DISTRICT COURT, El Paso County, Colorado Court Address: 270 South Tejon Street Colorado Springs, Colorado 80903	DATE FILED: January 7, 2022 DATE FILED: January 7, 2022 10:39 AM
People of the State of Colorado vs. **Defendant: LETECIA STAUCH**	▲ **COURT USE ONLY** ▲ Case #: 20CR1358 Division #: 15S Courtroom #:S403
District Attorney, Michael J. Allen, #42955 Senior Deputy District Attorney, Dave Young, # 21118 and Deputy District Attorney, Angelina Gratiano, #50674 105 E. Vermijo Colorado Springs, CO 80903 Phone Number: 719-520-6000	

[D-37]

PEOPLE'S RESPONSE TO DEFENDANT'S MOTION FOR CHANGE OF VENUE

Comes Now, Michael J. Allen, District Attorney for the Fourth Judicial District, and his duly appointed Deputy District Attorneys, respectfully submits the following [D-37] People's Response to Defendant's Motion For Change of Venue. This response is submitted in response to the defendant's motion filed on of December 28, 2021. In support thereof, the People state:

1. Defendant has not established that a change of venue is warranted in this case. A trial court must strike the proper balance between a defendant's right to a fair trial by a panel of impartial jurors and the rights of the public and press under the First Amendment. *People v. Hankins*, 361 P.3d 1033, 1036 (Colo. App. 2014). Pretrial publicity may prevent a defendant from being able to select impartial jurors and, if that is the case, a court may order a change of venue. *Hankins*, 361 P.3d at 1036. "However, 'pretrial publicity does not alone trigger a due process entitlement to a change of venue. Rather, we will presume prejudice only in extreme circumstances.' " *Hankins*, 361 P.3d at 1036 (quoting *People v. Harlan*, 8 P.3d 448, 469 (Colo. 2000)). " 'Only when the publicity is so ubiquitous and vituperative that most jurors ... could not ignore its influence is a change of venue required before voir dire examination.' " *Hankins*, 361 P.3d at 1036 (quoting *People v. McCrary*, 549 P.2d 1320, 1326 (Colo. 1976)) (modification in original).

2. The burden of establishing that a change of venue is warranted falls on the defendant. *See People v. Tafoya,* 703 P.2d 663, 666 (Colo. App. 1985); *Hankins*, 361 P.3d at 1036. The Defendant has not provided any examples of the publicity this case has received in her motion. For a change of venue to be warranted, a defendant must establish either that: (1) pretrial publicity was so " 'massive, pervasive, and prejudicial' as to create a

presumption of an unfair trial" or (2) "that the publicity created actual hostility on the part of the jurors." *Tafoya*, 703 P.2d at 666 (quoting People v. Bartowsheski, 661 P.2d 235 (Colo.1983)).[1]

3. In analyzing whether a defendant has met his burden of establishing that pretrial publicity was so "massive, pervasive, and prejudicial" to create a presumption of an unfair trial, a trial court considers the following factors:

> the size and type of the locale, the reputation of the victim, the revealed sources of the news stories, the specificity of the accounts of certain facts, the volume and intensity of the coverage, the extent of comment by the news reports on the facts of the case, the manner of presentation, the proximity to the time of trial, and the publication of highly incriminating facts not admissible at trial.

Hankins, 361 P.3d at 1036 (quoting *People v. McCrary*, 549 P.2d 1320, 1326 (Colo. 1976). To warrant a change of venue, these factors must establish that the publicity is so " 'ubiquitous and vituperative that most jurors in the community could not ignore its influence.' " *Hankins*, 361 P.3d at 1036 (quoting *Harlan*, 8 P.3d at 469). This standard is a stringent one and is difficult to meet. *Hankins*, 361 P.3d at 1036. "Prejudice exists only in rare and extreme circumstances." *Hankins*, 361 P.3d at 1037 (citing United States v. McVeigh, 153 F.3d 1166, 1181 (10th Cir.1998); Sheppard v. Maxwell, 384 U.S. 333, 355, 358 (1966); Rideau v. Louisiana, 373 U.S. 723, 726 (1963)).

4. "The difficulty in meeting this stringent standard is best illustrated by *Botham*, 629 P.2d at 597." *Hankins*, 361 P.3d at 1036 (citing *People v. Botham*, 629 P.2d 589 (Colo. 1981), *superseded on other grounds as recognized by People v. Rath*, 44 P.3d 1033, 1039 (Colo. 2002)).

> There, seventy percent of the county's residents subscribed to its only daily newspaper, which had published a hundred articles on the case involving four murders. Throughout the pendency of the case, the newspaper extensively reported the arrest, details about the ongoing investigation, gruesome descriptions of the corpses, and comments about the relief in the community after the arrest of the defendant. Despite these facts, the supreme court concluded that pretrial publicity was not so massive, pervasive, and prejudicial that the denial of a fair trial could be presumed.

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[1] Only a claim of presumptive prejudice is at issue here. Any claim of actual prejudice is premature, as Defendant must show a nexus between pretrial publicity and the partiality, if any, of the actual panel of jurors. *See Hankins*, 361 P.3d at 1037.

Hankins 361 P.3d at 1036-37 (citing *Botham*, 629 P.2d at 596-97) (internal citations omitted).

5. The facts of *Hankins* are also instructive. There, the defendant moved for a change of venue on the grounds that the town's only daily newspaper covered the case and published many articles. *Hankins*, 361 P.3d at 1035. The trial court ultimately denied the motion and the court of appeals affirmed. *Hankins*, 361 P.3d at 1035, 1037, 1040. In reaching its holding, the court reasoned:

> After reviewing the news articles here, we conclude the trial court did not abuse its discretion when it denied defendant's motion. As shown by the record, the pretrial publicity in this case was extensive but not so massive, pervasive, and prejudicial as to create a presumption that defendant was denied a fair trial. Although the crime occurred in a small town of 8500 people, the newspaper published only thirty-five articles in two years as opposed to a hundred in Botham, and none of the articles were published during the two-month period before trial. The trial court did not find that the articles were written in an inflammatory or sensational manner, and our review of the articles confirms that they were not so written. Several were merely part of articles about other unrelated cases or part of a review of events occurring during the year. They did not have the vituperative quality that would tend to inflame the passions of the community.

Hankins, 361 P.3d at 1037. Based on these circumstances, the court "perceive[d] no basis to presume that defendant was denied a fair trial because of the pretrial publicity." *Hankins*, 361 P.3d at 1037.

6. Particularly in light of *Botham* and *Hankins*, Defendant has not established that a change of venue is warranted here. The publicity this case has received does not warrant a presumption that Defendant will be denied a fair trial. The publicity Defendant asserts occurred here is not ubiquitous as measured by *Botham* and *Hankins*. Nor has it taken an inflammatory or sensationalist form. While the publicity has mentioned the facts very generally and that Defendant has been charged with murder in the first degree, it does not discuss specifics or editorialize the case.

7. Defendant has not pointed to any information about the "size and type of the locale," or "the publication of highly incriminating facts not admissible at trial" that would support his request for relief. In fact, Defendant has failed to mention or argue the factors required to be considered by this Court. *See Hankins*, 361 P.3d at 1036. Defendant has not met his heavy burden here.

8. In sum, under the circumstances here, the Defendant has not met her burden in establishing that there is a reasonable likelihood that Defendant will not be afforded a fair trial in El Paso County due to pretrial publicity. *Cf. Bartowsheski*, 661 P.2d at 241. The People respectfully request the Court deny Defendant's Motion.

Wherefore, the People request that this Court DENY Defendant's Motion or in the alternative hold a hearing on this issue before ruling on it.

Respectfully submitted this 7th day of January 2022.

MICHAEL J. ALLEN, #42955
DISTRICT ATTORNEY

By: /s/
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CERTIFICATE OF SERVICE

I certify on the 7th day of January 2022, a true and correct copy of [D-37] People's Response to Defendant's Motion For Change of Venue was served via Colorado Courts E-Filing on all parties who appear of record and have entered their appearances according to Colorado Court's E-Filing.

/s/
Kim Daniluk, Paralegal