

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

STATE OF NEW HAMPSHIRE

v.

JESSE T. BROOKS

09-S-319, 08-S-579, 07-S-2885

2009 APR -9 AM 11:27
ROCKINGHAM
SUPERIOR COURT

DEFENDANT’S MOTION FOR CHANGE OF VENUE

Defendant Jesse Brooks, by and through counsel, hereby moves for a change of venue in the above-captioned matter. Mr. Brooks is in an unprecedented position: he faces trial in this Court on charges of participating in the same conspiracy to commit capital murder for which John “Jay” Brooks—the Defendant’s father—was convicted and sentenced after a two-month trial in this Court last fall. The trial of Jay Brooks was the first capital murder case to go to a jury in New Hampshire in nearly fifty years. Accordingly, Jesse Brooks has been subject to uniquely intense and prejudicial pretrial publicity throughout the more than two years since his arraignment. The news coverage of this case, including daily updates on Jay Brooks’ trial, has been extensive, emotional, inflammatory, and in some instances flatly wrong in detailing all aspects of the case against Jesse Brooks and in creating a uniquely prejudicial impression of his guilt. It has made a fair trial in Rockingham County impossible.

Jesse Brooks therefore seeks that this case be transferred to another county for trial. Specifically, counsel submits that the Court should transfer this case to either Carroll County, where Jesse Brooks is currently in custody, or Grafton or Coos counties. Such a transfer is necessary to ensure Mr. Brooks the fair trial to which he is constitutionally entitled.

In further support of this Motion, Mr. Brooks states as follows:

1. “It is well established that due process requires that an accused must receive a trial by a fair and impartial jury.” State v. Laaman, 114 N.H. 794, 798 (1974) (citing N.H. Const. pt. I, art. 15; U.S. Const. Amends. VI, XIV). A defendant has a right to such a trial, if possible, “in the county or judicial district thereof in which the offense was committed.” RSA 602:1; see also N.H. Const. pt. I, art. 17. However, if “a fair and impartial trial cannot be had where the offense may be committed, the court shall direct the trial to a county or judicial district in which a fair and impartial trial can be obtained.” N.H. Const. pt. I, art. 17.

2. Adverse pretrial publicity is perhaps the most notorious impediment to “a fair and impartial trial.” See Laaman, 114 N.H. at 798. “Publicity about a case can result in two types of prejudice” that impair an accused’s “right to a fair trial.” Id. “[A]ctual prejudice ... exists when the publicity has infected the jurors to such an extent that the defendant cannot or has not received a fair and impartial jury trial.” State v. Smart, 136 N.H. 639, 647 (1993) (citation omitted). “[I]nherent prejudice,” in contrast, “exists when the publicity by its nature has so tainted the trial atmosphere that it will necessarily result in lack of due process.” Laaman, 114 N.H. at 798.

3. “[A] claim of inherent prejudice does not require the defendant to show actual identifiable prejudice.” Smart, 136 N.H. at 647 (citation omitted). Inherent prejudice may be presumed “where prejudicial, inflammatory publicity about a case so saturated the community from which the defendant’s jury” is to be drawn that a fair trial in that community is not reasonably likely. United States v. Angiulo, 897 F.2d 1169, 1181 (1st Cir. 1990); see Brecheen v. Oklahoma, 485 U.S. 909, 911 (1988) (Marshall, J., dissenting) (noting that “[m]ost States have followed the well-trod course of granting motions for venue change when the totality of the circumstances establish ‘a reasonable likelihood that in the absence of such relief, a fair trial

cannot be had” (citation omitted)). “[I]t is the adverse nature of the publicity, not merely its quantity, that is critical in finding presumptive prejudice.” Smart, 136 N.H. at 649.

4. Presumptive prejudice occurs “only in the most unusual cases.” See Busby v. Dretke, 359 F.3d 708, 725 (5th Cir. 2004); see also, e.g., House v. Hatch, 527 F.3d 1010, 1023 (10th Cir. 2008) (prejudice is presumed where “pretrial publicity is so pervasive and prejudicial that we cannot expect to find an unbiased jury pool in the community” (quotation and citation omitted)). Jesse Brooks’ circumstances, however, present exactly such a case.

5. Jesse Brooks is one of five defendants charged in connection with the death of Jack Reid in Deerfield, Rockingham County, on June 27, 2005. He is one of only two of the five defendants who has not already been convicted or pleaded guilty for participating in the death of Mr. Reid. He is also the only one who is not alleged to have been present in Deerfield (or even in New Hampshire) on the date and at the time of the alleged murder.

6. Since the beginning, the investigation and prosecutions related to Mr. Reid’s death have been extensively publicized and highly emotional. See, e.g., Hunter McGee, “Derry death probed,” Union Leader, July 7, 2005 (“A heart-rendering search by relatives for a missing local man ended in sadness after police announced yesterday that his body had been found in his dump truck in Saugus, Mass.”).¹ The media attention intensified with the arrest of Jay Brooks, a prominent New Hampshire businessman. See, e.g., John Whitson, “Brooks’ arrest stuns NH friends,” Union Leader, Nov. 25, 2006. The news media focused on Jay Brooks’ wealth and on contrasting Jay Brooks with Mr. Reid. See Scott Brooks, “Murder charge for Brooks,” Union Leader, Dec. 8, 2006 (“John ‘Jay’ Brooks, a wealthy and once prominent New Hampshire businessman, has been charged with first-degree murder in the fatal beating of a Derry trash

¹ The news articles referenced herein are provided at Appendix A, filed with this motion.

hauler.”); James Kimble, “Cell phone records led police to murder suspects,” Eagle-Tribune, May 1, 2007 (“Brooks, a wealthy businessman from Derry, is facing capital murder charges in the 2005 murder of Jack Reid, a self-employed salvage worker”); Annmarie Timmins, “Trial date set in murder case: Millionaire accused of paying to kill mover,” Monitor, Aug. 14, 2007; Beverly Wang, “The rise and fall of Jay Brooks: Successful businessman to accused murder,” Associated Press, May 14, 2007. The lurid allegations in the case also provided ample fodder for media interest. See, e.g., Sarah Schweitzer, “In N.H., did a grudge lead to murder?,” Boston Globe, May 20, 2007.²

7. The case took on historic proportions, however, and attracted attendant news media coverage, when John Brooks became the first person to face the death penalty in New Hampshire since 1959 for his alleged role in Mr. Reid’s death. See “Top 10 news stories of 2008 in N.H.,” Eagle-Tribune, Dec. 28, 2008 (listing John Brooks trial third among news stories in the state for 2008); see also Beverly Wang, “Death penalty sought in Derry man’s ’05 murder,” Associated Press, Apr. 27, 2007; Annmarie Timmins, “Millionaire faces death penalty,”

² His homespun business success was the stuff of state lore. His millions had earned him respect in New Hampshire business circles and homes in deluxe locales. He had the ear of political power brokers, and from time to time, he surfaced as a possible gubernatorial candidate.

Last week, though, John “Jay” Brooks was in his jail cell as he pleaded not guilty to murder, avoiding the glare of cameras at a high-profile arraignment. The 54-year-old, who is being held without bail, could face the death penalty for what prosecutors say was a gruesome murder plot that stemmed from a long-simmering animus Brooks bore for the Derry man he had hired to haul items from his home.

According to prosecutors, Brooks believed that in 2003, Jack Reid Sr. stole several things from him, including an urn containing his father’s ashes. In an elaborate scheme, prosecutors say, Brooks two years later lured Reid, 57, to a remote horse farm in Deerfield, where he bludgeoned Reid to death with a hammer, with the help of four men, including Brooks’ son.

Sarah Schweitzer, “In N.H., did a grudge lead to murder?,” supra.

Monitor, Apr. 28, 2007; James A. Kimble, “Multimillionaire faces death penalty in murder-for-hire case,” Eagle-Tribune, Apr. 28, 2007; Kathryn Marchocki, “Simultaneous capital murder cases ‘extraordinary’ in NH,” Union Leader, May 4, 2007; Trent Spiner, “New Hampshire vs. Brooks: Capital murder trial run,” Union Leader, Sep. 7, 2008; James Kimble, “Brooks trial renews capital punishment debate,” Eagle-Tribune, Sep. 7, 2008; James Kimble, “Death penalty in the spotlight,” Eagle-Tribune, Oct. 19, 2008 (John Brooks trial “will open up a new page in the history of capital punishment in New Hampshire”).

8. In the intense news spotlight that has resulted, the news coverage of the case has gone well beyond “merely factual reporting.” Cf. Smart, 136 N.H. at 649-50 (addressing need to distinguish “inflammatory, adverse press”). News reports have been intensely emotional. See Scott Brooks, “Silence baffles family,” Union Leader, Dec. 6, 2006 (reporting that Reid family “continues to grapple with unanswered questions” regarding Mr. Reid’s death); Scott Brooks, “5 tagged in NH Killing,” Union Leader, Feb. 6, 2007 (quoting Mr. Reid’s son that Mr. Brooks’ release on bail “makes me so mad”); “Family of murder victim calling for justice,” Union Leader, June 16, 2007 (reporting statement by victim’s family “expressing their outrage ‘at the conduct of those responsible for our father’s sudden death’” and that “[n]ot a day goes by when we do not think of the pain our father suffered prior to death”); Trent Spiner, “Victim’s family files suit against Brooks,” Union Leader, Aug. 15, 2008 (reporting Reid family’s “severe emotional distress and mental anguish” regarding death of Mr. Reid).

9. In particular, the daily reporting during the two-month trial of Jay Brooks last fall was laden with emotion. See Trent Spiner, “Victim’s daughter cries on the stand,” Union Leader, Sep. 10, 2008 (“Megan Reid, 21, of Manchester, cried yesterday as she told the jury about the last time she spoke with her father”); Annmarie Timmins, “Court hears from victim’s

daughter,” Monitor, Sep. 10, 2008; Trent Spiner, “Brooks murder case goes to the jury,” Union Leader, Oct. 15, 2008 (reporting closing arguments by Assistant Attorney General that “the defendant and his co-conspirators wrapped Reid like a piece of garbage”); James Kimble, “Capital murder case goes to jury,” Eagle-Tribune, Oct. 15, 2008 (reporting closing arguments by Assistant Attorney General that “It’s a chilling image to imagine Jack Reid extending a smile and a handshake to a new customer when he was brought there to die.”); Annmarie Timmins, “In penalty phase, victim’s children tell of pain,” Monitor, Oct. 25, 2008 (“Yesterday, [jurors] heard for the first time how Reid’s brutal murder devastated his children.”); James Kimble, “Victim’s children testify in Brooks’ trial,” Eagle-Tribune, Oct. 25, 2008 (“The grief-stricken children of Jack Reid told jurors the loss of their father and the two-year mystery of what happened to him still haunts them today.”); Trent Spiner, “Emotions run high as victim’s family testifies in Brooks trial,” Union Leader, Oct. 25, 2008 (“The loss of Jack Reid Sr., a hero to his youngest son and a new grandfather just before his murder, has left his family distraught, even now, three years later.”); James Kimble, “Brooks jurors start death-penalty deliberations,” Eagle-Tribune, Nov. 6, 2008 (reporting penalty phase argument by Assistant Attorney General: “The horror in that second when [Jack Reid] saw Mike Benton swing a hammer and punch a 3-inch hole in his head had to be unbelievable.”); *id.* (“The emotional toll was apparent on Reid’s children, who wept through the grueling details” of the State’s death-penalty closing arguments.); Annmarie Timmins, “Brooks sentenced, chastised by judge,” Monitor, Nov. 8, 2008 (reporting comments by members of Reid family to John Brooks during sentencing, such as “Where was your humanity when you brutally murdered my father?”); James Kimble, “Reid’s children face father’s killer,” Eagle-Tribune, Nov. 8, 2008 (“In an hour that brought more anger than tears, the family of murder victim Jack Reid, 57, of Derry told Brooks not only of their pain in the wake of

their father's killing, but their hope that he will spend the rest of his life rotting in state prison."); Editorial, "Brooks gets life: But deserved death," Union Leader, Nov. 9, 2008.³

10. Under these circumstances, Jesse Brooks has faced unprecedented adverse pretrial publicity. This news coverage has included substantial distortions of the allegations against Jesse Brooks. Indeed, although the indictment of Jesse Brooks alleges only a limited role in the conspiracy charged, he has been identified as a "central figure in a feud between his father and Reid." See James A. Kimble, "State wants bail revoked in '05 murder," Eagle-Tribune, Dec. 15, 2007. Multiple news reports have expanded Jesse Brooks' alleged role by essentially equating his alleged role with that of his father, despite substantial differences in the allegations concerning the two men. Compare James Kimble, "Sentencing trial for Brooks starts," Eagle-Tribune, Oct. 23, 2008 ("Jesse Brooks face trial ... for allegedly helping solicit [Michael] Benton to kill Reid."), with James A. Kimble, "Prosecutors: Jury needs to hear Brooks' acts of revenge," Eagle-Tribune, June 4, 2008 (John Brooks "and his son, Jesse Brooks, recruited three men to help them with the murder"), and Trent Spiner, "Brooks accomplice lays out murder plot," Union Leader, Sep. 17, 2008 ("Jesse Brooks [is] accused of helping his father plan the murder"), and Trent Spiner, "Ex-fiancee remembers raid," Union Leader, Sep. 19, 2008 ("Jesse Brooks [allegedly] helped organize the murder").

11. Worse, some news reports regarding the allegations against Mr. Brooks have been flatly wrong. For example, even though Mr. Brooks is the only defendant who was not allegedly

³ Some of that emotion has been directed at Jesse Brooks specifically. In the online comment section following a Union Leader article regarding his filing of a speedy trial motion in February, a purported member of Mr. Reid's family addressed comments to Jesse Brooks directly. See "Your Comments," Union Leader (following Trent Spiner, "Jesse Brooks seeks conspiracy charge dismissal," Union Leader, Feb. 10, 2009) ("ARE YOU KIDDING? ... CRY ME A RIVER JESSE, MY KIDS RIDE THAT RIVER EVERY DAY, AND HOLD THEIR HEADS HIGH. SHAME ON YOU AND YOUR FAMILY FOR WHAT YOU HAVE DONE TO JACK AND HIS CHILDREN.").

present in Deerfield on June 27, 2005, at least one news report placed him there at the time of the alleged murder. See Sarah Schweitzer, “In NH, did a grudge lead to murder?,” supra (“Jesse Brooks, according to affidavits, was also at the farm when Reid was killed.”); id. (stating “Timeline of Events,” including that on June 27 “John Brooks, his son, Jesse Brooks, [Robin] Knight, and the two other men ... travel[ed] to the horse farm in Deerfield” where Jack Reid was killed).

12. Moreover, because Jesse Brooks’ trial will follow the historic trial and conviction of his father, substantial amounts of prejudicial information regarding Jesse Brooks that otherwise might only have been publicized during his own trial—if at all—have been widely publicized already. Perhaps most significantly, the news media have already detailed much if not all of the State’s case against Jesse Brooks.

13. The State’s case against Jesse Brooks was an integral part of its case against his father. Hence, the news media have provided a full explication of allegations and evidence against him. See James A. Kimble, “AG: Defendants devised detailed cover story in Reid killing,” Eagle-Tribune, June 5, 2008 (Benton testified “he confessed to [John] Brooks’ son, Jesse, he was the one who struck the fatal blows. ‘We were in the back of the house at night and I told Jesse Brooks straight out: I killed that guy, and he said he knew,’ Benton said.”); Trent Spinner, “Testimony: Brooks sought Jack Reid’s death two years earlier,” Union Leader, Sep. 11, 2008 (reporting Andrew Carter testimony that John Brooks had paid Carter and Michael Benton to kill Mr. Reid in 2003, that they “stalked Reid at his trailer home,” that “Jesse Brooks flew back to New Hampshire to join them,” and that “[o]ne night, when Benton and the younger Brooks were outside the trailer, Reid shot at them”); Annmarie Timmins, “‘He was supposed to die that day,’” Monitor, Sep. 17, 2008 (reporting testimony by Michael Benton that “Jesse

Brooks and John Brooks both called Benton to ask for his help with Reid”); Trent Spiner, “Brooks accomplice lays out murder plot,” supra (reporting Benton testimony that for weeks he and Andrew Carter “stalked Reid’s trailer home in Londonderry, armed with a shotgun” and that “[John] Brooks joined one of those car trips to Reid’s trailer, accompanied by his son, Jesse”); Annmarie Timmins, “Former fiancée recalls the night shots were fired,” Monitor, Sep. 19, 2008 (reporting testimony by Jesse Brooks’ former fiancée regarding night he and Mr. Benton “were shot at while prowling outside Jack Reid’s trailer”); Trent Spiner, “Ex-fiancée remembers raid,” supra (“Jesse Brooks was enraged ... after he was shot at during a failed attempt on the life of a Derry handyman in 2003, Laura Eori testified yesterday.”). Jesse Brooks’ defense, however, has been entirely absent from this news coverage for a simple reason: his father was on trial.

14. The prejudicial publicity that has resulted from Jay Brooks’ trial, however, has also stretched well beyond Jesse Brooks’ alleged participation in the conspiracy charged. For example, in reporting on the State’s efforts to have evidence that Jay Brooks “previously targeted people who’ve crossed him” admitted in the death-penalty phase of his trial, a news story provided a detailed recitation of *his son’s* alleged involvement in unrelated and unproven prior incidents:

In 1994, Jesse Brooks and Michael Benton jumped their high school classmate Jason L’Etoile and beat him with a metal pipe, according to the court records. The reason, the state alleged, is that L’Etoile had pleaded guilty to stealing cash from John Brooks’s Londonderry home....

Benton has confirmed that he helped beat L’Etoile at Jesse Brooks’s request, the court records said.

....

In 1996, David Nadeau got into a fight with Benton and Jesse Brooks, during which Jesse Brooks was hit a couple of times, the records said. Afterward, Nadeau’s mother received a threatening call from John Brooks accusing her other son, Daniel, of the assault, according to the documents.

....

When John Brooks later realized it was David, not Daniel, who'd been fighting with Jesse Brooks, John Brooks called the house again and repeated his threats, the records said. Jesse Brooks also called, the records said.

....

In 2007, while John Brooks was at the Strafford County jail awaiting trial, inmate Michael Small was beaten badly enough that his ribs were broken. Small suspected John Brooks was behind the assault because Small had had a falling out with Jesse Brooks in 2005, the records said.

Small had been hired that year to work in Las Vegas, where John Brooks was living, but spent the time doing drugs with Jesse Brooks and not working, the court records said. John Brooks kicked Small out. Small later told John Brooks that he wanted him to pay for his own drug rehab because Jesse Brooks had become hooked on drugs, according to the records.

....

In 2000, the Brooks family and Jesse Brooks's then live-in girlfriend went on a cruise for vacation. Along the way, the girlfriend found drugs in Jesse Brooks's bags and confronted him, the court records said. They argued, and Jesse Brooks kicked her out of their suite, forcing the woman to spend the trip in the cabin of another couple she'd met onboard, the records said.

At the end of the cruise, the Brooks family refused to give the woman her airline ticket home from Miami, and she was stranded in Florida for a week, the records said. John Brooks has retold this story, the state said, but has said the woman had stolen money from Jesse Brooks, not found drugs in his bag.

In 2004, Jesse Brooks and his then-fiancee moved from California to Las Vegas to live with John Brooks and his wife while Jesse Brooks recovered from surgery. The fiancee visited Massachusetts during the stay to tend to her own family business. She had also been suffering from anxiety attacks, and the Brooks family was opposed to her taking medication, the records said.

While the woman was in Massachusetts, her car was delivered to her home on a flatbed truck. That was how she learned her engagement to Jesse Brooks was over, the court records said. She had to obtain a court order to reclaim the rest of her property from the Brooks home in Las Vegas.

Annamarie Timmins, "Millionaire used force before, filings say," Monitor, June 4, 2008; see Russ Choma, "Lawyer accused of aiding cover-up," Union Leader, June 5, 2008 (reporting same alleged incidents); see also Trent Spiner, "Drug use, assault detailed on stand," Union Leader,

Sep. 12, 2008 (Andrew Carter testified he and Jesse Brooks “became friends ... while in high school” and “used cocaine, heroin, marijuana and prescription pills together”); Annmarie Timmins, “Former fiancée recalls the night shots were fired,” supra (describing “the terms of the broken engagement” between Jesse Brooks and Laura Eori that were excluded from her testimony but “laid out in court records”); Trent Spinner, “Where are the ashes of John ‘Jay’ Brooks’ dad?,” Union Leader, Sep. 24, 2008 (reporting testimony by Mr. Brooks’ mother regarding handgun that “was owned by her son, who had a collection of firearms ... [that] [s]he was afraid police would perceive ... as ‘an arsenal’”); James Kimble, “Brooks defense team begins to call witnesses,” Eagle-Tribune, Oct. 9, 2008 (“When Londonderry police investigated the theft in 2003, they first looked to the Brooks family, especially their son, Jesse. ‘He would have definitely been one of the people we would have looked at,’ Londonderry prosecutor Kevin Coyle told jurors. Coyle said Jesse Brooks was known to have a drug history.”); James Kimble, “Sentencing trial for Brooks starts,” supra (reporting testimony of Jason L’Etoile during John Brooks sentencing trial that “Jesse Brooks and his friend Michael Benton tracked [L’Etoile] down one day to beat him with a metal pipe”).

15. News coverage of this case has also included encyclopedic reporting of unproven allegations in Jesse Brooks’ past and unrelated personal history completely apart from the coverage of the Jay Brooks trial. The nature and volume of this information has constituted much more than simple publication of “inadmissible evidence.” Cf. Smart, 136 N.H. at 650. For example, in an article regarding the State’s efforts to revoke Jesse Brooks’ bail following his arrest on a drug charge, which would garner little if any attention in most other cases, one newspaper reported at length:

[Assistant Attorney General Kirsten] Wilson said the drug charge only compounded worries about Jesse Brooks’ behavior in recent years. Brooks is

known as an avid gun collector and made statements to police about being armed with an AK-47 because he feared for his safety, Wilson said.

“Back in 2002, there was a period of time where (he) felt threatened and was driving around with an AK-47,” Wilson said.

Brooks called the Boston FBI in July 2003 to voice similar concerns. Wilson didn’t elaborate about who Brooks feared.

“He thought the Derry police were corrupt and couldn’t handle things,” Wilson said.

In response, the FBI called Manchester police, who found Brooks in a Queen City apartment. Brooks promptly surrendered his gun *and was not charged with any crime*. Las Vegas police arrested Brooks twice in 2005, just before and after Reid’s murder, according to prosecutors.

Three months before Reid’s murder, Brooks was charged there with possession of cocaine and drug paraphernalia. *The results of those charges are unknown*, according to prosecutors. He was charged again in October 2005 with possessing an unregistered firearm and carrying a concealed weapon....

That wasn’t the first time Brooks has faced gun-related charges.

A review of police records and court documents from 1997 obtained by The Eagle-Tribune show Brooks was indicted on a charge of felony reckless conduct for allegedly pointing a handgun at a woman’s head at an intersection in Londonderry on Dec. 3, 1996.

The record indicates *that witnesses gave conflicting statements about the confrontation and the charge was ultimately dismissed* on the condition Brooks remain on good behavior for 18 months.

James A. Kimble, “Judge won’t revoke bail for Jesse Brooks,” Eagle-Tribune, Dec. 20, 2007 (emphasis added); see also Scott Brooks, “5 tagged in NH Killing,” supra (reporting Jesse Brooks’ 1995 charge of “possession of drugs in a motor vehicle, a class B misdemeanor” that was dropped); James A. Kimble, “State wants bail revoked in ‘05 murder,” supra (reporting Jesse Brooks’ arrest on drug charges and “his departure from five different drug treatment programs”); id. (“While his father and three other men have been in jail since November 2006,

Brooks apparently spent the past year drinking and using drugs, living in Los Angeles, Massachusetts, New Hampshire and Las Vegas, according to court documents”).

16. Reporting of such unrelated and unproven incidents has continued unabated. When Jesse Brooks filed a Motion for Release on Bail Pending Trial in February of this year, the State generated full-blown news reports with fantastical but completely unsubstantiated allegations in public filings. In particular, press articles jumped on the allegation that Jesse Brooks had been “the ringleader of a ‘serious’ plot to take over a unit of Manchester’s jail, hoping to take guards as hostages.” See Trent Spiner, “Official: Prison uprising foiled,” Union Leader, Mar. 7, 2009; see also Associated Press, “Jail officials say they averted inmate uprising,” Monitor, Mar. 8, 2009 (“A New Hampshire jail official says they headed off an inmate uprising allegedly being orchestrated by Jesse Brooks”). When the Court held a hearing on Jesse Brooks’ motion, the State presented no evidence in support of its allegations, and neither the court nor corrections officials have made any findings regarding these allegations. That fact, however, has not been reported.⁴

17. These news reports have established a strong and prejudicial impression of Jesse Brooks’ guilt before his trial has even begun. In some instances, his guilt has, incredibly, been stated as though it were an already proven fact. Perhaps most notably, for example, an attorney for Jay Brooks reportedly argued to the jury during the penalty phase in his trial that Jay Brooks “ha[d] already been punished by *knowing that he got his son, Jesse, involved in Reid’s murder.*” Annmarie Timmins, “Jurors weighing death penalty,” Monitor, Nov. 6, 2008 (emphasis added). The conclusion that Jesse Brooks was involved in Mr. Reid’s death was also repeated in reports

⁴ One reader commenting on the reports of this alleged incident online stated, “Way to taint the jury pool, Brooks. If there was any hope of beating the rap, you just killed it, so to speak.” See “Your Comments,” Union Leader (following “Official: Prison uprising foiled,” supra).

of comments by members of Mr. Reid's family during Jay Brooks' sentencing. See James Kimble, "Reid's children face father's killer," supra ("I chose to believe that my father's life ... will forever be a part of your life," [James Reid] told Brooks. 'My father is that voice you often hear asking, 'How could you get your own son involved in such a mess?''"). Finally, that conclusion was also reportedly echoed by Chief Judge Lynn in sentencing comments to Jay Brooks. See id. ("On top of this, you got your son involved in this. It's not bad enough in 2003 you got your son shot at,' Lynn said. 'Maybe, at some point, you have said this has to stop. But, no, and now he is facing prosecution.'").⁵

18. The circumstances that Jesse Brooks faces make the pretrial publicity in his case truly unlike that in other cases, including the highest-profile cases. Jesse Brooks' counsel is unaware of any New Hampshire case in which a defendant has moved for a change of venue facing trial in a court in which a co-defendant (let alone, the defendant's father) has already been convicted on the same charge with the volume and kind of publicity that the trial of Jesse Brooks' father attracted. See Martinez v. Superior Court, 629 P.2d 502 (Cal. 1981) (issuing writ of mandate to Superior Court to change venue).⁶

⁵ Reported comments by Jesse Brooks' father and others similarly create a strong impression of Jesse Brooks' guilt. See Russ Choma "Bail revoked in slaying probe," Union Leader, Mar. 1, 2008 (reporting allegations that Jay Brooks had told jailhouse informant that he "loved his son" but "would not 'take the fall'" for him); Beverly Wang, "The rise and fall of Jay Brooks: Successful businessman to accused murderer," supra (reporting comments by associate of Jay Brooks that Jay Brooks would "talk about worrying about whether his son was going to be harmed," and that "[w]hen he heard that [John] Brooks had been arrested, 'The first thing I thought of was his son.'").

⁶ The element of sensationalism, always present in reporting of events concerning a capital case, became all the more pronounced in the instant case by the 'preview' of the events that unfolded in the trial of codefendant Much of the information presented to the public in the daily media coverage of [co-defendant's] trial ... caused extreme prejudice to petitioner.

...

19. In Smart, for example, the Supreme Court considered the “enormous” pretrial publicity of the defendant’s case that may have been, “as claimed by some, unprecedented” at the time in New Hampshire. 136 N.H. at 649. The Court, however, held that no inherent prejudice existed in large part because “most of the [news] items appeared after the jury had been continuously instructed ... not to read or watch anything connected to the case.” Id. at 650. “Our system of justice,” the Court concluded, “is premised on the belief” that jurors would follow those instructions and not be subject to extant prejudicial publicity. Id. (quoting State v. Novosel, 120 N.H. 176, 186 (1980)).

20. More recently, the Superior Court in State v. Addison denied a motion for change of venue in a case that also attracted significant news media attention as the second capital murder trial in the State since 1959. See Order on the Def.’s Motion to Change Venue, State v. Addison, No. 07-S-0254 (Hillsborough Superior Court) (June 25, 2008) (“Addison Venue Order”), Appendix B filed herewith. As in Smart, the pretrial publicity in Addison was “voluminous.” Id. at 10. In contrast to Smart, however, the Addison court ruled that no inherent prejudice existed in part because “the publicity surrounding the case was at its heaviest immediately after” the crime at issue. Id. at 11.

21. Here, unlike in both Smart and Addison, Jesse Brooks has been subject to a continuing stream of highly prejudicial news stories about his case throughout the two years since his arraignment. As noted above, the State’s allegations and evidence have been laid

The publicity, although not as sensational and inflammatory as in some cases in which venue has been changed, did not abate for any period in the year prior to the scheduled trial. It was especially persistent and pervasive during [co-defendant’s] trial, at which time the media reported testimony and statements ... tending to create a belief in [defendant’s] guilt.

Martinez, 629 P.2d at 505, 508.

before the public throughout this time, including in particular during his father's trial, before jury selection for Jesse Brooks has even begun. Moreover, under the Court's current schedule, Jesse Brooks is likely to face another wave of such publicity immediately before his own trial when the case of co-defendant Robin Knight goes to trial.

22. Jesse Brooks' case also differs, as detailed above, because the publicity in his case has been so blatantly prejudicial to him. Neither Smart nor Addison involved circumstances in which the State's whole case against the defendant, extensive and inflammatory information about the defendants' background, actual witness testimony at a parallel trial concerning the same events, and the raw emotion of testimony from the victim's family had been so fully laid before the public prior to trial as they have in this case. In Addison, for example,

[m]ost of the articles and clips are descriptions and depictions of [the] circumstances of Officer Briggs' death and funeral, the defendant's arrest for capital murder, and the legal happenings in the capital case.... While some of the articles and television clips about the death of Officer Briggs had an emotional tone, *very few related facts about the defendant in a way that could be described as prejudicial*.... Most [editorials] expressed sadness about the death of Officer Briggs, debated the value of the death penalty, and generally discussed crime in New Hampshire.

....

Moreover, the nature of the stories has changed ... to *rather dry accounts* of pleadings that have been filed and the hearings and rulings on those pleadings.

Addison Venue Order, at 10 (emphasis added); see also Smart, 136 N.H. at 649 ("bulk of the material submitted" consisted of "straightforward, unemotional factual accounts of events" (citing United States v. Haldemann, 559 F.2d 31, 61 (D.C. Cir. 1976)); Laaman, 114 N.H. at 798-99 (no inherent prejudice where news reports merely "dealt with the details of the bombings, comments on these happenings, and information about the defendant's background [,] motions to suppress filed by the defendant, ... a hearing on a motion for a separate trial ..., and ... the different phases of the trial, the verdicts, and the sentencing.").

23. Under the circumstances, juror voir dire would be unavailing and an insufficient prophylactic to inherent prejudice if Jesse Brooks' trial proceeds in Rockingham County. The purpose of such voir dire would only be to show actual, identifiable prejudice, which does not establish inherent prejudice. See Smart, 136 N.H. at 647. “[C]learly established Supreme Court precedent dictates that ... [where] pretrial publicity may be presumed to prejudice prospective jurors.... voir dire is not a condition precedent to transferring venue.” Hatch, 527 F.3d at 1024. Moreover, “adverse pretrial publicity can create such a presumption of prejudice in a community that the jurors’ claims that they can be impartial should not be believed.” Patton v. Yount, 467 U.S. 1025, 1031 (1984). Thus, even where a court considers an assertion of inherent prejudice (as opposed to actual prejudice) following juror voir dire, “[t]he court must disregard the results of voir dire ... and reach its own conclusion.” State v. Nordstrom, 25 P.3d 717, 727 (Ariz. 2001).

24. Therefore, this case must be transferred. “[U]pon proof that a fair trial cannot be had in the county or judicial district where the crime occurred, the trial court lacks any discretion to deny a defendant’s motion for change of venue.” State v. Johanson, 156 N.H. 148, 154 (2007). The only issue is to which county the case should be transferred.

25. Jesse Brooks submits that Carroll County, where he is currently housed in custody, or Grafton or Coos counties would provide a fair and appropriate venue for trial in this matter. Carroll, Grafton, and Coos counties are not among the four counties adjacent to Rockingham County. More importantly, the population in those counties has been subject to substantially less of the pervasive news media coverage of this and related cases than the populations of Rockingham County and proximate counties. A significantly smaller percentage of households in these alternate counties are regularly exposed to the newspapers that have so extensively covered this case and that are prevalent in the counties of southern New Hampshire,

including Rockingham County. See Appendix C filed herewith. Moreover, Carroll, Grafton, and Coos counties are each in a different local television news market than Rockingham County. Unlike southern New Hampshire counties including Rockingham County, Carroll and Coos counties are in the Portland-Auburn (Maine) television market, not the Manchester market, while Grafton County is in the Burlington, VT-Plattsburgh, NY television market. See Appendix D filed herewith.

26. Transfer of Jesse Brooks' case to Carroll, Grafton, or Coos counties would thus eliminate the inherent prejudice that Jesse Brooks now faces in Rockingham County due to the unique mountain of inflammatory, defamatory, adverse pretrial publicity that he has faced while awaiting trial in this matter. Such transfer is necessary, therefore, to the protection of Jesse Brooks' state and federal constitutional rights and to providing him the opportunity for "a fair and impartial trial" to which he is constitutionally entitled.

27. Senior Assistant Attorney General, Janice K. Rundles, was contacted regarding this motion, pursuant to Rule 57-A of the Superior Court Rules, and the State objects.

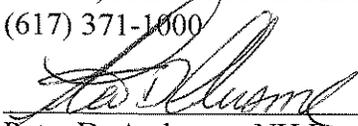
WHEREFORE, Defendant Jesse T. Brooks respectfully requests that this Honorable

Court:

- A. Schedule a hearing;
- B. Allow this Motion for Change of Venue;
- C. Transfer this case to Carroll County, Grafton County, or Coos County for trial;
and
- D. Grant such other relief as is just and appropriate.

Respectfully submitted,
JESSE T. BROOKS,
By his attorneys,

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Dated: April 9, 2009

Certificate of Service

I hereby certify that a copy of the foregoing was forwarded on this date, April 9, 2009, to all counsel of record by electronic mail and U.S. mail.