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STATE OF NORTH CAROLINA
COUNTY OF WAKE
AUG 18 2008
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NOS. 08 CRS 22922

STATE OF NORTH CAROLINA)	
)	
VS.)	<u>MOTION FOR CHANGE OF VENUE</u>
)	
BRADLEY COOPER)	
)	

NOW COMES the defendant, Bradley Cooper, through counsel, and pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, N.C.G.S. §15A-957 and Article I, Section 24 of the North Carolina Constitution moves this court for a change of venue to remove his trial from Wake County to a county where Mr. Cooper will be able to obtain a fair and impartial trial. In support of this motion, Mr. Cooper offers the following:

1. It is axiomatic that criminal defendants have the right to be tried by an impartial jury free from outside influences. *State v. Barnes*, 345 N.C. 184, 203, 481 S.E.2d 44, 53-54 (1997) (citing *State v. Boykin*, 291 N.C. 264, 269, 229 S.E.2d 914, 917 (1976)).
2. This case has been the subject of extensive pre-trial publicity which has saturated Wake County. Indeed, Wake County has been inundated with local and national newspaper articles, and TV and internet reports focusing on issues central to Mr. Cooper's case. These media accounts go beyond mere factual descriptions and include law enforcement officials' opinions that Nancy Cooper's death was the result of domestic violence, Nancy Cooper's friends' and neighbors' opinions that Mr. Cooper abused and

murdered Nancy; and, discuss details relating to the police's investigation of Nancy's murder .

3. Under North Carolina law, to prevail on a change of venue motion, a defendant must show 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. *State v. McDougald*, 38 N.C. App. 244, 251, 248 S.E. 2d 72 (1978), *appeal dismissed*, 296 N.C. 413, 251 S.E. 2d 472 (1979).

4. Because of the detailed, inflammatory and repetitious nature of the news accounts and the consequent public discussion regarding Mr. Cooper and this case, prospective jurors will be infected with preconceived views concerning the defendant's guilt. As such, Wake County cannot provide a fair and impartial trial for Mr. Cooper as guaranteed by the Sixth Amendment and Fourteenth Amendment to the United States Constitution and Article I, Section 24 of the North Carolina Constitution.

Overview

The right to a trial by an impartial jury is a deeply rooted constitutional safeguard to ensure that persons accused of crimes are treated fairly and justly by our courts.

Duncan v. Louisiana, 391 U.S. 145, 153, 88 S.Ct. 1444,1450, 20 L.Ed.2d 491-98 (1968).

It is a right embodied in the Sixth Amendment, *Tumey v. Ohio*, 273 U.S. 510, 47 S.Ct.

437, 47 S.Ct. 437, 71 L.Ed. 749 (1927), and the Fourteenth Amendment's due process

clause, *Sheppard v. Maxwell*, 384 U.S. 333, 362, 86 S. Ct. 1507, 16 L.Ed.2d 600 (1966).

The North Carolina Constitution similarly provides for this right to trial by an impartial jury in Article I, Section 24.

The Supreme Court has long recognized that when a defendant is to be tried by a jury, precautions must be taken to ensure fairness to the accused given the “pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors.” *Sheppard v. Florida*, 341 U.S. 50, 71 S. Ct. 549, 95 L.Ed. 740 (1951). The *Sheppard v. Maxwell* Court consequently held that when there is a reasonable likelihood that pre-trial publicity will affect a defendant’s right to a fair trial by an impartial jury, a change of venue should be granted. *Id.* at 363, 86 S.Ct. at 1522, 16 L.Ed.2d at 620. Echoing the *Sheppard* Court’s concerns, the Supreme Court granted a new trial in a case where it believed the TV coverage of the defendant’s case was so extensive in the county where the trial was held that the coverage “was Rideau’s trial.” The Court further stated that “any subsequent court proceedings in a community so pervasively exposed to such a spectacle could be but a hollow formality.” *Rideau v. Louisiana*, 373 U.S. 723, 726, 83 S. Ct. 1417, 1419, 10 L.Ed.2d 663, 665 (1963)

The North Carolina Constitution and North Carolina Statutes also recognize the fundamental right to a fair trial free of prejudice. N.C.G.S. §15A-957, giving effect to Article I, Section 24 of the North Carolina Constitution, provides that a trial court must transfer a proceeding to another county when “there exists in the county in which the prosecution is pending so much prejudice against the defendant that he cannot obtain a fair and impartial trial.”

A defendant has the burden of proving that a fair and impartial trial cannot be received due to pretrial publicity. *State v. Dobbins*, 306 N.C. 342, 293 S.E. 2d 162 (1982). Adopting the *Sheppard* test, the North Carolina Supreme Court held that a sufficient showing of prejudice is made when due to pretrial publicity, including word-of-

mouth publicity, there is a reasonable likelihood that the defendant will not receive a fair trial. *State v. Boykin*, 291 N.C. 264, 269-70, 229 S.E. 2d 914, 917-18 (1976). The standard was further clarified in *State v. Jerrett* which declared that where the “totality of the circumstances” reveals that a county’s population is “infected” with prejudice against the defendant, the defendant has fulfilled his burden of showing that he would not receive a fair trial in that county. *State v. Jerrett*, 309 N.C. 239, 258, 307 S.E.2d 339, 349 (1983).

In Bradley Cooper’s case, a review of the extensive and inflammatory pre-trial publicity demonstrates the degree to which Wake County has been “infected” with pre-trial prejudice against Mr. Cooper. For many, the damaging media accounts of the Cooper case *have been* Mr. Cooper’s trial in Wake County. In order to guarantee the defendant, Bradley Cooper, a fair trial by an impartial jury as mandated by Article I, Section 24 of the Constitution of the State of North Carolina (and the United States Constitution) it is necessary that venue be changed from Wake County.

Discussion

North Carolina courts have cited numerous factors that must be evaluated in the “totality of circumstances” determination of whether prejudicial pre-trial publicity will prevent a fair trial in a county. To expose the widespread pre-trial prejudice against Bradley Cooper in Wake County, these factors should be examined.

Factor One: The content of the media coverage regarding the defendant and the alleged crime. *State v. Oliver*, 302 N.C. 28, 37, 274 S.E. 2d 183 (1981). This factor examines the type of information to which potential jurors have been exposed. North Carolina courts have held that *factual* news accounts regarding the commission of a crime and the pretrial proceedings alone are not sufficient to establish prejudice against

the defendant. *Oliver*, 302 N.C. at 37 (finding the motion for change of venue motion was properly denied where defendant submitted twelve articles and transcripts of nine television and radio broadcasts which the court found were factual and non-inflammatory, and “of a general nature likely to be found in any jurisdiction to which the trial might be moved”); *see also State v. Moore*, 335 N.C. 567, 584, 440 S.E.2d, 797, 806-08 (finding denial of the defendant’s change of venue motion was proper where the trial court found that pretrial publicity not inflammatory and, in fact, some was exculpatory). In *State v. Alford*, 289 N.C. 372, 377-378, 222 S.E.2d 222 (1976), *death sentence vacated*, 429 U.S. 809 (1976), the court found the trial court did not err in denying the defendant’s change of venue motion where the defense presented six newspaper articles that were general in nature and the defense failed to present evidence that prospective jurors had seen or heard any news releases pertaining to the case. *Id.* at 378. The articles only indicated that the defendants were charged with a crime and “in no way intimate[d] that defendants were guilty.” *Id.*

In Mr. Cooper’s case, while portions of the media coverage were necessarily factual, much of it was not. Specifically, many of the media stories about the case assumed the defendant’s guilt and characterized him in inflammatory ways that prejudice his defense. These articles have been rife with opinion, speculation and even legal conclusions made by the Cary Police Department and Mrs. Cooper’s friends and family. Media coverage of Bradley Cooper’s case has exposed Wake County residents to unproven opinions, speculations and conclusions about Mr. Cooper’s guilt prior to his trial.

From the beginning of the investigation, police maintained that Mrs. Cooper's death was not random, leading many news outlets to immediately speculate that Brad Cooper was a police suspect. Amanda Lamb, *Slain Mom's Husband Could Have to Testify in Custody Case*, WRAL.COM, July 21, 2008. Mike Celizic, *Is husband secret focus in slain mom case?*, *supra*. Although the police had not named Bradley Cooper a suspect or person of interest, the media reported that "Cary police were suspicious of Brad Cooper's story the day they talked to him – two days before his wife was found murdered – saying it was inconsistent with what they heard in interviews with family and friends." Amanda Lamb, *Cooper Search Warrants: Husband's Story Inconsistent*, WRAL.COM, Sept. 2, 2008. On July 17, 2008, a front page article in *The News & Observer* reported that "police hope the home where Nancy Cooper built her American life will tell the story of her death." Mandy Locke & Kristin Butler, *Death Investigation Focuses on the Coopers' House*, NEWS & OBSERVER, July 17, 2008, at A1.

The assumption that Nancy Cooper's murder was committed by her husband continued to circulate as the media tracked every development in the police investigation. As discussed above, when the court sealed search warrants directed at the Cooper home, Mr. Cooper's office, and the family's computer, the prosecutor let the temporary order lapse despite the prejudicial effect on potential jurors. Lamb, *Cooper Search Warrants Could Be Unsealed Tuesday*, *supra*. The day after the warrants were released, *The News & Observer* reported that "Police investigating Nancy Cooper's disappearance and death found her husband's words and actions so suspicious they asked to search his computers for instructions on how to kill someone and dispose of the body." Martha Quillin &

Mandy Locke, *Police Searched Cooper's Computer*, NEWS & OBSERVER, Sept. 3, 2008, at A1.

When Bradley Cooper was indicted over three months after the crime, *The News & Observer* published Cary Police Chief Pat Bazemore's conclusion that "[The Cooper case] has been a case of domestic violence of the very worst kind." Michael Biesecker, et al., *Brad Cooper Charged With Murdering Wife*, NEWS & OBSERVER, Oct. 28, 2008, at A1. WRAL posted a video of the news conference held after Mr. Cooper's arrest in which Bazemore stated that "With this arrest, it should be clear to everyone that Cary citizens have been and are safe. This has really never been a case about a jogger being randomly attacked... I want to use this opportunity to encourage every person, woman or man, who is in a challenging relationship right now to take the steps necessary to keep yourself safe." News Conference on Brad Cooper's Arrest, <http://www.wral.com/news/video/3831097/> (last visited July 20, 2010).

Police conclusions that Mrs. Cooper was a victim of domestic violence were supplemented by Nancy Cooper's family and friend's inflammatory accusations about Mr. Cooper's guilt and motive. Mandy Locke, *Testimony Paints 2 Faces of Husband*, NEWS & OBSERVER, Oct. 17, 2008, at B3. In the initial 911 phone call reporting Mrs. Cooper missing, Jessica Adam told the dispatcher that "I don't know that [Brad Cooper's] been physically violent, but I know that there's a lot of tension, so I wouldn't be surprised, I hate to say it ... " 911 caller was concerned about Cooper's safety. Mandy Locke, *Call on Cooper Voiced Dread*, NEWS & OBSERVER, July 23, 2008, at B1. This recording was released just a week after Mrs. Cooper's murder was confirmed and Adam's unfounded

suspicions were widely disseminated by the media. 911 calls in Nancy Cooper's death released. *911 Calls in Nancy Cooper's Death Released*, WRAL.COM, July 22, 2008.

In the custody dispute over the Cooper children, Mrs. Cooper's family and friends continually voiced their conviction in Mr. Cooper's guilt. *The News & Observer* reported that, "Nancy Cooper's family is convinced Bradley Cooper killed his wife. One after another, the slain woman's family members and friends climbed into a witness stand last week and told the judge that Bradley Cooper was the only one with a motivation to kill her or access to do so." Mandy Locke, *Cooper Girls Will Remain in Canada*, NEWS & OBSERVER, Oct. 23, 2008, at B1. Bradley Cooper's guilt or innocence became the major focus of the civil trial with testimony presented from the lead homicide investigator and from witnesses discussing the day Nancy Cooper disappeared. Mandy Locke, *Lead Investigator in Cooper Slaying May Testify Today*, NEWS & OBSERVER, Oct. 16, 2008, at B3.

The civil trial also became a forum for Mrs. Cooper's friends and family to attack Bradley Cooper's character. Affidavits filed by Mrs. Cooper's friends and family called Bradley Cooper "distant, selfish and often absent." Mandy Locke, *Filings Lay Bare a Bitter Union*, NEWS & OBSERVER, July 24, 2008, at A1. They also contained descriptions of Brad's self-absorbed behavior and extra-marital affairs. *Documents Uncover Conflicting Accounts of Cooper Marriage*, WRAL.COM, July 23, 2008. The complete affidavits given in the custody case by Mrs. Cooper's friends and family were posted on both *The News & Observer* and WRAL websites with the publications reprinting many of the most damaging remarks. *The News & Observer* stated:

“Nancy Cooper's closest friends describe her husband as a self-absorbed, awkward man they barely saw. ‘Brad was never a family man,’ friend Michael Morwick said in an affidavit. ‘His priorities were always first, be it training for an Ironman event, his higher education pursuits or unexplained absences. Brad took care of himself first.” Locke, *Filings Lay Bare a Bitter Union*, *supra*.

Another article read:

“According to the custody complaint, Cooper's family said she had been desperate to leave her marriage and join her twin sister in Canada. Bradley Cooper had been unfaithful, the family said, and had been yelling at and belittling his wife in front of their children. Bradley Cooper also had been withholding money, her family said, adding that they had been lending her cash to buy groceries for her and the children.” Mandy Locke & Kristin Butler, *Family: Cooper Stuck in U.S.*, NEWS & OBSERVER, July 18, 2008, at B1.

In another article, WRAL reported on an affidavit filed by Mr. Cooper's ex-fiancé:

“Jennifer Windsor Ball says in the document, dated Oct. 12, that Cooper was emotionally abusive and mentally cruel to her while they lived together in a Calgary, Alberta, apartment from September 1997 to December 1998. Ball ... claims that Cooper ‘frequently berated’ her about her appearance and made derogatory comments about her to other people. She also says she was fearful for her physical safety at the end of their relationship and that after they broke up, Brad Cooper reportedly began ‘secretly accessing’ her apartment, even after his name had been removed from the lease and he had moved into another apartment in the same building.” Amanda Lamb & Renee Chou, *Judge Denies Motion to Dismiss Cooper Custody Case*, WRAL.COM, Oct. 13, 2008.

Mrs. Cooper's friends and family used the media to paint a dark picture of Bradley Cooper and cast Mrs. Cooper as a victim of domestic violence in the public mind. As recently as June of 2010, the media continued to quote Nancy's family and friends describing Nancy's murder as a case of a domestic violence committed by Bradley Cooper. Amanda Lamb, *Memorial Run to Benefit Domestic Violence Victims*, WRAL.com June 29, 2010. *See also*, Amanda Lamb, *Slain Mom's Parents Stand Against Domestic Violence*, WRAL.COM, Jun. 12, 2009. *Cooper Fund to Help Women Leaving Abusive Relationships*, WRAL.COM, Apr. 20, 2009. On the webpage for Nancy's Butterfly Fund, the organization states its mission to “help women and children

to free themselves from the danger of domestic violence in the memory of one who could not." Welcome to Nancy's Butterfly Fund, <http://nancysbutterflyfund.org/> (last visited July 20, 2010).

In the media and the public mind, the findings in the custody dispute became linked with the homicide investigation. Steve Mansbury, an attorney for Mrs. Cooper's family in the civil trial, stated "We are going to try and prove that Brad Cooper was involved in the murder of Nancy Cooper." Lamb & Chou, *Judge Denies Motion, supra*. One article states, "Central to the judge's ruling on who should take care of 4-year-old Bella and 2-year-old Katie: Did their father kill their mother?" Locke, *Lead Investigator in Cooper Slaying May Testify Today, supra*.

Thus, Nancy's friends and family's claims were seemingly legitimized when Wake County District Court Judge Debra Sasser denied Bradley Cooper custody. The media reported Sasser's findings that Brad Cooper's statements were "inconsistent" and not "credible" and her determination that Brad Cooper had been controlling toward Nancy. Judge Sasser also dismissed the testimony of a witness who said she had seen Cooper running on the morning she disappeared saying the testimony was 'not convincing.' Mandy Locke, *Cooper Custody Documents Become Public*, NEWS & OBSERVER, Nov. 21, 2008, <http://www.newsobserver.com/2864/story/1303930.html>. These findings on credibility by a family court judge have affirmed Brad's guilt for many, despite the fact that they have no bearing on Brad's criminal case.

Media coverage of this case has also included the publication of comments by members of the community, demonstrating the premature presumption of Mr. Cooper's guilt held by many. On the WRAL website, readers posted the following comments in

response to an article on Mr. Cooper's arrest. Amanda Lamb et al., *Husband Arrested in Nancy Cooper's Death*, WRAL.COM, Oct. 27, 2008.

- Geez! It is about time. If it walks like a duck and talks like a duck..... The Cary Police Chief said it best. This is a case of domestic violence at its worst. Period, point blank.
- I knew it, I knew it, I KNEW IT!
- YAYYYY one step closer to a CONVICTION. They're coming for you Brad, they just wanted to dot their i's and cross their t's... just for you, Mr. Smart Dude.
- I would imagine that is why Judge Sasser did not return the children to him.
- Recently when the Judge ruled that the girls could stay in Canada, I got the feeling that an arrest would be soon. Justice for Nancy!
- I REALLY hope I get called up for jury duty with this one.
- It is time for a lot of you, that have no knowledge of abuse, to eat crow. Finally!!!!
- I hope he pays a juge [sic] price here. I know he will pay a huge price later. It is so sad that someone can justify taking someone else's life for their own selfish reasons.
- this guy is guilty. he wasn't even a little sad when his wife showed up murdered. if my wife was murdered, I would be a basketcase. I hope he spends his life in prison sharing a cell with a very large man.
- he didnt do it... yeah, and OJ didnt do it either. who else would have a motive to kill her? she was not sexually assaulted. she was not robbed. but, it looks like her shady husband had a reason... im all for inocent till proven guilty, but that guy is guilty.
- FINALLY! I hope he gets what he deserves.
- It just makes me sick to think that a husband and father can be looking straight into the eyes of his wife, mother of his children while he is choking her to death. He must be on cold heart you know what. That's why he's been so cooperative, he has no conscioun. In his mind he has convinced himself that he did nothing wrong.
- I knew he was guilty from the get go!
- EVERYONE PLEASE - this is a tale of domestic abuse that escalated. If you know anyone who is suffering a similarly cruel fate and is making their plans to get out, HELP THEM. They say that the most dangerous time for a women is when she is making plans to leave her domestic partner - the break up time (especially when there are children involved) is the most dangerous time. My sis-in-law (a Ph.D., beautiful, strong, intelligent, loving woman from a family w/means) had to sneak away from her abusive ex and live in a woman's shelter w/her two young children for 5 weeks until she could get a plan and restraining order in place. I thank God she is safe, and I think of what she went through everytime I read about Nancy Cooper.
- Shocker the dude that took away their passports killed his wife, WHAT TOOK SO LONG. Her best friend he slept with must be very proud now.

The presumption of guilt expressed in these forums poisons the well of public opinion and makes it difficult, if not impossible, for any member of the community sitting as a juror on this case to go against the expressed outrage.

As set forth above, the coverage of Bradley Cooper's case has been detailed and opinionated. Instead of simply providing factual coverage, the media has repeatedly reported conclusions regarding Mr. Cooper's guilt, unfounded accusations of past abuse, and inflammatory character attacks. This is exactly the type of coverage that gives rise to preconceived impressions that prospective jurors would be unable to remove from their minds.

The Cary Police Department, Mrs. Cooper's friends and family, *and* a civil court judge have already told the prospective jurors that Bradley Cooper is guilty of the crimes he is alleged to have committed. A fair trial in Wake County, at this point, is impossible to achieve.

Factor Two: The number of and frequency of news accounts regarding the defendant and the alleged crime. *State v. Mandina*, 91 N.C. App. 686, 692-93, 373 S.E.2d 155, 159 (1988). Courts consider the number of newspaper articles as well as the number of radio and television broadcasts in the county. *State v. Oliver*, 302 N.C. 28, 36-37, 274 S.E. 2d 183, 189 (1981) (citing twelve newspaper articles and nine radio broadcasts). In *Jerrett*, the defendant introduced eight newspaper articles which he contended were highly prejudicial and inflammatory. *Jerrett*, 309 N.C. at 251.

Bradley Cooper's case received widespread coverage in *The News & Observer*, a large regional newspaper serving Wake County and the greater Triangle area. From July 15, 2008 to October 28, 2008, six front-page stories detailed the police investigation into

Mrs. Cooper's death. *The News & Observer's* coverage also extended to the custody suit filed against Bradley Cooper by Mrs. Cooper's family. The paper reported every development in the ten-month custody dispute, repeatedly linking it to Mrs. Cooper's death and the progress of the homicide investigation. As of July 6, 2010, sixty articles had been published in *The News & Observer* about the criminal investigation, the memorial fund and the custody dispute. In Wake County alone, the daily circulation is 123,492. *News & Observer Circulation*, [http://www.circulationforTheNews & Observer](http://www.circulationforTheNews&Observer.com) is 94,273 and the [Sunday.newsobserver.com/1391/story/529126.html](http://www.newsobserver.com/1391/story/529126.html) (last visited July 31, 2009). In its home county of Wake, *The News & Observer* reaches 64% of adults within a week, 57% over five weekdays, and 67% over four Sundays. *News & Observer Readership*, <http://www.newsobserver.com/1391/story/529127.html> (last visited July 31, 2009).

News accounts of Bradley Cooper's criminal and civil cases have also dominated television broadcasts. On Abc11tv, the local CBS affiliate for Raleigh, Durham and Fayetteville, approximately seventy clips related to the Coopers were aired and can now be found on the station's website. Available at <http://abclocal.go.com/wtvd/index> (search "Brad Cooper"). News14Carolina, a state-wide news channel, has aired thirty-eight clips about the case. Available at <http://www.news14.com/default.aspx> (search "Brad Cooper"). The investigation captured national attention with *The Today Show* airing two segments about the homicide and posting an article on the show's website. Mike Celizic, *Is husband secret focus in slain mom case?*, TODAY SHOW, July 18, 2008, <http://www.msnbc.msn.com/id/25732503/>. This national and state-wide media attention makes it more likely that Wake County residents were aware of the investigation

occurring in their county and therefore, were more attentive to the local news stories about the Cooper case.

Further, Bradley Cooper's case was prominently covered by popular news websites. On *The News & Observer* website, the designated keyword, "Nancy Cooper investigation," leads to a homepage containing all of the news articles about the case, along with photos and videos, numerous criminal and civil court documents, and recordings of the 911 calls made to police reporting Mrs. Cooper's disappearance and the discovery of her body. Available at http://www.newsobserver.com/news/crime_safety/nancy_cooper/ (Last visited July 6, 2010). WRAL.com, a local news website for Raleigh, Durham and Fayetteville, lists seventy three articles covering the homicide investigation and custody case. The site hosts thirty-eight videos about the case, including clips from the seven-hour deposition Mr. Cooper gave in his civil case. WRAL has also posted twenty court documents from the criminal investigation and fifty-seven civil court documents (as of July 6, 2010). These documents include affidavits, legal motions, search warrants and court orders. According to the WRAL website, 55% of adults in the Raleigh/Durham market visited WRAL.com in July of 2009. *WRAL.com Media Kit*, <http://www.wral.com/marketplace/clients/page/3661777/> (last visited Aug. 3, 2009).

The media coverage of Mr. Cooper's case has saturated Wake County, as demonstrated by NC Wanted, WRAL's crime news website, naming the Cooper case and subsequent "media circus" a top news story of 2008. *NC Wanted's Top Crime Stories of 2008*, NC WANTED, Jan. 6, 2009, http://www.ncwanted.com/ncwanted_home/story/4251462/. A poll on the WRAL

website asked readers, "How closely are you following the case of slain Cary mom Nancy Cooper?" As of July 5, 2010, there were 6027 total votes, with 2% claiming they knew Nancy and were personally invested, 36% responding that they have followed every twist and turn, and 46% saying they were aware of the story. The other 16% responded that they had tuned out because there was too much information. *Coverage of Nancy Cooper Case*, http://www.wral.com/news/local/poll/3281891/?show_results=1.

The intense media interest in the Cooper case reached a point where Capitol Broadcasting Co., the parent company of WRAL News, and The News & Observer Publishing Co., filed motions in court to unseal search warrants related to the murder investigation. At first, the trial judge denied the motion, reasoning that the release of information would jeopardize the chances of "a fair trial by a fair and impartial jury." Amanda Lamb, *Judge Denies Request to Release Cooper Search Warrants*, WRAL.COM, July 31, 2008. However, pressure by media outlets eventually led the district attorney not to request that the orders be resealed after the temporary order lapsed. Amanda Lamb, *Cooper Search Warrants Could Be Unsealed Tuesday*, WRAL.COM, Sept. 1, 2008.

The result of the media blitz surrounding the Cooper case is that persons who read newspapers, listen to the radio, watch television, or use the internet have already been inundated with information about Bradley Cooper's case. This information will remain in the minds of jurors, despite their efforts to focus only on the evidence presented at trial. The pervasive coverage in Bradley Cooper's case has infected the potential jurors with preconceived notions of the facts of this case.

Factor Three: Whether the victim or the witnesses for the state are prominent citizens in the county. *State v. Pendergrass*, 111 N.C. App. 310, 316-317,

432 S.E.2d 403, 407 (1993), citing *State v. Harrill*, 289 N.C. 186, 190-191, 221 S.E.2d 325, death sentence vacated, 428 U.S. 904, 49 L.Ed.2d 1211 (1976). Mrs. Cooper's close ties to her community and the media's coverage of her death will elicit sympathy from jurors who share the same community with the local victim. Though Nancy Cooper was originally from Canada, she had forged many relationships since moving to Wake County with Bradley Cooper eight years before her death. Both of Mrs. Cooper's daughters were born in Cary. The Coopers were members of Lochmere Swim and Tennis Club where Mrs. Cooper would often take her kids to swim while she socialized with other mothers. Remembered as an "outgoing person, who made friends easily," Nancy Cooper was a vital member of her Cary community. Amanda Lamb, *Slain Cary Mom Remembered as Outgoing, Friendly*, WRAL.COM, July 17, 2008.

Nancy Cooper's profile was greatly heightened in Wake County after she was reported missing. Local media outlets publicized her disappearance and the search efforts. Samuel Spies, *Search on for Missing Cary Woman*, NEWS & OBSERVER, July 13, 2008, <http://www.newsobserver.com/news/story/1139901.html>. "Authorities and nearly 200 volunteers searched for Cooper by air, land and water on Sunday and Monday along jogging trails near Regency Park, Lochmere Lake and other areas she was known to frequent." Volunteers also set up a website and posted more than 2,000 fliers in the area asking for information. Kelcey Carlson, *Police Probe Murder of Cary Mom*, WRAL.COM, July 15, 2008. The search received national attention, resulting in people across Wake County and becoming familiar with Nancy Cooper's story. *Nancy Grace: Murdered Jogger's Family Gets Emergency Custody of Kids* (CNN television broadcast July 17, 2008).

After Mrs. Cooper's body was found, about 170 friends, family members, and area residents gathered at a memorial service held in Koka Booth Amphitheatre. Kristin Butler, *Cooper's Friends, Family Members Share Grief*, NEWS & OBSERVER, July 20, 2008, <http://www.newsobserver.com/2864/story/1147709.html>. Further, Mrs. Cooper's friends began Nancy's Butterfly Fund in her honor, holding events in Wake County in 2009 and 2010 to raise money and awareness about domestic violence. *See e.g.* Sarah Lindenfeld Hall, *Run Benefits Fight Against Domestic Abuse*, NEWS & OBSERVER, July 12, 2009, at B3; Amanda Lamb, *Memorial Run to Benefit Domestic Violence Victims*, WRAL.com, June 28, 2010. These events received media coverage and continued to cast Nancy as the tragic victim of domestic violence in the public mind.

While the jurors' sympathy for Mrs. Cooper is natural, reasonable and expected, Brad Cooper should not be tried in a community which has special knowledge of and sympathy toward the victim. Accordingly, this factor favors transferring the trial of this matter to a jurisdiction without unduly sympathetic jurors.

Factor Four: The social and geographical context of the alleged crime. *State v. Watson*, 310 N.C. 384, 394, 312 S.E.2d 448, 455 (1984). In *Watson*, the court found it persuasive that the alleged crime took place in Mecklenburg County which had "the largest urban area in this state" and "one of the highest murder rates." *Watson*, 310 N.C. at 394. The *Watson* court said this fact diminished the prejudicial effect of the pre-trial publicity in question. *Id.*

Though Wake County also contains large urban areas, its crime rate is remarkably low for a county of its size. In 2007, Mecklenburg County had a violent crime rate of 916.1 (per 100,000), while the similarly sized Wake County's violent crime rate was only

355.9. STATE BUREAU OF INVESTIGATION, NORTH CAROLINA DEP'T OF JUSTICE, CRIME IN NORTH CAROLINA (2007), *available at*

<http://sbi2.jus.state.nc.us/crp/public/2007/ASR/2007%20Annual%20Summary%20.pdf>.

The fact that the crime took place in Cary is even more significant since Cary prides itself on safety. In 2000, Cary had the seventh largest population in North Carolina, yet no murders. THE DISASTER CENTER, UNIFORM CRIME REPORTS AND INDEX OF CRIME IN CARY, <http://www.disastercenter.com/northcar/crime/7640.htm> (last visited Aug. 3, 2009). In 2008, CQ Press ranked Cary the fifteenth safest municipality in the United States and the third safest city when compared with cities of similar size. Jordan Cooke, *Police Chief Stresses Year's Successes*, CARY NEWS, Jan. 13, 2009, <http://www.carynews.com/front/story/11385.html>. Further, the town's website publicizes that Cary has been among the twenty safest large cities all nine years that it has been rated. About Cary, <http://www.townofcary.org/aboutcary/index.htm> (last visited Aug. 3, 2009). Cary's reputation for safety throughout Wake County made Mrs. Cooper's murder especially shocking for Wake County residents.

The media attention surrounding Nancy Cooper's death was also compounded in Wake County by the death of two other local women around the same time. In both of those cases, the police named the woman's husband or boyfriend as the primary suspect. Cooke, *Police Chief Stresses Year's Successes*, *supra*. The temporal and geographic proximity of these other high-profile crimes intensified the media frenzy around Mrs. Cooper's death leading people in the community to assume it was yet another case of domestic violence. In a comment to an article in *The News & Observer*, one reader stated that "Simply put: this type of [random] crime doesn't happen in Cary. The husband either

murdered her or he hired someone else to do it.” See *Comments, Woman’s Body Found in Near Cary*, NEWS & OBSERVER, July 15, 2008, http://www.newsobserver.com/news/crime_safety/story/1141867.html.

Despite the large size of Wake County, the county’s relatively low crime rate and the other atypical murders in the area made Mrs. Cooper’s death a magnet for local media attention in Wake County. The result is that Mr. Cooper has already been tried in the forum of public opinion. In order to preserve Mr. Cooper’s right to a fair trial, the case must be moved to a county free from such pre-judgment.

Factor Five: Whether the information disseminated by the media would be admissible at trial. *State v. Oliver*, 302 N.C. 28, 37, 274 S.E. 2d 183, 190 (1981) (finding that the trial court did not err in denying motion for change of venue when articles in question “contained for the most part information that could have been offered in evidence at defendant’s trial”). In Mr. Cooper’s case, potential jurors have been subjected to numerous affidavits and findings from Mr. Cooper’s custody dispute that have no bearing on his criminal case. Chief among these are assertions of Mr. Cooper’s guilt made by Mrs. Cooper’s family and friends: “Police have named no suspects, but Nancy Cooper’s family members testified Thursday that they are convinced she died at the hand of her husband Bradley Cooper.” Locke, *Testimony Paints 2 Faces*, *supra*. These unfounded speculations, based on hearsay and belief, would not be admissible in Mr. Cooper’s criminal trial.

Further, the documents filed in the custody case contain accusations that would be ruled inadmissible as highly prejudicial and irrelevant at Mr. Cooper’s criminal trial. These documents are available on both the WRAL and *The News & Observer* web site

and have been recounted in numerous news stories. A front page story in *The News & Observer* outlined charges made against Bradley Cooper, including claims that he was “distant, selfish and often absent.” Locke, *Filings Lay Bare a Bitter Union, supra*. Another article reprinted claims that Bradley Cooper was “emotionally abusive”, “withheld funds for basic needs,” had an affair and threatened suicide. *Documents Uncover Conflicting Accounts, supra*. Prospective jurors have been exposed to this damaging evidence whereas character evidence is generally inadmissible in a criminal trial.

The media also reported Judge Sasser’s civil court findings that Brad Cooper’s statements were “inconsistent” and not “credible,” along with her determination that Brad Cooper had been controlling toward Nancy. Judge Sasser dismissed the testimony of a witness who said she had seen Cooper running on the morning she disappeared saying the testimony was ‘not convincing.’ Locke, *Cooper Custody Documents Become Public, supra*. The publication of these findings has tainted the pool of Wake County jurors, who would probably be asked to make similar findings on credibility in Mr. Cooper’s criminal case.

Additionally, the highly inflammatory comments by readers regarding Mr. Cooper’s character and his guilt which were featured on the WRAL and *The News & Observer* websites would not be admissible as evidence. The great degree of community speculation concerning Mr. Cooper’s alleged motives and the publicly expressed anger regarding Mr. Cooper is exactly the kind of non-evidentiary, damaging coverage that would not be admissible at trial.

Factor Six: Word-of-mouth publicity in the county. *State v. Boykin*, 291 N.C. 264, 269-70, 229 S.E. 2d 914, 918 (1976). Word-of-mouth publicity is generally established by the polling techniques and/or by the opinion testimony of county residents. Nancy Cooper's disappearance caused a frenzy of word-of-mouth speculation as Cary residents quickly mobilized search efforts, combing the area and posting over 2,000 flyers. The eventual discovery of Mrs. Cooper's body in such a reputedly safe area fueled speculation throughout Wake County about the crime.

As discussed above, a poll on the WRAL website asked readers how closely they were following Nancy Cooper's case. Eight-four percent of respondents were at least aware of the story, with thirty-six percent responding they were following every twist and turn. *Coverage of Nancy Cooper Case, supra*. The press also noted that this case is a popular topic of conversation in the community calling the Cooper case a top crime story of 2008. *NC Wanted's Top Crime Stories of 2008, supra*.

The introduction of electronic forums of public discussion has created an additional means for word-of-mouth publicity to spread and influence potential jurors. The public discussion of the Cooper case on blogs and news media websites is important because it shows the nature and volume of the dialogue concerning this case. Additionally, the "comment sections" of on news media websites are a venue for individuals who have personal knowledge and/or trajectory opinions to share these thoughts in a public, media-sponsored forum.

Factor Seven: The length of time that has passed between the publishing of the publicity in question and the trial. *State v. Mandina*, 91 N.C. App. 686, 694, 373 S.E.2d 155, 160 (1988) (finding that the trial court did not err in denying the defendant's

change of venue motion where the news articles in question appeared more than nine months prior to defendant's trial and that the defendant had not been prejudiced). The *Watson* court found no error in the trial court's denial of the change of venue motion, noting that seven months had elapsed since the intense news coverage in question. *Watson*, 310 N.C. at 393-94.

Contrastingly, the intense news coverage of the Cooper case stretches from Mrs. Cooper's disappearance in July 2008 through the present. As recently as June 2010, articles appeared on WRAL discussing the homicide and the allegations of domestic violence. *Memorial Run to Benefit Domestic Violence Victims*, WRAL.COM, June 28, 2010. Counsel believes that each time the matter appears in court, it will generate further publicity. Almost a year after Nancy Cooper's death, developments in the custody agreement and newly issued search warrants in June 2009 caused renewed prominence of this case in the media. Each development prompts the media to recap the information and speculation regarding this crime. Any member of the community who views coverage of recent developments in this case is directed to archives of all articles regarding this case. In addition, there is also the ability to email, print and save each of these articles. Thus, though the alleged crime occurred over two years ago, its continued coverage and the increased permanence of the coverage due to electronic sources keeps this case in the consciousness of prospective jurors in Wake County.

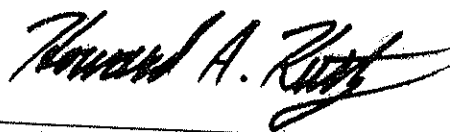
In sum, the pre-trial publicity in this case has been pervasive, inflammatory, and recent. The extensive media coverage has inundated Wake County with prejudicial information about Bradley Cooper. In this setting, prospective jurors will be unable to set aside the information obtained from the media. Instead, Mr. Cooper will begin his trial

with the minds of the jurors already poisoned against him. As such, the only way to preserve Bradley Cooper's constitutional right to a fair trial is to remove this case to a jurisdiction outside of the Wake County media coverage area.

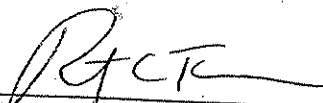
WHEREFORE, the defendant, Bradley Cooper, prays the Court:

1. Transfer the proceeding to another county in an adjoining prosecutorial district as defined in G.S. 7A-60; or
2. Order a special venire under the terms of G.S. 15A-950; or, in the alternative,
3. Such other and further relief as justice requires.

Respectfully submitted this the 12th day of August, 2010.



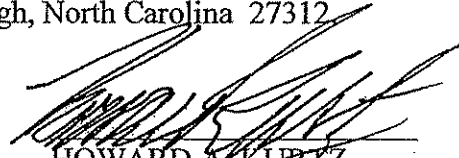
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CERTIFICATE OF SERVICE

The undersigned counsel for the aforementioned defendant hereby certify that a copy of the forgoing motion was delivered to the Office of the District Attorney, Judicial District 12, Wake County Courthouse, Raleigh, North Carolina 27312



HOWARD A. KURTZ
ATTORNEY FOR DEFENDANT

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NOS. 08 CRS 22922

STATE OF NORTH CAROLINA)

VS.)

BRADLEY GRAHAM COOPER,)
Defendant)

MOTION TO TEST OR EXAMINE
CELL PHONE

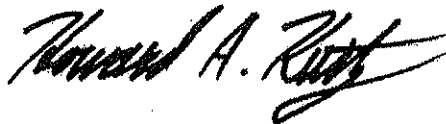
The defendant hereby moves This Honorable Court for an Order requiring the State of North Carolina to provide the defendant's expert(s) access to a Nancy Cooper's cellular telephone (a Blackberry Pearl Phone, PIN# 23FFDF38, Cary Police Department Evidence Log Number 3). Said access is so that the defendant's expert(s) may inspect, examine and test the item.

According to State provided discovery, Detective Young of the Cary Police Department admits to having deleted all data from the phone. The defense seeks an opportunity to replicate Detective Young's actions. This will require writing data to the phone and subsequently erasing same. The phone is to be returned in the same condition it was received.

IT IS HEREBY MOVED THAT:

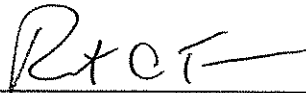
1. The defendant's cellular telephony expert(s) be permitted to inspect and test Nancy Cooper's cellular telephone (a Blackberry Pearl Phone, PIN# 23FFDF38, Cary Police Department Evidence Log Number 3);

2. Ben Levitan is to pick up the phone at the Cary Police Department at a prearranged agreed upon time between August 16 and August 31, 2010;
3. It is understood that testing of the phone will result in writing and deleting data however the phone is to be returned to its original state prior to its return.
4. Ben Levitan is to return the phone to the Cary Police Department on or before September 15, 2010;
5. By receipt of this item, the defendant waives any chain of custody issues for the period of time after the phone is picked up by Mr. Levitan until it is returned to either the Wake County District Attorney's Office or the Cary Police Department.



8/12/10

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CERTIFICATE OF SERVICE

The undersigned counsel for the aforementioned defendant hereby certifies that a copy of the foregoing Motion was delivered to the Office of the District Attorney, 10th Judicial District, North Carolina.

This the 12 day of August, 2010.



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