

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

05-CR-075-S

ERNEST KWASI BANKAS,

Defendant.

Before the court is defendant Ernest K. Bankas's motion pursuant to F. R. Cr. P. 21(b) to transfer this prosecution from the Western District of Wisconsin to the Northern District of Texas where Bankas lives. *See* Dkt. 5. The government opposes the motion. *See* Dkt. 9. The parties agree on the relevant law and for the most part agree on the relevant facts, but dispute the ending balance when the pros and cons of trial in each district are weighed. Having considered the relevant factors, I conclude that transfer is not warranted in this case. Therefore, I am denying the motion.

Rule 21(b) allows the court, upon a defendant's motion, to transfer a proceeding to another district "for the convenience of the parties and witnesses and in the interest of justice." The Supreme Court has identified ten factors courts should consider when deciding a transfer motion. *See Platt v. Minnesota Mining & Manufacturing Co.*, 376 U.S. 240, 243-44 (1964). Although courts still use the *Platt* factors and the parties have addressed them in this case, they are a bit dated in this age of easy air travel, fax machines, e-mail, the Internet,

cell phones and courier services. So, *Platt* simply provides a framework for a more fluid analysis. Generally, “it is enough if, all relevant things considered, the case would be better off transferred to another district.” *In the Matter of Balsimo*, 68 F.3d 185, 187 (7th Cir. 1995).

The circumstances of this case reveal the limits of *Platt*: many of its factors do not apply here and most of the rest are intertwined. Specifically, the fourth, eighth and tenth *Platt* factors drop out immediately: the parties agree that the location of the documents is not an issue, both courts are equally accessible and there are no “special” factors here. Factor 3, location of events, is a wash because the alleged events occurred in Dallas, Ithaca, Durham, St. Louis and perhaps England, as opposed to solely in one judicial district or the other. Further, the crux of the allegations is that Bankas fraudulently obtained student loans by falsely declaring that he was attending school in the United Kingdom and by falsely declaring that he was not in default on prior loans. The proof of or defense against such allegations is not location-sensitive.

The parties dispute the remaining six factors, either disagreeing on the facts or agreeing on the facts but disagreeing on their import. For instance, the first factor is the defendant’s location. Bankas lives in Texas, geographically distant from this court and from his federal defender. According to Bankas, this is the most significant factor and it militates strongly toward transfer. The Court of Appeals for the Seventh Circuit, however, has stated that the defendant’s location has no “independent significance.” *United States v. Zylstra*, 713 F.2d 1332, 1336 (7th Cir. 1983). This pronouncement begs the question because the

defendant's location directly affects other *Platt* factors. Here, Bankas argues that his geographic distance from Madison affects factor 5 (disruption of his "business"), factor 6 (how much it would cost to try the case in either location), and factor 7 (location of Bankas's attorney).

Bankas virtually concedes that he is not employed at this time but he reports that he is the primary caregiver for his five children while his wife works outside the home.¹ But Bankas would have to change the childcare arrangements even if he were tried in Texas; he apparently has plans to travel for job interviews and book promotion; and childcare is not so specialized a task as to make Bankas indispensable at home in the fashion that factor 5 envisages a key employee's extended absence preventing his business from operating effectively. This is not a factor militating toward transfer.

Factor 6, which weighs relative expenses, does not necessarily favor transfer. Bankas contends that it would be more expensive for *him* to be tried in Madison because of travel, room and board costs. The government disagrees, citing to 18 U.S.C. §4285, which provides that the marshals service, upon court order, shall pay Bankas's transportation to this court and a per diem subsistence allowance while he is in Madison. By contrast, the government alleges that sending its prosecution team to Dallas would at least double the cost to the taxpayers.

¹ "His career as a professor is essentially on hold until this matter is concluded." Aug. 9, 2005 letter of counsel.

Bankas rejoins that § 4285 is a one-shot deal meant to bring a defendant in for trial; this is insufficient, declares Bankas, because it is “imperative” that he have “face to face contact” with his attorney during their pretrial preparation. Therefore, so long as his attorney is located in Madison, Bankas will incur additional inconvenience and expense traveling here. If his case were transferred to Dallas, then he would receive a new federal defender located closer to Bankas, thus eliminating the majority of these expenses.

This intersects with factor 7, location of counsel, which technically favors *not* transferring the case because the federal defender represents Bankas and the district’s federal defender is proximate to the courthouse. But as a practical matter, argues Bankas, this is a detriment, not a benefit, since it prevents the face-to-face meetings he needs with his attorney to prepare his defense. Further, the detriment could be transformed into a benefit upon transfer because a federal defender in Dallas would assume representation.

Whether factors 6 and 7 tilt toward transfer depends in part on whether this court agrees with Bankas that it is imperative for him to have face-to-face meetings with his attorney before trial. Face-to-face pretrial meetings between a defendant and his attorney are important, especially where there appears to be a serious attempt to mount a defense. But Bankas and his attorney already have met in person for a long meeting prior to the arraignment. They have instant access to each other *via* e-mail, telephone and telefax, not to mention snail mail and courier services. Bankas is a highly educated author who holds a Ph.D. in law with no ongoing job responsibilities that would prevent him from devoting

his time to hands-on case preparation in electronic consultation with his appointed attorney. Factors 6 & 7, combined, would seem to tilt toward transfer only mildly at best.

But that's not the entire picture: Bankas currently is represented by an energetic federal defender who already is working diligently on this case. Replacing a known good attorney with a new, unknown attorney in Texas would be to start over with a cipher for counsel, thus erasing most of the benefits otherwise anticipated by transfer. Perhaps Bankas would get another attorney of equal quality, but there is no guarantee that a federal defender in a large, urban district would have the time or inclination to dedicate him/herself to a relatively minor fraud prosecution the way that Mr. Coad has. It might strike Bankas as unfair and ironic for this court to use his attorney's skill and dedication, as demonstrated in part by the vigor of the instant motion, as a ground *not* to transfer, but it is logical and equitable to do so. As a result, the totality of circumstances considered so far do not show that this case would be better off transferred.

Intertwined with factors 6 & 7 is factor 2, the location of witnesses. Event witnesses are scattered across America and England, so they do not tilt the balance in either direction. Bankas, however, claims to have "many" character witnesses in Texas. The government responds that all of these witnesses can be subpoenaed to testify at trial in Madison at no cost to Bankas. Bankas replies that because his attorney is in Madison, it will be difficult to prepare these witnesses; therefore, it is imperative to transfer this case to Texas so that a federal defender from Dallas can meet with and prepare these witnesses.

At least one federal district has found that in fraud cases, where the defendant's *mens rea* and general character are at issue, "the availability and convenience of [character] witnesses, while not a controlling factor, is one that should be given considerable weight." *United States v. Russell*, 582 F.Supp. 660, 663 (S.D.N.Y.). But the weight of this factor is undermined by the vagueness of Bankas's proffer. He has not identified any specific character witnesses, and he proffers only that "many" of his witnesses will be located in Texas and that "they will likely constitute a good portion of [his] defense." Defendant's Reply, dkt. 10, at 3. This is not enough demonstrate that this case is better off transferred to Texas.

There is no reason to believe that a defense investigator located in Texas—or Bankas personally—cannot identify and screen any Dallas area character witnesses. There is no valid reason to conclude that defense counsel in Madison cannot adequately prepare such witnesses via electronic media as opposed to in person. There is no showing that the number of character witnesses or their personal circumstances makes it impractical or inefficient to bring them to Madison to testify at trial. Perhaps factor 2 fits in the "favors transfer" column, but its weight is minimal.

Factor 9 remains, the docket conditions of the courts in Madison and Dallas. Neither side has offered any information about how the Northern District of Texas would schedule this case if it were transferred. It is fair to infer, however, that the fastest route to resolution runs through the Western District of Wisconsin because we have set a firm December 12,

2005 trial date. The only reason we waited that long is because Bankas was concerned that obtaining evidence from England might take a while. To the extent that the public is entitled to a speedy trial under 18 U.S.C. § 3161 and to the extent that Bankas is concerned about putting this prosecution behind him as quickly as possible so that he may recommence his job search, this factor favors not transferring the case.

In conclusion, there are factors cutting in both directions. Perhaps a different court could reach a different conclusion. That said, having considered the evidence, the proffers and the arguments of the parties, I conclude that this case would not be better off transferred to the Northern District of Texas.

Therefore, it is ORDERED that defendant Ernest K. Bankas's motion to transfer is DENIED.

Entered this 8th day of September, 2005.

BY THE COURT:
/s/
STEPHEN L. CROCKER
Magistrate Judge