

No._____

SUPREME COURT OF THE UNITED STATES

UNITED STATES,

Respondent,

v.

JAMIE BETANCES,

Petitioner.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
FIRST CIRCUIT COURT OF APPEALS

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I. QUESTION PRESENTED.

Did the lower court err in denying Jamie Betances acceptance of responsibility, under U.S.S.G. § 3E1.1, after Mr. Betances pleaded guilty, accepted the prosecution version, and limited his objections at sentencing to legal arguments and a few discrete non-frivolous factual issues?

II. PARTIES TO PROCEEDINGS

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V. PETITION FOR WRIT OF CERTIORARI

Jamie Betances, an inmate currently incarcerated at the Maine State Prison in Warren, Maine, by and through Hunter Tzovarras, respectfully petitions this Court for a writ of certiorari to review the judgment of the First Circuit Court of Appeals.

VI. OPINION BELOW

The First Circuit Court of Appeals decision was issued on September 11, 2020 and is unreported. The decision of the trial court is not reported and was ruled on orally; a copy is provided in the appendix.

VII. STATEMENT OF JURISDICTION

This matter seeks the review of a decision from the First Circuit Court of Appeals on a decision involving federal rule and United States Sentencing Commission Sentencing Guidelines. The First Circuit Court of Appeals issued its decision on September 11, 2020.

VIII. UNITED STATES SENTENCING GUIDELINES INVOLVED.

The Guidelines provide: "If the defendant clearly demonstrates acceptance of responsibility for his offense, decrease the offense level by 2 levels." USSG § 3E1.1 An additional point of acceptance is granted if it is done before the Government prepares for trial. USSG § 3E1.1.

IX. STATEMENT OF THE CASE

Jamie Betances was charged with one count of conspiracy to distribute a controlled substance. He pleaded guilty to the federal charge, and admitted to the truth of the prosecution version. The Presentence Report recommended a reduction for acceptance of responsibility.

On May 1, 2019, the court began the sentencing hearing. Prior to resolving the Guideline objections, and proceeding to sentencing, the court inquired as to what Mr. Betances admits to and contested in the PSR. The court questioned Mr. Betances as to each statement contained in the PSR as it relates to the conduct of the conspiracy and

Mr. Betances. Mr. Betances agreed with many statements contained in the report, did not dispute the accuracy of others, and disagreed with the accuracy of some when asked by the court.

Following this inquiry, the court indicated concern Mr. Betances was denying offense conduct and relevant conduct. The parties and court agreed to recess the sentencing hearing to determine whether Mr. Betances should be granted acceptance of responsibility based on his responses to the court's inquiry.

The sentencing hearing resumed on October 16, 2019. The court started by addressing whether Mr. Betances should be denied acceptance of responsibility based on his responses to the court's inquiry at the start of the previous May 1, 2019 hearing. Mr. Betances argued in favor of acceptance. Before the court ruled on acceptance, Mr. Betances withdrew any other factual objections to the PSR. The court indicated it did not cure the issue. The court goes on to rule and deny Mr. Betances the reduction for acceptance of responsibility.

Mr. Betances appealed the court's ruling on the denial of acceptance to the First Circuit Court of Appeals. On September 11, 2020, the Court affirmed the lower court's ruling.

X. REASONS FOR GRANTING THE PETITION

The Court should grant certiorari because the lower courts erred in finding Mr. Betances did not clearly demonstrate responsibility for his offense under the Sentencing Guidelines. Mr. Betances pleaded guilty. He admitted to the conduct set forth in the prosecution version. He limited his objections at sentencing to legal arguments and a few discrete factual issues. He did not frivolously contest or deny offense conduct in the PSR. He did not object to the court's reliance on the facts set forth in the PSR other than the previously noted objections briefed in the sentencing memorandum. Furthermore, as to any perceived challenge to the facts of the PSR, Mr. Betances withdrew those objections prior to the court ruling on acceptance.

The lower court made factual errors in determining Mr. Betances' denials were inconsistent with his prior admissions and acceptance of

responsibility. The record did not support the trial court's conclusions that Mr. Betances' statements were false or untrue and the First Circuit's affirming of the lower court's decision was error.

The Guidelines provide: "If the defendant clearly demonstrates acceptance of responsibility for his offense, decrease the offense level by 2 levels." USSG § 3E1.1 An additional point of acceptance is granted if it is done before the Government prepares for trial. USSG § 3E1.1

Application Note 1 of USSG § 3E1.1 provides the following guidance in determining whether acceptance has been demonstrated:

[T]ruthfully admitting the conduct comprising the offense(s) of conviction, and truthfully admitting or not falsely denying any additional relevant conduct for which the defendant is accountable under §1B1.3 (Relevant Conduct). Note that a defendant is not required to volunteer, or affirmatively admit, relevant conduct beyond the offense of conviction in order to obtain a reduction under subsection (a). A defendant may remain silent in respect to relevant conduct beyond the offense of conviction without affecting his ability to obtain a reduction under this subsection. A defendant who falsely denies, or frivolously contests, relevant conduct that the court determines to be true has acted in a manner inconsistent with acceptance of responsibility, but the fact that a defendant's challenge is unsuccessful does not necessarily establish that it was either a false denial or frivolous;"

Application Note 3 provides:

Entry of a plea of guilty prior to the commencement of trial combined with truthfully admitting the conduct comprising the offense of conviction, and truthfully admitting or not falsely denying any additional relevant conduct for which he is accountable under §1B1.3 (Relevant Conduct) (see Application Note 1(A)), will constitute significant evidence of acceptance of responsibility for the purposes of subsection (a). However, this evidence may be outweighed by conduct of the defendant that is inconsistent with such acceptance of responsibility. A defendant who enters a guilty plea is not entitled to an adjustment under this section as a matter of right.

Mr. Betances pleaded guilty and agreed with the prosecution version of the offense. His objections to the PSR were limited to legal and discrete factual issues. Following the change of plea, a Presentence Report (PSR) was prepared. The PSR recommended the reduction for acceptance of responsibility.

Mr. Betances never objected to any of the above factual statements in the PSR being relied on by the court in determining sentence. He was not challenging these facts for purposes of sentencing. No objections were filed or briefed prior to the start of sentencing.

Mr. Betances did not raise the denials the court took issue with and based the denial of acceptance on. These issues were raised by the court when it inquired into Mr. Betances' knowledge and agreement as to each statement in the PSR. Mr. Betances was not arguing for the purposes of sentencing that the court could not rely on the PSR statements—other than the few objected to before the start of the sentencing hearing.

To the extent the court took the exchange on May 1, 2019 to be a challenge or objection to the PSR facts, Mr. Betances withdraw those objections before the court's ruling. "To the extent that Your Honor finds that he was denying any relevant conduct or conduct of the offense of conviction at to the last colloquy that you had, Mr. Betances would withdraw any of those denials, except for the ones that are preserved in our objections." (Sentencing Transcript 10/6/2019 at p 9). The court declined to accept this withdrawal and proceeded to rule as if Mr. Betances was factually challenging the PSR.

The court based its denial of acceptance on factual findings unsupported by the record and that were clear error. In denying Mr.

Betances acceptance, the court found "So at the Rule 11, *contrary to what he told me on May 1, 2019*, he admitted that he was involved in distributing controlled substances." (Sentencing Transcript 10/16/2019 at p. 28) (emphasis added). The factual conclusion is not supported by the record. Mr. Betances admitted he distributed controlled substances on May 1, 2019, and never denied he did such. On May 1, 2019, Mr. Betances agreed he engaged in some distribution of controlled substances. (*Id.* at 11). The court asked Mr. Betances, "... Worrell and Betances, engaged in some distribution Do you agree with that?" Mr. Betances answered: "Yes". (*Id.*). Mr. Betances never denied distributing drugs as part of his role in the conspiracy at the May 1, 2019 hearing.

The court erred in finding Mr. Betances' admission to the Rule 11 in state court contradicted statements he made at the May 1, 2019 sentencing hearing. The court found: "I would point out that the defendant told me on May 1 that he didn't understand the drug dealers were in the backroom. That was something beyond his knowledge. He denied knowing anything about that, but here in front

of a state court judge, the allegation was made by the state prosecutor, as I have indicated, the defendant himself was in the backroom." (*Id.* at 29-30).

The court's factual conclusion that Mr. Betances was untruthful on May 1 when he indicted he did know the dealers would stay in the backroom of the trap houses, but agreed the discovery established that, (Tr. 11-12), was not contradicted by his plea to the state court charge. During the State Rule 11, Mr. Betances did not dispute "*he* generally would stay in a back bedroom or in the basement, which is where the drugs were located...." (Govt. Ex. 7 at p. 11) (emphasis added). This statement as to where Mr. Betances stayed in the house is separate from the question asked at the May 1, 2019 hearing as to the location of *workers* in the trap houses. Mr. Betances did not dispute that statement, and did not contradict it at his state Rule 11 hearing. The court erred in reaching the factual conclusion that Mr. Betances was untruthful in denying he personally knew where the workers stayed in the trap houses, when he admitted he stayed in the backroom himself.

The court erred in finding Mr. Betances told the court he was a "mere money man". "So my conclusion is that the defendant was a drug dealer based on all of the evidence. He was not a mere moneymen as he attempted to tell me on May 1." (Transcript 10/16/2019 at p. 30). Mr. Betances never objected to being a "drug dealer". He never indicated to the court he was a "mere money man."

At the May 1st hearing, Mr. Betances agreed he engaged in some distribution of drugs. Moreover, in admitting to the prosecution version of the offense, he admitted he distributed controlled substances as part of his involvement in the conspiracy.

Mr. Betances never indicated he did not distribute drugs. He never indicated his only role in the offense was as a mere moneymen. Mr. Betances argued in his sentencing brief his primary role was to collect the proceeds—an argument supported by the PSR record, which indicates Mr. Betances would text local workers daily for their "count". (PSR at paragraph 7). The court erred in finding he stated he was "a mere moneymen."

The court rejected Mr. Betances response that he personally did not know how many trap houses there were in central Maine, and was not being truthful when he made this statement. (*Id.* at 20). The court erred in finding Mr. Betances disputed the number of trap houses. He did not contest the number of trap houses on May 1, 2019. He agreed the discovery established the trap houses to be between 12-15. (Transcript 5/1/2019 at p. 17-18). Likewise, in admitting to prosecution version, Mr. Betances acknowledged there were 12-15 trap houses. (Prosecution Version).

The caselaw does not support the court's denial of acceptance in this case. The courts have found acceptance not to be demonstrated where a defendant uses the court process to falsely contest evidence.

The question is what did the defendant do with that opportunity to testify, or otherwise to participate. Application Note 1(a) to § 3E1.1 tells judges to consider whether a defendant has falsely den[ied] any additional relevant conduct' when deciding whether to grant a reduction for acceptance of responsibility. (Emphasis added.) While a defendant may want cross-examination of witnesses to disprove false testimony related to relevant conduct, she may also try to present testimony in an attempt falsely to deny past activities. Bowman and Cole did the latter, not the former.

U.S. v. Etchin, 614 F. 3d 726, 739 (7th Cir. 2010) (internal quotations omitted). Mr. Betances did neither of the above. Mr. Betances offered no evidence or testimony to falsely contest the factual statements in the PSR the court took issue with and denied acceptance on.

Therefore for all of the above reasons, the lower courts erred factually and legally in deny Mr. Betances the three level reduction for acceptance of responsibility under the Sentencing Guidelines.

XII. CONCLUSION.

The Court is respectfully requested to grant this petition for certiorari for the reasons set forth above.

Dated: December 10, 2020

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2020 I sent a copy of the Petition to:

Halsey Frank, U.S. Attorney
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100 Middle Street, East Tower, 6th Floor
Portland, ME 04101

/s/ Hunter J. Tzovarras
Bar No. 1135960

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United States Court of Appeals For the First Circuit

No. 19-2068

UNITED STATES,

Appellee,

v.

JAMIE BETANCES, a/k/a Booger, a/k/a Booga, a/k/a Buga, a/k/a Ice,

Defendant - Appellant.

Before

Thompson, Kayatta and Barron,
Circuit Judges.

JUDGMENT

Entered: September 11, 2020

Defendant appeals his 126-month sentence for conspiracy to possess with intent to distribute controlled substances, arguing that his sentence was procedurally unreasonable because the district court erred (1) by declining to apply an acceptance-of-responsibility credit to his offense level and (2) by applying an enhancement for his role as a supervisor or manager of the conspiracy. We have carefully reviewed the parties' briefs and the record below and **AFFIRM** the district court's judgment. See Local Rule 27.0(c).

By the Court:

Maria R. Hamilton, Clerk

cc:

Joel B. Casey
Julia M. Lipez
Benjamin M. Block
Jody B. Mullis

Johnathan G. Nathans
Hunter J. Tzovarras
Jamie Betances

1 make your ruling.

2 THE COURT: Go ahead.

3 MR. TZOVARAS: To the extent that Your Honor finds
4 that he was denying any relevant conduct or conduct of the
5 offense of conviction as to the last colloquy that you had,
6 Mr. Betances would withdraw any of those denials, except for
7 the ones that are preserved in our objections.

8 THE COURT: Well, that doesn't cure the issue. The
9 issue is that he stood up in front of me at the May 1, 2019,
10 hearing and he denied substantial amounts of the offense
11 conduct and caused the Court then after a conference of
12 counsel and after getting a transcript of the hearing and
13 having the Court comparing all the information before me, he
14 stands up now and says, what, that he was misrepresenting to
15 me -- is he going to tell me that he was misrepresenting to me
16 on May 1 when he denied conduct or he said he didn't know
17 about his conduct that he was actively misrepresenting and
18 trying to mislead the Court?

19 MR. TZOVARAS: No, Your Honor.

20 THE COURT: Okay. Well, then let's move to the
21 ruling.

22 So the origin of the controversy that caused a delay in
23 the defendant's sentencing can be traced to May 1, 2019, when
24 the defendant last came for sentencing. As a standard
25 practice, I ask the defendant about the contents of the

1 revised presentence report. Typically, when asked about a
2 presentence report, a defendant will admit the contents of the
3 report as true and then the Court moves to sentencing.
4 Occasionally, the defendant will correct some fact in the
5 presentence report, such as the ages of his children, that is
6 not relevant to sentencing, and the Court will note the
7 correction. More rarely the defendant will have a more
8 significant dispute such as he was never arrested for or
9 convicted of a crime listed in the presentence report and
10 under Rule 32. -- 32(i)(3)(B), which requires a ruling on a
11 disputed matter, the Court will rule on that, but only if it
12 affects sentencing. So if the sentencing judge declares that
13 he or she will not consider the disputed fact, the judge
14 continues to impose sentence.

15 From time to time, a defendant will object to a fact or a
16 set of facts in the context of a legal issue. An example in
17 this case is the defendant's objection to the drug quantity
18 calculation. In those situations, the objection is usually
19 more legal than factual. But it is highly unusual, in fact, I
20 cannot recall a situation where a defendant like -- as
21 Mr. Betances did, disputes large swaths of the facts in the
22 presentence report. The reason for this is because of the way
23 a presentence report is prepared. There is a procedure
24 whereby objections to the presentence report are raised and
25 often resolved, and those that are not resolved are

1 highlighted for the Court.

2 Here on February 26, 2019, the Court met with the lawyers
3 at a presentence conference and the defendant raised six
4 objections to the presentence report. Those objections
5 included drug quantity, firearms enhancement, and whether or
6 not he should receive an enhancement for being a manager or
7 supervisor. He initially objected to being a criminal history
8 category IV as over -- as overrepresenting his criminal
9 history, but at the presentence report -- conference, he
10 withdraw that objection.

11 He objected to being called the muscle or protection of
12 the drug trafficking organization, and he denied pulling a gun
13 on his father.

14 A part from the muscle or protection issue and the gun on
15 his father, the parties filed memoranda on these issues. The
16 Government filed a memorandum on March 19, 2019, and addressed
17 the drug quantity role enhancement and the firearms
18 enhancement.

19 The defendant responded on April 13, 2019, and addressed
20 drug quantity, supervisor/manager, and firearms, and the
21 Government filed a brief reply on April 15, 2019.

22 So before the sentencing, the Court and the parties
23 thought we knew what was in dispute. But at the May 1, 2019,
24 hearing, when the Court asked the defendant about the facts in
25 the presentence report involving his offense conduct, it was

1 the Court's impression that he had denied many of the facts
2 that the probation office presented as comprising the offense
3 conduct. Although Mr. Casey said relevant conduct, I consider
4 most of what he denied as intertwined with his offense.

5 After discussing the offense conduct line by line with
6 the defendant, the Court raised the issue of acceptance, and
7 to be eligible for acceptance the defendant, under
8 Section 3E1.1 of the guideline must truthfully admit the
9 conduct comprising the offense of conviction and must not
10 falsely deny or frivolously contest relevant conduct to the
11 offense of conviction.

12 Once the Court raised this issue, it was necessary to
13 continue the sentencing hearing to a later date to see if the
14 defendant's responses justified denial of acceptance.

15 To make this decision, the Court engaged in an extremely
16 arduous and long and tedious process. I needed to get a copy
17 of the transcript of the May 1, 2019 hearing and compare that
18 transcript to what the defendant admitted when he pleaded
19 guilty and what was in the presentence report, and that was
20 just the beginning.

21 The Court re-conferenced the case on June 19, 2019, a
22 transcript had been prepared, and the parties were entrenched.
23 The Government stood by the contents of the presentence
24 report, and the defendant argued that he had not denied
25 anything other than irrelevant or tangential facts.

1 To see what to make of the May 1, 2019 interchanges
2 between the Court and the defendant, as I mentioned, I had a
3 lot of work to do. I had to compare the contents of five sets
4 of documents, first was the transcript of the May 1, 2019
5 aborted sentencing hearing, second, the prosecution version in
6 this case, which the defendant admitted was true on
7 October 16, 2018, when he undertook the Rule 11, and I
8 rechecked the Rule 11 to make sure my recollection of it was
9 correct. The third was the transcript of his guilty plea to a
10 state of Maine aggravated trafficking charge for which he
11 pleaded guilty in state court and was sentenced on February 6,
12 2017. The fourth was the presentence investigation report as
13 revised on January 30, 2019, and the fifth was the set of
14 Government sentencing exhibits 1 through 6.

15 I will say a word about the documents that I reviewed,
16 with one exception, all the documents are legal documents,
17 they're either transcript of court or grand jury proceedings,
18 documents filed on the court docket about which the defendant
19 was questioned by a judge, and the probation office's
20 presentence report that I will speak about in a moment.

21 In addition, there was an MDEA investigative report and
22 evidence log. The only real exception is Government's
23 Exhibit 6, which is a photograph or photocopy of notes, a
24 ledger, and another documents that were seized from the
25 defendant on May 10, 2016.

1 I will now return to the presentence report. Under First
2 Circuit authority, a sentencing Court is generally entitled to
3 rely on the contents of the presentence report even if the
4 defendant denies the contents. The Government cites United
5 States v. Cyr, 337 F.3d 96, a 2005 case in which Judge Lipez
6 wrote, quote, at page 100, generally, a PSR bears sufficient
7 indicia of reliability to permit the district court to rely on
8 it at sentencing. A defendant is free to challenge any
9 assertions in the presentence report with countervailing
10 evidence or proffers in which case the district court is
11 obliged to resolve any genuine or material dispute. But if
12 the defendant's objections are merely rhetorical and
13 unsupported by countervailing proof, the district court is
14 entitled to rely on the facts in the presentence report.

15 This was recently reaffirmed in the case of United States
16 v. Rodriguez-Reyes 925 F.3d 558, a 2019 First Circuit case by
17 Judge Lynch. In that case, which was issued on June 5, 2019,
18 she wrote, a sentencing Court has wide discretion to decide
19 whether particular evidence is sufficiently reliable to be
20 used at sentencing which includes information in the
21 presentence report.

22 Traditionally, I have carved out an exception to the
23 First Circuit rule trying to accord greater rights to the
24 defendant than the First Circuit mandates. In the rare
25 instance where a defendant objects to an asserted fact and

1 it's important or material, I've usually required the
2 Government to come forward and substantiate what the
3 presentence report says happened. And in doing so, I have
4 never asked for a new trial, but I am -- as matter of
5 practice, I ask the Government to let the Court know the
6 information on the contested point that impressed the
7 probation officer. This is because although the probation
8 officers are respected professionals, they are not charged
9 with sentencing the defendant and I am. So usually where the
10 defendant objects or denies, I typically ask the Government to
11 let me know what the information was typically. The
12 Government produces grand jury testimony, investigative
13 reports, and the like so that I can see if the information
14 that impressed the probation officer equally impressed me.

15 The Government generally, I have gathered, does not like
16 my way of proceeding on this issue. The Assistant U.S.
17 Attorney typically cites Cyr and says, the First Circuit says
18 the sentencing judge can rely on the presentence report. And
19 I acknowledge that it causes more work for the prosecutor.

20 But the First Circuit does not say that the sentencing
21 Court must rely on the presentence report, and so I have
22 chosen the procedure to accord a defendant who is being
23 sentenced, the full set of rights, even more than strictly
24 necessary.

25 I view, however, this controversy as different from the

1 usual case. Here, the defendant's denials are extensive and
2 they go to the heart of his role as a coconspirator in this
3 drug trafficking organization. To put the Government to its
4 proof on the contents of the presentence report that the
5 defendant denied or said he was without knowledge would
6 effectively require the Government to try the whole case in
7 paper or alternatively to present testimony at sentencing.
8 And at the time of the Rule 11, I told Mr. Betances in no
9 uncertain terms that there would be no trial of any kind on
10 this case, a fact that he acknowledged.

11 So for Mr. Betances' case, I am going to accept the
12 contents of the presentence report as the First Circuit says I
13 may without requiring back-up proof from the Government. This
14 is especially true because the defendant has only denied --
15 only denied the contents of the presentence report and has not
16 adduced any countervailing proof supporting his denials.

17 So in order to figure out what happened on May 1, I am
18 going to start at the beginning. On May 17, 2017, a federal
19 grand jury indicted the defendant for engaging in a conspiracy
20 to distribute heroin, crack, and fentanyl in Maine. The
21 indictment alleged the conspiracy took place from June 14,
22 2015 through March 9, 2017. The indictment charged 15 people
23 with being coconspirators, 9 were Maine residents, and 6 were
24 residents of Rochester, New York, who had come to Maine and
25 were involved in the conspiracy.

1 On October 16, 2018, the defendant came before the Court
2 and underwent a Rule 11 in which he pleaded guilty to the drug
3 trafficking conspiracy count of the indictment. During the
4 Rule 11, I asked him about the contents of the prosecution
5 version that the Government had filed in the case. I think
6 it's important to place this colloquy that happened back on
7 October 16, 2018, in some context. Occasionally, a defendant
8 at a Rule 11 will tell me that he admits to certain portions
9 of it within his personal knowledge, but denies or says he
10 does not know certain things of his own personal knowledge,
11 but does not deny that the Government can prove it. That's
12 not what happened in this case.

13 I asked the defendant the following, Mr. Betances, I have
14 before me a document entitled the Prosecution Version of the
15 Offense, which is dated October 5, 2018. Have you had an
16 opportunity to review this document? Mr. Betances answered,
17 yes, Your Honor. I warned him, this is a very important
18 document, correct? The defendant said yes. I said, it
19 basically sets forth in some detail what it is the Government
20 says you did to commit this crime. Do you understand that?
21 Yes, Your Honor. I said, did you review it carefully to
22 determine whether it was accurate? And the defendant said
23 yes, Your Honor. And then I said the following, now, I have a
24 very important question for you, Mr. Betances, and obviously
25 again I require a truthful and honest answer, do you disagree

1 in any way with what is set forth in the prosecution version
2 of the offense? Mr. Betances answered, no, Your Honor. Is
3 the information set forth in the prosecution version of the
4 offense true to your own personal knowledge? Mr. Betances
5 answered, yes, Your Honor.

6 There was no attempt to say that he knew portions of it
7 and he didn't know other portions, but accepted that the
8 Government could prove those portions.

9 So with that understanding, I then turned to compare the
10 prosecution version that the defendant admitted with the
11 portions of the presentence report that he denied. The
12 prosecution version of the presentence report started with
13 describing the Rochester conspiracy. This is found in the
14 prosecution version, paragraphs 1 and 2 and paragraph 6 of the
15 presentence report. The defendant admitted both those
16 portions of the prosecution version, as I have mentioned
17 before, and paragraph 6 of the presentence report.

18 However, the presentence report went on to detail the
19 operation of the drug trafficking organization and the
20 defendant told me he did not know about how the operation
21 actually worked. In the prosecution version, the defendant
22 admitted that the drug trafficking organization used
23 residences to store and distribute the drugs and that there
24 were 12 to 15 such residents in central Maine at the height of
25 the conspiracy. This is what he admitted, was his own

1 personal knowledge at the Rule 11.

2 In paragraph 6 of the presentence report, the defendant
3 admitted it states, that the drugs were delivered to safe
4 stash houses, which were used as staging points to distribute
5 narcotics and trap houses where out-of-state members of the
6 drug trafficking organization were stationed to distribute
7 their narcotics. However, at the May 1, 2019 sentencing
8 hearing, I asked the defendant the following, this is
9 paragraph -- this is in paragraph 8, which says, at the height
10 of the conspiracy, there were approximately 12 to 15 such
11 residences, stash, trap houses throughout central Maine. I
12 asked the defendant whether he agreed with that, that's
13 page 17, line 16 of the sentencing transcript. The defendant
14 replied, yes, Your Honor. And then Attorney Tzovarras
15 intervened and he said, quote, and to be clear, Your Honor, he
16 -- what he said to me, I don't know if you could hear the
17 microphone, I said I didn't hear. Mr. Tzovarras said, he said
18 that's what the discovery showed.

19 So he agrees that's what the information was, but again
20 not that he had personal knowledge of everything going on. I
21 said, well, is he or did he tell me that he was responsible
22 for picking up cash or told by others to pick up cash? I
23 assume that he must have known how many trap houses there
24 were; is that not correct? The defendant said, I didn't. I
25 said, you didn't? And he said no.

1 For the reasons that I will elaborate later on, I reject
2 the defendant's denial at the May 1, 2019, hearing that he did
3 not know how many trap houses there were in central Maine.
4 First, the defendant admitted that there were 12 to 15
5 residences to store and distribute drugs in central Maine.
6 Second, he admitted in paragraph 6 of the presentence
7 report -- he admitted paragraph 6 of the presentence report
8 in which the probation office asserted that there were safe
9 and trap houses in central Maine used by the conspiracy.
10 Third, he admitted that the discovery revealed that other
11 members of the conspiracy and other confidential informants
12 and law enforcement confirmed that there were 12 to 15
13 residences in central Maine. Fourth, even if the court were
14 to accept the defendant's own description of his limited role
15 essentially as the moneyman, he would have had to know the
16 number of trap houses the Rochester conspiracy was running in
17 central Maine because he was required to collect from them.

18 So I conclude the defendant was not being truthful when
19 he denied this fact, and I accept the presentence report over
20 the defendant's denial. In doing so, I need to address what I
21 understand to be the defendant's main defense to this issue,
22 namely that the defendant never denied what others said about
23 him, he only denied his personal knowledge of certain aspects
24 of the conspiracy.

25 It is true that occasionally defendants will be extremely

1 careful about what they admit of their own personal knowledge
2 and what they admit the Government could prove. An obvious
3 example is the laboratory report that confirmed the drugs were
4 narcotics. Some defendants will say they admit the Government
5 could prove the lab results, but they have no personal
6 knowledge of the lab results because they did not perform the
7 test. That's fair enough.

8 The problem with this nuance distinction is that it
9 cannot be used when something is within the personal knowledge
10 of the defendant. The defendant admitted he collected the
11 proceeds from the trap houses, but he denied personally
12 knowing how many trap houses there were. I simply do not
13 believe the denial, and I don't credit it.

14 So let's turn to the heart of the controversy. What was
15 the defendant's role in the drug trafficking organization?
16 This is something he knows because it involves his own
17 actions. At the May 1, 2019, hearing, page 10, line 1, the
18 Court quoted paragraph 7, Newton, you're talking of Darrell
19 Newton, primarily stayed in Rochester and relied on Denton
20 Worrell and Jamie Betances to remain in Maine and manage the
21 operation locally. I asked him, do you agree with that? He
22 said, no, I do not agree with that, Your Honor. I said, you
23 do not agree with that? Mr. Tzovarras intervened. I think
24 where the disagreement is, Your Honor, is that the conclusion
25 that he managed or operated the organization locally. I said,

1 okay. Mr. Tzovarras said, we don't disagree with the part
2 about Mr. Worrell, though. So I said the following, so you
3 agree that Mr. Worrell was in Maine and he managed the
4 operation locally? And the defendant says, I agree with the
5 fact that he was in Maine. The Court, okay, but you don't
6 agree that he was a manager? Yes. You don't agree? The
7 defendant, I do not agree with that.

8 Now, here, it should be noted that the defendant
9 disagreed with Mr. Worrell because Mr. Worrell agreed that he
10 was a manager or supervisor of a Rochester drug trafficking
11 organization, and he was given without objection a three-level
12 increase under the guidelines. This is a transcript that's
13 filed under ECF number 869.

14 But the more important question apart from the fact, I
15 believe, that he knew Mr. Worrell was the manager and he was
16 simply refusing to acknowledge it before the Court, the more
17 important question is the defendant's own role. The Court, do
18 you agree that you were in Maine? The defendant, yes. Then I
19 talked about the manager and this is on page 11, although the
20 local manager, such as Worrell and Betances, engaged in some
21 distribution. The bulk of the distribution activities were
22 carried out by workers who were sent from -- it says here's
23 Worcester and I think I meant Rochester -- to staff various
24 trap houses provided by the Maine residents. Do you agree
25 with that? Yes. Mr. Tzovarras intervened, Your Honor, I

1 think that other than the local manager's label that's put in
2 front of Mr. Betances. The Court, okay. Workers generally
3 stayed in the backroom of the trap house and dispensed the
4 drugs with the owner of the trap house, who acted as the
5 middleman and completed the hand-to-hand transactions with the
6 customers. Do you agree with that? Mr. Tzovarras intervened.
7 We agree, Your Honor, that that's what the discovery shows.
8 Mr. Betances says he doesn't know what they were doing
9 essentially. But we would agree that that was the
10 information, that's -- we don't have any reason to disagree
11 that that is what they were doing because that's what the
12 discovery indicates. So I asked him, so he is saying that he
13 doesn't know how the operation worked? He basically says he
14 is telling me right now that he does not know of his own
15 personal knowledge that the drug trafficking organization used
16 trap houses? Mr. Tzovarras, I don't think he's saying that.
17 The Court, what is he saying? Mr. Tzovarras, he doesn't know
18 whether the workers generally stayed in the backroom of the
19 trap houses. I said, okay. Well, let's find out. That's why
20 I am asking. It says, workers stayed in the backroom of the
21 trap houses and he is telling me he doesn't know that?
22 Mr. Tzovarras said, I will let him answer that. Defendant, I
23 don't know that, Your Honor. The Court, and you don't know
24 the workers dispensed the drugs to the owner of the trap house
25 who acted as the middleman? Defendant, no, I don't, Your

1 Honor. The Court, don't know that. It goes on to say,
2 workers also distributed drugs to their own clientele at
3 times, do you know that? Defendant, no.

4 So using this, what I did is I created three separate
5 categories and tried to figure out what he admitted, what he
6 denied and what he said he did not know. And this is my
7 summary, first, the defendant admitted, number one, general
8 knowledge of stash and trap houses and distribution of drugs
9 from Rochester and central Maine. That's at page 9, line 6
10 through 15 of the transcript.

11 Second, Darrell Newton was a leader, controlled drugs,
12 and received proceeds. That's page 9, line 6 through 25.

13 Third, defendant and Mr. Worrell were responsible for
14 receiving drug proceeds and returning the money to Rochester.
15 That's page 14, lines 2 through 9.

16 Four, other members of the conspiracy acted as drivers,
17 drug runners, or distributed drugs for the drug trafficking
18 organization. That's at page 12, lines 21 through 25.

19 When it came to his specific role, this is what he was
20 willing to admit on May 1, one, his phone records revealed
21 that he texted local workers and local dealers daily to
22 provide their count, which he tracked in a ledger. That's at
23 page 14, lines 10 through 16.

24 Two, that -- the dealer at the residence searched on
25 April 26, 2016, that's CS-14 was working for him. That's

1 page 20, lines 21 to 23.

2 Third, that messages on his phone from April 14, 2016, to
3 April 29, 2016, revealed multiple text messages generally
4 indicative of drug trafficking. That's page 21, lines 15
5 through 20.

6 And four, that he exchanged messages with Denton Worrell,
7 Diana Davis, Jason Faulkner, and Blue. And that's at page 21,
8 lines 21 to 25. That's what he knew. That's what he said he
9 knew and acknowledged that was true.

10 This is what he told me he did not know, one, the number
11 of stash and trap houses, that's page 18, lines 1 through 7.
12 Two, whether Denton Worrell was a manager. That's at page 10,
13 lines 16 to 24. Three, whether the Rochester workers stayed
14 in the back of the trap houses. That's page 12, lines 5
15 through 11. Four, whether he told others to drop drugs off at
16 trap houses. That's page 16 line 14 to 16. Five, the people
17 dropped -- no, I am going to go back here because I mixed
18 these up.

19 So what he said he did not know starting with whether --
20 he denied whether the Rochester workers stayed in the back of
21 the trap houses. That's page 12, lines 5 through 11. Then
22 four, whether workers dispensed drugs to the owner of the trap
23 house who acted as the middleman. That's page 12, lines 12
24 through 15. Five, whether the Rochester workers were -- also
25 distributed drugs to their own clientele at times. That's

1 page 12, lines 16 to 20. And six, whether others in the
2 conspiracy carried firearms. That's page 23, lines 18 to 24.

3 Now, there is another category of denials that strikes me
4 as being different than the denials about what other people
5 are doing, and those are denials that address what he himself
6 was doing. And he can't say that he didn't know what he was
7 doing. That's not appropriate denial.

8 So I've looked through what the allegations in the
9 offense conduct were as regards to his actual -- his own
10 activity and his responses and where he equivocated or said he
11 didn't know or denied, I take it that -- I've taken them all
12 as denials because we're talking about what he himself is
13 alleged to have done.

14 What he denied and he should have known was, one, that he
15 was responsible for receiving drugs from Rochester. That's
16 page 20 -- page 13, lines 14 through 16. Two, that he and
17 Worrell were responsible for divvying up the drugs to be
18 distributed at trap houses. That's page 13 and 14, lines 22
19 to page -- to line 1 on the top of 14. Three, that he was, in
20 fact, the muscle or protection for the drug trafficking
21 organization. That's page 14, lines 17 to 21. Four, that he
22 told others to drop drugs off at trap houses. That's page 16,
23 lines 14 to 16. Five, that people dropped off narcotics and
24 picked up proceeds at various trap houses at his and Worrell's
25 direction. That's page 15, lines 14 to 20. Six, that he knew

1 that Russell Truman's house distributed \$20,000 of narcotics
2 every two days. That's page 16 to 17, lines 24 through 5.
3 Seven, that he carried a firearm. That's on page 23, lines 12
4 through 17. And eight, that he was involved in the drug
5 trafficking organization from early 2015. That's page 15,
6 lines 1 through 8.

7 The summary from all of the colloquy was, in my view,
8 well expressed by Mr. Tzovarras himself when he said, quote,
9 he agrees, and I'm quoting from page 16, lines 9 through 13.
10 He agrees that he would direct them, that he would pick up the
11 proceeds from the various trap houses, essentially he argues
12 that he was in charge. I don't know if I want to use the word
13 in charge, but he would collect the proceeds.

14 Now, I am then going to turn to see whether or not
15 these -- this categorization of denials is contradicted by
16 anything else in the record to see, in other words, whether
17 the defendant's asserted narrow role in the conspiracy,
18 essentially as a moneyman and not as a distributor of
19 narcotics was contradicted by other information in the record.
20 The first is I looked at the prosecution version, which is
21 dated October 5, 2018. And page 2 of the prosecution version,
22 which again the defendant admitted was true of his own
23 personal knowledge, he did not equivocate, states, the
24 defendant engaged in a variety of activities in furtherance of
25 the conspiracy including but not limited to distributing

1 controlled substances and collecting drug proceeds.

2 So at the Rule 11, contrary to what he told me on May 1,
3 he admitted that he was involved in distributing controlled
4 substances. This statement also indicates that he was
5 involved not in one activity, but a variety of activities in
6 furtherance of the conspiracy. But as I mentioned, more
7 significantly, it acknowledges that he distributed controlled
8 substances.

9 Second, I looked at the MDEA Investigation Report of the
10 defendant's May 10, 2016, arrest. MDEA executed a search
11 warrant in Fairfield, Maine on that date and the defendant was
12 present in -- at the residence at the time of the search. The
13 police had interviewed a man by the name of Jeffrey Berard
14 before the search and Mr. Berard had said he moved into a
15 house -- the defendant had moved into a house in Gardiner to
16 -- from a house in Gardiner to his house in Fairfield.
17 Mr. Berard told the police that the defendant had \$150,000
18 worth of crack and heroin in his green duffel bag inside his
19 house. Mr. Berard said the defendant was dealing crack and
20 heroin for Coast, namely Darrell Newton, and that the
21 defendant keeps track of money ledgers.

22 Jeffrey Shorette and two others, it turned out, including
23 the defendant, had left in a motor vehicle and they stopped
24 and searched the defendant, who had a black duffel bag.
25 Inside the black duffel bag was a scale with white residue, a

1 zip bag -- baggies with white residue, two cell phones, a
2 white pill, drug trafficking ledgers, and a pipe.

3 Mr. Shorette told the police that the defendant had wanted to
4 get out of the Berard house fast so he had taken him away.
5 The ledgers themselves contain lists of people and numbers
6 consistent with a drug ledger.

7 Following this arrest and search, the defendant was
8 charged in state of Maine court with aggravated trafficking of
9 scheduled drugs. The defendant pleaded guilty on February 6,
10 2017, before Justice Robert Mullen. The state prosecutor
11 described in detail the evidence that the Government would
12 bring to bear if the matter went to a hearing. And she said
13 as follows, MDEA had evidence before the search warrant that
14 there was a significant amount of crack and fentanyl inside a
15 Fairfield residence. As the officers were about to search,
16 the defendant left with others in the motor vehicle. They
17 found items, I mentioned earlier, in the defendant's duffel,
18 and that's -- the same as what I have indicated.

19 Inside the residence, they found 400 grams of crack. She
20 went on to say that others said the defendant would stay in
21 the backroom where the drugs were located and the defendant
22 was a drug tracker, clearly responsible for distribution with
23 others in central Maine.

24 Now, I would point out that the defendant told me on
25 May 1 that he didn't understand the drug dealers were in the

1 backroom. That was something beyond his knowledge. He denied
2 knowing anything about that, but here in front of a state
3 court judge, the allegation was made by the state prosecutor,
4 as I have indicated, the defendant himself was in the
5 backroom.

6 The state superior court judge asked the defendant the
7 following, anything you want to correct? The answer was no.
8 So he was telling one judge something that he told me was not
9 true or he didn't know.

10 The defendant pleaded no contest. And on February 6,
11 2017, he received a sentence of 15 years, all but 5 suspended,
12 which was later changed to 7 years straight.

13 So my conclusion is that the defendant was a drug dealer
14 based on all of the evidence. He was not a mere moneyman as
15 he attempted to tell me on May 1. I acknowledge that it's
16 true he collected the proceeds of the drug deals, and he
17 oversaw the money, but that's not all he did.

18 When I looked at all the evidence before me, I found only
19 two pieces of evidence that supported the defendant's view of
20 his limited role, the first was the drug ledger, which was
21 found in the duffel bag on May 10, 2016. The drug ledger
22 confirms the defendant was keeping track of the money, but the
23 drug ledger does not exclude the possibility that he was also
24 distributing drugs. And, in fact, as we have just indicated,
25 when he pleaded guilty to aggravated trafficking in scheduled

1 drugs, he admitted that he did not dispute any of the
2 prosecutor's -- state prosecutor's rendition. So I don't
3 consider the drug ledger indicative of not being involved in
4 drug dealing. In fact, many drug dealers keep drug ledgers.

5 The second is a more interesting piece of evidence, and
6 that's Government Exhibit Number 2, which is an anonymous
7 witness. The witness's name is blacked out for the Court at a
8 grand jury, so I don't know who it is. But I'm referring here
9 to pages -- to page 49, line 6 through 14, and it says, you
10 mention Booger or Jamie Betances, what was his role in the
11 whole thing? And this person answered, Jamie was brought up
12 after Lil D because Lil D was sort of screwing things up with
13 the money, with drugs, things like that. So Jamie was brought
14 up to sort of straighten out the situation and do collections,
15 houses behind on their payments. Question, all right. Have
16 you ever gotten drugs from Jamie? Answer, a small amount,
17 but, yes.

18 This snippet of testimony tends to confirm that the
19 defendant was sent to Maine from Rochester to follow and
20 collect the money, but right in the next sentence it also says
21 that he -- it confirms that he was distributing drugs
22 directly.

23 So under Section 5E1.1, I'm required to deny acceptance
24 if the defendant does not demonstrate he was truth -- he
25 truthfully admitted the offense of conviction. The way -- the

1 way I have analyzed this is what would have happened if I had
2 taken the defendant's denials at face value? In other words,
3 if I had taken the defendant's equivocations and outright
4 denials on May 1 as true, I would have sentenced the defendant
5 for much less of a role in the offense of conviction than his
6 true role. And it strikes me that he was attempting actively
7 to mislead the Court. This has caused a substantial delay
8 in the imposition of sentence. It's required the
9 transcription of a number of transcripts and obviously it
10 forced the Court to perform an exegesis of a series of
11 documents to ferret out the truth. While I know what the
12 defendant knows and that is that the defendant knew the truth
13 all along, but was unwilling to say it. Accordingly, I deny
14 acceptance.

15 The re-calculation of the guideline is as follows, the
16 total offense level becomes 37. He's a criminal history
17 category IV. The guideline range is capped at the statutory
18 maximum, but for the statutory maximum, he would have faced
19 292 to 365 months. The statutory maximum is 240 months, which
20 is the guideline range. The rest of the guideline findings
21 are the same except the fine range bottoms at 40,000, not
22 35,000.

23 Let's turn to the next issue, which is the law on drug
24 quantity. Would Mr. Casey, you, like to be heard? That's the
25 Government's burden.

1 MR. CASEY: No, Your Honor. We believe we've
2 sufficiently addressed the issue in the Government's
3 sentencing memo. For the record, the Government formally
4 moves to admit Government's Exhibits 1 through 6.

5 THE COURT: Any objection?

6 MR. TZOVARRAS: No, Your Honor. No objection.

9 MR. TZOVARRAS: Yes, I would, Your Honor. Before
10 that, though, just so the record's clear, we do respectfully
11 object to the Court's ruling on the denial of acceptance of
12 responsibility both in certain factual findings and the legal
13 conclusion, Your Honor. I just want to make sure that's clear
14 for the record. I won't argue it further. I will move on to
15 the drug quantity issue.

16 We are asking, as you know in the memorandum, that the
17 Court rule on the sign of lenity and not determine that it's
18 an even 50/50 split for the heroin and the crack cocaine.
19 There's testimony that's in the Government's own exhibits that
20 indicate that early on or it wasn't until late on that it was
21 an equal amount of crack versus heroin, which is cited in the
22 memorandum. The -- there is -- I would suggest, Your Honor,
23 that there is no evidence on this record to say that it was
24 always 50/50 and that it should be 50/50 for Mr. Betances.
25 And splitting it in the way the defendant suggests would make