

VIRGINIA: IN THE CIRCUIT COURT OF THE SMYTH COUNTY

COMMONWEALTH OF VIRGINIA

vs.

CHASE LEVI CLARK

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**Case No: CR22-180-00
CR22-181-00**

**COMMONWEALTH'S OPPOSITION TO DEFENDANT'S MOTION
TO CHANGE VENUE**

Comes now the Commonwealth and moves this Court to deny the Defendant's Motion to Change Venue. As grounds for its opposition, the Commonwealth states the following:

1. The Commonwealth spoke with defense counsel on August 1st, 2023, at which time she informed the Commonwealth that the defendant would not be accepting, therefore rejecting, the previous offer and instead the defendant would be entering an open plea to the charges.
2. Based upon this representation, the Court set the open plea for the trial date, August 2, 2023, since it was not the entry of a plea agreement, which is prohibited by local court rule.
3. Since an open plea would require a different sentencing date, Assistant Commonwealth's Attorney, Brendan Roche, proceeded on to his conference and asked his colleague Mr. Phillip Blevins to cover this matter.
4. At no time did the Commonwealth approve the article run by the media, nor has the Commonwealth ever had any type of power of

approval over any media outlets. In fact, Mr. Blevins contacted the reporter and asked her not to include the conversation between the Commonwealth and defense counsel that occurred in the courtroom. The reporter refused and ran the article that was published (attached).

5. The defendant attempts to paint the article as Mr. Blevins providing political quotes to the newspaper, but the article contains statements made before the Court and to defense counsel. At no place in the article are there any quotes given directly to the newspaper. Also, the article contains a reference to Mr. Blevins' political opponent, which would not be in line with a political statement issued and or approved by Mr. Blevins.
6. The court must begin with the presumption that a defendant can receive a fair trial in the jurisdiction in which the offense occurred. *Stockton v. Commonwealth*, 227 Va. 124, 137 (1984).
7. "To overcome this presumption, the accused has the burden of clearly showing 'that there is such a widespread feeling of prejudice on the part of the citizenry as will be reasonably certain to prevent a fair and impartial trial.'" *Id.* (quoting *Coppola v. Commonwealth*, 220 Va. 243, 248 1979).


8. The defendant has failed to show any type of prejudice based upon the article and has failed to bring forth any evidence showing that the defendant would not receive a fair trial in Smyth County.
9. In *Chandler v. Commonwealth*, 249 Va. 270, 274 (1995), three newspaper articles, quoting statements by the Commonwealth's Attorney that the defendant was the person who killed the victim, that defendant was a "likely candidate" for the death penalty and that defendant "had sought a plea agreement [did] not demonstrate that the pre-trial publicity" prejudiced defendant and "prevented him from receiving a fair trial."
10. The statements above were much more political and potentially prejudicial, but the Court in *Chandler* denied a change of venue.
11. The existence of media reports about the accused and the crime does not necessarily require a change of venue. *Dobbert v. Florida*, 432 U.S. 282, 303 (1977).
12. "Jurors are not required to be totally ignorant of the facts and issues in a case." *Buchanan*, 238 Va. 389, 406-07 (1989), (citing *Irvin v. Dowd*, 366 U.S. 717, 723; (1961)).
13. Also, the alleged article contains nothing of the facts of the case before the Court. The article even states, "Few details about the allegations against Clark are known at this time as he was charged

via direct indictment, but Roche said last week that it was a case involving Shaken Baby Syndrome.”

14. In determining whether community prejudice against the defendant is sufficiently pervasive to preclude a fair trial and justify a change in venue, the primary inquiry is the ease with which an impartial jury can be selected. *Thomas, J. v. Commonwealth*, 263 Va. 216, 231 (2002).
15. Voir Dire examination of prospective jurors who are under oath “is the best tool for searching for the truth.” *Thomas, D. v. Commonwealth*, 244 Va. 1, 11 (1992).
16. Any issues with the mention of the previously offered plea agreement, specifically the amount of time, could be dealt with by questioning during voir dire. However, presently this issue is moot, since defendant has not requested jury sentencing pursuant to *Virginia Code Section 19.2-295*. Since the Court will be conducting any sentencing at this time, the Commonwealth is confident that the Court can disregard any previous mention in the article.
17. Also, the Commonwealth, in its research on venue, is unaware of any case law that allows the defendant to choose the venue and would note that the Bristol Herald Courier also serves Washington County, Virginia, which if there was any impartiality imputed to Smyth County that same impartiality would be present any place that that paper serves, including Washington County, Virginia.

WHEREFORE, for all the foregoing reasons, and for any others evident to the Court upon a hearing on such matter, the Commonwealth asks the court to deny the Defendant's motion, or in the alternative to see if a jury can be fairly seated in Smyth County, Virginia.

Respectfully submitted,



Brendan E. Roche, Assistant
Attorney for the Commonwealth
County of Smyth, Virginia

CERTIFICATE

I hereby certify that the Commonwealth's Opposition was emailed (kchlawgroup@gmail.com) to Kimberly C. Haugh, Esquire, counsel for the defendant, on this 11th day of September 2023.



Brendan E. Roche, Assistant