

COMMONWEALTH OF KENTUCKY
MARSHALL CIRCUIT COURT
INDICTMENT NO. 18-CR-00030

FILED 5/2/19
TIFFANY FRALICX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY: Smith D.C.

COMMONWEALTH OF KENTUCKY

PLAINTIFF

V.

GABRIEL PARKER

DEFENDANT

COMMONWEALTH'S RESPONSE TO
DEFENDANT'S PETITION FOR CHANGE OF VENUE

Comes now the Commonwealth, by and through undersigned counsel, and for its Response to the Defendant's Petition for Change of Venue and in support thereof states as follows:

1. KRS 452.220(2) sets out the procedure for a defendant to move for a change of venue. It states as follows:

If the application is made by the defendant, it shall be made by petition in writing, verified by the defendant, and by the filing of the affidavits of at least two (2) other credible persons, not kin to or of counsel for the defendant, stating that they are acquainted with the state of public opinion in the county objected to, and that they verily believe the statements of the petition for the change of venue are true. The Commonwealth's attorney or, in his absence from the county, the county attorney shall be given reasonable notice, in writing, of the application. If objections to all the adjoining counties are made and sustained, the change shall be made to the nearest county to which there is no valid objection, preference being given to counties of the same judicial circuit.

2. Defendant, in his motion, sets out a statement of facts which will be addressed herein:
 - a. The Commonwealth does not dispute paragraph 1.
 - b. The Commonwealth does not dispute paragraph 2.

- c. The Commonwealth does not believe that paragraph 3 is relevant and would simply say that the media coverage of this event speaks for itself.
- d. The Commonwealth does not dispute paragraph 4 except as it relates to the generalized statement about the local population having formed opinions about the case. The Commonwealth believes that the affidavits filed with the motion speak for themselves and represent only the views of the affiants. Anything else is speculation.
- e. Regarding paragraph 5, there are two high schools in Marshall County, and the Commonwealth would submit that this statement is not a “fact” as such, but an argument which defendant can certainly present.
- f. The Commonwealth has no basis to either agree or disagree with the arguments made in paragraph 6, except as noted in the affidavits.
- g. Paragraph 7 has nothing to do with this case and is inaccurate insofar as the Defendant claimed that protestors for and against the NRA and Oliver North clashed on the streets of Murray.
- h. Paragraph 8 may or may not be true, but there certainly is nothing in this record to suggest what is claimed to be a fact.
- i. The Commonwealth will not dispute that extensive attention to this case has been evidenced on social media as alleged in paragraphs 9, 10, and 11. However, this reflects the times in which we now live, and is not, in and of itself, indicative of whether defendant is entitled to relief as a matter of law.
- j. The Commonwealth does not concede that defendant cannot receive a fair trial in Marshall County as alleged in paragraph 12 and does not believe that the civil suits have had any impact on whether defendant can receive a fair trial in Marshall County.
- k. Paragraph 13 speaks for itself.

3. The Commonwealth does not disagree with the legal arguments set out in defendant’s petition but would note that the petition is not in strict compliance with KRS 452.220(2) in that the petition is not verified by the defendant. This can be corrected, and because defendant has signed an affidavit, the Commonwealth will not object to going forward with the hearing on this matter but would request that Defendant supplement his motion to include verification by the defendant. However, the Commonwealth does not agree with

the conclusion that defendant could not receive a fair trial in Marshall Counties, counties in the Purchase area, or other counties adjacent to Marshall County.

4. The Commonwealth will not file competing affidavits with defendant within the strict parameters of the above statute. If the court reviews those affidavits and finds them to be credible as they relate to the state of public opinion, then the Commonwealth will ask the court to review this provision of the statute and first look to adjoining counties to determine an appropriate venue.
5. Looking first at adjoining counties, the Commonwealth will begin by looking at the counties contiguous to Marshall. They include McCracken, Graves, Calloway, Trigg, Lyon, and Livingston. It is the belief that of these counties, all are within the media range of WPSD-TV in Paducah, (News Channel 6) and media coverage may create a difficult situation in choosing a jury panel, excepting Trigg County.
6. Also, the court must consider the statute addressing change of venue, namely KRS 452.210., which states as follows:

When a criminal or penal action is pending in any Circuit Court, the judge thereof shall, upon the application of the defendant or of the state, order the trial to be held in some adjacent county to which there is no valid objection, if it appears that the defendant or the state cannot have a fair trial in the county where the prosecution is pending. If the judge is satisfied that a fair trial cannot be had in an adjacent county, he may order the trial to be had in the most convenient county in which a fair trial can be had.

7. In this case, if the court rules out any or all the contiguous counties, it would not be convenient for the trial to move to one of the other Jackson Purchase counties as travel for all parties would be difficult. The most convenient

county which has adequate court facilities, can draw from a sufficiently large jury pool, and would have adequate hotel facilities as well as easy transportation access would be Christian County.

8. Another advantage to the Christian County venue is with respect to witnesses the Commonwealth expects to call at the trial. Among the witnesses who will be called to testify are doctors and/or other medical staff from Vanderbilt University. Christian County is less than one hour from Nashville, TN and is easily accessible from Nashville. In addition, other doctors expected to testify would be coming from either Marshall County or from Paducah, Kentucky.
9. Certainly, other venues such as Daviess County and Warren County would also have the same amenities as Christian County, but the one major difference is the convenience factor. While it is asking a great deal of the victims and the victims' families to have a trial in a forum away from the location of the crimes committed, a trial in Christian County would not result in overnight stays for the victims and their families. A trial in any other county further than Christian would result in great inconvenience for the victims. With respect to witnesses, Christian County is easily accessible, and again, there should be adequate hotel space.

Wherefore, the Commonwealth requests the following relief:

1. That the motion for change of venue be denied.
2. That alternatively, that the Court choose the most convenient venue in accordance with KRS 452.210.


Dated this the 7th day of May, 2019.



DENNIS R. FOUST
Commonwealth's Attorney
42nd Judicial Circuit

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was on this the 7th day of May, 2019 served upon the Defendant by US mail and by email to the Defendant's counsel, Hon. Tom Griffiths, and Hon. Doug Moore



DENNIS R. FOUST