

FILED

April 17, 2017

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA
IN THE COURT OF APPEALS

Jeronimo Yanez,)
)
Petitioner,)
)
vs)
)
State of Minnesota,)
)
Respondent.)

**DEFENDANT’S PETITION FOR
WRIT OF MANDAMUS**

Ramsey County District File 62-CR-16-8110

TO: The Court of Appeals for the State of Minnesota

St. Anthony Police Officer Jeronimo Yanez, through and by his counsel, Paul Engh, Thomas Kelly and Earl Gray, and in accordance with Rule 120.01, Minn.R.Civ.App. P. and State v. Thompson, 123 N.W.2d 378, 380 (1963), petitions for Writ of Mandamus, compelling the Ramsey County District Court to transfer venue.

Officer Yanez, who is Hispanic, has been charged with second degree manslaughter in connection with the shooting death of Philado Castile, who is Black. The District Court found that although this case “has been the subject of ongoing public comment locally, statewide and nationally,” because “no area of the state has been “‘shielded’ from such publicity,” and “our present methods of

communication” make it unlikely that any community has been impervious to forming “impressions or opinions,” venue in St. Paul was appropriate. Order filed April 6, 2017, at p. 5, attached. Officer Yanez did not “demonstrate at this time that there is a “reasonable likelihood” that an unfair trial would occur in Ramsey County.” Id.

Thompson, the seminal decision in this area, requires a different analysis, one premised not on the sheer amount of publicity, but rather “the opinions of people who are supposed to know the facts,” Id. at 388, opinions that in turn have created here and then, “a prejudicial atmosphere within Ramsey County.” Id. at 389.

1. Statement of facts.

Within minutes of Mr. Castile’s death, this case became a omnipresent spectacle. His passing posted on social media as it happened, the incident ‘went viral,’ for want of a better phrase, and has since been constantly report in the Twin Cities news media. Officer Yanez’s name has become part and parcel of the headlines for the months now, sans diminution. The headlines attached to our District Court motion were revealing and prejudicial:

St. Anthony Police Data Shows Disproportionate Arrests Of Blacks

Cops And Racial Disparity: Is There A Double Standard?

Minnesota Police Have \$1.5 Million For Racial Sensitivity Training – But No Training, Yet

Roseville Talks Race And Police, In Wake Of Philando Castile Shooting

St. Paul Officers Stop Black Motorists At Higher Rates Than Whites, Data Show

Black Lives Matter (BLM) and other groups commenced protesting at the scene, within an hour after the shooting. The day after, their efforts moved to Summit Avenue, the Governor's mansion in St. Paul.

Missing from the Court's Order, and deemed an essential consideration by Thompson, are the comments by public officials. Without reading a report, or talking to an investigator, or listening to Officer Yanez's own taped version of what happened when he saw Mr. Castile with a gun, Governor Dayton, a St. Paul resident, announced the shooting had to have been race-based; he did not believe, nor should anyone else, that the incident would have happened had the driver been white.

The Governor's quotes:

“Shocked and horrified by what occurred last night, a horrible horrible tragedy, a senseless tragedy”

He reached out to President Obama's chief of staff, and the President “knew of the situation, he was shocked and concerned as well”

“I agree this kind of behavior is unacceptable”

“Justice will be served in Minnesota”

“Shock and horror by what transpired last night”

“Nobody should be shot and killed in Minnesota for a traffic, a tail light being out of function”

“Nobody should be shot and killed while they are seated still in their car without a very very different kind of response”

African American individuals who have been pulled over and singled out and “treated very differently because of their race”

“Would this have happened if the driver and passenger were white? I don’t think it would have”

“This kind of racism exists”

“Deeply deeply offended that this would occur in Minnesota”

“Totally unacceptable it is by all of the values and standards that I hold dear”

“Told [D.R.] how extraordinary her poise and presence was to make that recording in the way she responded to police”

Congressman Keith Ellison, whose district is about two miles from the scene, told CNN that the shooting could not have been an isolated incident, an innocent act by Officer Yanez. “There is a systematic targeting of African Americans and a systematic lack of accountability when police use excessive force,” was his proclamation. Washingtonpost.com July 7, 2016.

On November 16, 2016, during a most unnecessary press conference announcing the charges lodged against Officer Yanez, John Choi, the Ramsey County Attorney, stated, "I would submit that no reasonable officer knowing, seeing, and hearing what Officer Yanez did at the time would have used deadly force under these circumstances." The leading law enforcement official in St. Paul suggested no need for a trial, the eventual guilty verdict a fait accompli.

2. Statement of issue

Has the statewide internet/social media presence obviated Thompson's primary consideration of whether public officials, through their statements, necessitate a change of venue?

3. Argument

In Thompson, salacious murder charges were filed against a prominent St. Paul lawyer, who moved for a change of venue without success. Mr. Thompson petitioned for a Writ of Mandamus, then and now the "proper procedure to review a decision" denying his motion. Id. at 386.

The adverse publicity in 1963 was extensive, but that alone did not cause the Minnesota Supreme Court to reverse. The "[c]ourts can do little to restrain news media from printing or broadcasting what they claim is news." Id. at 388. This observation nowadays could refer to the Facebook postings of Mr. Castile's death as it happened, the response to which was instantaneous and thus

uncontrollable.

In Thompson, the High Court imposed far greater responsibility upon “people who are supposed to know the facts,” and what they say to the public. And that’s why, with abundant concern, our High Court emphasized that “Lt. George Barkley, head of the police homicide unit,” stated “the big fish – the one who is paying the bills and who engineered it from the beginning – remains to be caught.” Lt. Barkley was referring to, of course, T. Eugene Thompson. Id. at 388. An unnamed police officer “was reported as having said with regard to the person believed to have planned the murder: ‘We could have arrested this man weeks ago but we don’t want to arrest him until our case is so overwhelmingly concrete it leaves no possible chance for acquittal in the courtroom.’” Id. at 388-389. An insurance carrier announced that “it seems clear that the Thompson murder case is one of murder for profit.” Id. at 389.

These statements, our Supreme Court held, were what created “a prejudicial atmosphere within Ramsey County.” Id. at 389. The adverse newspaper articles and media coverage added proof of that prejudice, but in the primary sense. Id.

What the Thompson opinion announced to public officials was this: be very careful of what you say. The Governor and the Ramsey County Attorney and a Congressman, who today have considerably more sway with the public than the

homicide detective and unnamed police officer in 1963, did not heed that caution.

Governor Dayton, with the imprimatur of the electorate behind him, and having served six years now, announced that Officer Yanez was guilty. He was “horrified” and “shocked” that Mr. Castile was “killed” for a “tail light being out of function,” the shooting reflective of a “kind of racism.” Nary did the Governor mention the importance of a complete and ongoing investigation, or the presumption of innocence owned by Officer Yanez, or the truth seeking function of a trial with jurors who have not been exposed to such inappropriate comments.

Representative Ellison had no business, either, suggesting Castile’s death reflected a “systematic targeting of African Americans and a systemic lack of accountability when police use excessive force.”

Ramsey County Attorney Choi thought it should be said, with apparent gratuity and in an effort to support his charging decision in the realm of public opinion, "I would submit that no reasonable officer knowing, seeing, and hearing what Officer Yanez did at the time would have used deadly force under these circumstances."

How these combined statements differed, to any significant degree, from those uttered in Thompson, the District Court declined to say. Rather, the ruling below was that “our present methods of communication” make it unlikely that any

community has been impervious to forming “impressions or opinions” regarding the case.” Order at p. 4 (quoting State v. Kinsky, 438 N.W.2d 319, 323 (Minn. 1984)).

“Actual prejudice need not be shown,” however. Rule 25.02, Subd. 3, Minn.R.Crim.P. Massive and adverse publicity intended by public officials may instead create a presumption of prejudice. Sheppard v. Maxwell, 384 U.S. 333, 344-350 (1966). The constancy of news coverage from July 2016 to the present supports a transfer out of Ramsey County. Id. at 338-42.

The change of venue motion has become antiquated and irrelevant in the internet age, is the gist of the ruling below. Officer Yanez refuted the Court’s rationale. The defense hired an investigator to survey citizens of Brainerd and Duluth, as to their knowledge of what is commonly called the “Philando Castile” case. Craig Holm’s report is appended.

In Brainerd, dozens of individuals between the ages of 20 and 70 were interviewed. Only 10% knew who Mr. Castile was, and the majority of those did not have an opinion about the case.

Of the 60 citizens from Duluth who were interviewed, between the ages of 21 and 50, only 20% knew of the case; most “did not have an opinion either way due to their lack of knowledge of the case specifics.”

The District Court's fall back reliance on State v. Blom, 682 N.W.2d 578 (Minn. 2004) is misplaced. Order at pp. 4-5. In Blom, the defendant was granted a change of venue, and then complained on direct appeal there should have been another. Id. at 588. Having afforded relief, the District Court was not inclined to do so again, a decision affirmed. Id. at 595. The facts of Blom did not feature allegations of a racially motivated murder, street protests in front of the Governor's mansion, the closing of I-94 freeway, and opinions of public officials that the defendant is so guilty that a trial will be unnecessary.

May our Writ be granted. We live in a big state. Venue should be removed from where the Governor lives, where the BLM protests have been frequent, away from the prominent media outlets, away, too, from I-94 which has been shutdown, and Mr Castile's personal memorial on Larpenteur Avenue. We suggest Duluth, Hastings, St. Cloud, or Brainerd.

April 17, 2017

Respectfully Submitted,

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APPENDIX

1. Order of the Ramsey County District Court, the Honorable William H. Leary III, denying the Officer Yanez's change of venue motion.
2. Officer Yanez's Exhibit 5, the investigative report of Craig D. Holm