

ORIGINAL

SUPERIOR COURT  
OF THE  
DISTRICT OF COLUMBIA

2013 MAR 14 A 11:00

UNITED STATES OF AMERICA

FILED

Criminal No. 2011CF115683

v.

Judge Russell F. Canan

Status Hearing Date: March 14, 2013

ALBRECHT MUTH

**GOVERNMENT'S OPPOSITION TO  
DEFENDANT'S MOTION FOR CHANGE OF VENUE**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this opposition to defendant's motion for change of venue. In support of its opposition, the government relies on the following points and authorities and any other points and authorities that may be cited at a hearing on this motion.

This motion should be summarily denied without a hearing. Importantly, change of venue is not available in the Superior Court of the District of Columbia. This Court sits in a unitary judicial district, which means that change of venue among D.C. judicial "districts" is not possible. Moreover, D.C. charges must be prosecuted within the D.C. court system. Moreover, the defendant will receive a fair trial in this jurisdiction through the effective administration of *voir dire* by the Court, with the assistance of the parties. Finally, this case has not received a significant amount of publicity as compared to any number of other "high-profile" cases that have been fairly tried in Superior Court over the years.

## I. FACTUAL BACKGROUND

On the morning of August 11, 2011, the defendant called 911 and reported that his 91-year-old wife, Viola Drath, was dead on the bathroom floor of their Georgetown home located at 3206 Q Street, NW. On August 16, 2011, the defendant was arrested for the murder of his wife. On March 6, 2012, the grand jury indicted the defendant on one count of first degree premeditated murder (with aggravating circumstances) for the murder of his wife.

## II. ARGUMENT

### A. Change Of Venue Is Not Available In D.C. Superior Court

The D.C. Court of Appeals has continually recognized and held that transfer of venue is not available within the D.C. Superior Court because it “sits as a single unitary judicial district.” *Welch v. United States*, 466 A.2d 829, 834 (D.C. 1983); *see also United States v. Edwards*, 430 A.2d 1321, 1345 (D.C. 1981) (en banc), *cert. denied*, 455 U.S. 1022 (1982); *Catlett v. United States*, 545 A.2d 1202, 1215 n.27 (D.C. 1988) (reaffirming the “well-established rule” that change of venue is not available in D.C., and rejecting defendant’s request for transfer to suburban Maryland or Virginia due to prejudicial pretrial publicity as “groundless”); *Flax v. Schertler*, 935 A.2d 1091, 1108 n.16 (D.C. 2007) (noting that the Superior Court and the Court of Appeals have “no authority” to grant a motion for change of venue).

This prohibition on change of venue in the District of Columbia is logically required by an understanding of the interplay between venue and jurisdiction. Change of venue allows for transfer from one in-state district to another in-state district possessing the same jurisdictional power over the relevant offense. However, D.C. is a “single unitary judicial district,” *Welch*, 466 A.2d at 834, so there is no other “district” within D.C. that the case can be transferred to. As a result, the

defendant cannot argue for a change of venue to a different district within D.C. Instead, the defendant in substance seeks a transfer from a 'state' with jurisdiction to a state without jurisdiction, which is not covered by the doctrine of venue and is not otherwise permitted. 4 Wayne R. LaFave et al., *Criminal Procedure* § 16.1(a) (3d ed. 2007).

The murder of Viola Drath occurred within the territory of Washington, D.C., and the D.C. Code grants jurisdiction over offenses that occur within its territory to the D.C. Superior Court. *See* D.C. Code § 11-923(b)(1). No other state's court can claim jurisdiction over the offense, because "states have power to make conduct a crime only if that conduct takes place, or its results occur, within the state's territorial borders." 4 LaFave et al., *supra*, at § 16.1(a). Similarly, federal courts outside of Washington, D.C. cannot exercise jurisdiction because the defendant is charged exclusively with violations of the D.C. Code, not federal offenses. *See, e.g., Thor v. United States*, 554 F.2d 759, 762 (5th Cir. 1977) ("If the indictment upon which [the defendant] was tried and convicted failed to allege a federal offense, the district court lacked the subject matter jurisdiction necessary to try [the defendant] for the actions alleged in the indictment.").

**B. Defendant Will Receive A Fair Trial In D.C. Superior Court**

Each of the three opinions prohibiting change of venue in the District of Columbia, *Welch*, *Edwards*, and *Catlett*, address the constitutional dimensions of pretrial publicity and conclude that effective juror management by the trial court—careful *voir dire*, jury instructions, and sometimes even the drastic remedy of jury sequestration—can adequately ensure that defendants receive a fair trial. *See Welch*, 466 A.2d at 834–35 (holding that the defendant's "right to a fair trial by an impartial jury is not defeated . . . merely because the requested remedy [change of venue] is unavailable," and that "the Sixth Amendment inquiry turns on the adequacy of the *voir dire*"); *id.*

at 837 (referring to the trial court's use of jury sequestration as a "protective procedure" that helps to "dissipat[e] the impact of pretrial publicity and emphasize[] the elements of the jurors' oaths" (quoting *Neb. Press Assoc. v. Stuart*, 427 U.S. 539, 564 (1976)); *Catlett*, 545 A.2d at 1215 ("This extensive and careful voir dire procedure . . . ensured that appellants . . . were not prejudiced by the pretrial publicity."); *Edwards*, 430 A.2d at 1346 ("The strong presumption must be that in any case, jurors can be found in the District of Columbia whose exposure to the case will have been sufficiently minimal to enable them to render a fair and impartial verdict.")).

Although there has been some publicity surrounding the murder of Viola Drath, it has not been particularly extensive, nor has it been dramatically staged. Indeed, "pretrial publicity, even if pervasive and concentrated, cannot be regarded as leading automatically and in every kind of criminal case to an unfair trial." *Neb. Press Assoc.*, 427 U.S. at 565. This is especially true in the District of Columbia, which has such a "surfeit of events commanding media attention" that "[e]vents occur, are reported, and pass with amazing rapidity." *Edwards*, 430 A.2d at 1346. D.C. courts have used careful *voir dire* procedures to conduct fair trials in cases receiving "far more pervasive and accusatory" publicity even than the current case. *Welch*, 466 A.2d at 835 n.1 (collecting cases ranging from Watergate to the Letelier assassination and the Hanafi takeover).


**C. Defense Has Failed To Demonstrate Need For Evidentiary Hearing**

The defense has failed to demonstrate the need for an evidentiary hearing, particularly in light of the clear legal precedent that precludes change of venue in cases brought in D.C. Superior Court. In addition, defendant's motion should also be denied without a hearing because it completely failed to demonstrate any factual basis for the requested relief. *See e.g., Duddles v. United States*, 399 A.2d 59 (D.C. 1979) (holding that a defendant who files a motion to suppress "is obliged, in his definitive

motion papers, to make factual allegations which, if established, would warrant relief.”) If the Court determines that a hearing on this motion is necessary, then the defense should be required – before any hearing – to disclose the factual evidence relied upon by the defense that allegedly supports the position that a change of venue is necessary. Otherwise, the government would not be in a position to meaningfully address these allegations at the requested evidentiary hearing.

WHEREFORE, the United States respectfully requests that the Court deny in its entirety defendant’s motion for change of venue without a hearing.

Respectfully submitted,  
RONALD C. MACHEN JR.  
UNITED STATES ATTORNEY

  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was served by email upon attorney Dana Page, Public Defender Service, 633 Indiana Avenue, N.W., Washington, D.C. 20004, this 3<sup>rd</sup> day of March, 2013.

  
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Assistant United States Attorney