

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)	
)	
V.)	DEF. I.D.: 1409001584
)	
CHRISTOPHER RIVERS,)	
)	
Defendant.)	

Submitted: October 9, 2015
Decided: December 22, 2015

*Upon Consideration of Defendant Christopher Rivers
Motion for Transfer from New Castle County
for Trial.*
DENIED.

Colleen K. Norris, Esquire. Attorney for the State of Delaware.

John A. Barber, Esquire and Brian J. Chapman, Esquire. Attorneys for Christopher Rivers.

BUTLER, J.

INTRODUCTION

Defendant Christopher Rivers is charged with two counts of Murder First Degree, two counts of Possession of a Firearm During the Commission of a Felony, Conspiracy First Degree, and Criminal Solicitation First Degree. Trial is scheduled to begin in April 2016 in New Castle County. Defendant has moved to transfer his trial to Kent County or Sussex County, claiming that the extensive pretrial publicity in this case will prevent him from obtaining a fair and impartial trial in New Castle County.

FACTS

On September 22, 2013, police responded to the condominium residences at Paladin Club in North Wilmington after multiple reports of shots fired. Upon arrival, officers found Joseph and Olga Connell, suffering from multiple gunshot wounds. Both victims died that same day.

In the days following the murders, The News Journal and other news outlets reported limited details, stating that a couple was shot outside their apartment complex. Many of the articles identified neighbors and friends who expressed their surprise and sorrow about the deaths.

Mr. Rivers was first identified by news reports as Joseph Connell's business partner. On September 26, however, The News Journal reported that Rivers was arrested on drug charges. The article indicated that police discovered steroids and

needles hidden above a ceiling tile during a search of C&S Auto Service where Rivers and Connell worked together. Following his arrest, Rivers gave a videotaped interview to The News Journal. During the interview, Rivers denied that the drugs were his and denied any involvement in the Connells' deaths, describing Joseph Connell as his best friend.

Media interest in the case diminished by November 2013 with no new leads in the investigation, but re-emerged almost one year later when Rivers was arrested in connection with the murders on September 3, 2014. For about a month following his arrest, news outlets reported a possible murder-for-hire scheme in which Rivers was alleged to have engaged a middleman to hire one or more people to kill the Connells. The reports culminated in a two-part feature by The News Journal, which highlighted the Connells' romance from first date to marriage, described the partnership between Joseph Connell and Rivers, and detailed the police investigation that ultimately led to Rivers' arrest.

The Court held a proof positive hearing on December 8, 2014. The next day, The News Journal printed an article titled "New info: Blockbuster details in Paladin Club killings," which reported details of the investigation based on the lead detective's testimony at the hearing.

This case has appeared in the news only twice since December 2014, first when the Court revealed the details of a co-defendant's secret plea deal, and again upon the filing of this motion.

In addition to providing the Court with a sampling of news articles discussing the case, Defendant submitted a public survey that he contends illustrates the prejudicial impact the "saturation of media coverage" in this case has had on the potential jurors in New Castle County. Defense counsel commissioned Susquehanna Polling and Research to conduct a telephone survey of 1050 Delaware residents, 350 residents from each of Delaware's three counties.¹ The survey results indicate that 39% of New Castle County residents surveyed knew about this case as compared 17% of Kent and Sussex County residents. The individuals familiar with the case were then asked whether they believed Rivers was guilty. In New Castle County, 90% responded affirmatively. In Kent County, 95% responded affirmatively. In Sussex County, 98% responded affirmatively.

APPLICABLE STANDARDS

The Sixth Amendment of the United States Constitution and Article I, § 7 of the Delaware Constitution guarantee criminal defendants a trial by an impartial

¹ The State argues that the polling sample is skewed: the sample included 1050 Delaware residents split evenly across the three counties, however, the 2014 U.S. Census indicates that approximately 59% of Delaware's population resides in New Castle County and 41% reside in Kent and Sussex counties combined.

jury. Superior Court Criminal Rule 21 requires a change of venue when there is “a reasonable probability of so great a prejudice against the defendant that the defendant cannot obtain a fair and impartial trial” in the county where the prosecution is pending.² The decision to grant or deny a change of venue rests in the sound discretion of the trial judge.³

As a general rule, a defendant must show that potential jurors were in fact prejudiced by pretrial publicity.⁴ Routine pretrial publicity of a criminal case does not, without more, warrant a change of venue.⁵ Even continuous and prominent publicity will not alone establish a presumption of prejudice.⁶ Instead, a defendant must present evidence of pre-trial publicity so “highly inflammatory or sensationalized” as to justify a court’s presumption of prejudice.⁷

DISCUSSION

In support of his motion, Defendant cites articles headlined “How alleged mastermind unraveled,” “Behind the Paladin Club ‘massacre,’” and “New info:

² Del. Super. Crim. R. 21.

³ *State v. Cooke*, 910 A.2d 279, 283 (Del. 2006).

⁴ *Id.* (citing *Irvin v. Dowd*, 366 U.S. 717, 728 (1961)).

⁵ *Powell v. State*, 49 A.3d 1090, 1097 (Del. 2012).

⁶ *Id.* at 1098.

⁷ *Id.* at 1097 (citing *Riley v. State*, 496 A.2d 997, 1014–15 (Del. 1985)).

Blockbuster details in Paladin Club killings” as evidence of the sensationalized nature of reporting in this case. But some degree of drama is inherent in the concept of a headline. Having reviewed the substance of the news reports covering this case, including the articles specifically cited by Defendant, the Court is satisfied that the media coverage in this case is not so highly inflammatory or sensationalized as would render Defendant’s trial in New Castle County “but a hollow formality.”⁸ The reports are informational in scope and many repeat the same story: a young, newlywed couple was killed outside their apartment building and the victim’s business partner allegedly arranged for their murder. Though the facts might be unsettling, they are not reported in an inflammatory manner.

Moreover, the potential jurors in New Castle, Kent, and Sussex Counties have been equally exposed to the media coverage in this case. Defendant provided a sampling of more than 40 news reports and videos since September 2013. Many of those articles were published by The News Journal, which is distributed statewide.⁹ Thus, it is “unrealistic to think a jury pool that is significantly ignorant

⁸ See *Rideau v. Louisiana*, 373 U.S. 723, 726 (1963) (televised video of defendant’s detailed confession to charges prior to trial warranted change of venue).

⁹ See *State v. Flagg*, 1999 WL 167774, at *2 (Del. Super. Mar. 3, 1999) (“[T]he News Journal is a newspaper with state-wide circulation. There is no reason to believe that the interest in this case was any less intense in Kent and Sussex Counties as it has been in New Castle County.”).

of the allegations involved in this case could be found in Kent or [Sussex] County.”¹⁰

Nevertheless, even the fact that 39% of New Castle County residents surveyed knew about the case is not enough to warrant transfer. Total ignorance is not required.¹¹ Instead the standard is whether a prospective juror can set aside any preconceived opinions and render a fair and impartial verdict based solely on the evidence presented at trial.¹² Defendant’s survey asked, “If you were selected to be a juror for the upcoming trial, on a scale anywhere from 1 to 5 how likely is it your opinion could be changed?” Forty-five percent of the New Castle County residents surveyed responded that it was either very unlikely or somewhat unlikely that their opinion could be changed. That figure is much more favorable, however, than the 86% of Kent County residents and 78% of Sussex County residents who responded the same.¹³ The Court is not convinced that Defendant’s trial should be transferred when survey results indicate that each of the other potential venues

¹⁰ *State v. Powell*, ID No. 0909000858, at 7 (Del. Super. Apr. 21, 2010).

¹¹ *Dutton v. State*, 452 A.2d 127, 137 (Del. 1982); *see also Irvin*, 366 U.S. at 722.

¹² *Irvin*, 366 U.S. at 723.

¹³ These results are even less compelling in conjunction with the fact that 95% and 98% of Kent and Sussex County residents polled, respectively, thought that Defendant was definitely or probably guilty.

presents a lower likelihood of Defendant receiving a fair trial than the county in which trial is already scheduled.

Finally, as the trial judge noted in the high-profile Thomas Capano case:

[C]riminal trials which commanded the attention of a massed media have shown that an impartial jury can be obtained, even in areas that have been saturated by press, television, and radio coverage. Such coverage has become a fact of life in American jurisprudence. While the media coverage in this case certainly would have been so oppressive two decades ago as to warrant a change of venue, by today's standards it simply meets the norm for a high profile case. If the atmosphere created by the media coverage has become so pervasive that it is impossible to obtain an appropriate number of qualified jurors and alternates, that will become apparent at the time of jury selection.¹⁴

Defendant has not presented facts sufficient for the Court to presume prejudice to warrant a transfer of venue. “Without meeting the reasonable likelihood test to change venue now, the engine for insuring an impartial jury will be an individualized and searching voir dire.”¹⁵ Defendant will participate in the voir dire process prior to trial where he will have the opportunity to express his concerns as to any potential juror. At this time, the Court believes that a fair and impartial jury can be obtained with a thorough voir dire. If voir dire proves unsuccessful in securing a fair and impartial jury, Defendant may renew his motion. Defendant's motion to transfer venue is denied without prejudice.

¹⁴ *Flagg*, 1999 WL 167774, at *2 (quoting *State v. Capano*, Cr. A. No. 97-11-006198 (July 16, 1998) (letter to Charles Oberly, III, Esq.)).

¹⁵ *Cooke*, 910 A.2d at 290.

IT IS SO ORDERED.

/s/ Charles E. Butler
Judge Charles E. Butler