

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
 v.)
)
DZHOKHAR TSARNAEV)

CRIMINAL NO. 13-10200-GAO

**MOTION TO PROTECT DEFENDANT FROM PREJUDICIAL EFFECTS OF
“SUPPORTERS” DEMONSTRATIONS AT COURTHOUSE**

Defendant, Dzhokhar Tsarnaev, by and through counsel, respectfully requests that the Court direct the United States Marshals Service to take reasonable measures to protect his right to a fair trial from the deleterious and prejudicial impact of demonstrations by self-appointed “supporters” in the immediate vicinity of the Joseph R. Moakley United States Courthouse during all future proceedings in his case.

Shortly before the beginning of the final pretrial conference in his case on December 18, 2014, in the immediate vicinity of the courthouse, a group of demonstrators claiming to be “supporters” of the defendant were involved in a confrontation with members of the public, including a man who was severely injured by a bomb at the Boston Marathon on April 15, 2013. The demonstrators held signs and shouted statements to the effect, among other things, that the bombing and the survivors’ injuries were staged. Two news reports described the scene as follows:

His supporters, who claim Tsarnaev was set up and is actually innocent, massed outside the court building armed with provocative signs. Two women caught the eye of marathon bombing survivor Marc Fucarile, who limped by with a cane needed after he lost his right leg in the carnage.

“That’s trickery?” Fucarile fumed as he lifted his prosthetic leg to show the damage Tsarnaev is accused of doing to score of innocents.

Bev Ford, *Boston Marathon bombing survivor points to lost leg, confronts*

Dzhokhar Tsarnaev supporters outside courthouse: 'That's trickery?' NEW YORK

DAILY NEWS (December 18, 2014).

Outside the courthouse, a man who lost his right leg in the bombings had a testy exchange with a small group of protesters holding signs supporting Tsarnaev and questioning whether authorities have proof that he is responsible for the bombings.

Marc Fucarile held up his prosthetic leg and moved it back and forth toward the demonstrators, saying: "That's proof right there."

Associated Press, *Tsarnaev appears in court for 1st time since 2013*, BOSTON HERALD

(December 18, 2014). Many of the "supporters" who appear at the courthouse before

every court proceeding advocate various conspiracy theories concerning the Marathon

bombing, including that the resulting deaths and injuries have been somehow faked as a

part of a government plot.

The defendant and his counsel understand that all citizens enjoy the right to publicly display their opinions, no matter how outrageous. However, courthouses and their grounds are not public forums, and have "not been traditionally held open for the use of the public for expressive activities." *United States v. Grace*, 461 U.S. 171, 178 (1983) (holding that the Supreme Court building and its grounds other than public sidewalks are a non-public forum). At the same time, governments "may adopt safeguards necessary and appropriate to assure that the administration of justice at all stages is free from outside control and influence." *Cox v. Louisiana*, 379 U.S. 559, 562 (1965).

The continuing presence in the immediate vicinity of the courthouse entranceways of demonstrators — including those who gather to challenge as fabricated the injuries suffered by the survivors as they attempt to attend the proceedings — poses a grave threat to the fairness of the defendant’s trial. Beginning on January 5, prospective jurors and witnesses will be required to enter the courthouse through the same entranceways. Survivors, jurors, witnesses, and members of the public must be able to attend court without being assaulted by inflammatory accusations from any source. If they cannot, the fairness of the defendant’s trial is likely to be gravely harmed, in part because of the natural but false inference that the defendant and his counsel agree with the outrageous conspiracy theories that are being so vociferously advanced by demonstrators claiming to be the defendant’s “supporters.”

The defendant and his attorneys are powerless to protect the fairness of his trial from the destructive activities of these demonstrators. He therefore moves that the Court take such action as necessary to ensure that jurors, survivors, witnesses, and members of the public are able to enter and leave the courthouse before and during all future proceedings without having to pass through a gauntlet of demonstrators bearing insulting and inflammatory messages.

Conclusion

For the foregoing reasons, the Court should direct the USMS to take all reasonable measures to ensure that no public demonstrations in the vicinity of the Joseph R. Moakley United States Courthouse regarding the merits of this case are permitted to affect the fairness of the proceedings.

Respectfully submitted,

DZHOKHAR TSARNAEV
by his attorneys

/s/ David I. Bruck

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Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on December 22, 2014.

/s/ David I. Bruck