

DISTRICT COURT, El Paso County, Colorado Court Address: 270 South Tejon Street Colorado Springs, CO 80903	DATE FILED: December 1, 2022 5:13 PM
People of the State of Colorado vs. Defendant: Letecia Stauch	▲ COURT USE ONLY ▲
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	Case #: 20CR1358 Division #: 15S Courtroom #: S403
[P-33] PEOPLE'S POSITION REGARDING THE DEFENDANT'S REQUEST TO WAIVE A JURY TRIAL	

The District Attorney of the Fourth Judicial District of the State of Colorado, Michael J. Allen, and his duly appointed Deputy District Attorneys, respectfully moves as follows in [P-33] People's Position Regarding the Defendant's Request to Waive a Jury Trial. The People hereby object to the Defendant's waiver of her right to a jury trial, and further state as follows:

1. On February 4, 2022, the Defense filed an unnumbered motion titled Motion to Change Plea to Not Guilty by Reason of Insanity. In that pleading, the Defense notified the Court that the Defendant wished to waive her right to a jury trial and proceed with a trial to the court, citing Colorado Rule of Criminal Procedure Rule 23.
2. Pertinent to the People's position here, the Defendant filed [D-37] Motion for Change of Venue, on December 28, 2021.
3. The People filed a responsive pleading on January 7, 2022.

Applicable Law

4. Section 25 of article II of the Colorado Constitution provides that "[n]o person shall be deprived of life, liberty or property, without due process of law."
5. To be clear, an accused does not have a constitutional right to waive a jury trial. *People v. Dist. Court of Colorado's Seventeenth Judicial Dist.*, 843 P.2d 6, 8 (Colo. 1992); *See also People v. Dist. Court, City & County of Denver*, 953 P.2d 184, 188 (Colo. 1998).

6. Further, in the absence of a statutory authority, the courts have recognized that while a defendant may have a common law right to waive their right to a jury trial, this right is not absolute. *Dist. Ct.*, 843 P.2d at 9; *Dist. Ct., City & County*, 953 P.2d at 188.
7. As to the rights afforded to the prosecution, C.R.S. section 16-10-101 is clear in that the People have the right to refuse to consent to a waiver of a jury trial, however this right is also not absolute.
8. The Defense highlights Crim. P. 23(a)(5) which allows a defendant accused of a felony to waive their right to a jury trial with the consent of the prosecution. Crim. P. 23(a)(5) does not qualify this waiver based on the level of the offense. Conversely, section 18-1-406(2) explicitly states that the waiver of a jury trial by an accused does not apply in class 1 felony charges.
9. Given this incongruity, the Colorado Supreme Court recognized that an irreconcilable conflict exists between Crim. P. 23(a)(5) and section 18-1-406(2), and ultimately resolved the matter by declaring that section 18-1-406(2) is controlling. *Garcia v. People*, 615 P.2d 698 (Colo. 1980). However, the ruling in *People v. Garcia*, does not directly address the waiver of a jury trial in capital cases or class 1 felony charges, and there is still a lack of direct statutory guidance.
10. In the absence of relevant statutory authority regarding capital cases and class 1 felony cases, the Colorado Supreme Court previously ruled that the prosecution must consent to the waiver of a jury trial, and the trial court cannot grant the waiver over the prosecution's objection. *People v. Davis*, 794 P.2d 159, 209 (Colo. 1990), *overruled by People v. Miller*, 113 P.3d 743 (Colo. 2005).
11. To be clear, the ruling in *People v. Davis*, is also not absolute. Subsequent rulings in *Dist. Ct.*, 843 P.2d at 6, and *Dist. Ct., City & County*, 953 P.2d at 184, indicate that when construing section 18-1-406(2), the trial court should consider the due process rights of an accused such that the prosecution alone cannot compel a jury trial in circumstances where a defendant may not receive a fair trial.
12. Procedurally, it is the defendant's burden to raise due process concerns and clearly articulate the circumstances which would preclude a fair and impartial jury trial, specifically, when the people object to the waiver of a jury trial. *Dist. Ct.*, 843 P.2d at 11. The Defendant claims that she is prejudiced because it would not be possible to select a fair and impartial jury in this case. The trial court can consider the extent to which a change in venue may cure biases or prejudices against the accused when considering the issue of the waiver. *Id.* Ultimately, the trial court makes the determination as to whether the waiver of the defendant's right to a jury trial should be granted over the prosecution's objection considering these specific due process concerns. *Id.*

13. Regarding concerns of publicity in terms of a change of venue request, the burden is on the defendant. *People v. Tafoya*, 703 P.2d 663, 666 (Colo. App. 1985); *See also People v. Hankins*, 361 P.3d 1033, 1036 (Colo. App. 2014).
14. Further, to warrant a change of venue, the trial court must consider factors sufficient to show that the publicity is so “massive, pervasive, and prejudicial” as to create a presumption of an unfair trial. *Hankins*, 361 P.3d at 1036. These factors include:

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. *Id.*
15. This standard is a stringent one and is difficult to meet. *Id.* “Prejudice exists only in rare and extreme circumstances.” *Id.* 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)).

The People Do Not Consent to the Defendant’s Waiver of a Jury Trial and the Defendant’s Request to Proceed with a Court Trial Should Be Denied

16. The People hereby object to the Defendant’s waiver of a jury trial, and thus do not consent to the Defendant’s request for a court trial.
17. Given the People’s objection, the holding in *Dist. Ct., City & County*, 953 P.2d at 184, is determinative – specifically, it is the Defendant’s burden to show that she cannot receive a fair and impartial trial and she has not made that showing.
18. To date, the only “evidence” the Defendant has put forward for the Court to consider is her assertion that there has been a large amount of publicity in this case, and that by virtue of this case receiving this publicity, her right to a fair trial by an impartial jury is threatened. This assertion is not supported.
19. Given that the Defendant has only made an unsupported assertion that she faces a threat of not receiving a fair and impartial jury trial, she has not met her burden. The Court should deny the Defendant’s request for a waiver of her right to a jury trial at this time.
20. While the Defendant has filed [D-37] Motion for Change of Venue, the Court has already ruled that it cannot address the issue of venue until jury selection begins.
21. In the context of the Defendant’s request for a change of venue, the Court may seek to re-address the matter of her waiver of her right to a jury trial when the Court rules on [D-37] Motion for Change of Venue.

22. It is important to note in the State of Colorado, there have been a number of high-profile cases involving large amounts of publicity where a fair and impartial jury was imppaneled without the need for a change of venue.

WHEREFORE, the People respectfully request the Court DENY the Defendant's request to waiver her right to a jury trial at this time.

Respectfully submitted this 1st day of December 2022.

MICHAEL J. ALLEN, #42955
DISTRICT ATTORNEY

By: _____/s/_____
Michael J. Allen, #42955
District Attorney

Dave Young, # 21118
Senior Deputy District Attorney

Angelina Gratiano, #50674
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Certificate of Service

I hereby certify that on this 1st day of December, 2022, a true and correct copy of the foregoing [P-33] People's Position Regarding the Defendant's Request to Waive a Jury Trial 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