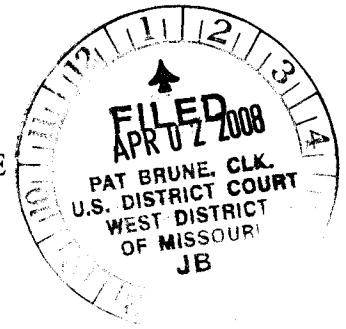


IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION



UNITED STATES OF AMERICA

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v.

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

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

Defendants

MOTION TO TRANSFER VENUE AND SEVER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, DELMON L. JOHNSON, Defendant, and files this 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

Defendant DELMON L. JOHNSON has 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. Defendant resides in Harris County, Texas, which is located in the Southern District of Texas, Houston Division. All of the allegations of wrongdoing involving Defendant DELMON L. JOHNSON are intertwined with his employment at Ascencia Nutritional Pharmacy, which is also located in Harris County, Texas. All of the other employees of

said business and other witnesses whom Defendant DELMON L. JOHNSON will call to testify on his behalf are located in Harris County, Texas. In addition, all of the records of Ascencia Nutritional Pharmacy, as well as the various medical facilities listed in the indictment, are located in Harris County, Texas.

Further, at least two (2) of the other defendants in this case, TROY R. SOLOMON and CHRISTOPHER J. ELDER, 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. Without commenting on the validity of the indictment or the statements contained therein, Defendant DELMON L. JOHNSON has 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.

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, three (3) 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. Defendant DELMON L. JOHNSON’s witnesses and the bulk of the evidence exonerating him are located in said District and Division. Given these facts, it will be extremely inconvenient and expensive for Defendant DELMON L. JOHNSON to present his defense in the Western District of Missouri. Defendant

DELMON L. JOHNSON lacks the financial resources to present a viable defense in the Western District of Missouri and will incur substantial burden, inconvenience, and violation of his due process rights unless the charges against him are severed and transferred to the Southern District of Texas, Houston Division. Given the vast disparity of resources between Defendant DELMON L. JOHNSON 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 Defendant DELMON L. JOHNSON to the Southern District of Texas, Houston Division.

WHEREFORE, DELMON L. JOHNSON, Defendant, requests that this Court sever and transfer his case to the Southern District of Texas, Houston Division.

Respectfully submitted,

BANNWART & ASSOCIATES, P.C.

By:



ANTHONY L. BANNWART

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ATTORNEYS FOR DEFENDANT,
DELMON L. JOHNSON

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing Motion to Transfer Venue has this day been sent via facsimile to, Mr. Rudolph R. Rhodes IV, Assistant U.S. Attorney, United States Attorney's Office, Charles Evans Whittaker Courthouse, 400 East Ninth Street, Fifth Floor, Kansas City, Missouri 64106, (816) 426-4328 ; Mr. John R. Osgood, attorney of record for Defendant CHRISTOPHER ELDER, located at Commercial Federal Bank, Suite 305, 740 NW Blue Parkway, Lees Summit, Missouri 64086, (816) 525-7580; Mr. James R. Hobbs, of Wyrsh, Hobbs & Mirakian, P.C., attorney of record for Defendant CYNTHIA MARTIN, located at 1000 Walnut, Suite 1600, Kansas City, Missouri 64106, (816) 221-3280; Mr. Curtis G. Harahan, attorney of record for Defendant MARY LYNN ROSTIE, located at 522 E. Capitol Ave., Jefferson City, Missouri 65101, (573) 556-6340; and to Mr. Jay DeHardt, Attorney at Law, local counsel, 4505 Madison Avenue, Kansas City, Missouri 64111, (816) 751-0520.

SIGNED this 1st day of April, 2008

BANNWART & ASSOCIATES, P.C.

By: 
ANTHONY L. BANNWART

ATTORNEYS FOR DEFENDANT,
DELMON L. JOHNSON