

NORTH CAROLINA
GRAHAM COUNTY

IN THE MATTER OF THE GRAHAM
COUNTY ALTERNATE COURTHOUSE
PLAN

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 17-R-64

ORDER

FILED
AUG 28 8:15
GRAHAM COUNTY, N.C.

It appearing to the Court that the courthouse in Graham County ("Courthouse") may not be adequate to provide for a modern trial with the expected provisions for security and due process, and that a new courthouse is an expense that the County government is reluctant to approve (and would be a long-range solution in any event), and that a presiding judge on rotation might determine that a very serious jury trial should not be continued but should be held in another county, and that advanced planning is necessary to prepare for dealing with such determination without delay, NOW THEREFORE, the Senior Resident Superior Court Judge for District 30A does hereby adopt this Plan, under the authority and obligation of his office, in order to provide for a fair and efficient administration of justice.ⁱ

The goal of this plan is to provide for the transportation of jurors and court personnel, with appropriate security detail, to and from Cherokee County (Murphy), which has a courthouse adequate to handle an out-of-county jury trial without severe inconvenience to court schedules already in place there. (In the event the presiding judge determines that Cherokee County cannot accommodate the needs of Graham County as established by this order, and that another county in District 30A can accommodate these needs, he or she may substitute such other county in all respects as if set forth herein.)

The findings of fact supporting this Order are as follows:

1. The Courthouse has multiple entrances that are not always monitored. The courtroom has windows to the street. In general, the Courthouse is not secure in relation to the modern-day threats of violence.ⁱⁱ
2. Jurors (petite or venire) have no place to go during breaks and will unavoidably be thrown outside the courthouse in unsheltered and unprotected areas, or within the stairwells, hallways, bathrooms, or other county offices, there to mingle with criminal defendants, witnesses and victims.
3. The jury deliberation room in the Courthouse is inadequate for the following reasons:
 - a. The jury room is too small to accommodate 12 persons, or more where there are multiple alternates.
 - b. The jury room has no bathroom (not even one) for the jurors. Jurors are forced to use the bathrooms in other areas of the courthouse, and their travel to and from the bathrooms is fraught with the danger of contact with non-jurors. Additionally, the bathroom journey is a waste of time.
 - c. The jury room is not sound-proof. While in the jury deliberation room, the jurors can be heard talking by those present in the courtroom, the jurors can hear what's going on in the courtroom when they are sequestered from the courtroom during trial.

4. The jury has no separate entrance or a jury assembly room, so it is almost impossible to insure that the jury won't see the defendant enter the courtroom from the rear entrance, which comes up from the jail, so a trial judge cannot possibly insure that jurors will not see the defendant on his way to or from the jail.
5. The courtroom is often inundated with noises from the adjacent streets, the jail underneath the courtroom, the air-conditioning unit, and the steam pipes of the furnace system.
6. The Courthouse has only one courtroom, which means that a lengthy trial will require District Court sessions to be held at inadequate offsite facilities.
7. The Courtroom lacks adequate, reliable and modern audio/visual equipment. This results in extra courtroom time being wasted on outdated presentation methods.
8. On the outside, there is inadequate parking for jurors.
9. The undersigned is very concerned as to whether the Courthouse is ADA compliant. At the very least, it is extremely inconvenient for those with disabilities. Wheelchair accessibility is practically impossible from the sidewalks into the courthouse. There is no handicap access in the courtroom for jurors, witnesses, court personnel and spectators. The elevator is at times unreliable in time of high usage, which effectively results in no access for disabled persons.
10. There is no room available for use by the Grand Jury in the Courthouse, which means that during a jury trial, the Grand Jury must be bussed to an offsite location, which creates enormous problems of security and efficiency.

Based upon the foregoing findings of fact, in the discretion of the Court, the following provisions (along with any additional provisions determined by the presiding judge) will be made in the event a presiding judge determines that venue for a trial must be transferred out of Graham County:

1. Jury Venire. Prior to jury selection, the entire jury panel will be transported in air-conditioned and heated buses to Murphy, North Carolina. The Sheriff shall post at least one deputy on each bus. The Sheriff shall provide an escort vehicle for the buses.
2. The County of Graham will provide lunches for the Jury, both Venire and Petite, while they are in Cherokee County.
3. The County of Graham will certify that all Jurors are reasonably and adequately insured against all perils resulting from transportation to and from Murphy.
4. The County of Graham will pay travel expenses for all Graham County personnel required to travel to Murphy, to the extent that such expenses are not covered by the AOC.
5. The County of Graham will provide two bailiffs to assist the bailiffs in Cherokee County during the trial, and pay the expenses of the bailiffs.
6. If the Defendant(s) is/are in custody during the trial, he/she/they will be transported to Murphy at Graham County's expense in such a way that it is impossible for a juror to determine that the Defendant(s) is/are in custody.
7. Graham County will pay for all meals consumed by the Defendant(s) during the trial, unless the Defendant(s) is/are already being housed in Cherokee County under an existing arrangement.

8. Upon request by the District Attorney, Graham County shall assist in meeting the additional burdens and expenses incurred by testifying victims of crime because of the lack of adequate court facilities in Graham County.

In order to provide that the foregoing provisions are implemented without delay, the Graham County Commissioners are hereby ordered to investigate the logistics and expenses reasonably expected in this matter (including the requirements as may be applied in counties other than Cherokee), and to set aside from County funds an amount sufficient to pay for these expenses.

A report of this investigation and proof of the budgetary action necessary to insure payment of the expenses required shall be provided to the undersigned Superior Court Judge on or before October 25, 2017.

The Commissioners of Cherokee, Swain, Clay and Macon Counties shall be notified concerning the contents of this order, and shall take such steps as deemed reasonable necessary to prepare for the transfer of venue as contemplated herein.

This the 25th day of August 2017.



A handwritten signature in black ink, appearing to read 'W. H. Coward', written over a horizontal line.

William H. Coward, Senior Resident Superior Court Judge, District 30A

ⁱIt is well settled that "notwithstanding this apparent statutory limitation upon the power of a court to order a change of venue, a court of general jurisdiction . . . has the inherent authority to order a change of venue in the interests of justice." *State v. Barfield*, 298 N.C. 306, 320, 259 S.E.2d 510, 524 (1979) (citing *English v. Brigman*, 227 N.C. 260, 41 S.E.2d 732 (1947)), *cert. denied*, 448 U.S. 907, 65 L. Ed. 2d 1137 (1980). "In either case, a motion for a change of venue is addressed to the sound discretion of the trial judge and will not be disturbed on appeal in the absence of a showing [***32] of an abuse of discretion." *Id.* A judge of a superior court "on his own motion, in his own discretion and in the furtherance of justice, has the authority to transfer a case from one county to another," *State v. Chandler*, 324 N.C. 172, 183, 376 S.E.2d 728, 735 (1989) even in the absence of express statutory authority. "Such power existed at common law, and, therefore, unless specifically denied by statute, still adheres in the courts of the country." *Brigman*, 227 N.C. at 261, 41 S.E.2d at 732. "These statutory limitations on the power of a court to order a change of venue are preempted by the inherent authority of the superior court to order a change of venue in the interest of justice." *Chandler*, 324 N.C. at 183, 376 S.E.2d at 735 (citing *Barfield*, 298 N.C. 306, 259 S.E.2d 510).

State v. Prevatte, 356 N.C. 178, 211 (2002).

ⁱⁱ The details of the deficient security of the Courthouse are not set forth here because of concern that publicity of the details only increases the chance that a potential perpetrator will take advantage of the knowledge to facilitate or encourage an act of violence.