

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Criminal Division – Misdemeanor Branch

UNITED STATES

*

v.

*

2021 CMD 000187

EARL A. GLOSSER

*

Judge Neal E. Kravitz

Status Hearing: April 1, 2022

Defendant

*

**DEFENDANT'S WAIVER OF JURY TRIAL
AND MEMORANDUM IN SUPPORT**

Comes now the Defendant, through undersigned counsel, and waives his right to a jury trial pursuant to the Sixth Amendment to the Constitution and applicable statute and rule. Defendant requests that the court set this matter for a bench trial.

MEMORANDUM IN SUPPORT

A defendant in a criminal matter other than a petty offense enjoys a right to a trial by jury. *Singer v. United States*, 380 U.S. 24, (1965). D.C. Code § 16-705(a) provides:

In a criminal case tried in the Superior Court in which, according to the Constitution of the United States, the defendant is entitled to a jury trial, the trial shall be by jury, unless the defendant in open court expressly waives trial by jury and requests trial by the court, and the court and the prosecuting officer consent thereto. In the case of a trial without a jury, the trial shall be by a single judge, whose verdict shall have the same force and effect as that of a jury.

Similarly, Super. Ct. R. "(a) Jury Trial. If the defendant is entitled to a jury trial, the trial must be by jury unless: (1) the defendant waives a jury trial in writing and orally in open court; (2) the government consents; and (3) the court approves."

The government need not articulate its reasons for a jury trial. *Singer*, 380 U.S. at 37. However, the Court in *Singer* explicitly left the door open to an instance when a defendant's reasons for desiring a bench trial are so compelling that they override the government's interest in a jury trial and the presumption that a prosecutor is acting with the "twofold aim that guilt shall not escape or innocence suffer." *Id.*

Here, the government has taken every opportunity to tie its allegations against Mr. Glosser to wholly unrelated crimes and unsavory activities that happened hours earlier. The government has been unable to identify what exhibits it intends to use at trial and, when asked by this Court, advised that it intends to introduce into evidence irrelevant video from hours earlier. Mr. Glosser is charged with a single count of unlawful entry for allegedly refusing to leave a parking lot. Admitting video of a riot he took no part in would serve no interest other than to inflame the passions of a jury. The government's representations to the court overcome the presumption in *Singer*.

A related problem would occur if Mr. Glosser were tried with co-defendants against whom video from earlier in the day were admitted. Even if the evidence were not admitted against Mr. Glosser and the court gave a limiting instruction, the effect of using video of a riot would be to inflame the passions of the jury to Mr. Glosser's detriment.

One of the other concerns here is the amount of press coverage the events of January 6, 2021, have received in Washington D.C. and around the country. Indeed, some news outlets have covered the events of January 6 almost every day since it happened. This has undoubtedly caused potential jurors to form a strong opinion prior to trial and Mr. Glosser would be deprived of fair adjudication of this case due to the "Passion, prejudice and public feeling" caused by the year-long intense media coverage. *Doepel v. United States*, 434 A.2d 449, 456 (D.C. 1981).

A pragmatic concern is that Mr. Glosser lives in North Carolina and is not a man of means. Undersigned counsel represents him through the CJA panel. A jury trial with multiple co-defendants would take much longer than a bench trial and present a major strain on Mr. Glosser's finances.

One of the safeguards discussed in *Singer* to ensure the fairness of a jury trial, change of venue, is not available in the District of Columbia. 380 U.S. at 35. The other two

safeguards discussed, voir dire and peremptory challenges, are inadequate here. The District of Columbia is a unique jurisdiction where 92.1% of the population voted for President Biden and only about 5% voted for President Trump¹. The riot that occurred earlier in the day on January 6, 2021, has been deeply polarizing for this country. Finding an impartial jury would be very difficult and media coverage of jury selection could very well make it impossible. Additionally, there could very well be a problem of outside influences on the jury. A sitting member of Congress recently flew halfway across the country and urged a mob and “Get more confrontational” outside a courthouse with no consequences². Superior Court is walking distance from the Capitol Building.

For the foregoing reasons, Mr. Glosser is desirous of a bench trial and believes that he has met his burden of demonstrating a compelling interest in having one.

1 <https://www.washingtonpost.com/elections/election-results/district-of-columbia-2020/>

2 <https://www.cnn.com/2021/04/19/politics/maxine-waters-derek-chauvin-trial/index.html>

Respectfully Submitted,

/s/ Joseph W. Fay

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CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2022, a copy of the foregoing was served upon the United States Attorney via the case file express file and serve function.

/s/ Joseph W. Fay

Joseph W. Fay