

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
~~20108 CRS 22922~~: 54

STATE OF NORTH CAROLINA)
VS.)
BRADLEY GRAHAM COOPER)
Defendant.)

WAKE COUNTY, N.C.

ORDER RE: CHANGE OF
VENUE MOTION

THIS MATTER came before the undersigned Judge of Superior Court on September 10th 2010 upon Defendant's Motion for a Change of Venue filed August 18, 2010. The defendant was present with his counsel, Mr. Howard Kurtz and Mr. Robert Trenkle. Mr. Howard Cummings, Ms. Amy Fitzhugh and Mr. Benjamin Zellinger of the Wake County District Attorneys Office appeared on behalf of the State.

In addition to the oral arguments of the defendant and the State, the court received exhibits from the parties. At the conclusion of the hearing the court took the matter under advisement and conducted an *in camera* review of Defendant's Exhibit #1¹ and State's Exhibit #1. The court has conducted a thorough review of the exhibits and the applicable case law, and for the following reasons denies the defendant's Motion for a Change of Venue.

1. The defendant has failed to show that the nature and extent of the pretrial publicity of this case will prevent a fair trial. Although this case and related matters have been widely reported in the local television and print media, the court finds that these reports are factual accounts of the proceedings and are non-inflammatory in

¹ Portions of the original version of Defense Exhibit #1 could not be opened by the court due to a technical problem. Upon request of the court and with the State's consent, a second disc was provided by the defense to the court in a different readable format.

nature. These reports are not beyond the bounds of propriety. The reports were made at or near the time of the various hearings and significant events and are separated by periods of time in which there is little or no media reports. The court does not find that the sheer number of the reports establishes a basis for the relief sought.

2. The court does not find that the information published by the various media outlets is attributable to the police or prosecution sources. At early stages of the investigation the Cary Police Department did conduct press conferences which were reported, however these were status updates concerning the initial missing person report, the discovery of the body of Nancy Cooper, and the arrest of the defendant. These press conferences were within the normal bounds of propriety for a law enforcement agency conducting an investigation of this type. After the arrest of the Defendant these press conferences largely ceased. The court also finds that at an early time in the investigation of this case the law firm of Kurtz and Blum, of which the defendant's lead counsel is a member, maintained a website devoted to addressing issues in this case. The website discussed issues relevant to the case and published purported evidence. Members of the Kurtz and Blum law firm conducted a press conference which was reported by the local television media.
3. The defendant has failed to show that there currently exists a prevailing community atmosphere which would prevent the defendant from receiving a fair trial in Wake County.
4. The court has considered, and is considering efforts to insulate the jury pool and jurors against publicity and efforts to diminish the

impact of publicity. The court fully anticipates exercising its inherent authority to establishing guidelines that regulate and control electronic media and still photography coverage of the proceedings as set forth and established by Rule 15 of the North Carolina General Rules of Practice for the Superior and District Courts. The court will also instruct the potential jurors during the orientation as required by Rule 15(b)(4) of the North Carolina General Rules of Practice for the Superior and District Courts utilizing North Carolina Pattern Instruction-Criminal 100.15 or some similar language. In addition, the court anticipates addressing the issue of pretrial publicity with the jury venire and the individual jurors during jury selection. In recent public court proceedings counsel for the State and the defendant have limited their statements in an effort to minimize the pretrial publicity.

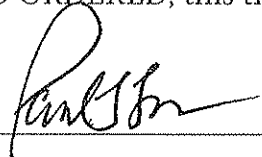
5. There is no evidence before the court that would support a finding of fact regarding the probable efficacy of a change of venue.
6. The length of time between the publicity and the trial has been considerable. This is an event that has occurred over two years ago. As previously stated, many of the news accounts were generated at or near significant events and proceedings and are not continual. Although these media accounts are archived and available on the internet, there is no evidence before the court from which it can make a finding of fact regarding the number of people that have viewed these accounts and when the viewings may have occurred.

This court has conducted a thorough review of the relevant portions of the record and considered various appellate opinions that address the issues presented. This order is

entered after carefully considering the defendant's right to a fair and impartial trial as guaranteed and protected by the Sixth and Fourteenth Amendments to the United States Constitution and Article I § 24 of the North Carolina Constitution, as well as N.C. Gen. Stat. §15A-957. The court has also considered the media's role as the people's monitor of the government as established by the First Amendment to the United States Constitution.

THEREFORE the court finds and concludes that the defendant has failed to establish that it is reasonably likely that prospective jurors would base their decision in the case upon pretrial information rather than the evidence presented at trial and would be unable to remove from their minds any preconceived impressions they might have formed. This court, in its discretion, denies the defendants motion for a change of venue.

SO ORDERED, this the 23rd day of September, 2010.



Paul G. Gessner
Resident Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Order Re: Change of Venue upon the persons listed below by depositing a copy of the same in the U.S. Mail in an envelope addressed to the place and address as stated below.

**Howard A. Kurtz
Kurtz and Blum
16 West Martin St., 10th Floor
Raleigh, NC 27601**

**Robert C. Trenkle
Edwards & Trenkle
Post Office Box 541
Pittsboro, NC 27312**

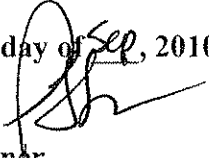
I hereby certify that I served a copy of the foregoing Notice of Hearing upon the persons listed below by hand delivering a copy of the order to the place and address as stated below;

**Howard J. Cummings
Assistant District Attorney
District Attorneys Office
Wake County Courthouse**

**Amy Fitzhugh
Assistant District Attorney
District Attorneys Office
Wake County Courthouse**

**Boz Zellinger
Assistant District Attorney
District Attorneys Office
Wake County Courthouse**

This the 23 day of Sep, 2010.


**Paul G. Gessner
Superior Court Judge Presiding**