

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

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CRIMINAL NO: 08-067

v.

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SECTION: "J"

DIEGO A. PEREZ

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**FACTUAL BASIS**

If this case was to proceed to trial the Government would present credible testimony and reliable evidence to prove the following facts beyond a reasonable doubt;

Beginning in or about November 1, 2007 and continuing until February 15, 2008, David C. Battenberg, a/k/a "Bird" (Date of Birth: 3/19/1980); Diego A. Perez (Date of Birth: 2/1/1990); and Henry Deeb Gabriel, III (Date of Birth: 10/30/1984), and others known and unknown conspired with each other to distribute and possess with intent to distribute quantities of heroin and cocaine hydrochloride. This conspiracy included distributions of heroin and cocaine hydrochloride to known individuals under 18 years of age. Between November 1, 2007 and February 15, 2008, Perez, repeatedly purchased amounts of heroin, cocaine hydrochloride, 3,4-

methylenedioxymethamphetamine, (also known as MDMA and Ecstasy) and marijuana from Battenberg for purposes of further distributing, in some cases to other persons also under 18 years of age.

For example, on January 4, 2008, Gabriel and other known individuals under 18 years of age, contacted Perez with the purpose of having Perez acquire amounts of heroin and cocaine hydrochloride for them. Following this contact, Gabriel drove Madeleine Prevost, a 16 year old female (Date of Birth: 3/7/1991), and Perez to Battenberg's house at 3424 Bauvais Street, Metairie, Louisiana for the purpose of acquiring the amounts heroin and cocaine hydrochloride. Gabriel provided Perez approximately \$100 for an amount of heroin, and Prevost and other known individuals under the age of 18 years of age collectively provided Perez an amount of money for the purchase of cocaine hydrochloride. Upon arriving at Battenberg's house, Perez entered, met with Battenberg, provided Battenberg a sum of United States currency and received amounts of heroin and cocaine hydrochloride.

After receiving the amounts of heroin and cocaine, Perez reentered Gabriel's vehicle and Gabriel dropped off Prevost and Perez to a known persons home and then Gabriel returned to his home. During the course of January 4<sup>th</sup> and 5<sup>th</sup>, Gabriel ingested amounts of the heroin acquired from Perez and Battenberg and discovered the heroin to be highly potent and communicated that fact to Perez. Later on January 5<sup>th</sup>, Gabriel provided Ms. Prevost with amounts of the heroin he acquired on January 4<sup>th</sup>. After Gabriel and Prevost consumed the remainder of the heroin Gabriel obtained on January 4<sup>th</sup>, Gabriel and Prevost contacted Perez for the purpose of obtaining additional amounts of heroin.

During the evening of January 5<sup>th</sup>, Gabriel and Prevost, in Gabriel's vehicle, picked up Perez and Gabriel again drove Perez to Battenberg's house on Bauvais Street. Similar to the night before, Perez entered Battenberg's home, purchased an amount of heroin from Battenberg and returned to Gabriel's vehicle. Gabriel provided approximately \$100 to Perez to acquire the heroin from Battenberg. From there Gabriel dropped Perez off and proceeded to his home with Ms. Prevost. Once at Gabriel's home, Gabriel and Ms. Prevost ingested amounts of heroin. Shortly thereafter, Gabriel returned Ms. Prevost to her home. Shortly thereafter Ms. Prevost went to sleep. The next morning, Ms. Prevost's father found her to be unresponsive when he tried to wake her up. Upon realizing her condition, he began performing CPR and contacted paramedics. Shortly thereafter Ms. Prevost was transported to the hospital and was subsequently pronounced dead, having never woken up after falling asleep. During attempts made to revive Ms. Prevost, Gabriel was contacted in an attempt to determine what Ms. Prevost may have ingested the night before. Gabriel falsely responded that he did not know. An autopsy revealed that Ms. Prevost died of a massive acute hemorrhagic pulmonary edema resulting from the ingestion of heroin.

During the course of the conspiracy, Perez and Battenberg communicated frequently through the use of telephones and text messaging to further their drug trafficking. A review of text messages and telephone toll data reveal hundreds of contacts between Perez and Battenberg during the course of this conspiracy. Further, review of the text messages of Perez's telephone obtained pursuant to search warrants authorized by a United States Magistrate Judge reveal that Perez frequently utilized the text messaging function on his telephone to communicate with Gabriel and other customers regarding the purchase of heroin, cocaine hydrochloride and other illegal controlled substances.

In February, 2008, investigating agents approached Gabriel and interviewed him regarding the circumstances of Ms. Prevost's death. During that non-custodial interview, Gabriel admitted to obtaining amounts of heroin from Perez on January 4<sup>th</sup> and 5<sup>th</sup> and that on each occasion Gabriel understood that Perez was obtaining the heroin and other illegal controlled substances from Battenberg. On each occasion, Gabriel admitted driving Perez to Battenberg's Bauvais Street residence and providing Perez the money necessary to make the purchases of heroin. Further, Gabriel admitted that on January 5<sup>th</sup>, he provided Ms. Prevost a portion of the heroin he obtained from Perez the night before, January 4<sup>th</sup>, and when he and Ms. Prevost had consumed all of the heroin purchased on January 4<sup>th</sup>, they contacted Perez on the evening of January 5<sup>th</sup> for the purpose of obtaining additional amounts of heroin. After obtaining the additional amounts of heroin, Gabriel explained that he took Ms. Prevost back to his home and they ingested the additional amounts of heroin before Gabriel drove Ms. Prevost home.

Beginning on February 11, 2008, Gabriel, cooperating and under the supervision of F.B.I. special agents, made several recorded telephone calls to Perez in an attempt to purchase an amount of heroin. Over the course of the next several days, Perez continued to inform Gabriel that Battenberg was out of his supply of heroin. On February 15, 2008, Perez contacted Gabriel and informed Gabriel that Battenberg had obtained an amount of heroin and Perez was then able to make a purchase on behalf of Gabriel. During the evening of February 15, 2008, Gabriel picked up Perez from his place of work and drove Perez to Battenberg's Bauvais Street home. Gabriel provided Perez \$150 in United States currency provided to Gabriel by the F.B.I. agents for purposes of acquiring the heroin. Once in the 3400 block of Bauvais Street, surveillance agents observed Perez exit Gabriel's vehicle and enter 3424 Bauvais Street. After a short time, Perez exited the home and

returned to Gabriel's vehicle. Once inside, Perez provided Gabriel an amount of heroin and retained a smaller portion for himself. Shortly thereafter, agents stopped Gabriel's vehicle and arrested Perez. Following his arrest Perez was advised of his Miranda warnings and agreed to provide a statement to agents. Perez admitted to purchasing heroin, cocaine and other drugs from Battenberg and then selling the drugs to Gabriel and other known individuals, some under the age of 18 years of age. Further, Perez admitted knowing that the heroin ingested by Ms. Prevost on January 5<sup>th</sup> was acquired by Perez from Battenberg as described above and he continued obtaining drugs from Battenberg for purposes of redistribution even after Ms. Prevost's death.

On February 16, 2008, agents applied for and obtained a search warrant from a United States Magistrate Judge to search Battenberg's 3424 Bauvais Street home. During the execution of the search warrant, agents found distributable amounts of heroin, cocaine hydrochloride, MDMA and marijuana. Battenberg was also found inside the home and was placed under arrest.

Following his arrest, Battenberg was advised of his Miranda warnings and agreed to provide a statement to agents. Battenberg admitted in his statement to arresting agents that he had supplied heroin, cocaine and other drugs to Perez with the knowledge and understanding that Perez was distributing these controlled substances to third parties some of whom were under 18 years of age. Further, Battenberg admitted that the heroin, cocaine hydrochloride, MDMA and marijuana were possessed with the intent to distribute.

At trial the Government would introduce the amounts of heroin, cocaine hydrochloride, MDMA and marijuana seized in connection with this investigation, the text messages documenting the relationship between and among Gabriel, Perez and Battenberg, the statements and admissions

of Gabriel, Perez and Battenberg as well as the testimony of cooperating witnesses and investigating agents and other items of evidentiary value.

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William J. Quinlan, Jr. (date)  
Assistant United States Attorney

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Richard Teissier (date)  
Attorney for Diego A. Perez

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Maurice Landrieu (date)  
Assistant United States Attorney

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Diego A. Perez (date)  
Defendant