

DOCKET NO. FST CR19-0148553-T : SUPERIOR COURT  
DOCKET NO. FST CR19-0167364-T :  
DOCKET NO. FST CR20-0241178-T :  
STATE OF CONNECTICUT : J.D. OF STAMFORD-NORWALK  
VS. : AT STAMFORD  
MICHELLE TROCONIS : JULY 7, 2023

**SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF THE  
DEFENDANT’S MOTION TO TRANSFER JURISDICTION/VENUE**

On March 5, 2020, the defendant moved for a change of venue to the Hartford Judicial District, on the grounds that there are no allegations in the warrants that the defendant committed a crime within the jurisdiction of the Stamford-Norwalk Judicial District. A separate motion to transfer prosecution alleging both a violation of the vicinage clause of the sixth amendment (applicable to the states under the fourteenth amendment) and the need to avoid prejudicial publicity was filed on or about February 5, 2020. The defendant also filed a memorandum in support of these motions on November 19, 2020. On March 19, 2021, in a written memorandum of decision, the court (Blawie, J) denied the defendant’s motion for change of venue on various statutory and constitutional grounds without prejudice. The court acknowledged “the possible need to revisit the issue of venue in the future on [ ] [the] independent grounds” of prejudicial pre-trial publicity, which was reserved for a future time. *State v. Troconis*, 2021 WL 1595638, \*6 n.11 (Conn. Super. 2021).<sup>1</sup> The defendant now submits that a change of venue to Hartford – the

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<sup>1</sup> The defendant maintains that she is entitled as a matter of statutory *and* constitutional right to proceed to trial with a jury chosen from the Hartford Judicial District. She further claims that the sixth amendment, by virtue of its incorporation through the fourteenth amendment, requires that the “public trial” provision includes the express right to “an impartial jury of the State *and* district wherein the crime shall have been committed, which district shall have been previously ascertained by law....” (emphasis added). Despite Judge Blawie’s initial rejection of this argument, the defendant submits that Connecticut criminal jurisdictional and vicinage statutes are similar to Fed. R. Crim. Pro. 18 and its interpretation by the federal courts, and is an element of the trial jurisdiction established by legislation. *See e.g., United States v. Hoskins*, 44 F.4th 140, 157 (2d Cir. 2022); *United States v. Rutigliano*, 790 F.3d 389, 395 (2d Cir. 2015); *United States v. Fernandez*, 480 F.2d 726 (2d Cir. 1973); *see also State v. Sanabria*, 192 Conn. 671 (1984) (“procedures prescribed by law” refers to those requirements determined by legislative enactments). As the defendant stated in her November 19, 2020 memorandum (the arguments from which are incorporated herein), Connecticut law mandates that a defendant be

only proper judicial district – is required due to the immense prejudicial effect pre-trial publicity has had on potential jurors in the Stamford-Norwalk Judicial District. At an upcoming hearing, the defendant intends to demonstrate that the extensive publicity and media attention surrounding this case and its allegations are so pervasive in the greater New York and Fairfield County media markets as to deny the defendant a fair and impartial jury trial in the state’s proposed venue, and that a substantial percentage of potential jurors in that venue is both familiar enough with the case and believes that the defendant is likely guilty. Proceeding to trial in Stamford, despite both the presumption of – and analytical data demonstrating – prejudice, will violate Ms. Troconis’s rights to a fair jury and due process; and all but assures the reversal of any potential conviction. Therefore, transfer to the Hartford Judicial District is required.

### **DISCUSSION**

Pursuant to Practice Book § 41-23(1), a change of venue may be granted “[i]f the judicial authority is satisfied that a fair and impartial trial cannot be had where the case is pending[.]” In seeking a change of venue due to pretrial publicity, the defendant “bears the burden of showing that he could not otherwise receive a fair and impartial trial.” *State v. Komisarjevsky*, 338 Conn. 526, 556, *cert. denied*, 142 S. Ct. 617 (2021), quoting *State v. Reynolds*, 264 Conn. 1, 222 (2003) (internal quotation marks omitted). While the trial court is vested with “broad discretion... in considering such a motion,” a denial carries with it “constitutional implications,” invoking the protections of the due process clause. *Id.* at 556-57; *see* U.S. Const. Art. XIV and Conn. Const. Art. I, § 8. Yet “discretion imports something more than leeway in decision-making.... It means a legal discretion, to be exercised in conformity with the spirit of the law and in a manner to

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tried by a jury in the judicial district where the crime is alleged to have been committed. That means Hartford. Connecticut is not one homogenous district for trial purposes. Our legislature has established discrete judicial districts, and only those prescribed by law are the proper *loci*, unless waived by the defendant. *See, e.g. Smith v. United States*, 143 S. Ct. 1594 (2023), which last month reinforced the principle that a jury selected from the proper judicial district within a state (*i.e.* vicinage) is an enumerated right under the sixth amendment and that reversal is automatic if a defendant is convicted at a courthouse with jurors from the wrong statutorily-created judicial district. Moreover, all portions of the sixth amendment are made applicable to the states as elements of due process under the fourteenth amendment. *Ramos v. Louisiana*, 140 S. Ct. 1390, 1397 (2020).

subserve and not to impede or defeat the ends of substantial justice.” *Gateway Co. v. DiNoia*, 232 Conn. 223, 239 (1995) (internal quotation marks and citation omitted).

Where the trial court’s standard for deciding a motion for change of venue is based on the presumption of prejudice caused by pre-trial publicity, reversal of a conviction on such grounds on appellate review requires that a defendant demonstrate that “the publicity was so inflammatory or inaccurate that it created a trial atmosphere utterly corrupted by press coverage.” *Komisarjevsky*, 338 Conn. at 557, quoting *Reynolds*, 264 Conn. at 223 (internal quotation marks omitted). *Reynolds* explicitly held that this latter standard only applies to appellate reversal of a conviction on such grounds, whereas a trial court’s determination before trial is based on the “fair and impartial” jury standard see forth in Practice Book § 41-23(1). Despite this clear distinction, some trial courts have erroneously applied the heightened post-conviction “utterly corrupted” standard. *Reynolds*, 264 Conn. at 222; see also *State v. Anderson*, 2012 WL 4902636, \*2 (Conn. Super. 2012); *State v. Komisarjevsky*, 2011 WL 1168532, \*2-3 (Conn. Super. 2011). Thus, where the defendant can show “inherently prejudicial publicity such as to make the possibility of prejudice highly likely or almost unavoidable” in a given venue, denying her motion for change of venue will violate due process. *Komisarjevsky*, 338 Conn. at 557, quoting *Reynolds*, 264 Conn. at 222 (internal quotation marks omitted). That is the standard that Ms. Troconis claims is applicable here.

When requesting a change of venue, the defendant has the burden of showing that he could not receive a fair and impartial trial. *State v. Rogers*, 143 Conn. 167, 172 (1956), cert. denied, 351 U.S. 952 (1956), citing *State v. Chapman*, 103 Conn. 453, 470 (1925). A court exercises its discretion in deciding whether a change of venue should be granted. *Id.*, citing *State v. Luria*, 100 Conn. 207, 209 (1923).

The United States Supreme Court has stated that, due to the grave constitutional implications attending such pretrial rulings, “appellate tribunals have the duty to make an independent evaluation of the circumstances” surrounding pretrial publicity and exposure of prospective jurors to media coverage of the case. *Sheppard v. Maxwell*, 384 U.S. 333, 362-63 (1966). The court must calculate the constitutional standard of fairness which requires that a defendant have “a panel of impartial, ‘indifferent’ jurors.” *Murphy v. Florida*, 421 U.S. 794, 799

(1975), quoting *Irvin v. Dowd*, 366 U.S. 717, 722 (1961).

In *Komisarjevsky*, *supra*, our state Supreme Court adopted the following factors outlined by the United States Supreme Court in *Skilling v. United States*, 561 U.S. 358 (2010), for use in determining whether prejudicial publicity requires a change in venue, and whether prejudice should be presumed:

(1) the size and characteristics of the community in which the crime occurred, (2) the nature of the media coverage, (3) whether the passage of time has alleviated the impact of any prejudicial publicity, and (4) whether the jury's actions and verdict, along with the jury selection procedures utilized, were consistent with imposing a presumption of prejudice.

*Komisarjevsky*, 338 Conn. at 563, quoting *Skilling*, 561 U.S. at 382-83 (internal quotation marks omitted).

Only the first three considerations apply at the pretrial stage. The first *Komisarjevsky* factor, concerning the size and characteristics of the community, is “of paramount importance,” because it is more likely that impartial jurors can be found in larger and more diverse communities. *Id.* Where the nature of the media coverage goes beyond reporting and evokes a “lynch mob mentality or [community wide] rush to judgment,” the presumption of prejudice will apply. *Id.* at 568 [brackets in original] (internal quotation marks and citation omitted). With regard to the third factor, over the four years plus since the disappearance of Jennifer Dulos was first reported, the amount of pretrial publicity has not abated, with each court appearance and pleading resulting in a rehash of all the prior allegations. The defendant intends to demonstrate that through an independent public opinion poll commissioned by the defense, demographics of the Stamford-Norwalk Judicial District, and by way of expert testimony, that selection of a fair and impartial jury panel from lower Fairfield Country is difficult if not impossible and that there is a presumption of prejudice should the jury be chosen from there.

In light of the concerns addressed by our Supreme Court, a change of venue due to the presumption of prejudice here is necessary due to the likelihood that the nature and extent of publicity in the New York metropolitan area will corrupt the trial atmosphere, which is particular to the state’s chosen venue. This provides a reason to believe that the results of jury selection would be different in another venue. *Id.* at 573-74.

As the polling data demonstrates, the inflammatory press coverage surrounding this case has created a poisonous trial atmosphere in the Stamford-Norwalk Judicial District, due to the close-knit nature of the wealthy community where Ms. Dulos resided, and the prevalence of the metropolitan New York media coverage of the case. A 2023 survey of 554 potential Stamford-Norwalk Judicial District jurors commissioned by the defendant and conducted by a national polling organization (to be submitted at a hearing), demonstrates exactly how unavoidable and pernicious the prejudicial atmosphere created by such inflammatory press coverage is in the state's chosen venue. When the names of the alleged co-conspirators in the case along with a few details are given, some 72% of Stamford-Norwalk Judicial District residents polled stated that they were familiar with the case, and had formed an opinion about guilt. Remarkably, 97% of those with familiarity of this case already believe that one or more of the accused parties (Michelle Troconis, Fotis Dulos and/or Kent Mawhinney) conspired to murder Ms. Dulos. The fact that these results are shockingly greater than the level of those who assumed the guilt of defendant Joshua Komisarjevsky, despite the fact that his guilt and confessions were undisputed, strongly suggest that here, where the defendant's guilt of any offense is heavily disputed, that prejudicial pre-trial media coverage may be the tipping point for a verdict reached by a jury composed of residents of the Stamford-Norwalk Judicial District. *See Komisarjevsky*, 338 Conn. at 547-48 (60% and 25% of respondents in New Haven believed that the defendant was "definitely" or "probably" guilty, respectively). These polling numbers are clear evidence that the prejudicial pre-trial publicity surrounding the Dulos case has created a community-wide rush to judgment among residents of the Stamford-Norwalk Judicial District. This unavoidably prejudicial atmosphere has, in large part, been ginned up by an unending torrent of biased and salacious media reports about Ms. Troconis and her relationship with Fotis Dulos. Ms. Troconis has been the subject of over 15,000 articles authored by national and local news media,<sup>2</sup> many of them taking on a reactionary, sexist, and dismissive tone towards Ms. Troconis that presumes her guilt, further inflaming negative public opinion about her in the Stamford-Norwalk Judicial

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<sup>2</sup> Searching for the term "Michelle Troconis" on Google News and sorting by date yields about 15,700 results. GOOGLE, <https://www.google.com/search> (last visited June 29, 2023).

District.<sup>3</sup> The effects of this attention and taint were magnified by comments made by Attorney Norman Pattis, defendant Dulos' former counsel, who utilized his alleged access to sensitive information to make multiple prejudicial and speculative statements about Ms. Troconis to the local media.<sup>4</sup> Pattis's pontifications regarding the criminal investigation were deemed to be so disruptive and inappropriate that he was subjected to a gag order issued by the Superior Court. *See State v. Dulos*, 2019 WL 4898712 (Conn. Super. 2019), *appeal dismissed*, Docket No. SC 20363 (Conn. 2020). Indeed, the attention garnered by this case following the actions of sensationalist media outlets and actors like Pattis was focused (and felt) in the "tight-knit" communities that make up the eight towns of the Stamford-Norwalk Judicial District, as these communities have taken an intensely personal interest in this case since its outset.<sup>5</sup> Additionally, the Stamford-Norwalk Judicial District's proximity to New York state has contributed to the problem, because many of the residents polled indicated that they obtain news coverage from New York-based media sources, which have been especially unbalanced and polarizing in their

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<sup>3</sup> See e.g., Vanessa Serna, *Ex-girlfriend of Fotis Dulos is seen SMILING as she heads trial over his wife Jennifer Dulos' disappearance and murder - as her lawyer fails to have charges against her dismissed*, DAILY MAIL, Nov. 29, 2022, <https://www.dailymail.co.uk/news/article-11483115/Ex-girlfriend-Fotis-Dulos-seen-SMILING-heads-trial-wifes-murder.html>; Jonathan Lee Riches, *Michelle Troconis 'Not A Flight Risk' Despite Flying 1,300 Miles to Miami to Violate COVID Social Distancing Rules*, YOUR CONTENT NEWS, Sept. 24, 2020, <https://www.yc.news/2020/09/24/michelle-troconis-not-a-flight-risk-despite-flying-1300-miles-to-miami-to-violate-covid-social-distancing-rules/> (describing the defendant as "Muddlehead Michelle" who is "intent on cheating justice").

<sup>4</sup> This included references to Ms. Troconis as Mr. Dulos's "lying lover." Pat Tomlinson, *Jennifer Dulos case: 'Lying lover' Troconis emotional in court*, STAMFORD ADVOCATE, Sept. 18, 2019, <https://www.stamfordadvocate.com/local/article/Jennifer-Dulos-case-Lying-lover-Michelle-14448235.php>.

<sup>5</sup> Christine Dempsey and Dave Altimari, *Police received more than 225 tips about Jennifer Farber Dulos, missing New Canaan mother*, HARTFORD COURANT, June 6, 2019, <https://www.courant.com/2019/06/06/police-received-more-than-225-tips-about-jennifer-farber-dulos-missing-new-canaan-mother/>.

reporting.<sup>6</sup> These considerations provide ample reasoning to conclude there is prejudice against this defendant in the Stamford-Norwalk Judicial District, and to justify moving the case away from the New York state line to the Hartford Judicial District.

The *Komisarjevsky* Court declined to find a presumption of prejudice due to the strength of Connecticut’s individual jury voir dire selection process, “[c]oupled with the size and diversity of New Haven’s population....” *Id.* at 571 (footnote omitted). The latter part of the analysis is of limited use when comparing the relatively small and homogenous Stamford-Norwalk Judicial District, consisting of mostly high-income and white communities that would identify with a wealthy socialite like Jennifer Dulos, with a diverse and less affluent metropolitan area like New Haven or Hartford. *Id.* at 564 (“New Haven, with an urban and suburban population of 846,000, is significantly larger than other regions that courts have deemed sufficiently populous to permit the selection of an impartial jury[.]”). The state insists on trying Ms. Troconis in a venue with an available jury pool from a population less than half the size of the one considered in *Komisarjevsky*.<sup>7</sup> The defendant’s proposed venue of the Hartford Judicial District is significantly larger than the Stamford-Norwalk Judicial District.<sup>8</sup> The population of the Stamford-Norwalk Judicial District is also, on average, higher-income and less diverse than that of the Hartford

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<sup>6</sup> See e.g., Kevin Sheehan and Ebony Bowden, *Jennifer Dulos’ hubby paid for jet-set lifestyle with gal pal: court witness*, NEW YORK POST, Dec. 3, 2019, <https://nypost.com/2019/12/03/jennifer-dulos-hubby-paid-for-jet-set-lifestyle-with-gal-pal-court-witness/>; Lorena Mongelli and Kate Sheehy, *Jennifer Dulos’ husband, his gal pal dumped bloody items along highway: court docs*, NEW YORK POST, June 3, 2019, <https://nypost.com/2019/06/03/jennifer-dulos-husband-his-gal-pal-dumped-bloody-items-along-highway-court-docs/>.

<sup>7</sup> The combined population of the Stamford-Norwalk Judicial District was estimated as under 380,000 people during the 2020 census. *U.S. Census Bureau Quickfacts: Connecticut*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/CT/PST045222> (last visited March 15, 2023). This estimate was reached by searching data for each town within the Stamford-Norwalk Judicial District using the Census Bureau’s QuickFacts tool, and then combining the most recently available population data.

<sup>8</sup> The combined population of the Hartford Judicial District was estimated as over 565,000 people during the 2020 census. *Id.* This estimate was reached using the same method referenced in footnote 7.

Judicial District. This too, increases the likelihood that a jury assembled to try the defendant in Stamford will be composed of members of the same white, upper-class community as Ms. Dulos.<sup>9</sup> In light of these facts, holding the trial outside the Stamford-Norwalk Judicial District, with its proximity to the New York media market, decreases the chance that an impartial juror can be selected. Thus, denying Ms. Troconis's motions for change of venue and transfer of prosecution unnecessarily decreases the likelihood that impartial jurors can be seated there.

The United States Supreme Court has made clear that "where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue the case until the threat abates, or transfer it to another county not so permeated with publicity." *Sheppard*, 384 U.S. at 363. After four-plus years, interest in the case has not abated and the reaction to Ms. Troconis remains hostile after a news story appears. In one example from just a few months ago, the day Judge White granted the defendant's motion to remove a GPS ankle monitor, the local reaction to newspaper story about it was particularly harsh. One individual disparaged counsel, while another contributor, purportedly from New Canaan, and using the (unintentionally) ironic user name "Justice for All" published the following:

"NO!!! BIG MISTAKE taking that reminder off her ankle. What the heck is wrong with that judge?? If it was removed from her ankle and placed around her neck instead, I'd understand - but to remove it completely is not justice for Jennifer or her family. Horrible decision, judge. Shame on you. God bless CT and America. (capitalization and punctuation in original)

The unrelenting and continuous nature of the media coverage in the greater New York area, including Stamford, assures that coverage and interest in the case has not, and will not,

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<sup>9</sup> The most recently available census data on demographics and household income indicates that residents of the Stamford-Norwalk Judicial District are slightly more likely to be white and far more likely to earn an income above six figures than residents of the Hartford Judicial District. *Id.* This estimate was reached by using the same method referenced in footnote 7, compiling the demographic and income data for each town and then calculating an average. Indeed, many of the towns in lower Fairfield County are among the wealthiest municipalities in the nation. See Lidia Ryan, *Fairfield County, CT towns make Bloomberg's list of richest places in the U.S.*, GREENWICH TIME, Feb. 13, 2019, <https://www.greenwichtime.com/news/article/Fairfield-County-CT-towns-make-Bloomberg-s-list-13613331.php>.



abate in the next few months leading up to the trial. Therefore, transferring the case to another judicial district is the only way to ensure that a fair trial can be held and limiting prejudicial publicity. While the defendant concedes that unfair media coverage will exist no matter where the case is tried, moving it away from metro New York can help ameliorate the prejudice.

### CONCLUSION

The defendant submits that it is readily apparent that the state is prosecuting these charges in the wrong venue. Trying the defendant with a Stamford area jury, where Ms. Dulos “was a valued member, and [where] [] the defendant was an outsider,” in spite of the substantial evidence suggesting she is innocent, greatly raises the danger of a tainted jury. *Komisarjevsky*, 338 Conn. at 565 (internal quotation marks and citation omitted). The Stamford-Norwalk Judicial District is not large enough to correct for the amount of prejudicial press coverage surrounding this case, which has persisted for four years. Polling data from Stamford-Norwalk Judicial District residents who are prospective jurors also demonstrates that this area is bombarded by ongoing prejudicial publicity and provides ample reason to believe that selection of impartial jurors will present a far greater challenge than it would elsewhere. In light of the defendant’s continued assertion that the sixth amendment vicinage clause dictates that her jury be chosen from the Hartford Judicial District,<sup>10</sup> forcing her to proceed in a lengthy and expensive trial in Stamford with an improperly seated jury, will likely result in reversal, if she is convicted of anything. *Smith, supra*, 143 S. Ct. 1594. Applicable case law, consideration of recent polling data, and the fundamental protections of due process under the federal and state constitutions, require that the defendant’s request to transfer these cases to the Hartford Judicial District for jury trial must be granted.

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<sup>10</sup> See footnote 1. Despite the contrary interim holding by Judge Blawie, our Supreme Court has categorically stated that: “From time immemorial in this state, the community unit which is the basis for the source of a jury array is that of a county....” *State v. Townsend*, 167 Conn. 539, 551 (1975). *Townsend* further recognized that “[t]he federal constitution demands [ ] that the system used by the state to select jurors produce an array which reflects a cross section of the county....” *Id.* at 546. Obviously that changed when the state legislature abolished county courts and replaced them with judicial districts in 1977. *See* Conn. Gen. Stat. §§ 51-342, 51-344. Thus, it is submitted that Judge Blawie’s suggestion that Connecticut has but one state-wide jurisdiction for venue and vicinage purposes is incorrect and must be reconsidered.

THE DEFENDANT – MICHELLE TROCONIS

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**CERTIFICATION**

I hereby certify that a copy of the foregoing was electronically transmitted on the date of this pleading to the following:

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Jon L. Schoenhorn



[Robert Tobey](#)

I'd say Schoenhorn is an idiot!

♡ Thank (1)    💬 Reply



Justice for All, Neighbor

New Canaan, CT | 1h

NO!!! BIG MISTAKE taking that reminder off her ankle. What the heck is wrong with that judge?? If it was removed from her ankle and placed around her neck instead, I'd understand - but to remove it completely is not justice for Jennifer or her family. Horrible decision, judge. Shame on you. God bless CT and America.

[See less](#)

♡ Thank (3)    💬 Reply



Sandy L., Neighbor

Branford, CT | 1h

When are we going to stand up for Jennifer? We need to inform our ELECTED officials we will no longer tolerate them releasing murderers into the public. If they cannot perform their jobs then they need to resign. Sick of this BS.