

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 06-538 JH

DANUEL QUAINANCE,

Defendant.

DANUEL QUAINANCE' FORMAL OBJECTIONS TO PRESENTENCE REPORT

Danuel Quaintance, by and through his counsel, hereby provides notice to the court and counsel that he adopts and incorporates by reference *formally*, his objections as contained in his letter of informal objections to Mindy Pirkovic of November 28, 2008.

Electronically filed on 03 January 2009

JERRY DANIEL HERRERA
Attorney for Danuel Quaintance
509 13th Street, SW
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I hereby certify that I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to opposing counsel of record on this date.

Electronically filed on 03 January 2009.

28 November 2008

Mindy Perkovic
United States Probation Officer
333 Lomas Blvd., NW
Suite 170
Albuquerque, NM 87102-2242

*Sent via facsimile and first class postal
(Facsimile: 348-2701)*

RE: **UNITED STATES OF AMERICA VS. DANUEL QUAINTANCE**
No. CR 06 - 538 JH
Objections to Presentence Investigation Report

Dear Ms. Pervkovic:

Mr. Quaintance and I have reviewed the presentence investigative report in the above-referenced cause. This letter will serve as Mr. Quaintance' objections to that investigative report as follows:

On the second page of what is the biographical data page, the PSR references aliases and lists two dates of birth are neither aliases nor accurate as to his date of birth. Mr. Quaintance date of birth is accurately stated as referenced at the top of the second page as April 13, 1952.

I. FACTS RELATIVE TO MR. BUTTS MISSOURI ARREST

Mr. Quaintance objects to paragraphs 34 and 37 as referenced, relative to the arrest of Joseph Butts in Missouri. For clarity, Mr. Quaintance is not objecting as it relates to relevant conduct of conspiracy, but rather as this relates to any increase as an organizer or leader under U.S.S.G. §3B1.1. Mr. Butts' statement that he was transporting the marijuana he possessed "for the church" should not be equated with transporting it for the Quaintances. Nor should that statement create an implication the Quaintances had knowledge that he was transporting it. The Church is comprised of approximately 200 members in various venues around the United States.

Couriers not unlike the IOMM's of the Church of Cognizance are independent entities and not under the control of anyone in the Church. In addition, they are not required to report to anyone about where they are or what activity thy may be engaged in. This Court, in it's *Order and Memorandum*, as shown in Doc. 192 at 26, denying the Motion to Dismiss (under the sub-heading "f. Structure and Organization" stated:

“ . . .Although the Church of Cognizance has “enlightened cogniscenti,” the members of the church are not led, supervised or counseled by these cogniscenti.” August 22, 2006, Tr at 224.

Mr. Quaintance admits he introduced Mr. Butts to members of the church which may have marijuana. Mr. Quaintance also admits introducing Mr. Butts to members of the church. He also admits that he signed a church document titled “Courier Certificate.” Mr. Quaintance reaffirms that the purpose of the certificate was to provide assurance that Mr. Butts was trustworthy to transport “religious instruments, properties, and sacrament” and therefore “ authorized to Possess, Transport and Distribute, articles essential to the Cogniscenti mode of worship.” Mr. Quaintance has not admitted to having dispatched Mr. Butts.

No documentation exists that declares that the Church “celebrates the use of marijuana.” There is documentation, however, which declares that the Church honors Haoma or Marijuana as the Teacher, Provider and Protector.”

II. REFERENCES TO QUAINTANCE RESIDENCE AS A “COMPOUND”

In paragraph 14, the report references Mr. Kripner as describing the Quaintance residence as a “compound.” Mr. Quaintance objects to this description as being offensive, erroneous and prejudicially inflammatory. Reference to his residence as a compound is not an element of any charged offense, connotes a negative implication and serves only to inflict bias. There have been many references to the Quaintance residence as a compound throughout the investigation of this case, however, this is inaccurate. Discovery at page 77 confirms that there are three separate trailers on three separate lots as follows: 13050 W. La Siesta Belle is the property and residence of the Quaintance’ son and daughter-in-law. 13078 W. La Siesta Belle is the property and residence of the Quaintance’ daughter and son-in-law. The two parcels, 109-59-41 and 42 with the Klondyke Road addresses are the Quaintance’s. Their trailer is on the property line between these two lots.

III. REFERENCES TO ITEMS DISCOVERED AT THE QUAINTANCE RESIDENCE

The discovery erroneously references that during a .25 caliber *Raven* handgun was discovered and taken from the Quaintances. Exhibit –22, page 54, discovery at page 76. This is erroneous. The firearm was actually taken from Tim and Zina’s residence. Discovery at page 76. There is also erroneous reference to other items purportedly removed from the Quaintances’ home when, in fact they too were removed from Tim and Zina’s residence.

IV. UNSUPPORTED REFERENCES TO COCAINE USE

No allegations of other controlled substance use or abuse by Mr. Quaintance surfaced until

after Timothy Kripner violated pretrial conditions of release. His urinalysis revealed his use of cocaine, meth and marijuana. *Evid. Hr. Tr.* 297-298.

TFO case agent Zarate was questioned as to whether any evidence existed to corroborate Mr. Kripner's testimony. No evidence existed corroborating this accusation of co-defendant Kripner. During his testimony, it was established that no evidence of cocaine usage was found during the search of the Quaintances' vehicle on the day of the arrest nor during the search of their residence conducted on March 3, 2006, while they remained in custody following the February 22, 2006 arrest. *Evid. Hr. Tr. At 364 (3-12), 366 (21) to 369 (5)*. It should also be noted that Mr. Kripner is a self-reported cocaine "addict." *Evid. Hr. Tr. At 370 (24), at 282 (12-18)*, with a readily available supply.

V. REFERENCES TO THE PURPORTED RECRUITMENT OF TIMOTHY KRIPNER

Mr. Quaintance disputes that Mr. Kripner was recruited. There were times that Mr. Quaintance would travel to Tucson to discuss events taking place within the church. On one occasion, Mr. Quaintance mentioned the church had decided to establish wellness centers, and to certify couriers. Mr. Kripner expressed an interest in becoming a courier, but when he was told that his compensation would consist of a little marijuana from monasteries using his services he became disinterested and the subject was not brought up again.

Mr. Kripner testified that Mr. Quaintance had discusses the issue of church couriers only on that one occasion, just before he had lost contact with the Quaintances around October, 2005. *Evid Hr. Tr. 284 at 11-12*.

Mr. Kripner lost contact with the Quaintances because he had moved to Phoenix, and Mr. Quaintance no longer had a phone number or address to be able to contact Mr. Kripner. It should be noted that Mr. Kripner's phone number is not in the Quaintance contact list. In fact, there are no numbers in the Quaintance contact list with the Phoenix area code "602," nor with Mr. Kripner's prefix "399."

VI. NO CONTROL OVER BACKPACKERS

During the evidentiary hearing, Mr. Quaintance was asked, "When you receive this donation of cannabis f5rom the monastery in Mexico, who determined what the quantity was?" *Evid Hr. Tr. At 233*. Mr. Quaintance replied, "Him, he's sending it up, I don't tell him how much I want or anything." *Id.* Further, Mr Kripner testified, "The plans changed when we were at McDonald's because somebody made a phone call to Mr. Quaintance, stating that the backpack runners were already there and the marijuana needed to be picked up." *Id at 291 (25)*.

Mr. Quaintance had no knowledge who the "backpackers" were or how to contact them. In fact, Mr. Quaintance speaks no Spanish. At most, Mr. Quaintance was only be able to

meet them at a place directed by the Monastery in Mexico. The Quaintances were in New Mexico on February 22, 2006. The Quaintances were traveling with Mr. Kripner to show him the remote location where the Monastery would have pre-directed to drop off the loads.

Mr. Quaintance further objects to any increase as an organizer or leader relative to Mary Helen Quaintance. Ms. Quaintance participation was limited only to the role of driver. Danuel Quaintance has no drivers license.

There is also a reference to Mr. Quaintance purchasing food in Deming. It was at the McDonalds, that Mr. Quaintance received a telephone call wherein he was asked to pick up some food for the backpackers. He was advised that he would be compensated for this. Without this call, Mr. Quaintance would not have purchased food for the backpackers. It is this lack of scienter about the protocol of food purchases for backpackers that also displays a lack of control over them.

Sincerely,

Jerry Daniel Herrera

JDH:rc

cc: Danuel Quaintance
Luis Martinez, AUSA
John Robbennhaar, Esq