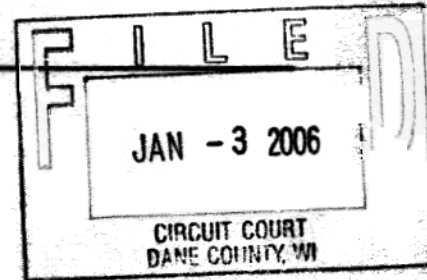


COPY

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 4

DANE COUNTY



STATE OF WISCONSIN,

Plaintiff,

vs.

Case No. 02CF2453

KL

SCOTT R. JENSEN

Defendant.

STATE OF WISCONSIN,

Plaintiff,

vs.

Case No. 02CF2454

STEVEN M. FOTI,

Defendant.

STATE OF WISCONSIN,

Plaintiff,

vs.

Case No. 02CF2455

SHERRY L. SCHULTZ,

Defendant.

DECISION AND ORDER DENYING DEFENDANTS' MOTION FOR A CHANGE OF VENUE

The defendants have filed this motion and supporting affidavit and exhibits along with supporting brief in June of 2005. The state responded at that time. Much has happened since that time. Other legislators have entered pleas and been sentenced for misconduct in public office. A former codefendant has entered a plea and awaits sentencing. In December 2005, the defendants filed a supplemental submission containing further argument and exhibits. The state has responded to that submission as well.

The case law in Wisconsin is quite well known to all counsel and the court. A concise summary of the Wisconsin law reiterates that a change of venue may be a constitutional right where adverse community prejudice will make a fair trial impossible. That issue, as it relates to the question of a change of venue, is addressed to the discretion of the trial court which must consider the evidentiary material presented. If the evidence presented establishes a reasonable likelihood that a fair trial cannot be had, it would be an inappropriate exercise of discretion to deny the motion.

Various factors are to be considered as relevant to the issue, including: the inflammatory nature of the publicity; the degree to which the adverse publicity permeated the county; the timing and specificity of the publicity; participation of the state in any

adverse publicity; and other factors relating to the actual selection of the jury. At this point in time it would be sheer speculation to consider the last point. I have read and considered the case law as far back as State v. Kramer, 45 Wis.2d 20 (1969) and the multiple cases decided since that case. The case law will not be repeated here. I have also read the exhibits presented by the defendants; exhibits that span a period of several years. That is not to say that the publicity was consistent and continuous over that time period. It was sporadic and was not consistently focused on these defendants or these charges. Some of the “legislative cases” followed others and the appellate process accounts for many months where little activity occurred at the circuit court level. Publicity was largely responsive to scheduled court activity.

Many of the exhibits presented by the defendants relate to news articles that primarily focus on legislative issues involving the defendants. Many news articles relating to the present charges are informational and I do not consider them to be inflammatory or designed to arouse the public against these defendants. Many of the cartoons presented are critical of the defendants as well as other legislative leaders and the governor. The fact that there have been news articles which were informational does not establish prejudice. My careful review of the exhibits along with my experience as a member of the community does not lead me to believe that this case is so emotionally charged that a change of venue is required.

The nature of the cases involving these defendants and Chvala and Burke was such that it would be prominent news in the capital community. I think it's fair to say that it may be more newsworthy in Dane County than in Buffalo or Taylor or Sawyer County. But the fact that it is newsworthy doesn't make it prejudicial. Many of the

editorials presented to the court contained opinions that were primarily critical of campaign financing or appellate delay or the payment of legal fees or wrong-doing by others in the legislative or executive branches or were critical of Jensen for reasons other than the charges in this case. Public figures such as legislative leaders must expect to be fair game for criticism in the media. At least one editorial related to these defendants noted that the defendants deserve a fair trial and that it is up to a jury of citizens to decide upon guilt or innocence.

Case law also instructs that an important factor to consider is the jury selection process. While it is not the controlling factor, I believe that it is premature to conclude that there is a reasonable likelihood that a fair trial cannot be had. I recognize that Judge Flanagan made comments relating to the negative responses from prospective jurors regarding Senator Chvala and the legislature. However, preliminary juror questionnaires can screen out jurors who have formed opinions prior to an actual jury election process in court. Follow-up juror questionnaires can further screen potential jurors to eliminate any potential prejudice. Voir dire may also further insulate the jury from any alleged prejudicial publicity.

It is simply too early to conclude that a fair trial cannot be held in Dane County. For that reason I am denying the motion for a change of venue at this time. The defendants may raise the issue again if it becomes relevant at jury selection.

Lastly, I do not intend to sequester the jury in these cases. The jury will be instructed to avoid reading, listening to or watching any news accounts of the trial during the course of the trial. They will likewise be admonished not to discuss the cases or listen to any discussions of the cases while they are pending. I will question the jury each day to insure that the court's ruling and order is followed. The state also raises the issue of peremptory strikes. I have reviewed this issue and conclude that, as to the number of strikes allowed, the defendants will have three each and the state will have four. In addition, each party will be allowed two more strikes for the two alternates.

IT IS SO ORDERED

Dated this 3rd day of January, 2006.

BY THE COURT

A handwritten signature in black ink that reads "Steven D. Ebert". The signature is written in a cursive, slightly slanted style.

STEVEN D. EBERT
Circuit Court Judge

cc: DA Brian Blanchard
AAG Roy Korte
Attorney Franklyn M. Gimbel
Attorney Stephen J. Meyer
Attorney Stephen L. Morgan