**RECORD IMPOUNDED**

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0303-16T2

**APPROVED FOR PUBLICATION**

**June 19, 2017**

**APPELLATE DIVISION**

STATE OF NEW JERSEY
IN THE INTEREST OF
M.P.

---

Argued May 9, 2017 – Decided June 19, 2017

Before Judges Messano, Espinosa and Grall.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, Docket No. FJ-12-1625-16.

Patrick C. O'Hara, Jr., argued the cause for appellant M.P. (Del Vacchio O'Hara, P.C., attorneys; Mr. O'Hara, on the brief).

Christopher L.C. Kuberiet, First Assistant Prosecutor, argued the cause for respondent State of New Jersey (Andrew C. Carey, Middlesex County Prosecutor, attorney; Mr. Kuberiet, on the brief).

The opinion of the court was delivered by

MESSANO, P.J.A.D.

The State of New Jersey charged juvenile M.P. with conduct which, if committed by an adult, would constitute second-degree aggravated assault, N.J.S.A. 2C:12-1(b), and fourth-degree

unlawful possession of a weapon, N.J.S.A. 2C:39-5(d).[1] M.P. appeared with counsel before a Family Part judge in Middlesex County for a preliminary hearing and subsequent detention hearing.

Several days later, a probation officer requested the prosecutor provide a copy of the police report because the matter was being transferred to another vicinage. Apparently, without notice to M.P.'s counsel or any further notice to the prosecutor, the Presiding Judge of the Family Part (PJ) filed an order transferring the matter to Somerset County.

The State moved to vacate the order. The prosecutor's certification asserted that court staff provided only "a cryptic reference to employee conflict." The prosecutor noted there had been no contact with the victim of the alleged assault before the transfer, in violation of the Crime Victim's Bill of Rights, N.J.S.A. 52:4B-34 to -38. The prosecutor also referenced prior juvenile matters involving M.P. for which venue was not

[1] The complaint fails to state which specific subsection of N.J.S.A. 2C:12-1(b) the juvenile allegedly violated. The language of the complaint suggests N.J.S.A. 2C:12-1(b)(1) (causing or attempting to cause serious bodily injury (SBI)). This is consistent with the State's representations at oral argument that it will seek waiver of the Family Part's jurisdiction to pursue prosecution in the Criminal Division. See N.J.S.A. 2A:4A-26.1(c)(2)(g) (permitting waiver for second-degree aggravated assaults).

transferred, and stated, on "information and belief," M.P. objected to the transfer.

The parties appeared before the PJ for oral argument on the State's motion. The prosecutor argued the State received no explanation for the transfer of venue, which was not authorized by statute or Court Rule. He stated the sole authority for the transfer was N.J. Administrative Office of the Courts, Judiciary Employee Policy #5-15, "Reporting Involvement in Litigation," (effective June 1, 2016) (the Policy). He further contended the Policy permitted only the Assignment Judge (AJ) to transfer venue. The prosecutor cited extensively to two of our unpublished opinions and argued the transfer created hardships for law enforcement and the alleged victim.

Defense counsel, who had represented M.P. since 2012, also noted her objection to the transfer of venue. Counsel explained that the juvenile's mother became "frantic" upon hearing of the transfer, noting she and her son lived in Middlesex County, she had a two-week old child and she could not "go back and forth to Somerset County." Counsel further stated that the mother's child support matter was initially transferred to Somerset County, but that order was revoked after M.P.'s mother objected. Defense counsel requested the judge hold a hearing to determine

"if there is some way we can shield the [court] person from any involvement with [M.P.'s] case."

The judge stated "that any lack of . . . communication" regarding the transfer order was "not a matter of design." She cited Rule 1:33-6(d) as providing authority for a PJ to enter the transfer order. The judge explained that she followed the Policy after receiving the confidential report of an employee, and noted the Policy "insure[s] the continued integrity of the judiciary in avoiding any actual [or] potential . . . appearance of partiality or conflict of interest." The judge reserved decision and subsequently filed the July 29, 2016 order denying the State's motion.

In a written statement of reasons accompanying the order, the judge explained a judiciary employee in the vicinage's Trial Court Services Division submitted a confidential "Personal or Family Member Involvement in Litigation form" to the Trial Court Administrator (TCA). Citing various provisions of the Policy, which we discuss in greater detail below, the judge stated she and the TCA determined a transfer of venue was necessary "to avoid any appearance of impropriety."

The judge explained the judiciary employee had access to the Family Automated Case Tracking System (FACTS), which permitted him or her to view information, including information

that was confidential pursuant to N.J.S.A. 2A:4A-60. The judge explained:

> The Judiciary employee's function is to assist court users by providing information and assistance with court processes, handling court user complaints and inquiries, and providing information from court files, as appropriate. In that regard, consideration of preventative measures to ensure insulation or isolation of this employee would substantially impact the employee's functionality. Specifically, the employee's need to regularly access FACTS to perform his/her job prohibits restriction of FACTS access as a means to insulate the individual. Additionally, consideration of relocating the employee to an area removed from the Middlesex Family Courthouse, wherein a substantial segment of the public seeks access to the employee's services, would significantly hinder the access to and delivery of services by the Judiciary to the public.

The judge distinguished one of the unpublished decisions cited by the prosecutor, noting it was a criminal case and "distinguishable from a juvenile delinquency case in that it does not implicate statutory confidentiality restrictions."

Lastly, the judge explained

> procedural safeguards ordinarily attendant to adversarial proceedings are not employed in the area of administrative transfers as it is the Court that is vested with the authority and responsibility to maintain a high degree of integrity and to avoid any actual, potential or appearance of partiality or conflict of interest in the adjudication or handling of all cases.

The judge concluded transferring venue in this matter was consistent with the Policy.

We granted M.P.'s motion for leave to appeal, which the State supported. In the interim, on September 5, 2016, M.P. was charged in another complaint with conduct which, if committed by an adult, would constitute fourth-degree riot, N.J.S.A. 2C:33-1(a)(1), and the disorderly persons offense of simple assault, N.J.S.A. 2C:12-1(a). Without notice to the State or defense counsel, the PJ entered an order on September 22 transferring venue for the second complaint to Somerset County. No further hearing occurred prior to entry of the order, and no statement of reasons accompanied it.

We granted M.P.'s motion to expand the record to include the September 22, 2016 order. The State did not object.

Counsel advised us at oral argument that M.P. has now been charged with additional offense(s) as an adult, since he has turned eighteen. As of the date of the argument, venue in that matter had not been transferred. The prosecutor also indicated the State continues to seek waiver of the initial juvenile complaint to the Law Division.

M.P. argues the judge mistakenly exercised her discretion by transferring venue over his objection. He contends that pursuant to the Policy, only the AJ can order a transfer of

venue, and, in this case, there was no indication the AJ had delegated that responsibility to the PJ. He further argues the PJ failed to consider his objection to the transfer, or N.J.S.A. 2A:4A-27, which provides, "[a]ny juvenile [fourteen] years of age or older charged with delinquency may elect to have the case transferred to the appropriate court having jurisdiction." M.P. urges us to summarily reverse the orders under review. The State agrees with M.P.'s position and reiterates the arguments it raised in the Family Part.

We now reverse and remand the matter for further proceedings consistent with this opinion.

I.

We begin by recognizing our Court Rules express a strong presumption that venue shall lie in the county of a juvenile defendant's domicile. Rule 5:19-1(a)(1) provides:

> Juvenile delinquency complaints are filed in the county where the incident giving rise to the complaint allegedly occurred. However, when the juvenile charged is domiciled in a county other than the county of the alleged occurrence, venue shall be laid in the county of the juvenile's domicile unless the court finds good cause for venue to be retained in the county where the incident allegedly occurred.
>
> [(Emphasis added).]

The Rule also provides that, "[i]f there are multiple defendants, juvenile or adult," the Family Part must

"immediately notify the county prosecutor and any attorney of record of an intent to transfer the juvenile matter to the county of domicile." R. 5:19-1(a)(2) (emphasis added). "Any objection to the transfer of venue . . . shall be made . . . within five days of such notice." Ibid.

When the Rule was last amended in 2006, the Supreme Court Family Practice Committee explained that under the pre-amendment Rule, venue in multiple defendant cases was laid in the county where the incident occurred. The Supreme Court Family Practice Committee, Family Practice Committee 2004-2007 Final Report 138 (Jan. 12, 2007) http://www.njcourts.gov/courts/assets/supreme/reports/2007/family_2007.pdf (The Report). This raised concerns "because the information most useful to the Family Part judge assigned to hear the juvenile delinquency case was uniquely available in the juvenile's county of domicile." Ibid. (emphasis added).

Rule 5:19-1(b) provides:

> Except when venue has been established by a court pursuant to an objection raised in paragraph (a)(2), a motion for change of venue may be made at any time. Such motion shall be made to the Family [PJ] or designee in the county where the matter is currently venued on notice to the other party. Venue shall be retained unless the court

> determines that good cause exists to change venue.[2]

The Committee succinctly summarized the Rule as amended:

> The amended rule supports a presumption in favor of venue in the county of the child's domicile; requires Family Part case management in the county where the complaint was originally filed to notify the State, and any attorney of record, of the existence of multiple defendants; permits the raising of an objection within five days of such notice of multiple defendants in the county where the complaint was originally filed and requires good cause to retain venue there; and for any other reason, a motion to change venue may be brought at any time, which also requires a finding of good cause to change venue.
>
> [The Report, supra, at 138 (emphasis added).]

In this case, the juvenile complaints were filed in Middlesex County, which is M.P.'s domicile and where the offenses allegedly occurred. No one sought a change of venue. The judge acted sua sponte, entering the order transferring venue without notice to the parties. The hearing on the State's motion was the first opportunity either party had to object.

---

[2] In criminal cases, subject to certain exceptions, venue presumptively lies in the county where the offense was committed. R. 3:14-1. Our Court Rules provide for a different procedure in adult criminal cases, in that only a defendant may move to transfer venue. R. 3:14-2. Such motions shall be made to the judge assigned to try the case or the AJ, "on notice to the other party or parties on such proofs as the court directs and shall be granted if the court finds that a fair and impartial trial cannot otherwise be had." Ibid.

Importantly, both M.P. and the State were placed in the unenviable position of having to voice their objections with virtually no information regarding the identity of the judiciary employee, what his/her job functions entailed and what involvement the employee or his/her family member had with the litigation.

Some of this information, although not all, was supplied for the first time in the judge's written opinion denying the State's motion. The judge relied upon the Policy. She correctly noted, and the parties concede, policies adopted by the Administrative Office of the Courts have the force of law. Schochet v. Schochet, 435 N.J. Super. 542, 545 n.3 (App. Div. 2014). The Policy expressly states its purpose:

> The Judiciary and those within the scope of this policy have an obligation to maintain a high degree of integrity and to avoid any actual, potential or appearance of partiality or conflict of interest in the adjudication or handling of all cases. Even the appearance of a potential conflict of interest undermines the core values of the New Jersey Judiciary and hampers its mission. Accordingly, those covered by this policy must report any involvement concerning themselves, and any immediate family member's involvement known to the individual, in any litigation matter covered in this policy so that, if deemed necessary, the appropriate action may be taken to avoid or minimize any such appearance.
>
> [Policy #5-15, supra, at 1 (emphasis added).]

The Policy applies to all judiciary employees and requires, among other things, that they "immediately report . . . [a]ny personal involvement," or "[a]ny immediate family member's involvement known to the employee," in any criminal, quasi-criminal or non-criminal matter pending in any New Jersey state or municipal court. Id. at 1-2.[3] It defines immediate family members. Id. at 3.

The affected judiciary employee must submit a confidential report to his or her Senior Manager, in this case, the TCA. Id. at 2. The Policy then provides:

> The Senior Manager, in consultation . . . with the Assignment Judge . . . shall take appropriate action to avoid any appearance of impropriety. Appropriate action includes, but is not limited to, changing the venue of the matter, if permitted,[] or otherwise insulating the individual from the matter. Confidentiality will be maintained to the extent practicable under the circumstances.
>
> [Id. at 3 (footnote omitted) (emphasis added).]

[3] In the Acting Administrative Director's cover memorandum issuing the Policy, he noted this reporting requirement expanded prior policies, which limited reporting requirements of immediate family members' involvement in litigation to matters pending in the vicinage where the employee worked. Memorandum from Glenn A. Grant, J.A.D., Acting Admin. Dir. of the Courts (May 24, 2016).

The footnote we omitted provides: "There may be restrictions on involuntary change of venue which make such action inappropriate (e.g., R. 3:14-2)."

No published case has addressed the interplay between the Policy and our Court Rules governing venue in juvenile delinquency matters. Our need to repeatedly address the propriety of a court's sua sponte transfer of venue pursuant to the Policy in criminal appeals, as reflected in the two recent unpublished cases cited by the prosecutor, persuades us it is necessary to provide some guidance to trial courts. Specifically in the context of juvenile delinquency proceedings like these, Family Part judges face the very difficult task of balancing the reasonable expectation of a juvenile defendant and his family expressed in our Court Rules — that venue will presumptively lie in the county of the juvenile's domicile — with the laudable goals of the Policy.

II.

We briefly address the argument that the PJ lacked authority to enter the order. Rule 1:33-6(b) provides, "[i]n addition to judicial duties, the Presiding Judge of each functional unit within the vicinage shall be responsible for the expeditious processing to disposition of all matters filed within that unit." Moreover, "[t]he Presiding Judge shall

perform such additional administrative duties as shall be assigned by the Assignment Judge and shall be responsible for the implementation and enforcement within the court of all administrative rules, policies and directives of the Supreme Court, the Chief Justice, the Administrative Director and the Assignment Judge." R. 1:33-6(d) (emphasis added). In short, as the judge here properly noted, Rule 1:33-6 permitted her to enter the order transferring venue of M.P.'s juvenile complaints to Somerset County.

We find further support for this conclusion in the language of Rule 5:19-1(b), which requires any motion for a change of venue to be heard by the PJ or her designee.

We disagree with the State's assertion that the Policy requires the AJ to enter any order transferring venue. The Policy authorizes the senior manager to consult with the AJ and take appropriate action, presumably action short of transferring venue, since it is axiomatic that only a judge may execute an order transferring venue. However, the policy does not require the AJ to enter every order transferring venue from the vicinage.[4]

[4] Additionally, even though the record does not reveal it happened here, Rule 1:33-6(a) allows the AJ to "delegate to the Presiding Judge of each functional unit within the vicinage, (continued)

III.

Because precedent regarding venue in juvenile delinquency matters is scant, we review some well-established principles from criminal cases, fully recognizing that additional concerns can arise in those prosecutions because a transfer of venue may implicate "the constitutional significance of an impartial jury." State v. Nelson, 173 N.J. 417, 475 (2002) (citing State v. Williams, 93 N.J. 39, 61 (1983)). Although juvenile defendants are accorded many of the same rights as criminal defendants, see State ex rel. P.M.P., 200 N.J. 166, 174 (2009) (citing N.J.S.A. 2A:4A-40), the right to a jury trial is not one of them. Ibid.; see also State ex rel. A.C., 426 N.J. Super. 81, 93 (Ch. Div. 2011), aff'd o.b., 424 N.J. Super. 252 (App. Div. 2012).

It is well-settled that "[v]enue is not a matter of jurisdiction, nor is it of constitutional dimension." State v. Zicarelli, 122 N.J. Super. 225, 233-34 (App. Div.) (citing State v. DiPaolo, 34 N.J. 279, cert. denied, 368 U.S. 880, 82 S. Ct. 130, 7 L. Ed. 2d 80 (1961)), certif. denied, 63 N.J. 252, cert. denied, 414 U.S. 875, 94 S. Ct. 71, 38 L. Ed. 2d 120 (1973).

---

(continued)
judicial duties and responsibilities allocated to the Assignment Judge by these rules."

Venue has generally been regarded as "a mere matter of practice and procedure." State v. Greco, 29 N.J. 94, 104 (1959) (quoting State v. O'Shea, 28 N.J. Super. 374, 379 (App. Div. 1953), aff'd, 16 N.J. 1 (1954)). However, "[t]his is not to belittle the venue provisions. They embody a significant policy decision, and an accused is entitled to insist upon them." DiPaolo, supra, 34 N.J. at 288.

Some of the policy reasons for presumptively laying venue in the county of the juvenile's domicile find voice in our Court Rules and in the Code of Juvenile Justice (the Code), N.J.S.A. 2A:4A-20 to -48. For example, Rule 5:20-4, provides that "parents, guardians or other person having custody, control and supervision over the juvenile shall be necessary parties to every proceeding in all juvenile delinquency actions." "Th[e] fundamental right of a party —— to be present during trial —— is equally applicable to a parent in a juvenile delinquency proceeding as a result of the adoption of Rule 5:20-4 by the New Jersey Supreme Court." State ex rel. V.M., 363 N.J. Super. 529, 535 (App. Div. 2003); see N.J.S.A. 2A:4A-38(b) and (c) (requiring notice to parents and their attendance at juvenile detention hearings).

Some of the expressed purposes of the Code include the preservation of family unity and "fostering interaction and

dialogue between the offender, victim, and community." N.J.S.A. 2A:4A-21(a) and (f). Prior to making a disposition in a delinquency matter, Family Part judges may order evaluations and consider sources of information rooted in the county of domicile, for example, county probation, "the county youth services commission, school personnel, clergy, law enforcement authorities, family members and other interested and knowledgeable parties." N.J.S.A. 2A:4A-42(b). Any predisposition report may include input from the victim. N.J.S.A. 2A:4A-42(c)(1).

Indeed, as the prosecutor argued in this case, the Crime Victim's Bill of Rights, N.J.S.A. 52:4B-34 to -38, applies to juvenile delinquency cases. See N.J.S.A. 52:4B-37 (defining "victim" as "a person who suffers personal, physical or psychological injury or death or incurs loss of or injury to personal or real property as a result of . . . an act of delinquency that would constitute a crime if committed by an adult, committed against that person"). Victims and witnesses are given the right "[t]o have inconveniences associated with participation in the criminal justice process minimized to the fullest extent possible," and "to be present at any judicial proceeding." N.J.S.A. 52:4B-36(d) and (p). See also State v. Timmendequas, 161 N.J. 515, 556 (1999) (recognizing that

victims' concerns should be taken into account in deciding whether venue should be transferred), cert. denied, 534 U.S. 858, 122 S. Ct. 136, 151 L. Ed. 2d 89 (2001).

These considerations must be balanced against the overriding goal of the Policy — "to maintain [the Judiciary's] high degree of integrity and to avoid any actual, potential or appearance of partiality or conflict of interest in the adjudication or handling of all cases." Policy #5-15, supra, at 1. These concerns find expression in our Court Rules and in a legion of decisions by our Court, too numerous to mention. See, e.g., R. 1:17-1 to -3, and -5 (limiting involvement of judges and "non-judge employees" in political activity, other employment and appointed positions); In re DiLeo, 216 N.J. 449, 471-72 (2014) (discussing public perception of integrity and impartiality as essential to conduct of a judge); In re Randolph, 101 N.J. 425, 441-42 (discussing the impact a judiciary employee's involvement in public and private civic organizations has upon the public's perception of the judiciary's impartiality), cert. denied, 476 U.S. 1163, 106 S. Ct. 2289, 90 L. Ed. 2d 730 (1986).

We have no doubt that the court alone is vested with the ultimate decision-making authority regarding any change in venue, and that the court's authority may be exercised even in

the face of a juvenile defendant's or the State's objection. However, that authority must be exercised in service to the Policy's goal, and any action promoting that goal must be "necessary" and "appropriate" under the circumstances. Policy #5-15, supra, at 1. The Policy anticipates that its goals may be served by something less drastic than a transfer of venue. Specifically, "insulating the [court employee] from the matter." Id. at 3.

In this case, the judge stated the unidentified employee's access to FACTS was a significant reason to transfer venue. The system is a statewide system, and those employees with access to Family Part case types in one vicinage may view those case types in other vicinages. In other words, even after the transfer of venue, the affected employee may still be able to follow the proceedings occurring in another vicinage. The judge also based her decision on the employee's physical location and job duties, which entailed significant interaction with the public, and the impracticality of "relocating" the employee.

However, the PJ did not identify the judiciary employee at issue, nor did she explain the relationship he or she had to the litigation. Confidentiality is important, and in some situations, for example, concern for an employee's safety, it may be paramount. However, the Policy recognizes

"[c]onfidentiality will be maintained to the extent practicable under the circumstances." Policy #5-15, supra, at 3 (emphasis added). Particularly since the nature and extent of the employee's involvement with this case was never discussed, it is impossible to assess whether some remedy, short of transferring venue, would have adequately served the Policy's goals.

Lastly, the judge determined the "procedural safeguards ordinarily attendant to adversarial proceedings are not employed in the area of administrative transfers." To some extent, we disagree. As our earlier discussion demonstrates, the presumption that venue in delinquency cases shall be laid in the county of the juvenile's domicile is not a trivial matter. Therefore, we believe Rule 5:19-1 provides the basic framework courts should follow whenever they decide sua sponte that particular circumstances establish good cause to transfer venue under the Policy. The court should provide the parties with five-days' notice of its intention and an opportunity to be heard. If there is an objection, the judge should conduct a hearing, explaining, to the extent "practicable," the judiciary employee's, or his or her family member's, involvement in the matter, and the job functions of that employee that create particularized reasons why a remedy short of transfer is impracticable.

In this case, M.P. and the State were not provided with any notice of the transfer. We do not view the hearing held on the State's motion as adequate under the procedure we have now devised. Nor do we conclude that the judge gave adequate weight to the presumption that venue remain in the county of the juvenile's domicile, or to the concerns raised by the State regarding the rights of the victim of the alleged assault. We are therefore constrained to reverse the two orders transferring venue of M.P.'s juvenile delinquency complaints to Somerset County, and we remand so the judge may conduct further proceedings consistent with this opinion.

Reversed and remanded. We do not retain jurisdiction.