

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

UNITED STATES OF AMERICA)	
)	
)	
v.)	
)	2:14-cr-00069-JDL-1
ROMELLY DASTINOT,)	
)	
Defendant.)	

**ORDER ON THE DEFENDANT’S OBJECTIONS TO THE PRESENTENCE
INVESTIGATION REPORT**

A hearing was held on January 8, 2016, at which the Government and Romelly Dastinot presented arguments raised in their respective sentencing memoranda. ECF No. 1068; ECF No. 1069. Having carefully reviewed and considered each party’s written and oral arguments, I conclude as follows:

1. Role Enhancement

The four-level enhancement contained in U.S.S.G. § 3B1.1(a) applies to Dastinot. The preponderance of the evidence presented in the Revised Presentence Investigation Report (“PSIR”) prepared by the United States Probation Office and the exhibits introduced by the Government establishes the following:

First, the conspiracy was broad in scope, extending from Maine to Massachusetts and New York. PSIR at ¶¶ 29, 45; Gov’t Ex. 14. At least one confidential witness told investigators that Dastinot had been involved in the distribution of drugs since the winter of 2012-2013. PSIR at ¶ 11.

Second, Dastinot had a role in planning and organizing the conspiracy. On at least one occasion, Dastinot directed a co-conspirator, Dimitry Gordon, to deposit

money into a bank account at a TD Bank branch in Auburn, Maine, which enabled a drug source to withdraw the money from bank branches in New York, thereby funding the acquisition of additional drugs. PSIR at ¶ 46; Gov't Ex. 14. Additionally, the transcripts of a series of intercepted telephone calls between Dastinot and Pierre Azor in February and March 2014 reflect that Dastinot had planned or organized a drug supply trip to Boston for Azor. PSIR at ¶¶ 16, 29.

Third, there is evidence that Dastinot directed others in the conspiracy. Intercepted telephone calls on April 18, 2014, revealed that Dastinot directed Carrie Buntrock and Mekayla Farley to pick up drugs from a supplier shortly before they were stopped by police, with drugs found on Farley. PSIR at ¶ 39. At least one confidential source identified Gordon and another man known only as "Jeff," as "sellers" for Dastinot. PSIR at ¶ 14. The evidence referred to, above, that Dastinot directed Gordon to make bank deposits is also evidence of his control and authority over others. PSIR at ¶ 46. More generally, Dastinot's extensive communications with a broad range of co-conspirators, including Jacques Victor, Richard McKenzie, Pierre Azor, Dimitry Gordon, Carrie Buntrock, Ronald Theodat, Mackendy Thenor, Stephen Chadwick, Mekayla Farley, Clifford Pierre, and Pierre Dubois, many of whom do not appear to have communicated with each other, is suggestive of a leadership role in the conspiracy. PSIR at ¶¶ 15, 16, 17, 18, 19, 22, 26, 29, 30, 37, 38, 39.

I conclude that the foregoing evidence establishes, by a preponderance of the evidence, that Dastinot was an organizer or leader of the conspiracy involved in this case.

2. Drug Quantity Dispute

When sentencing a participant in a drug-trafficking conspiracy, the district court must make an individualized finding concerning the quantity of drugs attributable to, or reasonably foreseeable by, the defendant. *United States v. Cintrón-Echautegui*, 604 F.3d 1, 5 (1st Cir. 2010). This determination need only be made by a preponderance of the evidence. *United States v. Laboy*, 351 F.3d 578, 582 (1st Cir. 2003).

Such drug quantity determinations are not limited to the amounts involved in the offense of conviction, however. *Id.* A defendant may be held responsible for drug quantities involved in his “relevant conduct,” *id.*; *Cintrón-Echautegui*, 604 F.3d at 5, which can include any “criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others,” U.S.S.G. § 1B1.3(a)(1)(B). Thus, “[r]elevant conduct for which the defendant may be sentenced also includes . . . all reasonably *foreseeable* acts and omissions of others in furtherance of the jointly undertaken criminal activity.” *Cintrón-Echautegui*, 604 F.3d at 5 (citing U.S.S.G. § 1B1.3(a)(1)(B) (emphasis added)).

The foreseeability requirement is “the central concept” behind U.S.S.G. § 1B1.3, and limits the defendant’s liability by making him responsible only “for foreseeable conduct within the scope of his own explicit or implicit agreement.” *Laboy*, 351 F.3d at 582-83 (citing *United States v. Carrozza*, 4 F.3d 70, 76 (1st Cir. 1993)). Thus, the scope of a defendant’s relevant conduct is not necessarily the same as the scope of the entire drug distribution conspiracy. *Id.* at 583; U.S.S.G. § 1B1.3 cmt. (n.3(B)).

The PSIR states a base offense level of 30, due to the offense involving between 1,000 kg and 3,000 kg of marijuana.¹ PSIR at ¶ 55 (citing U.S.S.G. § 2D1.1(c)(5)).

Dastinot argues that the drug quantities attributed to him in paragraphs 24 and 25 of the PSIR are “too attenuated” to be reasonably foreseeable to him. ECF No. 1069 at 3. Paragraph 24 states that on March 13, 2014, Jacques Victor arranged to sell drugs to Christopher Harkins, and that police observed the two men meet at a store before Harkins was detained for speeding away from the store. PSIR at ¶ 24. When the police searched Harkins, he was found with 0.8 grams of cocaine base. *Id.* The Government did not introduce evidence in support of Paragraph 24. Accordingly, Dastinot’s objection to Paragraph 24 of the PSIR is **GRANTED** and that paragraph is stricken.

Paragraph 25 states that on March 16, 2014, task force agents intercepted telephone calls between Victor and Alcindy Jean-Baptiste in which the two men discussed a plan to acquire controlled substances in Massachusetts and deliver them to Maine for distribution. PSIR at ¶ 25. Later the same day, Jonathan Duffaud and Jean Valbrun were stopped in a car by officers of the Auburn Police Department, and were found to be in possession of 106.2 net grams of cocaine base and 225 net grams of heroin. *Id.* As evidence that these drugs were foreseeable to Dastinot, the Government introduced the transcript of an intercepted telephone call between Dastinot and Jean-Baptiste dated March 16, 2014, in which Dastinot requested “a finger” and “a gram” and was told that “[t]he stuff is en route.” Gov’t Ex. 21-T.

¹ The PSIR converts the various drugs sold, possessed, and trafficked into a “marijuana equivalent.” PSIR at ¶ 50.

Dastinot and Jean-Baptiste also discussed the fact that Victor “has his people that will be coming with it.” *Id.*

Dastinot argues that “[t]here is no indication that [he] was remotely aware of this event,” and that the 106.2 net grams of cocaine base and the 225 net grams of heroin should not be attributed to him. ECF No. 1069 at 3-4. Dastinot also cites a jailhouse letter written by Victor to Dastinot, in which Victor claims to have been “a solo,” as evidence that “[w]hile there was some commonality in these endeavors, Victor clearly went off in his own direction.” *Id.* at 2, 4.

Dastinot’s objection to Paragraph 25 is **OVERRULED**. The foreseeability of the 106.2 net grams of cocaine base and 225 net grams of heroin seized from Duffaud’s and Valbrun’s car is established by the intercepted telephone call between Dastinot and Jean-Baptiste. Gov’t Ex. 21-T.

3. Career Offender Enhancement

At the January 8, 2016, hearing, the Government stated that it no longer intends to pursue the career offender enhancement under U.S.S.G. § 4B1.1(a). Therefore, Dastinot’s objection is **GRANTED**, and Paragraph 61 of the PSIR is stricken.

SO ORDERED.

Dated: January 15, 2016

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