IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-1652

UNITED STATES OF AMERICA,
Respondent/Appellee,

v.

JUAN JARMON,
Petitioner/Appellant.

APPENDIX TO BRIEF
VOLUME I

MAUREEN COGGINS
Attorney for Appellant Juan Jarmon
463 West Linden Street
Allentown, PA 18101
(610) 400-3015

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
V.	:	CRIMINAL NO.
	:	
JUAN JARMON	:	17-cr-72

NOTICE OF APPEAL

Juan Jarmon, by and through his attorney, Maureen Coggins, Esquire, hereby gives notice that he appeals to the UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT the conviction and sentence entered on November 27, 2019.

Respectfully submitted:

Maureen Coggins
MAUREEN COGGINS, ESQ.

DATED: December 2, 2019, 2019

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	**CRIMINAL ACTION**
v.	:	**NO. 2:17-cr-00072**
JUAN JARMON	:	

DEFENDANT JUAN JARMON'S MOTION TO JOIN IN PRE-TRIAL MOTIONS FILED BY CO-DEFENDANTS

Defendant Juan Jarmon, by his attorney, Maureen Coggins, moves to join in pre-trial motions filed by co-defendants, and states the following:

1. On January 3, 2017, an indictment was filed against defendant and twelve (12) other codefendants, charging 21 USCA 846 Conspiracy to Distribute and related charges.

2. In an Order dated September 8, 2017, defendant may file pre-trial motions by October 5, 2017.

3. Defendant requests to join his co-defendants' pre-trial motions as issues of the co-defendants also apply to him.

4. Defendant wishes to join in pre-trial motions already filed by co-defendant Stinson and Staggers, specifically:

- Defendant's Motion to Identify Co-Conspirator's Statement;
- Defendant's Combined Motion and Memorandum of Law for Discovery Pursuant to Rule of Criminal Procedure (16)(a)(1)(G);
- Defendant's Motion in Liminae to Exclude Other Crimes Evidence;

5. To the extent that other of defendant's co-defendants will file pre-trial motions in the future that are applicable to defendant, he requests leave to join in such motions and supplement where necessary.

WHEREFORE, defendant respectfully requests leave to join the pre-trial motions specified above as well as any pre-trial motions filed in the future that are applicable to defendants case.

Respectfully Submitted,

/s/ Maureen Coggins
MAUREEN COGGINS
Attorney for Defendant

October 5, 2017

ID 67126
509 Swede Street
Norristown, PA 19404
(610) 400-3017

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	**Crim. No. 17-72**
	:	
JUAN JARMON, et al.	:	

O R D E R

AND NOW, this 18th day of 2018, upon consideration of Defendant Edward Stinson's Motion for Discovery Pursuant to Federal Rule of Criminal Procedure Rule 16 (Doc. No. 78), Motion for Early Production of Jencks Act Materials (Doc. No. 79), Motion for Government Agents to Retain Rough Notes (Doc. No. 80), Motion for Disclosure of Exculpatory Evidence (Doc. No. 82), Motion for Discovery Pursuant to Federal Rule of Criminal Procedure Rule 16(a)(1)(G) (Doc. No. 178), Motion to Suppress Statements (Doc. No. 179), Motion in Limine to Exclude Other Crimes Evidence (Doc. No. 181), Defendant Juan Jarmon's Motion to Join in Pre-trial Motions Filed by Co-Defendant (Doc. No. 194), Motion in Liminae [sic] to Exclude Other Crimes Evidence (Doc. No. 195), the Government's Consolidated Response to Defendants' Pretrial Motions (Doc. No. 198), and the Government's Motion to Admit Audio and Video Recordings (Doc. No. 176), it is hereby **ORDERED** that:

1. Defendant Stinson's Motion for Discovery Pursuant to Federal Rule of Criminal Procedure Rule 16 (Doc. No. 78) is **DENIED as moot**. Discovery is limited to those areas of evidence outlined in Rule 16 "with some additional material being discoverable in accordance with statutory pronouncements and the due process clause of the Constitution," such as Jencks Act and *Brady* materials. United States v. Ramos, 27 F.3d 65, 68 (3d Cir. 1994). The Government represents that it has complied with Rule 16 and will continue to comply with its obligations under the Jencks Act, *Brady*, and *Giglio*. (Doc. No. 198);

2. Defendant Stinson's Motion for Early Production of Jencks Act Materials (Doc. No. 79) is **DENIED without prejudice**. "[N]o statement or report in the possession of the United States which was made by a Government witness or prospective Government witness (other than the defendant) shall be the subject of subpoena, discovery, or inspection until said witness has testified on direct examination in the trial of the case." 18 U.S.C. § 3500 (a); see also Fed. R. Crim. P. R. 26.2(a). Defendant may renew his request at the appropriate time: either at at trial or at the July 24, 2018 pre-trial hearing. See Fed. R. Crim. P. R. 26.2(g) (allowing production of Jencks Act material prior to trial for purposes of a suppression hearing). The Government is encouraged to produce Jencks materials at an earlier time; it has indicated it will do so approximately two weeks before trial. See United States v. Hill, 976 F.2d 132, 140 (3d Cir. 1992);
3. Defendant Stinson's Motion for Government Agents to Retain Rough Notes (Doc. No. 80) is **DENIED as moot**. The Government represents that it "has already instructed the case agent to remind agents to maintain copies of rough notes of interviews, to the extent that they exist, and to direct other law enforcement personnel to preserve existing notes once they are identified as prospective trial witnesses." (Doc. No. 198 at 8); see also United States v. Ramos, 27 F.3d 65, 68 (3d Cir. 1994) (outlining government duty to preserve all rough interview notes with witnesses so that determinations can be made on whether these notes should be made available under *Brady* and the Jencks Act);
4. Defendant Stinson's Motion for Disclosure of Exculpatory Evidence (Doc. No. 82) is **DENIED as moot**. The Government represents that it has complied with its *Brady* obligations, will continue to do so, and has agreed to early production of Jencks and

Giglio materials two weeks before trial. Defendant may renew his Motion in the event that the Government fails to comply with these obligations;

5. Defendant Stinson's Motion for Discovery Pursuant to Federal Rule of Criminal Procedure Rule 16(a)(1)(G) (Doc. No. 178) is **DENIED as moot**. The Government represents that such expert witness material has been disclosed;
6. Defendant Stinson's Motion to Suppress Statements (Doc. No. 179) is **DENIED in part as moot**, as it pertains to Defendant's March 30, 2015 statement. The Government states it does not intend to introduce at trial any of Defendant's statements from March 30, 2015. (Doc. No. 198.) There shall be a suppression hearing on Defendant's Motion (Doc. No. 179) as it pertains to Defendant's February 16, 2017 statement at the Pretrial Motions Hearing scheduled for July 24, 2018 at 2:00 p.m.;
7. The Court will consider Defendant Stinson's Motion in Limine to Exclude Other Crimes Evidence (Doc. No. 181) and Defendant Jarmon's Motion in Liminae [sic] to Exclude Other Crimes Evidence (Doc. No. 195) at the Pretrial Motions Hearing scheduled for July 24, 2018 at 2:00 p.m.; and
8. Defendant Juan Jarmon's Motion to Join in Pre-trial Motions Filed by Co-Defendant (Doc. No. 194) is **GRANTED**. Orders granting or denying the Motions Defendant Jarmon has moved to join (Doc. Nos. 181, 183, 178) shall apply to Defendant as well.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

Paul S. Diamond, J.

PAUL J. HETZNECKER, ESQUIRE
Attorney I.D. No. 49990
1420 Walnut Street, Suite 911
Philadelphia, PA 19102
215 893-9640 **Attorney for Defendant, Edward Stinson**

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	**CRIMINAL ACTION**
	:	
V.	:	
	:	
EDWARD STINSON	:	**NO. 17-71 and 17-72**

DEFENDANT'S MOTION TO SUPPRESS PRISON RECORDINGS

TO THE HONORABLE PAUL S. DIAMOND, JUDGE OF THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF PENNSYLVANIA, PHILADELPHIA:

Edward Stinson, by and through his attorney Paul J. Hetznecker, Esquire, files this Defendant's Motion to Suppress Prison Recordings and submits the following in support thereof:

1. On February 16, 2017 Edward Stinson was arrested and charged in an 86 count Indictment charging him with violations of 21 U.S.C. § 846 (conspiracy to distribute 280 grams or more of cocaine base ("crack"). The defendant was detained pursuant to the government's omnibus motion for pretrial detention.

2. Prior to the Indictment the government submitted administrative subpoenas to the Philadelphia Prison System for Edward Stinson's prison records. The subpoenas included the prison recordings of his telephone calls for the time periods covering April 21, 2011 to August 24, 2012; .from August 24, 2012 to August 3, 2015; from August 4, 2015 to October 13, 2015; from October 13, 2015 to November 6, 2015 and from November 6, 2015 to January 26, 2016. The requested records included phone calls from November 16, 2015 to January 27, 2016.[1] (See Exhibit 1 attached)

3. In June, the Supreme Court of the United States ruled that the right to privacy covers third party cellphone data utilized by the government to track an individual's movements. Carpenter v. United States, No. 16-402, 585_____(2018). The Court ruled that an expectation of privacy extends to third parties, including telephone companies where the right to privacy has been implicated.

4. Defendant, Edward Stinson, moves to suppress the seizure of all of his recorded telephone calls obtained by the government in violation of his right under the Fourth Amendment to be protected against an unlawful search and seizure by the government. Furthermore, the consent the government relies upon in seizing the recorded telephone conversations is invalid pursuant to Carpenter v. United States, supra.

[1] At present, counsel could only locate one of the subpoenas submitted by the government for prison records, including recorded telephone calls from Edward Stinson.

WHEREFORE, we respectfully request that Your Honor grant this Motion to Suppress and suppress all of the prison recordings obtained by the government whether through a subpoena or by other means, as a violation of his Fourth Amendment rights under the United States Constitution.

Respectfully submitted,

/s/ Paul J. Hetznecker, Esquire
Paul J. Hetznecker, Esquire
Attorney for Defendant, Edward Stinson

DATE: July 13, 2018

UNCLASSIFIED

FD-1035 (REV 2014-07-22)

U.S. DEPARTMENT OF JUSTICE/FEDERAL BUREAU OF INVESTIGATION

SUBPOENA

Subpoena number: 103345 When responding please reference this subpoena number.

In the matter of case number(s): 2810-PH-2693590

TO: Philadelphia NOC
Officer Paris

ADDRESS: 8001 State Road
Philadelphia, PA 19136

TELEPHONE: 2156858434

FAX: 2156858397

GREETING:

By the service of this subpoena upon you by Christine Cloney, who is authorized to serve it, you are hereby commanded and required to disclose to Christine Cloney, a representative of the FBI, the following information for the period 2015-11-16 to 2016-01-27 or the billing cycle including the requested time period: which may be relevant to an authorized law enforcement inquiry, involving the following:

- Continued on Attachment A

Please see the attached page explaining some terms that may be used in this demand. All time values are in the US/Eastern time zone, unless otherwise indicated.

THE INFORMATION SOUGHT THROUGH THIS SUBPOENA RELATES TO A FEDERAL CRIMINAL INVESTIGATION BEING CONDUCTED BY THE FBI.

YOUR COMPANY IS REQUIRED TO FURNISH THIS INFORMATION.

YOU ARE REQUESTED NOT TO DISCLOSE THE EXISTENCE OF THIS SUBPOENA INDEFINITELY AS ANY SUCH DISCLOSURE COULD INTERFERE WITH AN ONGOING INVESTIGATION AND ENFORCEMENT OF THE LAW.

Compliance must be made by personal appearance or production of records no later than the 26th day of February, 2016 at 09:00 o'clock AM, at William J. Green, Jr. Building, 600 Arch Street, 8th Floor, Philadelphia, PA 19106

In lieu of a personal appearance, the information can be provided, via mail, marked to the attention of Christine Cloney, at the following address: William J. Green, Jr. Building 600 Arch Street, 8th Floor, Philadelphia, PA 19106

If you refuse to obey this subpoena, the United States Attorney General may invoke the aid of a United States District Court to compel compliance. Your failure to obey the resulting court order may be punished as contempt.

Issued under authority of Sec. 506 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, Public Law No. 91-513 (21 U.S.C. 876)

ORIGINAL

Signature: S/ JAMES CROWLEY

Name: JAMES CROWLEY

Title: Supervisory Special Agent

Issued this 27th day of January, 2016

UNCLASSIFIED

RECEIVED

JAN 28 2016

Office of Contract Administration

2016 JAN 27 P 5:59

US-10950

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	
	:	**Crim. No. 17-72-3**
EDWARD STINSON, et al.,	:	**Crim. No. 17-71-1**
	:	

O R D E R

On February 8, 2017, the grand jury charged Defendant Edward Stinson in two separate indictments with conspiring to distribute crack cocaine. (Doc. No. 1, Crim. No. 17-72; Doc. No. 1, Crim. No. 17-71.) Defendant filed Motions to Suppress recordings of his prison telephone calls from April 21, 2011 through January 26, 2016. (Doc. No. 309, Crim. No. 17-72; Doc. No. 361, Crim. No. 17-71.) The Government responded. (Doc. No. 342, Crim. No. 17-72). I conducted an evidentiary hearing on September 14, 2018. I will deny Defendant's Motions.

Relying upon *Carpenter v. United States*, Defendant argues that because he had a reasonable expectation of privacy in his prison telephone calls, the Government had to obtain a warrant before compelling the state to provide recordings of his prison calls. 138 S. Ct. 2206 (2018). The Government responds that *Carpenter* applies only to the use of cell-site location information ("CSLI") to track physical movements, not prison telephone call recordings. I agree with the Government.

In *Carpenter*, the Government used compulsory process to compel a wireless carrier to turn over a subscriber's CSLI. Id. at 2221. The Government used CLSI to track a suspect's physical movements. Id. The Supreme Court held that "an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through CSLI." Id. at 2217. Because "the acquisition of [an individual's] CSLI [is] a search, . . . the Government must

generally obtain a warrant supported by probable cause before acquiring such records." Id. at 2221.

On September 14, 2018, Philadelphia Prison System custodian of records Brad Cakrane testified credibly that each prisoner is notified in three ways that his prison telephone calls are recorded and monitored: (1) a handbook given to each prisoner upon arrival at the prison; (2) signage in the area around the telephones; and (3) an audio message played at the beginning of each telephone call informing both the prisoner and the other party on the line that the call is being recorded and monitored. (See Tr. 3–7, Doc. No. 387, Crim. No. 17-72.) He reiterated that testimony during the January 9, 2019 evidentiary hearing I conducted relating to the Government's *Starks* Motion. Because Defendant knew that his telephone calls would be recorded he had no expectation of privacy. See Lanza v. New York, 370 U.S. 139, 143 (1962); United States v. Shavers, 693 F.3d 363, 389–90 (3d Cir. 2012), *vacated on other grounds*, 133 S. Ct. 2877 (2013) (no expectation of privacy where handbook and signage informed prisoner his calls are recorded); United States v. Sababu, 891 F.2d 1308, 1329 (7th Cir. 1989). The Government thus properly obtained Defendant's prison telephone records without first serving a warrant. See Carpenter, 138 S. Ct. at 2221. Accordingly, I will deny Defendant's Motions.

AND NOW, this 10th day of January, 2019, it is hereby **ORDERED** that Defendant's Motions (Doc. No. 309, Crim. No. 17-72; Doc. No. 361, Crim. No. 17-71) are **DENIED**.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

Paul S. Diamond, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	**Crim. No. 17-71-1, 5**
	:	
EDWARD STINSON, et al.	:	

UNITED STATES OF AMERICA	:	
	:	
v.	:	**Crim. No. 17-72-1**
	:	
JUAN JARMON, et al.	:	

O R D E R

AND NOW, this 7th day of May, 2019, it is hereby **ORDERED** that:

1. Defendant Juan Jarmon's Motion for Judgment of Acquittal is **DENIED**;
2. Defendant Edward Stinson's Motion for Judgment of Acquittal (Doc. Nos. 517, 557) is **DENIED**; and
3. Defendant Debra Baylor's Motion for Judgment of Acquittal is **GRANTED in part**:
   a. Baylor's conviction for conspiracy to distribute 280 grams or more of cocaine base (Count 1) is **VACATED**. Judgment of Acquittal will be entered for this offense; and
   b. Baylor's conviction for the lesser-included offense of Count 1, conspiracy to distribute 28 grams or more of cocaine base, is **SUSTAINED**. Judgment of Conviction will be entered for this lesser-included offense.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

Paul S. Diamond, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	**Crim. No. 17-71-1, 5**
	:	
EDWARD STINSON, et al.	:	

UNITED STATES OF AMERICA	:	
	:	
v.	:	**Crim. No. 17-72-1**
	:	
JUAN JARMON, et al.	:	

Diamond, J. **MEMORANDUM** **May 7, 2019**

Defendants Edward Stinson, Debra Baylor, and Juan Jarmon have moved for judgments of acquittal respecting their convictions for conspiring to distribute 280 grams or more of cocaine base ("crack"). 21 U.S.C. §§ 841, 846; Fed. R. Crim. P. 29. I took Stinson and Baylor's Motions under advisement during their recently completed trial. Fed. R. Crim. P. 29(b). I will now deny Stinson's Motion and grant Baylor's Motion in part. I denied Jarmon's Motion during his trial, stating that I would issue this Memorandum to explain my ruling more fully.

I. Procedural History

On February 8, 2017, in Matter 17-71, the grand jury charged Edward Stinson, Debra Baylor, Emmett Perkins, Rondell Holloway, Jamillah Bellamy, Jerry Lawrence, Germel Perkins, Carl Stinson, Imere Stinson, Daquian Brown, Reginald Copper, Terrance Jackson, and Stephen Dawkins Sr. with conspiring from 2010 to 2015 to distribute 280 grams or more of crack in the Norman Blumberg Public Housing Complex in North Philadelphia and numerous related offenses. (Indict., Doc. No. 1.) Stinson was charged in Counts: 1 (conspiring to distribute 280 grams or more of crack); 2, 3, 8, 9, and 66 (using a communication facility in furtherance of a drug felony).

(Verdict Form, Doc. No. 533, Crim. No. 17-71) Baylor was charged in Counts: 1 (conspiring to distribute 280 grams or more of crack); 64, 67 (possessing crack with intent to distribute); 65, 68 (possessing crack with intent to distribute within 1,000 feet of public housing); 66 (using a communication facility in furtherance of a drug felony); and 86 (maintaining a drug house). (Id.) All Defendants other than Stinson and Baylor pled guilty to the charged offenses or lesser included offenses. (See Docket, Crim. No. 17-71.)

In a separate but related Indictment (17-72), the grand jury charged Juan Jarmon, Edward Stinson, Damon Edwards, Donta Edwards, Raheen Butler, Michael Ferrell, Dottie Good, Taft Harris, Steven Thompson, Stephen Dawkins Sr., Derek Fernandes, Anthony Lee Staggers, and Gene Wilson Jr. with conspiring from late 2012 to mid-2014 to distribute 280 grams or more of crack in the Blumberg Complex and related offenses. (Indict., Doc. No. 1.) Jarmon was charged in Counts: 1 (conspiring to distribute 280 grams or more of crack); 2 (using a communication facility in furtherance of a drug felony); 7, 9, 11, 13, 15, 22 (distributing crack); 8, 12, 14, 16, 23 (distributing crack within 1,000 feet of public housing); 17 (distributing crack and aiding and abetting); 18 (distributing crack within 1,000 feet of public housing and aiding and abetting); 24 (possessing crack with intent to distribute); 25 (possessing crack with intent to distribute within 1,000 feet of public housing); 26, 28, 30, 32 (possessing crack with intent to distribute and aiding and abetting); 27, 29, 31, and 33 (possessing crack with intent to distribute within 1,000 feet of public housing and aiding and abetting). (Verdict Form, Doc. No. 480, Crim. No. 17-72.) As alleged, in late 2012, while Stinson was in state custody, he gave control of crack trafficking in one of the Blumberg towers to Jarmon. (Indict. at 3–4.) All Defendants other than Stinson and Jarmon pled guilty. (See Docket, Crim. No. 17-72.)

On February 7, 2017, Rasheen Chandler was charged by Information with the 17-72 conspiracy: as alleged, from late 2012 to mid-2014 Chandler conspired with Jarmon and Stinson to distribute 280 grams or more of crack in the Blumberg Complex and committed related offenses. (Information, Doc. No. 1, Crim. No. 17-69.) On April 25, 2018, Chandler pled guilty to the Information. (Doc. No. 10, Crim. No. 17-69.)

Trial of Stinson and Baylor in the 17-71 Matter began on January 17, 2019. On January 24, 2019, the Government rested and both Defendants moved for judgments of acquittal. Fed. R. Crim. P. 29(a). (Doc. Nos. 516, 517.) Defendants argued that the Government presented evidence of multiple conspiracies, not one over-arching conspiracy. (Id.) Both Defendants also argued that the Government failed to introduce evidence sufficient for the jury to find that the object of any such conspiracy was to distribute in excess of 280 grams of crack or 28 grams (the lesser included offense). (Id.) Baylor also moved for judgment of acquittal on the remaining Counts against her. (Id.)

On January 28, 2019, I granted Baylor's Rule 29 Motion as to the aiding and abetting portion of Count 86, denied her Motion as to Counts 64, 65, 66, 67, 68, and 86, and reserved judgment on both Defendants' Motions as to Count One (conspiring to distribute 280 grams or more of crack). (Doc. No. 519, Crim. No. 17-71); Fed. R. Crim. P. 29(b).

On January 29, 2019, the jury acquitted Baylor of Count 68 (possessing crack within 1,000 feet of public housing with intent to distribute), and convicted her of the remaining six Counts (1, 64, 65, 66, 67, and 86). (See Doc. No. 532, Crim. No. 17-71.) The jury convicted Stinson on all Counts (1, 2, 3, 8, 9, and 66). (Id.) On January 30, 2019, I ordered the Parties to submit additional memoranda in support of their Rule 29 Motions as to Count One. (Doc. No. 528.) The matter has been fully briefed. (Doc. Nos. 514, 516, 517, 556, 557, 569, Crim. No. 17-71.)

Following Stinson's conviction in the 17-71 Matter, the Government moved to dismiss all charges against him in the 17-72 Matter, leaving Jarmon, who went to trial on March 5, 2019. (Doc. Nos. 442, 448, 465, Crim. No. 17-72.) At the close of the Government's case, I denied Jarmon's Rule 29 Motion, stating that I would issue this Memorandum to explain more fully my ruling as to Count One of 17-72 (conspiring to distribute 280 grams or more of crack). (Mar. 12, 2019 Tr. 54–55.) On March 13, 2019, the jury convicted Jarmon of Counts 1, 2, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33. (Doc. No. 480, Crim. No. 17-72.) The jury acquitted on Counts 22 and 23 (distributing crack on September 5, 2013). (Id.)

II. Legal Standard

I "must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction." Fed. R. Crim. P. 29(a). "[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could [find] the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 (1979). I may not "usurp the role of the jury by weighing credibility and assigning weight to the evidence, or by substituting [my] judgment for that of the jury," and should find insufficient evidence only "where the prosecution's failure [to prove its case] is clear." United States v. Brodie, 403 F.3d 123, 133 (3d Cir. 2005).

III. Discussion

Each of the three Defendants was charged with conspiring to distribute 280 grams or more of crack cocaine. 21 U.S.C. §§ 841, 846. As I have described, the conspiracy charged at 17-71 against Stinson and Baylor is distinct from that charged against Jarmon at 17-72.

Section 841 includes increased penalties based on the quantity of crack the defendant conspired to distribute. See 21 U.S.C. § 841(b)(1) (10-year mandatory minimum sentence for

distributing 280 grams or more; 5-year mandatory minimum sentence for distributing 28 grams or more). Each of the three Defendants argued that the Government failed to prove: (1) the existence of one over-arching conspiracy, or (2) that the object of any such conspiracy was to distribute 28 or 280 grams of crack.

"The issue of whether a single conspiracy or multiple conspiracies exist is a fact question to be decided by a jury." United States v. Bobb, 471 F.3d 491, 494 (3d Cir. 2006). "[A] single conspiracy is proved when there is 'evidence of a large general scheme, and of aid given by some conspirators to others in aid of that scheme.'" Id. at 494 (quoting United States v. Reyes, 930 F.2d 310, 312–13 (3d Cir. 1991)).

Because § 841 provides an increased penalty based on the drug quantity a defendant conspired to distribute, quantity "is an element [of the crime] that must be submitted to the jury and found beyond a reasonable doubt." Alleyne v. United States, 570 U.S. 99, 103 (2013) (internal quotation marks omitted). There exists a Circuit split as to whether a quantity determination may be conspiracy-wide or if it must be individualized as to each conspirator. See United States v. Stoddard, 892 F.3d 1203, 1220 (D.C. Cir. 2018) (discussing split and requiring individualized determinations). The First, Fourth, Fifth, Ninth, and D.C. Circuits have adopted the individualized approach. See Id.; United States v. Haines, 803 F.3d 713, 738–42 (5th Cir. 2015); United States v. Rangel, 781 F.3d 736, 742–43 (4th Cir. 2015); United States v. Pizarro, 772 F.3d 284, 292–94 (1st Cir. 2014); United States v. Banuelos, 322 F.3d 700, 704–06 (9th Cir. 2003).

When making an individualized determination as to drug quantity, the "jury may draw reasonable inferences from direct or circumstantial evidence." United States v. Arras, 373 F.3d 1071, 1073 (10th Cir. 2004). "[A]n inference must be more than speculation and conjecture to be reasonable, and caution must be taken that the conviction not be obtained by piling inference on

inference." Id. The jury may not "engage in a degree of speculation and conjecture that renders its finding a guess or mere possibility." Id.

Although the Third and Seventh Circuits have adopted the conspiracy-wide approach, neither Circuit has addressed the issue since the Supreme Court's ruling in *Alleyne*. See United States v. Phillips, 349 F.3d 138, 141 (3d Cir. 2003), *vacated on other grounds*, 543 U.S. 1102 (2005); United States v. Knight, 342 F.3d 697, 709–12 (7th Cir. 2003). Both Circuits that have addressed the issue following *Alleyne* have adopted the individualized approach. See Stoddard, 892 F.3d at 1220; Pizzarro, 772 F.3d at 292–94. The *Stoddard* Court explained that "the conspiracy-wide approach . . . has been called into question by *Alleyne* . . . ." 892 F.3d at 1220. Moreover, the Court suggested that "[t]he circuits that earlier adopted the conspiracy-wide approach have, at times, failed to grapple with it in subsequent published and unpublished cases decided after *Alleyne*." Id.

Accordingly, in an abundance of caution, I applied the individualized approach in both 17-71 and 17-72, instructing each jury that a defendant was only responsible for the quantity of crack: (1) that was reasonably foreseeable to that Defendant, and (2) that was distributed by members of the conspiracy during the time that the Defendant was a member of the conspiracy. (January 29, 2019 AM Tr. 38–39, Crim. No. 17-71; March 13, 2019 Tr. 34–35, Crim. No. 17-72); see Stoddard, 892 F.3d at 1220. The verdict form was crafted to ensure that the jury's conspiracy determination would be individualized. The jury first had to determine whether the Government had proven the Defendant guilty beyond a reasonable doubt of the conspiracy charged in Count One. If the jury found a Defendant guilty, it was then asked to answer the following interrogatory:

> If you find [the Defendant] guilty of conspiracy to distribute cocaine base ("crack") as charged in Count 1, please answer the following question:

> 1) Do you unanimously agree, by proof beyond a reasonable doubt, that the quantity of the mixture or substance containing a detectable amount of cocaine base ("crack") which was involved in the conspiracy and which was attributable to and/or reasonably foreseeable to the defendant was 280 grams or more?
>
> _____Yes _____No
>
> If your answer is "no," please answer question 2. If your answer is "yes," please skip question 2 and proceed to Count 2.
>
> 2) Do you unanimously agree, by proof beyond a reasonable doubt, that the quantity of the mixture or substance containing a detectable amount of cocaine base ("crack") which was involved in the conspiracy and which was attributable to and/or reasonably foreseeable to the defendant was 28 grams or more?
>
> _____Yes _____No

(See Verdict Form, Doc. No. 533, Crim. No. 17-71; Verdict Form, Doc. No. 480, Crim. No. 17-72.)

A. Juan Jarmon

At trial, the Government introduced, *inter alia*, dozens of wire intercepts, audio and video recordings of controlled purchases of crack, the testimony of cooperating coconspirators Rasheen Chandler and Dottie Good, and the expert testimony of Drug Enforcement Administration Agent Randy Updegraff.

The testimony of Chandler, Good, and Updegraff provided ample basis for the jury to find that Jarmon headed a single conspiracy to distribute at least 280 grams of crack. Chandler and Good each admitted to conspiring with Jarmon (and others) to distribute at least 280 grams of crack and acknowledged that they had pled guilty to that crime. (Mar. 7, 2019 Tr. 131; Mar. 8, 2019 Tr. 25.) In addition, the Government introduced considerable evidence confirming Chandler's and Good's testimony that Jarmon headed and directed this conspiracy. (Mar. 7, 2019 Tr. 72, 88, 169; Mar. 8, 2019 Tr. 165; Gov't Exs. 203–04, 208–10, 220–29, 234, 243–44, 402,

409.) This alone is evidence supporting the jury's determination that Jarmon could reasonably foresee the distribution of at least 280 grams of crack. United States v. Gibbs, 190 F.3d 188, 219 (3d Cir. 1999) ("a leader of a drug conspiracy is responsible for drug quantities transacted by his subordinates in furtherance of the conspiracy").

The Government also established by a second method that the distribution of at least 280 grams of crack was foreseeable to Jarmon. Through Chandler's testimony, the Government established a baseline sales average of two crack bundles (100 nickel bags) per eight-hour shift. (Mar. 7, 2019 Tr. 76, 79, 100.) Each nickel bag sold for $5.00. (Id. at 76–77.) Chandler also testified that he sold more crack early in the month, and never sold less than one crack bundle (50 nickel bags) in a shift. (Id. at 78–79.) Chandler sold crack at Jarmon's direction every day for eight to nine months, during which he missed only five days of work. (Id. at 79.) Agent Updegraff testified that a nickel bag typically contains 0.05 grams of crack but could contain as little as 0.03 grams of crack. (Mar. 12, 2019 Tr. 26, 52.) Based on this testimony, the jury could conservatively find that Chandler sold one bundle of 0.03-gram nickel bags per shift for eight months, totaling over 340 grams of crack. Because Jarmon and Chandler were in constant contact regarding crack distribution, any crack distributed by Chandler was reasonably foreseeable to Jarmon. See Stoddard, 892 F.3d at 1220.

By either method, the jury could reasonably find that Jarmon conspired to distribute 280 grams or more of crack.

B. Edward Stinson

Once again, the Government introduced considerable trial evidence that Stinson headed and directed the conspiracy charged in 17-71. The Government introduced, *inter alia*: (1) the testimony of cooperating coconspirators Jamillah Bellamy, Terrance Jackson, and Steven Dawkins

Sr. (all three of whom pled guilty to conspiring to distribute 280 grams or more of crack in the 17-71 Matter); (2) expert testimony of Agent Updegraff; (3) dozens of recordings of consensually and non-consensually intercepted telephone calls; (4) video recordings of controlled crack purchases; and (5) lab reports identifying the quantity of crack cocaine actually contained in controlled purchases.

The fifty-one phone call recordings introduced at trial showed a single, overarching conspiracy headed by Stinson, spanning from at least September 4, 2012 to June 14, 2015. (See Govt. Exs. 11–15, 17, 21–22, 24, 29, 21, 35, 39, 40–43, 54, 59–60, 66–69, 80, 83, 85, 92, 94–95, 98, 101–103, 108–10, 112–13, 115, 126, 128, 153–59, 161–62.) Throughout these phone calls, Stinson and his coconspirators discuss the supply of crack, the daily volume of crack sales, the availability of shift sellers and lookouts, the process of cooking powder cocaine into crack, the storage of crack at Blumberg, and their sales proceeds. (Id.) Indeed, Stinson himself discusses these topics, giving orders and instructions to his employees, in the vast majority of the calls. Moreover, Bellamy testified that Stinson and Emmett Perkins were business partners in the sale of crack at Blumberg, and that they used her apartment to store, cook, package, and sell crack. (Jan. 18, 2019 Tr. 97–98, 101–02.) Bellamy described Stinson as "the boss," who was "in charge" of crack distribution. (Id. at 132–33.) This evidence was more than sufficient for the jury to find that Stinson led one over-arching conspiracy from at least 2012 to 2015. See Bobb, 471 F.3d at 495.

In seeking to establish the amount of crack attributable to Stinson, the Government asks me to assume a low weekly crack sales baseline, and then extends that amount over five years to arrive at a figure well in excess of 280 grams. (See Govt. Mem., Doc. No. 514.) Because, unlike in the 17-72 trial, during the 17-71 trial the Government failed to present evidence of an actual sales baseline, its conclusion amounts to impermissible speculation and conjecture. See Arras,

373 F.3d at 1073.

Even without sales figures derived from a "baseline"—real or imagined— the Government nonetheless introduced sufficient evidence for the jury to attribute 280 grams or more of crack to Stinson. Bellamy, Jackson, and Dawkins each told the jury that they had conspired with Stinson to distribute at least 280 grams of crack. (Jan. 18, 2019 Tr. 87; Jan. 22, 2019 Tr. 152; Jan. 23, 2019 PM Tr. 18.) Because Stinson led the conspiracy, this same amount may properly be attributed to him. See Gibbs, 190 F.3d at 219.

The Government also introduced numerous intercepted phone calls during which Stinson and his codefendants discussed their drug operations. Applying the prices, amounts, and activities mentioned during the recorded phone calls and the testimony of Bellamy, Jackson and Updegraff, I have compiled a crack distribution spreadsheet which I have appended to this Memorandum. (See Ex. A.) The spreadsheet includes an explanation of how crack quantities were derived from the recordings. (Id. at 3.) I have calculated conservatively that the recordings and testimony confirm the distribution of at least 281.70 grams of crack. (See id.); see also Gibbs, 190 F.3d at 219. This figure does not include the five sandwich sized bags stuffed with crack cocaine that Bellamy testified were cut up into nickel bags for further sales. (Jan. 18, 2019 Tr. 104–09.) Given that evidence presented during the 17-71 trial established that each nickel bag—the smallest crack amount handled by the conspirators—contained a "dot" of crack weighing on average 0.0362 grams, the five sandwich-sized bags stuffed with crack rocks necessarily contained hundreds of grams of the drug. (Jan. 18, 2019 Tr. 104–05; Gov't Exs. 35, 39–43, 83.) When the 281.70 grams I have calculated is combined with the five sandwich bags of crack, the Government necessarily showed that Stinson conspired to distribute considerably more than 280 grams of crack. See Arras, 373 F.3d at 1076; see also United States v. Kloszewski, No. 17-4054, 2019 WL 181175, at *3 (2d

Cir. Jan. 14, 2019); United States v. Ferguson, 729 F. App'x 314, 316 (5th Cir. 2018).

In sum, whether based on the admissions of Bellamy, Jackson, and Dawkins, or on the actual drugs sold (as described by Bellamy, Jackson, and Updegraff, as recorded in the audio intercepts, and as contained in the five sandwich sized bags of crack), the jury could easily find that Stinson conspired to distribute at least 280 grams. Accordingly, I will deny his Rule 29 Motion.

C. Debra Baylor

The Government based its case against Baylor almost entirely on twenty-one consensually recorded phone calls made from September 4, 2014 to June 12, 2015. (See Govt. Exs. 94–95, 98, 101–03, 108–10, 112, 113, 115, 126, 153–59, 161.) These ten months are substantially shorter than Stinson's five to six year leadership of the conspiracy. The phone calls nonetheless confirmed that Baylor worked with others (such as Rondell Holloway and Carl Stinson) in Edward Stinson's over-arching distribution operation by storing crack in her apartment and distributing it to those others to be sold at Blumberg. (See Gov't Exs. 94–95, 98, 101–03, 108–10, 112, 113, 115, 126, 153–59, 161.) Accordingly, I will deny Baylor's Rule 29 Motion to the extent she argues that the Government proved only multiple, discrete conspiracies. See Reyes, 930 F.2d at 313 ("[A] single conspiracy is proved when there is evidence of a large general scheme, and of aid given by some conspirators to others in aid of that scheme." (internal quotation marks omitted)).

No matter how favorably viewed, however, the Government's evidence was not sufficient to show that Baylor conspired to distribute 280 grams or more of crack. In opposing Baylor's Motion, the Government offers the previously discussed baseline assumptions to show that over 280 grams of crack is attributable to her. (See Govt. Mem., Doc. No. 514.) Once again, this is little more than impermissible conjecture. Moreover, the Government's assumptions are largely

inapplicable to Baylor because her involvement in the conspiracy was comparatively brief. The great bulk of the evidence respecting Stinson related to the four years before Baylor was a proven member of the conspiracy and so is inapplicable to her. For instance, Jackson withdrew from the conspiracy before Baylor joined. (See Jan. 22, 2019 Tr. 151 (testifying that he worked as a lookout "between 2010 and '12").) Similarly, Bellamy's guilty plea and related testimony does not make out sales attributable to Baylor. Bellamy testified to joining the conspiracy in 2011 or 2012 and withdrawing some time in 2014. (See Jan. 18, 2019 Tr. 80–81, 118.) This is not proof that any of the drug activity Bellamy described took place after September 4, 2014, when Baylor joined the operation. (See id.) Finally, Dawkins testified that he participated in the conspiracy "on and off" between 2012 and 2017. (See Jan. 23, 2019 PM Tr. 21–25.) This sporadic distribution of at least 280 grams of crack over these six years is not attributable to Baylor, whose participation lasted only ten months.

In these circumstances, the only trial evidence that can sustain Baylor's conspiracy conviction is that showing actual sales foreseeable to her during her ten-month involvement. As the attached spreadsheet shows, the jury could attribute no more than 142.6 grams of crack to Baylor by adding up evidence of: (1) the Group's crack distribution from September 4, 2014 to June 14, 2015; and (2) the Group's purchase and possession of powder cocaine (that it cooked into crack for sale at Blumberg). (See Quantity Spreadsheet, Ex. A.) Even without consideration of the powder cocaine, the recorded phone conversations show that Baylor was personally involved in the sale of at least 29.78 grams of crack. (See Gov't Exs. 94, 109, 126, 153–54, 157, 159, 161.) The Government's evidence is thus sufficient to sustain the verdict against her only for the lesser included offense of conspiring to distribute 28 grams or more of crack. 21 U.S.C. § 841(b)(1)(B)(iii); See United States v. Petersen, 622 F.3d 196, 207–08 (3d Cir. 2010); Gov't of

Virgin Islands v. Josiah, 641 F.2d 1103, 1108 (3d Cir. 1981) ("A jury's finding of guilt on all elements of the greater offense is necessarily a finding of guilt on all elements of the lesser offense . . . . A trial court therefore has authority to enter a judgment of conviction on a lesser-included offense when it finds that an element exclusive to the greater offense is not supported by evidence sufficient to sustain the jury's finding of guilt on the greater offense." (internal citation omitted)).

Accordingly, I will grant Baylor's Motion in part.

An appropriate Order follows.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

_____

Paul S. Diamond, J.

May 7, 2019

EXHIBIT A

Exhibit Number	Description	Date	Time	Crack Weight (g)	Price	Explanation
11	Call Transcript	9/4/2012	13:06:00	68.25	$ 2,500	Germel Perkins was arrested with half an ounce of crack (14g), E. Stinson and E. Perkins also discuss having spent $2500 (which they took from their girlfriends' tax refunds) on powder cocaine
12	Call Transcript	9/4/2012	13:23:00	16.78	$ 1,100	E. Stinson, E. Perkins, and Bellamy discuss being supplied by "Doom" on three occasions. The first time, they paid $500 for 20 grams of cocaine. On a subsequent occasion, they "bagged up" $600 worth of crack. I will thus assume that they sold one nickel of bag crack from the third supply package.
13	Call Transcript	9/4/2012	13:39:00	0.00		No quanity/price discussed
14	Call Transcript	9/6/2012	20:56:00	0.00		No quanity/price discussed
15	Call Transcript	9/7/2012	21:14:00	0.00		No quanity/price discussed
17	Call Transcript	9/10/2012	9:33:00	0.00		No quanity/price discussed
21	Call Transcript	10/14/2012	10:52:00	0.07		Bellamy tells E. Stinson that E. Perkins worked a sales shift each day for two days. I will assume that he sold one $5 bag each day
22	Call Transcript	1/1/2013	17:33:00	0.00		Drugs are discussed but the quanity is unclear
24	Call Transcript	1/1/2013	21:40:00	0.36	$ 50	Imere Stinson sold crack for $50
29	Call Transcript	1/3/2013	13:36:00	0.00		No quanity/price discussed
31	Call Transcript	1/3/2013	21:46:00	1.81	$ 250	Imere Stinson will sell $250 of crack
35	Call transcript and lab report	2/8/2013	15:02:00	0.14	$ 25	5 bags sold
39	Call transcript and lab report	3/20/2013	15:46:00	0.20	$ 20	4 bags sold
40	Call transcript and lab report	3/27/2013	15:00:00	0.14	$ 20	4 bags sold
41	Call transcript and lab report	3/27/2013	15:20:00	0.13	$ 40	8 bags sold
42	Call transcript and lab report	4/24/2013	15:45:00	0.18	$ 20	4 bags sold
43	Call transcript and lab report	4/24/2013	16:25:00	0.33	$ 30	6 bags sold
54	Call Transcript	8/1/2013	17:17:00	14.00		Germel Perkins states he has a half ounce of crack to sell. (See Jan 18, 2019 Tr. 171.)
162	Call transcript	8/2/2013	14:02:00	0.00		No quanity/price discussed
59	Call transcript	8/8/2013	11:28:00	0.04		Daquian Brown tells E. Perkins that he sold "all the shit" last night. I will assume one bag of crack was sold
60	Call transcript	8/8/2013	13:15:00	0.00		No quanity/price discussed

66	Call transcript	8/22/2013	20:20:00	0.00		No quanity/price discussed
67	Call transcript	8/22/2013	21:05:00	0.00		No quanity/price discussed
68	Call transcript	8/22/2013	21:24:00	0.04		T-Mac is waiting for newly cooked crack to dry before bagging it for sale. I will assume that one bag of crack was sold from this newly prepared batch.
69	Call transcript	8/26/2013	14:41:00	0.18	$ 20	E. Perkins tells Bellamy to charge a customer only $20 for 5 bags of crack.
80	Call transcript	9/2/2013	14:00:00	0.00		No quanity/price discussed
83	Call transcript and lab report	2/10/2014	15:02:00	0.29	$ 40	Confidential informant purchased 8 bags from Imere Stinson
85	Call transcript	8/28/2014	9:20:00	0.04		A "bit" of crack discussed. I will assume this is no more than one bag.
92	Call transcript	9/2/2014	14:16:00	0.00		No quanity/price discussed
94	Call transcript	9/4/2014	21:17:00	3.62		E. Stinson and Baylor discuss having two yaks to sell (equivalent to two bundles of crack)
95	Call transcript	9/5/2014	13:18:00	0.00		No quanity/price discussed
98	Call transcript	9/6/2014	22:08:00	0.00		No quanity/price discussed
101	Call transcript	9/9/2014	11:47:00	13.02	$ 800	E. Stinson and Baylor discuss paying $800 for 21 grams, which is most likely powder cocaine that will be cooked into crack
102	Call transcript	9/10/2014	15:44:00	13.02	$ 800	E. Stinson and E. Perkins discuss spending $800 for 21 grams, which is most likely powder cocaine that will be cooked into crack
103	Call transcript	9/12/2014	22:15:00	19.53	$ 900	E. Stinson and Baylor discuss buying $900 of cocaine
153	Call transcript	4/2/2015	8:50:00	1.09	$ 150	E. Stinson gives Baylor $150 from crack sales
154	Call transcript	4/2/2015	8:57:00	5.07	$ 700	Holloway sold $700 of crack
155	Call transcript	4/3/2015	13:43:00	20.18	$ 930	Holloway paid $930 for powder
156	Call transcript	4/3/2015	14:18:00	0.00		No quanity/price discussed
157	Call transcript	4/3/2015	21:58:00	0.04		Holloway says "shit still flowing." I will assume the sale of one bag.
158	Call transcript	4/5/2015	11:29:00	39.06		Holloway bought three "sevens." Updegraff explains that these are three 21 gram packs of powder, which results in 39.06 grams of crack after cooking
159	Call transcript	4/5/2015	13:23:00	13.00		E. Stinson tells Holloway that 21 grams of powder will cook down to a minimum of 13 grams of crack
161	Call transcript	4/8/2015	21:17:00	5.07	$ 700	Holloway discusses selling another $700 of crack
108	Call transcript	6/4/2015	8:38:00	0.00		No quanity/price discussed
109	Call transcript	6/4/2015	20:09:00	1.09	$ 150	Carl Stinson agrees to sell $150 of crack
110	Call transcript	6/4/2015	21:53:00	0.00		No quanity/price discussed
112	Call transcript	6/5/2015	12:46:00	8.03	$ 370	Baylor spent $370 on powder cocaine
113	Call transcript	6/5/2015	21:14:00	0.00		Sales are discussed, but it appears to be related to crack sold earlier in the day
115	Call transcript	6/6/2015	13:01:00	0.00		Again, sales appear related to crack sold the day before
126	Call transcript	6/12/2015	12:44:00	0.80	$ 110	Baylor "put together" $110 of crack
128	Call transcript	6/14/2015	12:36:00	0.00		No quanity/price discussed

	Testimony			6.52	$ 900	Perkins bought Bellamy a $900 gift. Because selling crack was Perkins' only income source, I have converted the dollar amount into crack weight. (See Jan. 18, 2019 Tr. 140.)
	Testimony			28.96	$ 4,000	Terrance Jackson testified that he sold over $1000 of crack on four occasions. (Jan. 23, 2019 AM Tr. 29.)
	Testimony			0.65		Bellamy testified that for the 18 months she worked with Perkins, she received a package of crack at least once a month, sometimes twice a month. These packages were "for both of them," meaning E. Stinson and E. Perkins. (Jan 22, 2019 TR. at 47-49.) I will assume that Bellamy received 18 packages, each containing one nickel bag of crack.

Stinson Total	**281.70**
Baylor Total	**142.60**

Conversion Rates	
Nickel Bag Weight	0.0362
Powder Cocaine per Dollar Spent	0.035
Powder to Crack Cooking	0.62

Methods

-The average weight of a nickel bag of crack--as determined from the weight of all the nickel bags obtained by the Government during its controlled purchases--is 0.0362g

-Each nickel bag costs $5. (Jan. 22, 2019 Tr. 17.)

-Based on Bellamy's testimony, one "yak" or "bundle" contains 50 nickel bags. (Jan. 18, 2019 Tr. 116.)

-Based on expert testimony and audio recordings, the Stinson Group's practice was to "cook" 21 grams of powder cocaine to at least 13 grams of crack. Using this ratio, 1g of powder cocaine will be cooked into 0.62g of crack cocaine. (Gov't Ex. 159; Jan. 24, 2019 PM Tr. 27.)

-Updegraff testified that "an ounce of [powder] cocaine is typically between $800 and $1,000" in Philadelphia. (Jan. 24, 2019 AM Tr. 54.) At the lowest price--$800 per ounce of powder--$1 would buy 0.035g of powder cocaine (28/800).

-Because the crack Holloway sold was stored in Baylor's apartment, his sales quantities may be attributed to her.

-Unless otherise specified, I have assumed a sale, package, container, or parcel of crack contained the smallest quantity: a nickel (i.e. $5) bag.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	**Crim. No. 17-72-1**
	:	
JUAN JARMON	:	

ORDER

On March 13, 2019, after a seven-day trial, the jury convicted Defendant Juan Jarmon of 23 drug trafficking offenses. (Doc. No. 480.) At sentencing, Defendant objected to some 83 paragraphs in the Presentence Investigation Report, including Probation's finding (also urged by the Government) that Defendant distributed 3.4 kilograms of crack cocaine. (Def.'s Objs., Ex. A.) I ruled on each of Defendant's objections, overruling some and sustaining others. In particular, I sustained Defendant's objection to the PSR drug quantity calculation and found that the Government had actually proven that Defendant was responsible for distributing only 723.33 grams. I sentenced him accordingly and stated that I would issue this Order to explain more fully the bases of my rulings.

I. PROCEDURAL BACKGROUND

I have previously set out a detailed history of this matter. (Rule 29 Memo, Doc. No. 527.) On February 8, 2017, in Matter 17-72, the grand jury charged Juan Jarmon and twelve others with conspiring to distribute 280 grams or more of crack in the Norman Blumberg Public Housing Complex and related offenses. (Indict., Doc. No. 1.) In a separate but related Indictment (17-71), the grand jury charged Edward Stinson, Debra Baylor, and eleven others with conspiring to distribute 280 grams or more of crack in the Blumberg Complex and related offenses. (Crim. Docket 17-71, Doc. No. 1.)

On January 29, 2019, a jury convicted Stinson on all counts and Baylor on six of seven counts. (Doc. No. 533.) Defendant Jarmon was convicted a little over a month later. (Doc. No. 480.) Defendant, Stinson, and Baylor had all moved during their trials for judgments of acquittal respecting their convictions for conspiring to distribute 280 grams or more of crack. Fed. R. Crim. P. 29. I deferred ruling on the Motions. Fed. R. Crim. P. 29(b). On May 7, 2019, I issued a Memorandum Opinion granting Baylor's Motion in part and denying both Stinson's and Jarmon's Motions. (Rule 29 Memo.) I explained in detail my methodology for calculating drug quantity based on testimony and evidence presented at trial. (Id.) I incorporate here that methodology and those calculations.

On October 21, 2019, Jarmon's counsel submitted objections to 83 PSR paragraphs. (Ex. A.) On November 15, 2019, the Government submitted its response. (Ex. B.) On November 21, 2019, I sentenced Defendant to a low-end Guidelines term of 360 months imprisonment to run concurrent to his undischarged state sentence, six years of supervised release, and a $1,300.00 special assessment. (Sent. Tr. 40.)

II. LEGAL STANDARDS

For any disputed portion of the PSR, I must "rule on the dispute or determine that a ruling is unnecessary." Fed. R. Crim. P. 32(i)(3)(B). I must "exercise independent judgment in sentencing," at which the Government bears "the burden of proving facts relevant to sentencing by a preponderance of the evidence." United States v. Prior, 941 F.2d 427, 431 (6th Cir. 1991); United States v. Moment, 750 F. App'x 68, 71 (3d Cir. 2018); United States v. Maxshure, 579 F. App'x 136, 139 (3d Cir. 2014).

"[D]rug quantity is a factor of extraordinary importance to the sentencing calculus." United States v. Tavano, 12 F.3d 301, 306 (1st Cir. 1993). The Third Circuit has thus admonished

that "the sentencing court must carefully scrutinize the government's proof to ensure that its estimates are supported by a preponderance of the evidence." United States v. Paulino, 996 F.2d 1541, 1545 (3d Cir. 1993); see United States v. Collado, 975 F.2d 985, 998 (3d Cir. 1992). In determining a quantity, I consider any "relevant conduct," including acts and omissions of the defendant as well as acts and omissions of co-conspirators that were: (1) "within the scope of the jointly undertaken criminal activity"; (2) "in furtherance of that criminal activity"; and (3) "reasonably foreseeable in connection with that criminal activity." U.S.S.G. § 1B1.3(a)(1)(B); see also Tavano, 12 F.3d at 305.

My drug quantity finding at sentencing is not controlled by the trial verdict. Tavano, 12 F.3d at 305. Rather, I must make an independent quantity determination. Id. That quantity may be "greater than that found by the jury" if it is "supported by the record." United States v. Lopez-Esmurria, 714 F. App'x 125, 126 (3d Cir. 2017); United States v. Vaughn, 430 F.3d 518, 527 (2d Cir. 2005). The Third Circuit has recognized that in determining the quantity of drugs distributed by many conspirators, "a degree of estimation is sometimes necessary." United States v. Paulino, 996 F.2d 1541, 1545 (3d. Cir. 1993); see also United States v. Gibbs, 190 F.3d 188, 219 (3d Cir. 1999) ("A district court may carefully estimate the total drug quantities involved in a conspiracy based on evidence of average drug transactions during the conspiracy.").

III. DISCUSSION

Defendant contested four aspects of the PSR: (1) that Defendant was part of a large, overarching conspiracy; (2) that he led the DTG (and thus was subject to an aggravated role enhancement); (3) that he engaged in violence, intimidation, or threats of violence in furtherance of the conspiracy; and (4) that he possessed a firearm during the commission of his drug crimes. (See generally Def.'s Objs.) Defendant objected to Probation's finding that he was responsible for

the distribution of 3.4 kilograms of crack. (Id.) Defendant also objected to a number of phone calls and text messages included in the PSR because the Government did not introduce them at trial. (Id.) Finally, the Defendant raised objections regarding how Probation described each co-conspirator's role and the drug quantities attributable to each co-conspirator. (Id.) At sentencing, the Government relied on its trial evidence and one additional telephonic intercept and transcript, which I reviewed carefully. Although I determined that only Defendant's objections to the offense level enhancements and drug quantity affected his advisory Guidelines calculation, I nevertheless ruled on all his objections.

Phone Calls and Text Messages

Defendant objected to those PSR paragraphs that mentioned phone calls and text messages because those calls and texts had not been introduced at trial and were not introduced at sentencing. (Def.'s Objs. Nos. 20–60.) The Government agreed. I sustained Defendant's objections. (Sent. Tr. 5.)

Controlled Buys

Defendant objected to those PSR paragraphs that mentioned eight controlled purchases of crack, arguing that they did not occur. (Def.'s Objs. Nos. 12–14, 16–19, 24, 36.) I overruled six of those objections because the Government introduced at trial audio, video, and still photos proving that the controlled buys occurred. (Sent. Tr. 5.) I sustained two of Defendant's objections because the buys involved sham substances. (Id.)

Co-Conspirators' Roles and Drug Quantities

Defendant objected to seventeen PSR paragraphs that described co-conspirators' roles and the drug quantity attributable to each. (Def.'s Objs. Nos. 66–75.) Because all these co-conspirators had pled guilty to participating in Defendant's drug trafficking conspiracy, I overruled objections

as to their roles. (Sent. Tr. 5–6.) I sustained Defendant's objections to Probation's drug quantity calculations, finding that Probation had overstated the amount attributable to each co-defendant. (Sent. Tr. 6.)

Miscellaneous Objections

Defendant objected to nine other PSR paragraphs. (Def.'s Objs. Nos. 2, 4, 6–8, 10, 62, 81.) I sustained three of these objections, ruling that: (1) Defendant demonstrated that he had earned his high school diploma; (2) the Government had not introduced trial evidence that Persons #4, #5, and #6 worked as lookouts for Defendant; and (3) Paragraph 46 included unproven facts relating only to Edward Stinson. (Sent. Tr. 7.)

I overruled the five remaining miscellaneous objections, finding that: (1) the October 3, 2012 prison phone call between Edward Stinson and Defendant did take place; (2) the Government demonstrated that Defendant distributed, packaged, and cooked crack; (3) the Government presented sufficient evidence at trial that Stephen Dawkins was a lookout for Defendant's Drug Trafficking Group; (4) Rasheen Chandler was not "dealing his own drugs"; rather, he was selling drugs in furtherance of the charged conspiracy; and (5) the Government demonstrated through phone calls and transcripts that Defendant and other co-conspirators attempted to avoid detection by law enforcement by limiting communications and obtaining burner phones. (Sent. Tr. 6–8.)

Violence Enhancement

Defendant objected to four PSR paragraphs that set out his acts of violence and intimidation, and threats of violence in furtherance of the drug trafficking conspiracy. (Def.'s Objs. Nos. 9, 15, 63, 77.) In two of these objections, Defendant challenged Probation's application of a two-level Guidelines enhancement. (Def.'s Objs. Nos. 63, 77.) I found that the Government demonstrated through phone calls and direct trial testimony that Defendant used and threatened

violence throughout the course of the drug trafficking conspiracy. (Sent. Tr. 8); see U.S.S.G. § 2D1.1(b)(2). For instance, Dottie Good testified credibly that Defendant had violently assaulted her when she failed to turn drug sale proceeds over to him. (Tr. 03/08/19 at 17–22.) I thus overruled Defendant's objections and found that the two-level enhancement was warranted. (Sent. Tr. 8.)

Defendant's Leadership and Overarching Conspiracy

Defendant objected to seven PSR paragraphs describing Defendant as a leader of the Drug Trafficking Group and characterizing the Group as a large, overarching conspiracy. (Def.'s Objs. Nos. 1, 3, 5, 11, 62, 65, 66.) In making these objections, Defendant argued against the applicability of a four-level Guidelines enhancement.

Four levels are added to the base offense level if Defendant played an aggravating role in the commission of the offense. U.S.S.G. § 3B1.1. To qualify for this enhancement, "the defendant must have been an organizer, leader, manager, or supervisor of one or more other participants." U.S.S.G. § 3B1.1 comment n.2. I must consider the following factors: "the exercise of decision making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others." U.S.S.G. 3B1.1 comment n.4.

The Government proved at trial that Defendant led the Drug Trafficking Group and that he employed and supervised supervisors, shift sellers, and lookouts. (Tr. 03/06/19 at 133–136, Gov't Exhs. 232, 232A 233, 233A); (Tr. 03/06/19 at 91–93, 11–13, 112–115.) For instance, Defendant would advise sellers when a preferred customer approached, and directed the drug amount the customer would receive. (Id.) Both Rasheen Chandler and Dottie Good testified that Defendant

hired them to sell crack and continuously supplied them with crack. (Tr. 03/07/19 at 71–72, 76, 78–79, 80–84, 86–87); (Tr. 03/08/19 at 11–24.)

I thus overruled Defendant's objections and found that the four-level Guidelines enhancement was warranted. (Sent. Tr. 9.)

Dangerous Weapon

Defendant objected to the two-level Guidelines enhancement for the use of a firearm during the commission of crimes. See U.S.S.G. § 2D1.1(b)(1). The enhancement "should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected to the offense." U.S.S.G. § 2D1.1, comment n.11(A). Further, as a leader of the drug trafficking group, Defendant is liable for "all acts and omissions that were reasonably foreseeable" to him in connection with the jointly undertaken criminal activity. U.S.S.G. § 1B1.3.

At sentencing, the Government introduced a transcript and audio of an intercepted phone call that took place on September 12, 2013 (during the conspiracy's pendency). (Sent. Tr. 9–10.) On the call, Defendant said that he had to acquire "another pistol" after he had directed "Boo" (co-defendant Damon Edwards) to "take the pistols out of the house" because Defendant "don't want that shit in the building with all them cops right there." (Sent. Ex. 1A.) Defendant was especially concerned about "Housing" police: "[t]hey just keep searching everybody . . ." (Id.) Indeed, Defendant was so concerned about the police that he was "scared to even get in the car with this pistol . . . they's gonna know something was up." (Id.)

Because the Government thus showed by an evidentiary preponderance that Defendant and Edwards (the Group's co-leader) used guns in their criminal activities, I ruled that the dangerous weapon enhancement was applicable. (Sent. Tr. 12.)

Drug Quantity

I sustained Defendant's objection to Probation's finding (with the Government's agreement) that 3.4 kilograms of crack cocaine were attributable to him. (Sent. Tr. 12.) In accordance with my earlier Memorandum (Doc. No. 527), I introduced a chart (attached here at Appendix A) setting out my quantity calculations. (Sent. Tr. 12.) I thus found that Defendant was responsible for distributing 723.33 grams of crack. (Id.)

Guidelines Calculations

Defendant objected to Probation's determination that his offense level was 43, resulting in an advisory Guidelines sentence of life imprisonment. (Def.'s Objs. Nos. 79, 80, 83.) Based on my finding that Defendant was responsible for distributing only 723.33 grams of crack, I reduced his base offense level to 32. (Sent. Tr. 13.) Adding the two-level enhancement for use of violence, the two-level enhancement for use of a dangerous weapon, and the four-level enhancement for Defendant's aggravating role, his total offense level was 40. (Sent. Tr. 13.) With an offense level of 40 and a criminal history level of VI, Defendant's Guidelines range was 360 months to life imprisonment. U.S.S.G. § 5, Part A Sentencing Table.

I thus sustained Defendant's objections as to the Guidelines calculations.

IV. SENTENCING

The Government requested a very lengthy sentence, arguing that a low-end Guidelines sentence would be insufficient, and emphasized the devastating impact that Defendant's drug trafficking conduct had on the Blumberg Housing Complex community. (Sent. Tr. 26–30.) Defendant argued, *inter alia*, that his Level VI Criminal History was overstated, and that the drug trafficking conspiracy was unsophisticated. (Sent. Tr. 15–24.) Defendant also emphasized the extraordinarily difficult circumstances in which he was raised. (Sent. Tr. 18.)

After considering the § 3553(a) factors and everything argued and submitted to me by the Parties, I determined that a low-end Guidelines sentence of 360 months imprisonment (to run concurrently with his undischarged state sentence), six years of supervised release, and a $1,300.00 special assessment was reasonable.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

November 27, 2019

Paul S. Diamond, J.

AO 245B (Rev 09/19) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

Eastern District of Pennsylvania

UNITED STATES OF AMERICA
v.
JUAN JARMON

JUDGMENT IN A CRIMINAL CASE

Case Number: DPAE2:17CR000072-0001

USM Number: 75891-066

Maureen Claire Coggins
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s)

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

☑ was found guilty on count(s) after a plea of not guilty. *1, 2, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 24, 25, 26, 27, 28 29, 30, 31, 32 and 33 on 3/13/2019 by a Jury

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 USC §§846, 841(a)(1) & (b)(1)(A) and 851	Conspiracy to distribute 280 grams or more of cocaine base (crack)	9/30/2014	1

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) 22 and 23 on 3/13/2019 by a Jury.

☐ 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.

11/21/2019
Date of Imposition of Judgment

Signature of Judge

Paul S. Diamond, United States District Court Judge
Name and Title of Judge

12/2/19
Date

DEFENDANT: JUAN JARMON
CASE NUMBER: DPAE2:17CR000072-0001

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
21 USC §843(b)	Unlawful use of a communication facility in furtherance of a drug felony	9/30/2014	2
21 USC §§841(a)(1) and (b)(1)(C) and 851	Distribution of cocaine base ("crack")	9/30/2014	7, 9, 11, 13 & 15
21 USC §§860(a), 841(b)(1)(C) and 851	Distribution of cocaine base ("crack") within 1,000 feet of public housing	9/30/2014	8, 12, 14 & 16
21 USC §§841(a)(1), (b)(1)(C) and 851, and 18 USC §2	Distribution of cocaine base ("crack") and aiding and abetting	9/30/2014	17
21 USC §§860(a), 841(b)(1)(C) and 851, and 18 USC §2	Distribution of cocaine base ("crack") within 1,000 feet of public housing, and aiding and abetting	9/30/2014	18
21 USC §§841(a)(1), (b)(1)(C) and 851, and 18 USC §2	Possession with intent to distribute cocaine base ("crack") and aiding and abetting	9/30/2014	24, 26, 28, 30 & 32
21 USC §§860(a), 841(b)(1)(C) and 851, and 18 USC §2	Possession with intent to distribute cocaine base ("crack") within 1,000 feet of public housing and aiding and abetting	9/30/2014	25, 27, 29, 31 & 33

DEFENDANT: JUAN JARMON
CASE NUMBER: DPAE2:17CR000072-0001

IMPRISONMENT

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

360 Months on Count 1, 48 Months on Count 2, 360 Months on each of Counts 8, 12, 14, 16, 18, 25, 27, 29, 31 and 33, and 240 Months on Count 9, all to run concurrently with each other and concurrently with any state sentence *(Counts 7, 11, 13, 15, 17, 24, 26, 28, 30 and 32 are lesser included offenses of Counts 8, 12, 14, 16, 18, 25, 27, 29, 31 and 33 and will merge for the purposes of sentencing. Therefore, the Court did not impose a term of imprisonment on Counts 7, 11, 13, 15, 17, 24, 26, 28, 30 and 32).

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

It is recommended Defendant receive vocational and educational training.

☑ 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

DEFENDANT: JUAN JARMON
CASE NUMBER: DPAE2:17CR000072-0001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

5 Years on Count 1, 1 Year on Count 2, 6 Years on each of Counts 8, 12, 14, 16, 18, 25, 27, 29, 31 and 33, and 3 Years on Count 9, all to run concurrently with each other. *(Counts 7, 11, 13, 15, 17, 24, 26, 28, 30 and 32 are lesser included offenses of Counts 8, 12, 14, 16, 18, 25, 27, 29, 31 and 33 and will merge for the purposes of sentencing. Therefore, the Court did not impose a term of supervised release on Counts 7, 11, 13, 15, 17, 24, 26, 28, 30 and 32).

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 the location where 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 other conditions on the attached page.

DEFENDANT: JUAN JARMON
CASE NUMBER: DPAE2:17CR000072-0001

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. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature Date

DEFENDANT: JUAN JARMON
CASE NUMBER: DPAE2:17CR000072-0001

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall refrain from the illegal possession and use of drugs and shall submit to urinalysis or other forms of testing to ensure compliance. It is further ordered that the defendant shall submit to evaluation and treatment as approved by the U. S. Probation Office. The defendant shall abide by the rules of any program and shall remain in treatment until satisfactorily discharged with the approval of the Court.

Payment of the Restitution and the Fine is a condition of Supervised Release and the defendant shall satisfy the amount due in monthly installments of not less than $25.00.

DEFENDANT: JUAN JARMON
CASE NUMBER: DPAE2:17CR000072-0001

CRIMINAL MONETARY PENALTIES

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

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 1,300.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

☐ 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, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage

TOTALS	$	0.00	$	0.00

☐ Restitution amount ordered pursuant to plea agreement $

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

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

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

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

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** 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.

DEFENDANT: JUAN JARMON
CASE NUMBER: DPAE2:17CR000072-0001

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 $ 1,300.00 due immediately, balance due

☐ not later than , or
☑ in accordance with ☐ C, ☐ D, ☐ E, or ☑ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ 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 *(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:
The defendant shall make payments in the amount of $25.00 per quarter from any wages he may earn in prison in accordance with The Bureau of Prisons' Inmate Financial Responsibility Program. Any portion of the special assessment that is not paid in full at the time of release from imprisonment shall become a condition of Supervised Release and shall be paid at the rate of $25.00 per month to commence 30 days after release from confinement.

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

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

☐ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☑ The defendant shall forfeit the defendant's interest in the following property to the United States:
$4,250.00.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

_____

No. 19-1652

_____

UNITED STATES OF AMERICA

v.

JUAN JARMON a/k/a J, a/k/a YIZZO,
Appellant

_____

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2-17-cr-00072-001)
District Judge: Honorable Paul S. Diamond

_____

Submitted Under Third Circuit L.A.R. 34.1(a)
August 27, 2021

_____

No. 20-1315

_____

UNITED STATES OF AMERICA

v.

EDWARD STINSON, a/k/a E-Black,
Appellant

_____

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2-17-cr-00071-001)
District Judge: Honorable Paul S. Diamond

_____

Submitted Under Third Circuit L.A.R. 34.1(a)
August 27, 2021

Before: HARDIMAN, ROTH, *Circuit Judges*, and
PRATTER, *District Judge*.[*]

(Filed: September 15, 2021)

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[*] The Honorable Gene E.K. Pratter, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

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OPINION OF THE COURT

HARDIMAN, *Circuit Judge*.

Edward Stinson and Juan Jarmon were tried, convicted, and sentenced to 30 years' imprisonment for selling large amounts of crack cocaine in a public housing complex. In this appeal, they challenge evidentiary decisions, the jury verdicts, and their sentences. We will affirm.

I

Stinson and Jarmon each ran drug trafficking conspiracies out of the Norman Blumberg Public Housing Complex in North Philadelphia at various times between 2010 and 2015. The Blumberg Complex included some 500 apartment units in what was intended to be a family-friendly environment that included two playgrounds. Unfortunately, that aspiration was not realized as the large quantity of drugs sold in the Blumberg Complex spurred a joint investigation among local police, the Federal Bureau of Investigation, and the United States Drug Enforcement Administration.

Government agents put up pole cameras, established wiretaps, used confidential informants to make controlled drug purchases, pulled trash, analyzed pen registers, and—after Stinson's arrest and subsequent incarceration in 2012—listened to recordings of Stinson's phone conversations while he was in prison. After authorities completed their investigation in February 2017, the grand jury returned two indictments. The first charged Stinson and twelve others with conspiracy to distribute 280 grams or more of crack cocaine and related crimes. The second charged Jarmon and twelve others with similar crimes.[1] Most of their co-defendants pleaded guilty, but Stinson and Jarmon proceeded to separate trials.

The trials shared a similar structure. In each, the Government called some law enforcement officers to testify

[1] Stinson was charged in both indictments, but the Government moved to dismiss all charges against him under the second indictment after his conviction under the first.

about the investigation. These officers gave general overview testimony, explained coded language and investigative techniques, and discussed recorded phone calls they reviewed as part of the investigation. In one recorded call—made by Stinson while in prison—Stinson ceded some of his drug territory to Jarmon.

The Government also called cooperating co-defendants who testified against Stinson and Jarmon. These witnesses explained the ins and outs of drug dealing at Blumberg. Stinson and Jarmon led their conspiracies. Each had his own group of sellers and lookouts with set wages and schedules. They used the Blumberg Complex apartments as stash houses and from there sold crack at all hours of the day.

Juries convicted Stinson and Jarmon of the conspiracy charges and most of the related charges. The District Court sentenced each to 360 months' imprisonment.

II

The District Court had jurisdiction under 18 U.S.C. § 3231, and we exercise appellate jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742. Stinson and Jarmon prematurely filed notices of appeal, which we deem timely under Rule 4(b)(2) of the Federal Rules of Appellate Procedure.

Although Stinson and Jarmon were charged in different indictments based on different underlying facts, their appeals were consolidated because they raise a common issue: whether recordings of phone calls Stinson made from prison were admissible at trial. We consider this issue first, and then turn to their separate arguments.

III

Before trial, Stinson moved to suppress recordings of phone calls he made while incarcerated. Because one of these calls was with Jarmon, Jarmon joined the motion. The District Court denied the motion, relying on our opinion in *United States v. Shavers*, where we held inmates and their interlocutors have no reasonable expectation of privacy in phone conversations if they have reason to know the calls are monitored. 693 F.3d 363, 390 & n.7 (3d Cir. 2012), *vacated on other grounds*, *Shavers v. United States*, 570 U.S. 913 (2013). We review the denial of a motion to suppress under a mixed standard: clear error for factual findings and de novo for issues of law. *United States v. Perez*, 280 F.3d 318, 336 (3d Cir. 2002).

Under *Shavers*, the motion to suppress had to be denied. Upon entering the prison, Stinson received a prisoner handbook which explained the facility's policies, including that calls are monitored and recorded. This warning is repeated on signs near the facility's telephones and in a recorded message played to both parties before every call. Neither Stinson nor Jarmon claim ignorance; they knew the calls were monitored and recorded. But they argue *Shavers* is no longer good law and that their calls were protected by the Fourth Amendment despite their knowledge of the recordings.

The Fourth Amendment protects information in which one has a "reasonable expectation of privacy." *Shavers*, 693 F.3d at 389 (quoting *New York v. Class*, 475 U.S. 106, 112 (1986)). This requires the defendant to subjectively believe the information is private and for that belief to be objectively reasonable. *Smith v. Maryland*, 442 U.S. 735, 740 (1979).

Until 2018, it was accepted that one could not have a reasonable expectation of privacy in information voluntarily turned over to third parties. *See id.* at 743–44. The Supreme Court altered this "third-party doctrine" in *Carpenter v. United States*, when it held a defendant's cell-site location information (CSLI)—data tracking a cell phone's physical location that is automatically sent by the phone to the cell carrier whenever the phone is used—is protected by the Fourth Amendment. 138 S. Ct. 2206, 2217 (2018).

The Court recognized CSLI is different. Unlike ordinary business records, the collection of CSLI by cell carriers is "inescapable and automatic" once one decides to carry a cell phone. *Id.* at 2223. The rare combination of automated disclosure and "deeply revealing" location information prompted the Court to conclude that cell phone users have a reasonable expectation of privacy in CSLI even when it was held by a private third party (a cell phone company). *Id.* at 2223. Stinson and Jarmon ask us to apply *Carpenter* to prison calls.

We decline Stinson and Jarmon's invitation to expand *Carpenter* for two reasons. First, *Shavers* did not rely on the third-party doctrine, so its holding is unaffected by *Carpenter*. *Shavers* held inmates have no expectation of privacy in their phone calls not because the recordings are held by a third party, but because of the nature of incarceration. 693 F.3d at 390 n.7. Prisoners know they are under constant surveillance. They have no general expectation of privacy during their incarceration, including in their own cells. *Hudson v. Palmer*, 468 U.S. 517, 525–26 (1984). And the prison's phone policies and warnings to inmates make any subjective expectation of privacy even more unreasonable. *See Shavers*, 693 F.3d at 390 n.7. That principle applies to both parties on the line. *Id.* at

389–90. A party at liberty (Jarmon) cannot reasonably expect his call to be private when he is told that his conversation with an inmate (Stinson) is being monitored. *Id.*

Even had *Shavers* relied on the third-party doctrine, *Carpenter* still would not compel a different result. While we need not decide how far *Carpenter* extends to other technologies, it does not apply to prison phone calls. Unlike an ordinary cell phone user who "in no meaningful sense . . . 'assume[s] the risk' of turning over a comprehensive dossier of his physical movements" when he turns on his phone, *Carpenter*, 138 S. Ct. 2220 (quoting *Smith*, 442 U.S. at 745), Stinson and Jarmon did assume the risk of surveillance here. After being told their calls were monitored, they continued to discuss drug trafficking and other criminal acts. And unlike CSLI, there is nothing "unique" or technologically advanced about prison phone calls that counsels for extending the Fourth Amendment to that milieu. *Id.*

For these reasons, we hold that Stinson and Jarmon had no reasonable expectation of privacy in their phone calls. We will therefore affirm the District Court's orders denying their motion to suppress.

IV

Having rejected Appellants' request to expand *Carpenter* to prison phone calls, we turn to Stinson's and Jarmon's particular arguments.

A

Stinson argues the District Court abused its discretion in admitting some testimony by FBI Agent Sarah Cardone, the

Government's overview witness. *See United States v. Pelullo*, 964 F.2d 193, 199 (3d Cir. 1992). He acknowledges overview witnesses may "tell the story of [the] investigation" including "how the investigation began, who was involved, and what techniques were used." *United States v. Lacerda*, 958 F.3d 196, 208 (3d Cir. 2020). But Stinson claims Agent Cardone went too far when she referred to the "Stinson drug trafficking group," Stinson App. 475, told jurors she "learned about the trafficking of crack cocaine by Edward Stinson and . . . other members of this organization," Stinson App. 472, and described a chart prepared by the prosecution showing the Government's theory of how Stinson's group was organized.

We perceive no problem with Agent Cardone's testimony. It "was limited to an account of her investigation, her personal observations, and her beliefs of what the evidence showed based on what she saw and heard and did." *Larcerda*, 958 F.3d at 210 (cleaned up). Besides, the District Court's limiting instructions throughout Agent Cardone's testimony would have cured any error. As for the chart, such exhibits are allowed when the jury is properly instructed and the chart is supported by actual evidence, as was the case here. *See United States v. Velasquez*, 304 F.3d 237, 240 (3d Cir. 2002).

B

Stinson and Jarmon separately argue the evidence at their trials was insufficient to convict them of conspiracy. Although they cite different evidence, the crux of their arguments is the same: the Government proved only the existence of mini-conspiracies to sell small quantities of crack, not overarching conspiracies to sell 280 grams or more. These arguments fail because they do not accept the evidence in the light most favorable to the jury verdict. *See United States v.*

Mike, 655 F.3d 167, 174 (3d Cir. 2011). Under that standard, there was plenty of evidence for a rational trier of fact to find proof beyond a reasonable doubt that Stinson and Jarmon orchestrated multi-year conspiracies that trafficked more than 280 grams of crack. *See id.*

For starters, Appellants recruited people in their communities to sell as much crack as possible. These were not just buyer-seller relationships. Stinson and Jarmon bought crack in bulk to distribute to their sellers who acted as employees, not customers. They set schedules and shifts and paid regular wages to their subordinates. And co-conspirators warned each other about police activity in the Blumberg Complex. *See United States v. Perez*, 280 F.3d 318, 345–47 (3d Cir. 2002) (finding "interdependency" between co-conspirators defeated the claim of multiple conspiracies). The record shows that Stinson and Jarmon were not merely part of large, ongoing criminal enterprises, but that they organized them. *See id.* at 347.

Stinson focuses heavily on the fact that some members of his conspiracy joined at different times while others left and returned later. Such behavior is common, which is why this Court held long ago that the government "may establish the existence of a continuing core conspiracy which attracts different members at different times and which involves different sub-groups committing acts in furtherance of the overall plan." *United States v. Boyd*, 595 F.2d 120, 123 (3d Cir. 1978). That one of Stinson's co-conspirators went to South Carolina for six months, or that Stinson and another co-conspirator feuded for short periods of time, did not preclude the Government from showing Stinson's participation in a single, overarching conspiracy.

The evidence also showed that Stinson's conspiracy and Jarmon's conspiracy each distributed 280 grams or more of crack. Besides the argument we just rejected, Stinson and Jarmon challenge the total amount of crack sold. The District Court addressed these arguments in its order denying Appellants' motions for judgments of acquittal and provided an estimate of crack quantities proven by the Government. And the trial judge's conservative calculations still exceeded 280 grams.

Stinson claims the District Court erroneously counted the same 21 grams of crack three times. We find no record support for this claim, but even if we did, the extra 42 grams would be unavailing for Stinson because the evidence at trial proved his conspiracy sold far more crack than the District Court gave it credit for. One of Stinson's co-conspirators mentioned five rocks of crack cocaine the District Court did not include in its calculations. Another said he sold crack for Stinson over 20 times, but the District Court considered only sales from his four highest grossing days. These uncounted quantities exceed the challenged 42 grams.

Jarmon's arguments on this score are even less convincing. One of Jarmon's sellers said he alone sold more than 280 grams of crack while working for Jarmon. This testimony sufficed to establish the requisite drug quantities. Jarmon also attacks the credibility of Government witnesses and questions the chain of custody for the seized drugs. But these arguments too are unpersuasive. It was the jury's prerogative to assess the credibility of the Government's witnesses. And the testimony by the DEA agents and chemists handling the drugs adequately authenticated the physical evidence. *See United States v. Rawlins*, 606 F.3d 73, 82 (3d Cir. 2010).

For these reasons, we hold the District Court did not clearly err in attributing more than 280 grams of crack to Stinson and Jarmon at sentencing. *See United States v. Grier*, 475 F.3d 556, 570 (3d Cir. 2007) (en banc). Although sentences must be based on drug quantities reasonably foreseeable to each individual, USSG § 1B1.3(a)(1)(B)(iii), as ringleaders, Stinson and Jarmon are responsible for all the crack sold by their subordinates to further the conspiracies, *see United States v. Gibbs*, 190 F.3d 188, 219 (3d Cir. 1999). And that amount exceeds 280 grams for both Stinson and Jarmon.

C

Jarmon claims the evidence was insufficient to convict him of several substantive drug offenses charged in counts 7–18 and 24–33. Counts 7–18 were based on controlled purchases of crack directly from Jarmon. He claims the evidence was insufficient because the Government cooperators who made the purchases were unreliable, the Government lost some of the seized drugs, and the chain of custody was spotty at times. While these arguments reduce the probative value of the Government's evidence, the videos, photos, and audio recordings of Jarmon participating in these sales were enough for a jury to find him guilty beyond a reasonable doubt.

Counts 24–33, which deal with aiding and abetting drug sales, were based on intercepted calls in which Jarmon directed customers to his sellers to buy crack. These calls and the witness testimony explaining them were sufficient evidence for the jury to convict. And the slight discrepancy between when the calls occurred and the time charged in the indictment (less than an hour) amounts to, at most, a non-prejudicial variance. *See Real v. Shannon*, 600 F.3d 302, 308 (3d Cir. 2010) ("Where 'on or about' language is used, the government is not required

to prove the exact dates, if a date reasonably near is established." (quoting *United States v. Nersesian*, 824 F.2d 1294, 1323 (2d Cir. 1987))).

D

Finally, Stinson and Jarmon dispute some aspects of their sentences. Both challenge a leadership enhancement. Jarmon alone challenges a violence enhancement, an enhancement for possessing a dangerous weapon, and the reasonableness of his sentence for the substantive drug charges.

The District Court did not clearly err in applying any of the sentencing enhancements. *See United States v. Helbling*, 209 F.3d 226, 242–43 (3d Cir. 2000). Testimony by Stinson and Jarmon's co-conspirators identified them as "the boss" of their respective conspiracies. Stinson and Jarmon bought crack in bulk, hired and controlled their workers, and kept the lion's shares of the drug proceeds. So we agree with the District Court that Stinson and Jarmon were the leaders of their groups. *See id.* at 243 (citing USSG § 3B1.1 app. note 3 (listing factors showing leadership including degree of control, scope of illegal activity, and claiming the larger share proceeds)). And the conspiracies were "extensive" for purposes of the leadership enhancement; evidence at trial showed each conspiracy had at least five members. *See* USSG § 3B1.1(a).

As for Jarmon's violence and weapon enhancements, his own words are the strongest evidence against him. The Government introduced an intercepted call where Jarmon bragged about punching a female Blumberg resident in the face when she threatened to call the police. In another call, he admitted to having a gun, which he gave to a co-conspirator,

and said he had to get another one. So his argument against the violence and weapon enhancements is specious at best.

Nor do we find Jarmon's 360-month sentence unreasonable. The District Court properly grouped Jarmon's conspiracy count with his substantive drug offenses and sentenced him at the bottom of the Guidelines range. *See* USSG § 3D1.2(d). Such sentences are presumptively reasonable, *United States v. Pawlowski*, 967 F.3d 327, 331 (3d Cir. 2020), and given the scope of Jarmon's crimes and his past criminal history, that presumption is not rebutted here.

* * *

Our review of the extensive District Court records in these cases leads us to conclude that the District Court committed no errors. Because the Supreme Court's decision in *Carpenter* cannot reasonably be extended to prison recordings, the District Court properly denied the motion to suppress. The Court afforded Stinson and Jarmon fair trials, the Government carried its burden of proof on the counts of conviction, and the sentences were reasonable. Accordingly, we will affirm.