SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

UNITED STATES OF AMERICA

Criminal No. M-4113-03

V.

Misdemeanor Calendar I

ELENA SASSOWER

MEMORANDUM EXPLAINING DENIAL OF MOTION FOR CHANGE OF VENUE

This matter was before this Court on August 20, 2003, on Defendant's *Pro Se* Motion for a Change of Venue. Defendant appeared by speaker-phone by leave of the court. Assistant United States Attorney Mendelsohn appeared in person and opposed the Motion with oral argument to which the defendant responded. This Court denied the Motion orally but files this memorandum to further explain its ruling.

Controlling case law in the District of Columbia is that change of venue is not available because the Superior Court of the District of Columbia sits as a single unitary judicial district. *United States v. Edwards*, 430 A.2d 1321, 1345, (D.C. 1981) (en banc) cert. denied, 455 U.S. 1022 (1982), *Catlett v. United States,* 545 A.2d 1202 (D.C. 1988). Changes of venue for cases in local courts usually means moving the case to another court within the same district or circuit to avoid prejudice in one community, often from excessive publicity. It does not necessarily mean a change of judge, particularly where the presiding judge routinely sits on the neighboring courts within his district. The District of Columbia has no other trial court.

In this case, the defendant requests not only a change of courthouse but also the recusal of all judges of the Superior Court. Defendant asks that her current misdemeanor case be transferred to a court and judge outside of the District of Columbia. The defendant is charged with disrupting a Congressional hearing in violation of D.C. Code § 10-503.16 (b)(4). Defendant argues that there would be an inevitable appearance of a conflict of interest because the Superior Court of the District of Columbia receives funding from Congress and its judges are appointed by the President of the United States and confirmed by Congress.

Even if there were a way to obtain jurisdiction over this D.C. Code misdemeanor in another state, the cost and disruption would not be justified. Defendant has not shown any justification for her fear that she will not receive Due Process in Superior Court. Bias warranting recusal must be more than fanciful. In Liteky v. United States, 510 U.S. 540 (1994), the Supreme Court stated that a judge should recuse for bias if the judge has a deep–seated favorable or unfavorable opinion "that is somehow wrongful or inappropriate, either because it is undeserved, or because it rests upon knowledge that the subject ought not to possess, . . . or because it is excessive in degree." Id. at 550. There is no reason to fear that the Superior Court is biased in favor of the government in a criminal case involving alleged disruption of Congress. Congress has no power to remove a Superior Court judge. Judges are appointed for fifteen years. Their continuing service and their reappointments, including appointments to serve as Senior Judge are regulated by a tenure commission, not Congress. It is also preposterous to fear that the budget a large urban court with 59 judges and numerous other judicial officers would be effected by the decision of one judge in one misdemeanor case.

Many years ago, the Supreme Court considered and rejected an argument that government employees should be presumed biased in favor of the government in criminal cases

and, therefore, should be stricken for cause from sitting as jurors in criminal cases in the District of Columbia. *United States v. Wood*, 299 U.S. 123 (1936). The Court considered it far-fetched and chimerical to suggest that an employee of the Government may be apprehensive of the termination of his employment in case he decides in favor of the accused in a criminal case. Thereafter, a criminal defendant's conviction was affirmed as fair, where no actual bias was shown, even though by chance every one of the twelve jurors on his case happened to be employed by the government. *Baker v. United States*, 131 U.S. App.7, 401 F.2d 958 (1968). Similarly, in this case, the ever so faint appearance of bias stemming from the Superior Court's relation with Congress in insufficient to require the recusal of all its judges.

In denying Defendant's motion for change of venue, this Court based its reasoning not only on case law and judicial economy, but also on knowledge of numerous instances of willingness of federal judges (with the same alleged bias attributed to Superior Court) to make decisions against the government based on the law and the evidence. Federal courts on many occasions have found acts of Congress unconstitutional, for example. If defendant's contention that a Court funded by Congress could not hear a matter involving Congress had merit, no U.S. District Court in the United States could hear any criminal case involving a violation of the United States Code provisions involving crimes against members of Congress (18 U.S.C. § 351).

Defendant's motion is without merit. Even in states, where change of venue is readily possible, a defendant has a heavy burden of showing that she cannot receive a fair trial in the district where the offense occurred. Defendant's only alleged basis for claiming that she cannot get a fair trial from Superior Court judges, whom she feels are beholden to Congress, is that they have not granted her every request. Unfortunately, she feels that if a judge disagrees with her, he or she must be biased against her and have pre-judged her case. It is for that reason that this

Court has prepared this Memorandum to explain its oral ruling denying her motion for change of venue. This denial is based entirely on the law and the lack of merit to her arguments and not based on any thought of tenure or court funding (and certainly not based on any pre-judgment about her guilt or innocence)[1].

Mary Ellen Abrecht

MARY ELLEN ABRECHT
SENIOR JUDGE
(Signed in Chambers)

Copies to:

Elena Sassower
P.O. Box 69
Gedney Station
White Plains, New York 10605-0069

Aaron Mendelsohn
Assistant United States Attorney
555 4th Street, N.W.
Washington, D.C. 20530

[1] Moreover, there was no merit to defendant's surprise argument that this Court should recuse from ruling on her motion for change of venue (in this 2003 case) because her husband Gary L. Abrecht apparently dismissed her complaint against the U.S. Capitol Police in 1996 while he served as Chief of Police, a position from which he retired in May 2000.