SUPERIOR COURT
OF THE
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

Criminal No.: M-4113-03

v.

Calendar 1: Judge Holeman

Trial Date: April 12, 2004

ELENA RUTH SASSOWER
_____/

GOVERNMENT'S NOTICE OF INTENT TO INTRODUCE OTHER CRIMES EVIDENCE PURSUANT TO DREW V. UNITED STATES

The United States, by and through its attorney, the United States Attorney for the District of Columbia, respectfully requests that this Court grant the government's notice of intent to introduce other crimes evidence pursuant to Drew v. United States, 118 U.S. App. D.C. 11, 331 F.2d 85 (1964). In support of its notice of intent, the United States relies on the following points and authorities and other such points and authorities as may be cited at a hearing on this motion.

FACTUAL HISTORY

On May 22, 2003, Defendant attended a hearing of the Senate Judiciary Committee on the nomination of Judge Richard C. Wesley to the United States Court of Appeals for the Second Circuit. During the hearing, without being recognized by the Chairman, Senator Saxby Chambliss, she shouted: "Mr. Chairman, we

are in opposition to Judge Wesley based on his documented corruption at the New York Court of Appeals." After the Chairman issued a warning that "we will have order" and instructed everyone to remain seated, Defendant demanded loudly several times, "Are you directing that I be arrested?" Defendant had been warned in mid-May 2003 that she would not be permitted to testify at the hearing and that she would be arrested if she disrupted it. Defendant's actions on May 22, 2003, are the basis of the charges in the instant case.

Previously, on June 25, 1996, Defendant entered the Dirksen Senate Office Building and began shouting and using profanity. After a Capitol Police officer confronted her, Defendant agreed to leave, but soon became disruptive again, screaming and cursing. She also tried to snatch her identification card, which she had presented at the officer's request, back from him. The officer warned her that she would be arrested if she did not lower her voice. Defendant refused to comply and was arrested.

LEGAL ANALYSIS

The seminal case on the admission of uncharged misconduct evidence is Drew v. United States, 118 U.S. App. D.C. 11, 331 F.2d 85 (1964). The Drew court held that uncharged misconduct evidence is inadmissible "to prove disposition to commit crime, from which

the jury may infer that the defendant committed the crime charged." Id. at 15, 331 F.2d at 89. It also held, however, that such evidence may be admitted for any "substantial, legitimate purpose." Id. at 16, 331 F.2d at 90; see also Johnson v. United States, 683 A.2d 1087, 1092 (D.C. 1996) (en banc). Legitimate purposes for admitting uncharged misconduct evidence include, but are not limited to, proof of motive, intent, absence of mistake or accident, common scheme or plan, and identity. Drew, 118 U.S. App. D.C. at 16, 331 F.2d at 90. If uncharged misconduct evidence is offered for a substantial, legitimate purpose, it is admissible so long as: (1) the uncharged misconduct is proved by clear and convincing evidence, and (2) its probative value is not substantially outweighed by the risk of unfair prejudice. Johnson, 683 A.2d at 1093, 1099. As the Johnson court explained, this standard "will further the policy of admitting as much relevant evidence as it is reasonable and fair to include . . . ." Id. at 1100.

There is substantial similarity between Defendant's disorderly conduct at the Dirksen Senate Office building in 1996 and her interruption of the Senate Judiciary Committee hearing on May 22, 2003. In both instances, Defendant entered a Senate building and began shouting in a highly disruptive manner. Moreover, in both 1996 and 2003, Defendant was warned by a Capitol

Police officer that she would be arrested if she acted in a disruptive manner, and she refused to comply. Both times, Defendant was arrested for disruptive conduct.

The government intends to introduce evidence of Defendant's prior bad act at the trial of this case. The proffered evidence is relevant to prove all five of the issues set forth in Drew, 118 U.S. App. D.C. at 16, 331 F.2d at 90: motive, intent, lack of mistake or accident, identity of the accused, and common scheme or plan. See Hazel v. United States, 599 A.2d 38 (D.C. 1991) (stating that Drew evidence is admissible to establish common scheme or plan), cert. denied, 506 U.S. 939 (1992); Clark v. United States, 593 A.2d 186 (D.C. 1991) (holding that Drew exception is applicable to show lack of mistake where defendant asserted accident); Harper v. United States, 582 A.2d 485 (D.C. 1990) (ruling that Drew evidence admissible to prove identity of defendant where sufficient similarity test is met). Because the facts of the prior bad act bear substantial similarity to the facts of the case at bar, the evidence is properly admissible in the government's case-in-chief.

In particular, evidence of Defendant's prior disorderly conduct at the Dirksen Senate Office Building is relevant to show that she interrupted the Senate Judiciary Committee hearing on May 22, 2003 with the intent "to impede, disrupt, or disturb the

orderly conduct of any session of the Congress or either House thereof," as required for conviction under the statute that she is charged with violating in this case. D.C. Code § 10-503.16. Defendant's plainly disruptive behavior at the Dirksen Senate Office Building in 1996 suggests strongly that she intended to be disruptive at the Senate Judiciary Committee in 2003, and did not merely intend to express her views on a matter of public concern. Moreover, the fact that Defendant previously was placed under arrest after ignoring warnings that she would be arrested if she did not control herself is strong evidence that Defendant knew that the Capitol Police meant what they said when they told her that she would not be allowed to testify and that she would be arrested if she acted in a disorderly manner, and therefore that she intended to disrupt the hearing when she spoke out.

Finally, the probative value of the uncharged conduct is not substantially outweighed by the danger of unfair prejudice. As set forth above, Defendant's prior bad act is highly relevant to this case, particularly to her intent when she interrupted the Senate Judiciary Committee hearing. There is nothing particularly prejudicial about Defendant's actions at the Dirksen Senate Office Building in 1996; although Defendant was loud and disorderly, there is no evidence that she physically harmed or verbally threatened anyone, or even said anything particularly inflammatory.

WHEREFORE, the United States respectfully requests that the Court grant the government's request to use other crimes evidence pursuant to Drew v. United States, 118 U.S. App. D.C. 11, 331 F.2d 85 (1964).

Respectfully submitted,

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