

TRIAL ADVOCACY

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF NITA

UNITED STATES OF AMERICA

vs

NO. CR-1513

FRED PETERS

PRE-TRIAL ORDER

IT IS ORDERED that,

The parties in this case agree to the following agreements of counsel, stipulations, and agree that the following exhibits have been premarked as indicated and have been exchanged, agree that the following witness lists are accurate, and agree that the following jury instructions are acceptable, subject to the reservations described below.

I. AGREEMENTS OF COUNSEL

The parties to this case agree to the following matters:

1. Trial date is March 11, 1992 at 3:00 p.m.
2. Prosecution will sit on the right side of the courtroom.
3. Defense will sit on the left side of the courtroom.
4. Separate verdict forms for each charge.
5. Chain of custody foundational requirements for Prosecution's Exhibits #1, #2, and #3 will not be contested.
6. Fred Peter's Battery and Burglary charges will not be admissible into evidence.
7. DEA Internal Memorandum dated October 30, 1991 to Pending Prosecution File of Fred Peters from Agent Francis Lucco revealing that Fred Peters has been a target of the Major Narcotics Violators Unit is not admissible into evidence.
8. The fact that Fred Peters has been previously tried of these charges in which that trial resulted in a hung jury and mistrial is not admissible into evidence.

9. Statements made by William Howell regarding his partner downstairs will be admissible into evidence.

10. Each party will notify opposing counsel five days prior to trial which witnesses from the witness list in Section IV of this Pre-Trial Order will be called to testify.

## II. STIPULATIONS

The parties to this case stipulate that the following facts are true:

11. Prosecution's Exhibit #1 contains approximately 146.46 grams of cocaine.

12. Prosecution's Exhibit #2 contains approximately 92.45 grams of cocaine.

13. Prosecution's Exhibit #3 contains approximately 1.18 grams of cocaine.

14. October 17, 1991 was a Saturday.

15. Laura Hobson has a conviction for possession of marijuana which occurred on September 8, 1988. Ms. Hobson received two years probation.

16. Fred Peters was arrested for possession of marijuana on July 29, 1990. The case was stricken on leave on December 6, 1990.

17. Laura Hobson was granted immunity to testify in Grand Jury proceedings but Ms. Hobson may still be prosecuted for perjury.

18. DEA Agent Lucco arrested Fred Peters partly on the basis of a statement from William Howell in which Mr. Howell stated that his partner "Buddy" was downstairs.

19. Fred Peters lives with his mother, Ethel Peters, at 1229 West Nelson, Nita City, Nita.

20. New town section of Nita City is located within walking distance of Fred Peter's house.

21. The walk from the New town section of Nita City to Fred Peter's house would take about 10 minutes.

22. Laura Hobson lives with her sister and brother-in-law at 2100 E. 72nd Place, Nita City, Nita.

23. In non-rush hour traffic, the drive from Fred Peters house to Laura Hobson's house is approximately 1/2 hour.

24. Lisle, Nita is an adjoining suburb of Nita City.

25. Richard Louis lives at 5537 E. Lake Drive in Lisle, Nita.

26. In non-rush hour traffic, Richard Louis' apartment is a drive of approximately 45 minutes to one hour from Fred Peter's house.

### III. EXHIBITS

The parties have pre-marked the following exhibits for identification and each party has shown the exhibit to the opposing party:

#### Prosecution's Exhibits 1 through 5

1. Cocaine in the amount of 146.46 grams
2. Cocaine in the amount of 92.45 grams
3. Cocaine in the amount of 1.18 grams
4. Fred Peters' arrest record for possession of marijuana
5. Map of Nita City

#### Defendant's Exhibits A through C

- A. Laura Hobson's conviction of possession of marijuana
- B. Laura Hobson's Grant of Immunity Order
- C. Map of Nita City

### IV. WITNESSES

The parties have composed and exchanged the following witness lists:

#### Prosecution's Witness List

1. Frank P. Lucco
2. Laura Hobson
3. Richard Louis

#### Defendant's Witness List

1. Fred Peters
2. Ethel Peters

### V. JURY INSTRUCTIONS

- A. Instructions Agreed Upon As To Both Content and Applicability

1. (a) The faithful performance of your duties as jurors is essential to the administration of justice.

(b) It is my duty as judge to inform you of the law applicable to this case by instructions, and it is your duty to accept and follow them as a whole, not singling out one instruction to the exclusion of others. You should not consider any rule of law with which you may be familiar unless it is included in my instructions.

(c) It is your duty to determine the facts from the evidence produced in this trial. You are to apply the law as contained in these instructions to the facts and render your verdict upon the evidence and law. You should not permit sympathy, prejudice, or like or dislike of any party to this action or of any attorney to influence your findings in this case.

(d) In deciding the issues you should consider the testimony of the witnesses and the exhibits received in evidence. The introduction of evidence in court is governed by law. You should accept without question my rulings as to the admissibility or rejection of evidence, drawing no inferences that by these rulings I have in any manner indicated my views on the merits of the case.

(e) Opening statements, remarks during the trial, and closing arguments of the attorneys are not evidence but are made only to help you in understanding the evidence and applicable law. Any argument, statements, or remarks of attorneys having no basis in the evidence should be disregarded by you.

(f) I have not intended by anything I have said or done, or by any questions that I may have asked, to intimate or suggest what you should find to be the facts, or that I believe or disbelieve any witness who testified. If anything that I have done or said has seemed to so indicate, you will disregard it.

2. The government has charged the defendant, Fred Peters, with violating the federal narcotics laws, specifically Title 21, Sections 841 and 846 of the United States Code. The defendant has pleaded not guilty.

3. There is a presumption of the defendant's innocence in a criminal prosecution, In this case, Fred Peters, is presumed to be innocent. The defendant is not required to prove his innocence. That presumption of innocence attends and protects him throughout the trial and should continue and prevail in your minds until you are convinced of his guilt beyond a reasonable doubt.

4. The Prosecution must prove beyond a reasonable doubt each element of the offenses charged.

5. Reasonable doubt is not a mere possible or imaginary doubt. It is a doubt that arises from your consideration of the evidence and one that would cause a careful person to pause and hesitate in the graver transactions of life. A juror is satisfied beyond a reasonable doubt if after an impartial consideration of all the evidence he has an abiding conviction of the truth of the charge.

6. In Count One of the indictment, the government alleges that in October, 1991, the defendant, Fred Peters, agreed, confederated, and conspired with William Howell, Thomas Falk, Richard Louis, and Laura Hobson to commit crimes against the United States, specifically to knowingly and intentionally possess, distribute, and dispense cocaine, a Schedule II controlled substance, in violation of Title 21, Section 841(a)(1) of the United States Code.

The government alleges that the objects of the conspiracy were to be accomplished as follows:

(a) That the defendants did unlawfully procure a quantity of cocaine.

(b) That the defendants did unlawfully sell and distribute and facilitate the sale and distribution of a quantity of cocaine.

(c) That the defendants did misrepresent, conceal, hide, and cause to be misrepresented, concealed, and hidden the purposes of and the acts done in furtherance of the conspiracy.

(d) And that to fulfill the objects of the conspiracy the defendants committed overt acts within the Northern District of Nita, among which are the following:

(1) On or about October 17, 1991, William Howell met with Richard Louis in Nita City, Nita.

(2) On or about October 17, 1991, William Howell and Fred Peters met with Laura Anna Hobson at 1229 W. Nelson in Nita City, Nita.

(3) On or about October 17, 1991, Laura Anna Hobson and William Howell traveled to 2100 E. 72nd Place in Nita City.

(4) On or about October 17, 1991, William Howell and Fred Peters traveled with Laura Anna Hobson to Lisle, Nita.

(5) On or about October 17, 1991, William Howell met with Richard Louis and Francis Lucco at Lisle, Nita.

(6) The actual sale and distribution of cocaine charged to William Howell and Fred Peters on Count Two of the indictment are realleged as overt acts in furtherance of the alleged conspiracy.

All in violation of Title 21, Section 846 of the United States Code.

7. Title 21, Section 846 of the United States Code provides:

Any person who . . . conspires to commit any offense defined in this subchapter [which deals with Drug Abuse] is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the . . . conspiracy.

8. A conspiracy is a combination of two or more persons to accomplish an unlawful purpose, or a combination of two or more persons to accomplish a lawful purpose by unlawful means. It is not necessary for co-conspirators to have met and entered into an express or formal agreement. It is sufficient to show that they tacitly came to a mutual understanding to accomplish an unlawful act. Such an agreement may be inferred from the circumstances and the conduct of the parties, since ordinarily a conspiracy is characterized by secrecy.

9. To be a member of the conspiracy it is not necessary that the defendant know all of the other members, nor all of the details of the conspiracy, nor the means by which the objects were to be accomplished. Each member of the conspiracy may perform separate and distinct acts. It is necessary, however, that the government prove beyond a reasonable doubt that Fred Peters was aware of the common purpose, and was a willing participant, with the intent to advance the purpose of the conspiracy.

10. Four essential elements must be proven in order to establish the crime of conspiracy as charged in Count One of the indictment:

First. That a conspiracy was willfully formed, and it was existing at or about the time alleged in the indictment.

Second. That the defendant, Fred Peters, willfully became a member of the conspiracy.

Third. That one of the conspirators committed at least one of the overt acts charged in the indictment at or about the time and place alleged.

Fourth. That such overt act was knowingly done in furtherance of some object or purpose of the conspiracy, as charged.

If the jury should find beyond a reasonable doubt from the evidence in the case that the existence of the conspiracy charged in the indictment has been proven, and that during the existence of the conspiracy one of the overt acts alleged was knowingly done by one of the conspirators in furtherance of some object or purpose of the conspiracy, then proof of the crime of conspiracy as charged is complete.

11. It is not necessary for the government to show that all the overt acts charged in the indictment were performed. One overt act is sufficient. An overt act means any act committed by one or more of the conspirators to accomplish a purpose of the conspiracy. It need not be in violation of the law, and the other conspirators need not join in it, or even know about it. It is necessary only that such act be in furtherance of the purpose or objects of the conspiracy.

12. The defendant, Fred Peters, acted "knowingly" if he acted voluntarily and intentionally, and not because of mistake or other innocent reasons.

13. The defendant, Fred Peters, acted "willfully" if he acted voluntarily and intentionally, with the specific intent to do something the law forbids.

14. In determining whether a conspiracy existed, the jury should consider the actions and declarations of all of the alleged participants. However, in determining whether Fred Peters was a member of the conspiracy, if any, the jury should consider only his acts and statements. He cannot be bound by the acts or declarations of other participants unless and until it is established that a conspiracy existed, and the he was one of its members.

15. The extent of the defendant's participation is not determinative of his guilt or innocence. The defendant may be convicted as a conspirator even though he played a minor part in the conspiracy.

16. If it is established beyond a reasonable doubt that a conspiracy existed and that the defendant, Fred Peters, was one of its members, then the acts and declarations of any other member of the conspiracy, whether performed in or out of Peters' presence, which were done in furtherance of the objects of the conspiracy and during its existence may be considered as evidence against Peters.

However, statements of any conspirator which are not in furtherance of the conspiracy or which were made before its existence or after its termination, may be considered as evidence only against the person making them.

17. A fact in dispute may be proved by circumstantial evidence as well as by direct evidence when, for example, it is proved by witnesses who testify to what they saw, heard, or experienced. A fact is established by circumstantial evidence when its existence can reasonably be inferred from other facts proved in the case. However, circumstantial evidence must be consistent with the guilt of the defendant and inconsistent with the guilt of the defendant and inconsistent with any other reasonable conclusion.

18. You are the sole judges of the weight of the evidence and the credibility of the witnesses. In determining the credibility of any witness and the weight to be given his testimony, you may take into consideration his demeanor while on the witness stand, any prejudice for or against a party, his means of acquiring knowledge concerning any matter to which he testified, any interest he may have in the outcome of the case, the consistency or inconsistency of his testimony, its reasonableness or unreasonableness, and any other fact or circumstance tending to shed light upon the truth or falsity of his testimony.

19. It is charged in Count Two of the indictment that on or about October 18, 1991, at LisLe in the Northern District of Nita, the defendant, Fred Peters, knowingly and intentionally distributed and possessed with the intent to distribute approximately 92.45 grams of cocaine, a Schedule II narcotic drug controlled substance, in violation of Title 21, Section 841(a)(1), of the United States Code.

20. Section 841(a)(1) of Title 21 of the United States Code provides:

It shall be unlawful for any person knowingly and intentionally to . . . possess with intent to manufacture, distribute, or dispense, a controlled substance . . .

21. Two essential elements must be proven in order to establish the crime of possession with the intent to distribute cocaine as charge in Count Two of the indictment.

First. That the defendant, Fred Peters, possessed cocaine with the intent to distribute it.

Second. That the defendant, Fred Peters, did such act or acts knowingly and unlawfully.

As stated before, the burden is always upon the prosecution to prove beyond a reasonable doubt every essential element of the crime charged. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witness or producing any evidence.

22. "Unlawfully" means contrary to law. So, to do an act "unlawfully" means to willfully do something which is contrary to law.

23. The law recognizes two kinds of possession, actual and constructive. A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, knowingly has both the power and the intention, at a given time, to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

Mere presence in the vicinity of a controlled substance, or mere knowledge of its physical location, however, does not constitute possession under the statute.

The law also recognizes that here may be sole or joint possession. If one person alone has actual or constructive possession of a thing, then there is sole possession. If two or more persons share actual or constructive possession of a thing, then there is joint possession.

You may find that the element of possession as that term is used in these instructions is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession, either alone or jointly with others.

24. If the jury should find beyond a reasonable doubt that the accused had possession of cocaine as charged, the fact of such possession alone, unless explained to the satisfaction of the jury by the evidence in the case, permits, but does not require, the jury to draw the inference that the accused possessed the cocaine for distribution.

25. It is alleged that a particular amount or quantity of cocaine was involved. The evidence in the case need not establish that the amount or quantity of cocaine was alleged in the indictment, but only that some measurable amount of cocaine was in fact the subject of the acts charged in the indictment.

26. After hearing arguments of counsel, you will retire to consider and complete the verdict forms.

All 12 of you must agree on the verdict, but only the foreman must sign the verdict.

We agree to the above Pre-Trial Order.

U.S. Assistant Prosecutor

Attorney for Defendant

U.S. Assistant Prosecutor

Attorney for Defendant

Fred Peters  
Defendant

The Hon. Terry Kirkpatrick  
United States District judge  
Northern District of Nita