

1 on this matter.

2 THE COURT: Okay.

3 All right. Mr. Fedock, you've made your argument, I  
4 believe.

5 Ms. Cheek, did you have any argument you want to make  
6 on this particular objection? He disagrees -- obviously, Mr.  
7 Fedock, the Government disagrees with the U.S. Probation  
8 Officer who didn't have the -- when she ruled on this or at  
9 least responded to it, did not have Mr. Cates' testimony,  
10 obviously, which I have.

11 Go ahead, Ms. Cheek.

12 MS. CHEEK: Yes, Your Honor.

13 I think it's of note, particularly with Mr. Cates'  
14 testimony to keep in mind the fact that he has admitted to  
15 actively trying to protect family members. And the best way to  
16 do that is to throw as much blame on non-family members as  
17 possible.

18 I think it's relevant that at the beginning of this  
19 investigation, he clearly stated that James Winstead and  
20 Chelsie Stubblefield were the primary sellers for him. He has  
21 now since said that there were multiple, multiple sellers.  
22 He's also indicated that the bulk of his business occurred  
23 actually after he got into business with Butch, which was a  
24 period of time where there was not as much transaction --

25 THE COURT: And we decided Butch is Melvin Anderson,

1 right?

2 MS. CHEEK: We did.

3 MR. FEDOCK: Yes --

4 MS. CHEEK: I'm sorry. Yes.

5 THE COURT: Okay. No, no, no, no.

6 MS. CHEEK: Yes.

7 THE COURT: No.

8 MS. CHEEK: Yes.

9 THE COURT: That's right.

10 MS. CHEEK: Well, I believe that's what he said.

11 THE COURT: I think that's what he said.

12 MS. CHEEK: So I would urge the Court to remain with  
13 the Probation Department's recommendation that she be given the  
14 benefit of being considered to be a minor participant for which  
15 she did take responsibility. This was a much bigger endeavor.  
16 She had a small portion, a small part to play in it. And we  
17 believe that she's entitled to that consideration and those  
18 points.

19 THE COURT: Thank you.

20 The Court sustains the objection. The Court finds  
21 from all the evidence that I've reviewed in the presentence  
22 report as well as the testimony of Mr. Cates that this  
23 Defendant was not substantially less culpable than an average  
24 participant.

25 While certainly, a dealer may have primary sellers,

1 primary sub dealers, that doesn't mean that those are the only  
2 people that distribute. And from the testimony, it sounded  
3 like she was distributing vast amounts as well as the others  
4 ones were, I guess, as well.

5           So then, was there a second objection from the  
6 Government?

7           MR. FEDOCK: The second objection, I believe, was  
8 from the Defense regarding the gun.

9           THE COURT: Okay. We're going back?

10          MS. CHEEK: Yes.

11          THE COURT: Okay. So I think maybe you objected  
12 originally or no --

13          MR. FEDOCK: Yes. Originally, the gun was not --

14          THE COURT: -- about the firearm?

15          MR. FEDOCK: -- included. We had objected.  
16 Probation ruled --

17          THE COURT: Agreed with you?

18          MR. FEDOCK: -- agreed with us on that.

19          THE COURT: And then, Ms. Cheek, you disagree with  
20 that. So go ahead, Ms. Cheek. I'm sorry.

21          MS. CHEEK: Yes, Your Honor. I disagree with the  
22 Government and the Probation Department.

23                There is no evidence whatsoever linking Ms. Gutierrez  
24 to the guns. There is no evidence actually linking the guns to  
25 use in any of this conspiracy, no evidence that she had any

1 knowledge that Mr. Cates or anyone else might have a firearm.  
2 And I think it would be burdensome and unfair on her case for  
3 the Court to place that upon her, as well, in assessing the  
4 appropriate guidelines.

5 THE COURT: Thank you.

6 So Mr. Fedock, remind me just briefly about the  
7 firearms. Tell me what firearms there were. Just refresh my  
8 memory, please.

9 MR. FEDOCK: Yes, Your Honor.

10 THE COURT: Where they were found, when --

11 MR. FEDOCK: There was a KelTec 9-millimeter firearm,  
12 a Smith & Wesson 357 Magnum handgun, a Browning Medallion 7-  
13 millimeter rifle, and then SKS 7.62-by-39 rifle. All of those  
14 were found --

15 THE COURT: Pull that mic. Pull that mic over there.  
16 I'm sorry. I just want to make sure that --

17 MR. FEDOCK: All of those, those four hand -- or four  
18 weapons, I guess some handguns and one or two rifles --

19 THE COURT: Okay.

20 MR. FEDOCK: -- they were all found in the same shop  
21 where Mr. Gutierrez -- I'm sorry, where Mr. Cates was detained  
22 and arrested on the day of his arrest which was the shop where  
23 he had the methamphetamine, where he was cutting up and  
24 weighing out -- well, I guess not cutting up but weighing out  
25 and distributing methamphetamine. The same shop where Ms.

1 Gutierrez herself in fact had met Mr. Cates on the day of their  
2 arrest and got the methamphetamine that was on her when she was  
3 subsequently traffic-stopped leaving that residence.

4 And so they were, as the case law that is cited  
5 there, that it's reasonably foreseeable that firearms were  
6 being employed as tools of the drug trafficking trade. And I  
7 believe the objection does not require Ms. Gutierrez herself to  
8 possess them, just that they're possessed by someone as part of  
9 that conspiracy.

10 THE COURT: And that it be reasonably foreseeable  
11 that someone would?

12 MR. FEDOCK: Yes, Your Honor.

13 MS. CHEEK: May I briefly respond, Your Honor?

14 THE COURT: I would like you to, please.

15 MS. CHEEK: Okay. Thank you.

16 In this particular -- although we can imagine a  
17 scenario where it would be reasonable to foresee that there  
18 would be guns involved in some sort of drug transaction, there's  
19 no evidence anywhere that there has ever been any violence, any  
20 gunplay, any need for that. So this particular alleged  
21 conspiracy does not involve violence, does not involve  
22 firearms.

23 Although the items were located in the shop, that is  
24 where Mr. Cates bagged. That is where Mr. Cates arranged for  
25 distribution. There is no evidence whatsoever that Ms.

1 Gutierrez was in any way involved in the packaging, separating,  
2 that sort of stuff or that she worked in the shop. If  
3 anything, she was out in the field.

4 And although they did at one point have a romantic  
5 relationship, there's no evidence they lived together or that  
6 she had any responsibility or control over any of his property  
7 or residence.

8 (Pause)

9 THE COURT: So looking at Application Note 11 to  
10 (b) (1), under 2D1.1(b) (1), state that:

11 "The enhancement for the weapon possession in (b) (1)  
12 reflects an increased danger of violence when drug  
13 traffickers possess weapons. The enhancement should  
14 be applied if the weapon was present unless it is  
15 clearly improbable that the weapon was connected with  
16 the offense."

17 We also know, of course, that it has to be reasonably  
18 foreseeable. This is obviously a tool of the trade. I will --  
19 I guess let me figure out how this works. So the Government  
20 objected, the Probation Office agreed with the objection and  
21 changed the report. The Defense now objects to that.

22 I'll overrule that objection in that the Court  
23 believes that these firearms were reasonably foreseeable.  
24 There's a temporal as well as a spatial relationship in  
25 proximity in the case. In fact, Ms. Gutierrez was present at

1 that location I think the day of the arrest. Am I wrong?

2 MR. FEDOCK: Yes, Your Honor.

3 THE COURT: That's what I thought, where the firearms  
4 were located and certainly there is a lot of narcotics being  
5 trafficked here, not a small amount that any of these  
6 defendants or co-defendants in the case were -- co-conspirators  
7 were involved in. So the Court will overrule the Defense's  
8 objection.

9 So I'll sustain the objection as to minor role that  
10 the Government had. I've overruled the Defense's objection on  
11 the firearm.

12 With that, just to make sure we're clear, let me go  
13 back. Ms. Cheek, were there any other objections from the  
14 Defense?

15 MS. CHEEK: No, Your Honor.

16 THE COURT: And from the Government?

17 MR. FEDOCK: No, Your Honor.

18 THE COURT: All right. So I think we're finally to  
19 the point to where I can state that the Court has reviewed the  
20 presentence investigation report -- and, by the way, in making  
21 those rulings, I have reviewed Officer Cordero's responses, the  
22 Government's objections, and I've of course listened to all the  
23 argument and testimony today.

24 The Court's reviewed the presentence investigation  
25 report prepared by U.S. Probation Officer Miriam Cordero. I