

NO:

IN THE
SUPREME COURT OF THE UNITED STATES

VENTERIA LEANET REASON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-11134
Non-Argument Calendar

D.C. Docket No. 2:16-cr-14002-RLR-3

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

versus

VENTERIA LEANET REASON,

Defendant–Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(January 12, 2018)

Before TJOFLAT, JULIE CARNES, and HULL, Circuit Judges.

PER CURIAM:

Venteria Leanet Reason appeals her 135-month sentence, imposed after her guilty plea, for conspiracy to import dibutylone HCI (“dibutylone”) into the United States, in violation of 21 U.S.C. §§ 952(a) and 963. Reason’s sentence is 100 months below the lower end of the Sentencing Guidelines range.¹ She argues that: (1) the District Court procedurally erred by misapplying U.S.S.G. § 2D1.1 cmt. n.6 (“Application Note 6”) and clearly erred by finding that, for purposes of calculating her offense level, MDMA and MDEA were the substances “most clearly related” to dibutylone and ethylone, respectively²; (2) the District Court erred in applying a three-point enhancement, pursuant to U.S.S.G. § 3B1.1(b), based on its finding that she was a manager or supervisor of the conspiracy; and that (3) her sentence is otherwise procedurally and substantively unreasonable because the District Court relied on a clearly erroneous fact—that a “support network” would care for her children while she was incarcerated—and because the Court failed to consider all of her arguments for a downward variance. We disagree with each of Reason’s arguments and affirm the District Court’s sentence.

¹ Based on a total offense level of 38 and a criminal history category of I, Reason’s guidelines range would have been 253 to 293 months. Statutorily, however, she was subject to a maximum penalty of 240 months. Her applicable guidelines range was therefore 235 to 240 months’ imprisonment.

² Reason’s total offense level reflects that she was held responsible for, among other substances, 10.34 kg of dibutylone and 9.98 kg of ethylone.

I.

We first address Reason’s arguments that the District Court procedurally erred by misapplying Application Note 6 and that it clearly erred by concluding that dibutylone and ethylone were most closely related to MDMA and MDEA.

We review *de novo* both a district court’s interpretation of the guidelines and its application of the guidelines to the facts. *United States v. Barrington*, 648 F.3d 1178, 1194–95 (11th Cir. 2011). Our review, further, gives due regard to the sentencing court’s opportunity to judge the credibility of witnesses. *United States v. Jenkins*, 901 F.2d 1075, 1083 (11th Cir. 1990).

Ethylone and dibutylone are not included in the guidelines’ Drug Quantity Table. See U.S.S.G. § 2D1.1(c). To determine the base offense level of a substance not specifically referenced in the guidelines, a court must identify the substance included in the guidelines that is “most closely related” to the unlisted substance. U.S.S.G. § 2D1.1 cmt. n.6. Then, using the most closely related substance’s marijuana-equivalency ratio as set forth in the guidelines’ Drug Equivalency Tables, the court converts the quantity of the unlisted substance to its marijuana equivalent. U.S.S.G. § 2D1.1 cmt. n.8(A), (D). To determine the most closely related substance, the court “shall, to the extent practicable, consider” three factors:

(A) Whether the controlled substance not referenced in this guideline has a chemical structure that is substantially similar to a controlled substance referenced in this guideline.

(B) Whether the controlled substance not referenced in this guideline has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance referenced in this guideline.

(C) Whether a lesser or greater quantity of the controlled substance not referenced in this guideline is needed to produce a substantially similar effect on the central nervous system as a controlled substance referenced in this guideline.

U.S.S.G. § 2D1.1 cmt. n.6. The guidelines provide that one gram of either MDMA or MDEA is equivalent to 500 grams of marijuana. U.S.S.G. § 2D1.1 cmt. n.8(D). They also provide that one gram of methcathinone, the comparator substance urged by Reason, is equivalent to 380 grams of marijuana. *Id.*

Reason argues that the District Court procedurally erred in two ways when determining that dibutylone was most closely related to MDMA and ethylone to MDEA. First, she contends that because dibutylone and ethylone were discussed mainly as “stimulants” throughout her sentencing, while the guidelines’ Drug Equivalency Tables classify MDMA and MDEA as “hallucinogens,” *see id.*, the Court erred in its “most closely related” determination.³ That is, if the evidence indicates that the substance at issue has one classification, the court cannot find that a substance with a different classification in the Drug Equivalency Tables is

³ The Government’s experts, though repeatedly noting the stimulant *effects* of dibutylone and ethylone, did not necessarily classify them as “stimulants.”

the most closely related. Second, Reason argues that the District Court misapplied the guidelines' three-factor test outlined above.

Reason's first argument is unpersuasive. The relevant guidelines provision instructs a court to find the substance most closely related to an unlisted substance by considering, "to the extent practicable," similarities in the substances' structures, effects, and potencies. U.S.S.G. § 2D1.1 cmt. n.6. There is no further requirement in the text that the comparator substance be within the same Drug Equivalency Tables classification as the unlisted substance. A number of reasons guide against reading such a requirement into the provision.

Nothing in Drug Equivalency Tables suggests its classification of substances has any bearing on a court's "most closely related" determination. Rather, the tables assist the court in its second step: converting the unlisted substance to its marijuana equivalent *after* identifying the most closely related comparator. And further, the guidelines do not instruct courts to classify an unlisted substance under one of the Drug Equivalency Tables classifications in the first instance. Making courts pick a comparator substance in the same class would, without any textual support, require courts to classify the unlisted substance, as such would be necessary in order to find a comparator in the same class. What's more, even if a court went ahead and classified the unlisted substance, there may be situations in which the substance "most closely related" to the unlisted substance under the

guidelines' three-factor test is not within the same class. A drug with a predominantly stimulant effect might be most similar in structure and effect to a drug pegged as a hallucinogen, more so than any substance classified as a stimulant. Indeed, as the Government's experts testified to in this case, substances can have multiple effects on a user—MDMA and MDEA have not only a hallucinogenic effect but also a strong stimulant effect, similar to that of dibutylone and ethylone. Thus, in some circumstances, Reason's proffered requirement could negate the guidelines' three-factor test—a court might be unable to pick the most closely related comparator under the test because the Drug Equivalency Tables classify it differently. By implication Reason therefore asks, in this situation, that we favor a textually nonexistent "requirement" over an expressly set out test. Her first argument fails.

Reason's second argument fares no better. She specifically argues that because the Government's experts testified that MDMA and MDEA are "substantially" but not "*most*" similar in structure to dibutylone and ethylone respectively, the District Court misapplied Application Note 6 and erred in choosing MDMA and MDEA as comparators. By crediting this testimony, Reason posits, the Court could not have properly decided that these substances were the "*most* closely related" to the unlisted ones. Reason adds that the Court should therefore have credited her expert, who testified that dibutylone and ethylone were

“most” similar in structure to methcathinone, a drug with a lower marijuana-equivalence ratio. This theory falls short.

The first prong of the three-factor test requires a court to consider whether “the substance not referenced in this guideline has a chemical structure that is *substantially similar* to a controlled substance referenced in this guideline.”

U.S.S.G. § 2D1.1 cmt. n.6(A) (emphasis added). The testimony of the Government’s experts thus traced the provision. Application Note 6, moreover, makes clear that finding the “most closely related” comparator substance is holistic, derived from all three factors.⁴ Here, the District Court found the Government’s experts’ testimony more credible than that of Reason’s experts as to chemical structure. It accordingly concluded that the chemical-structure analysis favored MDMA and MDEA. *See Jenkins*, 901 F.2d at 1083. Armed with that conclusion, the Court went on to complete the analysis in favor of the Government. There was no misapplication of Application Note 6.

Reason’s argument, at its heart, is really that the Court should have reached the conclusion she wanted—that dibutylone and ethylone are most closely related to methcathinone—when employing the three-factor test. She thus argues that the Court erred factually rather than procedurally. We review a district court’s factual

⁴ Indeed, under the test, it is of no moment if the substance used as a comparator is not the closest in structure to the unlisted substance, as long as the other factors favor the comparator substance.

findings under the guidelines for clear error. *United States v. Rothenberg*, 610 F.3d 621, 624 (11th Cir. 2010). Factual findings are clearly erroneous when, on the record as a whole, the appellate court “is left with a definite and firm conviction” that a mistake was made. *Barrington*, 648 F.3d at 1195. A district court’s choice between two permissible views of the evidence, though, cannot be clear error. *United States v. Ndiaye*, 434 F.3d 1270, 1305 (11th Cir. 2006).

Here, the District Court weighed the testimony of both parties’ experts and, in a detailed order, explained its finding that dibutylone and ethylone were closer to MDMA and MDEA in both structure and effect on the user than they were to methcathinone. It found that the third factor, potency, was neutral. The voluminous evidence and testimony presented by the Government enabled the Court to make these findings.⁵ Accordingly, choosing between two permissible views of the evidence—the position proffered by each party and its experts—the Court held that MDMA and MDEA were the proper comparators. This conclusion was not clearly erroneous. *See id.*

In sum, the District Court neither procedurally nor clearly erred in applying Application Note 6 and concluding that dibutylone and ethylone were most closely

⁵ The Government must prove a contested sentencing fact set forth in the presentence investigation report—here, that MDMA and MDEA were the most closely related substances—by a preponderance of the evidence, using reliable and specific evidence. *United States v. Lawrence*, 47 F.3d 1559, 1566 (11th Cir. 1995). It undoubtedly met this burden through its experts’ testimony.

related to MDMA and MDEA, respectively. The Court was therefore correct in applying a 1-to-500 conversion ratio when calculating Reason's offense level.

II.

Reason next argues that the District Court erred in applying a three-point enhancement, pursuant to U.S.S.G. § 3B1.1(b), based on its finding that she was a manager or supervisor of the conspiracy.

Under § 3B1.1(b) of the guidelines, a court may enhance the defendant's offense by three levels "[i]f the defendant was a manager or supervisor (but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive." In assessing the defendant's role in the offense, the court should consider

the exercise of decision making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others.

See U.S.S.G. § 3B1.1 cmt. n.4; *United States v. Njau*, 386 F.3d 1039, 1041 (11th Cir. 2004) (per curiam). There is no requirement that all of these factors be present; they "are merely considerations for the sentencing judge." *United States v. Martinez*, 584 F.3d 1022, 1026 (11th Cir. 2009). "[T]here must be evidence," however, "that the defendant exerted some control, influence, or decision-making authority over another participant in the criminal activity." *Id.*

When a defendant challenges one of the factual bases of her sentence, the government must prove the disputed fact by a preponderance of the evidence. *United States v. Aguilar-Ibarra*, 740 F.3d 587, 592 (11th Cir. 2014) (per curiam). Although not as rigorous as the reasonable-doubt or clear-and-convincing standards, the preponderance standard is not toothless; it is not a license to sentence the defendant absent sufficient evidence. *United States v. Rodriguez*, 398 F.3d 1291, 1296 (11th Cir. 2005); *United States v. Lawrence*, 47 F.3d 1559, 1566 (11th Cir. 1995).

Reason does not contest that the criminal activity involved five or more participants or was otherwise extensive. And the Government, through the testimony of Special Agent McBride and codefendant Natashia Thames, showed by a preponderance of the evidence that Reason, *inter alia*, ordered drugs from China and sent wire transfers there; packaged, sold, and distributed drugs in the United States; recruited and directed codefendant Thames; and permitted her husband, codefendant Julius Reason, to use her firearm. This evidence is sufficient to prove that Reason was a manager or supervisor of the conspiracy. *See Aguilar-Ibarra*, 740 F.3d at 592; U.S.S.G. § 3B1.1 cmt. n.4. The District Court thus did not err in concluding that the § 3B1.1(b) enhancement applied.

III.

Finally, Reason claims that two additional District Court errors render her sentence procedurally and substantively unreasonable. She first argues that the Court relied on a clearly erroneous fact—that a “support network” would care for her children while she was incarcerated. Second, she contends that the Court failed to consider all of her arguments for a downward variance. Specifically, it failed to consider her arguments that a lower equivalence ratio should be used because those of MDMA and MDEA are unfitting and that she should not receive a two-point enhancement for being directly involved in importing a controlled substance.⁶

We review a sentence’s reasonableness under a deferential abuse-of-discretion standard. *Gall v. United States*, 552 U.S. 38, 41, 128 S. Ct. 586, 591 (2007). A two-step process guides our review. *Id.* at 51, 128 S. Ct. at 597. First, we confirm that the district court committed no significant procedural error, “such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the 18 U.S.C. § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence—including an explanation for any deviation from the Guidelines range.” *Id.* We then consider the substantive reasonableness of the sentence given totality of the circumstances. *Id.* The party challenging the

⁶ See U.S.S.G. § 2D1.1(b)(15)(C). This enhancement applies only to those who, like Reason, also received a § 3B1.1 Aggravating Role enhancement.

sentence bears the burden of proving the sentence unreasonable in light of the record and the § 3553(a) factors. *United States v. Tome*, 611 F.3d 1371, 1378 (11th Cir. 2010).

A district court's sentence must be "sufficient, but not greater than necessary, to comply with the purposes" of § 3553(a). 18 U.S.C. § 3553(a). When a district court decides that the § 3553(a) factors support a variance, it should explain "with sufficient justifications" why the variance "is appropriate in a particular case." *Gall*, 552 U.S. at 46, 128 S. Ct. at 594. The court's justification must be "compelling enough to support the degree of the variance and complete enough to allow meaningful appellate review," but "an extraordinary justification" is not required. *United States v. Shaw*, 560 F.3d 1230, 1238 (11th Cir. 2009) (internal quotation marks omitted).

The District Court did not procedurally err in determining that Reason had a "support network" to care for her children while she was incarcerated. Reason herself provided letters of support showing the existence of such a network. And Reason's claim that the Court ignored her argument that lower equivalence ratios should be used than those of MDMA and MDEA is equally unavailing. The Court explained at length why it chose those two substances as comparators. It did not need to take the further step of expressly stating why it then chose to use the equivalency ratios assigned to those substances rather than the reduced ratios

Reason urged.⁷ Reason’s final argument—that the Court erred by not considering her request to eliminate the two-point enhancement for being directly involved in importing narcotics—also fails. As described above, the Government put forth much evidence illustrating Reason’s direct involvement in importing drugs from China. It is implicit that this evidence informed the Court’s decision to apply the enhancement. Ultimately, there is enough in the record and in the District Court’s explanation of Reason’s sentence to satisfy us that the Court “considered the parties’ arguments and ha[d] a reasoned basis for exercising [its] own legal decisionmaking authority.” *See Rita v United States*, 551 U.S. 338, 356, 127 S. Ct. 2456, 2468 (2007).

Lastly, as to its substantive reasonableness, Reason’s 135-month sentence fairly reflects the Court’s consideration of the sentencing factors. *See United States v. Snipes*, 611 F.3d 855, 872 (11th Cir. 2010). The record and the Court’s lengthy explanation at sentencing justify the 100-month downward variance it applied. And that Reason’s sentence is well below the relevant statutory maximum further diminishes her position that it is substantively unreasonable. *See United States v. Gonzalez*, 550 F.3d 1319, 1324 (11th Cir. 2008). Accordingly, the District Court did not err in imposing Reason’s 135-month sentence.

⁷ Reason did not request that the 1-to-380 ratio of methcathinone, the comparator substance for which she argued, be used. She instead urged that a 1-to-40 ratio be used for dibutylone and a 1-to-100 ratio be used from ethylone.

AFFIRMED.

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UNITED STATES DISTRICT COURT
Southern District of Florida
Fort Pierce Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: **16-14002-CR-ROSENBERG**

VENTERIA LEANET REASON

USM Number: **13007-104**

Counsel For Defendant: **Julie Vianale, CJA**

Counsel For The United States: **Carmen Lineberger, AUSA**

Court Reporter: **Betty Pierson, Phipps Reporting**

The defendant pleaded guilty to count(s) 1 of the Superseding Indictment.

The defendant is adjudicated guilty of these offenses:

<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
21, U.S.C., §952(a) and 963	Conspiracy to import a controlled substance- Dibutylone HCI	01/15/2016	1

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

All remaining counts are dismissed on the motion of the government.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Date of Imposition of Sentence: **2/28/2017**



Robin L. Rosenberg
United States District Judge

Date: 3/1/2017

DEFENDANT: **VENTERIA LEANET REASON**
CASE NUMBER: **16-14002-CR-ROSENBERG**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **135 months as to Count One of the Superseding Indictment**.

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

- BOP designation to a facility as close to South Florida as possible.
- In order to facilitate the successful, long-term rehabilitation of Venteria Leanet Reason, the Court recommends that, within the discretion of BOP policy, Defendant serve his period of incarceration in South Florida at the Federal Prison Camp in Miami, Florida and that Defendant be considered for admission to the 500-hour Residential Drug Abuse Program which is available at this institution, if eligible.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

DEPUTY UNITED STATES MARSHAL

DEFENDANT: **VENTERIA LEANET REASON**
CASE NUMBER: **16-14002-CR-ROSENBERG**

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **Three (3) years as to Count One of the Superseding Indictment.**

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. 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 from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
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 responsibilities;
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;
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; and
13. As directed by the probation officer, the defendant shall notify third parties of risks that may 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.

DEFENDANT: **VENTERIA LEANET REASON**
CASE NUMBER: **16-14002-CR-ROSENBERG**

SPECIAL CONDITIONS OF SUPERVISION

Permissible Search - The defendant shall submit to a search of her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

Mental Health Treatment - The defendant shall participate in an approved inpatient/outpatient mental health treatment program. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

DEFENDANT: **VENTERIA LEANET REASON**
CASE NUMBER: **16-14002-CR-ROSENBERG**

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$0.00	\$0.00

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>NAME OF PAYEE</u>	<u>TOTAL LOSS*</u>	<u>RESTITUTION ORDERED</u>	<u>PRIORITY OR PERCENTAGE</u>
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* 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.

**Assessment due immediately unless otherwise ordered by the Court.

DEFENDANT: VENTERIA LEANET REASON
CASE NUMBER: 16-14002-CR-ROSENBERG

SCHEDULE OF PAYMENTS

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

A. Lump sum payment of \$100.00 due immediately.

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

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

This assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 08N09
MIAMI, FLORIDA 33128-7716

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

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

<u>CASE NUMBER</u> <u>DEFENDANT AND CO-DEFENDANT NAMES</u> <u>(INCLUDING DEFENDANT NUMBER)</u>	<u>TOTAL AMOUNT</u>	<u>JOINT AND SEVERAL</u> <u>AMOUNT</u>
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The Preliminary Order of Forfeiture dated SEPTEMBER 27, 2016 (D.E. 145) is incorporated into this Judgment and Commitment.

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

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION

CASE NO. 16-CR-14002-ROSENBERG

UNITED STATES OF AMERICA, .
Plaintiff, .
vs. .
JULIUS REASON, . Fort Pierce, FL
NATASHIA THAMES, . January 31, 2017
VENTERIA REASON,
Defendants. .

SENTENCING PROCEEDINGS
BEFORE THE HONORABLE ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

VOLUME 1

APPEARANCES:

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Assistant Federal Public Defender
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772-489-2123

1 Q. So, as you did the comparisons in our case, ethylone to
2 MDEA and dibutylone to MDMA, did you find those differences,
3 looking at the whole structure, to be minor or substantial?

4 A. In the context of the entire evaluation, those are small
5 changes, minor changes.

6 Q. And did you find them to be significant or insignificant in
7 the context of looking at the whole substance?

8 A. In the context of the whole substance, they were not
9 significant in my determination of them being substantially
10 similar to one another.

11 Q. Now, Ms. Vianale asked you about a substance that she did
12 not give you a diagram for. You don't have a diagram before
13 you for methcathinone, do you?

14 A. I don't.

15 Q. Would it help you explain to the Court what you were
16 testifying about, or what she asked you about with regard to
17 methcathinone?

18 A. I have the structure in my head, I am happy to describe the
19 differences and similarities. Of course, a figure usually
20 helps when describing chemical structures.

21 MS. LINEBERGER: Your Honor, I have an additional
22 exhibit which I promise I will get for everybody. I didn't
23 anticipate it. I had to grab it and make some changes to it.

24 I would be marking it for identification as Government
25 Exhibit 17.

1 I don't have extra copies of it, but I will show it to
2 counsel.

3 THE COURT: Can you describe it for the record, what
4 it is?

5 MS. LINEBERGER: It is a chemical diagram of a
6 substance known as methcathinone.

7 But I will leave it to the expert to tell me, to
8 confirm.

9 THE COURT: Okay.

10 MS. LINEBERGER: May I approach, Your Honor?

11 THE COURT: Yes.

12 BY MS. LINEBERGER:

13 Q. Do you recognize what that is, what is marked Exhibit 17
14 for identification?

15 A. Yes.

16 Q. How do you recognize it?

17 A. The chemical structure of methcathinone.

18 MS. LINEBERGER: Your Honor, I ask this be admitted
19 into evidence.

20 MS. AUGUSTIN-BIRCH: No objection.

21 THE COURT: Okay, Exhibit 17 is admitted without
22 objection.

23 (Whereupon Government Exhibit 17 was marked for evidence.)

24 BY MS. LINEBERGER:

25 Q. Is that the substance Ms. Vianale asked you to opine about?

1 A. That is the substance she asked me about, yes.

2 Q. And she asked you -- on this substance, she asked you about
3 the location of the ketone or keto group; is that correct?

4 A. Yes.

5 Q. And is there a phenethylamine --

6 A. Core, yes.

7 Q. Core?

8 A. Yes.

9 Q. So, the head and the body is there, just like some of the
10 other substances we've discussed?

11 A. Yes.

12 Q. Is the head on there?

13 A. The 3,4 methylenedioxy group is not, if that is the head.

14 Q. What schedule is this in?

15 A. This is also in Schedule I.

16 Q. So, putting that -- making an attempt to put that on the
17 screen beside dibutylone, using your slide six just for the
18 purpose of this to try to get them in the same or similar
19 scale, why isn't dibutylone substantially similar to
20 methcathinone in your opinion, or is it?

21 A. I haven't made that evaluation.

22 I compared it to MDMA, and that is what I went forward with
23 and that is what we discussed.

24 It does have similarities with dibutylone, methcathinone
25 does.

1 Q. Do you see some differences as well?

2 A. Yes, of course.

3 Q. Does methcathinone have the 3,4 methylenedioxy ring?

4 A. No, it doesn't.

5 Q. And it is also missing some other portions as well; is that
6 correct?

7 A. Well, it is also missing the -- an additional carbon in the
8 alpha position.

9 Q. But you selected -- in your evaluation, you found that MDMA
10 and dibutylone --

11 MS. VIANALE: Objection, I don't believe that is the
12 witness' testimony, that he selected that. He said he
13 evaluated that -- evaluated MDMA, but not the other one.

14 THE COURT: Sustained. Rephrase the question.

15 BY MS. LINEBERGER:

16 Q. When you were asked to opine on the substantial similarity
17 of chemical structures, was it your choice that MDMA was
18 similarly -- substantially similar to dibutylone?

19 MS. VIANALE: Objection to the word "choice". I
20 haven't heard any testimony that he did an evaluation of
21 methcathinone which would enable him to make a choice.

22 THE COURT: Do you want to ask him how he came to
23 evaluate dibutylone to MDMA?

24 MS. LINEBERGER: Yes.

25 THE COURT: How did you do that?

1 BY MS. LINEBERGER:

2 Q. Explain that to the Court.

3 A. The same method I described earlier, looked at the core
4 structure, 3-D structure, literature --

5 THE COURT: Well, I think what I am understanding the
6 discussion to be is that you -- for the purpose of what you are
7 presenting you analyzed and compared dibutylone to MDMA, you
8 did not compare it to methcathinone.

9 THE WITNESS: Correct.

10 THE COURT: Why is that?

11 THE WITNESS: Well, certainly dibutylone can be
12 substantially similar to more than one thing. For the purpose
13 of this, we compared it to MDMA and that is a consensus we
14 reached in the unit, and we consult with the pharmacologists.
15 If we are talking about different structures and --

16 MS. VIANALE: I object to anything concerning
17 pharmacology, Your Honor.

18 THE COURT: Okay.

19 BY MS. LINEBERGER:

20 Q. You look at the total picture, the entire note, 6-A, when
21 evaluating a substance for substantial similarities; is that
22 right?

23 MS. VIANALE: Objection to leading, Your Honor.

24 THE COURT: Well, I think he already established that.
25 His role is in the chemical part of it, chemical

1 structure. Others will be talking about the pharmacological
2 impact, and the totality of all of that brings us to all of the
3 prongs of Note 6.

4 MS. LINEBERGER: Yes, Your Honor.

5 BY MS. LINEBERGER:

6 Q. Like dibutylone, ethylone also has the methylenedioxy ring;
7 is that correct?

8 A. Yes, it does.

9 Q. And again, methcathinone does not?

10 A. That is correct.

11 MS. LINEBERGER: No further questions of the witness
12 at this time, Your Honor.

13 THE COURT: Okay, all right.

14 I think you may step down, then.

15 How does an hour and 15 -- how is that for our lunch
16 break, resuming at 1:15, does that work for everybody?

17 MS. AUGUSTIN-BIRCH: Yes, Your Honor.

18 MS. LINEBERGER: Yes, Your Honor.

19 THE COURT: Then we'll expect the Government's next
20 witness next, Dr. Trecki.

21 MS. LINEBERGER: Yes, Your Honor.

22 THE COURT: Okay. All right. We will be in recess
23 until 1:15.

24 We lock the doors, you can keep your things here. If
25 you want anything, make sure you take it with you.

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Exhibit 3

Cocaine and Other Schedule I and II Stimulants
(order of decreasing ratio)

MEDIAN VALUE IS HIGHLIGHTED

1	1 gm of Amphetamine (Actual) =	20 kg of marihuana= 20,000 gm
2	1 gm of "Ice" =	20 kg of marihuana=20,000 gm
3	1 gm of Methamphetamine (Actual) =	20 kg of marihuana=20,000 gm
4	1 gm Cocaine Base ("Crack") =	3,571 gm of marihuana
5	1 gm of Amphetamine =	2 kg of marihuana= 2000 gm
6	1 gm of Methamphetamine =	2 kg of marihuana=2000 gm
7	1 gm Phenylacetone/P2P (when possessed for the purpose of manufacturing methamphetamine) =	416 gm of marihuana
8	1 gm of Methcathinone =	380 gm of marihuana
9	1 gm of Cocaine =	200 gm of marihuana
10	1 gm of 4-Methylaminorex ("Euphoria") =	100 gm of marihuana
11	1 gm of Methylphenidate (Ritalin) =	100 gm of marihuana
12	1 gm of Aminorex =	100 gm of marihuana
13	1 gm of N-Benzylpiperazine =	100 gm of marihuana
14	1 gm of N-Ethylamphetamine =	80 gm of marihuana
15	1 gm of Phenmetrazine =	80 gm of marihuana
16	1 gm Phenylacetone/P2P (in any other case) =	75 gm of marihuana
17	1 gm of Fenethylamine =	40 gm of marihuana
18	1 gm of N-N-Dimethylamphetamine =	40 gm of marihuana
19	1 gm of Khat =	.01 gm of marihuana

LSD, PCP, and Other Schedule I and II Hallucinogens
(order of descending ratio)

MEDIAN VALUE HIGHLIGHTED

1	100 kg of marihuana =
1 gm of D-Lysergic Acid Diethylamide/Lysergide/LSD =	100,000 gm
2	10 kg of marihuana=10,000 gm
1 gm of Phencyclidine (actual) /PCP (actual) =	
3	2.5 kg of marihuana=2,500 gm
1 gm of 4-Bromo-2,5-Dimethoxyamphetamine/DOB =	
4	1.67 kg of marihuana=1,670 gm
1 gm of 2,5-Dimethoxy-4-methylamphetamine/DOM =	
5	1 kg of marihuana=1,000 gm
1 gm of Pyrrolidine Analog of Phencyclidine/PHP =	
6	1 kg of marihuana=1,000 gm
1 gm of Thiophene Analog of Phencyclidine/TCP =	
7	1 kg of marihuana=1,000 gm
1 gm of Phencyclidine/PCP =	
8	1 kg of marihuana=1,000 gm
1 gm of N-ethyl-1-phenylcyclohexylamine (PCE) =	
9	680 gm of marihuana
1 gm of 1-Piperidinocyclohexanecarbonitrile/PCC =	
10	500 gm of marihuana
1 gm of Psilocybin =	
11	500 gm of marihuana
1 gm of 3,4-Methylenedioxyamphetamine/MDA =	
12	500 gm of marihuana
1 gm of 3,4-Methylenedioxymethamphetamine/MDMA =	

13	1 gm of 3,4-Methylenedioxy-N-ethylamphetamine/MDEA =	500 gm of marihuana
14	1 gm of Paramethoxymethamphetamine/PMA =	500 gm of marihuana
15	1 gm of Psilocin =	500 gm of marihuana
16	1 gm of Dimethyltryptamine/DM =	100 gm of marihuana
17	1 gm of Diethyltryptamine/DET =	80 gm of marihuana
18	1 gm of Bufotenine =	70 gm of marihuana
19	1 gm of Mescaline =	10 gm of marihuana
20	1 gm of Mushrooms containing Psilocin and/or Psilocybin (Dry) =	1 gm of marihuana
21	1 gm of Mushrooms containing Psilocin and/or Psilocybin (Wet) =	0.1 gm of marihuana
22	1 gm of Peyote (Dry) =	0.5 gm of marihuana
23	1 gm of Peyote (Wet) =	0.05 gm of marihuana

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 16-14002-CR-ROSENBERG

UNITED STATES OF
AMERICA, Plaintiff,

v.

JULIUS REASON III,
NATASHA THAMES,
VENTERIA REASON

Defendants,

_____ /

ORDER ON OBJECTIONS TO RATIO FOR DIBUTYLONE HCI AND ETHYLONE

This cause is before the Court upon Defendants', Julius Reason III, Natasha Thames and Venteria Reason, Objections (DE 196, 175 and 177, respectively) to the Presentence Reports ("PSI") (DE 215, 186 and 208, respectively) and, specifically, the following objections: Defendant Julius Reason's Objections (DE 196, para. 4) to paragraphs 61 and 62 of the PSI (DE 215) in which Defendant Julius Reason III "objects to the 500:1 ratio for Dibutylone HCI and Ethylone"; Defendant Natasha Thames' Objections (DE 175, para. 3) to paragraph 52 of the PSI (DE 186) in which Defendant Thames "objects to the ratio of dibutylone to marijuana (1 to 500)"; and Defendant Venteria Reason's Objections (DE 177, pg. 5) to paragraph 61 of the PSI (DE 208) in which Defendant Venteria Reason objects "to the 500:1 ratio for Dibutylone HCI and Ethylone." The Government filed its Post Hearing Memorandum Regarding the Marijuana Equivalency (DE 226). Defendant Venteria Reason filed her Post-Hearing Memorandum of Law Addressing Application of Sentencing Guidelines 2D1.1, Application Note Six, to Ethylone and Dibutylone (DE 225). Defendant Julius Reason III filed a Motion to Adopt Co-Defendant Venteria Reason's Post-Hearing Memorandum of Law Addressing Application of Sentencing Guidelines 2D1.1, Application Note Six (DE 227 and 229). The Court granted this motion on February 21, 2017 (DE 231). Defendant Natasha

Thames filed her Memorandum Regarding Defendant Natasha Thames' Position Regarding Dibutylone (DE 224).

The Court has reviewed the Objections and all pertinent portions of the record and is otherwise fully advised in the premises. For the reasons set forth below, the Court overrules the Defendants' Objections to the ratio for Dibutylone HCI and Ethylone and adopts the Government's position, accepted by the Probation Office in the PSIs as to Defendants Julius Reason III, Natasha Thames and Venteria Reason (DE 215-1, 186-1 and 208-1, respectively), that considering the three factors listed in the United States Sentencing Guidelines ("Guidelines" or U.S.S.G.) § 2D1.1 cmt. n.6 ("Application Note 6"), the controlled substance listed in the Drug Equivalency Tables that is most closely related to Ethylone is 3,4 methylenedioxy-N-ethylamphetamine ("MDEA"), in structure and effect, 1 gram of which is listed as equivalent to 500 grams of marijuana (the same ratio for MDMA); and that the controlled substance listed in the Drug Equivalency Tables that is most closely related to Dibutylone HCI is MDMA, in structure and effect, and 1 gram of which is listed as equivalent to 500 grams of marijuana.

On September 19, 2016, Defendant Julius Reason III pled guilty to Counts One and Two of a three-count Superseding Indictment. Count One charged conspiracy to import Dibutylone HCI, in violation of 21 U.S.C. § 963. Count Two charged conspiracy to manufacture, distribute and possess with intent to manufacture and distribute Dibutylone HCI, in violation of 21 U.S.C. § 846. On March 22, 2016, Defendant Natasha Thames pled guilty to a three-count Indictment. Count One charged conspiracy to import Dibutylone HCI, in violation of 21 U.S.C. § 963. Count Two charged conspiracy to manufacture and possess with intent to manufacture and distribute Dibutylone HCI, in violation of 21 U.S.C. § 846. Count Three charged possession with intent to distribute Dibutylone HCI, in violation of 21 U.S.C. § 841(a)(1). On September 21, 2016, Defendant Venteria Reason pled guilty to Count One of a three-count Superseding Indictment charging her with conspiracy to import Dibutylone HCI, in violation of 21 U.S.C. § 963.

The Court conducted a sentencing hearing on these Objections over two days, on January 31, 2017

(DE 216) and February 1, 2017 (DE 217). The primary disagreement between the parties with respect to Defendants' Objections is to which drug(s) within the Guidelines the Court should compare Dibutylone HCl (as to Defendants Julius Reason III, Natashia Thames and Venteria Reason) and Ethylone (as to Defendants Julius Reason III and Venteria Reason). Dibutylone HCl and Ethylone are not referenced in U.S.S.G § 2D1.1, which provides the base level for drug offenses. When a controlled substance is not referenced in the Guidelines, the Court must "determine the base offense level using the marijuana equivalency of the most closely related controlled substance referenced in the guideline." Application Note 6. In making that determination, "the court shall, to the extent practicable, consider:"

- (A) Whether the controlled substance not referenced in this guideline has a chemical structure that is substantially similar to a controlled substance in this guideline.
- (B) Whether the controlled substance not referenced in this guideline has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance referenced in this guideline.
- (C) Whether a lesser or greater quantity of the controlled substance not referenced in this guideline is needed to produce a substantially similar effect on the central nervous system, as a controlled substance referenced in this guideline.

The Government's position, accepted by the Probation Office in the PSIs as to Defendants Julius Reason III, Natashia Thames and Venteria Reason (DE 215-1, 186-1 and 208-1, respectively), is that considering the three factors listed in Application Note 6, the controlled substance listed in the Drug Equivalency Tables that is most closely related to Ethylone is 3,4 methylenedioxy-N-ethylamphetamine ("MDEA"), in structure and effect, 1 gram of which is listed as equivalent to 500 grams of marijuana (the same ratio for MDMA); and that the controlled substance listed in the Drug Equivalency Tables that is most closely related to Dibutylone HCl is MDMA, in structure and effect, and 1 gram of which is listed as equivalent to 500 grams of marijuana. (DE189). The Defendants disagree with the Government's proposed ratios, arguing instead that the Court find a marijuana to Dibutylone HCl ratio of less than 40:1 and perhaps less than 1:1 (according to Dr. Dudley;¹ see

¹ Defendants Julius Reason III and Venteria Reason, urge the Court to adopt, among the cathinones, Schedule One stimulant khat as the comparator for Dibutylone HCl which has a 100:1 ratio. (DE 225,

Defendants' Julius Reason III and Venteria Reason Exhibit 6, DE 178, Exhibit B, pg.28, "In my opinion, dibutylone is not "*substantially similar*" in chemical structure to any listed substance, and it should not be equated to any single listed substance. The diverse collection of amphetamines and cathinones discussed above provide context for making a logical and reasonable decision on an appropriate penalty for dibutylone. The preponderance of the facts and considerations related to chemical structure as presented herein supports a ratio of less than 40:1 and perhaps less than 1:1 relative to the marijuana standard.") and a ratio of 100:1 (according to Dr. DiCaprio; DE 224, pg. 7) and a marijuana to Ethylone ratio equal to, or slightly less than, methylone and at levels significantly lower than MDMA and MDEA, which are the most comparable substances in the Guidelines (Defendants' Julius Reason III and Venteria Reason Exhibit 6, DE 178, Exhibit C, pg. 49; and DE 225, pg. 10). Defendants Julius Reason III and Venteria Reason argue that because the experts agree that Ethylone and Dibutylone HCI act (or in the case of Dibutylone HCI are expected to act) as stimulants, the Court should select a comparator that is a stimulant and not a hallucinogen, which is how the Guidelines categorize MDMA and MDEA. As such, these Defendants argue the Court should use the stimulants in Schedule I and II and the Guidelines ratios for stimulants as its guide (DE 225, pg.2). The Government must prove the contested facts by a preponderance of the evidence and satisfy this burden with both "reliable and specific evidence". *United States v. Gupta*, 572 F.3d 878, 887 (11th Cir. 2009).

In support of its position, on January 31, 2017 and February 1, 2017, the Government presented evidence through testimony from Dr. Daniel Willenbring and Dr. Jordan Trecki. Dr. Willenbring is a Drug Science Specialist with the Drug and Chemical Evaluation Section of the Diversion Control Division at the Drug Enforcement Agency ("DEA"); he was called to testify as to the first factor listed in U.S.S.G. § 2D1.1, Application Note 6 (A)—specifically, whether Ethylone and Dibutylone HCI have a

pgs. 5 and 8). Dr. Dudley testified that, in his opinion, the substance that is most similar in chemical structure to Ethylone is methcathinone (ratio of 1:380). He reasons that the cathinone classification is the most important relative to amphetamines; he looks at the cathinones, methcathinone and cathinone itself, which is ambiguously included under the khat plant coverage. (Transcript, Volume I, pg. 211, line 21 – pg. 212, line 16). The requested ratio in the Defendants' Post-Hearing Memorandum would appear to differ from Dr. Dudley's conclusion in his Expert Report (DE 178, Exhibit B, pg. 28) that "the ratio is less than 40:1 and perhaps less than 1:1" and his testimony at trial.

chemical structure that is substantially similar to a Controlled Substances Act Schedule I controlled substance referenced in the Sentencing Guidelines. Dr. Willenbring holds a Ph.D. in Organic Chemistry from the University of California at Davis and completed his doctoral fellowship at the University of Pittsburgh in the department of anesthesiology. Dr. Willenbring has worked at the DEA since January 1, 2013 (Government Exhibit 1). Dr. Willenbring testified, without objection, as the Government's expert in chemistry. He has testified and been accepted as an expert in chemistry in other federal proceedings throughout the country (Government Exhibit 2).

Dr. Willenbring's main responsibility at the DEA is to evaluate substances for their controlled status under the Controlled Substances Act. Dr. Willenbring rendered two expert opinions which are summarized in his Rule 16 Summary of Expert Opinion and Bases as to Ethylone and Dibutylone HCl (Government Exhibits 3 and 5, respectively). With respect to Ethylone, Dr. Willenbring opines that under the Guidelines, Ethylone is substantially similar in chemical structure to 3,4-methylenedioxy-N-methylamphetamine (MDEA). Dr. Willenbring testified that the core structure of Ethylone and MDEA is phenethylamine and that each substance shares the same core chemical structure and are both substituted with the same substituents at the α -position, nitrogen (N) atom, and 3,4-positions. The differences between these two substances—that Ethylone has an additional substitution of an oxygen (O) atom (referred to as a ketone or carbonyl group) at the β -position of the phenethylamine core—is, according to Dr. Willenbring, a minor difference; therefore, he concludes within a reasonable degree of scientific certainty that Ethylone is substantially similar in chemical structure to MDEA, a Schedule I substance in the Guidelines (Government Exhibit 3).

With respect to Dibutylone HCl, Dr. Willenbring opines that under the Guidelines, Dibutylone HCl is substantially similar in chemical structure to 3,4-methylenedioxy-N-methylamphetamine (MDMA). Dr. Willenbring compared Dibutylone HCl to MDMA and went forward with that comparison. He did not, for example, make a similar evaluation of the similarity or lack thereof between Dibutylone HCl and methcathinone. (Transcript of Sentencing Hearing ("Transcript"), Volume I, pg. 82, lines 16-23). Dr. Willenbring acknowledged that while Dibutylone HCl can be substantially similar to

more than one substance, there was a consensus within his unit at the DEA that Dibutylone HCl be compared to MDMA (Transcript, Volume I, pg. 84, lines 11-15).

As with Ethylone, Dr. Willenbring testified that the core structure of Dibutylone HCl and MDMA is phenethylamine and that each substances shares the same core chemical structure and are both substituted as the α -position, nitrogen (N) atom, and 3,4-positions. The differences between these two substances—an oxygen atom (ketone) substitution (at the β -position) and two additional carbon units (at the α -position and nitrogen atom)—are, as Dr. Willenbring opines, minor in nature; accordingly, he concludes that Dibutylone HCl is substantially similar in chemical structure to MDMA, also a Schedule I substance in the Guidelines (Government Exhibit 5). In conclusion, the minor differences Dr. Willenbring found when comparing Ethylone to MDEA and Dibutylone HCl to MDMA were “small changes, minor changes” and, in “the context of the whole substance, they were not significant” to his determination that they substantially similar to one another. (Transcript, Volume I, pg. 80, lines 1-10, DE 216). Dr. Willenbring testified that the type of modifications seen in Ethylone and Dibutylone HCl are of the type “usually to attempt to evade chemical control, a specific listing of substances.” (Transcript, Volume I, pg. 47, lines 6-8, DE 216). Mr. Willenbring, importantly, also testified that he cannot come to court and testify about the substantial similarity of chemical structures and present a Rule 16 expert report unless there is unanimous consensus as to that conclusion among the chemists in his unit. (Transcript, Volume I, pg. 78, lines 4-6, 14-22).

The Government next presented evidence through testimony from Dr. Jordan Trecki, a Pharmacologist with the Drug and Chemical Evaluation Section of the Diversion Control Division at the DEA; he was called to testify as to the second and third factors listed in U.S.S.G. §2D1.1, Application Note 6 (B) and (C)—specifically, whether Ethylone and Dibutylone HCl involve a stimulant effect on the nervous system that is substantially similar to a Controlled Substances Act Schedule I controlled substance referenced in the Sentencing Guideline whether the potency of these two substances is substantially similar to a Schedule I controlled substance referenced in the Guidelines. Dr. Trecki holds a Ph.D. in Pharmacology from Temple University School of Medicine and was a post-doctoral research

fellow at Georgetown University Medical Center, Department of Neuroscience. Pharmacology is the study of how a drug will interact and affect the body (Transcript, Volume I, pg. 91, lines 1-2). Following his work at Georgetown University, Dr. Trecki worked as a toxicologist with the Environmental Protection Agency (EPA) for two years. Dr. Trecki has worked at the DEA since 2012 (Government Exhibit 6). Dr. Trecki testified as the Government's expert in pharmacology. He has testified as an expert in pharmacology in other federal proceedings throughout the country (Government Exhibit 7).

Dr. Trecki's main responsibility at the DEA is to research and report on various assigned licit or illicit substances. He belongs to a section of the DEA comprised of pharmacologists and, like Dr. Willenbring, his unit comes to a consensus and presents that opinion to the supervisors. (Transcript, Volume I, pg. 88, lines 23-25, pg. 89, lines 9-15, DE 216). Dr. Trecki rendered two expert opinions which are summarized in his Rule 16 Summary Reports as to Ethylone and Dibutylone HCl (Government Exhibits 8 and 9, respectively). With respect to Ethylone, Dr. Trecki opines that under the Sentencing Guidelines, the stimulant effects of Ethylone on the central nervous system are substantially similar to 3,4-methylenedioxy-N-ethylamphetamine (MDEA) and while Ethylone has been shown to be less potent in the drug discrimination assay than MDEA, the effects of Ethylone are substantially similar to MDEA. Dr. Trecki testified about in vitro or test tube studies that have been completed to support his opinion that Ethylone has a stimulant effect on the central nervous system (Transcript, Volume I, pg.123, lines19-22). Dr. Trecki described that Ethylone and MDEA inhibit various transmitters, such as dopamine transmitters, and that is consistent with both of the substances having a stimulant effect on the central nervous system. (Transcript, Volume I, pg. 123, line 23 – pg. 124, line 22). With respect to Dibutylone HCl, Dr. Trecki opines that under the Guidelines, the stimulant effects of Dibutylone HCl on the central nervous system are expected to be substantially similar to 3,4-methylamphetamine (MDMA). This was the first time that Dr. Trecki offered testimony with respect to Dibutylone HCl (Transcript, Volume I, pg. 96, lines 19-21). Dr. Trecki testified that in vivo studies have not yet been completed and thus, he relied upon the in vitro study and the case reports to form his opinion that Dibutylone HCl is expected to have a stimulant effect on the central nervous system that is substantially similar to that of MDMA (Transcript,

Volume I, pg. 130, line 17- pg. 131, line 8). Dr. Trecki acknowledged that potency cannot be determined from an in vitro study (Transcript, Volume I, pg. 143, lines 8-11). Dr. Trecki rendered his expert opinions within a reasonable degree of scientific certainty. (Transcript, Volume I, pg. 102, lines 9-11).

On January 31, 2017 and February 1, 2017, the Defendants presented evidence through the testimony of Dr. Gregory Dudley and Dr. Anthony DeCaprio. Dr. Dudley testified first on behalf of the Defendants Julius Reason III, Venteria Reason and Natasha Thames as to first factor listed in U.S.S.G. §2D1.1, Application Note 6(A) as to Dibutylone HCl—specifically, whether Dibutylone HCl has a chemical structure that is substantially similar to a controlled substance referenced in the Sentencing Guidelines. As to Defendants Julius Reason III and Venteria Reason, Dr. Dudley testified as to the first factor as it relates to Dibutylone HCl and Ethylone; he further testified on behalf of Defendants Julius Reason III and Venteria Reason as to the second and third factors listed in U.S.S.G. §2D1.1, Application Note 6 (B) and (C) regarding Ethylone only—specifically, whether Ethylone involves a stimulant effect on the nervous system that is substantially similar to a Controlled Substances Act Schedule I controlled substance referenced in the Guideline and whether the potency of Ethylone is substantially similar to a Schedule I controlled substance referenced in the Guidelines.

The Government objected to Dr. Dudley testifying as an expert in pharmacology.² The Court overruled the objection and permitted Dr. Dudley to render opinion testimony in chemistry and pharmacology. The Court did not rule that Dr. Dudley was to be designated as an expert witness in pharmacology; rather, it ruled that Dr. Dudley would be allowed to present opinion testimony and that the Court would consider the appropriate weight to afford Dr. Dudley's testimony in light of his background, education and experience. Although Dr. Dudley has been accepted by some courts as an expert in the field of pharmacology, the Government presented, through cross-examination of Dr. Dudley, that in certain cases in which he testified, Dr. Dudley was not found to be qualified by the court as an expert in pharmacology (Transcript, Volume II, pg. 34, line 9 – pg. 37, line 22).

² There was no objection to Dr. Dudley rendering expert testimony in the field of chemistry.

Dr. Dudley holds a Ph.D. in Organic Chemistry from the Massachusetts Institute of Technology and was a NIH Postdoctoral Fellow at the Sloan-Kettering Institute for Cancer Research from 2000-2002 (Defendants' Julius Reason III and Venteria Reason Exhibit 5, DE 210). Dr. Dudley does not hold a Ph.D. in Pharmacology. Dr. Dudley did not pass any exams in pharmacology for his Ph.D.; his doctoral dissertation was in organic chemistry, not pharmacology; he has not taken exams in pharmacology; and he works in the area of chemical synthesis (Transcript, Volume II, pg. 30, line 11 – pg. 31, line 15). Dr. Dudley has been a professor at West Virginia University and Chair of the Department of Chemistry since 2016. Prior to joining the faculty of the University of West Virginia, Dr. Dudley began his career at Florida State University in 2002, where he became an Associate Professor with tenure in the Department of Chemistry and Biochemistry and had assumed Associate Chair responsibilities in these departments. (Transcript, Volume I, pg. 172, lines 14-25 and pg. 173, line 1, DE 216; Defendants' Julius Reason III and Venteria Reason Exhibit 5). Dr. Dudley has not conducted in vitro studies, in vivo studies or drug discrimination studies as part of his professional work. (Transcript, Volume II, pg. 63, line 12 – pg. 64, line 6).

Dr. Dudley rendered two opinions which are summarized in his "Expert Reports" as to Dibutylone HCl and Ethylone (Defendants' Julius Reason III and Venteria Reason Exhibit 6, DE 178, Exhibit B and C). With respect to Dibutylone HCl, Dr. Dudley opines that Dibutylone HCl is not "substantially similar" in chemical structure to a controlled substance listed in the Guidelines, and that its pharmacological effects on the human nervous system are not characterized well enough to make informed decisions. Dr. Dudley further opines that, at this time, it would not be scientifically appropriate to equate Dibutylone HCl with any listed substance (Defendants' Julius Reason III and Venteria Reason Exhibit 6, DE 178, Exhibit B). While Dr. Dudley notes that Dibutylone HCl incorporates a methylenedioxy (MD) ring, similar to MDMA, a ketone functional group, similar to methcathinone and a second N-methyl group, similar to dimethylamphetamine, he does not believe that it would be appropriate to designate any one of these comparable substances as "most comparable" and/or "substantially similar" to Dibutylone HCl in chemical structure. Dr. Dudley testified that he would classify Dibutylone HCl with cathinones and

MDMA with amphetamines (Transcript, Volume II, pg. 23-2; pg. 205, lines 5-7). Because three of Dibutylone HCl's structural features are associated with downward adjustments in the marijuana equivalency ratios, and the fourth is hypothetically associated with reduced potency, Dr. Dudley opines that the marijuana equivalency ratio for Dibutylone HCl should be less than 40:1 and perhaps less than 1:1. (Defendants' Julius Reason III and Venteria Reason Exhibit 6, DE 178, Exhibit B, pg.28). With respect to Ethylone, Dr. Dudley opines that this substance should be sentenced at a level equal to, or slightly less than, methylone and that both Ethylone and methylone should be sentenced at levels significantly lower than MDMA and MDEA, which are the most comparable substances in the Guidelines (Defendants' Julius Reason III and Venteria Reason Exhibit 6, DE 178, Exhibit C). Dr. Dudley finds it hard to justify using a marijuana equivalency for methylone higher than 100:1 and given that Ethylone is "substantially similar to methylone in structure and that the early indications are that it is similar but less potent in its pharmacological activity, the marijuana equivalency of Ethylone should be less than or equal to that of methylone (Defendants' Julius Reason III and Venteria Reason Exhibit 6, DE 178, Exhibit C).

Defendant Natasha Thames, on her own behalf and on behalf of Defendant's Julius Reason III and Venteria Reason, next presented the testimony of Dr. Anthony DeCaprio. Dr. DeCaprio was called to testify as to the second and third factors listed in U.S.S.G. §2D1.1, Application Note 6 (B) and (C)—specifically, whether Dibutylone HCl involves a stimulant effect on the nervous system that is substantially similar to a Controlled Substances Act Schedule I controlled substance referenced in the Sentencing Guideline and whether the potency of Dibutylone HCl is substantially similar to a Schedule I controlled substance referenced in the Guidelines. Dr. DiCaprio is an Associate Professor of Chemistry and Biochemistry and serves as the Director of the Forensic and Analytical Toxicology Facility and the Forensic Certificate Program for the International Forensic Research Institute at Florida International University. He received his Ph.D. in Toxicology from Albany Medical College. He worked as a research scientist in human toxicology with the New York State Department of Health, Wadsworth Laboratories prior to his academic appointments at the University of Albany, the University of Massachusetts at Amherst and then, FIU. (Defendant Natasha Thames Exhibit 3, DE 193). Dr. DiCaprio opined that the

only way to know with certainty what the relative activity and potency of any two drugs is in humans is to conduct an experiment in humans and anything else is less reliable, and in some cases, much less reliable. (Transcript, Volume II, pg. 85, lines 12-16, DE 217). Dr. DiCaprio opined that while in vitro studies are reliable, insofar as they are widely accepted in science for the purpose of generating early data, he does not think that they are adequate to answer the question of substantial similarity in and of themselves but rather, they provide some data to develop an hypotheses (Transcript, Volume II, pg. 88, lines 5-13, DE 217). Dr. DiCaprio did offer the opinion that, using the available data and making a prediction based on that data, MDMA is five times as potent as methylene for pharmacological end points and, Ethylone is likely to be the same potency as methylene, or possibly somewhat less. Dr. DiCaprio also opined that the potency of buytlone is the same as Ethylone. (Transcript, Volume II, pg. 105, lines 8-23). As to Dibutylone HCl, Dr. DiCaprio opined that it is one of the compounds along with others that might be predicted or expected to be pharmacologically similar to MDMA. (Transcript, Volume II, pg. 106, lines 3-9). He testified that while Dibutylone HCl is similar pharmacologically to MDMA, he could not go so far as to opine that the two substances were substantially similar. (Transcript, Volume II, pg. 112, lines 2-9). As for pharmacological potency, Dr. DiCaprio opined that the available data is too limited to make firm conclusions regarding its relative potency in comparison to either methylene or MDMA. Ultimately, Dr. DiCaprio rendered the opinion that the appropriate marijuana equivalency ratio for Dibutylone HCl should be no more than 100:1.

The Eleventh Circuit in *United States v. Brey*, 627 F. App'x 775 (11th Cir. 2015), considered the issue of the proper ratio of Ethylone to marijuana under the Guidelines. The Government argued at the sentencing hearing in *Brey*, as in this case, that the 1:500 ratio should apply to Ethylone because the first two factors under the Application Note 6, chemical structure and effect on the user, favored the Government³, while the third factor, "potency", was an "unknown" that should be considered "neutral" so "the scales tip in favor of the Government". *Id.* at 778. At the sentencing hearing in *Brey*, as here, the

³ The defense stipulated to the government's position regarding the similarity of MDEA and Ethylone as to both chemical structure and effect. 627 F. App'x at 781.

district court heard from two Government experts from the DEA—one chemist and one pharmacologist. *Id.* at 777-78. Dr. Daniel Willenbring testified as an expert in chemistry, as he has testified in this case. *Id.* Dr. Casandra Prioleau testified as an expert in pharmacology. *Id.*

Dr. Willenbring testified in *Brey* that Ethylone and MDEA were very similar in chemical structure and that there is no drug in the Sentencing Guidelines that was a better match for Ethylone than MDEA. *Id.* Dr. Willenbring also noted the one difference between Ethylone and MDEA, the “beta Keto”, an oxygen atom added to MDEA to make it Ethylone. *Id.* at 778. Dr. Willenbring has offered the very same testimony in this case and specifically characterized the aforementioned structural difference as minor. Based on this testimony, the district court in *Brey* concluded that the first factor in application Note 6 favored the Government’s argument.

Dr. Prioleau, like Dr. Trecki in this case, testified in *Brey* that Ehtylone is “expected to have a stimulant effect in the central nervous system that is substantially similar to that of MDEA.” *Id.* at 778. Dr. Prioleau was not aware of any human or animal studies on the potency of Ethylone, and she admitted that Ethylone could be more potent, less potent than, or as potent as MDEA or methylone. *Id.* As noted above, Defendant’s expert, Dr. Dudley, reasoned that because early studies indicated that Ethylone was less potent than methylone, the marijuana equivalency of Ethylone should be less than that of methylone (Defendants’ Julius Reason III and Venteria Reason Exhibit 6, DE 178, Exhibit C). But despite Dr. Prioleau’s testimony in *Brey* that Ethylone could be less potent than methylone, the district court held, and the Eleventh Circuit affirmed the finding, that MDEA was the most closely related substance to Ehtylone under Application Note 6 to U.S.S.G. § 2D1.1. The Court did not agree with *Brey*’s argument that the lack of evidence of potency was fatal to the Government’s position because Application Note 6 does not impose an absolute duty on the Government to produce evidence about all three factors; rather it requires only that the district court consider the three factors “to the extent practical.” Application Note 6; *Brey*, 627 F. App’x at 780.

Following the *Brey* opinion, this Court issued an Order in *United States v. Bully*, 15-cr-80068, in which it found that MDEA is the most closely related substance referenced in the Guidelines in structure

and effect to Ethylone, and as a result, should carry the same ratio of 1 gram of substance to 500 grams of marijuana. In *Bully*, this Court relied upon the expert testimony of Dr. Thomas DeBerardino, in the area of chemistry, and upon the testimony of Dr. Jordan Trecki, in the area of pharmacology. Both were employed with the DEA at the time of their testimony. Other courts similarly have found that MDEA is the most closely related substance referenced in the Guidelines in structure and effect to Ethylone and thus, should carry the same ratio of 1 gram of substance to 500 grams of marijuana. See *United States v. Pangourelas*, 14-cr-303-T; *United States v. Chauca*, 14-cr-409-T; *United States v. Palfalvi*, 14-cr-79-FtM038DNF; *United States v. Kuhn*, 14-cr-485-T-26TGW; and, as noted in the Government's Post-Hearing Memorandum at footnote 1 (DE 226), according to the DEA, the courts have also applied the 500 to 1 ratio for Ethylone in *United States v. Hernandez*, 15-cr-20755; *United States v. Kelly*, 15-cr-41; and *United States v. Warner*, 16-cr-16. At least one other court since *Brey* has adopted methcathinone as the best comparator for Ethylone. See *United States v. Holmes*, 2016 U.S. Dist. LEXIS 54044 (D. Hawaii 2016).

The Court is not aware of, nor have the parties brought to the attention of the Court, any case law or court proceedings wherein a determination was made regarding the appropriate ratio for Dibutylone HCl. Nor has this Court previously addressed the issue. The Government has, however, put on testimony by a DEA chemist and pharmacologist that was extremely similar to the testimony regarding Ethylone that was presented (and credited) in both the *Bully* and *Brey* cases. The Court finds, based on the testimony by Dr. Willenbring and Dr. Trecki regarding the Application Note 6 factors as they apply to Dibutylone HCl, that the Government's proposed ratio of 500:1 is the appropriate ratio.

Dr. Willenbring's testimony regarding the comparison between Dibutylone HCl and MDMA was similar to his testimony regarding the comparison between Ethylone and MDEA. He opined that both Dibutylone HCl and MDMA share a core structure—phenethylamine—and that both are substituted at the α -position, nitrogen (N) atom, and 3,4-positions. In contrast with these structural similarities, Dr. Willenbring testified that the structural differences, outlined above, were not only minor, but were the sort usually made "to attempt to evade chemical control, a specific listing of substances." (Transcript, Volume I, pg. 47, lines 6-8, DE 216). The Court finds these conclusions particularly credible. Not only

are they the conclusions of an Organic Chemistry Ph.D whose main responsibility at the DEA is the evaluation of substances for their controlled status under the Controlled Substances Act, they are conclusions that cannot be expressed absent unanimous consensus of all other chemists in his unit. Thus, the Court finds that the first factor outlined in Application Note 6—chemical structure—favors the Government.

Dr. Trecki testified that the stimulant effects of Dibutylone HCl on the central nervous system are expected to be substantially similar to MDMA. This testimony was couched because in vivo studies, which would allow for a more scientifically reliable assessment of the relative activity of Dibutylone HCl, have yet to be conducted. Dr. Dudley and Dr. DiCaprio both opined that, in light of this fact, it would be premature to conclude that there is substantial pharmacological similarity between Dibutylone HCl and MDMA.⁴ However, Dr. Trecki testified that his conclusion is supported by collective knowledge including the case report; in vitro studies; and historical information about the drug including structure, modifications made to it, etc. The Court finds that Dr. Trecki's conclusion is more credible than those of Dr. DiCaprio or Dr. Dudley. Not only is Dr. Trecki's opinion the conclusion of a Pharmacology Ph.D whose main responsibility at the DEA is to research and report on various assigned licit or illicit substances, it could not be expressed absent unanimous consensus of all others in his unit. The Court also notes that Dr. Dudley's pharmacological testimony that the effects of Dibutylone HCl are not well characterized enough to inform an analogy to a controlled substance listed in the Guidelines was afforded less weight for the reasons discussed *supra*, including that Dr. Dudley does not hold a Pharmacology Ph.D and works in the area of chemical synthesis. Thus, the Court finds that the first factor outlined in Application Note 6—effect on the user—favors the Government.

Dr. DiCaprio and Dr. Dudley also opined about the lack of information regarding potency, given that in vivo studies have yet to be conducted. Dr. Trecki acknowledged in his testimony that potency cannot be determined from an in vitro study. The situation is analogous to that in *Brey*, wherein Dr.

⁴ The Court notes that despite this alleged dearth of information both Dr. DiCaprio nonetheless went on to compare the pharmacological effects of Dibutylone HCl with those of other substances not listed in the Guidelines.

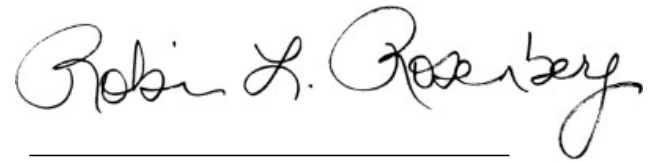
Prioleau acknowledged that because of a dearth of human or animal studies on the potency of Ethylone, it could be more potent, less potent than, or as potent as MDEA or methylone. *Id.* This ambiguity as to potency was not fatal to the Government's argument in *Brey*. And it is not fatal here. As in *Brey*, the balance tips in favor of the Government because the chemical structure and effect on the user factors favor the Government's argument while the third factor, potency, is neutral.

The Court has considered "to the extent practicable," the following three factors: (1) chemical structure, (2) effect on the user (whether stimulant, depressant, or hallucinogenic), and (3) relative potency of Ethylone and Dibutylone HCl. The Court has considered the arguments and evidence presented by the Government and the Defendant regarding the substance most closely related to Ethylone and Dibutylone under Application Note 6 to U.S.S.G. § 2D1.1. The Court finds that the Government has proven, by a preponderance of the evidence, with reliable and specific evidence that Ethylone is most closely related to MDEA and so should carry the same conversion ratio of 1 gram of substance to 500 grams of marijuana that Dibutylone HCl is most closely related to MDMA and so should carry the same conversion ratio of 1 gram of substance to 380 grams of marijuana. The Court found the testimony of the Government's experts to be credible. The experts were qualified to testify about the matters on which they opined and offered reliable scientific evidence to support their conclusions. With respect to the chemical structure of the substances, the Court found that Dr. Willenbring offered persuasive testimony that Ethylone is substantially similar to MDEA and Dibutylone HCl is substantially similar to MDMA. Similarly, the Court found persuasive Dr. Trecki's conclusions that Ethylone is most similar to MDEA and Dibutylone HCl is substantially similar to MDMA, finding that each substance has a stimulant effect on the central nervous system and a similar phenethylamine core structure and Dibutylone HCl is expected to have a stimulant effect on the central nervous system that is substantially similar to that of MDMA.

For the foregoing reasons, it is hereby **ORDERED and ADJUDGED** that the Defendants', Julius Reason III, Natashia Thames and Venteria Reason, Objections (DE 196, 175 and 177, respectively) to the Presentence Reports ("PSI") (DE 215, 186 and 208, respectively) and specifically the following objections: Defendant Julius Reason's Objections (DE 196, para. 4) to paragraph 61 and 62 of the PSI

(DE 215) in which Defendant Julius Reason III “objects to the 500:1 ratio for Dibutylone HCI and Ethylone”; Defendant Natashia Thames’ Objections (DE 175, para. 3) to paragraph 52 of the PSI (DE 186) in which Defendant Thames “objects to the ratio of dibutylone to marijuana (1 to 500)”; and Defendant Venteria Reason’s Objections (DE 177, pg. 5) to paragraph 61 of the PSI (DE 208) in which Defendant Venteria Reason objects “to the 500:1 ratio for Dibutylone HCI and Ethylone” are **OVERRULED.**

DONE and ORDERED in Chambers, at West Palm Beach, Florida, this 24th day of February, 2017.

A handwritten signature in black ink, reading "Robin L. Rosenberg". The signature is written in a cursive, flowing style. The first name "Robin" is written in a larger, more prominent script, followed by "L." and "Rosenberg". The signature is positioned above a horizontal line.

ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

cc: Counsel of Record