

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA :  
 :  
vs. : No.  
 :  
 :

MOTION FOR A PRETRIAL HEARING TO DETERMINE  
THE EXISTENCE OF A CONSPIRATORIAL AGREEMENT  
AND THE CONNECTION THERETO OF DEFENDANT  
AS CHARGED IN THE INDICTMENT

COMES NOW the defendant, by and through his undersigned counsel of record, and on information and belief that the government intends to introduce co-conspirator hearsay statements against him at trial, moves this Court to conduct a pretrial hearing pursuant to James v. United States, 590 F.2d 575 (5th Cir. 1979) (en banc) for the purpose of determining whether said coconspirator hearsay statements are admissible as evidence against this defendant. Defendant further moves this Court to require the government to submit evidence at the James hearing to establish:

- (a) The existence of a conspiratorial agreement; and
- (b) The sufficiency of the evidence against defendant to establish his involvement in the alleged conspiracy.

The defendant further moves that if, at the conclusion of the James hearing, it appears:

- (a) That as to defendant there is no sufficient showing by

independent evidence of a conspiracy among one or more other defendants and the declarant; and

- (b) That the declarations at issue were not in furtherance of that conspiracy, the Court must dismiss Count \_\_\_ of the indictment against defendant.

Defendant asserts that the foregoing procedure of law is necessary to avoid denial of his rights to due process of law and to overcome abuses of defendant's rights which will otherwise occur in the course of the trial herein, and that simply requiring the government to order its proof at trial, rather than a full and fair pretrial determination, will deprive defendant of the protections sought to be afforded by this process.

WHEREFORE, defendant respectfully requests that this Court conduce a pretrial hearing to determine the existence of a conspiratorial agreement and to establish the defendant's connection thereto, if any, and for such other and further relief as this Court may deem just and proper.

Respectfully submitted this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

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WILLIAM C. INGRAM  
First Assistant Federal Public Defender

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing on the below-mentioned attorney by mailing a copy of the same to the following address:

M  
Assistant United States Attorney  
P. O. Box 1858  
Greensboro, NC 27402

This, the \_\_\_\_\_ day of \_\_\_\_\_, 1998.

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WILLIAM C. INGRAM  
First Assistant Federal Public Defender