

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

WILLIAM C. CARPENTER, JR.  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
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October 22, 2015

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RE: Michael W. Rogers v. Matthew Morgan, individually and in his  
official capacity as a Delaware State Trooper, the State of Delaware,  
and the Department of Public Safety – Division of State Police  
C.A. No. N15C-07-259 WCC

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**On Defendants' Motion for Change of Venue  
DENIED**

Dear Counsel:

The Court has before it a Motion for Change of Venue, in which Defendants urge the Court to transfer the above captioned case from New Castle County to Sussex County pursuant to Superior Court Civil Rule 12(b)(3).<sup>1</sup> For the following reasons, the Motion will be denied.

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<sup>1</sup> Super. Ct. Civ. R. 12(b)(3) (improper venue).

This matter stems from Plaintiff Michael Rogers’s civil action for damages arising out of an altercation occurring between himself and Defendant Matthew Morgan, a Delaware State Trooper, at Plaintiff’s residence in Georgetown, Delaware on August 1, 2013. Plaintiff was indicted and tried in Superior Court on criminal charges related to the altercation. During the four-day trial in Georgetown, twenty-five Delaware State Police officers, two Georgetown police officers<sup>2</sup> and six civilian residents all of Sussex County were subpoenaed. However, it appears that few actually testified at trial. As a result of a hung jury, a mistrial was declared and Plaintiff ultimately entered a no contest plea to the charge of Resisting Arrest. On July 29, 2015, Plaintiff filed his civil action in the Superior Court in New Castle County against Morgan (individually and in his official capacity as a Delaware State Trooper), the State of Delaware, and the Department of Public Safety’s Division of State Police. Defendants filed the instant Motion for Change of Venue on September 10, 2015.

Defendants do not argue New Castle County is an improper venue for this case, but that it would be more convenient if trial was held in Sussex County. In Delaware, “changing the location of a trial is a matter of judicial discretion”<sup>3</sup> and such change will only result where “consideration of the equities yields that the change is desirable.”<sup>4</sup> In making this determination, the Court must afford the plaintiff’s choice of forum “great weight” and only where the defendant cites factors “strongly militat[ing] against” that choice, will the Court transfer venue of the case.<sup>5</sup> “If the balance of inconvenience borne by the parties is equal or only slightly heavier for a defendant, the plaintiff's choice of forum should prevail.”<sup>6</sup>

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<sup>2</sup> Defs. Mot. for Change of Venue ¶ 3 (“There were two Georgetown Police Department officers and approximately twenty-five other DSP officers who were subpoenaed for trial. The majority of these DSP officers are assigned to Sussex County police troops.”).

<sup>3</sup> *Connell v. Ammons*, 2011 WL 4827581, at \*1 (Del. Super. Sept. 6, 2011).

<sup>4</sup> *Givens v. Del. Harness Racing Comm’n*, 2011 WL 5822626, at \*3 (Del. Super. Nov. 17, 2011) *aff’d*, 58 A.3d 982 (Del. 2012).

<sup>5</sup> *See Connell*, 2011 WL 4827581, at \*1 (citation omitted). *See also Goldberg v. Hersman et. al.*, 2000 WL 33275020, at \*3 (Del. Com. Pl. Jan. 28, 2000) (“The burden of demonstrating the necessity for transfer lies with the moving party and a plaintiff's choice of forum should not be disturbed unless a clear and convincing showing is made that the balance of convenience favors defendant's choice.”). In *Goldberg*, the Court of Common Pleas looked to federal decisional law in deciding whether to change venue and considered the following factors: (1) the convenience of witnesses, (2) the location of relevant documents and the relative ease of access to sources of proof, (3) the convenience of the parties, (4) the locus of operative facts, (5) the availability of process to compel the attendance of unwilling witnesses, (6) the relative means of the parties, (7) the forum's familiarity with the governing law, (8) the weight accorded the plaintiff's choice of forum, and trial efficiency and the interests of justice, based on the totality of the circumstances. *Id.* (citing *Orb Factory, LTD. V. Design Science Toys, LTD.*, 6 F. Supp. 2d 203,208 (S.D.N.Y. 1998)).

<sup>6</sup> *See Connell*, 2011 WL 4827581, at \*1 (citing *Delmarva Power & Light Co. v. City of Seaford*, 523 A.2d 973, 975 (Del. Super. 1987)).

Defendants rely on the following in support of their position: the events alleged in the Complaint took place in Sussex County, all relevant documents and sources of proof are located in Sussex County, Plaintiff's counsel's office is located in Sussex County, "the locus of all operative facts" is Sussex County, "a number of witnesses were needed for the criminal case and many of the police officers are assigned to Sussex County," inconvenience to the police officers for having to drive to and from New Castle County, and the such "wasted hours" would result in costs to the State.<sup>7</sup> In weighing these considerations, Defendants urge the Court to adopt the reasoning applied by then Vice-Chancellor Jacobs in *Krueger v. Cedars Academy*.<sup>8</sup> However, *Krueger* is factually distinguishable from the case at issue here. The defendant in *Krueger*, a small school located in Sussex County, alleged it had very few staff members, many of whom would have to participate in the trial originally set to be held in New Castle County.<sup>9</sup> Additionally, the plaintiff in that case resided in California "and would be coming from out-of-state no matter where in Delaware the trial [was] held."<sup>10</sup> The Court granted the change in venue so the school could remain in operation during the trial and because the plaintiff "pointed to *no countervailing equities* showing that having a trial in Sussex County would burden the plaintiff or his family."<sup>11</sup>

Unlike the defendant in *Krueger*, Defendants here have not sufficiently alleged any "undue hardship" would result from holding trial in New Castle County.<sup>12</sup> Additionally, unlike the out-of-state plaintiff in *Krueger*, Plaintiff articulated concerns at oral argument about the jury pool in Sussex County in light of extensive media coverage of the underlying criminal trial. Moreover, since *Krueger* was decided in 1996, Delaware courts have consistently emphasized the substantial degree of deference owed to a plaintiff's chosen venue.<sup>13</sup> In *Givens v. Delaware Harness Racing Commission*, this Court denied the Commission's motion to transfer venue to Kent County because it failed to show that hearing the case in New Castle County presented any "significant hardship to the parties

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<sup>7</sup> Defs. Mot. for Change of Venue ¶ 8. Additionally, Defendants do concede: "[t]he availability of process does not appear to be an issue if the case were tried in either County;" "[b]oth [Counties] would be familiar with the operative law and this would not be a factor in changing the venue;" "the Courts have afforded weight to the plaintiff's choice of a forum." *Id.*

<sup>8</sup> 1996 WL 422334 (Del. Ch. Apr. 26, 1996).

<sup>9</sup> *See id.* at \*2.

<sup>10</sup> *See id.*

<sup>11</sup> *See id.* (emphasis added).

<sup>12</sup> *See id.* ("The defendant requests that this proceeding be transferred to Sussex County, because a trial in New Castle County would inflict undue hardship upon it.").

<sup>13</sup> *See, e.g., Givens*, 2011 WL 5822626, at \*4.

involved.”<sup>14</sup> There, the Commission argued it exclusively conducted its business in Kent County, the plaintiff resided in Sussex County rather than New Castle County, all witnesses and Commission employees likely to be subpoenaed resided in Kent County, and the Commission's records, which could be introduced as evidence, were stored in Kent County.<sup>15</sup> The Court found these grounds insufficient to “outweigh the deference the Court must give to [the plaintiff’s] choice of venue.”<sup>16</sup> Further, in *Connell v. Ammons*, the Sussex County Superior Court respected a plaintiff’s choice of forum where the defendant seeking to transfer venue to New Castle County failed to persuasively show that compelling witnesses to attend the trial would be problematic, that the trial would be lengthy, or that the witnesses or defendants would be unduly inconvenienced by trying the action in Sussex County.<sup>17</sup>

After balancing the facts of this case, and properly crediting great weight to Plaintiff’s choice of forum, the Court finds it more analogous to *Givens* and *Connell* and concludes Defendants have failed to present grounds sufficient to militate against holding the trial in New Castle County. Defendants do not satisfactorily explain how transporting relevant documents and evidence would be unduly difficult,<sup>18</sup> especially given that Defendants’ counsel’s office is close to the New Castle County Courthouse and his colleagues routinely appear in this Court. Nor do Defendants provide specific data to support their assertion that particular witnesses would be materially inconvenienced.<sup>19</sup> That the six potential civilian witnesses and a number of potential witnesses from the Delaware State Police reside or are stationed in Sussex County, alone, is not convincing.<sup>20</sup> Defendants have not presented a situation analogous to that in *Krueger* or expressed concern about the sustainability of police operations in Sussex County during the trial

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<sup>14</sup> *See id.*

<sup>15</sup> *See id.* at \*3.

<sup>16</sup> *See id.* at \*4 (“The Commission points to no witnesses in particular who would be materially inconvenienced by traveling from Kent County to New Castle County, does not specify how transporting records to New Castle County would be difficult, and does not satisfactorily explain how the location of the racetracks the Commission operates affects the convenience of litigating this matter.”).

<sup>17</sup> *See Connell*, 2011 WL 4827581, at \*1 (“There is no showing by Ammons that she or any of the other defendants would suffer severe or undue financial hardship in traveling to Georgetown to attend trial. Indeed, as a practical matter, I suspect that Ammons and her attorneys will, as many parties and attorneys do, simply stay in or near Georgetown for the trial, thus eliminating most of the inconvenience to them.”).

<sup>18</sup> *See Givens*, 2011 WL 5822626, at \*4.

<sup>19</sup> *See id.*

<sup>20</sup> *See Goldberg*, 2000 WL 33275020, at \*3 (“[T]he only witnesses who may testify are the persons who cleaned or repaired the property. They reside in Sussex County. There is no showing that they could not appear in New Castle County.”).

should certain officers be asked to testify in New Castle County. Finally, even if the State had to bear the “costs” associated with State Police Officers taking time off from their duties to travel and attend trial, Defendants fail to show the “severe or undue financial hardship” required to weigh in favor of disrupting a plaintiff’s choice of venue.<sup>21</sup>

Thus, Defendant’s Motion for Change of Venue is **DENIED**.

**IT IS SO ORDERED.**

/s/ William C. Carpenter, Jr.  
Judge William C. Carpenter, Jr.

WCCjr:twp

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<sup>21</sup> See *Connell*, 2011 WL 4827581, at \*1.