
No.

In the

Supreme Court of the United States

October Term 2017

Casey Peebles,

Petitioner,

v.

United States of America,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Eighth Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

1. <i>United States v. Peebles</i> , No. 17-1126 (8th Cir. Apr. 30, 2015)	1a-11a
2. Judgment in a Criminal Case (ECF Doc. 706)	12a-18a
3. Trial Transcript Regarding Fed. R. Evid. 801(d)(2)(E) (Trial Tr., Vol. II, 199-206.)	19a-26a
4. Order denying petition for rehearing and rehearing en banc	27a
5. U.S.S.G. § 5K1.1 (<i>Guidelines Manual</i> Nov. 1, 2015)	28a-29a

United States Court of Appeals
For the Eighth Circuit

No. 17-1126

United States of America

Plaintiff - Appellee

v.

Casey Peebles

Defendant - Appellant

Appeal from United States District Court
for the Eastern District of Missouri - St. Louis

Submitted: December 15, 2017

Filed: March 5, 2018

Before SMITH, Chief Judge, KELLY and ERICKSON, Circuit Judges.

ERICKSON, Circuit Judge.

A jury convicted Casey Peebles of two offenses for his participation in a drug trafficking conspiracy. Peebles appeals the district court's¹ denial of his motion for

¹The Honorable E. Richard Webber, United States District Judge for the Eastern District of Missouri.

judgment of acquittal as well as a number of evidentiary rulings. For the reasons that follow, we affirm.

I.

Following a five-day trial, a jury convicted Peebles of conspiracy to distribute 100 grams or more of heroin in violation of 21 U.S.C. §§ 841(a)(1) and 846 and possession with the intent to distribute 100 grams or more of heroin in violation of 21 U.S.C. § 841(a)(1). We recount the pertinent evidence in the light most favorable to the verdict.

In 2013, the St. Louis Metropolitan Police Department was investigating the distribution of narcotics out of an apartment located at 5911A Highland Avenue. The investigation revealed that two brothers, Joseph and Thomas Rander, were among the leaders of an organization moving cocaine, marijuana, and heroin from the San Bernardino, California, area to St. Louis, Missouri, for distribution. An informant, who began cooperating with law enforcement officers following his arrest, had advised investigators that members of the organization preferred to use young female couriers to transport the narcotics as they were less likely to draw the attention of law enforcement. The informant also told law enforcement that the organization had recently received and was distributing a kilogram of heroin out of 5911A Highland Avenue.

Armed with this information, law enforcement began surveilling the Highland Avenue apartment building during the late evening hours on April 2, 2013. Just before midnight, the officers observed a dark-colored Land Rover drive up, and a male (later identified as Peebles) get out of the driver's side door. The man walked into the apartment building. A short time later, they saw the man leave the building while holding a bulky object in the right side of his coat and get back inside the Land Rover.

The informant was inside the apartment while the officers were stationed outside. He relayed to law enforcement what happened after Peebles entered the apartment. The officers briefly followed the Land Rover before stopping it. Law enforcement officers encountered Peebles, Vernon Westcott (Peebles's cousin), and Leah Douglas inside the vehicle. Upon approaching the vehicle, Detective Blake Witzman observed Douglas, who was seated in the rear passenger seat, with her right hand and arm down the front of her pants.

When the initial search did not reveal any heroin, the officers called for a female officer to search Douglas more thoroughly. Officer Erin Becherer arrived at the scene and conducted the search of Douglas. Officer Becherer discovered Douglas was concealing a bag containing 247.3 grams (8.723 oz.) of a substance containing heroin. At nearly the same time, another officer arrived with his trained drug-sniffing dog. During a walk-around, the dog alerted to the area near where Douglas had been seated. Douglas, Westcott, and Peebles were arrested and transported to the Drug Enforcement Administration building for questioning.

Douglas was originally somewhat deceptive during the interview, telling task force officers that she had stolen the heroin from her boyfriend, who was not Peebles or Westcott. By the time of trial, however, Douglas was cooperating and testified that she was dating Peebles at the time of the stop. She explained that she often accompanied Peebles and was asked to hold narcotics for him as they traveled around to distribute the drugs. Douglas testified that on April 2, 2013, she was with Peebles when he drove to the apartment building on Highland Avenue and that Peebles went inside the building for about ten to fifteen minutes. Douglas said that after Peebles drove away, Peebles commented about the police following them, stating "Here come them boys, Cuz." Douglas testified that as Peebles was removed from the vehicle, Westcott handed heroin to Douglas and she hid it in her pants.

At trial, the informant testified about what he observed on April 2, 2013. He told the jury that he saw a male get out of the driver's side door of a dark-colored Land Rover, enter the apartment, and get heroin from Joseph Rander. After Rander delivered the heroin, the informant let the male out of the apartment and the male returned to the Land Rover. The informant did not know the name of the man on the night in question, but identified Peebles in the courtroom as the male he saw that night.

Over Peebles's objection, the informant testified to various statements made on April 2nd by Joseph Rander, including that Rander told the informant to "work the door," or provide security at the apartment while Rander distributed the heroin. The informant also relayed the following additional statements concerning his interactions with Rander:

- "He said Twin people fit'n to come through, we fit'n to be on, we fit'n to be back together."
- "Well, he had got a call, he had got a call from him telling him he was about to pull up; so he had told me to go to the door."
- "When he had left after I had notified the police that he had got the drugs and left, when I had went back upstairs, that's when Joseph Rander had told me he had gave him 9 ounces, he had fronted him."

After the close of evidence, Peebles moved for a judgment of acquittal, arguing the government presented insufficient evidence for a jury to convict him of either charged offense. The district court denied the motion, and the jury found Peebles guilty of both offenses. The district court sentenced Peebles to concurrent 120-month terms of imprisonment on each count.

II.

A. Sufficiency of the Evidence

Peebles first argues that the government presented insufficient evidence to sustain the convictions. We review the denial of a motion for judgment of acquittal *de novo* and will affirm unless, viewing the evidence in the light most favorable to the government and accepting all reasonable inferences which may be drawn in favor of the verdict, no reasonable jury could have found the defendant guilty. United States v. Chatmon, 742 F.3d 350, 352 (8th Cir. 2014). We must uphold the verdict “[i]f there is an interpretation of the evidence that would allow a reasonable-minded jury to find the defendant guilty beyond a reasonable doubt[.]” United States v. Huyck, 849 F.3d 432, 441 (8th Cir. 2017).

To convict Peebles for conspiracy to distribute more than 100 grams of heroin, the government had to prove: “(1) the existence of an agreement among two or more people to achieve an illegal purpose, (2) the defendant’s knowledge of the agreement, and (3) that the defendant knowingly joined and participated in the agreement.” United States v. Whirlwind Soldier, 499 F.3d 862, 869 (8th Cir. 2007). The informant testified that he personally witnessed Rander deliver heroin to Peebles inside an apartment at 5911A Highland Avenue. Peebles’s girlfriend at the time testified as to Peebles’s involvement in distributing heroin and the events that occurred on April 2, 2013. Their testimony is consistent with the law enforcement officers’ observations of Peebles on the night of August 2, 2013, as well as information that the officers had learned during the course of their investigation of the drug trafficking organization.

The fact that key testimony was provided by cooperating co-conspirators does not undermine the sufficiency of the evidence, as the jury is presumed to take that fact into consideration when determining the credibility of the witnesses. United States v. Coleman, 525 F.3d 665, 666 (8th Cir. 2008) (citing United States v. Velazquez,

410 F.3d 1011, 1015–16 (8th Cir. 2005)) (“We have repeatedly upheld jury verdicts based solely on the testimony of co-conspirators and cooperating witnesses, noting that it is within the province of the jury to make credibility assessments and resolve conflicting testimony.”). Viewing the evidence in the light most favorable to the verdict, the evidence was more than sufficient to establish that Peebles was a member of a conspiracy to distribute heroin.

To establish that Peebles possessed heroin with the intent to distribute, the government must prove the defendant knowingly possessed the heroin and he intended to distribute it. United States v. Trejo, 831 F.3d 1090, 1094 (8th Cir. 2016). A person who, although not in actual possession, has both knowledge of presence and control over a thing, either directly or through another person, is in constructive possession of it. United States v. Johnson, 18 F.3d 641, 647 (8th Cir. 1994).

Evidence at trial established that Rander fronted a quarter kilogram of heroin to Peebles and that Peebles took physical possession of the heroin. This evidence, along with its reasonable implications, is sufficient to sustain the conviction. Moreover, during the traffic stop, officers found the heroin on Douglas, who testified that Peebles frequently gave her drugs to hold in order to minimize Peebles’s chances of arrest. This evidence when coupled with Peebles’s presence and conduct at 5911A Highland Avenue was more than sufficient to establish Peebles’s constructive possession of the heroin.

As to the second element, an intent to distribute may be established solely by the quantity of drugs. United States v. Serrano-Lopez, 366 F.3d 628, 635 (8th Cir. 2004). The amount in question was a quarter kilogram (nearly nine ounces) of heroin with a purported street value of \$15,000 to \$18,000. This quantity supports the jury’s finding that Peebles possessed with intent to distribute 100 grams or more of heroin.

B. Evidentiary Rulings

1. *Co-Conspirator Statements*

Peebles argues that the district court erred in admitting statements made by Rander. An out-of-court statement “offered against an opposing party” that “was made by the party’s coconspirator during and in furtherance of the conspiracy” is not hearsay. Fed. R. Evid. 801(d)(2)(E). We review the district court’s admission of out-of-court statements “under Rule 801(d)(2)(E) for an abuse of discretion, ‘keeping in mind that its discretion is particularly broad in a conspiracy trial.’” United States v. Young, 753 F.3d 757, 771 (8th Cir. 2014) (quoting United States v. Davis, 457 F.3d 817, 824–25 (8th Cir. 2006)) (citations omitted). Peebles claims the testimony was inadmissible because the evidence did not support a finding that he was a member of the charged conspiracy or that the statements were anything other than idle chatter. We have concluded that the evidence was sufficient to establish Peebles’s membership in the charged conspiracy. We now review for clear error the district court’s finding that a statement was made in furtherance of a conspiracy. United States v. Beckman, 222 F.3d 512, 522–23 (8th Cir. 2000).

“It is well-established that an out-of-court declaration of a coconspirator is admissible against a defendant if the government demonstrates (1) that a conspiracy existed; (2) that the defendant and the declarant were members of the conspiracy; and (3) that the declaration was made during the course and in furtherance of the conspiracy.” United States v. Bell, 573 F.2d 1040, 1043 (8th Cir. 1978); see also Fed. R. Evid. 801(d)(2)(E). For the reasons explained above, the government presented ample evidence that Peebles was a member of a drug trafficking conspiracy engaged in the distribution of heroin in the St. Louis area. The government also presented ample evidence that Peebles was a member of the conspiracy with Rander, the informant, and Douglas. Finally, the statements at issue, including that “Twin people fit’n to come through . . . [and] be back together”; that Rander directed the informant

to “work the door” when Peebles showed up to get the heroin; and that Rander told the informant that he fronted Peebles nine ounces of heroin, were undoubtedly statements made in furtherance of the drug trafficking conspiracy. The district court did not abuse its discretion in admitting the out-of-court statements under Fed. R. Evid. 801(d)(2)(E).

2. *Impeachment by a Prior Conviction*

We ordinarily review for abuse of discretion when considering whether evidence concerning a prior conviction was properly admitted for impeachment purposes. United States v. Levine, 700 F.2d 1176, 1182 (8th Cir. 1983). However, when a defendant preemptively introduces evidence of a prior conviction on direct examination, he may not argue on appeal that the admission of such evidence was error. Ohler v. United States, 529 U.S. 753, 759–60 (2000). Peebles chose to preemptively introduce his burglary conviction from 2014 during direct examination and thus is precluded from raising this issue on appeal.²

3. *Use of Law Enforcement Officer as Drug Trafficking Expert*

We review a district court’s decision to admit expert testimony “for abuse of discretion, according it substantial deference.” United States v. Holmes, 751 F.3d 846, 849 (8th Cir. 2014). Peebles raises two issues related to the expert testimony of Officer Edward Clay, who testified concerning the *modus operandi* of drug trafficking operations. First, he argues that the district court did not conduct an independent evaluation of the reliability of Officer Clay’s testimony but instead relied on general precedent allowing admission of testimony by expert witnesses in federal drug prosecutions. We have recognized that the “relevant reliability concerns may

² Even if we were to consider the argument, Peebles has failed to demonstrate the conviction was inadmissible under Fed. R. Crim. P. 609.

focus upon personal knowledge or experience rather than scientific foundations.” Id. at 850 (quotations omitted). Officer Clay’s extensive service record related to drug investigations, consisting of twenty-eight years of law enforcement experience and hundreds of narcotics investigations, makes plain that his testimony based on experience was reliable and would have satisfied a more detailed, individualized evaluation. Under these circumstances, the district court’s decision to permit his testimony was not an abuse of discretion.

Second, Peebles argues that Officer Clay’s testimony that drug traffickers have a preference to use young female couriers without extensive criminal histories was impermissible drug courier profile testimony. We have previously disallowed the introduction of drug courier profiles as substantive evidence because it “involves nothing more than the introduction of investigative techniques that law enforcement officers use to identify potential drug couriers.” United States v. Schwarck, 719 F.3d 921, 924 (8th Cir. 2013). We have serious reservations that Officer Clay’s testimony is drug courier profile evidence. Douglas’s testimony detailing her role in the conspiracy was already before the court. Officer Clay provided background information explaining the habits of drug traffickers and couriers. His testimony was likely admissible as *modus operandi* evidence. See United States v. Jeanetta, 533 F.3d 651, 657–58 (8th Cir. 2008) (if the importance of evidence “would not necessarily be apparent to a lay observer,” expert testimony may be necessary to explain its significance in “the world of drug dealing”).

Even if we accepted Peebles’s characterization, the evidence was admissible. Our exclusionary rule was designed to protect criminal defendants from being identified as drug couriers merely based on their profile. Similar concerns are not present when the evidence is offered to establish that someone other than the defendant was potentially a drug courier—as in this case, where the evidence was offered to establish that Douglas fit the profile of a drug courier. Additionally, any

error in allowing Officer Clay's testimony would be harmless due to Douglas's direct testimony about her role as a courier for Peebles .

4. *Limitation of Cross-Examination Regarding Past Instances of Untruthfulness*

Finally, Peebles asserts the district court erred when it precluded him from questioning two police officers, who were part of the group of drug task force officers assigned to monitor 5911A Highland on April 2nd, about their involvement in the 2006 World Series Ticket Scandal. Federal Rule of Evidence 608(b) provides that the district court has discretion when determining if a specific instance of witness untruthfulness may be inquired into on cross-examination. Cross-examination may be limited or denied if the probative value of the evidence is "substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." United States v. Beck, 557 F.3d 619, 621 (8th Cir. 2009).

A limitation on cross-examination does not violate the Sixth Amendment's Confrontation Clause unless the defendant demonstrates that a reasonable jury might have received a significantly different impression of a witness's credibility if counsel had been allowed to pursue the proposed line of cross-examination. United States v. Jones, 728 F.3d 763, 766 (8th Cir. 2013). We have previously affirmed exclusion of the very evidence Peebles sought to introduce in this case. Beck, 557 F.3d at 620–21. While questioning the officers about the scandal may have held some probative value, in light of the nature of the officers' testimony and the corroboration of their testimony by Special Agent Witzman it is unlikely a reasonable jury would have "received a significantly different impression" of their credibility if the evidence had been allowed.

III.

For the foregoing reasons, we affirm Peebles's convictions.

United States District Court

Eastern District of Missouri

UNITED STATES OF AMERICA

v.

CASEY PEEBLES

JUDGMENT IN A CRIMINAL CASE

CASE NUMBER: S1-4:14CR00345-10 ERWUSM Number: 42206-044

T. Patrick Deaton, Jr.

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) _____

pleaded nolo contendere to count(s) _____
which was accepted by the court.

was found guilty on count(s) Two and Five of the Superseding Indictment on October 7, 2016.
after a plea of not guilty

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
21 U.S.C. §846, 21 U.S.C. §841(a)(1), 21 U.S.C. §841(b)(1)(B) and 21 U.S.C. § 851(a)(1)	Conspiracy to Possess With Intent to Distribute Heroin	September 29, 2011, through date of Indictment, October 14, 2015	Two
21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(B) and 21 U.S.C. § 851(a)(1)	Possession With Intent to Distribute Heroin	On or about April 23, 2013	Five

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) _____ dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

January 3, 2017

Date of Imposition of Judgment

E. Richard Webber

Signature of Judge

Honorable E. Richard Webber
Senior United States District Judge
Name & Title of Judge

January 3, 2017

Date signed

DEFENDANT: CASEY PEEBLESCASE NUMBER: S1-4:14CR00345-10 ERWDistrict: Eastern District of Missouri**IMPRISONMENT**

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of 120 months.

This term consists of a term of 120 months on each of counts two and five, such terms to be served concurrently. This sentence shall run concurrently to any sentences imposed by the State of Missouri, 21st Circuit, St. Louis County in Dockets numbered 12SL-CR03829-01 and 2198R-02459-01.

 The court makes the following recommendations to the Bureau of Prisons:

It is recommended that the defendant be evaluated for placement in the Bureau of Prisons facility at Greenville, Illinois. While in the custody of the Bureau of Prisons, it is recommended that the defendant be evaluated for participation in Residential Drug Abuse Program, and a mental health evaluation and treatment. The Court further recommends that the defendant participate in an Occupational/Educational Program, particularly in carpentry, flooring and painting, and in post high school level educational coursework. These recommendations are made to the extent they are consistent with the Bureau of Prisons policies.

 The defendant is remanded to the custody of the United States Marshal. The defendant shall surrender to the United States Marshal for this district:

at _____ a.m./pm on _____
 as notified by the United States Marshal.

 The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____
 as notified by the United States Marshal
 as notified by the Probation or Pretrial Services Office

MARSHALS RETURN MADE ON SEPARATE PAGE

13a

DEFENDANT: CASEY PEEBLESCASE NUMBER: S1-4:14CR00345-10 ERWDistrict: Eastern District of Missouri**SUPERVISED RELEASE**Upon release from imprisonment, the defendant shall be on supervised release for a term of eight years.

This term consists of a term of eight years on each of counts two and five, all such terms to run concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment

The defendant shall comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: CASEY PEEBLES

CASE NUMBER: S1-4:14CR00345-10 ERW

District: Eastern District of Missouri

ADDITIONAL SUPERVISED RELEASE TERMS

While on supervision, the defendant shall comply with the standard conditions that have been adopted by this Court and shall comply with the following additional conditions. If it is determined there are costs associated with any services provided, the defendant shall pay those costs based on a co-payment fee established by the probation office.

1. The defendant shall submit his person, residence, office, or vehicle to a search conducted by the probation office based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
2. The defendant shall refrain from any unlawful use of a controlled substance and submit to a drug test within 15 days of commencement of supervision and at least two periodic drug tests thereafter for use of a controlled substance.
3. The defendant shall participate in a substance abuse treatment program approved by the probation office, which may include substance abuse testing, counseling, Residential Re-entry Center placement, residential or inpatient treatment.
4. The defendant shall participate in a mental health treatment program approved by the probation office.
5. The defendant shall participate in an educational program approved by the probation office, which shall include post high school level coursework.

DEFENDANT: CASEY PEEBLESCASE NUMBER: S1-4:14CR00345-10 ERWDistrict: Eastern District of Missouri

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on sheet 6

AssessmentFineRestitution

Totals:

\$200.00

The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such a determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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Totals: _____

Restitution amount ordered pursuant to plea agreement _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

The interest requirement is waived for the. fine restitution.

The interest requirement for the fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994 but before April 23, 1996.

DEFENDANT: CASEY PEEBLESCASE NUMBER: S1-4:14CR00345-10 ERWDistrict: Eastern District of Missouri**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A Lump sum payment of \$200.00 due immediately, balance due not later than _____, or in accordance with C, D, or E below; or F below; orB Payment to begin immediately (may be combined with C, D, or E below; or F below; orC Payment in equal _____ (e.g., equal, weekly, monthly, quarterly) installments of _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; orD Payment in equal _____ (e.g., equal, weekly, monthly, quarterly) installments of _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; orE Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after Release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; orF Special instructions regarding the payment of criminal monetary penalties:

IT IS FURTHER ORDERED that the defendant shall pay to the United States a special assessment of \$100 on each of counts two and five, for a total of \$200, which shall be due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program are made to the clerk of the court.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

 Joint and Several

Defendant and Co-defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

 The defendant shall pay the cost of prosecution. The defendant shall pay the following court cost(s): The defendant shall forfeit the defendant's interest in the following property to the United States:

Under 21 U.S.C. §853, the defendant has forfeited all of his right, title and interest in the property previously identified in the Preliminary Order of Forfeiture issued on October 31, 2016.

Payments shall be applied in the following order: (1) assessment; (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.



DEFENDANT: CASEY PEEBLES
CASE NUMBER: S1-14CR00345-10 ERW
USM Number: 42206-044

UNITED STATES MARSHAL
RETURN OF JUDGMENT IN A CRIMINAL CASE

I have executed this judgment as follows:

The Defendant was delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

The Defendant was released on _____ to _____ Probation
 The Defendant was released on _____ to _____ Supervised Release
 and a Fine of _____ and Restitution in the amount of _____

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

I certify and Return that on _____, I took custody of _____
at _____ and delivered same to _____
on _____ F.F.T. _____

U.S. MARSHAL E/MO

By DUSM _____

18a

(The following proceedings were held in the
courtroom out of the presence of the jury:)

3 MR. DEATON: Judge, Document 445.

4 **THE COURT:** I have it. The motion is under Federal
5 Rule 801(d)(2)(E), electronic case filing No. 445.

6 In his motion, Defendant Peebles requests the Court
7 prohibit the United States or Government from introducing
8 testimony of Quantiae Harris about statements Joseph Rander
9 allegedly made to Harris on the night of April 2nd, 2013.

10 Defendant Peebles asserts the two statements are
11 hearsay if Joseph Rander does not testify. Defendant Peebles
12 argues he is not a member of the conspiracy and is unaware of
13 any evidence showing the people Joseph Rander spoke to were
14 co-conspirators. Further, Defendant Peebles claims admissions
15 of the testimony would violate his right to confront witnesses
16 against him as guaranteed by the Sixth Amendment.

17 The Government of the United States states these
18 statements were made during and in furtherance of the
19 conspiracy; thus, they are admissible under Federal Rule
20 801(d) (2) (E) .

21 The Court will not rule on this motion at this time
22 before evidence of this nature is admitted at trial. The
23 Government is to alert the Court when it intends to adduce
24 this evidence and this Court will make a ruling as to its
25 admissibility.

1 That was a pretrial ruling, that last paragraph was
2 a pretrial ruling I made at the time of the arguments.

3 I need to -- Melissa -- would you have Melissa bring
4 down my Federal Rules of Evidence 801(d), please, 801. Just
5 Federal Rules of Evidence. It's in the rolltop desk. There
6 are little booklets up in the middle with -- where the Federal
7 Rules of Evidence is listed.

8 **THE CLERK:** She found it.

9 **THE COURT:** I have it on Google.

10 Rule 801. Definitions that apply to this article;
11 exclusions from hearsay. Rule 801 defines what is and what is
12 not hearsay for the purpose of admitting a prior statement as
13 substantive evidence. A prior statement of a witness at trial
14 or hearing which is inconsistent with his testimony of course
15 is admissible for the purpose of impeaching the witness's
16 credibility.

17 Thank you.

18 801(d) (2) (E). Statements made by the party's
19 co-conspirator during and in furtherance of the conspiracy.
20 The statement must be considered but does not by itself
21 establish the declarant's authority under (C); the existence
22 or scope of the relationship under (D); or the existence of
23 the conspiracy or participation in it under (E).

24 Let me hear from Mr. Reilly, please.

25 **MR. REILLY:** Your Honor, it's a classic or textbook

1 co-conspirator statement, to the extent that it's offered
2 against an opposing party and was made by the party's
3 co-conspirator during and in furtherance of the conspiracy.
4 Joseph Rander -- we presented significant evidence of the
5 conspiracy, what the goals of the conspiracy were; that Joseph
6 Rander was a member of the conspiracy.

7 And what Mr. Harris is about to say is that he was
8 directed to the residence to help let somebody in. That
9 person was ultimately determined to be the defendant. Joseph
10 Rander was excited, said words to the effect that, "We're
11 fit'n to get it back on," and eventually directed Mr. Harris,
12 he told Mr. Harris that somebody would be coming in a car to
13 pick up heroin. He told Mr. Harris to be prepared to open the
14 door.

15 At some point he said something along the lines of
16 "Go let my boy in." At that point Mr. Harris went down the
17 steps, opened the door, saw Mr. Peebles here exit the vehicle,
18 walk up the steps and conduct a drug transaction with
19 Mr. Joseph Rander, a member of the conspiracy. After the
20 events had occurred, Mr. Rander told, Joseph Rander told
21 Quantiae Harris that he just delivered 9 ounces of heroin to
22 this individual. He also at some point identified the
23 defendant as Twin's people.

24 So he has done several things that makes this in
25 furtherance of the conspiracy. He's making the conspiracy

1 happen by having Mr. Harris open the door. He is apprising
2 him of the status of the conspiracy that somebody is coming to
3 pick up heroin. He is also identifying a member of the
4 conspiracy, maybe not by name but by indicating, yes, it's
5 okay to let this person into the residence. And he is
6 apprising him of the events of the conspiracy after he does
7 the deal when he says he delivered 9 ounces.

8 And that -- that statement, by the way, is also
9 declaration against Joseph Rander's penal interest. But the
10 other thing that Mr. Harris may say is that after the car stop
11 occurred, they got word that they need to clear out of
12 Highland because there was a car stop in the area. And the
13 amount of heroin was a factor. It's relevant in furtherance
14 of the conspiracy that Mr. Harris knew the amount because it
15 relates to the gravity of the stop, that 9 ounces of heroin
16 was recovered shortly after the vehicle left Highland.

17 But it's classic textbook co-conspirator statements.

18 **THE COURT:** Mr. Deaton, it would seem to be, but I
19 will hear you on that, sir.

20 **MR. DEATON:** Thank you, Judge Webber. I call your
21 attention to the paragraphs numbered 6 and 7 in document 445.

22 The test for admissibility is whether the
23 declarant -- and that's going to be, we anticipate, what I am
24 concerned about, that that's going to be Joseph Rander -- and
25 the defendant -- well, that's Casey Peebles -- were members of

1 the conspiracy. It's not enough that Joseph Rander and
2 Quantiae Harris were in the conspiracy.

3 So any testimony offered by Quantiae Harris about
4 what Joseph Rander said to him that night regarding a purchase
5 of heroin doesn't qualify under 801(d)(2)(E).

6 **THE COURT:** All right. I point out again, I have it
7 before me, 801(d)(2)(E) was made by the party's co-conspirator
8 during and in furtherance of the conspiracy. The statement
9 must be considered but does not by itself establish the
10 declarant's authority under (C); the existence or scope of the
11 relationship under (D); or the existence of conspiracy or
12 participation in it under (E).

13 Which -- to which part -- tell me again why --

14 **MR. DEATON:** Judge, in paragraph 6 of my motion --

15 **THE COURT:** Okay. I do not have that before me.
16 I'm sorry.

17 **MR. DEATON:** Document 445 -- I thought you did.

18 **THE COURT:** Wait a minute. Let me see. Maybe I do.

19 **MR. DEATON:** Document 445.

20 **THE COURT:** Well, I was -- I was referring to 445 in
21 my -- in what I had prepared and sent out as an order. Just a
22 second. Let me keep digging here. Maybe I have it.

23 **MR. DEATON:** I'll pass my --

24 **THE COURT:** Yeah. May I see your copy. I do not
25 have it here with me. Well, I got this out of the brown

1 folder. Let me just see his copy. Thank you. Here it is. I
2 have it. I have it. You say paragraph 6.

3 **MR. DEATON:** Yes.

4 **THE COURT:** Okay. What you say in paragraph 6 is:
5 "The test for admissibility is whether the declarant, the
6 person who made the statement" -- I assume that you believe
7 that is Joseph Rander; is that correct?

8 **MR. DEATON:** Yes.

9 **THE COURT:** "And the defendant were members of the
10 conspiracy." Why are you -- why -- upon what basis do you
11 maintain Mr. Peebles is not a member of this conspiracy?

12 **MR. DEATON:** Well, I do not understand how he could
13 be. If we -- if we take the Government's testimony, the --
14 it -- they are headed in a direction of they are trying to
15 prove that Mr. Peebles came to purchase heroin one time. That
16 doesn't put him in the conspiracy.

17 **THE COURT:** Well, there's evidence that this
18 happened many times from Ms. Douglas.

19 **MR. DEATON:** Are you referring to the testimony from
20 Leah Douglas?

21 **THE COURT:** Correct.

22 **MR. DEATON:** Right. But she's -- she's not --
23 there's nothing to connect Leah Douglas with the Rander
24 conspiracy. She is not --

25 **THE COURT:** No, that -- that -- to address your

1 point, it happened more than once. Not that she was -- no, I
2 agree. There's nothing to show she was a member of the
3 conspiracy. I agree with that. All right. Let me hear from
4 Mr. Reilly again.

5 **MR. REILLY:** Judge, I am back where I was initially.
6 It is a textbook co-conspirator statement. The evidence is
7 there's significant evidence of a long-running drug
8 distribution conspiracy from the Rander organization of which
9 Joseph Rander is a principal member with a significant drug
10 trafficking organization.

11 There is also information from Leah Douglas that
12 Mr. Peebles is a drug distributor and that he previously, of
13 course, had conspired with Ms. Douglas to distribute
14 narcotics. But he becomes a member of the conspiracy when he
15 receives narcotics, when he shows up at Joseph Rander's
16 residence to receive a distribution amount of heroin. I don't
17 know how it could be any more clear-cut.

18 **THE COURT:** Well, the objection will be overruled.

19 **MR. DEATON:** Judge Webber, for purposes of the
20 record -- for purposes of the record, do I understand that
21 you're overruling my objection and going to allow Quantiae
22 Harris to testify about statements that Joseph Rander made to
23 him on the night of April 2nd?

24 **THE COURT:** Yes, that's correct.

25 **MR. DEATON:** So I want it clear that I don't intend

1 to jump up so I don't have to object every time.

2 THE COURT: No. Your objection is preserved.

3 MR. DEATON: Okay. All right.

4 THE COURT: Yes, sir.

5 MR. DEATON: May I go to the restroom.

8 MR. DEATON: Thank you.

9 (The following proceedings were held in the
10 courtroom in the presence of the jury:)

11 **THE COURT:** Please be seated. Just one second,
12 please. I need to talk to Melanie just a second.

13 Whenever you are ready.

14 MR. REILLY: Thank you, Judge.

15 Q. (By Mr. Reilly) Mr. Harris, we were talking about the
16 evening hours of April 2nd, 2013. This property, Highland,
17 that's located in St. Louis City; is that correct?

18 || A. Yes.

19 Q. All right. And you were continuing to cooperate with the
20 city police department and DEA about providing them
21 information about the activities of the Rander drug
22 trafficking organization?

23 A. Yes.

24 Q. And did you become aware of Joseph Rander's presence at
25 that property on April 2nd?

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 17-1126

United States of America

Appellee

v.

Casey Peebles

Appellant

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:14-cr-00345-ERW-10)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Judge Gruender did not participate in the consideration or decision of this matter.

May 10, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

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PART K - DEPARTURES

1. SUBSTANTIAL ASSISTANCE TO AUTHORITIES

§5K1.1. Substantial Assistance to Authorities (Policy Statement)

Upon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense, the court may depart from the guidelines.

(a) The appropriate reduction shall be determined by the court for reasons stated that may include, but are not limited to, consideration of the following:

- (1) the court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered;
- (2) the truthfulness, completeness, and reliability of any information or testimony provided by the defendant;
- (3) the nature and extent of the defendant's assistance;
- (4) any injury suffered, or any danger or risk of injury to the defendant or his family resulting from his assistance;
- (5) the timeliness of the defendant's assistance.

Commentary

Application Notes:

1. Under circumstances set forth in 18 U.S.C. § 3553(e) and 28 U.S.C. § 994(n), as amended, substantial assistance in the investigation or prosecution of another person who has committed an offense may justify a sentence below a statutorily required minimum sentence.

2. The sentencing reduction for assistance to authorities shall be considered independently of any reduction for acceptance of responsibility. Substantial assistance is directed to the investigation and prosecution of criminal activities by persons other than the defendant, while acceptance of responsibility is directed to the defendant's affirmative recognition of responsibility for his own conduct.
3. Substantial weight should be given to the government's evaluation of the extent of the defendant's assistance, particularly where the extent and value of the assistance are difficult to ascertain.

Background: A defendant's assistance to authorities in the investigation of criminal activities has been recognized in practice and by statute as a mitigating sentencing factor. The nature, extent, and significance of assistance can involve a broad spectrum of conduct that must be evaluated by the court on an individual basis. Latitude is, therefore, afforded the sentencing judge to reduce a sentence based upon variable relevant factors, including those listed above. The sentencing judge must, however, state the reasons for reducing a sentence under this section. 18 U.S.C. § 3553(c). The court may elect to provide its reasons to the defendant in camera and in writing under seal for the safety of the defendant or to avoid disclosure of an ongoing investigation.

Historical Note: Effective November 1, 1987. Amended effective November 1, 1989 (see Appendix C, amendment 290).