

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

U. S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
**FILED**  
MAY 17 1991  
NANCY DOHERTY, CLERK  
By \_\_\_\_\_ Deputy

UNITED STATES OF AMERICA

v.

JOHN BLONDEK and  
VERNON R. TULL

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Criminal No. 3-90-061 and  
3-90-062

ENTERED ON DOCKET  
5-19-91 PURSUANT  
TO F. R. C. P. RULES  
58 AND 79a.

ORDER

Before the Court are: Defendant Tull's Motion to Dismiss or to Transfer Venue, filed April 23, 1990; and the Government's Omnibus Response to Motions of Defendants, filed May 1, 1990.<sup>1</sup>

Defendant Tull argues that venue is improper in the Northern District of Texas and that this conspiracy case should accordingly be dismissed or transferred to the Southern District of Texas, where he, several of his witnesses and all of Defendant Blondek's witnesses reside.

Under F.R.Crim.P. 18, venue is proper in any district in which the offense was committed. A conspiracy is considered to have been committed both in the district in which the conspiratorial agreement was made and in any district in which any overt act by any conspirator occurred. United States v. Nicoll, 664 F.2d 1308, 1311 (5th Cir. 1982) (venue proper even though defendant Nicoll did not participate in overt acts in district in which case was brought).

<sup>1</sup>The Court will only address that portion of the Government's Omnibus Response that responds to Defendant Tull's Motion to Dismiss or Transfer Venue.

Two of the twenty overt acts alleged in the indictment occurred in Texas, one in the Southern District and one in the Northern District. Overt Act 13, Defendant Tull's instructing a co-conspirator to write a letter regarding the alleged bribe, is alleged to have occurred in the Southern District. Overt Act 3, a co-conspirator's travel from Toronto, Ontario to Harlingen, Texas via the Dallas-Fort Worth International Airport is alleged to have occurred in the Northern District.

F.R.Crim.P. 21(b) states:

[f]or the convenience of parties and witnesses, and in the interest of justice, the court upon motion of the defendant may transfer the proceeding as to that defendant or any one or more of the counts thereof to another district.

In In re Chesson, 897 F.2d 156, 159 (5th Cir. 1990), the Fifth Circuit explained that when ruling on motions for a change of venue, district courts must consider "the effect the location of the trial will have upon the defendants and their witnesses" as well as "the impact the trial location will have on the timely disposition of the instant and other cases." See also United States v. Dickie, 775 F.2d 607, 610 (5th Cir. 1985).

The first factor -- the effect on Defendants and their witnesses -- requires transferring this case to the Southern District. The indictment here alleges that officers of a Brownsville bus manufacturer conspired to bribe Canadian officials with regard to the sale of several buses. The actions alleged to have been taken to effectuate the transaction occurred either in the Brownsville area or in Canada. Defendants and the

witnesses identified in Defendant Blondek's Designation of Witnesses and in Defendant Tull's letter to the Court live in the Brownsville area. Neither the Government nor Defendants identify any witnesses who reside in the Northern District of Texas.

The Court is of the opinion that for the convenience of the parties and witnesses, and in the interest of justice, Defendant Tull's Motion to Transfer Venue should be, and it is, **GRANTED**, and that this case should be, and it is, **TRANSFERRED** to the United States District Court for the Southern District of Texas, Brownsville Division.

Defendant's Motion to Dismiss for Improper Venue is therefore moot and is accordingly **DENIED**.

SO ORDERED.

DATED: May 17, 1991.



**BAREFOOT SANDERS, CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS**