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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

UNITED STATES OF AMERICA
Plaintiff,

vs.

KARL F. THOMPSON, JR.,
Defendant.

No. CR-09-0088-FVS

**Defendant's Response to United
States' Motion for Reconsideration
of Court's Venue Selection**

COMES NOW the Defendant, KARL F. THOMPSON, JR., by and through his attorneys, CARL J. ORESKOVICH, STEPHEN M. LAMBERSON, and COURTNEY A. GARCEA of ETTER, McMAHON, LAMBERSON, CLARY & ORESKOVICH, P.C., and responds to the United States' Motion for Reconsideration of Court's Venue Selection.

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I. LAW AND ARGUMENT

a. Law Regarding Change of Venue Has Been Previously Briefed and Is Incorporated Herein By Reference.

The law regarding change of venue has been extensive briefed for this Court. Defendant sees no reason to waste the Court's time with additional briefing on the law as it relates to change of venue and incorporates Defendant's Motion and Memorandum in Support of Change of Venue [ECF Nos. 567-568] and Defendant's reply brief in support of his Motion to Change Venue [ECF No. 584] herein by reference.

b. Good Cause Does Not Exist For Reconsideration.

The government argues that trial should be moved back to Spokane because Defendant's request for Change of Venue did not request trial to be moved to Yakima. This argument mischaracterizes Defendant's Motion to Change Venue and inaccurately states the relief requested by Defendant. Defendant's motion specifically requested a change of venue, albeit no particular location was identified. Despite the fact that Yakima was not expressly proposed, a different venue, which encompassed the possibility of moving the trial to Yakima, was requested. Therefore, the government's argument that trial should be moved back to Spokane because Yakima was not specifically requested by either party is without merit and should not be considered by the Court. Furthermore, the government has misinterpreted

1 Defendant's "request" during the September 29, 2011 hearing. While Defendant
2 did propose the possibility of using potential jurors from Jury Division B if the
3 trial were to remain in Spokane, this suggestion was made as an alternative
4 option if the Court determined that an actual change of venue was not
5 warranted. By no means did the suggestion supersede the requested change of
6 venue.
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11 The government also complains that the change in venue violates the
12 Crime Victims' Rights Act, 18 U.S.C. § 3771, because Otto Zehm's family
13 and/or legal representatives did not have the opportunity to be heard on
14 Defendant's Motion to Change Venue. Again, this assertion mischaracterizes
15 the facts of this case. Nothing prohibited Messrs. Finer or Beggs from filing a
16 brief in opposition to Defendant's initial motion to change venue, ECF No. 567.
17 Additionally, Mr. Finer was present in the courtroom throughout the duration of
18 the Court's September 29, 2011 pretrial hearing, and observed oral argument on
19 Defendant's Motion to Change Venue. At no time during those proceedings did
20 Mr. Finer attempt to address the Court with any concern regarding a venue
21 change. During yesterday's rulings regarding various pretrial motions, Mr.
22 Finer and Mr. Beggs had the opportunity to be present. However, neither was in
23 attendance. The government cannot now argue that Mr. Zehm's family/legal
24 representatives right to be heard on the venue change has been truncated when
25 in reality, they simply did not exercise their right.
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1 Additionally, the government asks the Court to consider the hardship the
2 change of venue imposes on Mrs. Anne Zehm's counsel in the parallel civil
3 case to attend, view, and participate in trial proceedings. Respectfully, this
4 argument should not be considered by the Court. By no measure is a civil
5 attorney's right to preview his case by viewing a parallel criminal proceeding
6 greater than a criminal defendant's right to a fair trial.
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10 Mrs. Anne Zehm's civil counsel Jeffrey Finer filed a declaration this
11 afternoon stating that the change in venue effectively violates the Victim's
12 Rights Act. While Defendant is mindful that the change of venue may make it
13 more difficult for Otto Zehm's family and friends to attend trial, nothing is
14 actually prohibiting them from doing so, which is the purpose of the Crime
15 Victims' Rights Act. Section (a)(3) of the Crime Victim's Rights Act explicitly
16 states:
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18 A crime victim has the following rights:
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20 (3) The right not to be excluded from any such public
21 court proceeding, unless the court, after receiving clear
22 and convincing evidence, determines that testimony by
23 the victim would be materially altered if the victim heard
24 other testimony at that proceeding.
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29 18 U.S.C.A. § 3771(a)(3). Otto Zehm's family and friends are not excluded
30 from the trial proceedings, which is the right that is protected by the Crime
31 Victims Rights Act. The Act does not protect against potential difficulties
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1 imposed in attending trial by a change of venue.
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3 Just this morning the government filed a supplemental brief complaining of
4 the logistical concerns the change of venue will have on the Spokane Police
5 Department. The government argues that 61 law enforcement officers have
6 been subpoenaed to appear making coverage difficult for SPD patrols. The
7 government's argument is overly generalized and the fact that each of those
8 witnesses will testify seems highly improbable, especially given the fact that the
9 Defense has only subpoenaed 13 SPD witnesses. Defense counsel has written a
10 letter asking to Police Chief Anne Kirkpatrick to verify these representations.
11 (See Declaration of Carl J. Oreskovich, Attachment A). Additionally, even if 61
12 SPD witnesses have in fact been subpoenaed, only a handful of officers will
13 testify on any given trial day. It is presumed that the United States, as well as
14 defense counsel, will do its best to apprise the officers of the specific day in
15 which they are expected to testify, as is customary in every trial in order to
16 minimize hardships incurred on business entities. Defense counsel has also
17 asked Police Chief Anne Kirkpatrick to supply any information regarding
18 scheduling arrangements that have made between the Police Department and
19 Department of Justice. Defense counsel will supply any response received by
20 Anne Kirkpatrick to the Court.
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31 While Defendant recognizes the logistical and financial concerns raised by
32 the government, those concerns are nonetheless outweighed by Officer

1 Thompson's right to a fair trial. The Court correctly determined that the
2 saturation of pretrial publicity and political attention has had a likely affect on
3 the jury pool. Additionally, the continued publicity this trial will receive if it is
4 to remain in Spokane, including the likely possibility of demonstrations and
5 protests, has the potential to infect the jury with prejudice. The best option for
6 all parties involved, is to remove the trial from the Spokane area to protect
7 Officer Thompson's constitutional right to a fair trial.
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12 Lastly, the government argues that its request to move the trial back to
13 Spokane will avoid any continuance defense counsel indicated it would be
14 requesting. The government has misinterpreted or inaccurately characterized
15 conversations with defense counsel in furtherance of this argument. Yesterday,
16 directly after the pretrial hearing, defense counsel approached the government
17 asking whether the parties should consider jointly approaching the Court for an
18 extra day of two to figure out the logistics of moving to Yakima for six weeks.
19 No decision was made at that time. The United States then called defense
20 counsel to inquire into whether Defendant would join in its motion for
21 reconsideration. The government represented that the request for
22 reconsideration was partly do to personal/family problems incurred by its
23 attorneys resulting from the trial's relocation. Defendant declined to join in the
24 motion. However, respecting these concerns and as an accommodation, defense
25 counsel informed the government that it would not object to a short (2 day)
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1 continuance so that personal and other logistical concerns could be sorted out.
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3 While defense counsel agrees that both parties would benefit from a few extra
4 days to relocate to Yakima, Defendant will nonetheless will be ready for trial on
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6 October 11, 2011 in Yakima if the Court so decides.

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8 **II. CONCLUSION**

9 For the foregoing reasons, Defendant Thompson requests the Court to deny
10 the United States' Motion for Reconsideration of Venue Change.
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13 DATED this 5th day of October, 2011.

14 ETTER, McMAHON, LAMBERSON,
15 CLARY & ORESKOVICH, P.C.
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18 By/s/ Carl J. Oreskovich

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24 Attorneys for Defendant Thompson
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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of October, 2011, I electronically filed the following document:

DEFENDANT’S OPPOSITION TO THE UNITED STATES’ MOTION FOR RECONSIDERATION OF COURT’S CHANGE OF VENUE

with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following:

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