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CLERK OF DISTRICT COURT  
18TH JUDICIAL DISTRICT  
BY \_\_\_\_\_

6  
7 IN THE EIGHTEENTH JUDICIAL DISTRICT  
8 DISTRICT COURT, SEDGWICK COUNTY, KANSAS  
9 CRIMINAL DEPARTMENT

10  
11 STATE OF KANSAS,  
12 Plaintiff,

13 vs.

14 SCOTT P. ROEDER,  
15 Defendant

Case No.: Case No. 09 CR 1462

16  
17  
18 **STATE'S RESPONSE TO DEFENDANT'S MOTION FOR CHANGE OF VENUE**

19 **Comes Now** the State of Kansas by and through its attorneys, Chief Deputy District  
20 Attorney Kim T. Parker and Deputy District Attorney Ann Swegle and submits this response to  
21 the defendant's motion for change of venue.

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23 K.S.A. 22-2616(1) provides that "in any prosecution, the court upon motion of the  
24 defendant shall order that the case be transferred as to him to another county or district if the  
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1 court is satisfied that there exists in the county where the prosecution is pending so great a  
2 prejudice against the defendant that he cannot obtain a fair and impartial trial in that county.”

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4 In *State v. Jackson*, 262 Kan. 119, 936 P.2d 761 (1997) the Kansas Supreme Court  
5 discussed the burden borne by a defendant who requests a change of venue. The court stated:

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7 The determination of whether to change venue is entrusted to the sound discretion  
8 of the trial court; its decision will not be disturbed on appeal absent a showing of  
9 prejudice to the substantial rights of the defendant. The burden is on the defendant to  
10 show prejudice exists in the community, not as a matter of speculation, but as a  
11 demonstrable reality. The State is not required to produce evidence refuting that of the  
12 defendant. The defendant must show that such prejudice exists in the community and that  
13 it is reasonably certain he or she will not obtain a fair trial. *State v. Shannon*, 258 Kan.  
14 425, Syl. ¶ 5, 905 P.2d 649 (1995). See *State v. Butler*, 257 Kan. 1043, Syl. ¶ 2, 897 P.2d  
15 1007 (1995); *State v. Lumbreira*, 252 Kan. 54, Syl. ¶ 2, 845 P.2d 609 (1992); *State v.*  
16 *Grissom*, 251 Kan. 851, 927-29, 840 P.2d 1142 (1992).

17  
18 Indicative of whether the atmosphere is such that a defendant's right to a fair trial would  
19 be jeopardized, courts have looked at such factors as the particular degree to which the  
20 publicity circulated throughout the community; the degree to which the publicity or that  
21 of a like nature circulated in other areas to which venue could be changed; the length of  
22 time which elapsed from the dissemination of the publicity to the date of trial; the care  
23 exercised and the ease encountered in the selection of the jury; the familiarity with the  
24 publicity complained of and its resultant effect, if any upon the prospective jurors or the  
25 trial jurors; the challenges exercised by the defendant in the selection of a jury, both  
peremptory and for cause; the connection of government officials with the release of the  
publicity; the severity of the offense charged; and the particular size of the area from  
which the venire is drawn. *State v. Ruebke*, 240 Kan. 493, 499-500, 731 P.2d 842, *cert.*  
*denied* 483 U.S. 1024, 107 S.Ct. 3272, 97 L.Ed.2d 770 (1987) (citing Annot., 33  
A.L.R.3d 17, § 2[a]).

262 Kan. at 128-129.

23 *Jackson* thus makes clear that the defendant must present real evidence - not mere  
24 speculation - that a fair and impartial jury cannot be seated; and that it would be difficult to find  
25 that a fair and impartial jury cannot be seated without having gone through the jury selection

1 process. One of the opinions cited by the *Jackson* Court is *State v. Shannon*, 258 Kan. 425, 905  
2 P.2d 649 (1995). *Shannon* is a Sedgwick County case wherein the defendant was convicted of  
3 the attempted murder of the murder victim in this case, George Tiller. *Shannon* highlights the  
4 importance of actually picking or attempting to pick a jury to sit in judgment in a case before  
5 making a determination as to whether a properly qualified jury can be empanelled. There, the  
6 court held:

7  
8 The defendant's argument that some of the jurors had come to a conclusion that she was  
9 guilty before the evidence was even presented in this case is entirely speculative. Each  
10 venireperson was directly questioned about how extensively he or she had read or heard  
11 about the case. All venirepersons who indicated some knowledge about the case, except  
12 those excused for cause, unequivocally stated they had not formed an opinion about the  
13 case or they could set aside any opinion formed. Such venirepersons also asserted they  
14 could be fair and impartial and would decide the case based on the evidence. Nothing in  
15 the record suggests that any of the jurors were untruthful about their ability to set aside  
16 preconceived opinions and decide the case based solely on the evidence at trial.

17 The defendant has failed to meet her burden to show that her rights to a fair trial were  
18 substantially prejudiced by the pretrial publicity. The trial court did not abuse its  
19 discretion in denying the defendant's motion for a change of venue. See *State v. Bierman*,  
20 248 Kan. 80, 87-88, 805 P.2d 25 (1991).

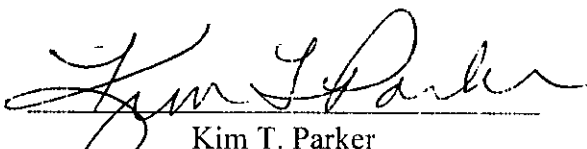
21 258 Kan. at 432.

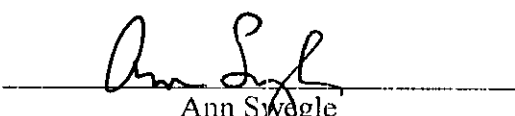
22 Additionally, and as acknowledged by the defendant in his brief in support of his motion,  
23 media publicity alone has never established prejudice per se. *State v. Ruebke*, 240 Kan. 493,  
24 500, 731 P.2d 842, cert. denied 483 U.S. 1024, 107 S.Ct. 3272, 97 L.Ed.2d 770 (1987).

25 Currently, there is no evidentiary support for the defendant's request for a change of  
venue. The only things offered in support of the request are unsupported factual assertions and  
conclusory opinions and commentary. Those things cannot serve as a legitimate basis for the  
court to grant the requested relief.

1           WHEREFORE, based upon the above and foregoing, the State of Kansas respectfully  
 2 requests the Court to overrule the defendant's motion, with leave to the defendant to renew the  
 3 motion if he chooses at the time of or following the jury selection in this matter.

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 5                           Respectfully Submitted,

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 8                           Kim T. Parker  
                              Chief Deputy District Attorney, #11203


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 11                           Ann Swegle  
                              Deputy District Attorney, #10920

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 15                           CERTIFICATE OF SERVICE

16           This is to certify that a true and correct copy of the foregoing was hand-delivered on this  
 17 19th day of November, 2009 to the following:

18           Mr. Charles S. Osburn  
 19           Mr. Mark Rudy  
              Public Defender's Office  
              604 N. Main, Suite D  
              Wichita, KS 67203

20  
 21           And a copy hand-delivered to the chambers of the Honorable Warren Wilbert on the  
 22 same date.

23  
 24  
  
 25                           Ann Swegle  
                              Deputy District Attorney