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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

NO: CR 06-538 JCH

DANUEL DEAN QUAINANCE, et al.,

Defendants.

TRANSCRIPT OF PROCEEDINGS

CHANGE OF PLEAS

August 18, 2008

BEFORE: HONORABLE W. DANIEL SCHNEIDER
UNITED STATES MAGISTRATE JUDGE

1 APPEARANCES

2 For the Plaintiff:

3 US ATTORNEY'S OFFICE
4 555 S. Telshor Blvd., Suite 300
5 Las Cruces, NM 88011-8646
6 505-522-2304
7 BY: LUIS A. MARTINEZ, ESQ.
8 AMANDA GOULD, ESQ.

9 For Defendant Danuel Dean Quaintance:

10 JERRY DANIEL HERRERA, ESQ.
11 509 13th Street, SW
12 Albuquerque, New Mexico 87102
13 505-262-1003

14 For Defendant Mary Helen Quaintance:

15 JOHN F. ROBBENHAAR, ESQ.
16 1011 Lomas Blvd., NW
17 Albuquerque, NM 87102
18 505-242-1950

19 Defendants Mary and Danuel Quaintance appeared in
20 person.

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1 (Court in session at 10:31 a.m.)

2 THE COURT: All right, go ahead and call
3 the case.

4 THE DEPUTY CLERK: United States vs Danuel
5 Quaintance and Mary Helen Quaintance.

6 THE COURT: All right. We're here for a
7 change of plea; is that correct?

8 MR. MARTINEZ: Yes, Your Honor. Luis
9 Martinez and Amanda Gould for the United States.

10 MR. HERRERA: Your Honor, good morning.
11 JD Herrera, along with Danuel Quaintance.

12 MR. ROBBENHAAR: Good morning, Your Honor.
13 John Robbenhaar. I'm here on behalf of Mary
14 Quaintance, who is present.

15 THE COURT: Okay. Do I have the originals
16 of the plea agreements up here at this point? I
17 think I do.

18 Does either counsel have a problem with
19 proceeding at the same time with the plea?

20 MR. MARTINEZ: No, sir.

21 MR. HERRERA: No.

22 MR. ROBBENHAAR: No, Your Honor.

23 THE COURT: The government has no problem?

24 MR. MARTINEZ: No, Your Honor.

25 THE COURT: All right. Let's go ahead and

1 swear the defendants.

2 (Defendants Danuel and Mary Quaintance
3 were duly sworn.)

4 THE DEPUTY CLERK: Please state your name
5 for the record.

6 DEFENDANT MARY QUAINANCE: Mary
7 Quaintance.

8 DEFENDANT DANUEL QUAINANCE: Danuel
9 Quaintance.

10 THE COURT: All right. What I will do is
11 I'll ask Mary -- you can always answer first, but
12 I'm going to ask you a bunch of questions that will
13 be the same.

14 First of all, you've already stated your
15 name. Mary, how old are you?

16 DEFENDANT MARY QUAINANCE: I forgot, 53.

17 THE COURT: That's all right. And Danuel?

18 DEFENDANT DANUEL QUAINANCE: Fifty-six,
19 Your Honor.

20 THE COURT: All right. Mary, how far did
21 you go to school?

22 DEFENDANT MARY QUAINANCE: Twelve, but I
23 didn't graduate.

24 THE COURT: All right.

25 DEFENDANT DANUEL QUAINANCE: One year of

1 junior college.

2 THE COURT: All right. Are either of you
3 presently under the influence of any medicine, drugs
4 or alcohol?

5 DEFENDANT MARY QUAINANCE: No.

6 DEFENDANT DANUEL QUAINANCE: No, sir.

7 THE COURT: Have you recently been treated
8 for any illness or addiction to drugs?

9 DEFENDANT MARY QUAINANCE: No.

10 DEFENDANT DANUEL QUAINANCE: No, sir.

11 THE COURT: And do you understand what
12 we're here for today?

13 DEFENDANT MARY QUAINANCE: Yes, sir.

14 DEFENDANT DANUEL QUAINANCE: Yes, sir.

15 THE COURT: Have you both been given a
16 copy of the indictment in this case?

17 DEFENDANT MARY QUAINANCE: Yes, sir.

18 DEFENDANT DANUEL QUAINANCE: Yes, sir.

19 THE COURT: All right. In the indictment,
20 you are both charged under Count 1 with conspiracy
21 to commit the following offense against the United
22 States: Possession with intent to distribute 100
23 kilograms or more of marijuana. And in Count 2
24 you're charged with intentionally possessing, with
25 intent to distribute, 50 kilograms of marijuana.

1 Have you had a chance to discuss these
2 charges with your attorney?

3 DEFENDANT MARY QUAINANCE: Yes, sir.

4 DEFENDANT DANUEL QUAINANCE: Yes, Your
5 Honor.

6 THE COURT: And you're satisfied with the
7 representation your attorneys have given you?

8 DEFENDANT MARY QUAINANCE: Yes, sir.

9 DEFENDANT DANUEL QUAINANCE: Yes, Your
10 Honor.

11 THE COURT: All right. First I'm going to
12 need a consent. Have you all filled out a consent
13 form?

14 MR. ROBBENHAAR: You know, it was at the
15 last minute when Judge Herrera told us you were
16 going come down and take the plea. So we haven't
17 even --

18 (Discussion off the record.)

19 THE COURT: While they're doing that, let
20 me state for the record the case number. This is
21 criminal number 06-538, with Judge Herrera as the
22 sentencing judge.

23 All right. I have a couple of documents
24 here I want to go over with both of you. First,
25 signed by both of you, I have two forms that are

1 identical, and they are called Consent to Proceed
2 Before a United States Magistrate Judge in a Felony
3 Case.

4 Mary, is that your signature on that
5 document?

6 DEFENDANT MARY QUAINANCE: Yes, sir.

7 THE COURT: And let me ask you, Dan: Is
8 that yours on that document?

9 DEFENDANT DANUEL QUAINANCE: Yes, sir.

10 THE COURT: All right. You both have a
11 right to have this plea taken in front of a US
12 District Judge. By signing this consent, you agree
13 to have it taken in front of me, a United States
14 Magistrate Judge. Do you understand that?

15 DEFENDANT MARY QUAINANCE: Yes, sir.

16 DEFENDANT DANUEL QUAINANCE: Yes, sir.

17 THE COURT: And that's what you wish to
18 do?

19 DEFENDANT MARY QUAINANCE: Yes, sir.

20 DEFENDANT DANUEL QUAINANCE: Yes, sir.

21 THE COURT: I find that the consent is
22 knowing and voluntary, and I'll accept them both.

23 I also have what I believe to be virtually
24 identical documents pertaining to both of you
25 entitled Conditional Plea Agreement.

1 First let me ask you, Mary: Is that your
2 signature on page 7, the last page of that
3 agreement?

4 DEFENDANT MARY QUAINANCE: Yes, Your
5 Honor.

6 THE COURT: And also consisting of seven
7 pages, is that your signature on the second page,
8 Dan?

9 DEFENDANT DANUEL QUAINANCE: Yes, Your
10 Honor.

11 THE COURT: All right. Now, have both of
12 you had enough time to read and review this plea
13 agreement with your attorney before signing it?

14 DEFENDANT MARY QUAINANCE: Yes, sir.

15 DEFENDANT DANUEL QUAINANCE: Yes, sir.

16 THE COURT: Now, has anyone -- first of
17 all, let me ask you: Do you understand all the
18 terms of your plea agreement?

19 DEFENDANT MARY QUAINANCE: Yes, sir.

20 DEFENDANT DANUEL QUAINANCE: Yes, sir.

21 THE COURT: All right. Has anybody
22 coerced you in order to get you to plead guilty?

23 DEFENDANT MARY QUAINANCE: No, Your
24 Honor.

25 DEFENDANT DANUEL QUAINANCE: No, Your

1 Honor.

2 THE WITNESS: Were any promises made to
3 you other than the promises that may be contained in
4 the plea agreement?

5 DEFENDANT MARY QUAINANCE: No, Your
6 Honor.

7 DEFENDANT DANUEL QUAINANCE: No, Your
8 Honor.

9 THE COURT: All right. Are you pleading
10 guilty voluntarily because you are in fact guilty?

11 DEFENDANT MARY QUAINANCE: Yes, Your
12 Honor.

13 DEFENDANT DANUEL QUAINANCE: Yes, sir.

14 THE COURT: All right. Do you realize
15 that by pleading guilty to a felony, you're giving
16 up certain of your civil rights, such as the right
17 to bear arms and the right to vote?

18 DEFENDANT MARY QUAINANCE: Yes, Your
19 Honor.

20 DEFENDANT DANUEL QUAINANCE: Yes, sir.

21 THE COURT: All right. By pleading
22 guilty, you're giving up your right to a jury trial,
23 you're giving up your right to confront and
24 cross-examine the witnesses against you, you're
25 giving up your right to remain silent and not be

1 compelled to testify against yourself. You're also
2 giving up your right to present evidence, to testify
3 and to compel the attendance of witnesses to testify
4 on your own behalf.

5 Do you understand all of these rights?

6 DEFENDANT MARY QUAINANCE: Yes, sir.

7 DEFENDANT DANUEL QUAINANCE: Yes, sir.

8 THE COURT: All right. Do you understand
9 that by pleading guilty this morning, you're giving
10 those rights up?

11 DEFENDANT MARY QUAINANCE: Yes, sir.

12 DEFENDANT DANUEL QUAINANCE: Yes, sir.

13 THE COURT: All right. Now you've
14 indicated that you've read and understand your plea
15 agreement. But I'm going to go over certain
16 portions of it with you at this time.

17 First, on page 2, paragraph 4, the
18 sentence in that paragraph, have you discussed with
19 your attorney the maximum penalty the Court could
20 impose for these violations, which under Count 1, as
21 to both of you, could include, among other
22 punishments, a period of imprisonment of not less
23 than five nor greater than 40 years in prison?

24 And under Count 2, the maximum penalty,
25 among other punishments, could include a period of

1 imprisonment of not more than 20 years.

2 Have you discussed that maximum sentence
3 with your attorney?

4 DEFENDANT MARY QUAINANCE: Yes, sir.

5 DEFENDANT DANUEL QUAINANCE: Yes, sir.

6 THE COURT: All right. Now, do you
7 understand that the sentencing judge is not bound by
8 your plea agreement, and that it will be up to the
9 sentencing judge to decide whether or not to accept
10 that plea agreement?

11 DEFENDANT MARY QUAINANCE: Yes, sir.

12 DEFENDANT DANUEL QUAINANCE: Yes, sir.

13 THE COURT: Now, the sentencing judge is
14 going to calculate the applicable Sentencing
15 Guidelines range and consider that range and
16 possible departures from that range under the
17 Sentencing Guidelines, along with other sentencing
18 factors set out by law.

19 Have you discussed that with your
20 attorney?

21 DEFENDANT MARY QUAINANCE: Yes, sir.

22 DEFENDANT DANUEL QUAINANCE: Yes, sir.

23 THE COURT: Now, it appears in this
24 sentencing agreement that there's no agreement under
25 Rule 11(c)(1)(C). Is that right, counsel?

1 MR. HERRERA: That's correct, Your Honor.

2 MR. ROBBENHAAR: That is correct, Judge.

3 THE COURT: All right. And also, it
4 appears in here that counsel -- excuse me -- that
5 defendants are reserving their right to appeal any
6 of the issues already litigated in this case. Is
7 that correct?

8 MR. ROBBENHAAR: Correct, Your Honor.

9 MR. HERRERA: That's correct.

10 THE COURT: Should they be successful in
11 that appeal, they would have a right to withdrawal
12 their guilty pleas; is that correct?

13 MR. HERRERA: That would be my
14 understanding.

15 MR. ROBBENHAAR: Yes, sir.

16 THE COURT: All right. And is that your
17 understanding, too?

18 DEFENDANT MARY QUAINANCE: Yes, Your
19 Honor.

20 DEFENDANT DANUEL QUAINANCE: Yes, Your
21 Honor.

22 THE COURT: All right. It also appears as
23 a condition of the agreement that both of you plead
24 together, which is what we're doing here at this
25 time. Is that correct?

1 MR. HERRERA: Yes, Your Honor.

2 MR. ROBBENHAAR: Yes, Your Honor.

3 THE COURT: All right. In order to accept
4 the plea, I've got to be satisfied that there's a
5 factual basis. Would the government state its
6 factual basis, please?

7 MR. MARTINEZ: Yes, Your Honor. On or
8 about the 13th day of February and through the 22nd
9 day of February 2006, the defendants agreed,
10 together with other people, including Mr. Butts and
11 Mr. Kripner, to possess with intent to distribute
12 more than 100 kilograms of marijuana.

13 To further the conspiracy, Mr. Butts was
14 sent to Missouri to transport marijuana. He was
15 arrested. He had documents which connected him to
16 the defendants here before the Court.

17 Subsequently and continuing in furtherance
18 of the conspiracy, on the 22nd day of February 2006,
19 Mr. Kripner was arrested with 78.5 kilograms of
20 marijuana in a vehicle that had been leased with
21 money from the defendants in order to transport the
22 marijuana. The defendants had sent Mr. Kripner to
23 carry this marijuana.

24 The defendants themselves were arrested
25 shortly after Mr. Kripner had been arrested and that

1 marijuana had been seized. Documents connecting all
2 parties were seized, in addition to walkie-talkies,
3 which were set at the same channel that the
4 defendants had in the vehicle they were driving and
5 that were in the vehicle that Mr. Kripner, the
6 co-conspirator, was driving.

7 THE COURT: All right. And there's a
8 stipulation in the plea agreement, if I recall, that
9 the amount of marijuana that we're talking about
10 here that each defendant is responsible for is
11 150 kilograms; is that correct?

12 MR. MARTINEZ: That's correct, Your Honor.

13 THE COURT: Okay. Let me ask you, Mary:
14 You've heard the facts as stated by the Assistant US
15 Attorney and the stipulation you've entered into
16 concerning 150 kilograms of marijuana. Do you agree
17 that that's what occurred here and that that was
18 your part in this thing?

19 DEFENDANT MARY QUAINANCE: Yes, Your
20 Honor.

21 THE COURT: All right. Let me ask you the
22 same question, Dan.

23 DEFENDANT DANUEL QUAINANCE: Yes, Your
24 Honor.

25 THE COURT: I'm satisfied with the factual

1 basis.

2 And at this time let me ask Mary: As to
3 Count 1 of the indictment, charging you with
4 conspiracy to possess and distribute 50 kilograms
5 and more of marijuana and aiding and abetting, how
6 do you plead?

7 MR. ROBBENHAAR: Your Honor, I'm sorry to
8 interject. I think we're dealing with the
9 superseding indictment dated May 17th, 2006. I
10 don't know if the Court has that.

11 THE COURT: I do. All right. So --

12 MR. ROBBENHAAR: It concerns a quantity of
13 100 kilograms or more of marijuana, which would be
14 Count 1.

15 THE COURT: You're right. I was reading
16 the upper part of the indictment, so we'll note that
17 it's 100. Let me rephrase that then.

18 As to Count 1 of the indictment, charging
19 you with conspiracy with intent to possess and
20 distribute 100 kilograms and more of marijuana, how
21 do you plead?

22 DEFENDANT MARY QUAINANCE: Guilty.

23 THE COURT: All right. As to Count 2,
24 charging you with unlawfully and knowingly and
25 intentionally possessing with intent to distribute

1 50-kilograms and more of marijuana, how do you
2 plead?

3 DEFENDANT MARY QUAINANCE: Guilty.

4 THE COURT: All right. And 50 is correct
5 for the second one?

6 MR. MARTINEZ: That's correct, Your Honor.

7 THE COURT: All right. Let me go to you,
8 Danuel. With respect to Count 1, charging you with
9 conspiracy to possess with intent to distribute
10 100 kilograms and more of marijuana, how do you
11 plead?

12 DEFENDANT DANUEL QUAINANCE: Guilty.

13 THE COURT: And as to Count 2, charging
14 you with possession with intent to distribute
15 50 kilograms and more of marijuana, how do you
16 plead?

17 DEFENDANT DANUEL QUAINANCE: Guilty, Your
18 Honor.

19 THE COURT: All right. It is the finding
20 of the Court that the defendants are fully competent
21 and capable of entering informed pleas; that the
22 defendants are aware of the nature of the charges
23 and the consequences of the pleas; and that the
24 pleas of guilty are knowing and voluntary pleas
25 supported by independent evidence of the elements of

1 the offenses charged.

2 The pleas of guilty are therefore accepted
3 by the Court, and you are adjudged guilty of the two
4 offenses, each of you.

5 The sentencing judge, as I stated earlier,
6 will decide whether or not to accept your plea
7 agreement. A presentence report will be prepared.
8 You need to cooperate with the Probation Department
9 so they may prepare a full and complete report.

10 Your attorneys may be present for all
11 meetings you have with the Probation Department.
12 You must comply with their guidelines for filing any
13 objections or corrections to that presentence
14 report.

15 At your sentencing, you're going to have
16 the right to make a statement on your own behalf to
17 the sentencing judge and also have your attorneys
18 make a statement on your behalf.

19 Anything further from the government on
20 this?

21 MR. MARTINEZ: No, Your Honor. Thank you.

22 THE COURT: All right. Anything further
23 from the defense?

24 MR. HERRERA: No, Your Honor.

25 MR. ROBBENHAAR: No, Your Honor.

1 THE COURT: All right. I guess the only
2 remaining issue then is whether the defendants
3 should remain free, pending sentencing. I note the
4 status report from the pretrial probation people.

5 And is there any objection to following
6 their recommendation by the government?

7 MR. MARTINEZ: No, Your Honor.

8 THE COURT: All right. You will be
9 continued then on conditions of release previously
10 imposed.

11 MR. HERRERA: Thank you, Your Honor.

12 MR. ROBBENHAAR: Thank you very much, Your
13 Honor.

14 THE COURT: All right. We'll be in
15 recess.

16 (Court in recess at 10:47 a.m.)

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REPORTER'S CERTIFICATE

I, Paul Baca, Official Court Reporter for the US District Court, District of New Mexico, do hereby certify that I reported the foregoing proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings and was reduced to printed form under my direct supervision.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case and that I have no interest in the final disposition of this case.

PAUL BACA
NM Certified Court Reporter No. 112
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