

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

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:
UNITED STATES OF AMERICA : Criminal Action
: No.: M4113-03
v. :
:
ELENA SASSOWER, :
:
Defendant. :
:
-----X

Washington, D.C.
April 20, 2004

The above-entitled action came on for jury trial before The Honorable BRIAN HOLEMAN, Associate Judge, in Courtroom Number 218.

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DISTRICT OF COLUMBIA
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APPEARANCES:

On behalf of the Government:

JESSIE LIU, Esquire
AARON MENDELSON, Esquire
Assistants United States Attorney

On behalf of the Defendant:

ELENA SASSOWER, Pro Se
MARK GOLDSTONE, Esquire
Attorney Adviser

EVA B. RAMOS
OFFICIAL COURT REPORTER

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P R O C E E D I N G S

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THE COURT: Mr. Goldstone, where's your client.

MR. GOLDSTONE: Yes, Your Honor. Mark Goldstone, attorney adviser for Ms. Sassower. She was right outside the courtroom. May I be excused to look for her, Your Honor?

THE COURT: Yes.

MR. GOLDSTONE: She's on her way in, Your Honor.

THE COURT: Thank you.

MR. GOLDSTONE: She's in the witness room.

(Pause)

MS. SASSOWER: Elena Sassower, criminal defendant, pro se.

THE COURT: Mr. Goldstone.

MR. GOLDSTONE: Yes, Your Honor.

THE COURT: Just announce yourself for the record.

MR. GOLDSTONE: Mark Goldstone, attorney adviser.

MR. MENDELSON: Aaron Mendelson for the United States.

MS. LIU: Jessie Liu for the United States.

THE COURT: Very well. Two matters which have been provided to me by way of notes from the jury. The

1 first note came in at 10:04 a.m. and reads as follows.
2 It's headed juror number 13.

3 "In reviewing the exhibits, there is a
4 reference to a 'Luke Alby', who works for Senator Leahy.
5 Although he is not a friend of mine, he is a neighbor.
6 During voir dire it was not clear to me that having such
7 a neighbor would be problematic. Is this a problem?"

8 That is the extent of the, of that note. So
9 we'll deal with that one first. My inclination is to
10 have juror 13 come to the bench and we will inquire of
11 him whether this in any way affects his ability to be
12 fair and impartial in his deliberations.

13 I don't see that anything more than that is
14 needed. We'll allow him to explain. And to the extent
15 that follow-up is required, then we will engage in such
16 follow-up very much as we have in dealing with the prior
17 jurors who come up with similar issues.

18 MS. LIU: Your Honor, the government
19 would have no objection to proceeding in that fashion.

20 THE COURT: Very well. Ms. Sassower.

21 MS. SASSOWER: It sounds sensible.

22 THE COURT: Very well. All right. Before we
23 bring juror 13 in, let me address the second note which
24 came in at 10:15. The jury would like to see the
25 videotape again.

1 And this is, juror 13 generated this note. So
2 my, the inference that I draw is juror 13 is probably
3 the foreperson. Given that, is there any objection to
4 having the jury review the videotape again?

5 MS. SASSOWER: Absolute --

6 THE COURT: Go ahead.

7 MS. SASSOWER: Absolutely not, it's
8 exculpatory.

9 MS. LIU: No objection from the government,
10 Your Honor. But we do think that we should make sure
11 it's cued to the place that is actually admitted because
12 it's a very lengthy videotape.

13 THE COURT: Well, just so the record is clear,
14 not only will it be properly cued, it will be checked
15 before they're even brought in here.

16 But there won't be any editorial during its
17 playing. There, there won't be any commentary
18 whatsoever. There won't be any stopping and starting.
19 We'll simply allow the tape to play. Is there any
20 misunderstanding?

21 MS. LIU: Understood, Your Honor.

22 THE COURT: Very well.

23 MS. SASSOWER: But I also have no objection to
24 their viewing the entire tape should that be their
25 desire, and I think it's appropriate.

1 THE COURT: Please be seated. I don't, I don't
2 much care about your, your commentary on what is
3 appropriate or, or anything else, Ms. Sassower. Just
4 answer my questions.

5 The tape will be played, as I previously
6 stated. So the first thing we'll do is take this
7 question from, deal with the question of his, juror 13's
8 neighbor. Let's bring him in. Please come forward
9 counsel.

10 (Bench Conference.)

11 THE COURT: We received your note and I'll read
12 it as it is written. It's headed by juror 13. And it
13 says, "In reviewing the exhibits there is a reference to
14 a 'Luke Alby' who works for Senator Leahy. Although he
15 is not a friend of mine, he is a neighbor. During voir
16 dire it was not clear to me that having such a neighbor
17 would be problematic. Is this a problem?" And the note
18 ends there.

19 The question that I have for you, sir, is
20 whether Mr. Alby, having Mr. Alby as a neighbor in any
21 way affects your ability to be fair and impartial in
22 your deliberations in this case?

23 JUROR NO. 2: Not at all, Your Honor.

24 THE COURT: Very Well.

25 JUROR NO. 2: As I've said, I have said two

1 words to the guy. I've lived there for 12 years and I,
2 I've never spoken to him really.

3 But I do know, I do know that he works for
4 Senator Leahy, but it wasn't clear to me that there
5 would be such a connection with Senator Leahy and this
6 case.

7 THE COURT: Very well. All right, if you don't
8 mind, please just stand over near the podium while I
9 speak with counsel.

10 (Juror number two not present.)

11 There was -- step in. There was absolutely no
12 equivocation or hesitancy in his response to my
13 question.

14 I don't find that there would be any grounds
15 for removing him as, as a juror. I think that he did
16 what we would expect people to do. And that is, when he
17 found out that there might be this remote connection he
18 brought it to our attention.

19 We called him to the bench. He has expressed
20 that it would in no way affect his ability to be fair
21 and impartial. And, and he also expressed he has
22 limited con, personal contacts with the individual.

23 Therefore, I don't see that there would be any
24 grounds for dismissing him as a juror. Ms. Liu?

25 MS. LIU: Your Honor, we have no objection

1 whatsoever to keeping him on.

2 THE COURT: Very well. Ms. Sassower.

3 MS. SASSOWER: I believe this is the same juror
4 whose wife was seeking a position with either the Senate
5 or House Judiciary Committee, legal counsel. We want to
6 just inquire on that.

7 THE COURT: No, because that has no
8 bearing on the reason that this question was brought to
9 us. We dealt with the issue of this tenuous employment
10 application relationship previously. That was dealt
11 with in the initial voir dire.

12 This is a separate matter, separate issue; it
13 will be dealt with separately. And I am certainly not
14 going to go back into matters that have previously been
15 disposed of. That being the case, we will keep juror 13
16 on. There won't be any disturbing of his service.

17 The next issue will simply be the playing of the
18 videotape. I'd like for you to check now to make sure
19 that it's cued properly.

20 MR. MENDELSON: Should we send the juror back
21 to the juryroom?

22 THE COURT: Yes, I will. Where is juror 13?

23 (Juror number 13 present.)

24 THE COURT: Thank you for your, for your
25 service and thank you for bringing that issue to our, to

1 our attention. Your service will continue.

2 JUROR NUMBER 13: Okay. Thank you, Your Honor.

3 THE COURT: Please step back.

4 (Open Court)

5 THE COURT: Now go ahead and cue it up.

6 (Thereupon, the jury returned to the
7 courtroom at 10:35 a.m.)

8 THE COURT: Very well, be seated. Good
9 morning, ladies and gentlemen.

10 THE JURY: Good morning.

11 THE COURT: It's been brought to my attention
12 that you wanted to review the videotape again. We will
13 have a playback of the tape. There won't be any
14 commentary during your viewing of it. And once it's
15 played, then we'll excuse you back to the juryroom for
16 further deliberations. All right.

17 (Thereupon, the videotape was played
18 back.)

19 THE COURT: Very well. You're excused to
20 continue your deliberations.

21 (Thereupon the jury returned to the
22 juryroom to continue deliberations at 10:38 a.m.)

23 THE COURT: Thank you. We'll call you if
24 anything else comes about.

25 MR. MENDELSON: Thank you, Your Honor.

1 MS. LIU: Thank you, Your Honor.
2 THE COURT: Very well.
3 (Thereupon, the Court recessed at 10:40
4 a.m.)
5 (Thereupon, the court reconvened at 11:25 a.m.)
6 MR. GOLDSTONE: Mark Goldstone, attorney
7 adviser.
8 MS. LIU: Good morning, Your Honor. Jessie Liu
9 for the United States. I called Mr. Mendelsohn, he's on
10 his way here.
11 THE COURT: Very well. It is -- I've received
12 a note from juror number 13, timed at 11:16, that the
13 jury has reached a verdict and it's signed by juror
14 number 13.
15 (Thereupon, the jury returned to the courtroom
16 at 11:25 a.m.)
17 THE COURT: Please be seated. Would the
18 foreperson please stand? Mr. Foreperson, it is my
19 understanding that the jury has reached a verdict?
20 THE FOREPERSON: Yes, we have, Your Honor.
21 THE COURT: And would you please state the
22 verdict?
23 THE FOREPERSON: The verdict is guilty.
24 THE COURT: Very well. Thank you, you may be
25 seated. Any requests?

1 MS. SASSOWER: Yes, polling the jury.

2 THE COURT: Very well. I am going to ask each
3 of you by seat number if you agree with the verdict as
4 stated by your foreperson. We do this to make sure that
5 your verdict is unanimous.

6 If you agree with the verdict, say yes when I
7 call your seat number. If you disagree with the
8 verdict, say no when I call your seat number. Very
9 well. Juror number one?

10 THE JUROR: Yes.

11 THE COURT: Please stand.

12 THE JUROR: Yes, Your Honor.

13 THE COURT: Very well. Juror number three?

14 THE JUROR: Yes.

15 THE COURT: Very well, number four?

16 THE JUROR: Yes.

17 THE COURT: Number five?

18 THE JUROR: Yes, Your Honor.

19 THE COURT: Number 6?

20 THE JUROR: Yes, Your Honor.

21 THE COURT: Number 7?

22 THE JUROR: Yes, Your Honor.

23 THE COURT: Number 8?

24 THE JUROR: Yes, Your Honor.

25 THE COURT: Number 9?

1 THE JUROR: Yes, Your Honor.
2 THE COURT: Number 11?
3 THE JUROR: Yes, Your Honor.
4 THE COURT: Number 12?
5 THE JUROR: Yes, Your Honor.
6 THE COURT: Number 13?
7 THE JUROR: Yes, Your Honor.
8 THE COURT: Number 14?
9 THE JUROR: Yes, Your Honor.
10 THE COURT: Very Well. Let me just say before
11 I excuse you that I believe that there is no nobler a
12 service that a citizen than, can perform than to sit as
13 a juror.
14 I sit here every day and it is my job. For you
15 to take time out from your schedules, to sit, to listen
16 to the evidence, to deliberate and to render a verdict
17 is one of, if not the highest, contributions that you
18 can make to our civilized society.
19 I thank you wholeheartedly for your service. I
20 know that the case took longer than I had anticipated,
21 but as I told you, I can't predict these things.
22 You have stayed the course. You have made me
23 proud and the citizens of the District of Columbia proud
24 as well. Thank you very much. You're now excused.
25

1 (Thereupon, the jury was excused at 11:29 a.m.)
2 THE COURT: Very well. Be seated please. The,
3 the jury having found a verdict of guilty, the jury
4 having been polled, indicating that the verdict was
5 unanimous and the Court now having received the verdict
6 form, signed by the jury foreperson, dated today's date
7 with the, with guilty indicated as the jury verdict.
8 Very well. All that remains in this case is
9 sentencing and I will take proposed dates for that. I
10 will not render sentence today.
11 MR. GOLDSTONE: How long is Your Honor
12 anticipating --
13 MS. SASSOWER: Excuse me. I move to set aside
14 the jury verdict as against the weight of evidence and
15 contrary to law.
16 THE COURT: Very well. You can file your
17 post-trial mor, motions within the time limit
18 prescribed. Mr. Goldstone can, can fill you in on that.
19 Now back to the issue that I previously
20 mentioned with regard to sentencing. Mr. Goldstone?
21 MR. GOLDSTONE: I'm inquiring how long the
22 Court needs. I'm assuming you're gonna order a
23 presentence investigation?
24 THE COURT: Ms. Liu, do we have a pretrial
25 report in this case?

1 MS. LIU: Your Honor, unfortunately my jacket
2 is back in the office, I'm just realizing. I believe
3 that there was a pretrial report but it was dated almost
4 a year ago.

5 THE COURT: Right. All right. Give me just a
6 moment to see if in this voluminous stack of materials
7 we have one. I'm attempting to answer your question,
8 Mr. Goldstone.

9 And typically, the answer to the question is,
10 is that if I can make a sentencing determination based
11 on the pretrial report. We have one? I don't need a
12 presentence report.

13 Based on this record I don't need a presentence
14 investigation, so I don't need seven weeks prior to
15 sentencing. My thought on this is to set it for 30 days
16 out. May the 21st.

17 MS. SASSOWER: That is not available for me.

18 THE COURT: When is available for you, Ms.
19 Sassower?

20 MS. SASSOWER: It would have to be at the end
21 of May, the final week of May, not the third week.

22 THE COURT: Well, let me ask you this, Ms.
23 Sassower. Are you asking me to accommodate your
24 schedule?

25 MS. SASSOWER: Yes, I am.

1 THE COURT: Very well, I will do that. What
2 day at the end of May are you requesting?

3 MS. SASSOWER: My legal adviser has indicated
4 to me that he is not available in that final week of
5 May. He has class. Tuesday, June 1st.

6 THE COURT: I'll accommodate you, Mr.
7 Goldstone, certainly.

8 MR. GOLDSTONE: Thank you.

9 THE COURT: Very well.

10 MS. SASSOWER: If Your Honor would wish to
11 sentence me now, that will be fine.

12 THE COURT: Well, --

13 MS. SASSOWER: I have no objection. This
14 matter is going up on appeal and could not be sustained.

15 THE COURT: Very well. Well, while you're
16 getting your appeal ready, just be back here for
17 sentencing. Give her a warning please.

18 THE CLERK: Ms. Sassower, if you fail to --
19 there's no presentence investigation?

20 THE COURT: No.

21 THE CLERK: If you fail to appear for
22 sentencing, failure to appear for sentencing is a felony
23 offense. If you are convicted of felony failure to
24 appear --

25 MS. SASSOWER: Could we have sentencing now?

1 THE CLERK: Just a minute.

2 MS. SASSOWER: -- or not?

3 THE COURT: Hey, do you want to step back? Be
4 quiet while you receive your warning.

5 THE CLERK: Ms. Sassower, if you fail to appear
6 for sentencing, failure to appear for sentencing is a
7 felony offense.

8 If you are convicted of felony failure to
9 appear, you face five years in jail, a \$5,000 fine, or
10 both, and that's for your failure to appear. Do you
11 understand the warning you've been given for failing to
12 appear?

13 MS. SASSOWER: I do indeed.

14 THE CLERK: Please sign your notice underneath
15 your signature. Put your address please underneath your
16 signature.

17 MS. SASSOWER: Yes.

18 THE COURT: All right.

19 MS. SASSOWER: I'd like the transcript
20 immediately.

21 THE COURT: This matter is, is now adjourned.
22 Ms. Sassower, you won't disrupt this courtroom again or
23 I'll have the marshal step you back. Keep your mouth
24 shut and leave my courtroom once you're through signing
25 your notice.

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MR. GOLDSTONE: Thank you, Your Honor. May I
be excused?

THE COURT: You may. Thank you, Mr.
Goldstone.

MR. GOLDSTONE: Thank you very much.
(Thereupon, the proceedings concluded at 11:25
a.m.)

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CERTIFICATE OF REPORTER

I, EVA B. RAMOS, an Official Court Reporter for the Superior Court of the District of Columbia, do hereby certify that I reported, by means of the voice writing method, in my official capacity, the proceedings had and/or testimony adduced in the matter of United States v. ELENA SASSOWER, Docket Number: M4113-03-03, in said Court, on the 13th, 14th, 15th, 16th, 19th and 20th days of April 2004.

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I further certify that the foregoing 808 pages constitute the official transcript of said proceedings as taken from my voice writing machine with the backup tapes of said proceedings.

In witness whereof, I have subscribed my name this the day of July, 2004.

Eva B. Ramos

OFFICIAL COURT REPORTER