

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

Vs.

No. 06-40016-02-SAC

LUIS GABRIEL MARTINEZ,

Defendant.

MEMORANDUM AND ORDER

The driver of a vehicle in which a large amount of cocaine was found secreted inside a panel area of the vehicle along with currency, the defendant was charged with and then pleaded guilty to conspiracy to distribute and to possess with the intent to distribute cocaine. The presentence report (“PSR”) recommends a Guideline sentencing range of 87 to 108 months from a criminal history category of one and a total offense level of 29 based on the following calculations: a base offense level of 34 pursuant to U.S.S.G. § 2D1.1(c)(3), a two-level “safety valve” reduction pursuant to U.S.S.G. §§ 2D1.1(b)(9) and 5C1.2, a three-level acceptance of responsibility adjustment enhancement pursuant to U.S.S.G. § 3E1.1. The addendum to the PSR reflects one unresolved joint objection.

Both the government and the defendant object that the PSR fails to

recommend a minor role adjustment. After reviewing the applicable law and the facts as set forth in the PSR, the court finds the defendant is less culpable than most other participants and sustains the joint objection. The court bases its ruling on the defendant's lack of knowledge about the scope and structure of the conspiracy, the defendant's limited and brief involvement, and the government's position.

This ruling results in the following changes to the Guideline calculations appearing in the PSR. The base offense level is reduced from 34 to 31 pursuant to U.S.S.G. § 2D1.1(a)(3) in light of the minor role reduction. The base offense level is further reduced by two levels for safety valve, two levels for minor role, and three levels for acceptance of responsibility. The result is a total adjusted offense level of 24 and a criminal history category of one for a sentencing range of 51 to 63 months.

IT IS THEREFORE ORDERED that the parties' joint objection to the PSR is granted.

Dated this 26th day of July, 2006, Topeka, Kansas.

s/ Sam A. Crow

Sam A. Crow, U.S. District Senior Judge