

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

HUAN NGUYEN,

Defendant.

ORDER

07-CR-45-S

Before the court for decision is defendant Huan Nguyen's motion to transfer this case to the District of Minnesota for trial. *See* *dk.* 13. Although this court had agreed at the June 28, 2007 telephonic pretrial motion hearing to allow Nguyen to graft onto this transfer motion a motion to dismiss for lack of jurisdiction, Nguyen did not follow up on this request in his brief,¹ so he has waived his ability to seek dismissal. *See Anderson v. Litscher*, 281 F.3d 672, 675 (7th Cir. 2002).² A venue transfer motion is susceptible to direct decision by a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(A), so there is no need for a report and recommendation.

Citing to eight of the ten factors enumerated in *Platt v. Minnesota Mining and Mfg. Co.*, 376 U.S. 240, 243-44, Nguyen noted that he lived in Minnesota and ran a business "and may

¹ Nguyen filed a timely brief in support of transfer but did not file a reply brief.

² In a letter to the court prior to the pretrial motion hearing, Nguyen also purported to reserve his right to file additional substantive motions after the court had decided his venue challenge. In the face of this court's pellucid scheduling order, undergirded by F.R. Crim. Pro. 12(e), Nguyen's alleged reservation of rights was a nullity.

So too with Nguyen's request that the government disclose grand jury materials: in the absence of a supporting brief, the government does not know what Nguyen actually wants. Even so, the government has taken a stab at it, arguing that regardless how one interprets Nguyen's vague request, he is not entitled to additional disclosures beyond those the government already has provided or intends to provide. The government is correct.

experience undue loss of income as a result of trial and expenses associated herewith” if this trial is held in Wisconsin. Nguyen also asserts vaguely that “docket conditions permit case [sic] to be heard in Minnesota,” his attorney resides in Minnesota, and “most significantly” all the evidence seized “is located in Minnesota.” *See* dkt. 19 at 2. That’s it; Nguyen advances all these arguments in one seven-line paragraph with no supporting affidavits, documents or additional argument. He closes by asserting that the government has no compelling basis to try this case in Madison “save for ‘we want to’ and ‘know the judge’.” [sic]. *Id.*

The government responds that proper venue for criminal actions normally is in the district in which the offense was committed. *United States v. Morrison*, 946 F.2d 484, 490 (7th Cir. 1991). It is within the court’s discretion under F.R. Crim. Pro. 21(b) to decide if, all relevant things considered, the case would be better off transferred to another district. *In the Matter of Balsimo*, 68 F.3d 185, 186 (7th Cir. 1995).

Running through all ten of the *Platt* factors, the government acknowledges that Nguyen lives in Minnesota but notes that most of the government’s witnesses live in Wisconsin; apparently some law enforcement witnesses also live in Minnesota, but they are not agitating to move this case to their home state. The conspiracy alleged against Nguyen occurred in this district and defendant’s co-conspirator distributed cocaine and marijuana in this district. Most of the documents to be used in this case are in Wisconsin. Although Nguyen claims that his business “may” suffer if he must come to Wisconsin, he provides no details. The pretrial service report states that Nguyen is co-owner of Fast Eddie’s Pizza in Minneapolis, from which he claims to derive income of about \$1500/month, about \$50/day. Adding two days for travel to and from

Madison would at most cost Nguyen \$100 in lost income; if he owns the place, then he might get his share of the proceeds anyway. Nguyen declined to reveal his assets and liabilities to pretrial services, but he hired his own attorney, so the cost of a motel in Madison for a few days cannot be deemed a significant incremental cost to him. On the other hand, the government would incur a much higher incremental cost if it had to transport and perhaps house its larger number of Wisconsin witnesses to the Twin Cities. Location of counsel is a wash: regardless where the trial occurs, one attorney has to travel. Accessibility also is a wash. Docket conditions of the districts doesn't matter much, due to the Speedy Trial Act, but Nguyen obviously would get a quicker trial in Madison, since he has a firm trial date less than two weeks hence. Neither side has asserted any other special circumstances that might affect the decision to transfer.

In sum, having carefully considered the totality of circumstances, I conclude that neither the convenience of the parties nor the interests of justice militate toward transferring this case to Minnesota. Therefore, I am denying Nguyen's motion to transfer.

It is ORDERED that defendant Huan Nguyen's motion to transfer venue is denied on its merits and his other remaining motions and requests are denied as waived.

Entered this 24th day of July, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge