No. ____________

In the Supreme Court of the United States

MICHAEL CARDONA,
Petitioner,

v.

UNITED STATES OF AMERICA
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITIONER'S APPENDIX

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January 1, 2018

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IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 16-51113

United States Court of Appeals
Fifth Circuit
FILED
October 5, 2017
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

XAVIER CARDONA; MICHAEL CARDONA,

Defendants - Appellants

Appeals from the United States District Court
for the Western District of Texas
USDC No. 2:14-CR-46

Before DAVIS, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:*

Xavier and Michael Cardona ("Xavier" and "Michael") appeal their convictions for conspiracy to possess with intent to distribute cocaine and their respective sentences. For the reasons set forth below, we AFFIRM both the defendants' conspiracy convictions as well as their sentences.

I

A jury convicted defendants of conspiracy to possess with intent to distribute cocaine. Michael was also found guilty of two substantive counts of

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

possession with intent to distribute. The district court calculated Xavier's Sentencing Guidelines range as 235 to 293 months imprisonment, but granted him a downward variance of 216 months. Michael was sentenced to a within-guidelines term of 216 months imprisonment for each of the three counts in the indictment to be served concurrently.

At trial, the government presented multiple witnesses who testified to having purchased various quantities of cocaine from either Xavier or Michael or both. Michael and other dealers the defendants employed would often deliver the drugs to purchasers, but many transactions also took place at Xavier's auto-detailing shop. On more than one occasion, witnesses saw defendants display weapons in connection with their drug business and in an effort to intimidate buyers or dealers they employed. DEA agent Juan Silva testified that he monitored two controlled "buy-walk" transactions between Michael Cardona and Bernabe Olivas, a former member of the Eagle Pass Mexican Mafia, in which Olivas purchased a combined $2,200.00 worth of cocaine. When the FBI executed search warrants at Michael and Xavier's residences, they found $26,520.00 and $136,275.00, respectively, in cellophane-wrapped stacks of cash. Agents also found weapons and some cocaine at both residences. A search of Xavier's auto shop revealed almost no legitimate business records, and agents found a suspicious accounting book that was later confirmed by a forensic examiner to be an illicit sales ledger.

While in custody, Michael was caught trying to swallow a document in an attempt to prevent custodial authorities from seizing it. The note, written in Spanish, directed the unnamed recipient to facilitate the creation of false receipts to "help [him] out." Xavier was found in possession of a similar note containing information about vehicles and prices. During a recorded phone call between Xavier and a family member, a cooperating source read a written statement disclaiming any knowledge of Xavier's criminal activity. The source later told authorities that Xavier had coerced him into reading the statement, warned the source that he would be back in custody following the trial, and stressed that he would know whether the source had testified against him.

Defendants' sentencing hearing lasted over four hours. In calculating the volume of cocaine for which defendants were responsible, the district court tallied quantities derived from various sources listed in the PSR: (1) amounts provided to trial witnesses; (2) amounts provided to unnamed confidential and cooperating individuals; (3) the amount purchased in the controlled "buy-walks" between Michael and Bernabe Olivas; (4) the amounts found in Michael and Xavier's respective residences; and (5) the volume equivalent of the cash seized at defendants' residences.[1] The amounts totaled 6.7453 kilograms. Defendants' objected to the inclusion of the amounts sold to confidential witnesses as well as the amount derived from the cash conversion.

The district court found that Xavier qualified for a two-level sentencing enhancement under U.S.S.G § 2D1.1(b)(15)(D) for witness intimidation and/or obstruction of justice.[2] Michael received a two-level sentencing enhancement under U.S.S.G. § 2D1.1(b)(15)(D) for obstruction of justice[3] and a two-level enhancement under U.S.S.G. § 2D1.1(b)(2) for a credible threat of violence. The

[1] The PSR converted the $26,520.53 found in Michael's residence and the $136,275.00 found in Xavier's residence into roughly 2.6 kilograms of cocaine.

[2] The two-level sentencing enhancement under § 2D1.1(b)(15) is also applicable if "the defendant committed the offense as part of a pattern of criminal conduct engaged in as a livelihood." U.S. SENTENCING GUIDELINES MANUAL § 2D1.1(b)(15)(E) (U.S. SENTENCING COMM'N 2015). The PSR lists this as an alternative basis for applying the two-level enhancement, and Xavier disputes that Section (E) applies to him in his brief, but it is clear from the sentencing record that the district court relied primarily on Section (D) as the basis for the enhancement.

[3] In their briefs, both Michael and the government address Michael's obstruction of justice enhancement under § 3C1.1. The PSR and the record, however, indicate that the enhancement was applied under § 2D1.1(b)(15)(D).

PSR recommended Xavier receive an adjusted offense level of 42, but the district court reduced the total to 38 after sustaining Xavier's objection to the leadership enhancement. Xavier's Sentencing Guidelines range was 235 to 293 months imprisonment. The district court granted Xavier a downward variance and sentenced him to 216 months imprisonment. The district court concluded Michael had a total offense level of 36 and sentenced him within the guidelines range to 216 months for each offense charged to be served concurrently. Defendants appeal their convictions and their sentences.

II

Defendants contend that the evidence presented at trial was insufficient to establish that they participated in a conspiracy to violate federal narcotics laws. This contention is without merit. Because defendants failed to move for a judgment of acquittal under Federal Rule of Criminal Procedure 29 at the close of trial, our review is limited to determining whether defendants' convictions amount to "manifest miscarriage[s] of justice." *United States v. Delgado*, 256 F.3d 264, 274 (5th Cir. 2001). In doing so we merely ask whether the record is "devoid of evidence pointing to guilt." *United States v. Robles-Pantoja*, 887 F.2d 1250, 1254 (5th Cir. 1989). The evidence presented at trial was overwhelming and more than sufficient to demonstrate that the defendants entered into an agreement to distribute cocaine. Accordingly, defendants' convictions are AFFIRMED.

III

Defendants raise two overarching objections to the district court's sentencing calculation. First, defendants claim that the district court erred in including the amount of cocaine attributable to transactions with confidential witnesses and the amount converted into kilograms of cocaine from the cash found in their residences in the total amount of relevant conduct. Second, Michael argues that the district court improperly imposed a two-level sentencing enhancement under § 2D.1(b)(2) of the Sentencing Guidelines for threat of violence and under § 3C1.1 for obstruction of justice. Similarly, Xavier claims that the district court erred in applying a two-level sentencing enhancement for obstruction of justice under § 2D1.1(b)(15)(D) or for committing and offense as part of a pattern of criminal conduct engaged in as a livelihood under § 2D1.1(b)(15)(E).

We review the district court's interpretation and application of the Sentencing Guidelines *de novo* and its factual findings for clear error. *United States v. Juarez-Duarte*, 513 F.3d 204, 208 (5th Cir. 2008). Factual findings at sentencing need only be determined by a preponderance of the evidence. *See United States v. Mergerson*, 4 F.3d 337, 343 (5th Cir. 1993).

IV

The district court's calculation of the quantity of drugs to be included in the relevant conduct is a factual determination. *United States v. Betancourt*, 422 F.3d 240, 246 (5th Cir. 2005). In making its determination, the district court is entitled to consider "any information that has sufficient indicia of reliability to support its probable accuracy," *United States v. Huskey*, 137 F.3d 283, 291 (5th Cir. 1998), and may estimate the total quantity based on a defendant's distribution patterns, law enforcement approximations, and hearsay, *see Betancourt*, 422 F.3d at 246-47. "Generally, a PSR bears sufficient indicia of reliability to permit the sentencing court to rely on it at sentencing," and the sentencing court may adopt the PSR absent competent rebuttal evidence. *United States v. Ollison*, 555 F.3d 152, 164 (5th Cir. 2009). Out-of-court testimony by confidential informants "may be considered where there is good cause for the nondisclosure of their identity and there is sufficient corroboration by other means." *United States v. Rogers*, 1 F.3d 341, 343 (5th Cir. 1993) (citing U.S.S.G. § 6A1.3).

Defendants argue that confidential witness testimony regarding additional drug sales was insufficiently reliable. They also contend that the district court erred in failing to make a specific finding regarding the reason for non-disclosure of the witnesses' identities.[4] In crediting the witnesses' testimony, the district court relied on information outlined in the PSR, which included the identity of the distributor, dates, times, drug amounts, and other contextual details of the transactions. As the district court noted, the details provided by the confidential witnesses were entirely consistent with those provided by witnesses at trial. Though the district court did not make an explicit finding with respect to the government's nondisclosure of witness identities, the reason for nondisclosure is abundantly clear in the record. Defendants had extensive contacts with the Mexican Mafia, possessed multiple firearms, and trial witnesses testified that they feared retaliation for their cooperation with authorities. Accordingly, the district court's implicit finding of good cause for nondisclosure of the unidentified witness identities and its determination that the testimony was sufficiently corroborated was not clearly erroneous.[5]

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[4] There is no evidence in the record that defendants requested the sentencing court make an explicit determination regarding the reasons for the government's nondisclosure.

[5] Michael also insists that the district court's partial reliance on the hearsay testimony of confidential witnesses to determine the drug quantity violated his Fifth Amendment right to due process as well as his confrontation right under the Sixth Amendment. Though Michael admits this argument is effectively foreclosed by this Circuit's precedent in *United States v. Beydoun*, 469 F.3d 102 (5th Cir. 2006)—which declined to extend the procedural protections afforded to defendants at trial under *Crawford v. Washington*, 541 U.S. 36 (2004) to sentencing proceedings—he urges us to reconsider. We decline to do so here. Michael's independent argument under the Due Process Clause of the Fifth Amendment is merely a reformulation of his complaints regarding the reliability of the unidentified witness testimony. Because we agree with the district court that the testimony was sufficiently reliable, we need not address this argument further.

Defendants also object to the district court's conversion of the cash seized at their residences into quantities of cocaine. Xavier insists that the wrapped stacks of cash came from legitimate sources, namely a personal injury settlement, his auto business, and gambling winnings. Michael argues that the district court was required to make an explicit finding that either (a) there was no drug seizure, or (b) the amount seized did not reflect the scale of the charged offense, before converting the cash to drug quantities. *See United States v. Henderson*, 254 F.3d 543, 544 (5th Cir. 2001) (Garza, J., concurring). He also contends that the cash conversion may have "double counted" quantities derived from confidential witnesses.

The district court dealt with Xavier's objection to the cash conversion at length. Though there was evidence Xavier earned some legitimate income, the amount was minimal, and Xavier's ex-spouse told authorities that the proceeds from his personal injury settlement had been spent. Furthermore, the evidence tending to show the cash was from drug sales was substantial. Both the testimony presented at trial and the information in the PSR established that Xavier and Michael sold large quantities of cocaine for over a decade.[6] The district court analyzed Xavier's tax records and found no indication of significant cash savings. Noting also the lack of legitimate business records at the auto detailing shop, the drug ledger, and the cellophane wrapping on the stacks of cash, the district court reasonably concluded that Xavier's alternative explanations were not credible. The district courts' finding that the cash found was from cocaine sales was not clearly erroneous.

Michael's objections to the cash conversion are similarly unavailing. As to his first objection, because Michael failed to object to the district court's

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[6] Bernabe Olivas testified at trial that he had known Michael for several years and had never seen him work any kind of legitimate job.

procedural oversight during the sentencing hearing, our review is for plain error. *See, e.g.*, *United States v. Lopez-Velasquez*, 526 F.3d 804, 806 (5th Cir. 2008). Though the district court did not make the determination explicitly, the evidence in the record amply supports the conclusion that the quantity of drugs seized did not reflect the scale of the offense. The district court's failure to make this finding overtly before converting the cash to cocaine quantities was not plainly erroneous. The district court addressed Michael's second objection—the risk of double counting—in depth at the sentencing hearing. As the district court noted, the transactions described by the unidentified witnesses occurred several years before the cash was seized. Furthermore, the high value of the wrapped stacks of cash was not consistent with having come from the type of smaller-quantity buys the confidential witnesses participated in. The district court's factual finding that the conversion did not constitute double counting under these circumstances does not constitute clear error.

V

Lastly, defendants object to the district court's application of various sentencing enhancements. Turning first to defendants' contention that the facts do not support the sentencing enhancements for a credible threat of violence, witness intimidation, obstruction of justice, or committing an offense as a part of a pattern of criminal conduct engaged in as a livelihood, we find defendants' protests unavailing.

In applying Michael's enhancement for making a credible threat of violence under § 2D1.1(b)(2), the district court credited Bernabe Olivas' testimony that he witnessed Michael get angry with an associate and demand that he return with "either . . . the drugs or the money" before handing him a pistol. Combined with the evidence introduced at trial tending to show defendants' potential for violence, including but not limited to witness testimony that defendants' motto was "we're not going to fight anybody . . . we're just going to kill them in case something is set to go down," the incident Olivas witnessed can reasonably be classified as a credible threat of violence. Additionally, Michael's attempt to pass along a message from prison directing someone to manufacture legitimate receipts in order to "help [him] out," followed by an attempt to swallow the incriminating note, easily qualifies as obstructive behavior under § 2D1.1(b)(15)(D).

The district court's finding that Xavier engaged in witness intimidation and obstruction of justice under § 2D1.1(b)(15)(D) is similarly reasonable. A cooperating source told the FBI that Xavier coerced him into making an exculpatory statement during a recorded phone call. Xavier then warned the source that "he [would] know" if the source chose to testify against him and that Xavier was "going to come back here." It was not clearly erroneous for the district court to conclude that Xavier's actions constituted witness tampering and obstructive conduct warranting a two-level sentencing enhancement.

With respect to the application of § 2D1.1(b)(15)(D), however, we note that the government concedes this section was inapplicable because the district court sustained defendants' objection to the application of an aggravating role enhancement under § 3B1.1—a prerequisite for the application of § 2D1.1(b)(15)(D). *See* U.S. SENTENCING GUIDELINES MANUAL § 2D1.1(b)(15) (U.S. SENTENCING COMM'N 2015). Defendants did not make this specific objection during sentencing nor did they raise it in their briefs, and this objection is likely waived. *See U.S. v. Scroggins*, 599 F.3d 433, 446-48 (5th Cir. 2010). Even assuming, however, that the issue is subject to plain error review, we find that defendants have not demonstrated the error had "a serious effect on the fairness, integrity, or public reputation of judicial proceedings." *United States v. Baker*, 538 F.3d 324, 332 (5th Cir. 2008). As the government notes, the same conduct that constituted obstruction under § 2D1.1(b)(15)(D) would almost certainly have qualified defendants for the two-level obstruction of justice enhancement under § 3C1.1.[7] Both Xavier and Michael's PSR specifically stated that an adjustment for obstruction of justice under § 3C1.1 was not applied "due to the fact that the defendant received an enhancement under [] § 2D1.1(b)(15)(D)." Accordingly, the district court's application of a two-level enhancement was not plainly erroneous.

VI

We AFFIRM defendants' convictions and their sentences.

[7] Contrary to Michael's contention that the "alleged obstruction did not pertain to 'the instant offense of conviction,'" as required by § 3C1.1, we believe that attempting to falsify records in order to prove seized cash was legitimate income as opposed to proceeds from drug sales is highly relevant to the offense charged.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

UNITED STATES OF AMERICA,	*	No. DR-14-CR-461
Plaintiff,	*	
VS.	*	SEPTEMBER 6, 2016
XAVIER CARDONA, (1), AND	*	
MICHAEL CARDONA, (2),	*	
Defendants.	*	DEL RIO, TEXAS

TRANSCRIPT OF SENTENCINGS

BEFORE THE HONORABLE ALIA MOSES

UNITED STATES DISTRICT JUDGE

Proceedings recorded by mechanical stenography. Transcript produced by Computer-Aided transcription.

objections, I'm going to hear those objections before I make the money finding amount -- or the finding of the money judgment amount, so that we can get to all of that specifically.

Okay. So, now let's skip over to the objections to the presentence report, starting with relevant conduct.

Mr. Munoz, let me hear -- now -- now, here's your objection -- anything you want to rely on in terms of the trial testimony, trial evidence, or any new evidence that you want to present with regard to your objection as to relevant conduct?

MR. MUNOZ: Yes, Judge. Do you want me to go to the podium, Your Honor?

THE COURT: Please.

MR. MUNOZ: Thank you. Judge, regarding -- we did lodge an objection to the drug quantity determination. And I -- in my -- in my objections, I kind of -- I go paragraph by paragraph.

Paragraphs 11, 12, 13, 15, 30, 31, 32 and 22 of the presentence report refer to quantities that are based on unnamed confidential sources. They just -- and they only describe approximate amounts. There's no information referenced in the presentence report as to whether these unnamed sources were reliable and trustworthy. There is also no evidence or any indication as to how certain or confidential these sources were in terms of the quantities they described. And without more of these --

THE COURT: Okay, wait, wait, wait.

MR. MUNOZ: -- these sources --

THE COURT: Go back -- go back -- go back a little. "How confidential" or what?

MR. MUNOZ: How confident they were --

THE COURT: Oh, "confident."

MR. MUNOZ: -- in terms of the quantities they described. Oftentimes people say, Oh, I think I bought, you know, an ounce a week or about, and they -- they're not real precise.

THE COURT: You think I haven't heard that argument and objection for about 17,000 times? So I know what you're arguing. So I understand what you're saying, Mr. Munoz.

MR. MUNOZ: Basically, Judge, it -- it appears what happened here is that --

THE COURT: Uh-huh.

MR. MUNOZ: -- the probation officer took the reports the government gave them and included those amounts, but we don't know who these people are, whether they're credible, or whether they're even the same people who testified at trial. Because if they're unnamed -- and I think that -- while I understand that generally the defendant has a burden to object or attack the reliability of the information contained in the presentence report, here I think that because there's no corroboration, because it's unnamed sources, it lacks a sufficient indicia of reliability to be included in the drug quantity determination.

I can't challenge or attack the veracity of allegations made by unnamed sources. I can't prove a negative. And so because of these -- because of that, I would argue that those paragraphs or those quantities should be stricken from the relevant conduct determination.

THE COURT: Okay. Well, that's the -- before you go further, Mr. Munoz, let me get Mr. Cavazos -- if he's making that same objection or argument, to come up before I get some information.

MR. MUNOZ: Sorry.

MR. CAVAZOS: Your, I -- I agree with Mr. Munoz, and I join him in -- in his objection. We -- we can't tell whether there's really a separation between what's in the relevant conduct and what was in actual trial testimony. Some of the quantities that are discussed almost -- not mirror each other, but appear to come from, perhaps, the same source.

So there's -- there's a real danger of double counting if we just follow what's in the PSR as it's laid out. And -- and that's a big concern for me.

I join Mr. Munoz in -- in -- with respect to the guesstimation or approximation of what these unknown persons may have spoken about.

So for those reasons, I join Mr. Munoz in -- in the objection.

THE COURT: Okay. So, Mr. Thomas, let's -- in terms of the folks that testified versus the unnamed confidential informants, is there any overlap there --

AUSA THOMAS: No. The --

THE COURT: -- in terms of --

AUSA THOMAS: I'm sorry, Judge. I didn't mean to interrupt.

THE COURT: No, I was going to say, like, say, by way of example, Paragraph 11. Is Paragraph 11 part of the testimony that was given -- again, I'm making this up because I'm -- I don't know. Say Paragraph 41.

AUSA THOMAS: Judge, none of the earlier confidential source reports that were provided, both to probation in the case for their review, but also in redacted form to both counsel, none of those were the individuals that testified at the trial.

THE COURT: Okay.

AUSA THOMAS: I know the Court will recall we had a hearing regarding the disclosure --

THE COURT: Uh-huh.

AUSA THOMAS: -- of the -- the identity of those individuals. All of those --

THE COURT: And that's in the record?

AUSA THOMAS: It is. Yes. And none of those individuals were testifying, except for the ones that were disclosed, which ended up being individuals testifying at trial.

So those reports are in no way duplicative of any testimony that was at the trial.

THE COURT: Okay. So you're saying all of those paragraphs that named confidential sources are not any of the amounts that are involved from Paragraphs 41 through 60?

AUSA THOMAS: Yes. That's --

THE COURT: Okay.

AUSA THOMAS: -- that's correct.

THE COURT: All right. So how does defense counsel get a chance to attack the validity of the confidential source information, Mr. Thomas, for purposes of relevant conduct?

AUSA THOMAS: Judge --

THE COURT: What do you -- what do you have to present on that matter?

AUSA THOMAS: Judge, we could have an agent report on -- I mean, normally we present that information through hearsay. Obviously the defendants have had ample and full opportunity --

THE COURT: But they don't know who these folks are. They don't have an identity, and I'm not suggesting they should be given up -- that's not what I'm saying. But they don't have a way of contesting the credibility or the validity of this.

AUSA THOMAS: As far as who the individuals are to be directly confronted, I agree. My understanding is that there is some degree -- to a degree of hearsay that is permissible in this form versus at trial, which is why we chose the individuals that we chose in trial.

I -- I understand the point as far as confrontation, but as far as whether the information is credible and reliable, the -- obviously, as the Court's pointed out, the jury had an opportunity to hear from five people who certainly put their face out there for the defense to -- to cross-examine and -- and did cross-examine in a full way.

The information that was provided by those confidential sources regarding the historical buy information, the -- the amounts, all of that type of information, was consistent in -- in many, many ways with what was presented at the trial. So in that sense, it -- it -- we argue that it is reliable.

Additionally, there hasn't been any other information, other than the defendant's testimony at the trial, which was rejected, about what the business activities, if any, other than selling cocaine were by the brothers, by both Cardona brothers, Your Honor.

THE COURT: Mr. Munoz and Mr. Cavazos, just on that issue, rebuttal.

MR. MUNOZ: Yes, Judge. Your Honor, the issue is I wouldn't even know who to ask -- which agent to ask for to be here to be able to testify. I don't know what years these confidential sources debriefed.

THE COURT: Yes, you do, Mr. Munoz. They're in the presentence report.

MR. MUNOZ: I mean, well, let me -- let me pull my --

THE COURT: The dates are in the presentence report.

MR. MUNOZ: Let me -- my apologies, Judge. Let me --

AUSA THOMAS: The dates are also in the discovery that was provided.

MR. MUNOZ: That -- that's correct. I was provided discovery, but the names were redacted.

THE COURT: Right. But --

MR. MUNOZ: And so I -- I don't --

THE COURT: -- but I'm just saying, even in the presentence report, even though the names are redacted, it's giving you the date of the inform -- the date the information was provided and the dates of the transactions.

MR. MUNOZ: I may have misspoken, then, Judge. I -- my apologies. I -- but I stand on my argument that without any additional information, it's insufficient to qualify as reliable enough to be included in the drug quantity and calculation, Judge. It's -- it's -- it's almost hard to comprehend some -- somebody -- I --

THE COURT: Folks, why is it so hard --

MR. MUNOZ: -- anonymously --

THE COURT: -- but why is it so hard to comprehend?

This is done every day in every drug case where there's relevant conduct. I have only sentenced about 10,000 cases like this. The Fifth Circuit has only issued I don't know how many opinions that a credible and reliable estimate is fine, even if you don't have the drugs on the table.

Mr. Munoz, if what y'all are arguing is required -- to a certain degree I agree with you. But for the majority of what you're arguing, if that's to be true, you could never have a no-drug conspiracy conviction. Ever.

MR. MUNOZ: I -- I -- I see the Judge's point -- or Your Honor's point.

THE COURT: But that's the law.

MR. MUNOZ: I -- I understand that, Judge. But the -- the problem is here, is that I have no way to attack or even determine or assess whether these people are credible because they're completely unnamed. And I literally have --

THE COURT: But that's allowed.

MR. MUNOZ: -- no way to challenge it.

THE COURT: But that is allowed. You've got the circumstances of the situation.

MR. MUNOZ: I have the circumstances of the evidence that was presented at trial, but with regard to these people --

THE COURT: No, you have what --

MR. MUNOZ: -- with regard to these --

THE COURT: -- and you have the circumstances of these -- of these situations because you have some preliminary information of that. Do you not?

MR. MUNOZ: I mean, I -- I have -- I mean, we were given a lot of reports and -- and -- and -- but, again, Judge, I mean, if you get an unnamed redacted report that -- you know, it's hard to make sense of it, it's just difficult -- I -- I don't think it's possible for me to challenge the reliability or the veracity of the -- the -- the sources without knowing who they are, without knowing whether they're reliable, whether they provided other information that was corroborated. There's nothing that substantiates or corroborates whether these people are credible.

And for the reasons I've stated, Judge, I'd ask the Court to -- to sustain our objection regarding Paragraphs 11, 12, 13, 14, 15, 30 --

THE COURT: Okay, hold -- hold on. Hold on. You're going a little bit fast on the paragraph numbers. Let me write them down.

MR. MUNOZ: 11, 12, 13, 14, 15, 30, 31, 32 and 22.

THE COURT: And 22?

MR. MUNOZ: Yes. Those are the -- by my -- my review of the report or the -- of the parts of the presentence report where the quantities are based on unnamed confidential sources.

THE COURT: Okay.

MR. MUNOZ: And it's in my -- if you look at my objection, Judge, I list the paragraphs.

THE COURT: Right. I just -- I want to have them here in front of me.

MR. MUNOZ: I'm sorry, Judge. Thank you.

THE COURT: Okay. Go ahead, Mr. Cavazos. Your turn.

MR. CAVAZOS: Yes, Your Honor. I -- I agree. There's some information provided in the paragraphs from Nine to 60, but not sufficient for us -- the defendant and -- and I to be able to ascertain what was going on on September 20th of 2007, for example, in Paragraph 11, so as to be able to challenge what this unknown person is claiming.

And -- and -- and I think the government kind of made -- made our point. They brought their best game to trial. They brought their best witnesses to trial. They chose --

THE COURT: You're assuming that.

MR. CAVAZOS: -- not to bring --

THE COURT: You're assuming that, Mr. Cavazos. You may not rely on that argument in this court, because you don't know the nature of the ex parte hearings at this point.

MR. CAVAZOS: Well, and -- and -- and look at -- look at it in totality, Your Honor.

THE COURT: Sure.

MR. CAVAZOS: We have almost twice as much cocaine --

THE COURT: Uh-huh.

MR. CAVAZOS: -- being added under a relevant conduct theory than what was actually presented at trial.

THE COURT: And I don't agree necessarily with that, Mr. --

MR. CAVAZOS: I -- I think --

THE COURT: I'm -- I'm doing some math here while y'all are arguing. And what I'm -- I'm trying to do is, so far I've got through paragraph -- including Paragraph 26. Okay? So far I'm at 260 -- 46 grams of relevant conduct based on unnamed sources.

MR. CAVAZOS: My -- my -- my addition, Your Honor --

THE COURT: You've got 75 grams, you've got 127.57 grams, you've got .08 grams, you've got 37.5 grams, you've got 3.9 grams, you've got 3 grams, you've got 3.40 grams you've got 1 point -- 1.5 grams, you've got 4.9 grams, you have 10.4 grams. And through Paragraph 26 you've got 10.11 grams.

And I -- I'm not going to vouch that my math is perfect, Mr. Cavazos --

MR. CAVAZOS: Right.

THE COURT: -- but so far my addition, just based on those amounts, is about 260.46 grams of relevant conduct. So I'm not sure how y'all are arguing that is over half of the relevant conduct included or half of the amount included in the -- in the -- in the calculations.

Now, I haven't finished calculating all of the amounts, but...

MR. MUNOZ: Yes.

THE COURT: Okay.

MR. MUNOZ: And at -- at --

THE COURT: I hadn't even included that in the amount yet, but go ahead.

MR. MUNOZ: And then -- and --

THE COURT: Okay, but -- but that's not -- that's not an amount based on a confidential source, right?

MR. MUNOZ: No, I'm just -- I just want to point that out.

THE COURT: Okay. I'm just talking about the --

MR. MUNOZ: Okay. I'm sorry.

THE COURT: -- confidential source right now.

MR. MUNOZ: Okay.

THE COURT: Okay. So the same thing would happen with the conversion of the money situation in Paragraph 34, that testimony, and 35. That's not all -- that's not based at all on confidential testimony, right?

MR. MUNOZ: Yes.

THE COURT: Thereafter, it's all based on testimony. So, based on unnamed confidential sources, you have, by my -- again, this is my math, so it can be -- people may want to check it. I'm showing 2,036.9865. So let's just round it up to 2,037 grams. So you're not even talking half a -- you're talking, what, two kilos at that point?

MR. CAVAZOS: Yes, Your Honor.

THE COURT: Okay. Again, we're not -- I haven't gotten into any of the money conversions or any of that part.

The money conversion of the $136,275 -- which I think that was the amount found in the cellophane wrap, Mr. Munoz. I know earlier we had talked about maybe 171, but it's not. It was 136,000. Just 136,000 comes out to 2.6 kilos.

And then the named individuals...

(BRIEF PAUSE)

THE COURT: And I'm rounding down on all these numbers. For the ones that testified, I'm rounding down. I'm taking off whatever the point, whatever it is, so I'm rounding down in the defendants' benefit, just for purposes of easier calculations.

(BRIEF PAUSE)

THE COURT: Okay. So for the ones that testified, rounding down, I'm showing it's 1,495 -- roughly 1,500 grams, or 1.5 kilograms.

So my question to the parties is: Why would the unnamed confidential sources be so off the mark credibility-wise when the ones that testified, testified to at least one and-a-half kilograms of cocaine?

If you had unnamed sources that were saying 500 kilograms or 30 kilograms, and you've got testifying people that are saying it's -- it was sold in grams and we're at about

1,500 grams, you would -- that would be a big enough disparity where you would be in a serious situation where I'd have to say, yeah, this is -- something is not computing here, because anybody can say anything if -- if they're kept secret.

But in terms of credibility and reliability, they're pretty close.

MR. CAVAZOS: I -- I think part of the problem, though, and -- and -- and it -- I think the numbers are showing, when you -- when you add to that the money conversion, how do you avoid the double counting?

THE COURT: Okay. Well, first of all, is --

MR. CAVAZOS: How do we know where --

THE COURT: This way, Mr. Cavazos. Let me -- let me explain. And by the way, in these -- in the 1,500 grams number, I didn't -- I have not included the 32 grams found, or I haven't included the...

How much was found in the other location? One was 32 grams and one was 9 grams. Was it 9 grams?

MR. MUNOZ: I think it was -- I have the lab report, Judge. It was 32.92 grams at Xavier Cardona's house.

THE COURT: Uh-huh.

MR. MUNOZ: And I have to add the other ones up.

THE COURT: You can just tell me the other amount.

MR. MUNOZ: It was -- let's see, 1.39, .91 --

THE COURT: I want to say -- why do I want to say like

9 grams -- 9.6 grams or something like that.

MR. MUNOZ: I think it was eight -- eight -- between eight and nine. I don't remember the exact amount.

THE COURT: I remember -- I want to say it was something like that that it came out to. Between -- we'll say eight grams.

So that roughly takes us to -- without any money conversion, 1,541 -- 40 grams of cocaine. Give or take.

Now, you're talking about -- in terms of the unnamed sources, you're talking about time periods of 2008, 2007, 2009 time period. You're talking about arrests of the defendants, both defendants, and the seizure of the property in 2013, 2014.

Are y'all wanting me to really believe that the 2,000 -- what was it, 2,000 -- oh, a little over 2,000 grams of cocaine was $136,000 still wrapped in cellophane, or 26,000 still kept in the other gentleman's house?

MR. CAVAZOS: I don't know that I follow.

THE COURT: Look at -- look at the dates, Mr. Cavazos. This money was found in, what, 2013, 2014 -- 2014 when they were arrested, right?

MR. CAVAZOS: Correct.

THE COURT: All right. When you look at the amounts of the unnamed sources, those transactions occurred at least five years before. The reason I know that it's not double counting is what you're wanting me to believe is the money paid, if at all -- I'm not going to assume anything, okay? If at all for the 2,000 grams of cocaine between 2007 and 2009 was still sitting in cellophane or in somebody's home in 2014, then it can't be double counting, folks.

MR. CAVAZOS: Well -- I mean, I guess the only positive way to know would be to look at each bill and determine when it was issued, as to when it might have been --

THE COURT: Mr. Cavazos, you -- you want me to believe that these folks, if -- and I'm not -- let me -- let me say to the big "if," okay? Just hypothetically. Your client sold 2,000 grams of cocaine between 2007 and 2010, and that amounted to $136,000, plus $26,000 -- that's what it came out to -- and it's still sitting in their home in 2014? No way, folks. That's just not credible. That can't be double counting.

Let -- just -- just based on practical knowledge, 2,000 grams would come out to about how much in money, roughly? What -- what is it -- what would it sell for?

MR. MUNOZ: Judge, could I just briefly respond to that last point that you made?

THE COURT: It's not double counting, Mr. Munoz.

MR. MUNOZ: Could -- could I just respond to that briefly?

THE COURT: Sure.

MR. MUNOZ: Judge, that's assuming that these unnamed sources were in fact telling the truth or that they're accurate with reliable information.

THE COURT: Well --

MR. MUNOZ: It's our position that it's -- that it's --

THE COURT: Mr. -- Mr. Munoz --

MR. MUNOZ: And I under --

THE COURT: Your clients were convicted of selling cocaine in these quantities to known people. Okay?

MR. MUNOZ: I understand that -- that their -- that the trial testimony indicated that they -- people testified that there was drug dealing going on. But the fact that there was drug dealing going on -- and I understand that that -- that that was presented, doesn't mean that these confidential sources were telling the truth --

THE COURT: And I'm not --

MR. MUNOZ: -- or that their information is accurate.

THE COURT: And I'm not suggesting that. But we're talking right now about your double counting argument. I'm trying to show you why it can't be double counting of the amounts.

MR. MUNOZ: And -- and I -- and I would see the Court's -- and I see the Court's point. If you believe -- assuming that you were to believe that the confidential sources --

THE COURT: You're -- you're off base right now --

MR. MUNOZ: -- were telling the truth.

THE COURT: -- Mr. Munoz. We're not talking about that. I'm just -- the argument before me right now -- not the credibility yet. But the argument before me right now is that how do we know it's not double counting with the money conversion? That's all I'm getting to right now.

MR. MUNOZ: And -- and the -- my position, Judge, is by converting it, it's -- it's essentially -- you're -- you're essentially going to have to guess. Because you don't -- I mean, if you remember, there was testimony that he did receive a 170-something thousand. And I understand the Court's -- Court's position that, you know, normal people don't just put this money in cellophane, but --

THE COURT: Counsel, look at Paragraph 34. Your client -- the client's ex-wife said that money had already been spent.

MR. MUNOZ: Well, 34 -- what -- what paragraph, Judge? I'm sorry.

THE COURT: Paragraph 34. Look at the bottom part of that paragraph of the presentence report.

MR. MUNOZ: I'm -- I think I'm looking at the wrong presentence report.

THE COURT: No, look at the presentence report.

MR. MUNOZ: The revised -- the revised one?

THE COURT: Uh-huh. Yeah. Uh-huh.

MR. MUNOZ: Okay. I'm sorry. I looked at the wrong one.

THE COURT: Yeah, the revised one.

MR. MUNOZ: I mean, I understand that's what she's claiming, Judge, but the testimony at trial was -- from my recollection from my client -- was that the money that was found at his house was partly money from the settlement, and partly he -- money he generated from his legitimate business interests.

I understand that -- that the Court can say, well, I can -- the fact that there was evidence of drug dealing; therefore, it's some evidence that corroborates the -- the confidential sources.

And I -- I get that point. I understand that that -- that the Court can -- can use that as some evidence. But it's my position it's insufficient --

THE COURT: I can use it as all evidence, counsel.

MR. MUNOZ: I -- I would argue to the Court that it's insufficient to establish that it's reliable such that it should be included in the drug quantity determination.

These are unidentified people, Judge. And just to say, Well, there was testimony at trial that they were dealing drugs; therefore, these people must being right.

We don't know who they are. I -- I don't know anything about them, other than they made declarations against my client. That -- I would argue to the Court that that is insufficient to meet its burden. I understand the Court can use the fact that there was testimony of drugs as some evidence to corroborate it, but I would argue to the Court that it's insufficient to meet the -- to reach the burden necessary to --

THE COURT: Counsel, I only have to make these findings by a preponderance of the evidence, and I can base it on hearsay. While I don't disagree completely with what you're talking about in terms of not being able to know who these folks are, I'm not -- I'm not discounting what you're saying there.

MR. MUNOZ: Yes.

THE COURT: And so you're beating a dead horse, to a certain extent, on some of that because I'm not discounting it. I've got to look at the totality of the circumstances here. And when I'm looking at the totality of the circumstances and I'm looking at the description of the sales, the quantities of the sales, the amounts that were paid, and I compare it to what folks that you know of testified, they're comparable. Okay? The -- the information is very comparable. It's very corroborated, in other words.

When you look at the amount of the -- the total quantity of the drugs in terms of the -- the confidential sources versus the ones that testified in court, they're -- they're comparable amounts. They're off by maybe five -- four- to 500 grams of cocaine. They're comparable amounts.

And as a matter -- and in fact, it's comparable time periods. And when -- when you look at the money -- what really weighted -- weighed things over in terms of the -- the relevant conduct was the conversion of the money. That really is what really is hampering y'all. It's not so much these unnamed sources, it's the conversion of the money.

One of the arguments against the conversion of the money, whether it could be double counting, is that how do we know it's not double counting with these unnamed sources since y'all haven't had a chance to look at it? Look at the time periods.

MR. MUNOZ: But -- but even --

THE COURT: And -- look at the time periods. The time period of the sales to the unknown sources were years before the time the money was found in the homes. Number one.

Number two -- somebody do the conversion, if you can, of how much 2,036 grams of cocaine would have brought in in terms of funds, if they were sold by anybody on the street, roughly.

I promise you, it's not going to be anywhere near $160,000, which is the 132 plus the 26,000 that was found in cash.

MR. MUNOZ: The -- the other --

MR. CAVAZOS: Judge, if you look at Paragraph 35 --

THE COURT: Right. I'm looking -- I saw that and it said $150 per 3.5 grams. So you basically have to find out how each other from a long time kind of a situation.

But -- so the -- the point is, all I have is your argument that I've got to find that it's double counting because you think it is.

MR. MUNOZ: Well, no. What I'm saying is, is that --

THE COURT: Well, yes.

MR. MUNOZ: -- it's impossible to know without guessing. And that's my point --

THE COURT: I get it. But it's your --

MR. MUNOZ: -- is that I can't --

THE COURT: -- but it's your objection. And as the Fifth Circuit just said last week, while there are times that the -- the burden shifts to the government when you object, you have to do more than just object to have -- to get to the point where the government has to produce something. That's a brand new Fifth Circuit case that just came out last week.

MR. MUNOZ: I wasn't aware of that case. But I --

THE COURT: Well, it just came out --

MR. MUNOZ: -- I do have some evidence --

THE COURT: -- it just came out last week. I mean, it's a very recent -- fairly recent case.

But the bottom line is, y'all have to produce some evidence, too. You can't just get up there and say, "We don't believe it, therefore it's insufficient," because that's essentially what you're doing as well.

MR. MUNOZ: I -- I was going to present my client on one of the subsequent objections, in -- in light of --

THE COURT: Do you --

MR. MUNOZ: -- the Court's inquiry --

THE COURT: Do you want to do it now?

MR. MUNOZ: If the Court will permit me, I could get into that now. But it -- I was going to address some of the other objections in -- through his testimony, but if...

THE COURT: I'm just saying, y'all want me to support your objections, both of you, on, "We don't believe, therefore you shouldn't believe it. And there is insufficient evidence." What I'm saying is, y'all haven't even met your prima facie sufficient showing of evidence that there is a basis for the objections.

MR. MUNOZ: Would the Court permit me to call my client now and address all the objections or would the Court --

THE COURT: Sure. What --

MR. MUNOZ: Is there other objections besides the drug quantity --

THE COURT: I'm -- you're objecting to what, relevant -- I mean, to obstruction?

MR. MUNOZ: Well, let's see, there's the firearms enhancement, the -- the threat of violence enhancement, obstruction of justice enhancement, use of premises enhancement. So, there's quite a few objections. And -- but then --

on?

MR. MUNOZ: I'm basing it on the fact that -- that it's essentially -- it takes a guess. And when you have to guess to determine --

THE COURT: Okay --

MR. MUNOZ: -- what the quantity should be --

THE COURT: But that's the point --

MR. MUNOZ: -- that it essentially --

THE COURT: -- Mr. Munoz.

MR. MUNOZ: -- doesn't meet its burden.

THE COURT: You're wanting me to guess that your objection is valid when you don't have any evidence. And that's the problem. That's why the Circuit requires evidence. Because you're -- you're wanting me to guess as well on your side.

You're -- you're saying, It's a -- don't -- if you're going to guess, guess for us and not the -- not the government.

I'm not guessing for the government. I'm not.

MR. MUNOZ: Your Honor, I think in light of the fact that my client is the accused, any --

THE COURT: Your client is accused --

MR. MUNOZ: -- uncertainty or ambiguity --

THE COURT: Counsel, stop.

MR. MUNOZ: -- should belong to the defendant.

THE COURT: Stop. Quit throwing out platitudes.

That's not the way we decide stuff in federal court. These rules are pretty much set. The Fifth Circuit has already ruled repeatedly, you have objections, you have the burden with the exception of some areas. And they just reaffirmed that last week.

You've got to present evidence. You cannot get up in front of a court and say, "Because I don't agree with the outcome, because I don't agree with the evidence, because I don't believe the evidence, you therefore cannot find that there is any evidence," without you presenting something other than you giving me your opinion. That's what you're essentially doing.

MR. MUNOZ: Well, I -- I would just -- I don't have any evidence to prove that it's double counting. I would just submit to the Court --

THE COURT: All you're giving me is your opinion, counsel.

MR. MUNOZ: Well, then, for purposes of just pre -- I guess, preserving the appellate record, I -- I would submit to the Court I don't have any evidence to prove that it's double counting.

THE COURT: But that's your objection. I -- you want me to find in your favor that it's double counting. I'm asking you if you have any evidence to support your objection, other than that's your opinion. Because I have indicated to you so that -- for purposes of this hearing how this is not double counting.

So I'm asking you, Do you have any evidence, other than your opinion, that I would be wrong in my logical inferences? And all I'm getting is, You can't be right, Judge, because the government didn't meet its burden.

That's not what I'm asking you.

MR. MUNOZ: I -- and to answer the Court's question, I cannot prove that it's double counting.

THE COURT: Okay. All right. That's all I'm asking. Okay.

Mr. Munoz, I've given you a long time to argue this part. Let me let Mr. Cavazos argue before you call your witness.

MR. MUNOZ: Okay.

MR. CAVAZOS: I'll be brief, Your Honor. I, too, cannot directly prove to you the opposite of what Your Honor is concluding, but I would submit that neither has the government proved that --

THE COURT: Counsel, but you can't support your objection by pointing fingers and giving me opinions. That's what y'all are doing.

MR. CAVAZOS: I know.

THE COURT: That's all y'all are doing.

MR. CAVAZOS: But the -- my -- my -- my argument is --

THE COURT: The government's not having to prove anything at this point. It is in the presentence report. You want me to take it out. You've got the objection, you have the burden of proof. And you saying "the government can't prove" is not evidence.

MR. MUNOZ: It's in the presentence report, because --

THE COURT: It's not their presentence report, it's the Court's presentence report.

MR. CAVAZOS: There was two presentence reports --

THE COURT: Counsel, the presentence report is prepared by a court unit for the Court. Not by the government.

MR. CAVAZOS: I understand that perfectly, Judge. However, the information with which the presentence report was prepared was provided to the probation department by the government.

THE COURT: That doesn't mean that the government has the burden or has failed to meet their burden of proof. That's not what that means.

MR. CAVAZOS: I know that. All I'm saying --

THE COURT: That's what you're arguing, counsel. That is exactly what you're arguing e. So if you know that, why are you arguing that?

MR. CAVAZOS: Because what I'm saying, basically, is that the presentence report is the government's report --

THE COURT: It is not.

not talking about they're making -- they're buying and they're selling kilos of cocaine at any one particular time. So it's -- it's not the kind of sophisticated organization which this Court has seen in particular times past.

So the -- in terms of the leadership role as to both defendants, the Court sustains the objections.

In terms of the possession of the guns, the Court overrules the objections. There is nothing in the -- in the criteria or the guidelines that requires the brandishing of the weapons or the active use of the weapons in terms of the -- the drugs. There has to be some temporal and geographical connection between the drug trafficking and the guns. And there is sufficient evidence in this case, credible and sufficient evidence by a preponderance of the evidence, that guns were possessed during the discussion of the drug -- especially at the beginning of setting up the drugs, of the one shotgun being used in terms of flashing the gun during the actual selling of the drugs. So there is sufficient evidence that there are firearms in connection with a drug trafficking offense. So that objection is as to both defendants is -- is overruled.

In terms of the -- in terms of the relevant conduct, the Court finds that there is sufficient, reliable and credible evidence from the known and unknown sources to show that the relevant conduct is a very reasonable calculation over the period of time that is concerned in this particular case. So the Court is overruling the -- the objections.

I think all along with the relevant conduct there had been -- there had been information, there had been findings made with relevant conduct. Why the Court found that it wasn't double counting in terms of the money, in terms of the amounts, why the amounts of the unknown -- unidentified individuals -- and when I say "unidentified individuals," let me be very clear. The circumstances, the dates, and the times and the amounts were very much identified. It was just the -- the actual identity of the person that wasn't given. They were corroborated by all the information that was given by the identified and testifying witnesses. So the Court feels very comfortable and confident in terms of the reliability and credibility of the evidence and the calculation of the -- of the cocaine.

When you even look at the different amounts of the -- of the purchases of the individual amounts of cocaine by the unnamed sources versus the named sources, even the quantities are roughly in the same ballpark. It's the -- the conversion of the money that gives you the high -- hardest bump in terms of the quantity of the cocaine. But it's not the hand-to-hand buys by the people. That -- those quantities are all pretty consistent, given the different lengths of times that -- that drugs were being purchased.

In terms of the money, whether it's the proceeds of drug trafficking -- and there has been some evidence back and

Cardona's case?

PROBATION: Yes, ma'am.

THE COURT: Okay. Let's go to Michael Cardona's file. Paragraph 72, we would begin with that one, would be zero. Paragraph 73 would be zero. Paragraph 75 would be 36. Paragraph 78 would be 36. Paragraph 117 would be 36/1, which I show to be 188 to 235.

PROBATION: Yes, ma'am.

THE COURT: And then does the fine range change?

PROBATION: It changes to the lower end at 20,000, Your Honor.

THE COURT: So 128 would -- also would show 20,000 to seven million.

Okay. Any other changes?

PROBATION: No, ma'am.

THE COURT: Okay. All right. So, with those changes, the Court will adopt the legal and factual conclusions contained within the presentence reports revised August 29th of 2016 for Xavier Cardona and revised August the 30th of 2016 for Mr. Michael Cardona. And the Court will make the following findings:

Statutorily, for Mr. Xavier Cardona, there is a term of incarceration of five to 40 years; probation is not authorized; there is a term of supervised release of four years to life; there is a fine of $5 million; there is no restitution, but there is a 100-dollar special assessment.

For Mr. Michael Cardona, on counts -- on Count One, there is a term of incarceration of five to 40 years; that probation is not authorized; there is a term of supervised release of four years to life; there is a fine of $5 million -- up to $5 million on that count; there is no restitution, but there is a 100-dollar special assessment on that count.

As to Counts Two and Three, there is a range of imprisonment of up to 20 years -- zero to 20 years of imprisonment; a term of probation of one to five years; a term of supervised release of not less than three years up to life on each count; there is a fine on each count of up to $1 million; there is no restitution, but there is a 100-dollar special assessment per count.

For Xavier and Michael Cardona, pursuant to the policy statements of the Sentencing Reform Act, the Court finds that for Xavier Cardona there is a Total Offense Level of 38, Criminal History Category of One; there's a range of imprisonment of 235 to 293 months; that probation is not authorized; there is a term of supervised release of four to five years; there is a fine range of 25,000 to $5 million; there is no restitution, but there is a 100-dollar special assessment.

For Michael Cardona, there is a Total Offense Level of 36, Criminal History Category of One; there's a range of imprisonment on all three counts of 188 to 235 months; that probation is not authorized; there is a term of supervised release of -- for Count One, four to five years, for Counts Two and Three, three years per count; there is no restitution, but there is a fine range of 20,000 to $7 million and a 300-dollar special assessment.

Okay, gentlemen, at this time you each have the opportunity to say whatever you'd like, beginning with Xavier Cardona. You are not required to say anything, either one of y'all, but you may do so.

DEFENDANT XAVIER CARDONA: In Spanish?

THE COURT: You may do so. Is -- is Lily --

INTERPRETER: I am here, Your Honor.

THE COURT: Okay. Go ahead.

DEFENDANT XAVIER CARDONA (By Interp): The only thing I want to say is to apologize for what happened. I just was trying to prove my innocence. Since I was a kid I have always been a hard worker all my life. I had my body shop for seven years. And the loss -- I think it was in 2012, I'm not sure, but that's when my life got upended. And I have -- and I spent about $40,000 in order to be able to open my car lot and that's when my life started to go up, improve.

And the lawsuit, yes, it's -- it's true they gave me a check, and I went and I cashed that check and took out the money and passed it to IBC, and then from there I started to take out the money, and I started to leave the money at home.

adequate under the circumstances, Your Honor, and -- and would be consistent with the testimony that was offered in this case.

With that, I close.

THE COURT: Okay. Michael Cardona, anything else you'd like add?

DEFENDANT MICHAEL CARDONA (By Interp): No. Just to apologize and ask for forgiveness.

THE COURT: Okay. All right. In assessing sentences in each of these cases, the Court takes into account the advisory guidelines, as well as the policy statements of those guidelines, together with other sentencing factors such as the nature and circumstances of the offenses, the seriousness of the offenses, the history and characteristics of the defendants, the need to promote respect for the law and to provide just punishment for the offenses, the need to deter future criminal conduct and to protect the public.

The Court also takes into account the allocution of the parties, as well as the factual information contained within the presentence reports.

In each case, the Court finds that the advisory guidelines are not adequate and that a reasonable and adequate sentence can be achieved by imposing a non-guideline sentence for the following reasons: The need to promote respect for the law, to provide just punishment for the offenses, and taking into account the nature and circumstances of the offenses.

And normally I would say, in terms of the defendants, you -- the parties have heard me say I take in mitigation of the defendants going up, the following matters coming down. In this case it would be reversed. In terms of where to impose a non-guideline sentence, the Court is also taking into account all of the other aggravating factors that were previously brought up in the -- in this particular case. That this wasn't a one- or two-month or 12-month period type of offense, that it involved a long period of time, that we had multiple attempts to influence witnesses, we had multiple attempts to either -- we had at least -- we had "attempts," I should say, instead of "multiple attempts." We had attempts to create evidence, we had attempts to influence evidence or to influence a witness not to show up, we had attempts to create evidence of -- of receipts. Which, you know, I'm -- I'm to believe that Mr. Michael Cardona had nothing to do with the drug -- Mr. Michael Cardona was drug trafficking on his own, as he allocuted to just a few moments ago, and his brother had nothing to do with it, and the business of the brother had nothing to do with it; ergo, that would happen, there would be no reason to create documents to show the purchase of drugs. I mean, the -- the purchase of vehicles.

Let me get to the point where I'm trying to get.

Where the defendant suggested that a witness should create receipts that should look old as if he had paid them little by little. This would have been for work or for vehicles sold by the brothers? No?

AUSA THOMAS: It was -- it was related -- my understanding, it was related to the house that was being built by Michael Cardona.

THE COURT: Oh, that's right. You're right. You're right. You're right. I do remember that now. I take it back, then.

But I do go back to the idea of he wouldn't have been utilizing the business locations to distribute drugs if this wasn't a joint enterprise.

So, instead of listening to what the Court says, everybody wants to get up and try to convince me that I either should find them all of a sudden not guilty and/or impose sentences that now are on the low end of the spectrum. You -- you make it difficult for the Court to -- to do what's -- to do what would appear to be reasonable. I'm going to do what's reasonable and what's fair.

But the bottom line is, everybody wants to go back to their original statements and the original lies, which frankly I'm not going to be lied to. I do not like being lied to. It is an affront to the dignity of the Court that people think I am that stupid that I am going to believe that you used cocaine for a drug -- for a toothache. Come on, folks, I am not stupid. And every time those stunts are pulled by the defendants, you're not helping yourself when I told you I was willing to help you.

I don't understand this insistence by both of these defendants to continue to engage in counterproductive conduct that's got them at a guideline range that is incredibly high, at the original one of 360 to 480.

You think you know how to get out of trouble, you think you know what you're doing, and you keep getting yourself in deeper. Stop it.

I wish for a change people would listen to what I am saying at the time that I make pronouncements.

And I'll -- I'll be honest, insisting that the money is legitimate proceeds of a business that is not reporting it as legitimate income in tax returns, versus a brother who says, "I wanted to plead guilty," when he was given that opportunity prior to trial and he rejected it.

It is the order and the judgment of the Court that the defendant, Xavier Cardona, is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of 216 months, with credit for the time he has been in custody since April 23rd of 2014.

It is the order and the judgment of the Court that the defendant, Michael Cardona, is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of -- actually, for Michael Cardona, his sentence and range is within the guideline at 36/1. It -- it would be a guideline sentence.

It is the order and the judgment of the Court that the defendant, Michael Cardona, is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of 216 months, with credit for the time he has been in custody since April 23rd of 2014. This is for Counts One, Two and Three to run concurrently.

That upon release from imprisonment, you will be placed -- for Mr. Xavier Cardona, you will be placed on a term of supervised release of five years. For Mr. Michael Cardona, you will be placed on a term of supervised release of five years on Count One, and three years on each of Counts Two and Three to run concurrently.

While you are each on supervised release, you shall comply with all the standard conditions of supervision adopted by the Court on July 18th of 2011. One of the conditions for each of you is that you shall abstain from the use of alcohol and/or all other intoxicants. And you shall get your GED, either while incarcerated or under conditions of release.

In each case, because of the money judgment, the Court is going to forgo imposing a fine, but will order that Xavier Cardona pay a 100-dollar special assessment, and Michael Cardona pay a 300-dollar special assessment.

The Court does find that the appropriate money

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UNITED STATES DISTRICT COURT
Western District of Texas
DEL RIO DIVISION

UNITED STATES OF AMERICA

v.

MICHAEL CARDONA

Defendant.

Case Number DR-14-CR-00461(02)-AM
USM Number 36117-380

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, MICHAEL CARDONA, was represented by Jaime Efrain Cavazos.

The defendant was found guilty on Count(s) One (1), Two (2), and Three (3) by a jury verdict on October 23, 2015 after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such Count(s), involving the following offense(s):

Title & Section	Nature of Offense	Offense Ended	Count (s)
21 U.S.C. § 846	Conspiracy to Possess with Intent to Distribute More than 500 Grams of Cocaine	Between on or about October 1, 2009 to on or about the date of this indictment	One
21 U.S.C. § 841	Possession with Intent to Distribute Less than 500 Grams of Cocaine	August 15, 2013	Two
21 U.S.C. § 841	Possession with Intent to Distribute Less then 500 Grams of Cocaine	September 10, 2013	Three

As pronounced on September 6, 2016, the defendant is sentenced as provided in pages 2 through 9 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is further ordered that the defendant shall 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 shall notify the Court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this the 26th day of September, 2016.

ALIA MOSES
United States District Judge

Arresting Agency: DEA

Defendant: MICHAEL CARDONA
Case Number: DR-14-CR-00461(02)-AM

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 216 months on each of Counts One (1), Two (2), and Three (3) to be served concurrently with credit for time served since April 23, 2014, pursuant to 18 U.S.C. § 3584(a).

The Court makes the following recommendations to the Bureau of Prisons:

That the defendant serve this sentence at F. C. I., Bastrop, if possible.

The defendant shall remain in custody pending service of sentence.

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 Marshal

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SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of five (5) years on Count One (1), and Three (3) years on each of counts Two (2) and Three (3), all to be served concurrently.

While on supervised release, the defendant shall comply with the mandatory, standard and if applicable, the special conditions that have been adopted by this Court, and shall comply with the following additional conditions:

X The defendant shall abstain from the use of alcohol and/or all other intoxicants during the term of supervision.

X The defendant will attend and participate in a General Equivalency Diploma Program as directed by the Probation Officer.

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CONDITIONS OF SUPERVISION

Mandatory Conditions:

1) The defendant shall not commit another federal, state, or local crime during the term of supervision.

2) The defendant shall not unlawfully possess a controlled substance.

3) The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release on probation or supervised release and at least two periodic drug tests thereafter (as determined by the court) for use of a controlled substance, but the condition stated in this paragraph may be ameliorated or suspended by the court if the defendant's presentence report or other reliable sentencing information indicates low risk of future substance abuse by the defendant.

4) In supervised release cases only, the defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from custody of the Bureau of Prisons.

5) If convicted of a felony, the defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

6) The defendant shall cooperate in the collection of DNA as directed by the probation officer, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 14135a).

7) If convicted of a sexual offense and required to register under the Sex Offender and Registration Act, that the defendant comply with the requirements of the Act.

8) If convicted of a domestic violence crime as defined in 18 U.S.C. § 3561(b), the defendant shall participate in an approved program for domestic violence.

9) If the judgment imposes a fine or restitution, it is a condition of supervision that the defendant pay in accordance with the Schedule of Payments sheet of the judgment.

Standard Conditions:

1) The defendant shall not leave the judicial district without permission of the court or probation officer.

2) The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.

3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.

4) The defendant shall support his or her dependents and meet other family obligations, and shall comply with the terms of any court order or order of an administrative process requiring payments by the defendant for the support and maintenance of a child or of a child and the parent with whom the child is living.

5) The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons.

6) The defendant shall notify the probation officer at least ten days prior to any change in residence or employment.

7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.

8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.

9) The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer.

10) The defendant shall permit a probation officer to visit him or her at any time, at home or elsewhere, and shall permit confiscation of any contraband observed in plain view of the probation officer.

11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.

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12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.

13) As directed by the probation officer, the defendant shall notify third parties of risks that my be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications, and to confirm the defendant's compliance with such notification requirement.

14) If convicted of a sex offense as described in the Sex Offender Registration and Notification Act or has a prior conviction of a State or local offense that would have been an offense as described in the Sex Offender Registration and Notification Act if a circumstance giving rise to federal jurisdiction had existed, the defendant shall participate in a sex offender treatment program approved by the probation officer. The defendant shall abide by all program rules, requirements and conditions of the sex offender treatment program, including submission to polygraph testing, to determine if the defendant is in compliance with the conditions of release. The defendant may be required to contribute to the cost of the services rendered (copayment) in an amount to be determined by the probation officer, based on the defendant's ability to pay.

15) The defendant shall submit to an evaluation for substance abuse or dependency treatment as directed by the probation officer, and if deemed necessary by the probation officer, the defendant shall participate in a program approved by the probation officer for treatment of narcotic addiction or drug or alcohol dependency which may include testing and examination to determine if the defendant has reverted to the use of drugs or alcohol. During treatment, the defendant shall abstain from the use of alcohol and any and all intoxicants. The defendant may be required to contribute to the cost of the services rendered (copayment) in an amount to be determined by the probation officer, based upon the defendant's ability to pay.

16) The defendant shall submit to an evaluation for mental health counseling as directed by the probation officer, and if deemed necessary by the probation officer, the defendant shall participate in a mental health program approved by the probation officer. The defendant may be required to contribute to the cost of the services rendered (copayment) in an amount to be determined by the probation officer, based upon the defendant's ability to pay.

17) The defendant shall participate in a cognitive behavioral treatment program as directed by the probation officer, and if deemed necessary by the probation officer. Such program may include group sessions led by a counselor or participation in a program administered by the probation office. The defendant may be required to contribute to the cost of the services rendered (copayment) in an amount to be determined by the probation officer, based upon the defendant's ability to pay.

18) The defendant shall participate in workforce development programs and services as directed by the probation officer, and if deemed necessary by the probation officer, which include occupational/career development, including but not limited to assessment and testing, education, instruction, training classes, career guidance, job search and retention services until successfully discharged from the program. The defendant may be required to contribute to the cost of the services rendered (copayment) in an amount to be determined by the probation officer, based upon the defendant's ability to pay.

19) If the defendant is excluded, deported, or removed upon release on probation or supervised release, the term of supervision shall be a non-reporting term of probation or supervised release. The defendant shall not illegally reenter the United States. If the defendant lawfully reenters the United States during the term of probation or supervised release, the defendant shall immediately report in person to the nearest U.S. Probation Office.

20) If the judgment imposes other criminal monetary penalties, it is a condition of supervision that the defendant pay such penalties in accordance with the Schedule of Payments sheet of the judgment.

21) If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall provide the probation officer access to any requested financial information.

22) If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with the payment schedule.

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The Court further adopts such of the following special conditions applied to the supervised person by the judge at the time of sentencing:

1) Community Confinement: The defendant shall reside in a Community Corrections Center for a period of _____ months to commence on ___________. Further, once employed, the defendant shall pay 25% of his/her weekly gross income for his/her subsistence as long as that amount does not exceed the daily contract rate.

Location Monitoring Program:

2) *Radio Frequency Monitoring:* The defendant shall participate in the Location Monitoring Program with Radio Frequency Monitoring for a period of _____ days/months. You shall abide by the rules and regulations of the Participant Agreement Form. During this time, you will remain at your place of residence except for employment and other activities approved in advance by your probation officer. You will maintain a telephone at your place of residence without "caller ID," "call forwarding," "call waiting," "call back/call block," a modem or a portable cordless telephone for the above period as directed by the probation officer. You will wear an electronic monitoring device and follow location monitoring procedures specified by your probation officer. You shall pay all or part of the costs of the program based on the ability to pay as directed by the probation officer.

3) *Global Positioning Satellite (GPS):* The defendant shall participate in the Location Monitoring Program for a term not to exceed _____ days/months, which will include remote location monitoring using ____Active ____Passive Global Positioning Satellite (GPS) tracking. You shall abide by the rules and regulations of the Participant Agreement Form. During this time, you will remain at your place of residence except for employment and other activities approved in advance by your probation officer. You will maintain a telephone at your place of residence without "caller ID," "call forwarding," "call waiting," "call back/call block," a modem or a portable cordless telephone for the above period as directed by the probation officer. At the direction of the probation officer, you shall wear a transmitter and be required to carry a tracking device. You shall pay all or part of the costs of the program based on the ability to pay as directed by the probation officer.

4) Community Service: The defendant shall perform ____ hours of community service work without pay, at a location approved by the probation officer, at a minimum rate of four hours per week, to be completed during the first ____ months of supervision.

5) Sex Offender Search & Seizure Condition: If required to register under the Sex Offender Registration and Notification Act, the defendant shall submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of probation or supervised release or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions.

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CRIMINAL MONETARY PENALTIES/ SCHEDULE

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth. Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. Criminal Monetary Penalties, except those payments made through Federal Bureau of Prisons' Inmate Financial Responsibility Program shall be paid through the Clerk, United States District Court, 111 E. Broadway, Suite100 Del Rio, Texas 78840.

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

	Assessment	Fine	Restitution
TOTAL:	$300.00	$0	$0

Special Assessment

It is ordered that the defendant shall pay to the United States a special assessment of $300.00. The debt is incurred immediately.

Fine

The fine is waived because of the defendant's inability to pay.

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 above. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. §3614.

The defendant shall pay interest on any fine or restitution of more than $2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All payment options may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

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

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.

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FORFEITURE

The defendant is ordered to forfeit the following property to the United States:

Real Property
Residence located at 1902 Roosevelt, Eagle Pass, Maverick County, TX with all buildings, appurtenances, and improvements thereon and any and all surface and sub-surface rights, title, and interests, if any, and being more fully described as follows:

Being Lot 6, in Block 13, of the South Heights Addition to the City of Eagle Pass, Maverick County, Texas, as shown by the Plat of said addition which is of recorded in Vol. 1, at Page 39, of the Map Records of said County.

Firearms
1. RG Senorita .22 caliber revolver, SN: 2181;
2. Winchester Ranger 30-30 rifle, SN: 5308699;
3. Izhmash 12 guage shotgun, SN: H08445299;
4. Remington 12 guage shotgun, SN: 32570;
5. Remington, Model 870 Express Magnum shotgun, SN: B712357M; and
6. Assorted rounds of ammunition, magazines, and firearm accessories

The defendant is ordered to forfeit the following money judgment to the United States:

A sum of money equal to Three Hundred Seventy-Two Thousand, Three Hundred Twenty Dollars ($372,320.00), representing the amount of proceeds obtained, directly or indirectly, as a result of the violations set out in the above-described Counts and for which defendant's Michael Cardona and Xavier Cardona are jointly and severally liable. One Hundred Seventy-Five Thousand, Three Hundred Seventy-Two Dollars and Forty-Eight Cents ($175,372.48) were administratively forfeited assets credited in partial satisfaction against money judgment leaving a balance of One Hundred Ninety-Six Thousand, Nine Hundred Forty-Seven Dollars and Fifty-Two Cents ($196,947.52).

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

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

IT IS ORDERED that the defendant shall be ineligible for all federal benefits for a period of five (5) years ending September 6, 2021.

The clerk is responsible for sending a copy of this page and the first page of this judgment to: U.S. Department of Justice, Office of Justice Programs, Washington, DC 20531

(c) Lesser Offense or Attempt. A defendant may be found guilty of any of the following:

(1) an offense necessarily included in the offense charged;

(2) an attempt to commit the offense charged; or

(3) an attempt to commit an offense necessarily included in the offense charged, if the attempt is an offense in its own right.

(d) Jury Poll. After a verdict is returned but before the jury is discharged, the court must on a party's request, or may on its own, poll the jurors individually. If the poll reveals a lack of unanimity, the court may direct the jury to deliberate further or may declare a mistrial and discharge the jury.

(As amended Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 29, 2002, eff. Dec. 1, 2002.)

TITLE VII. POST-CONVICTION PROCEDURES

Rule 32. Sentencing and Judgment

(a) [Reserved.]

(b) Time of Sentencing.

(1) ***In General.*** The court must impose sentence without unnecessary delay.

(2) ***Changing Time Limits.*** The court may, for good cause, change any time limits prescribed in this rule.

(c) Presentence Investigation.

(1) ***Required Investigation.***

(A) *In General.* The probation officer must conduct a presentence investigation and submit a report to the court before it imposes sentence unless:

(i) 18 U.S.C. § 3593(c) or another statute requires otherwise; or

(ii) the court finds that the information in the record enables it to meaningfully exercise its sentencing authority under 18 U.S.C. § 3553, and the court explains its finding on the record.

(B) *Restitution.* If the law permits restitution, the probation officer must conduct an investigation and submit a report that contains sufficient information for the court to order restitution.

(2) ***Interviewing the Defendant.*** The probation officer who interviews a defendant as part of a presentence investigation must, on request, give the defendant's attorney notice and a reasonable opportunity to attend the interview.

(d) Presentence Report.

(1) ***Applying the Advisory Sentencing Guidelines.*** The presentence report must:

(A) identify all applicable guidelines and policy statements of the Sentencing Commission;

(B) calculate the defendant's offense level and criminal history category;

(C) state the resulting sentencing range and kinds of sentences available;

(D) identify any factor relevant to:

(i) the appropriate kind of sentence, or

(ii) the appropriate sentence within the applicable sentencing range; and

(E) identify any basis for departing from the applicable sentencing range.

(2) *Additional Information.* The presentence report must also contain the following:

(A) the defendant's history and characteristics, including:

(i) any prior criminal record;

(ii) the defendant's financial condition; and

(iii) any circumstances affecting the defendant's behavior that may be helpful in imposing sentence or in correctional treatment;

(B) information that assesses any financial, social, psychological, and medical impact on any victim;

(C) when appropriate, the nature and extent of nonprison programs and resources available to the defendant;

(D) when the law provides for restitution, information sufficient for a restitution order;

(E) if the court orders a study under 18 U.S.C. §3552(b), any resulting report and recommendation;

(F) a statement of whether the government seeks forfeiture under Rule 32.2 and any other law; and

(G) any other information that the court requires, including information relevant to the factors under 18 U.S.C. §3553(a).

(3) *Exclusions.* The presentence report must exclude the following:

(A) any diagnoses that, if disclosed, might seriously disrupt a rehabilitation program;

(B) any sources of information obtained upon a promise of confidentiality; and

(C) any other information that, if disclosed, might result in physical or other harm to the defendant or others.

(e) Disclosing the Report and Recommendation.

(1) *Time to Disclose.* Unless the defendant has consented in writing, the probation officer must not submit a presentence report to the court or disclose its contents to anyone until the defendant has pleaded guilty or nolo contendere, or has been found guilty.

(2) *Minimum Required Notice.* The probation officer must give the presentence report to the defendant, the defendant's attorney, and an attorney for the government at least 35 days before sentencing unless the defendant waives this minimum period.

(3) *Sentence Recommendation.* By local rule or by order in a case, the court may direct the probation officer not to disclose to anyone other than the court the officer's recommendation on the sentence.

(f) Objecting to the Report.

(1) *Time to Object.* Within 14 days after receiving the presentence report, the parties must state in writing any objections, including objections to material information, sentencing guideline ranges, and policy statements contained in or omitted from the report.

(2) ***Serving Objections.*** An objecting party must provide a copy of its objections to the opposing party and to the probation officer.

(3) ***Action on Objections.*** After receiving objections, the probation officer may meet with the parties to discuss the objections. The probation officer may then investigate further and revise the presentence report as appropriate.

(g) Submitting the Report. At least 7 days before sentencing, the probation officer must submit to the court and to the parties the presentence report and an addendum containing any unresolved objections, the grounds for those objections, and the probation officer's comments on them.

(h) Notice of Possible Departure from Sentencing Guidelines. Before the court may depart from the applicable sentencing range on a ground not identified for departure either in the presentence report or in a party's prehearing submission, the court must give the parties reasonable notice that it is contemplating such a departure. The notice must specify any ground on which the court is contemplating a departure.

(i) Sentencing.

(1) ***In General.*** At sentencing, the court:

(A) must verify that the defendant and the defendant's attorney have read and discussed the presentence report and any addendum to the report;

(B) must give to the defendant and an attorney for the government a written summary of—or summarize in camera—any information excluded from the presentence report under Rule 32(d)(3) on which the court will rely in sentencing, and give them a reasonable opportunity to comment on that information;

(C) must allow the parties' attorneys to comment on the probation officer's determinations and other matters relating to an appropriate sentence; and

(D) may, for good cause, allow a party to make a new objection at any time before sentence is imposed.

(2) ***Introducing Evidence; Producing a Statement.*** The court may permit the parties to introduce evidence on the objections. If a witness testifies at sentencing, Rule 26.2(a)–(d) and (f) applies. If a party fails to comply with a Rule 26.2 order to produce a witness's statement, the court must not consider that witness's testimony.

(3) ***Court Determinations.*** At sentencing, the court:

(A) may accept any undisputed portion of the presentence report as a finding of fact;

(B) must—for any disputed portion of the presentence report or other controverted matter—rule on the dispute or determine that a ruling is unnecessary either because the matter will not affect sentencing, or because the court will not consider the matter in sentencing; and

(C) must append a copy of the court's determinations under this rule to any copy of the presentence report made available to the Bureau of Prisons.

(4) ***Opportunity to Speak.***

(A) *By a Party.* Before imposing sentence, the court must:

(i) provide the defendant's attorney an opportunity to speak on the defendant's behalf;

(ii) address the defendant personally in order to permit the defendant to speak or present any information to mitigate the sentence; and

(iii) provide an attorney for the government an opportunity to speak equivalent to that of the defendant's attorney.

(B) *By a Victim.* Before imposing sentence, the court must address any victim of the crime who is present at sentencing and must permit the victim to be reasonably heard.

(C) *In Camera Proceedings.* Upon a party's motion and for good cause, the court may hear in camera any statement made under Rule 32(i)(4).

(j) Defendant's Right to Appeal.

(1) *Advice of a Right to Appeal.*

(A) *Appealing a Conviction.* If the defendant pleaded not guilty and was convicted, after sentencing the court must advise the defendant of the right to appeal the conviction.

(B) *Appealing a Sentence.* After sentencing—regardless of the defendant's plea—the court must advise the defendant of any right to appeal the sentence.

(C) *Appeal Costs.* The court must advise a defendant who is unable to pay appeal costs of the right to ask for permission to appeal in forma pauperis.

(2) *Clerk's Filing of Notice.* If the defendant so requests, the clerk must immediately prepare and file a notice of appeal on the defendant's behalf.

(k) Judgment.

(1) *In General.* In the judgment of conviction, the court must set forth the plea, the jury verdict or the court's findings, the adjudication, and the sentence. If the defendant is found not guilty or is otherwise entitled to be discharged, the court must so order. The judge must sign the judgment, and the clerk must enter it.

(2) *Criminal Forfeiture.* Forfeiture procedures are governed by Rule 32.2.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 22, 1974, eff. Dec. 1, 1975; Pub. L. 94–64, §3(31)–(34), July 31, 1975, 89 Stat. 376, eff. Dec. 1, 1975; Apr. 30, 1979, eff. Aug. 1, 1979, and Dec. 1, 1980; Pub. L. 97–291, §3, Oct. 12, 1982, 96 Stat. 1249; Apr. 28, 1983, eff. Aug. 1, 1983; Pub. L. 98–473, title II, §215(a), Oct. 12, 1984, 98 Stat. 2014, eff. Nov. 1, 1987; Pub. L. 99–646, §25(a), Nov. 10, 1986, 100 Stat. 3597, eff. Nov. 1, 1987; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 25, 1989, eff. Dec. 1, 1989; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 1994, eff. Dec. 1, 1994; Pub. L. 103–322, title XXIII, §230101(b), Sept. 13, 1994, 108 Stat. 2078, eff. Dec. 1, 1994; Apr. 23, 1996, eff. Dec. 1, 1996; Pub. L. 104–132, title II, §207(a), Apr. 24, 1996, 110 Stat. 1236; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 30, 2007, eff. Dec. 1, 2007; Apr. 23, 2008, eff. Dec. 1, 2008; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 26, 2011, eff. Dec. 1, 2011.)

sufficient information in the record to enable it to exercise its statutory sentencing authority meaningfully and explains its finding on the record.

Historical Note	Effective November 1, 1987. Amended effective June 15, 1988 (amendment 58); November 1, 1989 (amendment 293); November 1, 1997 (amendment 574); November 1, 2004 (amendment 674).

§6A1.2. Disclosure of Presentence Report; Issues in Dispute (Policy Statement)

(a) The probation officer must give the presentence report to the defendant, the defendant's attorney, and an attorney for the government at least 35 days before sentencing unless the defendant waives this minimum period. Rule 32(e)(2), Fed. R. Crim. P.

(b) Within 14 days after receiving the presentence report, the parties must state in writing any objections, including objections to material information, sentencing guideline ranges, and policy statements contained in or omitted from the report. An objecting party must provide a copy of its objections to the opposing party and to the probation officer. After receiving objections, the probation officer may meet with the parties to discuss the objections. The probation officer may then investigate further and revise the presentence report accordingly. Rule 32(f), Fed. R. Crim. P.

(c) At least 7 days before sentencing, the probation officer must submit to the court and to the parties the presentence report and an addendum containing any unresolved objections, the grounds for those objections, and the probation officer's comments on them. Rule 32(g), Fed. R. Crim. P.

Commentary

Background: In order to focus the issues prior to sentencing, the parties are required to respond in writing to the presentence report and to identify any issues in dispute. *See* Rule 32(f), Fed. R. Crim. P.

Historical Note	Effective November 1, 1987. Amended effective June 15, 1988 (amendment 59); November 1, 1991 (amendment 425); November 1, 1997 (amendment 574); November 1, 2004 (amendment 674).

§6A1.3. Resolution of Disputed Factors (Policy Statement)

(a) When any factor important to the sentencing determination is reasonably in dispute, the parties shall be given an adequate opportunity to present information to the court regarding that factor. In resolving any dispute concerning a factor important to the sentencing determination, the court may consider relevant information without regard to its admissibility under the rules of evidence applicable at trial, provided that the information has sufficient indicia of reliability to support its probable accuracy.

(b) The court shall resolve disputed sentencing factors at a sentencing hearing in accordance with Rule 32(i), Fed. R. Crim. P.

Commentary

Although lengthy sentencing hearings seldom should be necessary, disputes about sentencing factors must be resolved with care. When a dispute exists about any factor important to the sentencing determination, the court must ensure that the parties have an adequate opportunity to present relevant information. Written statements of counsel or affidavits of witnesses may be adequate under many circumstances. *See, e.g., United States v. Ibanez,* 924 F.2d 427 (2d Cir. 1991). An evidentiary hearing may sometimes be the only reliable way to resolve disputed issues. *See, e.g., United States v. Jimenez Martinez,* 83 F.3d 488, 494–95 (1st Cir. 1996) (finding error in district court's denial of defendant's motion for evidentiary hearing given questionable reliability of affidavit on which the district court relied at sentencing); *United States v. Roberts,* 14 F.3d 502, 521(10th Cir. 1993) (remanding because district court did not hold evidentiary hearing to address defendants' objections to drug quantity determination or make requisite findings of fact regarding drug quantity); *see also, United States v. Fatico,* 603 F.2d 1053, 1057 n.9 (2d Cir. 1979), *cert. denied,* 444 U.S. 1073 (1980). The sentencing court must determine the appropriate procedure in light of the nature of the dispute, its relevance to the sentencing determination, and applicable case law.

In determining the relevant facts, sentencing judges are not restricted to information that would be admissible at trial. *See* 18 U.S.C. § 3661; *see also United States v. Watts,* 519 U.S. 148, 154 (1997) (holding that lower evidentiary standard at sentencing permits sentencing court's consideration of acquitted conduct); *Witte v. United States,* 515 U.S. 389, 399–401 (1995) (noting that sentencing courts have traditionally considered wide range of information without the procedural protections of a criminal trial, including information concerning criminal conduct that may be the subject of a subsequent prosecution); *Nichols v. United States,* 511 U.S. 738, 747–48 (1994) (noting that district courts have traditionally considered defendant's prior criminal conduct even when the conduct did not result in a conviction). Any information may be considered, so long as it has sufficient indicia of reliability to support its probable accuracy. *Watts,* 519 U.S. at 157; *Nichols,* 511 U.S. at 748; *United States v. Zuleta-Alvarez,* 922 F.2d 33 (1st Cir. 1990), *cert. denied,* 500 U.S. 927 (1991); *United States v. Beaulieu,* 893 F.2d 1177 (10th Cir.), *cert. denied,* 497 U.S. 1038 (1990). Reliable hearsay evidence may be considered. *United States v. Petty,* 982 F.2d 1365 (9th Cir. 1993), *cert. denied,* 510 U.S. 1040 (1994); *United States v. Sciarrino,* 884 F.2d 95 (3d Cir.), *cert. denied,* 493 U.S. 997 (1989). Out-of-court declarations by an unidentified informant may be considered where there is good cause for the non-disclosure of the informant's identity and there is sufficient corroboration by other means. *United States v. Rogers,* 1 F.3d 341 (5th Cir. 1993); *see also United States v. Young,* 981 F.2d 180 (5th Cir.), *cert. denied,* 508 U.S. 980 (1993); *United States v. Fatico,* 579 F.2d 707, 713 (2d Cir. 1978), *cert. denied,* 444 U.S. 1073 (1980). Unreliable allegations shall not be considered. *United States v. Ortiz,* 993 F.2d 204 (10th Cir. 1993).

The Commission believes that use of a preponderance of the evidence standard is appropriate to meet due process requirements and policy concerns in resolving disputes regarding application of the guidelines to the facts of a case.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 294); November 1, 1991 (amendment 387); November 1, 1997 (amendment 574); November 1, 1998 (amendment 586); November 1, 2004 (amendment 674).

§6A1.4. Notice of Possible Departure (Policy Statement)

Before the court may depart from the applicable sentencing guideline range on a ground not identified for departure either in the presentence report or in a party's prehearing submission, the court must give the parties reasonable notice that it is contemplating such a departure. The notice must specify any ground on which the court is contemplating a departure. Rule 32(h), Fed. R. Crim. P.

Commentary

Background: The Federal Rules of Criminal Procedure were amended, effective December 1, 2002, to incorporate into Rule 32(h) the holding in *Burns v. United States*, 501 U.S. 129, 138–39 (1991). This policy statement parallels Rule 32(h), Fed. R. Crim. P.

Historical Note	Effective November 1, 2004 (amendment 674).

§6A1.5. Crime Victims' Rights (Policy Statement)

In any case involving the sentencing of a defendant for an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in 18 U.S.C. § 3771 and in any other provision of Federal law pertaining to the treatment of crime victims.

Commentary

Application Note:

1. **Definition.**—For purposes of this policy statement, "***crime victim***" has the meaning given that term in 18 U.S.C. § 3771(e).

Historical Note	Effective November 1, 2006 (amendment 694).

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA	
vs.	**PRESENTENCE INVESTIGATION REPORT**
	Docket No.: 0542 2:14CR00461-001
Xavier Cardona	

Prepared for: The Honorable Alia Moses
United States District Judge

Prepared by: Jason O. Burke
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Sentence Date: September 6, 2016 3:00 PM

Offense: **Count 1**:
Conspiracy to Possess Cocaine With Intent to Distribute
21 U.S.C. § 846, 21 U.S.C. § 841(b)(1)(B)
5 years to 40 years imprisonment/$5,000,000 fine
(Class B Felony)

Release Status: In custody since date of arrest on April 23, 2014.

Detainers: None

Codefendants: Michael Cardona - 0542 2:14CR00461-002

Related Cases: Juan Leopoldo Leandro – 0542 2:13CR01249-003
Israel Suarez-Escamilla – 0542 2:13CR01380-002
Jesus Lopez (aka "Jessie" aka "Worst Ever") – 0542 2:14CR00688-001
Gerardo Castillo (aka "Jerry" aka "Chingo Bling") – 0542 2:14CR00688-002

Date Report Prepared: 2/19/16 **Date Report Revised:** 8/29/16 of 18 U.S.C. § 1959 – Violent Crimes in Aid of Racketeering-Murder. Count Three charged him with a violation of 18 U.S.C. § 1959 – Violent Crimes in Aid of Racketeering-Assault With a Dangerous Weapon. He is in custody awaiting rearraignment.

8. Gerardo Castillo (aka "Jerry" aka "Chingo Bling") DR-14-CR-00688(02), appeared before the Court on April 11, 2016, and pled guilty to Count One of his Superseding Indictment, with a plea agreement. Count One charged him with a violation of 18 U.S.C. § 1962(d) – Conspiracy to Conduct the Affairs of an Enterprise Through a Pattern of Racketeering. He is in custody awaiting sentencing.

The Offense Conduct

9. Since 2007, the United States Drug Enforcement Administration (DEA), in conjunction with the Federal Bureau of Investigation (FBI), gathered intelligence and conducted an investigation regarding the drug trafficking activities of Michael Cardona and **Xavier Cardona**, and their cocaine drug trafficking organization (DTO). Intelligence revealed that in addition to distributing cocaine in multi-gram and multi-ounce quantities in Eagle Pass, Texas, Michael Cardona and **Xavier Cardona** were also responsible for the importation of marijuana from Mexico into the United States. The investigation further revealed that the Cardona DTO conceals cocaine inside vehicles at the Real Street Paint and Body Shop. The Cardona DTO also owns an automobile sales establishment, Real Street Auto Sales. The investigation revealed that Michael Cardona has been distributing cocaine for approximately 14 years.

10. According to information provided by multiple confidential and cooperating sources, Michael Cardona and **Xavier Cardona** utilize their businesses to sell, store, and pre-package multi-gram and multi-ounce quantities of cocaine. Their businesses are used to launder their drug proceeds. According to the confidential sources, Michael Cardona and **Xavier Cardona** have numerous individuals who work for them by selling cocaine. The confidential sources stated Michael Cardona is aware of law enforcement practices and techniques, and he attempts to insulate himself from authorities by recruiting individuals to sell and distribute his cocaine in Eagle Pass.

11. On September 20, 2007, a confidential source provided information regarding the Cardona DTO. The confidential source stated that Michael Cardona has been trafficking cocaine for approximately 5 years. The confidential source stated Michael Cardona sells no less than 1.5 gram individual bags of cocaine for $50. The confidential source indicated he/she attempted to purchase kilogram quantities of cocaine from Michael Cardona; however, Michael Cardona refused. The confidential source stated that Michael Cardona advised him/her that if he could not be found, that the confidential source could contact his brother, **Xavier Cardona**. The confidential source indicated he/she has purchased gram quantities of cocaine from **Xavier Cardona** on approximately 5 occasions, and he has purchased cocaine from Michael Cardona approximately 50 times since 2007. The defendant will be held accountable for **75 grams of cocaine** (1.5 grams x 50 occasions).

12. On December 5, 2007, a cooperating source indicated he/she sold approximately 1.5 ounces of cocaine for Michael Cardona on three occasions. The cooperating source indicated that Michael Cardona has several individuals who sell cocaine for him. The defendant will be held accountable for **127.57 grams of cocaine** (1.5 ounces x 3 occasions and 1 ounce equals 28.35 grams).

13. On March 13, 2008, a cooperating source stated he/she previously sold cocaine for Michael Cardona and **Xavier Cardona**. The cooperating source stated he/she recently purchased 0.8 or 0.9 grams of cocaine from **Xavier Cardona**. The cooperating source stated he/she usually purchased approximately 25 small bags of cocaine from Michael Cardona and **Xavier Cardona** for $300. The cooperating source would then sell the cocaine and make a profit after paying Michael Cardona and **Xavier Cardona** their share. The cooperating source stated that Michael Cardona and **Xavier Cardona** have several individuals who sell cocaine for them. The defendant will be held accountable for **0.8 grams of cocaine.**

14. On July 23, 2008, a confidential source provided information regarding the Cardona DTO. The source stated that in 2006, he/she met with Michael Cardona, who was known for selling multi-ounce quantities of powder cocaine in Eagle Pass. The source would purchase 1.5 grams worth of cocaine for $50 from Michael Cardona. In 2007, Michael Cardona recruited the source to sell multi-ounce quantities of cocaine for him/her. Michael Cardona would provide the source with approximately 25 individual small bags of cocaine ready for street-level distribution. The confidential source would sell each bag of cocaine for $50. The source indicated that Michael Cardona also provided other individuals with 50 small bags of cocaine for distribution. The small bags weighed approximately 1.4 grams. Michael Cardona's associates were selling approximately 4 to 5 ounces of cocaine per week. The confidential source indicated he/she stopped selling cocaine for Michael Cardona in approximately April 2008. The source indicated that **Xavier Cardona** is also selling multi-ounce quantities of cocaine with Michael Cardona. The source stated that Michael Cardona is being supplied by an individual in Mexico, and Michael Cardona purchased two kilograms of cocaine per month for approximately $11,000 per kilogram. The defendant will be held accountable for **37.5 grams of cocaine** (1.5 grams x 25 small bags of cocaine).

15. On August 27, 2008, a confidential source provided information regarding the Cardona DTO. The confidential source stated that in 2007, he/she met with Michael Cardona, who was known for selling multi-ounce quantities of powder cocaine in Eagle Pass. The source stated that on several occasions, he/she observed Michael Cardona selling $50 worth of cocaine. The approximate weight of the cocaine was 1.3 grams. The confidential source indicated he/she is aware of multiple individuals who are associates of Michael Cardona, and assist in cocaine distribution. The source indicated Michael Cardona sells cocaine at a local car wash. The source further indicated that Michael Cardona was not currently selling cocaine, because he felt that somebody in his group was working against him. The confidential source stated that Michael Cardona and his associates are usually armed with semi-automatic handguns. The defendant will be held accountable for **3.9 grams of cocaine** (1.3 grams x 3 occasions assuming that several occasions equals at least 3).

16. On September 9, 2008, a confidential source provided information regarding the Cardona DTO. The confidential source stated that in November 2007, he/she began to purchase multi-gram quantities of cocaine from Michael Cardona and his associates. The source stated that Michael Cardona conducts most of his drug transactions at a local car wash. The source stated that Michael Cardona has several associates who sell cocaine for him. One associate obtains 40 bags of cocaine and sells them for $40 each. The source indicated that **Xavier Cardona** is also known to sell gram quantities of cocaine. The confidential source identified numerous individuals who were associates of Michael Cardona and **Xavier Cardona.**

17. On September 18, 2008, a confidential source purchased **3 grams of cocaine** from Michael Cardona. The cocaine had a purity level of 88.9%.

18. On September 29, 2008, a confidential source provided information regarding the Cardona DTO. The confidential source indicated that Michael Cardona and **Xavier Cardona** are selling multi-ounce quantities of cocaine from their automotive body shop.

19. On October 24, 2008, a confidential source purchased **3.4 grams of cocaine** from Michael Cardona. The cocaine had a purity level of 89.3%.

20. On February 11, 2009, a confidential source purchased **1.5 grams of cocaine** from an associate of the Cardona DTO. The cocaine had a purity level of 77.9%.

21. On June 22, 2009, a confidential source provided information regarding the Cardona DTO. The confidential source stated that Michael Cardona's associates recruit young adults in Eagle Pass to transport, deliver, and solicit potential buyers for the Cardona DTO.

22. On August 28, 2009, a confidential source provided information regarding the Cardona DTO. The confidential source identified an individual who works for Michael Cardona by distributing cocaine in Eagle Pass. Each small bag of cocaine that is sold usually weighs between 1.3 and 1.5 grams, and is sold for approximately $50. The source stated that since January 2009, he/she accompanied Michael Cardona's associate on eight occasions to deliver cocaine. The defendant will be held accountable for **10.4 grams of cocaine** (1.3 grams x 8 occasions).

23. On December 7, 2009, a confidential source provided information regarding the Cardona DTO. The confidential source indicated that Michael Cardona and **Xavier Cardona** operate an automobile body shop, and they utilize the shop to sell, store, and pre-package multi-ounce quantities of cocaine. The confidential source stated that the business is a "front" for the organization to launder their drug proceeds. The confidential source stated that in July 2009, he/she picked up multi-gram quantities of cocaine from an associate of Michael Cardona. The confidential source identified other individuals who sold cocaine for Michael Cardona.

24. On April 29, 2010, DEA agents met with an individual, and advised him/her that they had reliable information that he/she was purchasing multi-gram quantities of cocaine from Michael Cardona. The individual admitted that he/she purchased cocaine from Michael

Cardona on two occasions in the past. The individual stated the cocaine was not for him/her; rather, it was for somebody else.

25. In 2013, a cooperating source stated he/she purchased $20 to $50 worth of cocaine from Michael Cardona so many times that he could not recall how many times it was. The cooperating source stated he purchased $20 worth of cocaine from **Xavier Cardona** on five or six occasions.

26. On August 15, 2013, Michael Cardona sold a confidential source 52 "20's" of cocaine for $1,200. The net weight of the cocaine was **10.11 grams.**

27. On September 10, 2013, Michael Cardona sold 100 small bags of "20's" to a confidential source for $1,200. The street value of the cocaine was approximately $2,000. The net weight of the cocaine was **18.94 grams.**

28. On November 20, 2013, Michael Cardona sold ten small bags of cocaine to a confidential source. The weight of the cocaine equaled **3.50 grams.**

29. On December 18, 2013, Michael Cardona sold four small bags of cocaine to a confidential source. The weight of the cocaine equaled **0.093 ounces (2.6365 grams).**

30. On March 19, 2014, a confidential source stated he purchased cocaine from Michael Cardona for a period of approximately 12 months. The confidential source purchased approximately 400 "20's" of cocaine per month from Michael Cardona (approximately 120 grams per month). Over the course of the 12-month period, the confidential source purchased approximately **1,440 grams of cocaine** from Michael Cardona. The confidential source stated he/she never purchased cocaine from **Xavier Cardona**; however, he witnessed him selling cocaine to separate customers.

31. A confidential source stated he/she purchased a total of approximately six or seven ounces of cocaine from **Xavier Cardona** at Real Street Paint and Body. The defendant will be held accountable for **170.10 grams of cocaine** (6 ounces equals 170.10 grams).

32. A confidential source stated he/she purchased a total of approximately five to six ounces of cocaine from Michael Cardona. The defendant will be held accountable for **141.75 grams of cocaine** (5 ounces equals 141.75 grams).

33. On April 23, 2014, the DEA, FBI, and the Texas Department of Public Safety (DPS) executed a federal arrest warrant on Michael Cardona at his residence in Eagle Pass. An FBI entry team detained several individuals at the front door of the residence; however, they did not locate Michael Cardona. Shortly thereafter, Michael Cardona was encountered by perimeter security, and he was taken into custody. A search of the residence resulted in the seizure of **55.6 grams of cocaine**, $26,520.53 in U.S. currency, and several firearms, including a revolver handgun. The currency located will be converted into a cocaine equivalency. Evidence presented at trial was that Michael Cardona sold quantities of cocaine in $20 and $50 amounts. The currency will be converted to a cocaine equivalency of **0.5069 kilograms.** A reasonable conversion for the seized proceeds would be one-half of the proceeds from sales of "8 balls" and one-half of

the proceeds from the sales of "20's." Assuming the prices used were $20 per 0.3 grams for a "20" and $150 per 3.5 grams for an "8 ball" the calculation would be as follows:

"8 ball" sales: $26,520/2 = $13,260/$150 per 3.5 grams = 88 sales = 0.308 kilograms

+

"20's" sales: $26,520/2 = $13,260/$20 per 0.3 grams = 663 sales = 0.1989 kilograms

34. On April 23, 2014, the DEA, FBI, and the Texas Department of Public Safety (DPS) executed a federal arrest warrant on **Xavier Cardona** at his residence in Eagle Pass. The FBI SWAT Team gained entry into the residence and apprehended **Xavier Cardona** without incident. A search of the residence resulted in the seizure of **26.1 grams of cocaine**, $136,275 (wrapped in plastic and placed in a safe on the second floor of the residence), and multiple firearms, including a clip-fed shotgun. The currency located will be converted into a cocaine equivalency. Xavier Cardona testified at trial that the cash seized from his residence was proceeds from a prior personal injury settlement and/or business sales proceeds. Xavier Cardona testified that the currency was wrapped in plastic to prevent damage from flooding. Xavier Cardona stated "his wife" was in charge of the recordkeeping and that he had no knowledge of where any records were maintained for the business. During interviews with the FBI in 2014 and 2015, the defendant's ex-common-law spouse, Yvette Mendez, stated she was not sure where the money originated from; however, that the money was definitely not proceeds from the prior personal injury settlement, because that money had already been spent. Yvette Mendez did not claim that the money was proceeds from any business transactions of what she was aware. The currency will be converted to a cocaine equivalency of **2.6108 kilograms** based on the following information:

35. During the trial, there was testimony concerning the prices and quantities of cocaine sold and purchased. There was testimony that it is common for cocaine to be broken down from kilograms into various quantities, including ounces, "8-balls," and "20's." Due to the fact that there is evidence that Michael Cardona and **Xavier Cardona** sold cocaine in various quantities to different customers, it is reasonable to conclude that the seized money is product of proceeds from various quantity cocaine sales. A reasonable conversion for the seized proceeds would be one-half of the proceeds from sales of "8 balls" and one-half of the proceeds from the sales of "20's." Assuming the prices used were $20 per 0.3 grams for a "20" and $150 per 3.5 grams for an "8 ball" the calculation would be as follows:

"8 ball" sales: $68,137.50/$150 per 3.5 grams = 454 sales = 1.589 kilograms

+

"20's" sales: $68,137.50/$20 per 0.3 grams = 3,406 sales = 1.021 kilograms

36. On April 23, 2014, the DEA, FBI, and the Texas Department of Public Safety (DPS) executed a search warrant at Real Street Body Shop in Eagle Pass. **Xavier Cardona** is

the owner of the shop. A search of the shop revealed no contraband, currency, or weapons.

37. On November 2, 2014, Michael Cardona attempted to provide a note to his family member who was meeting with him at the Val Verde Correctional Facility. Michael Cardona suggested that a witness create receipts that "should be old, as if he paid them little by little." The note was an effort by Michael Cardona to document the work done on the residence being built by Michael Cardona, which was purchased with drug proceeds. When confronted by Val Verde Correctional Facility guards, Michael Cardona attempted to eat the note. The note was recovered by a GEO guard, who testified at trial.

38. On November 2, 2014, **Xavier Cardona** attempted to provide a note to his family member who was meeting with him at the Val Verde Correctional Facility. The note contained information about vehicles and prices, to create a legitimate looking record regarding his claimed business activities. The incident was testified to at trial.

39. On July 24, 2015, during a recorded jail conversation with a family member, **Xavier Cardona** provided the phone to a cooperating source. The cooperating source read a written statement that he did "not know anything nor was I involved in any illegal or criminal activity whatsoever that may have involved Mr. **Xavier Cardona**." **Xavier Cardona** had the cooperating source read the statement in order for **Xavier Cardona's** girlfriend to make a recording of the statement. The cooperating source advised FBI agents that **Xavier Cardona** confronted him at the jail and coerced him into writing the statement. The cooperating source advised FBI agents that afterwards, **Xavier Cardona** told the cooperating source to "remember that he (**Xavier Cardona**) is going to come back here (to the Val Verde Correctional Facility) for trial, so he will know" whether the cooperating source will testify against him.

40. In August 2015, during recorded jail conversations, **Xavier Cardona** advised Yvette Mendez to "plead the 5^{th}." **Xavier Cardona** advised Yvette Mendez not to go to court. Yvette Mendez had previously spoken to FBI agents regarding her knowledge of the cash found at **Xavier Cardona's** residence, and the fact that the money was not part of **Xavier Cardona's** prior personal injury settlement.

Jury trial testimony of Bernabe Olivas

41. Olivas testified he went with Jesse Lopez approximately 10 times to purchase "20's" and "50's" of cocaine from Michael Cardona. Olivas testified that "20's" are equivalent to 0.3 grams, and "50's" are more than 0.6 grams. **Xavier Cardona** will be held accountable for **3 grams of cocaine** (based on a conservative estimate of 0.3 grams on 10 occasions).

42. Olivas testified that he was present when **Xavier Cardona** provided Jesse Lopez $20 worth of cocaine at Real Street Paint and Body Shop. **Xavier Cardona** will be held accountable for **0.3 grams of cocaine** (based on the fact that "20's" are equivalent to 0.3 grams).

43. Olivas testified he was present when Gerardo Castillo received personal use amounts of cocaine from Michael Cardona on several occasions between 2010 and 2011, generally

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,	§	
vs	§	
MICHAEL CARDONA,	§	Case Number: **2:14-AP-00461-2-AM**
Defendant	§	

ORDER APPOINTING COUNSEL

The above named Defendant has testified under oath, or has otherwise satisfied this court, that he/she is financially unable to obtain counsel and does not wish to waive representation by counsel.

Therefore, in the interest of justice, John Anthony Peralta , is hereby appointed to represent the defendant in the above-styled and numbered cause.

This appointment shall remain in effect until further order of this court.
It is so **ORDERED** this 9th day of September, 2016.

Victor Roberto Garcia
U.S. Magistrate Judge