

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

United States of America,	)	
	)	
Plaintiff,	)	<b>ORDER GRANTING DEFENDANT’S</b>
	)	<b>MOTION TO CONTINUE TRIAL AND</b>
vs.	)	<b>DENYING DEFENDANT’S MOTION</b>
	)	<b>TO CHANGE VENUE</b>
Michael Giron,	)	
	)	Case No. 1:17-cr-31
Defendant.	)	

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Before the Court is the Defendant’s motions to continue trial and change venue filed on October 11, 2017. See Docket Nos. 57 and 59. On October 23, 2017, the Government filed responses stating counsel for the Government is unopposed to a continuance of trial but opposed to changing the venue. See Docket Nos. 67 and 68. On October 30, 2017, the Defendant replied to the Government’s response to his motion for transfer of venue and requested a hearing. See Docket Nos. 76 and 78. The Defendant requests a ninety (90) day continuance and claims a change of venue is necessary to ensure a fair and impartial trial.

On March 1, 2017, the Government charged the Defendant, Michael Giron, with civil disorder and use of fire to commit a federal felony offense in a superseding indictment. See Docket No. 6. Trial is currently scheduled to begin on January 9, 2018. See Docket No. 30. On October 11, 2017, Giron filed a motion requesting a continuance and a motion to change venue from the District of North Dakota or, alternatively, transferring the venue to the Eastern Division in Fargo, ND. See Docket No. 57 and 59. Giron’s motion argues a change of venue from the District of North Dakota is necessary to ensure a fair and impartial trial due to the “massive, pervasive and prejudicial publicity surround[ing] the anti-DAPL protesters and [the] strong feelings about the pipeline and its protesters in a majority of the residents in the counties from which Mr. Giron’s prospective venire is to be drawn.” See Docket No. 59, pp. 1-2. The Government has not responded.

“Proper venue is required by Article III, § 2 of the United States Constitution and by the Sixth Amendment, as well as Rule 18 of the Federal Rules of Criminal Procedure.” United States v. Morales, 445 F.3d 1081, 1084 (8th Cir. 2006). Rule 18 of the Federal Rules of Criminal Procedure states, in relevant part, “the government must prosecute an offense in a district where the offense was committed.” Fed. R. Crim. P. 18. “The court must set the place of trial within the district with due regard for the convenience of the defendant, any victim, and the witnesses, and the prompt administration of justice.” Fed. R. Crim. P. 18.

“[T]he locus delicti must be determined from the nature of the crime alleged and the location of the act or acts constituting it.” United States v. Cabrales, 524 U. S. 1, 6-7 (1998). “In performing this inquiry, a court must initially identify the conduct constituting the offense (the nature of the crime) and then discern the location of the commission of the criminal acts.” United States v. Rodriguez-Moreno, 526 U.S. 275, 279 (1999). The alleged acts in this case occurred in North Dakota; thus, venue in North Dakota is proper. General Rule 1.1 of the Local Rules of Court for the District of North Dakota provides that North Dakota constitutes one judicial district divided into two divisions.

Because the alleged offenses occurred in Morton County, North Dakota, in the Western Division, the matter is venued in the Western Division of the District of North Dakota. It is well-settled that a trial court has broad discretion in determining whether a defendant should be granted a change of venue. Walker v. Bishop, 408 F.2d 1378, 1369 (8th Cir. 1969). Rule 21 of the Federal Rules of Criminal Procedure provides for a transfer of venue based on prejudice only “if the court is satisfied that so great a prejudice against the defendant exists in the transferring district that the defendant cannot obtain a fair and impartial trial there.” Fed. R. Crim. P. 21(a).

When pretrial publicity is at issue, the Eighth Circuit Court of Appeals engages in a two-tiered analysis. United States v. Rodriguez, 581 F.3d 775, 784 (8th Cir. 2009); United States v.

Blom, 242 F.3d 799, 803 (8th Cir. 2001). The question in the first tier of the analysis is “whether pretrial publicity was so extensive and corrupting that a reviewing court is required to ‘presume unfairness of constitutional magnitude.’” Id. (citations omitted). The formation of a tentative impression about the case by some jurors is not enough to satisfy the first tier of the analysis. United States v. Bliss, 735 F.2d 294, 298 (8th Cir. 1984). Because our democracy tolerates, and even encourages, extensive media coverage of crimes, extensive coverage of a case is not enough to satisfy the first tier inquiry. Blom, 242 F.3d at 803. The presumption of inherent prejudice is reserved for “rare and extreme cases.” Id.

In all other cases, the change-of-venue question turns on the second tier of the analysis, i.e., whether the voir dire testimony of those who become trial jurors demonstrated such actual prejudice that it was an abuse of discretion to deny a timely change-of-venue motion. Id. The existence of prejudice among prospective jurors does not necessarily mean that an impartial jury cannot be impaneled. United States v. Mercer, 853 F.2d 630, 633 (8th Cir. 1988). A pretrial venue change is called for only in those situations where the “pretrial publicity in a community is so extensive and inflammatory as to raise a presumption that an impartial jury could not be seated there.” Bliss, 735 F.2d at 298. The Eighth Circuit has noted it prefers trial courts to wait until voir dire before ruling on motions for a change of venue. Bliss, 735 F.2d at 297. However, it remains squarely within a court’s discretion to grant or deny a motion to change venue. United States v. Deggendorf, 626 F.2d 47, 53 (8th Cir. 1980).

Upon a careful review of the record, relevant Eighth Circuit case law, and the Defendant’s filings, the Court finds that a change of venue is not warranted under the circumstances. There are various measures that can be implemented to ensure the selection of an unbiased jury, including but not limited to, assembling a larger-than-average jury pool and increasing the number of peremptory strikes for each side. These various measures will be discussed with the parties prior

to trial. Accordingly, in the exercise of this Court's broad discretion, the Defendant's motion to transfer venue (Docket No. 59) is **DENIED**. The Court **FINDS AS MOOT** Defendant's request for oral argument (Docket No. 78) on his motion to change venue. The Defendant's unopposed motion to continue trial (Docket No. 57) is **GRANTED**. This case will proceed to a jury trial in Bismarck, North Dakota, commencing on Tuesday, April 10, 2018, at 9:00 a.m.

**IT IS SO ORDERED.**

Dated this 3rd day of November, 2017.

*/s/ Daniel L. Hovland*

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Daniel L. Hovland, Chief Judge  
United States District Court