

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

UNITED STATES OF AMERICA)	
)	
)	
v.)	
)	2:14-cr-00069-JDL-9
JEAN VALBRUN,)	
)	
Defendant.)	

**ORDER DENYING THE DEFENDANT’S MOTIONS TO ACQUIT AND
MOTION FOR A NEW TRIAL**

After a two-day jury trial, Jean Valbrun was found guilty on November 24, 2015, of violating 21 U.S.C.A. § 841(a)(1) (2015) and 18 U.S.C.A. § 2 (2015). ECF No. 1013. Before the jury returned its verdict, Valbrun made an oral motion and a renewed oral motion to acquit (ECF No. 1006; ECF No. 1007; ECF No. 1011), both of which the court denied. ECF No. 1008. Valbrun also made a second renewed oral motion to acquit (ECF No. 1011), on which the court reserved ruling and which remains under advisement. ECF No. 1012. Valbrun now renews his motion to acquit (ECF No. 1041) and, alternatively, moves for a new trial (ECF No. 1042). For the reasons discussed below, all three motions are denied.

1. Renewed Motion to Acquit (ECF No. 1041)

Title 21 U.S.C.A. § 841(a)(1) makes it unlawful for anyone to distribute or possess with intent to distribute “a controlled substance.” In Count Nine of the Second Superseding Indictment (“the Indictment”) (ECF No. 530), Valbrun was alleged to have violated § 841(a)(1) when, on about March 16, 2014, he “knowingly and intentionally possessed with intent to distribute a mixture or substance

containing heroin and mixture or substance containing cocaine base[.]” ECF No. 530 at 7.

Valbrun argues that the Indictment “lacks an essential element of the offense,” because it alleges that he possessed heroin and cocaine base, specifically, but does not allege that these drugs are “controlled substances” under the statute, ECF No. 1041 at 2, and that “there was no evidence at all to show that the alleged ‘heroin’ and ‘cocaine base’ were in fact ‘controlled substances[.]’” *id.* at 3 (emphasis omitted). Furthermore, Valbrun claims, the Government’s burden was to prove that he actually knew that the substances seized from the trunk of the rental car were heroin and cocaine base and not merely something illegal, and the Government offered no evidence to meet this burden. *Id.* at 4-5 (citing *McFadden v. United States*, 135 S. Ct. 2298 (2015)).

Both heroin and cocaine base are listed as a schedule I and schedule II drug, respectively, under the Controlled Substances Act, 21 U.S.C.A. § 812 (2015). Thus, both drugs are controlled substances as a matter of law, 21 U.S.C.A. § 802(6) (2015), and therefore, determining whether heroin and cocaine base fit this category was not a factual matter for the jury to decide.

Valbrun’s argument that the Government’s burden was to prove beyond a reasonable doubt that he knew he was in possession of heroin and cocaine base, specifically, is unpersuasive because it is undercut by the First Circuit’s opinion in *United States v. Pérez-Meléndez*, 599 F.3d 31, 41 (1st Cir. 2010). In that case, the indictment alleged that the defendants had possessed cocaine with the intent to distribute it, in violation of § 841(a)(1). *Pérez-Meléndez*, 599 F.3d at 37. The First

Circuit held that “[t]he government need *not* have proved beyond a reasonable doubt . . . that [the defendants] knew or were willfully blind to the fact that the controlled substance was cocaine specifically.” *Id.* at 41 (citing, e.g., *United States v. Azubike*, 564 F.3d 59, 61, 64, 66 (1st Cir. 2009) (government had to prove beyond a reasonable doubt that a briefcase contained a controlled substance where defendant was charged specifically with possessing heroin)). Thus, it was not the Government’s burden to prove beyond a reasonable doubt that Valbrun knew he was in possession of heroin and cocaine base, specifically.

2. Motion for a New Trial (ECF No. 1042)

At the close of all the evidence at trial, Valbrun objected to a portion of the jury instructions which set forth the rules of law. In his motion for a new trial, Valbrun renews his objection, arguing that this portion of the jury instructions varied from the Indictment and the evidence insofar as it used the term “controlled substance” instead of “heroin” and “cocaine base.” ECF No. 1042 at 1-5. Valbrun makes a related argument with regard to the court’s willful blindness instruction, claiming that it “allowed the jury to find [him] guilty even if the Government did not prove and the jury did not find that [he] knew the package contained ‘heroin’ and ‘cocaine base.’” ECF No. 1067 at 4 (emphasis omitted).

As noted above, both heroin and cocaine base are “controlled substances” as a matter of law and it was not necessary for the Government to prove that Valbrun knew he was in possession of heroin and cocaine base, specifically. Valbrun’s reliance on *Alleyne v. United States*, 133 S. Ct. 2151, 2159 (2013), does not advance his argument. *Alleyne* stands for the proposition that any fact that increases the

mandatory minimum sentence is an element of the crime rather than merely a sentencing factor. *Id.* at 2155, 2158. Valbrun has not argued or shown that proving he possessed heroin and cocaine base, specifically, would increase the mandatory minimum sentence he faces compared to what he would face upon proof that he possessed a “controlled substance.”

Furthermore, I am not persuaded by Valbrun’s suggestion that his testimony that he would not have taken his children along in the car if he knew illegal substances were involved, or that he stopped and searched the car to make sure that there was nothing illegal in it, rendered the jury’s finding of a “conscious course of deliberate ignorance” impossible. ECF No. 1067 at 3 (citing *United States v. Appolon*, 695 F.3d 44 (1st Cir. 2012)). As the Government notes, in addition to Valbrun’s testimony, the jury also heard transcripts of telephone calls that took place on March 16, 2014, between Valbrun and Jacques Victor in which Victor instructed Valbrun to “look good for a place in the car to hide it well for me,” and to “do the speed limit,” to which Valbrun responded that Victor should “[m]ake sure you got my shit though, you know?” Trial Ex. 03-T-09. From these statements, the jury could have reasonably inferred that Valbrun deliberately ignored or that he actually knew that the package in the trunk of the car he was driving contained controlled substances.

3. Conclusion

For the foregoing reasons, Valbrun’s Second Renewed Oral Motion to Acquit (ECF No. 1011), his Renewed Motion to Acquit (ECF No. 1041) and his Motion for a New Trial (ECF No. 1042) are **DENIED**.

SO ORDERED.

Dated: January 15, 2016

/s/ Jon D. Levy
U.S. DISTRICT JUDGE