

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2006).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1280**

State of Minnesota,
Respondent,

vs.

Jeremy Jason Hull,
Appellant.

**Filed September 23, 2008
Affirmed
Toussaint, Chief Judge**

Mille Lacs County District Court
File No. 48-CR-07-2336

Lori Swanson, Attorney General, John S. Garry, Assistant Attorney General, 1100 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Andrew T. Northrup, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Toussaint, Chief Judge; Klaphake, Judge; and Worke, Judge.

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

This is an expedited appeal from a pretrial order denying appellant Jeremy Jason Hull's ex parte motion for funding for expert or investigative services under Minn.

Stat. § 611.21(a) (2006). This court granted appellant's motion for expedited consideration and directed briefing in accordance with the ex parte nature of this proceeding in the district court. Because we conclude that the district court did not abuse its discretion in denying the request for funding, we affirm.

D E C I S I O N

This court reviews an order denying expert or investigative fees under Minn. Stat. § 611.21 under an abuse-of-discretion standard. *See In re Application of Wilson*, 509 N.W.2d 568, 570 (Minn. App. 1993) (holding that determination is within district court's discretion); *State v. Volker*, 477 N.W.2d 909, 910 (Minn. App. 1991) (same).

The statute allows counsel for an indigent defendant to file an ex parte application for "investigative, expert, or other services necessary to an adequate defense in the case." Minn. Stat. § 611.21(a). After making an appropriate inquiry and finding that the services are "necessary and that the defendant is financially unable to obtain them," the court may authorize the expenditure. *Id.*

A defendant seeking funding under Minn. Stat. § 611.21 must show that the funds are "necessary to an adequate defense." *Id.* A defendant seeking a change of venue must show "that the dissemination of potentially prejudicial material creates a reasonable likelihood that in the absence of [a change of venue], a fair trial cannot be had." Minn. R. Crim. P. 25.02, subd. 3. Public opinion surveys are one of the recognized methods of satisfying this burden, although the testimony or affidavits of "individuals in the community" or "other materials having probative value" are also acceptable means of proof. *Id.*, subd. 2.

“Pretrial publicity consisting of factual accounts of the crime is insufficient to establish that the publicity was prejudicial. Moreover, the length of time between the publicity and the trial may mitigate any potential prejudice.” *State v. Warren*, 592 N.W.2d 440, 448 (Minn. 1999) (footnotes omitted).

The news accounts disseminated about this case are, as the district court found, almost entirely factual in nature. There are no opinions as to Hull’s guilt expressed by persons in authority. *Cf. State v. Thompson*, 266 Minn. 385, 388, 123 N.W.2d 378, 381 (1963) (“The vice of the publicity given this case is not in printing or disseminating factual news but in printing and broadcasting what purports to be the opinions of people who are supposed to know the facts.”). And the online reader comments reacting to the news accounts are not so numerous, or so representative of public opinion, as to indicate widespread exposure to the publicity or a reasonable likelihood of a biased jury pool. Although the news accounts include some gruesome details, those were largely revealed in May and June of 2007, well over a year before the scheduled October 2008 trial date. By the time of trial, it is doubtful that prospective jurors would have those details in mind, absent a fresh round of intense publicity.

The district court found that voir dire is sufficient to ensure an impartial jury, and that, if enough impartial jurors are not found, a change of venue would be mandatory. *See* Minn. R. Crim. P. 25.02, subd. 4 (noting that defendant may seek reconsideration of prior denial of motion for change of venue); *cf. State v. Brom*, 463 N.W.2d 758, 761-62 (Minn. 1990) (noting that trial court had specified that motion to change venue could be renewed).

The district court properly considered the nature of the pretrial publicity in this case and appellant's opportunity to test its effects on the jury pool during voir dire. Given those considerations, the district court did not abuse its discretion in denying the request for funding.

Affirmed.