UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. Case No. 00-80756

KEITH PRESLEY, HONORABLE AVERN COHN

Defendant.

_____/

SENTENCING MEMORANDUM ON REMAND*

I.

Defendant Keith Presley is before the Court for resentencing on a remand from the Court of Appeals for the Sixth Circuit. See United States v. Davis, 430 F.3d 345 (6th Cir. 2005). Presley is sentenced to 120 months on Count 1, forty-eight (48) months on Count 2, and 120 months on Count 12. The sentences are to run concurrently and are to be followed by five (5) years on supervised release under the standard terms and conditions of this District.

The reasons for these sentences follow.

II.

A.

1.

Presley, together with others, and particularly Kevin Davis, were involved in a

* This Memorandum explains the reasons for the sentences imposed on defendant on December 19, 2006 and is part of the record of the sentencing.

large scale drug conspiracy and money laundering operation dealing in cocaine. The nature of Presley's and Davis' criminal activities are described in the Court of Appeals' decision. While the Presentence Reports put Presley at a higher level in the hierarchy of culpability of the participants in the conspiracy than Davis, both were deeply involved and responsible for the amounts of cocaine involved and the money laundered. This is particularly made clear in the Offense Conduct portion of each of the Presentence Reports relating to Presley and Davis. Presley and Davis went to trial;[1] others involved pled guilty. The counts of their convictions were as follows:

A. Presley: Count I, 21 U.S.C. §§846 and 841; Conspiracy to Distribute and Possess With Intent to Distribute Cocaine

Count 2, 21 U.S.C. §843(d), Use of a Communication Facility to Commit a Drug Offense

Count 12, 18 U.S.C. §1956(a)(1)(A)(I) and (B)(I) and 1956(h), Conspiracy to Launder Monetary Instruments

B. Davis: Count 1, 21 U.S.C. §§846 and 841, Conspiracy to Distribute and Possess With Intent to Distribute Cocaine

Count 12, 18 U.S.C. §1956(a)(1)(A)(I) and (B)(I) and 1956(h), Conspiracy to Launder Monetary Instruments

Count 15, 18 U.S.C. §1956(a)(1)(B)(I) and 18 USC §2, Laundering of Monetary Instruments, Aiding and Abetting

Notwithstanding the differences in the counts of conviction, Presley and Davis were equally culpable, and as co-conspirators, responsible overall for the same quantity of cocaine and amount of money laundered. See U.S.S.G. §1B1.3(a)(1) and comment n.2 and United States v. Campbell, 279 F.3d 392 (6th Cir. 2002). Each scored the

[1]Frederick Davis, Kevin Davis' brother, also went to trial and was acquitted.

same under the guidelines as to Offense Level. Presley, because of prior convictions, none of a serious nature, scored Criminal History II, while Davis scored Criminal History I. The Offense Level computation of each is attached as Exhibits A and B.

Excerpts from the Presentence Reports relating to Guideline Provisions read as follows:

A. Presley: Based on a total offense level of 42 and a Criminal History Category II, the guideline imprisonment range is 360 months to life. The statutory minimum sentence for Count 1 is 120 months, the statutory maximum sentence for Count 2 if 48 months, and the statutory maximum sentence for Count 12 is 240 months. Pursuant to §5G1.2(c), as the sentence imposed on the count carrying the highest statutory maximum is adequate to achieve total punishment, the sentences on all counts shall run concurrently.

B. Davis: Based on a total offense level of 42 and a Criminal History Category I, the guideline imprisonment range is 360 months to life. As the statutory maximum sentence for Counts 1, 12 and 15 is 20 years, the Court must impose the custodial portion of the sentence on a combination of Counts 1, 12 and 15, that will equal the total punishment, 360 months, pursuant to §5G1.2(d).

The Probation Office's attributions of amounts of cocaine are described in the attachment to its letter to the Court dated August 5, 2002 (Exhibit C attached). In the government's sentencing memorandum dated January 3, 2003, there is a detailed description of the amount of cocaine the government argued should be attributed to each, which included amounts not attributed to each by the Probation Office. In general, the government attributed over 200 kilograms of cocaine to each. Additionally, the government described in detail and justified the role-in-offense enhancement which increased the Offense Level of each by four levels.

3.

Both Presley and Davis contested both the cocaine amounts and role adjustments urged by the government. At the sentencing hearings, Davis on April 1, 2003, and Presley on April 25, 2003, the Court made findings, relatively brief, consistent with the cocaine amounts and role enhancements described in the Presentence Reports.

The sentences imposed were as follows:

A. Presley: Count 1 - 360 months

Count 2 - 48 months

Count 12 - 210 months

The sentences were to run concurrently.

B. Davis: Count 1 - 240 months

Count 12 - 48 months

Count 15 - 120 months

The sentences on Counts 1 and 12 were to run concurrently; the sentence on Count 15 was consecutive, for an aggregate sentence of 360 months.

The sentences were predicated on the amount of cocaine involved (150 kilograms or more) and mandatory under the guidelines.

B.

Presley and Davis each appealed. Each conviction was affirmed except as follows: prior to trial Davis, moved to suppress money seized from him following a

traffic stop. The Court denied the motion. United States v. Davis, 2002 WL 230725 (E.D. Mich. Feb. 5, 2002). The Court of Appeals in a 2 to 1 decision held the ruling in error and remanded the case as to Davis stating:

> Having determined that the search of Davis's vehicle violated the Fourth Amendment, and therefore that the district court erred in denying Davis's motion to suppress evidence seized during the search, we remand the case to the district court for a determination as to whether Davis's conviction still stands. The district court must consider whether evidence seized during the other searches was the fruit of a poisonous tree, or whether there are exceptions to this exclusionary rule under which the evidence seized from Davis's home and the storage locker is admissible[2]

Davis, 430 F.3d at 358.

The Court of Appeals, however, vacated each sentence in light of United States v. Booker, 543 U.S. 220 (2005) on the grounds that the Court relied on judge found facts as to the quantity of drugs attributable to Presley and Davis, and their roles in the offense. The Court of Appeals said particularly:

> The defendants raise other sentencing claims, alleging that the district court erred in imposing a role-in-the-offense sentence enhancement pursuant to U.S.S.G. §3B1.1, and that the district court improperly calculated the drug quantity attributable to each defendant for sentencing purposes. We need not address these claims now given that the district court must reconsider the defendants' sentences in their totality upon remand. It would be unnecessary for us to consider whether, for example, the district court properly calculated the quantity of drugs attributable to each defendant given that this quantity may change upon resentencing as a result of this opinion. Instead, we urge the district court to consider carefully and document the appropriate guideline range to be considered as part of resentencing. If after resentencing the defendants still believe their sentences to be erroneous they may challenge

[2]Importantly, the Court of Appeals did not order a new trial for Davis.

their sentences on appeal.

Id. at 362.

The Judgment entered by the Court of Appeals reads:

> In consideration whereof, it is ordered that the order of the district court denying defendant Kevin Davis's motion to suppress evidence seized from the car is reversed and the case is remanded for further proceedings consistent with the opinion of this court. It is further ordered that defendant Keith Presley's conviction is affirmed, the sentences of both defendants Davis and Presley are vacated, and the cases are remanded for resentencing consisted with *United States v. Booker*.

The mandate issued on January 12, 2006; a certified copy of the mandate was docketed in the district court on February 27, 2006.

C.

1.

Prior to the docketing of the mandate, the Court held a status conference on December 14, 2005. The government appeared through the Assistant United States Attorney (AUSA-1) who coordinated the handling of the sentencing of Presley and Davis and the appeal (the Assistant United States Attorney who prosecuted the case had transferred to the Department of Justice in Washington, DC.) Nothing was accomplished at the status conference because the mandate had not yet been docketed. At the status conference, the Court did say it would set a date for resentencing Presley, and asked for an update to his presentence report. Davis noted that he intended to file a motion for a new trial; the motion was filed on February 2, 2006 and included a prayer to suppress evidence. Because of the events described below

the government never filed an answer to the motion.

2.

A second status conference took place on March 25, 2006. At this conference, the government as to Davis was represented by a second Assistant United States Attorney (AUSA-2). The resentencing of Presley awaited a follow-up to the Presentence Report. The matter as to Davis was put over thirty (30) days. From this point on the case as to Presley and the case as to Davis took separate tracks. There is no indication that AUSA-1 and AUSA-2 either discussed or coordinated their efforts. Each, as will be seen, proceeded separately in dealing with the government's end of the case as to Presley and the case as to Davis.

3.

As to Davis, the following occurred:

On May 9, 2006 and May 31, 2006 status conferences took place. At the May 9, 2006 status conference the Court was advised that the case against Davis had been "settled." The Court then requested a supplemental Presentence Report.

At the May 31, 2006 conference, the government and Davis signed a sentencing agreement in which Davis withdrew his pending motion for a new trial, the government agreed to move to vacate the Judgment of Conviction on Counts 1 and 15, and in essence the parties agreed that as to Count 12, the conviction of which stood, an 87 to 112 month sentence under the Sentencing Guidelines was a reasonable range. Davis also agreed to the forfeiture of over 1.2 million dollars, including the $705,880.00 seized from him on April 29, 1999 in Indiana, and the government agreed to release

$135,000.00 of that amount, as well as releasing its claim to a residence owned by Davis.

Clearly, while the sentencing agreement and consent to forfeiture did not so state, the government abandoned any effort to sustain Davis's conviction on the trial record exclusive of the evidence seized in Indiana and ordered suppressed by the Court of Appeals, as well as any effort to re-try Davis. Additionally, the government left Davis with funds to pay his counsel and his family to keep a residence. The reasons for these considerations were not explained to the Court, and as will be discussed, have played a major role in the sentence imposed on Presley on remand.

A revised Presentence Report on Davis was received by the Court on July 20, 2006. Following the filing of sentencing memoranda by Davis and by the government, Davis was sentenced to 96 months custody on October 25, 2006. An Amended Judgment in a Criminal Case memorializing the sentence was filed October 31, 2006, stating that "the sentence is within an advisory guideline range not greater than 24 months, and the Court finds no reason to depart."

4.

As to Presley, on March 29, 2006, the Court requested a "supplemental memo regarding his resentencing in light of Booker." On July 12, 2006, the Court not having received anything from the Probation Office followed up with a second request. On July 27, 2006, the Court received a brief letter from a probation officer noting Presley's role in the offense, attached to which was Exhibit C, which described the quantity of cocaine attributed to him. On September 13, 2006 the Court held a status conference with the

government represented by AUSA-1.

On September 28, 2006 the Government's Booker ReSentencing Memorandum was filed with the Court. The Memorandum included a detailed description of the initial sentencing, the appeal and the drug quantities attributed to Presley, arguing that overall Presley was responsible for over 400 kilograms of cocaine when the cash seized is translated to drug quantities, and therefore "there was ample support in the record for a finding that Presley distributed well over 150 kilograms of cocaine." The Memorandum also discussed in detail the evidence supporting the four level enhancement for Presley's leadership role. The Memorandum concluded:

> Presley's base offense level of 38, coupled with the four-level leadership enhancement, produces a total offense level of 42. Coupled with Presley's criminal history category of II, Presley's applicable guideline range remains 360 months to life. We do not believe that Presley can articulate any unusual factors under 18 U.S.C. §3553(a) which would take his case out of the "heartland" of large-scale drug conspiracy cases or chronic drug-dealing defendants. Accordingly, we submit that Presley should be resentenced to the minimum point of this range – 360 months.

Attached to the Memorandum were transcript excerpts from the trial displaying the testimony which supported the drug quantities attributable to Presley.

Significantly and inexplicably, the Memorandum makes no mention of the 18 U.S.C. §3553(a)(6) factor, "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct."

As can be seen from the history described above, Presley and Davis had similar records and were found guilty of similar conduct. The Memorandum does no more than mechanically apply the quantity factors of the guidelines to justify a 360 month sentence

on remand, and ignores the disparity between the treatment of Presley it argues for and what was about to occur with regard to Davis.

Presley responded with Defendant's Memorandum in Support of Resentencing Consistent With United States v. Booker in which each of the 18 U.S.C. §3553 factors were discussed in a manner favorable to Presley, particularly pointing out (1) Presley's adjustment to prison life, and that he had taken advantage of his incarceration to better himself personally by being a model prisoner, and professionally by completing a course in computer science which would enable him to be better employed upon release; (2) the amount of cocaine attributed to him was overstated citing to the trial record in detail to justify this conclusion; (3) the lack of evidence supporting the role enhancement; and (4) the disparity in the sentence the government urged for him in light of the treatment of Davis and co-defendant Sidney Zanders. This point was not emphasized. Presley urged a 120 month sentence, the mandatory minimum, on
Count 1.

5.

Following an initial sentencing hearing, which the Court cut short because of the failure of the government to justify in writing in advance the disparity in treatment argued for Presley in light of Davis' sentence after having been orally advised of the Court's concerns, the government then filed Government's Supplemental Booker Resentencing Memorandum, in which it endeavored to identify the factors which supported the distinction between Presley and Davis "which in its view warrants the reinstatement of the same guideline sentence for Presley." These factors were

(1) Presley's conviction was upheld. Davis's was reversed. On remand it is likely Davis would have been afforded a new trial.[3]

(2) The government faced significant litigation risks at a second trial.[4]

(3) In light of the uncertainties, the government negotiated a plea agreement with Davis under which the $500,000.00 of the $700,000.00 seized in Indiana was forfeited.[5]

(4) The facts of Presley's conviction supported the 360 month to life guideline range for his sentence.[6]

(5) On the culpability list Presley ranked higher than Davis.[7]

(6) On remand Davis entered a guilty plea, forfeited a significant amount of cash and accepted responsibility as a money launderer.[8]

(7) Davis had no prior criminal record; Presley had a criminal record.[9]

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[3]There is nothing in the record to support this statement; it is self-serving on the part of the government.

[4]This is at odds with the first reason. It appears that the government simply never explored the possibility that the excluded evidence was of a nature that Davis's conviction on Count 1 could be sustained without it.

[5]This reason seems to suggest there was a profit motive involved in making a deal with Davis.

[6]This begs the question.

[7]This is true. However, Davis was as deeply involved in the conspiracy as Presley and was as culpable. Presley's role was not such as to warrant any distinction in treatment and they were treated alike as reflected in the Presentence Reports.

[8]This only repeats what occurred with regard to David. Davis, in the words of the AUSA, was "the beneficiary of what may be characterized as a windfall."

[9]The prior record was not so extensive as to support a substantial difference in the sentence imposed on Presley in contrast to the sentence imposed on Davis. The initial

III.

A.

The precedents regarding the Court's obligation in imposing a sentence are well-known and need not be discussed in detail. See United States v. Buchanan, 449 F.3d 731 (6th Cir. 2006). The beginning point is 18 U.S.C. §3553(a) which provides:

> (a) Factors to be considered in imposing a sentence. The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider
>
> (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
>
> (2) the need for the sentence imposed
>
> > (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
> >
> > (B) to afford adequate deterrence to criminal conduct;
> >
> > (C) to protect the public from further crimes of the defendant; and
> >
> > (D) to provide the defendant with needed educational

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sentences were quantity driven and their criminal histories did not play a role. In a supplemental filing, the government notes that in 2004 Presley pled guilty in Illinois to various state charges, including possession with intent to deliver over 400 grams of heroin and cocaine, for which he was sentenced to twelve concurrent years. The government says that this conviction, which was noted as a pending charge in the Presentence Report, constitutes a prior offense "for which he would be assessed three criminal history points had an updated PSR been prepared." This fact is irrelevant. Assuming the government's calculation is correct, the 2004 conviction would place Presley in criminal history category III as opposed to criminal history category II. However, his guideline sentence would not change based on a higher criminal history; the guidelines remain 360 to life. As stated above, the guidelines score was quantity driven and not based on criminal history. Thus, even if Presley is in a different criminal history category, it is a distinction without a difference.

> or vocational training, medical care, or other correctional treatment in the most effective manner;
>
> (3) the kinds of sentences available;
>
> (4) the kinds of sentence and the sentencing range established for
>
> > (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines;
> >
> > * * *
>
> (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
>
> (7) the need to provide restitution to any victims of the offense.

B.

1.

The Court in imposing a sentence first considers the sentencing guideline range that would be applicable if the Court was required to follow the guidelines, and then goes on to consider the factors set forth in 18 U.S.C. §3553(a), particularly the nature and circumstances of the offense, the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law and to provide just punishment. The Court is also to consider the deterrent factor. Lastly, the Court must consider the need to avoid unwarranted sentence disparity. Here particularly the Court must consider the sentence meted out to Davis, whose circumstances in terms of his culpability as described above, were substantially similar to those of Presley.

As to the factors outside of sentencing disparity, Presley's efforts to argue that

the amount of cocaine attributable to him as argued by the government and previously found by the Court to be overstated, i.e., in excess of 150 kilograms, is not persuasive. There is ample support in the record to attribute the amount described in Exhibit C. Likewise, the role of enhancement of four (4) Offense Levels is amply supported by the record**.** See Offense Conduct description in Presentence Report, attached as Exhibit D.[1] Presley managed and directed Sidney Zanders as well as Holly Baskins-Spear, and there were at least five (5) individuals involved: Presley, Davis, Zanders, Baskins-Spear and Jimmy Austin.

There are, however, considerations in the record to support a variance of the 360 months called for by the guidelines. Presley has used his time in custody to improve his skills in the use of computers, been a model prisoner and in the words of his Memorandum, "has all the tools and commitments necessary to be a law abiding citizen for the rest of his life."[2]

2.

The most important consideration, however, in regard to the sentence imposed on Presley is, however, the need to avoid an unwarranted disparity between his sentence and that imposed on Davis with the agreement of the government.

Initially, in the history of guideline sentencing, appellate courts resisted the application of 18 U.S.C. §3553(a)(6) to sentencing disparities among co-defendants, holding it to be a stricture on sentencing disparity on a national level. See United States v. Toohey, 2005 WL 1220361 (2d Cir. May 23, 2005); Sentencing Disparity Among Co-

[1]The Offense Conduct in Davis' Presentence Report reads substantially the same.
[2]This is in contrast to Davis, whose record in prison as detailed in the Amended Presentence Report has not been exemplary.

Defendants: The Equalization Debate, 6 Fed. Sen. R. 116 (1993), 1993 WL 561438 (Vera Inst. Just.) However, and importantly, the Sixth Circuit in United States v. Williams, 894 F.2d 208 (6th Cir. 1990) reversed what it found to be an inconsistent application of the weapons possession enhancement with regard to co-conspirators, stating:

> Under the theory of co-conspirator liability established in Pinkerton v. United States, 328 U.S. 640, 646-47, 66 S.Ct. 1180, 1183-84, 90 L.Ed. 1489 (1946), the overt act of one partner in crime is attributable to all members of the conspiracy. However, an overt act of one partner cannot be charged against other co-conspirators if it is not charged against the partner who allegedly committed the act, and the act of one partner cannot be charged against other co-conspirators in an inconsistent manner. This would be inequitable. In the present case, the district court at the sentencing hearing decided that defendant Williams, who was present at the drug sale and acquitted of using and carrying a firearm in violation of 18 U.S.C. §924, was not to be given a two-level increase for weapons possession. If Williams' acquittal cast doubt about the appropriateness of using the weapons possession guideline against Williams, this doubt should have precluded its use, based on his conduct, against Blanton and Davis as well. Instead, defendants Blanton and Davis, who were not present at the drug sale or charged with violating 18 USC §924, were given a two-level increase for weapons possession. This is contradictory to the rationale for imputing co-conspirator liability and violates the spirit of the guidelines. One purpose of Congress in establishing the Federal Sentencing Guidelines was to narrow the wide disparity imposed by different federal courts for similar conduct by similar offenders. We find that the district court's inconsistent application of the weapons possession enhancement with regard to co-conspirators Williams, Blanton and Davis created the type of disparity which the Guidelines seek to avoid. It is particularly inequitable to impute the possession of a weapon to co-conspirators who did not commit the conduct relevant to the enhancement, when the act of weapons possession is not used against the co-conspirator who allegedly did commit the relevant conduct. For these

> reasons, we find that it was an abuse of discretion for the district court, without any explanation, to apply the weapons possession enhancement to the sentences of Davis and Blanton, when the court had decided not to apply the enhancement to the sentence of co-conspirator Williams. We, therefore, reverse the decision of the district court on this issue.

Williams,894 F.2d at 212-13.

More recently, in United States v. Tzoc-Sierra, 387 F.3d 978 (9th Cir. 2004), the Ninth Circuit found sentencing disparity among co-defendants to be justifiable grounds for a variance. It said

> The government argues that the downward departure was based solely on impermissible or unsupported grounds, such as Tzoc-Sierra's socio-economic background or his unexceptional post-offense rehabilitation efforts. It seems apparent from the record, however, that the factor that was of paramount importance to the district court was the disparity between Tzoc-Sierra's recommended sentence and the sentences of his co-defendants. Reviewing the downward departure *de novo* under the PROTECT Act, we conclude that the district court's departure is justified by this disparity in sentences among co-defendants. "[A] 'downward departure to equalize sentencing disparity is a proper ground for departure under the appropriate circumstances,' " so long as "the co-defendant used as a barometer for judging the disparity was convicted of the same offense as the defendant." United States v. Caperna, 251 F.3d 827, 830-31 (9th Cir. 2001) (quoting in part United States v. Daas, 198 F.3d 1167, 1180-81 (9th Cir. 1999)). All of Tzoc-Sierra's co-defendants pleaded guilty to the same charge as Tzoc-Sierra, yet received sentences that were lower than his, with the exception of one co-defendant who was also charged with using or carrying a firearm in violation of 18 USC §924(c). The record indicates that Tzoc-Sierra's co-defendants, other than the one who suffered a firearm enhancement, received sentences ranging from 21 to 38 months, with the possibility that one sealed sentence was lower than that. There is no indication that Tzoc-Sierra is any more culpable than the other defendants. Tzoc-Sierra has no criminal history. We conclude, therefore, that a

departure for sentence disparity was justified.

Tzoc-Sierra, 387 F.3d at 980-81 (footnotes omitted).

This same view of § 3553(a)(6) was the basis for variances in other cases. See United States v. Parker, 462 F.3d 273, 276 (3d Cir. 2006) (stating that "[w]here appropriate to the circumstances of a given case, a sentencing court may reasonably consider sentencing disparity of co-defendants in the application of those factors"), United States v. Blackmond, 2006 WL 1676288 (S.D.N.Y. June 14, 2006); United States v. Delarosa, 2006 WL 1148698 (S.D.N.Y. Apr. 27, 2006). See also the discussion in Co-Defendant Disparity As a Basis for a Non-Guideline Sentence, 236 N.Y.L.J. (Aug. 28, 2006), and a follow-up in the Sentencing Law and Policy blog, found at: www.sentencing.typepad.com/sentencing_law_policy/2005/05/can_a_variance_.html as well as United States v. Parker, 462 F.3d 273, 278 (3rd Cir. 2006).

3.

As discussed above, Presley and Davis were both involved in a large scale cocaine conspiracy involving hundreds of kilograms of cocaine and millions of dollars in cash. Both were tried and both were convicted by the same jury. By happenstance, a small portion of the evidence at their trial was found to be excludable as to Davis but not as to Presley. Accordingly, the Court on remand was to review the overall evidentiary basis for the conviction of Davis to see if that conviction could stand without the excluded evidence. The government had an obligation to see if that case could be made. For reasons known only to the government, it chose not to make the effort and entered into a compromise with Davis which resulted in a significantly lower sentence

for him; a “windfall” in the words of the government.

As the Court of Appeals observed in Williams, supra, it would violate the spirit of the guidelines and be particularly inequitable for Davis to receive a 96 month sentence and Presley a 360 month sentence for the same conduct. Booker gives the Court discretion to impose a reasonable sentence sufficient, but no greater than necessary, to comply with the purpose set forth in §3553(a)(2).

The Court is exercising that discretion in a reasoned manner. It is for these reasons that Presley has been sentenced overall to 120 months, the mandatory minimum under Count 1.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: December 19, 2006

Detroit, Michigan

Count 1, Conspiracy to Distribute and to Possess with Intent to Distribute Cocaine

Count 2, Use of a Communication Facility in Committing a Drug Offense

Count 12, Conspiracy to Launder Monetary Instruments

32. The above counts have been grouped, pursuant to § 3D1.2(b). Pursuant to § 3D1.3(a), the offense level is determined by the highest level of the counts, which in this case is Count 1.

33. Base Offense Level: The guideline for a violation of 21 U.S.C. §§ 841 and 846 is found at § 2D1.1(c)(1), where a base offense level of 38 is established for the distribution of 150 kilograms or more of cocaine. 38

34. Specific Offense Characteristics: None. 0

35. Victim Related Adjustment: None. 0

36. Adjustment for Role in the Offense: As the defendant was a leader or organizer of a criminal activity that involved five or more participants, there is a four level increase pursuant to § 3B1.1(a). +4

37. Adjustment for Obstruction of Justice: None. 0

38. Adjusted Offense Level, Counts 1, 12, and 15 (Subtotal): 42

39. Adjustment for Acceptance of Responsibility: None. 0

40. Total Offense Level (Subtotal): 42

41. Chapter Four Enhancements: None. 0

42. **Total Offense Level:** 42

PART B. THE DEFENDANT'S CRIMINAL HISTORY

Adult Criminal Convictions

43. The following information was prepared by the United States Probation Department, Northern District of Illinois.

Offense Level Computa

36. The 2001 edition of the Guidelines Manual has been used in this case.

Count 1, Conspiracy to Distribute and to Possess with Intent to Distribute Cocaine

Count 12, Conspiracy to Launder Monetary Instruments

Count 15, Laundering of Monetary Instruments

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40. Victim Related Adjustment: None. 0

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42. Adjustment for Obstruction of Justice: None. 0

43. Adjusted Offense Level, Counts 1, 12 and 15 (Subtotal): 42

44. Adjustment for Acceptance of Responsibility: None. 0

45. Total Offense Level: 42

46. Chapter Four Enhancements: None. 0

47. **Total Offense Level:** **42**

PART B. THE DEFENDANT'S CRIMINAL HISTORY

Adult Criminal Convictions

48. None.

EXHIBIT C

Paragraph (PRESLEY)	Date of Seizure or Transaction	Amount attributed to Kevin Davis	Amount attributed to Keith Presley	Amounts not attributed to Presley or Davis
13	**July 1998** (Zanders and Davis received ten kilograms of cocaine from PRESLEY)	10 kilograms	10 kilograms	
14	**December 30, 1998** (Trammel stopped by Chicago Police after agents observed him meet with PRESLEY)	N/A	N/A	30 kilograms
14	**December 30, 1998** (Duncan and Dunlap stopped by Chicago Police after agents observed them meet with PRESLEY)	N/A	N/A	65 kilograms
18	**February 6, 1999** (Zanders received ten kilograms of cocaine from PRESLEY)	N/A	10 kilograms	
19	**February 16, 1999** (Money seized from Zanders' house, and Zanders' parents' house)	N/A	N/A	9 kilograms (Equivalency of seized - $169,839.00)
20	**February 17, 1999** (Presley arrested by Southfield Police)	N/A	1 kilogram (Equivalency of seized - $23,000.00)	
21	**March 29,1999,** (Agents observe Baskin-Spears switch vehicles with PRESLEY)	N/A	38 kilograms	
22	**April 29, 1999** (Officers seized money after observing Presley giving Davis detergent boxes)	38 kilograms (Equivalency of seized - $705,880.00)	38 kilograms (Equivalency of seized - $705,880.00)	
25	**December 16, 1999** (agents located stashed money in a storage locker rented out to "Tony Mohammad" (Keith Presley). Locker key found at Davis's home during a search.	109 kilograms (Equivalency of seized - $2,030,000.00)	109 kilograms (Equivalency of seized - $2,030,000.00)	
	TOTAL:	**157 kilograms**	**206 kilograms**	

PART A. THE OFFENSE

Charge(s) and Conviction(s)

1. On July 25, 2000, KEITH PRESLEY was named along with other individuals in an 11 count sealed Indictment filed in the Eastern District of Michigan. Count 1 charged the defendant with Conspiracy to Distribute and to Possess with Intent to Distribute Cocaine, in violation of 21 U.S.C. § 846, and Count 2 charged the defendant with Use of a Communication Facility in Committing a Drug Offense, in violation of 21 U.S.C. § 843. According to the Indictment, the offense conduct took place from in or about 1994 and continued up to and including February 1999. On October 3, 2000, the Indictment was unsealed and a warrant for the defendant's arrest was issued at that time.

2. On November 21, 2000, the Honorable Avern Cohn ordered with petition a writ of habeas corpus ad prosequendum as to the defendant.

3. On January 11, 2001, the defendant, with counsel, made an initial appearance for arraignment before a United States Magistrate Judge in the Eastern District of Michigan. The arraignment was adjourned, and the defendant was detained pending a detention hearing set for January 12, 2001.

4. On January 12, 2001, the defendant, with counsel, appeared before a United States Magistrate Judge and the arraignment was concluded. The defendant entered a plea of not guilty to Counts 1 and 2 of the Indictment. The defendant consented to detention, the writ was discharged, and the defendant was returned to the custody of Cook County, Illinois.

5. On July 31, 2001, KEITH PRESLEY was charged in Counts 1, 2, and 12 of a 15 count sealed Superseding Indictment filed in the Eastern District of Michigan. Count 1 charged the defendant with Conspiracy to Distribute and to Possess with Intent to Distribute Cocaine, in violation of 21 U.S.C. § 846 and 841(a)(1). According to the Superseding Indictment, the offense occurred from in or about 1993, continuing up to and including December 1999. Count 2 charged the defendant with Use of a Communication Facility in Committing a Drug Offense, in violation of 21 U.S.C. § 843(b). According to the Superseding Indictment, the offense occurred on or about February 6, 1999. Count 12 charged the defendant with Conspiracy to Launder Monetary Instruments, in violation of 18 U.S.C. §§ 1956(a)(1)(A)(i), (B)(i) and 1956(h). According to the Superseding Indictment the offense occurred from in or about 1993 through December 1999.

6. On August 9, 2001, the Superseding Indictment was unsealed and the defendant, with counsel, was arraigned before a United States Magistrate Judge. A plea of not guilty was entered, and the defendant was ordered detained pending trial.

7. On January 3, 2002, the defendant was charged in Counts 1, 2, and 12 of a 15 count Second Superseding Indictment filed in the Eastern District of Michigan. The allegations contained in the Second Superseding Indictment are the same as those contained in the First Superseding Indictment.

8. On January 28, 2002, a criminal jury trial began before the Honorable Avern Cohn, United States District Judge.

9. On February 19, 2002, the jury trial concluded, and KEITH PRESLEY was found guilty on Counts 1, 2 and 12 of the Second Superseding Indictment.

10. Due to the defendant's custodial sentence, the defendant was not supervised by the United States Pretrial Services.

The Offense Conduct

11. The following information was obtained from the United States Attorney's Office and the Drug Enforcement Administration (DEA) case agent reports. Information was obtained from the interception of electronic communications, search warrants, surveillance and the utilization of other sources.

12. From 1994, continuing up to and including February 1999, the defendants in this case were involved in a conspiracy to distribute multi-kilograms of cocaine between Chicago, Illinois, and Detroit, Michigan. KEITH PRESLEY would supply quantities of cocaine to Sidney Zanders, Kevin Davis, and others. Zanders would distribute various quantities of cocaine to individuals including: Donnie Northern, Morris Johnson, Antoine Trapp, Andre Abrams, Roderic Rooks, Brian Gresham, Tancred Jones, Julien Burford and Russell Edwards. PRESLEY and Zanders would use couriers to transport the cocaine in vehicles from Chicago to the Detroit metropolitan area. PRESLEY and Zanders would also use couriers and vehicles to transport drug proceeds from Detroit back to Chicago. PRESLEY was identified as the main source of supply.

13. In July 1998, Zanders, PRESLEY and Davis became associated with each other. In November 1998, Zanders and Davis received ten kilograms of cocaine from PRESLEY for a cost of $150,000.00, of which $50,000.00 was contributed by Davis. The transaction took place in Chicago, Illinois, and the cocaine was delivered to Detroit, Michigan, by David Zanders, Sidney Zanders' brother.

14. In 1998, officers of the Chicago (Illinois) Police Department, in conjunction with the DEA, began surveillance on PRESLEY, whom they suspected was a drug dealer. On December 30, 1998, the officers saw PRESLEY meet with Christopher Trammel in a residence in South Holland, a suburb of Chicago, Illinois. Trammel was subsequently stopped, and 30 kilograms of cocaine was seized from his automobile. On the same day, officers saw PRESLEY meet with persons named Duncan and Dunlap at the same residence in South Holland. They were also stopped, and 65 kilograms of cocaine was seized from their automobile.

15. Later on December 30, 1998, the Chicago (Illinois) Police Department executed a search warrant at 1241 East 168th Street, South Holland, Illinois. The officers discovered that the residence was used as a packaging plant for cocaine. The officers found cutting agents, an industrial press for packaging cocaine, industrial size soap detergent boxes, and a mound of detergent was found in the building.

16. In early 1999, PRESLEY began selling cocaine independently to Davis and Zanders. Davis directed the actions of Thomas Patrick, Brock Spearman, Bryant Beaks, William King and Charles Eason. Thomas Patrick aided in loading and unloading the cocaine shipments. Spearman and Beaks helped resell the cocaine. Between January 1999 and March 1999, PRESLEY purchased over $100,000.00 in jewelry. King and Eason helped launder the drug proceeds by purchasing items for Davis. Patrick, Spearman, Beaks, and King have not been indicted.

17. In February 1999, agents observed PRESLEY meet with Holly Baskin-Spears. She was monitored driving towards Michigan before surveillance was discontinued.

18. On February 6, 1999, Zanders received ten kilograms of cocaine from PRESLEY and gave him a laundry box full of money. That same day, PRESLEY and Baskin-Spears discussed their next meeting on the telephone.

19. On February 16, 1999, agents of the DEA executed a search warrant at Sidney Zanders' residence, and his parents' residence. The agents recovered $6,200.00 in currency in Zanders' residence, and $163,639.00 in currency at his parents' house.

20. On February 17, 1999, Zanders called PRESLEY on the telephone to tell him about the DEA searches. Later that same day, officers of the Chicago (Illinois) Police Department executed a traffic stop on PRESLEY and found $23,000.00, a firearm, drug ledgers, and a Western Union receipt. PRESLEY was arrested at that time for two counts of Unlawful Use of a Firearm/Felon; and one count of Carry/Possess a Firearm. The defendant was released on $1,000,000.00 bond. On September 10, 1999, a warrant was issued out of the Cook County Circuit Court, Chicago, Illinois. On November 19, 1999, a warrant for a Violation of Bail Bond was also issued out of the same court.

21. On March 29, 1999, agents observed PRESLEY and Baskin-Spears switching automobiles in Chicago, Illinois. A traffic stop was then conducted on the vehicle operated by Baskin-Spears. As a result of the traffic stop, 38 kilograms of cocaine were seized. The cocaine was to be delivered to Davis. During the traffic stop, officers observed Baskin-Spears on her cellular telephone. Telephone records revealed that she placed five calls to PRESLEY's pager between 8:40 p.m. and 11:00 p.m.

22. On April 29, 1999, Davis met PRESLEY in Chicago, Illinois. During their meeting, PRESLEY gave Davis two detergent boxes which were placed in Davis' Range Rover. A short time later, officers conducted a traffic stop on Davis' Range Rover. Officers discovered the two detergent boxes actually contained United States currency, totaling $705,880.00. It is believed PRESLEY gave this money to Davis as a refund for the previous 38 kilograms of cocaine that was seized from Baskin-Spear's automobile on March 29, 1999.

23. On July 20, 1999, PRESLEY flew from Chicago, Illinois, to Detroit, Michigan, to meet with Kevin Davis. On July 22, 1999, PRESLEY rented a storage locker at Shurgard Storage in Troy, Michigan, under his alias, "Tony Mohammad".

24. On September 13, 1999, PRESLEY was arrested by officers of the Southfield (Michigan) Police Department on an outstanding warrant out of Chicago, Illinois. PRESLEY attempted to use the alias "Tony Mohammad" but he could not remember the identification details of the alias. Officers located seven driver licenses, two social security cards, numerous cellular telephones and $33,000.00 in currency. PRESLEY was transported to the Chicago (Illinois) Police Department, and has been in custody ever since.

25. On December 16, 1999, DEA agents executed a search warrant at Davis' home located at 6960 Leslee Crest, Bloomfield, Michigan. As a result of the search, the agents seized various jewelry, $8,300.00, and the key to the storage unit PRESLEY rented at Shurgard Storage. A search of the storage unit resulted in the seizure of $2,030,000.00, which was hidden in a couch. According to DEA agents, the current street value of one kilogram of cocaine is approximately $18,500.00. Therefore, the cocaine equivalency of $2,030,000.00 is approximately 109 kilograms of cocaine.

26. The defendant, KEITH PRESLEY, will be held accountable for over 150 kilograms of cocaine.

27. The order in the culpability list below is subject to change as more information is received by the government.

CULPABILITY LIST

LEVEL 1
Supplier

Jose Enriqui Castellanos
KEITH PRESLEY
Jimmie Austin

LEVEL 2
Distributor

Sidney Zanders
Kevin Davis