 2011) (courts are reluctant to presume prejudice if the pretrial publicity is primarily factual and *non-inflammatory*). The State is required to prove the dissemination of the prejudicial material will probably result in the State being deprived a fair trial. *State v. Salazar*, 173 Ariz. 399, 406 (1992); Ariz. R. Crim. P. 10.3(b). Here, the publication accusing the State of engaging in a “political plot” against the Defendants is *inflammatory* and not primarily factual simply because it may have in part come from Michael Whiting’s *inflammatory* “facts” section of his remand motion. While Michael Whiting cites in his motion several cases where pretrial publicity prejudice was not presumed for extensive pretrial publicity, it is the *prejudicial effect* and not the extensiveness that is key. *State v. Chaney*, 141 Ariz. 295, 302 (1984).

Furthermore, Michael Whiting does not address the fact that he is a public figure—an elected official—facing trial in a very small town with a limited number of jurors. Based on Michael Whiting’s role in the community and the size of that community, the pretrial publicity has pervaded the court proceedings to an extent that the proceedings deny the usual judicial serenity and calm. Based on this, a change of venue is appropriate and the State’s motion should be granted.

b. Change of Venue for Other Reasons.

Rule 10.3(a) of the Arizona Rules of Criminal Procedure requires the State to show that the State cannot have a fair and impartial trial in Apache County. It does not contain the same standard for pretrial publicity. Rule 10.3(b). *See State v. Rendel*, 19 Ariz. App. 554, 557 (App. 1973) (defendant’s claim that trial judge was seeking reelection caused him prejudice was not proven). The State has cited in its motion and this reply multiple other

reasons for the change of venue in this case.

D. At the Very Least, this Court Should Grant an Evidentiary Hearing and Oral Argument.

If the Court determines an evidentiary hearing is needed, the State will present clear and persuasive evidence to show that the State cannot have a fair and impartial trial in Apache County for multiple reasons, and that the prejudicial pretrial publicity will result in the State being deprived a fair trial, such that a change of venue should be granted to Maricopa County.

RESPECTFULLY SUBMITTED this 21st day of April, 2025.

KRISTIN K. MAYES  
ATTORNEY GENERAL



CATHERINE FERGUSON-GILBERT  
Assistant Attorney General

ORIGINAL of the foregoing e-filed  
this 21st day of April, 2025, with:

Clerk of the Court  
Apache County Superior Court

COPY of the foregoing delivered  
this 21st day of April, 2025, to:

The Honorable Daniel Martin  
Apache County Superior Court

Bruce Griffen  
office@flagstaff-lawyer.com  
*Attorney for Michael Whiting*

Jack Litwak  
[jlitwak@litwaklawgroup.com](mailto:jlitwak@litwaklawgroup.com)  
*Attorney for Joyclynn Whiting*

