

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA

v.

MARY LYNN ROSTIE,
CYNTHIA S. MARTIN,
TROY R. SOLOMON,
CHRISTOPHER J. ELDER, and
DELMON L. JOHNSON

Defendants

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NO. 08-00026-01/05-CR-W-FJG

JOINT SECOND AMENDED MOTION TO TRANSFER VENUE AND SEVER

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, TROY R. SOLOMON and DELMON JOHNSON, Defendants, and file this Joint Second Amended Motion to Transfer Venue and Sever as authorized by Rules 21 and 14 of the Federal Rules of Criminal Procedure, and in support hereof would respectfully show unto this Court as follows:

I.

Background

Defendants SOLOMON and JOHNSON have been charged with distributing and conspiring to distribute controlled substances in violation of the Controlled Substances Act, and conspiring to promote and conceal the laundering of money. Both Defendants reside in Harris County, Texas, which is located in the Southern District of Texas, Houston Division. All of the allegations of wrongdoing involving these Defendants are intertwined with businesses, Ascencia Nutritional Pharmacy and South Texas Wellness Centers, which are also located in Harris County, Texas. All

of the employees of said businesses and other witnesses whom Defendants will call to testify on their behalf are located in Harris County, Texas. In addition, all of the records of these businesses, as well as the other various medical facilities listed in the indictment, are located in Harris County, Texas.

Further, after CYNTHIA MARTIN'S plea hearing of December 18, 2008, all of the remaining defendants in this case reside in or around Harris County, Texas. The witnesses, records, and other evidence relied upon by these defendants are also located in Harris County, Texas. By way of example, attached hereto as Exhibit "A" is a true and correct copy of email correspondence from AUSA Rudy Rhodes affirming that all of the evidence seized from Ascensia Nutritional Pharmacy is kept and stored at the DEA's Houston Field Office. Without commenting on the validity of the indictment or the statements contained therein, these Defendants have no connection to the Western District of Missouri, and will endure a substantial and unreasonable burden and inconvenience if forced to defend in said District.

Defendants SOLOMON and JOHNSON cannot be expected to mount a proper defense if forced to bear the burden of transporting necessary witnesses and evidence all the way to the Western District of Missouri. It has been suggested that this burden could be mitigated by permitting Defendants to depose necessary witnesses located in Houston. Unfortunately, this purported solution does not relieve Defendants' burden of paying for the cost of dozens of depositions. Further, the deposition solution is flawed in that it does not provide a method, short of incurring massive transportation costs, for Defendants to obtain deposition testimony from rebuttal witnesses in Houston whose identity cannot be ascertained with any degree of certainty until the close of the prosecution's case. In short, it will be impossible for Defendants to mount a proper defense in the Western District of Missouri.

The facts underlying the Government's case deal with allegedly illegal prescriptions written by doctors from Houston, for patients from Houston, with most of the documentary evidence located in Houston, and with every remaining Defendant located in Houston. Given the volume of infractions alleged in the indictment, there are thousands of potential witnesses necessary to the defense, all of whom reside in or around Houston, Texas. Moreover, following Defendant CYNTHIA MARTIN's guilty plea, the Western District of Missouri has virtually no local connection with the facts underlying this case. Based on the witness list produced by the government, even a majority of the prosecution's witnesses reside outside the Western District of Missouri.

II.

Transfer is Proper under Rule 21(b) of the Federal Rules of Civil Procedure

Rule 21(b) provides that "upon the defendant's motion, the court may transfer the proceeding, or one or more counts against that defendant to another district for the convenience of the parties and witnesses and in the interest of justice." In this matter, all three (3) of the remaining defendants are charged with criminal activity that allegedly occurred in Harris County, Texas, located in the Southern District of Texas, Houston Division. The medical facilities and pharmacy wherein the alleged wrongful conduct occurred are located in said District and Division. The Movants' witnesses and the bulk of the evidence exonerating them are located in said District and Division. Given these facts, it will be extremely inconvenient and expensive for the Defendants to present their defense in the Western District of Missouri. Defendants lack the financial resources to present a viable defense in the Western District of Missouri and will incur substantial burden, inconvenience, and violation of their due process rights unless the charges against them are severed and transferred to the Southern District of Texas, Houston Division. Given the vast disparity of resources between Defendants and the United States of America, it is in the interest of justice and

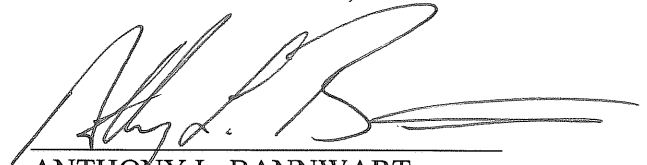
the convenience of the parties to sever and transfer the charges against Defendants SOLOMON and JOHNSON to the Southern District of Texas, Houston Division.

WHEREFORE, TROY R. SOLOMON and DELMON JOHNSON, Defendants, request that this Court order the severance and transfer of this case to the Southern District of Texas, Houston Division.

Respectfully submitted,

BANNWART & ASSOCIATES, P.C.

By:



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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing Joint Amended Motion to Transfer Venue has this day been sent via electronic filing to counsel for all parties of record.

SIGNED this 15th day of January, 2009

BANNWART & ASSOCIATES, P.C.

By:



ANTHONY L. BANNWART

ATTORNEYS FOR DEFENDANTS