

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	CRIMINAL NO. 06-538 JCH
)	
DANUEL DEAN QUAINANCE,)	
)	
Defendant.)	

GOVERNMENT’S RESPONSE TO DEFENDANT’S
FORMAL OBJECTIONS TO PRESENTENCE REPORT

The United States of America hereby provides notice to the court and counsel that the government formally adopts and incorporates by reference its response to defendant’s objections as contained in its letter to Mindy Pirkovic dated December 18, 2008, which is attached hereto.

Respectfully submitted,

GREGORY J. FOURATT
United States Attorney

Electronically filed on 1/5/09
LUIS A. MARTINEZ
Assistant United States Attorney
555 S. Telshor Blvd., Suite 300
Las Cruces, NM 88011
(575) 522-2304 - Tel.
(575) 522-2391 - Fax

I HEREBY CERTIFY that I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to opposing counsel of record, and have faxed a copy to United States Probation on this date.

Electronically filed
LUIS A. MARTINEZ
Assistant United States Attorney



U.S. Department of Justice

United States Attorney
District of New Mexico

555 S. Telshor, Suite 300
Las Cruces, New Mexico 88011

575/522-2304
FAX 575/522-2391

December 18, 2008

Mindy Perkovic
United States Probation Officer
333 Lomas Blvd. NW, Ste. 170
Albuquerque, NM 87102-2242

RE: **USA v. Danuel Quaintance**
No. 06cr538 JCH

Dear Ms. Perkovic:

The government responds to Mr. Quaintance's informal objections¹ to the Presentence Investigation Report ("PSR") as follows:

I. Role Adjustment

A. Introduction:

Danuel Quaintance was assessed +4 as a leader and organizer of an offense which involved at least five participants pursuant to U.S.S.G. § 3B1.1(a). PSR at 37.

Defendant Objections I, V and VI all relate to the foregoing. Hence, the government will respond to these objections as a related unit.

B. Joseph Butts and the Missouri Arrest:

The defendant claims that his brother-in-law, Joseph Butts, was not transporting marijuana for the Quaintances at the time of his arrest by the Missouri State Police. This assertion flies in the face of logic and the facts adduced at numerous pre-trial hearings.

As the defendant notes, the "Courier Certificate" utilized by defendant Butts was signed by then Church of Cognizance leader Danuel Quaintance.

The maps in Mr. Butt's possession at the time of his arrest indicated a travel itinerary originating in Pima, Arizona, the location of the defendant's home/church.

¹ Defendant has not formally filed objections with the Court by December 5, 2008, the Court imposed deadline for such; therefore, the government's response will be sent directly to U.S. Probation.

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At the time of his arrest, Mr. Butts was in possession of other paperwork indicating his affiliation with the Church of Cognizance in Pima, Arizona.

However, it is Danuel Quaintance's own testimony which most vividly illustrates his leadership relationship over Joseph Butts. On August 22, 2006, Mr. Quaintance testified at a motion hearing. Mr. Quaintance was asked if he personally gave Mr. Butts the "Courier Certificate" in Butts's name. (R. at p. 258, ll 14-17.) The defendant was asked if he had given then "Courier Certificate", . . . "to carry on his [Butts's] trip to parts unknown, to transport the 335 pounds of marijuana; correct?" (R. at p. 258, ll 18-19.) After being asked again if he gave Mr. Butts the certificate as he began his journey, defendant replied, "I gave that to him prior to, where he was, yes I gave it to him on the 1st." (R. at p. 258, ll 24-25.)

Danuel Quaintance organized and lead the conspiracy to possess with intent to distribute marijuana to which he pled guilty. And as part of his role, the defendant stood in a leadership position in relation to Mr. Butts. Provided this offense involved more than five participants, defendant's leadership status as to Mr. Butts alone is sufficient for this Honorable Court to assess +4 points as to this defendant pursuant to U.S.S.G. § 3B1.1(a). See, *United States v. Okoli*, 20 F.3d. 615, 616 (5th Cir. 1994).

C. Timothy Kripner – Lordsburg, New Mexico:

In defendant's objection V, defendant disputes Mr. Kripner was recruited. The role adjustment is not based on recruitment, but rather on control and organization. "The key determinants of section 3B1.1 are control and organization." *United States v. Rowley*, 975 F.2d 1357, 1364 (8th Cir. 1992).

Defendant claims that Kripner lost contact with the Quaintances around October 2005. (Def. Objections to PSR at p. 3.) This assertion may or may not be the case, but even if true, there is no relevance to the issue of role adjustment.

By the time of their arrest on February 22, 2006, in Lordsburg, New Mexico, Mr. Kripner and Mr. Quaintance had certainly reunited. Subsequent to Kripner's arrest, a two-way handheld radio, set to channel 6. An identical handheld two-way radio also set to channel 6 was retrieved from the vehicle in which the defendant had been a passenger.

Post-Miranda, Kripner stated the Quaintances provided the money for the rental of the vehicle driven by Kripner which contained 78 kilograms of marijuana. PSR at ¶ 14.

Kripner was in possession of a "courier certificate" identical to the one possessed by Mr. Butts and, like Mr. Butts's certificate, signed by Danuel Quaintance. PSR at ¶ 15.

Kripner went on to tell authorities at the time of his arrest and later at a pre-trial hearing, that he was under the direction of Danuel Quaintance and was to be paid after transporting the 78 kilograms to the Quaintance residence. PSR at ¶ 14.

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Corroborating Mr. Kripner's statements, Mr. Quaintance, subsequent to his arrest, stated, "I am the head of my church and I have the right to have that marijuana." PSR at ¶ 16.

A defendant need not personally lead five or more participants to receive a § 3B1.1(a) enhancement; leading at least one of the five is sufficient. *United States v. Okoli*, 20F.3d 615, 616 (5th Cir. 1994).

Mr. Quaintance's own testimony on August 22, 2006, further demonstrates Danuel Quaintance's leadership status over Mr. Kripner. Mr. Quaintance stated he gave Mr. Kripner a certificate "... yes, that is the duty." (R. at p. 259, ll 3-4.)

Either Mr. Butts or Mr. Kripner would qualify as the basis of a +4 enhancement against Danuel Quaintance pursuant to U.S.S.G. § 3B1.1(a).

D. The Backpackers:

Defendant does not deny the existence or involvement of the Backpackers who delivered the marijuana to the vehicle driven by defendant Kripner. Kripner testified regarding the Backpacker on August 22, 2006. (R. at p. 290, ll 2-4.) The +4 assessment as a leader and organizer of an offense pursuant to U.S.S.G. § 3B1.1(a) requires (1) a defendant lead at least one participant and (2) the offense involve at least five participants.

Certainly, Mr. Quaintance's leadership of Mr. Butts and Mr. Kripner satisfies the first prong of U.S.S.G. 3B1.1(a). We must now determine whether the offense involved at least five participants. It should be noted that only "criminally responsible" individuals may be counted as "participants" under § 3B1.1. *United States v. Jarrett*, 956 F.2d 864, 868 (8th Cir. 1992). Mr. Danuel Quaintance, Ms. Mary Quaintance, Mr. Butts and Mr. Kripner all pled guilty to the charged conspiracy and furthered the conspiracy during its existence. Clearly, all four are participants for § 3B1.1(a) purposes. Five are required. The "[g]uidelines do not require that a "participant" be charged in the offense of conviction." *United States v. Manthei*, 913 F.2d 1130, 1136 (5th Cir. 1990).

The Backpackers were never charged, arrested or even identified. However, without their participation the conspiracy would not have been carried out by its members to the extent that it was. Just one of the several backpackers added to the roster of known conspirators satisfies the requirements of U.S.S.G. § 3B1.1(a) as to Danuel Quaintance. The defendant's control or lack thereof as to the backpackers is irrelevant to the analysis at hand.

E. Role Adjustment is Properly Assessed:

The PSR correctly assesses +4 enhancement as to Danuel Quaintance pursuant to U.S.S.G. § 3B1.1(a). PSR at 11, ¶ 37. Further, the Total Offense Level 27 is correctly calculated by the PSR. This, if the Court finds correctly assessed, yields an imprisonment range of 70-87 months.

II. The Balance of the Objections Do Not Affect the Guidelines.

A. In objection II, defendant objects to his residence referred to as a "compound". The description is a matter of interpretation, but does not affect the guidelines.

B. As to objection III, no firearms were charged nor were the guidelines affected, so this objection is of no consequence.

C. Likewise, objection IV has no affect on the guideline calculations.

III. Conclusion.

The United States asserts that the assessment of a +4 enhancement in the Presentence Investigation Report, pursuant to U.S.S.G. § 3B1.1(a), is correct, as well-supported by the facts in this matter.

Respectfully yours,

GREGORY J. FOURATT
United States Attorney



LUIS A. MARTINEZ
Assistant United States Attorney

LAM/elr

xc: Hon. Judith C. Herrera, U.S. District Judge
Jerry Daniel Herrera, Esq.
John F. Robbenhaar, Esq.