

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI**

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	No. 08-00026-04-CR-W-FJG
)	
CHRISTOPHER L. ELDER,)	
)	
Defendant.)	

**DEFENDANT ELDER’S MOTION FOR CHANGE OF VENUE
WITH SUGGESTIONS IN SUPPORT**

Defendants Solomon and Johnson have filed an amended joint motion seeking change of venue. After review of these pleadings, the court’s prior ruling on the original motion, and a more thorough review of the law on venue as well as the facts and circumstances surrounding this prosecution, Defendant Elder now joins in the request for change of venue and believes it is justified and necessary to ensure that defendant Elder is tried in a forum where he can present essential evidence that may otherwise be denied him because of undue financial burdens and essential trial preparation and pretrial investigation. See *United States v. McManus*, 535 F.2d 460

(8th Cir. 1976) for general discussion of the criteria justifying a change of venue.¹

Defendant hereby adopts the factual and legal arguments made by Defendants Solomon and Johnson and would offer yet additional justification as more fully set out below.

Defendant Elder filed his initial exhibit list (doc. 149) on December 12, 2008. That list contains 27 names. Twenty-two of the 27 named witnesses reside in the Houston, Texas area. Four of remaining five witnesses are government agents and experts who have been endorsed by the government. The net result is that if the case is tried in Missouri, defendant Elder will incur witness travel and lodging expenses in excess of \$30,000. Since this list was filed, defendant has identified a number of additional witnesses in Texas that he will endorse in a modified witness list.

As of this filing, defendant's Private investigator has interviewed a number of Texas witnesses by telephone. These witnesses are essential to the defense and while counsel has fairly thorough reports supplied by his investigator, counsel does wish to conduct a pretrial witness interview of each of the proposed witnesses. This can best

¹ This case provides an insightful view of the pros and cons the court must weigh in granting or denying a motion for change of venue. Here the court twice granted venue changes from Iowa to California based on circumstances very similar to those present in this prosecution. The Court of Appeals reversed the second transfer only because the case involved a prosecution where local community standards in a pornography case were at issue. The Court carved out a special rule on venue unique to pornography cases but at the same time indicated their general agreement otherwise with the district court's decision to move venue.

be accomplished from an efficiency standpoint as well as an economic one by conducting these interviews in the Houston area.

The only remaining defendants for trial are residents from the Houston, Texas area. Counsel for two of the three remaining defendants reside in Texas. Defendant Elder is a practicing physician with an active practice. It is difficult for him to travel to Missouri without loss of income and extreme inconvenience. A number of his patients are spinal cord injury related patients and patients with permanent serious injuries that require constant pain management monitoring. Finally, counsel needs to work directly with defendant Elder to prepare him for testimony at his trial. This will require many evening hours of work which can best be accomplished if counsel is present in Houston, Texas at a central base of operation.

Added to the mix is the pending investigation and likely prosecution of Doctor Peter Okose, a Houston area physician and alleged un-indicted co-conspirator in this case. The government has openly acknowledge to counsel and this court that such an investigation is pending in the Houston US Attorney's office. Defendant has been provided partial discovery from the Houston office files and been informed that there are voluminous computer records of Ascensia pharmacy available for inspection and review in Houston. Again, this is a task that can best be accomplished in Texas while counsel is operating from a Texas base of operations.

Apart from a failure to cite, *McManus, supra*, the defendant concedes that the government has fairly informed the court of the controlling law on venue, particularly, in its most recent response filed on February 10, 2009. It is the application of facts to the law where the government's argument falls short.

Location of defendants:

With respect to location of defendants, the government asserts that it would be "inconvenient" for the two defendants Rostie and Martin to appear in Texas, without drawing any distinction to the fact that Rostie and Martin are admitted felons while the remaining defendants are cloaked with the presumption of innocence. And of course by Elder joining in the motion, this factor is no longer "neutral" as argued by the government and instead weighs in favor of the defendants.

Location of witnesses:

The majority of defendant Elder's witnesses will be from Texas. The government contends that it has a number of Missouri witnesses, but they have not been identified in the response. Indeed, it would appear that this list is more likely in the neighborhood of 6 to 8 including the two defendants who have pled. And to the extent that the government might argue that numerous Missouri custodians of record would have to appear, Defendant Elder is prepared to stipulate to such authentication issues, rendering this argument moot. Finally, this issue has been more fully addressed above in our general discussion on location and cost. The government has

the funding and capability to provide for its witnesses and this resource dwarfs anything available to Elder.

Location of events likely to be in issue:

The government argues that Solomon and Johnson “by their actions, . . . chose this district for the crux of their criminal activity” pointing to the faxing and filling of prescriptions and delivery of money to Missouri. This is of course evidence that will likely be disputed in court. More significantly, no such argument can readily be made insofar as defendant Elder is concerned. His connections with and to Missouri are scant at best. Moreover, this government argument strikes almost as one of punishment.

Disruption of Business:

Defendant Elder has discussed this factor already. His practice will suffer and more to the point, his patients may suffer irreparable harm. Defendant’s Solomon and Johnson also would appear to have similar difficulties.

The government also discusses several other factors in its response, none of which appear very persuasive. Many of the remaining points asserted by the government seem to ignore the extreme disparity of the parties and their relative financial resources, power and status.

The indictment in this case is simply an accusation. The remaining defendants are presumed innocent. In balancing the relative merits for and against transfer, this

should weight heavily in this court's decision. There appears to have been a rush to judgment in Missouri, particularly in light of Doctor Elder, when the facts are fully examined. Indeed, the government acknowledges that Doctor Peter Okose is under investigation in Texas for conduct virtually identical to that the government contends Elder is guilty of. Why Elder appears in the Missouri indictment and Okose does not is at best perplexing. In light of the absence of any credible evidence directly linking Elder to this Missouri conspiracy, this Court should grant his motion for change of venue.²

WHEREFORE, defendant Elder moves the Court to enter an order transferring this matter to the Southern District of Texas, Houston Division.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

² The long awaited "smoking gun" supplemental proffer statement of defendant Martin has been disclosed to the defense. In a nine page report with 21 paragraphs, Elder is discussed in one. Martin simply states that she heard Doctor Elder's name once as the prescribing physician and she believes he had a relationship with Solomon. And of course Rostie has provided no direct incriminating testimony to connect Elder to the alleged scheme based on all discovery disclosed to date.

I certify that a copy of this pleading has been caused to be served on the Assistant United States Attorney for Western District of Missouri and other ECF listed counsel through use of the Electronic Court Document Filing System on September 6, 2008.

/s/

JOHN R. OSGOOD