United States Court of Appeals
for the Fifth Circuit

No. 19-40498

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOHN D. LEONTARITIS,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:18-CR-23-1

(Filed Oct. 9, 2020)

Before HIGGINBOTHAM, ELROD, and HAYNES, *Circuit Judges*.

CATHARINA HAYNES, *Circuit Judge*:

John D. Leontaritis was charged with one count of conspiracy to possess with the intent to distribute and distribute 500 grams or more of a mixture containing methamphetamine and one count of conspiracy to commit money laundering. The jury found Leontaritis guilty on both counts. The jury also returned a special verdict finding beyond a reasonable doubt that the conspiracy involved 500 grams or more of a mixture

containing methamphetamine. On the question of Leontaritis's accountability, the jury did not find that he was accountable for more than 50 grams. The district court, concluding that a preponderance of the evidence showed that it was reasonably foreseeable that Leontaritis was responsible for 176 kilograms of methamphetamine, sentenced Leontaritis to concurrent terms of 240 months of imprisonment, to be followed by a total of three years of supervised release.

Leontaritis appeals, arguing that the district court erred in finding that the amount of drugs reasonably foreseeable to him within the scope of the conspiracy was 176 kilograms. Citing *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Alleyne v. United States*, 570 U.S. 99 (2013), he contends that the district court was bound by the jury's finding that he was accountable for less than 50 grams of methamphetamine and that the district court's alleged disregard of this finding violated the Fifth and Sixth Amendments. We review Leontaritis's properly preserved constitutional challenge to his sentence de novo. *See United States v. King*, 773 F.3d 48, 52 (5th Cir. 2014).

The pertinent jury question and answer are as follows:

> You must next determine the quantity of methamphetamine for which the defendant was accountable. Indicate below your unanimous finding beyond a reasonable doubt of the quantity of methamphetamine, if any, attributable to the defendant. The defendant is accountable only for the quantity of

> methamphetamine with which he was directly involved and all reasonably foreseeable quantities of methamphetamine within the scope of the conspiracy reasonably foreseeable to him.
>
> ___ 500 grams or more of a mixture or substance containing detectable amount of methamphetamine.
>
> ___ 50 grams or more but less than 500 grams of a mixture or substance containing a detectable amount of methamphetamine.
>
> _X_ Less than 50 grams of a mixture or substance containing a detectable amount of methamphetamine.

The general instructions required proof by the Government beyond a reasonable doubt. Leontaritis argues that the jury found beyond a reasonable doubt that he was accountable for less than 50 grams. We read it the other way: that the Government failed to prove 50 or more grams beyond a reasonable doubt. In so doing, our opinion is consistent with the vast majority of circuits that have considered this issue. *See United States v. Lopez-Esmurria*, 714 F. App'x 125, 127 (3d Cir. 2017) (unpublished); *United States v. Webb*, 545 F.3d 673, 678 (8th Cir. 2008); *United States v. Florez*, 447 F.3d 145, 156 (2d Cir. 2006); *United States v. Magallanez*, 408 F.3d 672, 684–85 (10th Cir. 2005); *United States v. Goodine*, 326 F.3d 26, 33–34 (1st Cir. 2003); *United States v. Smith*, 308 F.3d 726, 744–45 (7th Cir. 2002). Only the Ninth Circuit came out the way Leontaritis

requests. *United States v. Pimentel-Lopez*, 859 F.3d 1134, 1140 (9th Cir. 2017).

But, either way, Leontaritis's argument fails to recognize the difference between *Apprendi* and *Alleyne*, on the one hand, and *United States v. Booker*, 543 U.S. 220 (2005), on the other hand. The former cases deal with statutory minimums and maximums. *See United States v. Stanford*, 805 F.3d 557, 570 (5th Cir. 2015). As to those findings, the jury verdict is binding. *Apprendi*, 530 U.S. at 490; *Alleyne*, 570 U.S. at 103. On the other hand, here, the question relates to the calculation and application of the Sentencing Guidelines, which is within the judge's duty, not the jury's. *Booker*, 543 U.S. at 257. The Supreme Court made this clear in *United States v. Watts*, which it has not overruled. 519 U.S. 148, 156–57 (1997) (holding that a district judge may rely on conduct proven by a preponderance of the evidence even if the jury did not find the same conduct proven beyond a reasonable doubt at trial). Indeed, we have consistently explained:

> [T[he *Alleyne* opinion did not imply that the traditional fact-finding on relevant conduct, to the extent it increases the discretionary sentencing range for a district judge under the Guidelines, must now be made by jurors. . . . The Court did not suggest that the setting of Sentencing Guidelines ranges in a PSR, which structure but do not control district judge discretion, were subject to the same requirement.

United States v. Hinojosa, 749 F.3d 407, 412–13 (5th Cir. 2014); *see also Stanford*, 805 F.3d at 570 (holding that "[n]either *Apprendi* nor *Alleyne* applies to sentencing guidelines" and that a district court may "adjudge[ ] a sentence within the statutorily authorized range"); *United States v. Romans*, 823 F.3d 299, 316–17 (5th Cir. 2016) (holding the same).[1]

Even if the charge in this case suggested some intent to bind the district judge's sentencing discretion, mistakes in jury charges do not change the way a jury's role is assessed. *See Musacchio v. United States*, 136 S. Ct. 709, 715 (2016) (holding that where the jury question erroneously added an extra element to a charge, the analysis of sufficiency of the evidence should not include that added element). "We have never doubted the authority of a judge to exercise broad discretion in imposing a sentence within a statutory range." *Booker*, 543 U.S. at 233. Indeed, because mandatory guidelines impinged on the judge's role, *Booker* severed that part of the Guidelines statute. *Id.* at 246. We are therefore left with a clean division of labor: absent waiver of a jury trial, statutory findings (whether the defendant is guilty or not guilty and whether his conduct meets the test for a statutory minimum or maximum) are for jurors to decide, while sentencing within the statutory minimums and

[1] In addition to conflicting with the law of six other circuits, the Ninth Circuit's ruling in *Pimentel-Lopez* is unpersuasive for the additional reason that it is inconsistent with our case law. We are bound by our precedent unless the Supreme Court or our en banc court has changed the relevant law. *Jacobs v. Nat'l Drug Intelligence Ctr.*, 548 F.3d 375, 378 (5th Cir. 2008).

maximums following a guilty verdict and applying the Sentencing Guidelines is for the district judge to decide.[2] Accordingly, we conclude that the district court did not err in making its decision about drug quantity for purposes of determining the applicable Sentencing Guidelines range.

Leontaritis also challenges the district court's application of a two-level enhancement under § 3B1.3 of the Sentencing Guidelines based on a finding that he abused a position of trust or used a special skill to significantly facilitate the commission or concealment of the offense. The district court found that he possessed a state-issued license for his car dealership and that he used the license to facilitate and conceal the offense. Leontaritis argues that he held no position of trust. He also asserts that the evidence at trial did not support the district court's conclusion that a co-conspirator purchased multiple cars from Leontaritis. The Government responds that, even if the court erred in this regard, the error is harmless.

We review the district court's interpretation or application of the Sentencing Guidelines de novo and its factual findings for clear error. *United States v. Cisneros-Gutierrez*, 517 F.3d 751, 764 (5th Cir. 2008). A finding of fact is not clearly erroneous if it is plausible in light of the entire record. *Id.*

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[2] We note one exception to this clear division of labor, that is, a sentencing court may "increase[ ] the penalty for a crime beyond the prescribed statutory maximum" upon finding that the defendant had a prior conviction. *Apprendi*, 530 U.S. at 490.

"A procedural error during sentencing is harmless if the error did not affect the district court's selection of the sentence imposed." *United States v. Delgado-Martinez*, 564 F.3d 750, 753 (5th Cir. 2009) (internal quotation marks and citations omitted). An error in calculating the Sentencing Guidelines is harmless if the district court considered the correct advisory guidelines range in its analysis and stated that it would impose the same sentence even if that range applied. *United States v. Richardson*, 676 F.3d 491, 511 (5th Cir. 2012). Even when a district court fails to consider the correct sentencing guideline range, an error may be harmless "if the proponent of the sentence convincingly demonstrates both (1) that the district court would have imposed the same sentence had it not made the error, and (2) that it would have done so for the same reasons it gave at the prior sentencing." *United States v. Ibarra-Luna*, 628 F.3d 712, 713–14 (5th Cir. 2010).

At sentencing, the court gave extensive reasons as to why it imposed a sentence of 20 years. The court stated that it would have imposed the same sentence under the factors of 18 U.S.C. § 3553(a) even if the guidelines were incorrectly calculated and specifically cited the need for the sentence imposed to serve as just punishment, to promote respect for the law, and to deter future criminal acts. Additionally, the court imposed the statutory maximum sentence on each count, opting not to have the sentences run consecutively to each other, indicating that it had a particular sentence in mind without reference to the guidelines range.

Because the district court's statements show that the sentence was not based on the guidelines range and that the district court would have imposed the same sentence without the alleged error for the same reasons, any error in imposing the two-level enhancement for abuse of position of trust is harmless. *Cf. id.* at 719.

Finally, Leontaritis contends that the district court erred in failing to award him a two-level reduction for acceptance of responsibility under § 3E1.1 of the Sentencing Guidelines. He contends that such a reduction was warranted because he admitted to one of the charges against him.

We "will affirm a sentencing court's decision not to award a reduction . . . unless it is without foundation, a standard of review more deferential than the clearly erroneous standard." *United States v. Juarez-Duarte*, 513 F.3d 204, 211 (5th Cir. 2008) (per curiam) (internal quotation marks and citation omitted). The defendant has the burden of proving that the reduction is warranted. *United States v. Medina-Anicacio*, 325 F.3d 638, 647 (5th Cir. 2003). By his own admission, Leontaritis disputed his conduct on the drug conspiracy conviction and on aspects of his money laundering conspiracy conviction. The record shows that he repeatedly argued that he was not involved in a drug conspiracy and that he lacked the intent to conceal drug proceeds. Thus, he contested his factual guilt. The district court's refusal to award a reduction for acceptance of responsibility is not without foundation. *See Juarez-Duarte*, 513 F.3d at 211.

Accordingly, the judgment of the district court is AFFIRMED.

JENNIFER WALKER ELROD, *Circuit Judge*, concurring in part[1] and dissenting in part:

This case boils down to what question the special interrogatory asked the jury. Did it ask the jury to determine, beyond a reasonable doubt, the actual amount of methamphetamine for which Leontaritis was accountable? Or did it ask the jury to decide whether the government had met its burden with respect to different weight ranges? Because the plain language of the special interrogatory clearly asks the former question, I would reverse and remand for resentencing consistent with the jury's special finding.

I.

In response to a special interrogatory, the jury found that John Leontaritis was accountable for less than 50 grams of methamphetamine mixture. Nevertheless, at sentencing the judge found Leontaritis accountable for 176 kilograms of methamphetamine mixture: 3,520 times greater than the upper limit of the jury's explicit finding. These contradictory factual

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[1] I agree with the majority opinion that the district court did not clearly err in applying the public-trust enhancement and that it was not without foundation in declining to award an acceptance-of-responsibility reduction. I concur in those portions of the majority opinion.

findings cannot be reconciled on a notion of the "division of labor" between the judge and the jury. Nor can the jury's special finding plausibly be read as simply determining that the government did not reach its burden as to the higher amounts.

The special interrogatory instructed the jury to "[i]ndicate below [its] unanimous finding beyond a reasonable doubt of the quantity of methamphetamine, if any, attributable to the defendant." In response the jury marked, "Less than 50 grams of a mixture or substance containing a detectable amount of methamphetamine." The interrogatory and response plainly give the jury's affirmative finding that Leontaritis was accountable for less than 50 grams of methamphetamine mixture.

The only way to read the special interrogatory differently is by actually changing the words of the interrogatory. That is exactly what the government did. Twice in its brief, the government claims that "[t]he jury unanimously found beyond a reasonable doubt that Leontaritis was responsible for *up to* 50 grams." The government's change of "less than" to "up to" fits its theory that the jury did not weigh in on amounts more than 50 grams—a position otherwise untenable since "less than" is plainly inconsistent with "more than." It does not, however, fit the actual words of the special interrogatory.

The government and the majority opinion rely on a series of cases to support their a-textual interpretation of the special interrogatory. Neither the majority

opinion nor the government's brief engage with the language in the special interrogatories at issue in those cases. Nor, in fact, do the cases themselves. *See United States v. Lopez-Esmurria*, 714 F. App'x 125, 127 (3d Cir. 2017); *United States v. Webb*, 545 F.3d 673, 677–78 (8th Cir. 2008); *United States v. Florez*, 447 F.3d 145, 156 (2d Cir. 2006); *United States v. Magallanez*, 408 F.3d 672, 683–85 (10th Cir. 2005); *United States v. Goodine*, 326 F.3d 26, 32–34 (1st Cir. 2003); *United States v. Picanso*, 333 F.3d 21, 25–26 (1st Cir. 2003); *United States v. Smith*, 308 F.3d 726, 743–45 (7th Cir. 2002).[2]

The language in the special interrogatories in those cases can be generally categorized into two types: (i) burden-of-proof language and (ii) jury-finding language. On the burden-of-proof side lies *Florez*, in which the special interrogatory directs the jury to "state the maximum quantity of heroin that the prosecution has proven beyond a reasonable doubt that the importation involved. 10 kilograms or more ___ 3 kilograms or

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[2] I reviewed the special interrogatories at issue in each of these cases, except for *Goodine, Picanso*, and *Smith*. In those three cases, retrieval of the actual verdict form was made difficult by a lack of electronic records in the district courts for the relevant years. The dockets, however, show that the verdict forms for *Goodine, Picanso*, and *Smith* are available, respectively, at Docket No. 64, *United States v. Goodine*, No. 2:01-cr-00025-DBH-2 (D. Me. Aug. 01, 2002); Docket Nos. 117-18, *United States v. Picanso*, No. 1:99-CR-10343-EFH (D. Mass. May 02, 2002) (Nos. 02-1551, 02-2013); and Docket Nos. 110-16, *United States v. Smith*, No. 99-CR-50022 (N.D. Ill. Aug. 08, 2000). Each of these three cases pre-dates *United States v. Booker*, 543 U.S. 220 (2005).

more ___ 1 kilogram or more ___ 100 grams or more ___." Verdict Form, *United States v. Florez*, No. 04-CR-80 (E.D. N.Y. May 12, 2005).[3]

Similarly, the special interrogatory in *United States v. Pineiro*, 377 F.3d 464 (5th Cir. 2004)—analyzed by Leontaritis in his reply and at oral argument—contains burden-of-proof language because it asks the jury to find the defendant guilty or not-guilty as to different amounts:

> Conspiracy to Distribute Marijuana:
>
> ___ Guilty of Conspiracy to Distribute 100 kilograms or more of marijuana.
>
> ___ Guilty of Conspiracy to Distribute 50 to 100 kilograms of marijuana.
>
> _✓_ Guilty of Conspiracy to Distribute less than 50 kilograms of marijuana.
>
> ___ Not guilty.

Verdict Form, *United States v. Pineiro*, No 2:02-CR-20024, 2007 WL 496403 (W.D. La. Apr. 07, 2007). Both the *Florez* and *Pineiro* special interrogatories clearly ask the jury to decide whether the prosecution had met its burden of proof rather than decide for itself the actual amount at issue in the case.

The special interrogatory in this case, which instructs the jury to "[i]ndicate below [its] unanimous

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[3] For consistency, I refer to each of the documents containing general and special interrogatories and jury responses as a "verdict form."

finding beyond a reasonable doubt of the quantity of methamphetamine, if any, attributable to the defendant," is markedly different. The special interrogatory asks the jury to make its own affirmative finding as to the precise amount of methamphetamine mixture attributable to Leontaritis. Thus, this special interrogatory falls on the jury-finding side of the ledger, alongside the special interrogatories in *Webb, Magallanez*, and *Lopez-Esmurria*. The *Webb* special interrogatory includes the following language:

> We, the jury, find beyond a reasonable doubt, that the quantity of cocaine base (crack cocaine) involved in the conspiracy and that was either directly attributable to defendant Geno Webb or reasonably foreseeable to him was:
>
> ____ more than 50 grams
>
> _✓_ more than 5 grams but less than 50 grams
>
> ____ less than 5 grams.

Verdict Form at 2, *United States v. Rey et al.*, No. 3:06-CR-00573-JAJ-SBJ, 2008 WL 244379 (S.D. Iowa Jan. 28, 2008).

Similarly, the *Magallanez* verdict form contains the following special interrogatory and response:

> We, the jury, duly empaneled, find beyond a reasonable doubt as to the amount of a mixture containing methamphetamine distributed or possessed with the intent to distribute in the conspiracy charged in the Indictment: (check only one)

> ( ) That the amount of a mixture containing methamphetamine distributed or possessed with intent to distribute exceeded 500 grams.
>
> (✓) That the amount of a mixture containing methamphetamine distributed or possessed with intent to distribute was more than 50 grams, but less than 500 grams.
>
> ( ) That the amount of a mixture containing methamphetamine distributed or possessed with intent to distribute was less than 50 grams.

Verdict Form at 1-2, *United States v. Magallanez*, No. 2:02-CR-125-NDF-7 (D. Wyo. Feb. 12, 2004).

The *Lopez-Esmurria* special interrogatory contains hybrid language because it instructs the jury to find the specific quantity of cocaine hydrochloride beyond a reasonable doubt" while including "Not guilty as it relates to cocaine hydrochloride" as one of the quantity responses:

> On the charge outlined in Count One, we find that Defendant Mr. Lopez-Esmurria conspired to knowingly and intentionally distribute and possess with intent to distribute the following amount of cocaine hydrochloride (check only one):
>
> Five kilograms and more: ___
>
> Less than five kilograms, but equal to or more than five hundred grams: ___
>
> Any weight less than 500 grams: ✓

> Not guilty as it relates to cocaine hydrochloride: __.

Verdict at 1–2, *United States v. Lopez-Esmurria*, No. 1:11-CR-00230-YK, 2014 WL 12672442, (M.D. Pa. Oct. 6, 2014). The verdict form uses similar language for the heroin-related counts and the counts against other defendants. *Id.* at 2–8.

None of the circuit cases, however, discusses the language in the special interrogatory at issue. The only case cited in the briefs or the majority opinion that actually addresses the language of the special interrogatory is *United States v. Pimentel-Lopez*, 859 F.3d 1134, 1140, 1142–43 (9th Cir. 2016). The special interrogatory used in *Pimentel-Lopez* reads:

> Having found Jesus Pimentel-Lopez guilty of the charge in Count I of the indictment, we unanimously find beyond a reasonable doubt the amount of a substance containing a detectable amount of methamphetamine attributable to Jesus Pimentel-Lopez to be:
>
> _X_ Less than 50 grams of a substance containing a detectable amount of methamphetamine.
>
> ___ 50 grams or more, but less than 500 grams, of a substance containing a detectable amount of methamphetamine.
>
> ___ 500 grams or more of a substance containing a detectable amount of methamphetamine.

Verdict Form at 1-2, *United States v. Pimentel-Lopez*, No. 2:13-CR-00024-SEH-1 (D. Mont. Sept. 30, 2014); *see also Pimentel-Lopez*, 859 F.3d at 1139. Similar wording was used for Count II. *See* Verdict Form at 3.

Pimentel-Lopez rejected the government's argument that the jury verdict in response to the special interrogatory merely constituted an acquittal on amounts greater than 50 grams, because the special interrogatory was not capable of that construction. 859 F.3d at 1141–42. Rather, the jury-finding language in the special interrogatory could only be read as requesting an affirmative finding by the jury of the actual amount of methamphetamine mixture attributable to the defendant. *Id.* at 1141. So too here. The majority opinion's attempts to re-write the special interrogatory in this case in terms of burden of proof are unavailing. We must take the verdict form as we find it, and the jury-finding language in this special interrogatory and response constitutes an affirmative finding by the jury.

The upshot is that the majority opinion joins what I believe is the wrong side of a deeply entrenched circuit split, which has developed without careful parsing of the actual words of the relevant special interrogatories. On one side of the split lies the Ninth Circuit, which explicitly discussed the language of the relevant special interrogatory in its opinion. *See Pimentel-Lopez*, 859 F.3d at 1139, 1141–42. On the other side lie the Third, Eighth, Tenth, and, now, Fifth Circuits. *See Lopez-Esmurria*, 714 F. App'x at 127 (citing *United States v. Smith*, 751 F.3d 107, 117 (3d Cir. 2014)); *Webb*, 545 F.3d at 677–78; *Magallanez*, 408 F.3d at 683–85.

What is most disappointing about the majority opinion is that it, unlike the Third, Eighth, and Tenth Circuit opinions, does address and quote the language of the special interrogatory. Nevertheless, it ignores the actual words of the special interrogatory.

II.

The majority opinion's approach leads it to a more fundamental error: its conclusion that the judge can contradict the jury's factual findings at sentencing. The majority opinion cites to *United States v. Booker*, 543 U.S. 220 (2005) to frame this case in terms of a "clean division of labor" between the judge and the jury; *i.e.*, juries assess guilt and judges assign punishment. The problem posed by this case, however, goes beyond the question settled in *Booker*. While *Booker* addressed whether the judge or the jury should decide the facts of the "real conduct" underlying a statutory offense for purposes of sentencing, *Booker*, 543 U.S. at 250–51, this case asks whether the judge can contradict the jury once it has already found a portion of those facts.

The majority opinion would have *Booker* do too much. The majority opinion claims that "because mandatory guidelines impinged on the judge's role [in sentencing], *Booker* severed that part of the Guidelines statute." That is simply not accurate. The first part of the *Booker* opinion found the guidelines, as written, unconstitutional because they impinged on the Sixth Amendment right to a jury trial. *Booker*, 543 U.S. at 233–34; 244 (discussing *Blakely v. Washington*, 542

U.S. 296, 299, 313, 325 (2004)). The problem was an insufficient role of the jury when the guidelines were mandatory. The second part of the *Booker* opinion fixed the constitutional problem by excising the provision in the Sentencing Act which made the guidelines mandatory. *Id.* at 265. A lack of judicial discretion was not the problem; rather, the addition of judicial discretion was the easiest remedy given the likely intent of Congress had it understood the impact of the Sixth Amendment's jury-trial right on sentencing. *Id.* at 246, 265.

Booker does not settle all questions regarding the relationship of the judge and the jury at sentencing, and it does not address the question presented by this case: can a district court's sentence contradict an affirmative finding by the jury? There is certainly reason to be cautious in exploring this question, and I share Judge Graber's concern that the *Pimentel-Lopez* opinion "suggests that *any* jury finding as to drug weight that sets an 'upper boundary' precludes a sentencing judge from finding a drug weight above that boundary by a preponderance of the evidence." *Pimentel-Lopez*, 859 F.3d at 1139 (Graber, J., dissenting from denial of rehearing en banc) (emphasis in original). That issue is not presented here, however, where the special interrogatory and response provide an answer to the question that does not depend on a superiority determination between judge and jury.

In my view, if the jury has affirmatively found a specific fact, rather than having simply decided that the government did not meet its burden of proof on related facts, then the court may not make a finding

inconsistent with or impose a sentence beyond a limit set by the jury's finding. The court is at all times free to structure its special interrogatory like the interrogatories in *United States v. Pineiro* or *United States v. Florez*. Verdict Form, *United States v. Pineiro*, No 2:02-CR-20024, 2007 WL 496403 (W.D. La. Apr. 07, 2007); Verdict Form, *United States v. Florez*, No. 04-CR-80 (E.D. N.Y. May 12, 2005). Here, however, the government requested this special interrogatory, and the court adopted it and gave it to the jury. The jury's findings preclude the sentence that was given.

I respectfully dissent.

United States Court of Appeals
for the Fifth Circuit

No. 19-40498

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOHN D. LEONTARITIS,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:18-CR-23-1

Before HIGGINBOTHAM, ELROD, and HAYNES, *Circuit Judges*.

JUDGMENT

This cause was considered on the record on appeal and was argued by counsel.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS BEAUMONT DIVISION

UNITED STATES OF AMERICA	§	**JUDGMENT IN A CRIMINAL CASE**
v.	§	Case Number:
JOHN D LEONTARITIS	§	**1:18-CR-00023-001**
	§	USM Number:
	§	**25091-479**
	§	**Joseph C Hawthorn**
	§	Defendant's Attorney

THE DEFENDANT:

☐	pleaded guilty to count(s)	
☐	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
☐	pleaded nolo contendere to count(s) which was accepted by the court	
☒	was found guilty on count(s) after a plea of not guilty	**1 & 2 of the Indictment**

The defendant is adjudicated guilty of these offenses:

Title & Section/Nature of Offense	**Offense Ended**	**Count**
21:846; 21 U.S.C. § 841(b)(1)(C) Conspiracy To Possess With Intent To Distribute and Distribution of Less Than 50 Grams of Methamphetamine	05/01/2017	1

18:1956(h); 18 U.S.C. § 1956(a) Conspiracy To Commit Money Laundering	06/30/2017	2

The defendant is sentenced as provided in pages 2 through 8 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) ☐ is ☐ are 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.

May 17, 2019
Date of Imposition of Judgment

Marcia A. Crone
Signature of Judge

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

5/17/19
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **240 Months**

This term consists of 240 months as to Count 1, and 240 months as to Count 2 of the Indictment, with Count 2 to be served concurrently with Count 1.

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

The Court recommends to the Bureau of Prisons that the defendant receive appropriate drug treatment while imprisoned.

The Court recommends that the defendant be incarcerated in Texarkana, Texas, if eligible.

☒ 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. ☐ p.m. 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.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **three (3) years terms. This term consists of terms of three years as to each of Counts 1 and 2, with both terms to run concurrently.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must 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 you pose a low risk of future substance abuse. *(check if applicable)*

4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*

5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*

6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*

7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must 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

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on

supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.

2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.

3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.

4. You must answer truthfully the questions asked by your probation officer.

5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation

officer within 72 hours of becoming aware of a change or expected change.

6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.

7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at www.txep.uscourts.gov.

Defendant's Signature _____ Date _____

SPECIAL CONDITIONS OF SUPERVISION

You must provide the probation officer with access to any requested financial information for purposes of monitoring your efforts to obtain and maintain lawful employment and income.

You must not participate in any form of gambling.

You must participate in a program of testing and treatment for drug abuse and follow the rules and regulations of that program until discharged. The probation officer, in consultation with the treatment provider, will supervise your participation in the program. You must pay any cost associated with treatment and testing.

CRIMINAL MONETARY PENALTIES

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

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$200.00		$.00	$.00

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* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

** 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.

☐ The determination of restitution is deferred until . An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such 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 proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

☐ 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 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 ☐ fine ☐ restitution.

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

SCHEDULE OF PAYMENTS

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

A ☒ Lump sum payment of $ 400.00 due immediately, balance due

☐ not later than , or

☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or

B ☐ Payment to begin immediately (may be combined ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., 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; or

D ☐ Payment in equal 20 ***(e.g., 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; or

E ☐ 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; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:

It is ordered that the Defendant shall pay to the United States a special assessment of $200.00 for Counts 1 and 2, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to: the Clerk, U.S. District Court. Fine & Restitution, 211 West Ferguson Street Rm 106, Tyler, TX 75701.

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

☐ Joint and Several

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

☐ Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.

☐ 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: **The sum of $1,378,109.00 in U.S. Currency**

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) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

DENIAL OF FEDERAL BENEFITS
(For Offenses Committed On or After November 18, 1988)

FOR DRUG TRAFFICKERS PURSUANT TO 21 U.S.C. § 862

IT IS ORDERED that the defendant shall be:

☒ ineligible for all federal benefits for a period of **5 YEARS**

☐ ineligible for the following federal benefits for a period of *(specify benefit(s))*

OR

☐ Having determined that this is the defendant's third or subsequent conviction for distribution of controlled substances, IT IS ORDERED that the defendant shall be permanently ineligible for all federal benefits.

FOR DRUG POSSESSORS PURSUANT TO 21 U.S.C. § 862(b)

IT IS ORDERED that the defendant shall:

☐ be ineligible for all federal benefits for a period of

☐ be ineligible for the following federal benefits for a period of *(specify benefit(s))*

☐ successfully complete a drug testing and treatment program.

☐ perform community service, as specified in the probation and supervised release portion of this judgment.

IS FURTHER ORDERED that the defendant shall complete any drug treatment program and community service specified in this judgment as a requirement for the reinstatement of eligibility for federal benefits.

Pursuant to 21 U.S.C. § 862(d), this denial of federal benefits does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility. The clerk is responsible for sending a copy of this page and the first page of this judgment to:

U.S. Department of Justice, Office of Justice Programs, Washington, DC 20531

United States Court of Appeals
for the Fifth Circuit

No. 19-40498

UNITED STATES OF AMERICA,

Plaintiff—Appellant,

versus

JOHN D. LEONTARITIS,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:18-CR-23-1

ON PETITION FOR REHEARING EN BANC

(Filed Dec. 16, 2020)

(Opinion 10/9/20, 5 CIR., _____, _____ F.3D _____)

Before HIGGINBOTHAM, ELROD, and HAYNES, *Circuit Judges*.

PER CURIAM:

Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R.

APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA	DOCKET 1:18-CR-00023
VS.	MAY 17, 2019 10:20 A.M.
JOHN D. LEONTARITIS	BEAUMONT, TEXAS

VOLUME 1 OF 1, PAGES 1 THROUGH 29

REPORTER'S TRANSCRIPT OF SENTENCING

BEFORE THE HONORABLE MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE

(Filed Jun. 4, 2019)

APPEARANCES:

FOR THE GOVERNMENT:
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COURT REPORTER: RUTH C. WEESE, RDR-CSR
FEDERAL OFFICIAL
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PROCEEDINGS REPORTED USING
COMPUTERIZED STENOTYPE;
TRANSCRIPT PRODUCED VIA
COMPUTER-AIDED TRANSCRIPTION.

[2] (OPEN COURT, DEFENDANT PRESENT.)

THE COURT: The next matter is No. 1:18-CR-23, Defendant 1, *United States of America versus John D. Leontaritis.*

MS. ENGLADE: Your Honor, Michelle Englade for the Government. We're ready to proceed.

MR. HAWTHORN: Your Honor, Lum Hawthorne and Bryan Laine for the Defendant. We are ready to proceed.

THE COURT: All right. Please come forward. Have counsel for the Defendant read and discussed the presentence report, including any revisions?

MR. HAWTHORN: Yes, Your Honor, we have.

THE COURT: Has counsel fully explained the report to the Defendant?

MR. HAWTHORN: Yes, Your Honor.

THE COURT: Mr. Leontaritis, do you fully understand the presentence report?

THE DEFENDANT: Yes, ma'am.

THE COURT: Does counsel or the Defendant wish to make any comments, additions or corrections to the report?

MR. HAWTHORN: Other than my written objections, Your Honor.

THE COURT: Right. Is there anything else?

MR. HAWTHORN: No, ma'am.

[3] THE COURT: And, Mr. Leontaritis, does the report adequately cover your background?

THE DEFENDANT: Yes, ma'am.

THE COURT: Has the Government read the report and does it wish to make any comments, additions or corrections?

MS. ENGLADE: We have read the report, Your Honor, and we have no changes to make.

THE COURT: All right. We can go through the objections. Please go in the order in which the probation officer discusses them. Mr. Hawthorn, are you ready?

MR. HAWTHORN: I think so, Your Honor.

THE COURT: Okay.

MR. HAWTHORN: Do you want me to proceed?

THE COURT: Yes, go ahead. Please proceed.

MR. HAWTHORN: Our first objection, Your Honor, is to that portion of paragraph 4 page 4 that states the Defendant participated with Cloyd Guillory in the offense of distributing methamphetamine to the degree that it implies that he actually was involved in drug transactions because the evidence and then the trial showed that he did not actually participate in any drug transactions.

THE COURT: Does the Government wish to [4] respond?

MS. ENGLADE: Yes, Your Honor. I think they mistakenly inferred that the offense which the probation officer was talking about was distributing methamphetamine, when, in fact, the offense was conspiracy to possess with intent to distribute methamphetamine.

As the probation officer goes through it, there is different roles in a direct conspiracy and that's what the jury found Mr. Leontaritis guilty of, is the conspiracy to possess with intent to distribute, not the actual distribution.

And I believe the probation report adequately labels it as such.

THE COURT: Right. He was charged with conspiracy, the participation in a drug trafficking

conspiracy. I think the evidence was such that it could be inferred he did participate in the drug trafficking conspiracy. There are different roles in the conspiracy. And so that's overruled. I note what you're saying.

MR. HAWTHORN: I understand.

THE COURT: All right.

MR. HAWTHORN: May I proceed?

THE COURT: Yes.

MR. HAWTHORN: Objection No. 2 is to that [5] portion of paragraph 8 that states that he bought automobiles in addition to the Lamborghini from the Defendant because the evidence at trial I believe showed only that one car that was sold to him.

Your Honor was here during the entire trial; you heard the testimony. I'm referring to my memory about what the testimony was. So you heard it as well as I did. Maybe you heard something different, but I didn't hear about any cars that were sold to Guillory by Mr. Leontaritis other than the Lamborghini Aventador.

MS. ENGLADE: Your Honor, from my recollection of the testimony from Mr. Guillory was that I believe he purchased at least five vehicles from Mr. Leontaritis and those were evidenced in the text messages as they were talking about the GL and the Wraith and those other automobiles. So I do believe that; and furthermore, the 404(b) testimony that was presented shows that there was also many more vehicles that Mr. Leontaritis sold to drug dealers.

THE COURT: I think there is evidence of other vehicles. Now, whether legal title was transferred, probably not. I think that was part of the whole scheme, but it seems like they were associated with other vehicles that Mr. Guillory at least could drive and members of his family could drive. So I think that that [6] is accurate. Is it exactly purchasing? Certainly Mr. Leontaritis had these vehicles and let Mr. Guillory and others use them. But Lamborghini I agree with was the focus of most of this testimony.

MR. HAWTHORN: Yes, Your Honor. I think there were some other vehicles that were traded in, but as far as actual sales to Mr. Leontaritis, I think the only sale was of the Lamborghini Aventador.

THE COURT: Do you have evidence of other sales?

MS. ENGLADE: Yes, Your Honor. I think Mr. Guillory and Wanda Ellis both testified to that. And I know Mr. Rovey has got his notes. Do we have in your notes how many vehicles Mr. Guillory may have testified to?

MR. ROVEY: The five is what I recall.

MS. ENGLADE: The five.

THE COURT: All right. The objection is overruled.

MR. HAWTHORN: Our objection No. 3 is to that part of paragraph 7 that indicates that the Defendant knew Guillory was selling pills to the

Defendant's employees because as I recall there was no evidence of that fact.

MS. ENGLADE: Your Honor, I believe the [7] testimony of Cloyd Guillory was that he was selling pills to employees of Mr. Leontaritis at the Global Motor site.

THE COURT: I recall there was testimony about that. Certain named individuals. And clearly, Mr. Leontaritis was aware Mr. Guillory was a drug dealer, so I think the objection is overruled.

MR. HAWTHORN: Our objection No. 4, Your Honor, is to that part of paragraph 11 on page 6 which states the Defendant directed his dealership employees to deposit cash which was derived from drug trafficking proceeds into bank accounts.

And I think the probation department has agreed with that and has revised the paragraph to reflect that there was no evidence of that.

THE COURT: Well, I think there was evidence about him not filing cash reporting documents having to do with cash deals.

MR. HAWTHORN: Well, this objection, Your Honor, has to do with him – whether or not there was any evidence that he directed his dealership employees to deposit cash which was derived from drug proceeds and to – and directed employees not to submit cash reporting documents.

The fact that they might not have been filed, I believe the evidence showed that the 8300s were not [8] filed, but there is no evidence that he directed that they not be filed or that he did not file them, only that they were not filed.

THE COURT: But he was the owner of the dealership and operator. So I mean apparently probation has cleared up the situation, but I think that there was money deposited in the business bank accounts and the currency transaction reports were not filed. There was certainly evidence of that.

MR. HAWTHORN: I don't think there was any evidence, Your Honor, of any of the cash being deposited into any of these bank accounts.

MS. ENGLADE: Your Honor, I believe there was. And I think this was initially put in there to determine whether Mr. Leontaritis was in a leadership position. We do think there was evidence that was presented that he did instruct people to deposit money. We just weren't able to show that they were actually members of this conspiracy. So we agreed to take that out and not go forward on a leadership role on Mr. Leontaritis because we don't think the evidence was fully developed enough to show that. But there was certainly evidence that he did have others deposit money in his accounts; and that was through the testimony of Brett Rovey and the bank records.

[9] THE COURT: Well, I think like the 400,000, I don't think there were – that was deposited.

I think that was – they didn't file currency transaction reports on that.

MS. ENGLADE: That's correct, Your Honor.

THE COURT: So I think – it's overruled. I think probation has changed the language, but I think it – there was money received in the bank accounts, but the currency transaction reports weren't filed. There was evidence of that. But I mean sustained to the extent that probation fixed it, but overruled otherwise. Okay. Next one.

MR. HAWTHORN: Your Honor, our next objection is to the calculation of the quantity of methamphetamine for which the Defendant is accountable.

THE COURT: No, I thought the next one had to do with the 400,000 about the cousin.

MR. HAWTHORN: I'm sorry, you are right, Your Honor. I'm sorry. We object to the statement in paragraph 11 page 6 that states he directed his cousin to pick up $400,000 from Guillory on at least one occasion because there was no evidence of that at trial to my recollection.

THE COURT: I think – well, what does the Government say?

[10] MS. ENGLADE: Your Honor, there was extensive evidence of that fact. Mr. Guillory talked about it extensively, explained why he was on the phone with Mr. Leontaritis the entire time that the cousin was picking it up and that Mr. Guillory actually

even took some photos at the same time. They were introduced into evidence.

We don't have any photos of the driver, but Mr. Guillory testified extensively about Mr. Leontaritis saying I'm sending my cousin to come pick up the money and Mr. Leontaritis on the phone with Mr. Guillory as Mr. Guillory was handing it to his cousin.

THE COURT: I think there was evidence of that. Whether he was really his cousin or not I don't know, but I mean he directed a person to get the money from Mr. Guillory.

MS. ENGLADE: Right.

THE COURT: So I think you refer to the person as his cousin.

MS. ENGLADE: Right.

THE COURT: I don't know he was really his cousin, but it's overruled to the extent it – I mean there was evidence of picking up money, that Mr. Leontaritis directed someone to pick up money from Mr. Guillory. Okay. The quantity?

[11] MR. HAWTHORN: Yes, Your Honor. That number – objection No. 6. We object to the calculation of the quantity of methamphetamine for which the Defendant is accountable which is contained in paragraphs 11 through 18 on the grounds first that part of the paragraph 11 page 6 provides that the determination of the amount of methamphetamine for which the Defendant is responsible is correlated to the

amount of money laundered. And that's not the proper method for determining whether a Defendant is accountable for a particular quantity of drugs.

That is in some circumstances an acceptable amount to determine the quantity of drugs, but not whether or not a Defendant is personally responsible for those drugs. Rather, the test is whether or not the quantity, how much the quantity and the entire operation is, and the amount for which each Defendant knew or should have known that was involved in the conspiracy.

The jury was asked to make that determination and they did make the determination and they were explained that they had to do it by beyond a reasonable doubt and they held that the quantity for which he was accountable was the lowest quantity, 50 grams or below. We actually think that it was zero, the amount should be zero, because there was no scenario that I'm aware of [12] where a jury could conclude that there was an amount somewhere between zero and 49, like a particular transaction or something of that sort.

I think what the jury decided was that he was selling cars to drug dealers. He knew that he was selling cars to drug dealers, but he was not involved in any way in the drug dealing. And because he was not involved in any way in the drug dealing, then he should be personally responsible for less than the 50 grams. I think that's where that decision came from. It's certainly logical.

And so we object to any finding above zero actually concerning the drug quantity for which Mr. Leontaritis is personally accountable.

MS. ENGLADE: Your Honor, I think this is the main crux of the argument here today. First of all, the jury's finding as to what he was personally attributed to was only part of the jury's verdict. As the Court may remember, the jury found Mr. Leontaritis guilty of the entire drug conspiracy involving 500 grams or more. But because they made the additional finding of what he was personally responsible for, pursuant to Haynes that only caps the amount of the statutory maximum of 20 years. It does not in any way according to Alleyne, Supreme Court case, that you are restricted to stay within that amount.

[13] In fact, it says, and as Mr. Hawthorn just pointed out, the jury found that beyond a reasonable doubt.

The Court is able to look at all relevant conduct and a preponderance of the evidence standard. And I think the Court heard all the evidence, can certainly find, especially with a jury's verdict that the conspiracy was 500 grams or more; and I think we're still having troubles trying to distinguish what Mr. Leontaritis' role in this was. He was a co-conspirator as a banker for this drug conspiracy. We're not claiming he distributed marijuana – methamphetamine, and that's I think the argument of the defense.

Here we're arguing that he – his role, which was as banker, was – the jury found was attributable up to

less than 50 grams which makes it a statutory maximum. But Alleyne and other Fifth Circuit and through all the other circuits allow the Court to consider all other relevant conduct that is reasonably foreseeable to Mr. Leontaritis to be considered in sentencing the – in determining the proper guideline range.

So that's why we ask the Court to follow the probation officer's recommendation, because there's certainly ample evidence to show that the guideline range was properly calculated by probation.

[14] THE COURT: I think by a preponderance of the evidence that's correct. The Court is looking at this from a different standard. The Court is very familiar with drug conspiracies. I think perhaps the jury didn't quite understand how drug conspiracies work and different people play different roles. And I think Mr. Leontaritis was vital to this conspiracy as in the banking function. Different conspiracies have different ways of organizing and I think he participated. I think the amount – I can – from the $800,000 and that's extrapolating – that's 176 kilograms. I think there's certainly evidence of that by a preponderance of the evidence.

And I think the case that you cited, the Ninth Circuit case, was just kind of an outlier because other cases don't do that. They allow the Court to determine quantities by a preponderance of the evidence as long as the Court doesn't impose a sentence that's in excess of the statutory maximum and that's what is already set. That's the 240 months.

So in those cases we conclude *United States v. Lopez-Esmurria 714 Federal Appendix 125 3rd Circuit, 2017* and *United States v. Webb 545 F.3d 673, 8th Circuit 2008, United States v. Magallanez 408 F.3d 672, 10th Circuit 2005, United States v. Goodine, 326 F.3d 26, 1st Circuit 2003, United States v. Smith, 308 F.3d 726, 7th Circuit,* [15] *2002.* There's also – let me find the whole site on that.

MS. ENGLADE: Your Honor, I believe it's *749 F.3d 407, 5th Circuit 2014.*

THE COURT: Right. So I think that it's just not in line with the other courts especially in the 5th Circuit so the objection is overruled. I think it can be based on conversion of money and drugs and I think there was ample evidence that Mr. Leontaritis was responsible for a far greater quantity than what the jury found by a preponderance of the evidence. It's overruled.

MR. HAWTHORN: No. 7, the Defendant objects to paragraph 21 for its failure to give him the two point reduction for acceptance of responsibility. It was Mr. Leontaritis' feeling that he was guilty of selling cars to drug dealers for cash knowing that they were drug dealers, but that – and the only reason that he actually went to trial was to determine what his personal responsibility or accountability was for the drugs since he did not deal any of the drugs himself.

I do not – I do not follow the Government's theory that he was a banker. He sold cars to drug dealers and he borrowed money from drug dealers. The amount of

money that he paid back to Guillory was a repayment of the loan. It was not some kind of a [16] banker/customer relationship. Banks have the money. Guillory had the money. Leontaritis didn't have any money. He was borrowing some of it. He paid back some of it. Most of it he did not pay back.

THE COURT: Well, I assume money laundering, disguising the source of these funds that were drug proceeds funds, I mean I don't think he accepted responsibility. We had a long trial about this whole incident and today the Court's findings about the quantity of drugs certainly is inconsistent with what he's saying. So I don't think he's entitled to acceptance of responsibility.

And then a lot of the rest of these is having to do with Level 42, it's a calculation of the quantity. I don't know if there was something different from what you have already said.

MR. HAWTHORN: Yeah. In all due respect, I can see where this is headed. And I don't know of any reason for me to actually orally go over all these objections. The objections are in my written objections to the presentence report and also in my sentencing memorandum. I think the record is clear as to what my objections are. And so I'll just – unless you want me to read the rest of these objections, I'll just stand on the written objections that I have made and also stand on [17] my sentencing memorandum and the authority cited in my sentencing memorandum.

THE COURT: All right. I don't know if any of these other ones are anything different than that. A lot of this has to do with the calculation that I overruled the objections. Referring to him as the bank, I think that was since he played a financial role in this conspiracy. I think bankers is too broad a term, but that seems to be kind of captures the essence of what he did. So that's overruled.

Abuse of a position of trust, No. 14, he was a licensed automobile dealer. And the problem was he wasn't transferring the titles so that would help mask the source of the funds so the drug dealers could have the use of these cars.

And then but it was never on paper to show that and a responsible dealership would transfer the titles and file the notice of return and all those things. So I think he did abuse the position of trust having to do with the licensed automobile dealer.

15 and 16, it's about grouping, it has to do with calculation of quantities and objections of recommended punishment and term. Those were overruled because the Court thinks that probation properly calculated these quantities and the amounts and the [18] responsibility. So it's – those are overruled. Okay.

MR. HAWTHORN: Are you going on to more objections or –

THE COURT: No, I think that's all of them.

MR. HAWTHORN: Your Honor, I just want to make sure that the record reflects that you have

overruled No. 8 and No. 9, No. 10, No. 11, No. 12, No. 13, No. 14, 15, 16 and 17 so that the record will properly reflect –

THE COURT: Yes.

MR. HAWTHORN: – your actions on all those objections.

THE COURT: Yes, I did overrule those objections.

MR. HAWTHORN: Okay.

THE COURT: The Court finds the information contained in the presentence report has sufficient indicia for reliability to support its probable accuracy. The Court adopts the factual findings, undisputed facts and guideline applications in the presentence report.

Based upon a preponderance of the evidence presented and the facts in the report, while viewing the sentencing guidelines as advisory, the Court concludes that the total offense level is 42, the criminal history level is II, which provides an advisory guideline range of 360 to 480 months.

[19] Does defense counsel wish to make any remarks on behalf of the Defendant?

MR. HAWTHORN: Yes, Your Honor. I think what this is about is the Defendant's knowingly selling automobiles, luxury automobiles, to people that he knew were drug dealers. And that enabled them to get possession of automobiles that they might not

otherwise have been able to get. Indirectly I suppose that it helped their drug dealing business. But that's all he did. And he should be punished accordingly. He shouldn't be punished as a drug dealer who the Government and the presentence officer think should get the same sentence as the head of the drug conspiracy, Mr. Guillory. To me that's ridiculous. And the fact that they want him to be held accountable for 176 kilograms of methamphetamine is also ridiculous.

The jury found less than 50. What they are asking is to increase the jury's decision 7,520 percent. That is crazy. He should be sentenced according to 18 U.S.C. 3553(a) mainly on whether or not he is guilty as a launderer of drug proceeds, which he is, more than a member of a drug conspiracy.

But even a finding – since the jury found him guilty of a drug conspiracy, 3553(a) paragraph 6 says that he should be sentenced according to others who are [20] similarly situated. Sheila Guillory, who was much more culpable in this case than John Leontaritis, was sentenced to 27 months, 27 months, and they are asking for 30 years. That's ridiculous, Your Honor.

In my opinion, he should not get any more than Sheila Guillory got. Anything else would to me not be a fair sentence. So that's what I am asking on behalf of the Defendant for.

THE COURT: All right. Mr. Leontaritis, do you wish to make a statement?

THE DEFENDANT: Yes, Your Honor. I had some stuff to say, but based on the Court's decisions I would like to point out one thing. I read all my – all the probation officer's writings and all the sentence memorandums written by the prosecution. And I believe that they have miscited one point, that as the judge - the Honorable Judge Jennifer Elrod pointed out in Haynes and Porter, Your Honor, those Defendants sentences were vacated because they were sentenced on a conspiracy wide quantity jury finding instead of an individualized drug jury finding.

And their sentence were vacated because of the fact at sentencings the judge said – the Honorable Judge of the 5th Circuit said that they should be sentenced based on an individual quantity finding. And that is the [21] verdict of Haynes and why their sentence were vacated. That is why my verdict form was actually designed, Your Honor, was because it not only sets the minimum sentence for an individual, it actually fulfills Alleyne in the fact that the jury must find beyond a reasonable doubt any element of crime. And so Haynes actually states that a quantity of drug that affects the minimum sentence of an individual is an element of crime. And that is what the jury actually found and that is why the jury is required to rule beyond a reasonable doubt not only as to the quantity that I am personally responsible for, but all foreseeable quanties to the conspiracy.

And that is what they did. So beyond a reasonable doubt that's what they decided according to Haynes. I'm only pointing this out to the Court, Your Honor,

because I have spent hours and hours and hours researching this. That is not to say, Your Honor, that I don't take responsibility for what I did. There is a lot of things I regret and I will accept whatever punishment you state right now, Your Honor. And tell my family that I love them very much and everything is going to be okay.

Thank you, Your Honor.

THE COURT: Does the attorney for the Government wish to make any remarks?

MS. ENGLADE: Your Honor, we stand by our [22] previous – our sentencing memorandum and the previous rulings by the Court that the Court can determine by a preponderance of the evidence all relevant conduct as part of this. Haynes specifically only deals with the statutory maximum and as I know the Court is well aware, will not go above the statutory 20 years for each count.

Furthermore, that according to the guidelines, because the guidelines are higher than 240 months, the sentencing guidelines Section 5G1.2(b) says that the Court shall impose consecutive sentences to the extent necessary to meet the minimum total punishment which would be 360 months in this case. Your Honor, we would ask the Court follow that.

THE COURT: Does counsel know of any reason why sentence should not be imposed at this time?

MR. HAWTHORN: No, Your Honor.

THE COURT: Well, the Court thinks that a variance is in order in this case, but not to the extent that Mr. Hawthorn suggests. I think a sentence of 240 months on both counts would be appropriate. That's the statutory maximum on both counts. I think that he was responsible for the 176 kilograms extrapolating from the $800,000 that he laundered, probably more than that, but that we know that's an amount that he admitted and that there is evidence of that, hard evidence of the [23] 800,000.

So I think, though, that it should be 240 and that to run concurrently, so a total of 240. So pursuant to the Sentencing Reform Act of 1984 – and I think that that more closely represents his involvement in the criminal conspiracy.

MS. ENGLADE: Your Honor, if I could just say for the record.

THE COURT: Yes.

MS. ENGLADE: I know Mr. Hawthorn is relating his sentence to that of Cloyd Guillory; however, Cloyd Guillory accepted responsibility and did not receive an abuse of power assessment like Mr. Leontaritis did. Furthermore, Mr. Leontaritis was guilty of the money laundering too, which Mr. Cloyd Guillory was not charged or convicted of.

And as far as Ms. Guillory, the 27 months, it's apparent that her role was much less. She was not inducing this conspiracy continue. She was hiding the fact of her son's involvement in this drug conspiracy. So, Your

Honor, if the Court is going to compare sentences and use it to –

THE COURT: I am not comparing sentences. I agree he is not similarly situated to Mr. Guillory exactly or Mrs. Guillory. It's not that. I just think [24] that this is an appropriate sentence for his involvement in the conspiracy.

MS. ENGLADE: And that's fine, Your Honor. I just wanted the record to be clear about the disparate sentencings.

THE COURT: Right.

MS. ENGLADE: Thank you.

THE COURT: They're different.

MS. ENGLADE: Thank you.

THE COURT: I think this captures his role better than the other sentences. Pursuant to the Sentencing Reform Act of 1984, having considered the factors noted in 18 U.S.C., Section 3553(a), and after having consulted the advisory Sentencing Guidelines, it is the judgment of the Court that the Defendant, John D. Leontaritis, is hereby comitted to the custody of Bureau of Prisons to be imprisoned for a total term of 240 months. This term consists of 240 months as to Count 1 and 240 months as to Count 2 of the indictment with Count 2 to be served concurrently with Count 1.

Furthermore, the term of imprisonment imposed by this judgment shall run consecutively with the

Defendant's term of imprisonment for the following conviction: Theft of Public Money, U.S. District Court, Southern District of Texas, Houston, Texas, docket no. [25] 4:17-CR-00198-001.

The sentence is within an advisory guideline range that is greater than 24 months, and the specific sentence is imposed after consideration of the factors set forth in 18 U.S.C. Section 3553(a).

The Court recommends to the Bureau of Prisons that the Defendant receive appropriate drug treatment while imprisoned. The Court finds the Defendant doesn't have the ability to pay a fine. The Court will waive the fine in this case.

It is ordered the Defendant must pay the United States a special assessment of $100 as to each Counts 1 and 2, for a total of $200, which is due and payable immediately.

The Defendant is ineligible for all federal benefits listed in 21 U.S.C. Section 862(d), for a period of five years from the date of this order. Upon release from imprisonment the Defendant shall be on supervised release for a term of three years. This term consists of terms of three years as to each of Counts 1 and 2, with both terms to run concurrently.

Within 72 hours of release from the custody of the Bureau of Prisons, the Defendant must report in person to the probation office in the district to which the Defendant is released.

[26] The Defendant must not commit another federal, state or local crime and must comply with the standard conditions that have been adopted by this Court.

In addition, the Defendant must comply with all applicable mandatory conditions and the following special conditions. The Defendant must provide the probation officer with access to any requested financial information for purposes of monitoring the Defendant's efforts to obtain and maintain lawful employment and income. The Defendant must not participate in any form of gambling.

The Defendant must participate in a program of testing and treatment for drug abuse and follow the rules and regulations of that program until discharged. The probation officer, in consultation with the treatment provider, will supervise the Defendant's participation in the program.

The Court finds this to be a reasonable sentence in view of the nature and circumstances of the offenses entailing the Defendant's participation in a drug trafficking conspiracy involving the distribution of methamphetamine and in a conspiracy to commit money laundering, the Defendant's using an automobile dealership that he owned and operated which specialized in luxury vehicles to assist an individual that he knew [27] to be a drug dealer to conceal drug proceeds derived from the distribution of methamphetamine pills, the drug dealer's purchasing a Lamborghini valued at more than $400,000 from the Defendant which he kept

registered to his dealership to preclude it from being viewed as an asset of the drug dealer, the drug dealer's making a cash down payment of 225,000 and making subsequent monthly cash payments totaling more than $400,000 for the vehicle which were deposited into his business bank accounts but for which proceed transaction reports were not filed as required by law, the drug dealer's purchasing other vehicles from the Defendant under similar conditions in various schemes to conceal the drug proceeds, that drug proceeds were the source of funds, the Defendant's dealership holding liens on the vehicles to avoid seizure by law enforcement, the drug dealer's providing another $400,000 to the Defendant in exchange for the use of other vehicles and allowing the cash to be returned to him in different manners to conceal that the money was derived from the sale of drugs, the Defendant's leasing a penthouse on behalf of the drug dealer, purchasing a home for the drug dealer's family and paying for several luxury trips for the drug dealer and his companions in order to launder the funds, Defendant's directing another person to pick up $400,000 in cash from the drug dealer, [28] the Defendant's responsibility for a minimum of $800,000 in laundered funds which represents 176 kilograms of methamphetamine, his prior conviction for theft of public money, and his history of substance abuse. It will serve as just punishment, promote respect for the law, and deter future violations of the law.

Although the Court finds the guideline calculations announced at the sentencing hearing to be

correct, to the extent they were incorrectly calculated, the Court would have imposed the same sentence without regard to the applicable guideline range in light of the factors set forth in 18 U.S.C. Section 3553(a).

The Defendant has a right to appeal. If the Defendant is not able to pay the cost of the appeal, you may appeal *in forma pauperis*. The clerk of the court will prepare and file a notice of appeal upon the Defendant's request. With few exceptions, any notice of appeal must be filed within 14 days.

The presentence report is made part of the record and is placed under seal except counsel for the Government and defense may have access to it for purposes of appeal.

Were there any other counts?

MS. ENGLADE: No, Your Honor, but we have filed a final order of forfeiture. We do ask the Court [29] to sign that and make it part of the sentence in this case.

THE COURT: That's granted.

The Defendant is remanded to the custody of the United States Marshal and then to the custody of the United States Federal Bureau of Prisons to begin the service of sentence. Is there a particular facility you are requesting?

MR. HAWTHORN: Texarkana.

THE COURT: All right. I'll recommend Texarkana. If there is nothing further then you're excused.

MS. ENGLADE: Thank you, Your Honor.

(Proceedings concluded, 10:58 a.m.)

COURT REPORTER'S CERTIFICATION

I HEREBY CERTIFY THAT ON THIS DATE, MAY 31, 2019, THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS.

/s/ Ruth C. Weese
RUTH C. WEESE, RDR-CSR

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA	§	
	§	CASE NO. 1:18-CR-23
versus	§	Filed Dec. 4, 2018
	§	
JOHN D. LEONTARITIS	§	

VERDICT OF THE JURY

(Filed Dec. 4, 2018)

As to the offense charged in Count One of the Indictment, conspiracy to possess with intent to distribute or distribute a mixture or substance containing a detectable amount of methamphetamine in violation of 21 U. S C. § 846, we, the Jury, find:

JOHN D. LEONTARITIS (check one)

X	
(Guilty)	(Not Guilty)

If you have found the defendant guilty of Count One of the Indictment, then you must consider the following special issues.

You must determine the quantity of methamphetamine attributable to the overall scope of the conspiracy. Indicate below your unanimous finding beyond a reasonable doubt of the quantity, if any, applicable to the overall scope of the conspiracy.

_X_ 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine

___ 50 grams or more but less than 500 grams of a mixture or substance containing a detectable amount of methamphetamine

___ Less than 50 grams of a mixture or substance containing a detectable amount of methamphetamine

You must next determine the quantity of methamphetamine for which the defendant was accountable. Indicate below your unanimous finding beyond a reasonable doubt of the quantity of methamphetamine, if any, attributable to the defendant. The defendant is accountable only for the quantity of methamphetamine with which he was directly involved and all reasonably foreseeable quantities of methamphetamine within the scope of the conspiracy reasonably foreseeable to him.

___ 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine

___ 50 grams or more but less than 500 grams of a mixture or substance containing a detectable amount of methamphetamine

_X_ Less than 50 grams of a mixture or substance containing a detectable amount of methamphetamine

As to the offense charged in Count Two of the Indictment, conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h), we, the Jury, find:

JOHN D. LEONTARITIS (check one)

X	
(Guilty)	(Not Guilty)

If you have found the defendant guilty of Count Two of the Indictment, then you must consider the following special issues. Please check any and/or all that apply.

X The government has proved beyond a reasonable doubt that the defendant intended to promote the distribution of a controlled substance (methamphetamine) by the conspiracy.

X The government has proved beyond a reasonable doubt that the defendant knew that the transaction or transactions were designed to conceal the proceeds of the distribution of a controlled substance (methamphetamine) by the conspiracy.

X The government has proved beyond a reasonable doubt that the defendant knowingly engaged in, or attempted to engage in, a monetary transaction or transactions involving criminally derived property, in excess of $10,000.00, that was derived from the distribution of

a controlled substance (methamphetamine).

12-4-18	K.M.
Date	Foreperson's Initials