

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
	:	
v.	:	Crim. No. 17-71-5
	:	
DEBRA BAYLOR	:	

Diamond, J.	<u>MEMORANDUM</u>	August 7, 2019
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At the sentencing of Defendant Debra Baylor—convicted of conspiring to sell “crack” cocaine—the Government argued that she had distributed 1.62 kilograms of the drug. I found that the Government had actually proven that Baylor distributed only 65.66 grams. I sentenced her accordingly, and stated that I would issue this Memorandum to explain the bases of my rulings more fully.

I. PROCEDURAL BACKGROUND

I have previously set out a detailed history of this matter. (Rule 29 Memo 1–4, Doc. No. 601.) On February 8, 2017, the grand jury charged Edward Stinson, Debra Baylor, and eleven others with conspiracy to distribute at least 280 grams of crack and related offenses. (Indictment, Doc. No. 1); 21 U.S.C. §§ 841, 846. In a related Indictment, Juan Jarmon, Edward Stinson, and eleven others were charged with a separate conspiracy to distribute at least 280 grams of crack and related offenses. (Crim. No. 17-72, Indictment, Doc. No. 1); 21 U.S.C. §§ 841, 846. In both Matters, the distribution occurred in the Norman Blumberg Complex, a North Philadelphia public housing project. Generally, the two conspiracies involved different participants and operated in different months from 2010 to 2015.

In the 17-71 Matter, only Baylor and Stinson (the conspiracy’s alleged leader) went to trial; the remaining eleven co-defendants entered into cooperation or non-cooperation guilty plea agreements. Trial of Stinson and Baylor began on January 17, 2019. On January 24, 2019, the

Government rested and both Defendants moved for judgments of acquittal. (Doc. Nos. 516, 517); Fed. R. Crim. P. 29(a). Baylor argued, *inter alia*, that the Government had failed to introduce evidence sufficient for the jury to find that she was personally responsible for conspiring to distribute any crack. (Id.) On January 28, 2019, I largely denied Baylor’s Motion, but reserved judgment on the conspiracy Count. (Doc. No. 519); Fed. R. Crim. P. 29(b). On January 29, 2019, the jury convicted both Defendants of conspiracy to distribute at least 280 grams of crack and related charges (acquitting Baylor of one distribution Count). (See Doc. No. 532.)

Although Stinson was charged in both Matters, following Stinson’s conviction in the 17-71 Matter, the Government moved to dismiss the charges against him in the 17-72 Matter. (Doc. Nos. 442, 448, 465, Crim. No. 17-72.) All the remaining Defendants in that Matter pled guilty, save Juan Jarmon—that conspiracy’s alleged leader—who went to trial on March 5, 2019. (Doc. No. 465, Crim. No. 17-72.) When the Government rested, I denied Jarmon’s Rule 29 Motion. (Mar. 12, 2019 Tr. 54–55.) On March 13, 2019, the jury convicted Jarmon of 23 of 25 Counts, including conspiracy to distribute at least 280 grams of crack. (Doc. No. 480, Crim. No. 17-72.)

On May 7, 2019, I issued a Memorandum Opinion, discussing in detail why I had denied Stinson’s and Jarmon’s Rule 29 Motions. (Doc. No. 601.) I granted Baylor’s Rule 29 Motion in part, vacating her conviction for conspiring to distribute at least 280 grams of crack cocaine, and sustained her conviction on the lesser-included offense of conspiring to distribute 28 grams or more of crack. (Doc. Nos. 601, 602.) I explained that each Defendant “was only responsible for the quantity of crack: (1) that was reasonably foreseeable to that Defendant, and (2) that was distributed by members of the conspiracy during the time that the Defendant was a member of the conspiracy.” (Rule 29 Memo 6, Doc. No. 601 (citing United States v. Stoddard, 892 F.3d 1203, 1220 (D.C. Cir. 2018)).) Although the Government produced direct evidence of drug sales in both

Matters, it sought to prove distribution amounts primarily with circumstantial evidence. In the 17-72 Matter, the Government thus established a baseline figure of regular crack sales by which the jury could permissibly infer that Jarmon was personally responsible for the distribution of at least 340 grams of the drug. (Id. at 8.) In the 17-71 Matter, however, the Government sought unsuccessfully to establish a baseline of crack sales attributable to Baylor with evidence of transactions that occurred: (1) during periods when Baylor was not part of the conspiracy; and (2) during a particular day, week, or other period, without any evidence that the sales volume was regular or typical. Accordingly, the 17-71 jury could rely only on direct evidence of actual crack sales in attributing a crack quantity to Stinson or Baylor. (Id. at 10–11.)

The only evidence of crack sales involving Baylor comprised fourteen intercepted calls, during which she and her co-defendants discussed “cooking” (i.e., preparing) and selling the drug. As I discussed in my May 7 Memorandum, viewed in the light most favorable to the Government, these discussions showed, at most, that 142.60 grams of crack distribution could be attributed to Baylor during the ten months she was involved in the conspiracy (August 2014 to June 2015). (Id.) I thus vacated Baylor’s conviction for conspiring to distribute 280 grams or more of crack, and sustained her conviction for conspiring to distribute 28 grams or more of the drug. (Doc. No. 602.) The mandatory minimum sentence Baylor thus faced was reduced from ten to five years imprisonment. See 21 U.S.C. § 841(b)(1)(A)–(B).

Baylor’s sentencing was scheduled for May 15, 2019. (Doc. No. 538.) On May 7, 2019, I received a Presentence Investigation Report and Sentencing Recommendation. Surprisingly, in determining Baylor’s “relevant conduct,” Probation attributed 2.8 kilograms of crack to Baylor, explaining that:

the Stinson [Drug Trafficking Group] distributed approximately 70 grams of crack cocaine per week, or 280 grams of crack cocaine per month, during the duration of the conspiracy. This amount was based on intercepted telephone calls, controlled drug purchases, and information from witnesses. Given the period of Debra Baylor's involvement with the Stinson DTG (approximately 10 months) and her direct knowledge of and participation in the DTG's activities, the total quantity of crack cocaine attributed to her is approximately 2.8 kilograms

(PSR at ¶ 49.) Given the 2.8 kilograms of crack Probation attributed to her (and her Criminal History Category of I), Baylor's offense level was set at 38, resulting in an advisory Guidelines range of 235 to 293 months imprisonment. (PSR at ¶¶ 53–63, 66.)

In its Sentencing Memorandum, the Government agreed that 2.8 kilograms of crack was attributable to Baylor:

As a member of the Stinson DTG, Baylor had direct knowledge of the number of customers, types and quantities of crack cocaine sold to users, and the structure of the DTG, and she knew that it was an around-the-clock operation that sold crack cocaine in various shifts throughout the day, every day. The Stinson DTG sold more than 280 grams of crack cocaine per month. Given Baylor's period of involvement with the Stinson DTG, the total quantity of crack cocaine attributable to Baylor was approximately 2.8 kilograms.

(Govt. Memo 4, Doc. No. 605.) The Government identified no evidence, however, to support the 280-gram monthly figure or the 2.8-kilogram ten-month total.

In her Sentencing Memorandum, Baylor largely agreed with my Rule 29 analysis, but argued that the trial evidence, when viewed fairly (i.e., not in the light most favorable to the Government), showed that the distribution of only 65.24 grams of crack is attributable to her. (Def. Memo 6–7, Doc. No. 607.)

At Baylor's May 15, 2019 sentencing hearing, the Government changed its position as to quantity, now stating (without explanation), that it "is more comfortable with [attributing] 162 grams per month," thus reducing to 1.62 kilograms of crack the amount attributable to Baylor. (May 15, 2019 Tr. 7.) The Government argued that evidence of the conspirators' "pattern and

practice” supported this calculation. (*Id.* at 4–5.) Because the Government did not identify the specific pieces of “pattern and practice” evidence, however, I continued the hearing and ordered the Parties to submit Supplemental Memoranda addressing the following questions:

1. Does the drug quantity attribution standard at sentencing differ from that at trial?
2. Having acquitted Defendant Debra Baylor of conspiring to distribute 280 grams or more of crack, am I compelled at sentencing to find (in determining “relevant conduct”) that Defendant conspired to distribute less than 280 grams?
3. Does the trial evidence show by a preponderance that Defendant conspired to distribute 2.8 kilograms of crack? If not, what quantity is shown?
4. By what standard is trial evidence viewed at sentencing in determining relevant conduct (in light most favorable to verdict winner; fair reading; etc.)?

(Doc. No. 620.)

On June 12, 2019, the Parties submitted their Memoranda; they subsequently submitted Reply Memoranda. (Doc. Nos. 638, 639, 654, 656.) During the July 9, 2019 sentencing hearing, the Government announced that it would introduce no additional evidence and instead rely exclusively upon the evidence it introduced at trial.

In imposing sentence on July 9, I stated that I would issue this Memorandum (which reflects the Parties’ supplemental submissions). (July 9, 2019 Tr. 6.)

II. LEGAL STANDARDS

I must “exercise independent judgment in sentencing,” at which the Government bears “the burden of proving facts relevant to sentencing by a preponderance of the evidence.” *United States v. Prior*, 941 F.2d 427, 431 (6th Cir. 1991); *United States v. Moment*, 750 F. App’x 68, 71 (3d Cir. 2018); *United States v. Maxshure*, 579 F. App’x 136, 139 (3d Cir. 2014). “[D]rug quantity is a factor of extraordinary importance to the sentencing calculus.” *United States v. Tavano*, 12 F.3d 301, 306 (1st Cir. 1993). The Third Circuit has thus admonished that “the sentencing court must

carefully scrutinize the government's proof to ensure that its estimates are supported by a preponderance of the evidence." United States v. Paulino, 996 F.2d 1541, 1545 (3d Cir. 1993); see United States v. Collado, 975 F.2d 985, 998 (3d Cir. 1992).

The Parties agreed that in finding quantity, I must determine the amount of drugs personally attributable to each defendant. (May 15, 2019 Tr. 5–6; Gov't Supp. Memo 19, Doc. No. 638; Def. Supp. Memo 1–2, Doc. No. 639); Collado, 975 F.2d at 995 (because "the quantity of drugs attributed to the defendant usually will be the single most important determinant of his or her sentence," the sentencing court must conduct "a searching and individualized inquiry into the circumstances surrounding each defendant's involvement in the conspiracy"); see also United States v. Cintron-Echautegui, 604 F.3d 1, 5 (1st Cir. 2010) ("district court must make an individualized finding concerning the quantity of drugs attributable to . . . the offender"). I may consider any "relevant conduct," including acts and omissions of the defendant as well as acts and omissions of co-conspirators that were: (1) "within the scope of the jointly undertaken criminal activity"; (2) "in furtherance of that criminal activity"; and (3) "reasonably foreseeable in connection with that criminal activity." U.S.S.G. § 1B1.3(a)(1)(B); see also Tavano, 12 F.3d at 305 (the sentencing court has "a duty to consider all relevant drug quantity evidence at sentencing, even if that evidence is from the same sources as, and conflicts with, evidence adduced at trial").

I consider relevant conduct evidence "without regard to its admissibility under the rules of evidence applicable at trial, provided that the information has sufficient indicia of reliability to support its probable accuracy." U.S.S.G. § 6A1.3; see also Maxshure, 579 F. App'x at 139 ("The Federal Rules of Evidence do not apply in sentencing hearings."). I must apply the "sufficient indicia of reliability" standard "rigorously." United States v. Miele, 989 F.2d 659, 664 (3d Cir. 1993).

My drug quantity finding at sentencing is not controlled by the trial verdict. Tavano, 12 F.3d at 305. Rather, I must make an independent quantity determination. Id. That quantity may be “greater than that found by the jury” (or by me under Rule 29), if it is “supported by the record.” United States v. Lopez-Esmurria, 714 F. App’x 125, 126 (3d Cir. 2017); United States v. Vaughn, 430 F.3d 518, 527 (2d Cir. 2005) (“there is no logical inconsistency in determining that a preponderance of the evidence supports a finding about which there remains a reasonable doubt”); see also Moment, 750 F. App’x at 71–73; United States v. Freeman, 763 F.3d 322, 335 (3d Cir. 2014). I may also consider “conduct underlying an acquitted charge.” Moment, 750 F. App’x at 72–73 (citing United States v. Watts, 519 U.S. 148 (1997)). The Third Circuit has recognized that in determining the quantity of drugs distributed by a conspiracy, “a degree of estimation is sometimes necessary.” United States v. Paulino, 996 F.2d 1541, 1545 (3d Cir. 1993); see also United States v. Gibbs, 190 F.3d 188, 219 (3d Cir. 1999) (“A district court may carefully estimate the total drug quantities involved in a conspiracy based on evidence of average drug transactions during the conspiracy.”).

Although I may rely on trial testimony to make findings at sentencing, complete reliance on such testimony is discouraged because defendants may be “wary of conceding culpability before the jury and often prefer to pitch their case on bedrock issues of guilt or innocence.” Tavano, 12 F.3d at 306. Similarly, “it would be error for a district court to base a factual finding of drug quantities on evidence presented in another case, to which the defendant was not a party.” United States v. Gomez, 208 F. App’x 643, 645–46 (10th Cir. 2006).

III. FINDINGS OF FACT

Having reviewed the trial record with care, I find that the Government has proven the following by an evidentiary preponderance.

The Stinson Drug Trafficking Group

From 2010 to 2015, a Group headed by Edward Stinson conspired to distribute crack in the North Philadelphia Norman Blumberg Housing Project. The Group maintained its crack supply by purchasing: (1) bulk quantities of crack; and (2) powder cocaine that Baylor and others would “cook” into crack cocaine. (See Gov’t Ex. 159; Jan. 24, 2019 PM Tr. 27.) That process yielded some 0.62 grams of crack from one gram of powder cocaine. (See Gov’t Ex. 159 (Stinson explains how to cook twenty-one grams of powder cocaine down to thirteen grams of crack).) The Group packaged crack into \$5 “nickel” bags, containing on average 0.0362 grams of crack. (See Jan. 22, 2019 Tr. 17; Gov’t Exs. 35–43.) The Group would then bag up fifty nickel bags and put them in a “bundle” or “yak” for sale to drug addicts. (Jan. 18, 2019 Tr. 116.)

Once the crack was packaged, it would be transferred to the Group’s sellers. Stinson also employed lookouts, who alerted sellers to police presence and directed customers to Group members (and away from competitors). (See Jan. 23, 2019 PM Tr. 21.) Stinson organized his Group to sell crack in three eight-hour shifts every day of the year. (Jan. 18, 2019 Tr. 131.) Sales were, in fact, considerably spottier, however, with shifts frequently unstaffed, crack supply unavailable, and competitors diverting customers. This was a source of constant complaint by Stinson and his confederates. (See Gov’t Ex. 11 (Co-defendant Emmett Perkins informs Edward Stinson that “[w]e ain’t got no grinders [i.e., sellers]”); Gov’t Ex. 15 (Perkins and Stinson complain that nobody is selling drugs and that they need a consistent sales force); Gov’t Ex. 17 (Stinson and co-defendant Jamillah Bellamy complain that the overnight shift is staffed only early in the month

because nobody wants to be outside on “these chilly ass nights”); Gov’t Ex. 21 (Bellamy tells Stinson that “[n]obody be out there . . . sellin’ drugs,” and that the poor crack supply is making customers sick); Gov’t Ex. 22 (An unidentified co-conspirator informs Stinson that “the lookouts don’t want to work So we got no lookout”); Gov’t Ex. 24 (Co-defendant Imere Stinson—Edward’s brother—tells Edward Stinson that he has no crack to sell); Gov’t Ex. 113 (Co-defendant Carl Stinson—Edward’s cousin—complains to Edward Stinson that sales were slow the previous night); Gov’t Ex. 115 (Baylor informs Edward Stinson that nobody is out selling crack.) The Group’s sales also slowed when Stinson was in state custody for periods during 2013 through 2015, while the sales of competitors increased. (See Jan. 18, 2019 Tr. 50–52, 119–21.) The Group’s poor sales resulted in little or no income for its members. (See Gov’t Ex. 94 (Baylor tells Stinson, “I got 160 fucking dollars saved. That’s all I got, and that’s off my welfare check.”); Gov’t Ex. 128 (Baylor tells Stinson that selling crack is “not making money”; she has only a few diapers left, and she has no money to buy more diapers).)

Although the Government argued that it had proved a crack sales “baseline” attributable to Baylor, it never did so. Putting aside the Government’s sometimes less than accurate description of its own proof (which I reviewed in detail at sentencing), I will discuss here the “baseline” evidence on which it primarily relied. (See July 9, 2019 Tr. 8–21.)

The Government offered the trial testimony of co-defendant Terrance Jackson that he sold “\$1,000 or more of crack in a day.” This occurred only “between two and four” times, however. (Jan. 22, 2019 Tr. 166–67; Jan. 23, 2019 AM Tr. 29–31.) Moreover, Jackson’s supply varied greatly, sometimes receiving \$240 packs of crack to sell, and other times receiving only \$10 packs of the drug. (See Jan. 22, 2019 Tr. 164–69; Jan. 23, 2019 AM Tr. 9.) Jackson complained that sales were especially slow during Stinson’s incarceration on state charges. (See Jan. 22, 2019 Tr.

170 (“I think [Edward Stinson] got locked up or something . . . the product wasn’t coming out like it was when [he] was there.”).)

The Government also called co-defendant Jamillah Bellamy who testified that Stinson’s Group sold drugs 24 hours a day, 7 days a week, 365 days a year. (Jan. 18, 2019 Tr. 125–32.) This testimony was less than credible, however, because it was contradicted by “real time” audio recordings—some of Bellamy herself—in which the Group’s extremely spotty and uneven operation is repeatedly discussed. (See Gov’t Exs. 11, 15, 17, 21, 22, 24, 113, 115.) Moreover, Bellamy never testified to the regularity, frequency, or volume of crack sales. Finally, Bellamy was a member of the conspiracy from 2011 or 2012 to sometime in 2014. (Jan. 18, 2019 Tr. 81, 117–18.) Baylor did not join the conspiracy until late August 2014, however.

The Government also called co-defendant Stephen Dawkins, who worked as a lookout for Stinson and others “on and off” between 2012 and 2017. (See Jan. 23, 2019 PM Tr. 21–25.) Although Dawkins confirmed that crack was continually sold in Blumberg on “most” days, he did not testify that it was sold by the Stinson Group each day. (See Jan. 23, 2019 PM Tr. 47–48 (testifying that crack was available for sale 24/7 in the Blumberg projects on “most” days); see also *id.* at 30–32, 35–37 (testifying that there were several groups selling crack at Blumberg).) As with Bellamy, the Government’s contemporaneous audio recordings confirmed that the Stinson Group’s crack availability and sales were spotty and irregular. (See Gov’t Exs. 11, 15, 17, 21, 22, 24, 113, 115.)

Debra Baylor’s actions

Baylor became romantically involved with Edward Stinson sometime after she moved into Blumberg in 2009. (PSR ¶ 81.) The evidence against her is derived almost entirely from consensually recorded telephone conversations Stinson had with Baylor and others from August

28, 2014 to June 12, 2015 (when Stinson was incarcerated on state charges). (Gov't Exs. 85, 92, 94–95, 98, 101–03, 108–10, 112–13, 115, 126, 128, 153–59, 161.) The co-conspirators discussed, *inter alia*, the acquisition of powder cocaine, cooking powder into crack cocaine, and the performance of Stinson's sellers and lookouts. (See *id.*) The Group used the Blumberg apartments of Baylor and others to store and cook crack. (See *id.*)

In the absence of a sales baseline, I determined the drug sales attributable to Baylor only from direct evidence. I have attached to this Opinion a chart (which I incorporate here), setting out in detail the evidence proving by a preponderance that the distribution of 65.66 grams of crack may be attributed to Baylor. I will here summarize that evidence:

Actual crack sold

- Ex. 85 (0.04 g); Ex. 153 (1.09 g); Ex. 154 (5.07 g); Ex. 157 (0.04 g); Ex. 161 (5.07 g)

Crack available for sale

- Ex. 94 (3.62 g); Ex. 109 (1.09 g)

Cocaine powder purchased to be “cooked” into crack

- Ex. 101 (13.02 g); Ex. 155 (20.18 g); Ex. 158 (13.02 g)

Cocaine powder “cooked” into crack

- Ex. 112 (2.68 g); Ex. 126 (0.8 g)

Total crack quantity attributable to Baylor

- 65.66 g

During the May 15 hearing, the Government argued—without the least bit of irony—that these findings were needlessly restricted because they reflected an “empirical approach” to calculating drug quantity. (May 15, 2019 Tr. 4–5.) Insofar as the Government thus suggested that I have based my findings on actual evidence and not on speculation, it is entirely correct.

IV. LEGAL CONCLUSIONS

The Government urged me to find that Baylor was personally responsible for the distribution of 1.62 kilograms of crack. (Gov’t Supp. Memo 16–17.) In support, the Government offered the following “evidence”:

Assuming conservatively that the conspiracy sold only \$300 worth of crack per shift . . . , in one day, \$900 worth of crack would be sold. Over a week, that amount would rise to \$6,300 worth of crack. In one 30-day month, the value of crack sold would be \$27,000. Dividing \$27,000 by the price per nickel bag of \$5, yields the total number of bags sold in one month as 5,400. Multiplying 5,400 bags by .03 grams per bag (the low-end average amount in any crack bag purchased at Blumberg during the undercover controlled purchases) produces a result of 162 grams of crack cocaine, sold over only a one-month period of time. Multiplying 162 x 10 results in a product of 1.6 kilograms of crack that would result from just 10 months of operations of the [Stinson Drug Trafficking Group].

(Id. at 17 (emphasis added).) Of course, this is not evidence of anything; it is an assumption “that the conspiracy sold \$300 worth of crack per shift.” As I have found, however, the “supporting” evidence the Government offered—including the testimony of cooperating co-conspirators Terrance Jackson, Jamillah Bellamy, and Stephen Dawkins—does not support the assumption.

Numerous courts have ruled that drug quantities may be proven circumstantially—from pattern and practice or sales baseline evidence. See Gibbs, 190 F.3d at 219 (“A district court may carefully estimate the total drug quantities involved in a conspiracy based on evidence of average drug transactions during the conspiracy.”). For instance, in *United States v. Sanchez*, the Second Circuit upheld a finding of “more than 150 kilograms” of cocaine based on testimony that the conspirators sold at least “one kilogram of cocaine per week during the seven-year duration of the conspiracy.” 455 F. App’x 27, 31 (2d Cir. 2012); accord United States v. Blount, 291 F.3d 201, 216 (2d Cir. 2002) (upholding quantity finding based on co-conspirator testimony that “on an average day [the conspiracy] sold a total of some 12-13 bundles [of cocaine]; on a busy day they sold approximately 20 bundles”) Similarly, in *United States v. Golden*, the Seventh Circuit ruled

that the sentencing court could derive drug quantity from testimony that the conspirators sold at least ten grams of crack every day during the conspiracy. 102 F.3d 936, 944–45 (7th Cir. 1996) (the district court “did not err” by taking “a low estimated daily sales figure (10 grams per day), [and multiplying] it by the number of days the conspiracy was in effect (approximately 250)”).

The Government followed this authority in the 17-72 trial, where Rasheen Chandler (a cooperating co-defendant) testified that during the eight to nine months he sold crack for Juan Jarmon, he missed only five days of work, and never sold less than one “bundle” of crack (1.5 g) during an eight-hour shift. (See May 7, 2019 Memo 8; Mar. 7, 2019 Tr. 78–79.) From this baseline testimony, I ruled that the jury could permissibly attribute over 340 grams of crack to Jarmon. (See *id.*) The Government introduced no such sales baseline evidence, however, from which I could extrapolate a drug quantity attributable to Baylor. See United States v. Lopez-Esmurria, 629 F. App’x 284, 287 (3d Cir. 2015) (vacating sentence because there was no “evidence in the record to support the drug quantities found by the District Court”); United States v. Butler, 41 F.3d 1435, 1447 (11th Cir. 1995) (rejecting drug quantity based on extrapolation from the video of drug sales occurring over the course of single day because the “Government did not offer any evidence . . . that tended to show that January 17, which was a Friday and thus a payday for many, was a typical or average day . . . or that January 17 was in any other way a valid indicator of drug activities on other days”); see also United States v. Chase, 499 F.3d 1061, 1070–71 (9th Cir. 2007) (rejecting district court’s drug quantity extrapolation because there was no evidence to support its monthly sales quantity assumption upon which the extrapolation was based).

In seeking to explain the dearth of baseline evidence, the Government urged that, given the secretive nature of drug dealing, there are only “certain periods of time” when investigators were “able to ‘peek in’ and capture some of the inner workings of the conspiracy.” (Gov’t Supp. Memo

8.) That proof of a defendant's culpability is not readily available, however, hardly excuses its absence. As I have also found, the only evidence probative of the drug quantity attributable to Baylor was included in the conspirators' intercepted telephone discussions. I thus found that 65.66 grams of crack is attributable to Baylor.

V. SENTENCING

Probation determined that Baylor's base offense level for the distribution of 1.62 grams of crack was 32, her total offense level was 36, and her revised Guidelines advisory range was 188 to 235 months imprisonment. The Government agreed that a sentence within this range would be unreasonable, and acknowledged that a downward variance "would be appropriate." (July 9, 2019 Tr. 31–32.) Given my factual findings, I determined that Baylor's base offense level was 24. U.S.S.G. § 2D1.1(c)(8). I added a two-level enhancement under § 2D1.1(b)(12) (because Baylor "maintained a premises for the purpose of manufacturing or distributing a controlled substance"), and another two-level enhancement under § 2D1.2 (because she committed a drug offense in a protected location—a public housing facility). Baylor's total offense level was thus 28. Her criminal history category was I, as this was Baylor's first conviction (or arrest). I thus determined that her advisory Guidelines range was 78 to 97 months imprisonment. Baylor is thirty years old and has two small children—Stinson is the father of the younger child. When considering the 18 U.S.C. § 3553(a) factors, I found, *inter alia*, that Baylor's involvement in the drug conspiracy was largely the result of her romantic involvement with Stinson. (July 9, 2019 Tr. 40–41.) I varied downward and sentenced Baylor to the mandatory minimum term of 60 months imprisonment and six years of supervised release (as well as a \$500 special assessment). (*Id.* at 36–41.)

VI. CONCLUSION

The Government asked me to find facts at sentencing that had no evidentiary support. Although the law allows the prosecution to prove drug quantities circumstantially—by logical inference from reliable evidence—there must be actual evidence on which the inference is based. The case against Debra Baylor included no such evidence. Accordingly, the sentence I imposed reflects what the Government actually proved by an evidentiary preponderance, not what it tried to prove.

August 7, 2019

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

Paul S. Diamond, J.