

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 06-40001-01-RDR

ROBERTO CARLOS LOPEZ-SALAZAR,

Defendant.

O R D E R

This order is issued to record the court's rulings upon issues raised during the sentencing hearing in the above-captioned case. Defendant appeared for sentencing after pleading guilty to a charge of possession with intent to distribute approximately 230 kilograms of marijuana. This case arises from a traffic stop and a consent search. Marijuana and cocaine were found in a pickup truck driven by a Mr. Diarte. Defendant was a passenger in the vehicle. Defendant's fingerprints were found on at least one of the packages of marijuana in the vehicle.

During the sentencing hearing, the court addressed defendant's two-part objection to the presentence report. The first part concerned whether the court should consider the cocaine found in the truck in addition to the marijuana, since defendant pleaded guilty to possessing marijuana and not cocaine. The court held that the cocaine was part of the relevant conduct in this case and must be considered in calculating an appropriate sentence under the Guidelines. U.S.S.G. § 1B1.3.

The second part to defendant's objection requested the court to reduce defendant's offense level on the grounds that defendant played a "minor" or "minimal" role in the offense. The court determined that the facts of this case supported a reduction in the offense level for defendant's "minor role" in the offense. The court did not find that a reduction for a "minimal role" was justified in this case. The fact that defendant's fingerprints were found on the drug packaging in this case demonstrates a degree of participation which the court believed is incompatible with "minimal participation" by a drug courier.

After deciding defendant's objection to the presentence report, the court found that defendant's offense level was 23, his criminal history category was I, and the guideline range was 46 to 57 months. The court sentenced defendant to a term of 46 months.

A copy of this order shall accompany any copy of the presentence report transmitted to the Bureau of Prisons.

IT IS SO ORDERED.

Dated this 19th day of December, 2006 at Topeka, Kansas.

s/Richard D. Rogers
United States District Judge