United States Court of Appeals
For the Eighth Circuit

No. 19-3448

United States of America,

Plaintiff - Appellee,

v.

Temne Adah Hardaway,

Defendant - Appellant.

Appeal from United States District Court
for the Eastern District of Missouri - St. Louis

Submitted: January 15, 2021
Filed: June 7, 2021

Before COLLOTON, WOLLMAN, and SHEPHERD, Circuit Judges.

COLLOTON, Circuit Judge.

Temne Hardaway appeals after she entered a conditional guilty plea to a charge of conspiracy to commit money laundering. She challenges an order of the district

court[1] denying her motion to dismiss the indictment for lack of venue or to transfer venue to another judicial district. We conclude that there was no error in the ruling and affirm the judgment.

Law enforcement agents discovered Hardaway's identity while investigating a drug trafficking conspiracy in St. Louis. The Drug Enforcement Administration learned that Gerald Hunter regularly transported cocaine and fentanyl from Los Angeles to St. Louis. Hunter fled when agents in Missouri attempted to apprehend him. During a subsequent investigation into Hunter's whereabouts, agents discovered that Hardaway used proceeds from Hunter's drug trafficking in Missouri to purchase a home in Los Angeles.

A grand jury in the Eastern District of Missouri charged Hardaway with one count of conspiracy to commit money laundering. *See* 18 U.S.C. § 1956(a)(1)(B)(i), (h). Hardaway moved to dismiss the indictment for lack of venue. Hardaway asserted that the "only money laundering event" that the government alleged against her was the purchase of the residence in Los Angeles—a transaction that occurred entirely in California. On that basis, Hardaway maintained that venue was improper in the Eastern District of Missouri and that the indictment should be dismissed. Alternatively, Hardaway sought a change of venue to the Central District of California. The district court denied the motion, and Hardaway entered a conditional guilty plea that reserved the right to appeal the court's ruling on her motion. The court sentenced Hardaway to 18 months' imprisonment.

On appeal, Hardaway renews her contention that venue is improper in the Eastern District of Missouri. The Constitution provides that an accused enjoys the

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[1]The Honorable John A. Ross, United States District Judge for the Eastern District of Missouri, adopting the report and recommendations of the Honorable Patricia L. Cohen, United States Magistrate Judge for the Eastern District of Missouri.

right to a trial by jury in the State and district where the crime was committed. U.S. Const. art. III, § 2, cl. 3; U.S. Const. amend. VI. The federal rules of criminal procedure likewise direct that "the government must prosecute an offense in a district where the offense was committed." Fed. R. Crim. P. 18.

Hardaway maintains that venue is improper in Eastern Missouri because the government's only evidence connecting her to the money laundering conspiracy is a financial transaction from California. When a defendant moves to dismiss for lack of venue, however, the court must presume the truth of the allegations in the indictment and consider whether venue is proper based on those allegations. *See Boyce Motor Lines, Inc. v. United States*, 342 U.S. 337, 343 n.16 (1952); *United States v. Engle*, 676 F.3d 405, 415-16 (4th Cir. 2012); *United States v. Snipes*, 611 F.3d 855, 866 (11th Cir. 2010); *United States v. Jensen*, 93 F.3d 667, 669 (9th Cir. 1996). "An indictment returned by a legally constituted and unbiased grand jury, . . . if valid on its face, is enough to call for trial of the charge on the merits." *Costello v. United States*, 350 U.S. 359, 363 (1956) (footnote omitted). To go beyond the face of the indictment, and challenge the sufficiency of the government's evidence on venue, Hardaway was required to proceed to trial and put the government to its burden of proof.

The indictment on its face supports venue in the Eastern District of Missouri. Count 4 charges that Hardaway and Hunter "did knowingly combine, conspire, and agree with each other" to commit money laundering in "the Eastern District of Missouri, the Central District of California, and elsewhere." The indictment need not detail specific acts that support the charge, and Count 4 does not do so. Taking the allegations in the indictment as true, there was venue in the Eastern District of

Missouri to try the allegation that Hardaway conspired to commit money laundering in "the Eastern District of Missouri" and elsewhere.[2]

Hardaway contends alternatively that the district court should have transferred venue to the Central District of California. A district court "may" transfer a proceeding against a defendant to another district "for the convenience of the parties, any victim, and the witnesses, and in the interest of justice." Fed. R. Crim. P. 21(b). In evaluating the district court's exercise of discretion, we consider a number of factors, including the "location of events likely to be in issue," "location of possible witnesses," "location of documents and records likely to be involved," "expense to the parties," and "location of counsel." *United States v. McGregor*, 503 F.2d 1167, 1170 (8th Cir. 1974) (quoting *Platt v. Minn. Mining & Mfg. Co.*, 376 U.S. 240, 244 (1964)).

Hardaway contends that the relevant factors all favor transfer. The district court correctly observed, however, that the investigation into the drug proceeds was conducted in St. Louis, the relevant documents were in St. Louis, witness expenses for Hardaway's defense would be paid by the government, and Hardaway's counsel was in St. Louis. Hardaway may reside in the Central District of California, but the location of a defendant's home "has no independent significance" in the venue analysis. *Platt*, 376 U.S. at 245. The district court considered the proper factors and

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[2]Even going beyond the face of the indictment, Hardaway's admissions demonstrate that venue was proper. Hardaway acknowledged in her plea agreement that the "source of the proceeds" to purchase the residence in Los Angeles "came from the distribution of fentanyl in the Eastern District of Missouri." Venue for conspiracy to commit money laundering is proper "in any . . . district where an act in furtherance of the . . . conspiracy took place." 18 U.S.C. § 1956(i)(2). The act need not be an element of the conspiracy offense. *Whitfield v. United States*, 543 U.S. 209, 218 (2005). Hunter's sales of controlled substances in the Eastern District of Missouri furthered the money laundering conspiracy by generating funds that Hardaway used to purchase the home in Los Angeles.

articulated a sound basis for declining to transfer venue. There was no abuse of discretion.

The judgment of the district court is affirmed.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:17CR00198 JAR
	)	
TEMNE ADAH HARDAWAY,	)	
	)	
Defendant.	)	

MEMORANDUM AND ORDER

This matter is before the Court on the Report and Recommendation and Order of United States Magistrate Judge Patricia L. Cohen (ECF No. 604). On January 20, 2019, Defendant Hardaway filed a Motion to Dismiss Indictment (ECF No. 535) and a Motion to Bifurcate Filing and Hearing of Pretrial Motion (ECF No. 536) which the Magistrate Judge construed as a Motion to Transfer Case to the Central District of California. An evidentiary hearing was held on February 22, 2019. Magistrate Judge Cohen recommends the Court deny both the Motion to Dismiss Indictment and the Motion to Transfer Case to the Central District of California.

Pursuant to 28 U.S.C. § 636(b), these matters were referred to United States Magistrate Judge Patricia L. Cohen, who filed a Report and Recommendation and Order on May 28, 2019 (ECF No. 604). Defendant Hardaway filed objections to the Report and Recommendation and Order on June 11, 2019 (ECF No. 605), and the Government thereafter filed a Response in Opposition to Defendant's Objections on June 18, 2019 (ECF No. 606). Defendant Hardaway summarily states that she objects to several conclusions drawn by Magistrate Judge Cohen, but fails to provide any countervailing rationale for her position. The Court finds that the Magistrate

Judge's conclusions are supported by the evidence, and Defendant Hardaway's objections are not persuasive.

The Magistrate Judge recommends that both the Motion to Dismiss Indictment and the Motion to Transfer Case to the Central District of California the Motion to Suppress Statements be denied. After de novo review of this matter, this Court adopts the Magistrate Judge's recommendation.

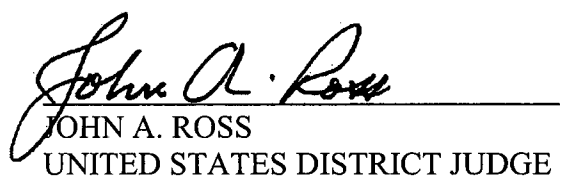
Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation and Order of the United States Magistrate Judge [604] is **SUSTAINED, ADOPTED, AND INCORPORATED** herein.

IT IS FURTHER ORDERED that the Motion to Dismiss Indictment [535] is **DENIED.**

IT IS FURTHER ORDERED that Defendant's Motion to Bifurcate Filing ad Hearing of Pretrial Motions [536] which the Court construed as a Motion to Transfer Case to the Central District of California is **DENIED**.

Dated this 9th day of July, 2019.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 4:17-CR-198 JAR/PLC**
	)	
TEMNE ADAH HARDAWAY,	)	
	)	
Defendant.	)	

REPORT AND RECOMMENDATION

The Government charged Defendant in a multi-count, multi-defendant superseding indictment with one count of violating 18 U.S.C. § 1956(h) (conspiracy to commit money laundering) (Count IV). Defendant moves for dismissal of Count IV on the grounds that "nothing in furtherance of the Section 1956 conspiracy could have been, nor is alleged to have, occurred in Missouri." Therefore, Defendant contends, the Court lacks jurisdiction. Alternatively, Defendant requests the Court to transfer Defendant's case to the Central District of California pursuant to Federal Rules of Criminal Procedure 21(b) - - "convenience of the parties, any victim, and the witnesses, and in the interest of justice."

The Court held a hearing. The Government called a Drug Enforcement Agency (DEA) officer who offered testimony regarding the investigation into allegations underlying the superseding indictment.

Background

The Government alleged in Count IV of the superseding indictment that Defendant and Defendant Gerald Fitzgerald Hunter conspired to "knowingly conduct and attempt to conduct financial transactions affecting interstate...commerce...involving the proceeds of a specified

unlawful activity" [Doc. 375]. The "unlawful activity" referred to distribution of Fentanyl and cocaine. [Id.]. The "transaction" was allegedly designed to "conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of" the distribution of Fentanyl and cocaine. [Id.] The Government alleged the conspiracy occurred in the Eastern District of Missouri, Central District of California and elsewhere. [Id.] As Defendant notes, the Government alleged that the "money laundering event" consisted of purchase of residential property at 3931 West 58th Place, Los Angeles, California.

At the hearing, the Government called DEA Task Force Officer Daniel Plumb. Officer Plumb is employed in St. Louis. He is also an officer with the St. Peters Police Department in St. Charles, Missouri.

Officer Plumb testified that in November 2016, he learned that an individual living in St. Louis named Bryan Warren was distributing Fentanyl and cocaine in the Eastern District of Missouri. As part of the ensuing investigation, Officer Plumb used a confidential informant to purchase Fentanyl from Warren. Officer Plumb also utilized wiretaps and surveillance in his investigation. At some point, Officer Plumb determined that Andon Templer, also a resident of St. Louis, supplied Warren with Fentanyl. Thereafter, Officer Plumb obtained a Precision Location Information warrant as well as authorization to intercept Templer's phone. The investigation of Warren and Templer revealed at least three others involved together in drug trafficking, and all resided and/or were present in the Eastern District of Missouri.

In April 2017, Officer Plumb learned that Gerald Hunter, a California resident, was travelling to the Eastern District of Missouri. Based on information obtained in phone intercepts, Officer Plumb believed that Hunter was a possible Fentanyl source for Templer. Following Hunter's arrival in St. Louis, officers located him and attempted to arrest him, along with

Templer, and two other individuals - - Walter Justiniano and Kashita Webb. The officers were unsuccessful in arresting Hunter and later learned that he fled to Los Angeles. However, the officers arrested Templer, Justiniano and Webb and seized 27 kilograms of Fentanyl.

A day after the arrest of Templer, Justiniano and Webb, officers executed search warrants on various locations throughout St. Louis and seized firearms, Fentanyl and documents. Thereafter, the Government charged Templer, Justiniano and Webb along with six individuals, Bryan Warren, David Wabra-Samahi Campbell, Deron Davis, Forestell Sheppard, Shaneisha Settle, and Gerald Hunter, in the Eastern District of Missouri. Defendant and Raina Madison were added at a later date through the superseding indictment.

In connection with attempts to locate Hunter following his flight from the Eastern District of Missouri, Officer Plumb became aware of a property possibly related to Hunter at 3931 West 58th Place in Los Angeles, Califonria. DEA officers in St. Louis conducted an investigation into the Los Angeles property. The primary DEA investigator, William Schottlein, was, during the investigation and currently is, based in St. Louis. The subpoenas for the relevant financial records were generated in the Eastern District of Missouri. Records seized in California during the investigation California were transported to St. Louis for analysis.

On cross-examination at the hearing, defense counsel established that, although Hunter's name was discovered during interceptions of Templer's phone, Defendant "was [n]ever intercepted." Officer Plumb also stated that, to his knowledge, Defendant was never in the Eastern District of Missouri with Hunter or by herself.

DISCUSSION

A. Motion to Dismiss Count IV[1]

[1] In Defendant's post-hearing brief, she alleges Count IV of the indictment "is defective for

1. Jurisdiction

Defendant contends that this Court lacks jurisdiction because in essence, the Eastern District of Missouri is not the proper venue for prosecution of Defendant [Doc. 577]. As an initial matter, Defendant has no basis for contending that improper venue deprives the Court of jurisdiction and indeed Defendant cites no cases in support of such a proposition. To the contrary, the Eighth Circuit has expressly disagreed with the notion that the "question of venue is jurisdictional...." United States v. Cordova, 157 F.3d 587, 597, n.3 (8th Cir. 1998); see also United States v. Meade, 110 F.3d 190, 200 (1st Cir. 1997) ("... the constitutional and statutory venue provisions are not restrictions on the court's jurisdiction"). Accordingly, the Court recommends denial of the motion to dismiss Count IV for lack of jurisdiction.

2. Improper venue

Defendant also contends in his motion that the following Constitutional provisions and federal statutes support dismissal: Article III, § 2 of the U.S. Constitution; Rule 18 of the Federal Rules of Criminal Procedure; 28 U.S.C. § 1406(a) and 18 U.S.C. § 1956(i). Beyond simply quoting language from these sources, Defendant has not developed how the statutes, rule and constitutional provision support dismissal of the indictment. Nevertheless, because all of the cited provisions concern venue, the Court presumes that the Defendant is seeking dismissal of the indictment on the grounds of improper venue.

It is well-settled that "[p]roper 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) (quotation omitted).

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failure to provide 'adequate notice.'" Lack of specificity, however, was not a subject of Defendant's motion. In any event, the Court concludes that the indictment tracks the relevant statute and provides adequate detail.

"[I]n a conspiracy case, venue is proper 'in any district in which any act in furtherance of the conspiracy was committed by any of the conspirators even though some of them were never physically present there.'" United States v. Banks, 706 F.3d 901, 904-06 (8th Cir. 2013) (quoting United States v. Fahnbulleh, 748 F.2d 473, 477 (8th Cir. 1984)).

In Prosper v. United States, the Eighth Circuit considered venue in a money laundering conspiracy prosecution under 18 U.S.C. § 1956(h). 218 F.3d 883 (8th Cir. 2000). In Prosper, the defendant admitted participating in a conspiracy in which he obtained fraudulently-acquired funds in Minnesota and sent them to Georgia to be laundered. As here, the defendant argued that he "took action" only in a state (Georgia) other than where he was charged (Minnesota). In rejecting the defendant's argument, the Eighth Circuit critized a "narrow view" of the overt acts that furthered "this long-standing, multi-state money laundering conspiracy." Id. at 884. See also United States v. Nichols, 416 F.3d 811, 824 (8th Cir. 2005) (venue proper in Missouri in a money laundering conspiracy where funds were acquired in Missouri and transported to California); United States v. Perez, 223 Fed.Appx. 336, 342 (5th Cir. 2007) (in a money laundering conspiracy, venue proper in Texas where currency collected from drug sales in Texas was laundered in California).

In support of dismissal, Defendant relies primarily on United States v. Cabrales, 524 U.S. 1 (1998). Defendant contends that "[a]s in Cabrales, all of Defendant's alleged money laundering conduct occurred in California even though the underlying unlawful activity, drug distribution, and proceeds derived therefrom, occurred in Missouri." [ECF No. 535].

In Cabrales, the Government charged the defendant in the Western District of Missouri with:

> conspiracy to avoid a transaction reporting requirement in violation of 18 U.S.C. §§ 371, 1956(a)(1)(B)(ii) (Count I); conducting a financial transaction to avoid a

> transaction-reporting requirement, in violation of § 1956(a)(1)(B)(ii) (Count II); and engaging in a monetary transaction in criminally derived property of a value greater than $10,000, in violation of § 1957 (Count III). 524 U.S. at 4.

The defendant challenged venue with respect to Counts II and III (substantive money laundering) but not Count I (money laundering conspiracy). The District Court granted the defendant's motion to dismiss and the Eighth Circuit affirmed. Describing the case, the Supreme Court stated that the defendant: "was charged with money laundering, for transactions which began, continued, and were completed only in Florida." Id. at 5. In characterizing the issues on appeal, the Supreme Court emphasized that: "[n]otably the counts at issue do not charge Cabrales with conspiracy; they do not link her to, or assert her responsibility for, acts done by others." Id. at 7. The Supreme Court stated the question decided in Cabrales as follows: "Do [the dismissed counts] charge crimes begun in Missouri and completed in Florida, rendering venue proper in Missouri, or do they delineate crimes that took place wholly within Florida?" Id.

As Defendant acknowledges, Cabrales does not address venue in the context of a conspiracy charge: "Not specifically addressed in Cabrales is the issue of a conspiracy charge and its impact on venue." [ECF No. 535]. The Government asserts that, therefore, Cabrales is not applicable and in particular cites United States v. Romero for the proposition that Cabrales does not alter a court's determination regarding venue in a conspiracy case because "Cabrales simply does not address the issue...." 150 F.3d 821, 826 (8th Cir. 2017).

In 2001, Congress amended 18 U.S.C. § 1956 to add a venue provision. See Whitfield v. United States, 543 U.S. 209, 217 (2005). The venue provision was intended to address the Cabrales decision:

> ...in Cabrales, the Supreme Court held that a money laundering prosecution could be brought only in the district in which the financial transaction that constitutes the laundering occurred. It was immaterial that the laundered money was the fruit of a drug transaction that took place in another district.

> Congress then amended the money laundering statute so that venue is now proper "in any district where a prosecution for the underlying specified unlawful activity could be brought" so long as the defendant participated in the transfer of the proceeds from that district.

Federal Practice and Procedure, Criminal § 302 at 342-43 (4th ed. 2008) (citations omitted). In addition to addressing venue in substantive money laundering cases, Section 1956(i)(2) specifically provides for venue in money laundering conspiracy cases as follows: "A prosecution for an attempt or conspiracy offense under this section or section 1957 may be brought in the district where venue would lie for the completed offense under paragraph (1), or in any other district where an act in furtherance of the attempt or conspiracy took place."

Applying the relevant principles articulated in Cabrales, the Eighth Circuit cases analyzing proper venue in money laundering conspiracies, as well as the venue provisions of Section 1956(i), it is clear that the indictment provides an adequate basis for venue in the Eastern District of Missouri. Although it is apparently undisputed that Defendant was never present in the Eastern District of Missouri, it appears to be equally undisputed that Defendant Hunter, Defendant's alleged co-conspirator, was present in the Eastern District of Missouri and the underlying activity, drug distribution, and proceeds derived therefrom, arguably occurred in the Eastern District of Missouri. [ECF No. 535]. More importantly, the indictment alleges that Defendant and Defendant Hunter agreed to conduct a financial transaction involving proceeds derived from Fentanyl and cocaine distribution in the Eastern District of Missouri designed to conceal the nature and source, among other things, of the proceeds. As the Supreme Court noted in Cabrales:

> But if Cabrales is in fact linked to the drug-trafficking activity, the Government is not disarmed from showing that is the case. She can be, and indeed has been, charged with conspiring with drug dealers in Missouri. If the Government can prove the agreement it has alleged, Cabrales can be prosecuted in Missouri for that confederacy, and her money laundering in Florida could be shown as overt

acts in furtherance of the conspiracy. (citation omitted).

524 U.S. at 10. Because Count IV alleges a conspiracy begun in the Eastern District of Missouri, but completed in California, venue is proper in the Eastern District of Missouri.[2]

B. Alternative Motion for Rule 21 transfer to Central District of California

Defendant moves this Court, in the alternative, to transfer Count IV to the Central District of California, pursuant to Federal Rule of Criminal Procedure 21(b). The Government opposes transfer relying on the factors enumerated in Platt v. Minnesota Mining & Mfg. Co., 376 U.S. 240 (1964).

Rule 21(b) provides as follows:

> Upon the defendant's motion, the court may transfer the proceeding or one or more counts against the defendant to another district for the convenience of the parties, any victim and witnesses, and in the interest of justice.

A Rule 21(b) transfer is discretionary. United States v. Green, 983 F.2d 100 (8th Cir. 1992); United States v. Lopez, 343 F.Supp. 2d 824, 835 (E.D.MO 2004). A defendant bears the burden of demonstrating the necessity of transfer. United States v. Reyes, No. 4:18-CR-156 CDP-NAB 2018 U.S. Dist. LEXIS 194268, at *3 (E.D.Mo. October 15, 2018).

The parties agree that the ten factors articulated in Platt supra govern the determination of a request for a Rule 21(b) transfer. The Platt factors are the following: (1) location of the defendant; (2) location of the witnesses; (3) location of the events in issue; (4) location of the documents and records likely to be used at trial; (5) disruption of a defendant's business; (6) expense to the parties; (7) location of counsel; (8) accessibility of the place of trial; (9) docket conditions of the respective districts; (10) other considerations affecting transfer. Defendant

[2] If venue is at issue, a court may submit the issue to the jury. See United States v. Shyres, 898 F.2d 647, 657-58 (8th Cir. 1990). Thus, although the indictment is sufficient to preclude dismissal at this stage, Defendant is not precluded from litigating the propriety of venue at trial. See United States v. Calandra, 414 U.S. 338, 349-52 (1974).

argues that every Platt factor "favors transfer of the case to Los Angeles. There is simply no relevant factor which supports venue of this case in St. Louis." The Government disagrees noting, in essence, that mere inconvenience is not a sufficient basis for transfer and that "the government's choice of forum is ordinarily to be respected." United States v. McManus, 535 F.2d 460, 463 (8th Cir. 1976).

The Court considers the Platt factors and reaches the following conclusions:

1. Defendant's location

Defendant is currently incarcerated in the Eastern District of Missouri. Defendant focuses on the distance of her family "and the ability to visit with individuals important to her case." She also contends that it would be costly to defend the case because of the expense of flying-in and housing witnesses. Defendant describes St. Louis as a "remote location" with "limited airline service."

It is undisputed that Defendant's home is in the Los Angeles area. However, a defendant's domicile has no special significance when considering venue, particularly when arguing that the interests of justice compel transfer. Platt, 376 U.S. at 245-24. Often defendants in conspiracy cases face trial in locations where they have little or no connection. See United States v. McGregor, 503 F.2d 1167, 1170 (8th Cir. 1974). Under the circumstances here, Defendant's location does not provide a strong basis for transfer.

2. Witness location

This prosecution arises out of a drug trafficking investigation. Most defendants with the exception of Defendant, had ties to the St. Louis area, including Defendant Hunter, who is also charged in Count IV. St. Louis-based DEA agents conducted the investigation of the financial transaction forming the basis of Count IV as well as the investigation of the source of the

relevant proceeds. Moreover, the financial records at the heart of the prosecution are accessible to Defendant in the Eastern District of Missouri. The financial records are in St. Louis. Although some possible witnesses reside in Los Angeles, the bulk of the witnesses reside in St. Louis and/or are connected in St. Louis.

3. Event location

The Government alleges that the drug trafficking that generated the funds used to purchase the property at issue occurred in St. Louis. Clearly, the purchase of the property at issue occurred in California. Defendant has not disputed the Government's assertion regarding the centrality of St. Louis to the drug trafficking allegations, although Defendant claims the proceeds at issue might also derive from drug trafficking in places other than St. Louis. The record supports the determination that the "events" and the witnesses to those events are primarily connected to St. Louis. As Defendant concedes, "the government will have to prove Hunter was engaged in narcotics and generated proceeds therefrom prior to February 2017." [ECF No. 577].

4. Document location

The investigation of both the drug trafficking conspiracy and the money-laundering conspiracy was centered in St. Louis. Defendant claims that other documents are important but "still need to be acquired." Nothing about the location of the documents, many of which are in St. Louis, establishes that this factor presents a hardship to Defendant warranting transfer.

5. Disruption of Defendant's business

Defendant mistakenly argues that the Platt factor related to a defendant's business requires an analysis of the location of a defendant's business. To the contrary, the analysis under Platt focuses on the "disruption" of Defendant's business. In response to the Government's assertion that Defendant failed to identify any disruption, Defendant stated: "The defense is under no

obligation to provide the government with details of potential defense theory and evidence."

The Court ordered Defendant detained prior to trial. Therefore, whether Defendant is incarcerated in Missouri or California, her business is disrupted. Therefore, this factor does not favor transfer.

6. Expense to Parties

In her post-hearing brief, Defendant asserted that "it will be virtually impossible... to come up with the necessary amount of money to mount a defense if the case is tried in the Eastern District." In support, Defendant identified several witnesses residing in California and an estimate of costs. Defendant has a court-appointed attorney. Rule 17(b) of the Federal Rules of Criminal Procedure governs fees for witnesses if the defendant shows an inability to pay the witness fees and the necessity of the witness's presence for an adequate defense. As the Eighth Circuit stated in Terlikowski v. United States, "[t]he object of [Rule 17b] is to afford the trial court authorization to provide an indigent defendant with witnesses at Government expense when the necessity is shown that their presence is required to insure a fair and adequate defense." 379 F.2d 501, 508 (8th Cir. 1967). If the court orders a subpoena, "the process costs and witness fees will be paid in the same manner as those paid for witnesses the government subpoenas." Rule 17(b). Because Defendant will have the opportunity to demonstrate that her out-of-state witnesses are necessary for a fair and adequate defense, the Court concludes that this factor does not favor transfer.

7. Location of counsel

The Court appointed Defendant experienced counsel following the unfortunate death of her privately-retained counsel. As Defendant acknowledged in her reply brief, in reference to her prior attorney, she "has experienced representation in both districts." [ECF No. 561]. Moreover,

to transfer this case at this point would inevitably delay resolution of the case. Thus, Defendant has not demonstrated the need for a transfer on the basis of location of counsel.

8. Accessibility of place of trial

Defendant claims that Los Angeles is "more readily accessible by air" than St. Louis [ECF No. 561]. Other than this conclusory statement, Defendant identifies no basis for concluding that Los Angeles is significantly more accessible than St. Louis for trial of this matter. Given that Defendant is incarcerated in a small town in Missouri, not California, St. Louis is clearly more accessible for trial.

9. Docket condition

In her memorandum in support of her motion, Defendant states that both districts "had diminished criminal loads." [ECF No. 535]. Presumably, Defendant intended to suggest that neither District favored the other. In a later memoranda, Defendant focused on the larger number of judges in Los Angeles [ECF No. 561]. By contrast, the Government noted that the Eastern District has many fewer criminal cases filed. Based upon the record before this Court, the "docket condition" of the Eastern District of Missouri does not support transfer.

10. Other considerations

Defendant has not demonstrated that there are other considerations favoring transfer.

Having reviewed the Platt factors, the Court concludes that, on balance, Defendant fails to establish a transfer to the Central District of California is warranted.

Accordingly,

IT IS HEREBY RECOMMENDED that Defendant's Motion to Dismiss [ECF No. 535] be **DENIED**.

IT IS FURTHER RECOMMENDED that Defendant's Motion to Transfer to the Central

District of California [ECF No. 536] be **DENIED**. The parties are advised that they have **fourteen (14) days** in which to file written objections to this Recommendation pursuant to 28 U.S.C. Section 636(b)(1). Failure to file timely objections may result in waiver of the right to appeal questions of fact.

Patricia L. Cohen

PATRICIA L. COHEN
UNITED STATES MAGISTRATE JUDGE

Dated this 28th day of May, 2019