



**US Sentencing Commission's Annual National Seminar  
on the Federal Sentencing Guidelines**

# National Seminar

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## **Relevant Conduct Answers**



# Relevant Conduct Scenarios

You are the judge in a multi-defendant drug case. All the defendants have pleaded guilty. Defendants **ADAM BROOKS, CELESTE DRAKE, ELLIOTT FRANKS, GREG HANOVER, ISAAC JONES, KYLE LUCAS**, are charged in the District of Maryland with Indictment with one count of Conspiracy to Distribute and Possession with Intent to Distribute Heroin. The Indictment alleges that beginning in January 2015 until December 30, 2017, the five defendants did conspire to distribute 1 kilogram or more of Heroin in the McCulloh Homes in West Baltimore. The charge carries a ten-year mandatory minimum sentence.

## The discovery described the following:

Beginning in January of 2015, Baltimore City Police Department and the DEA began investigating a drug distribution ring in the McCulloh Homes housing project. The investigation centered on Defendant **ADAM BROOKS** who, it was revealed, was a mid-level distributor of heroin. Over the course of two years, the investigation showed that Brooks worked with **ELLIOT FRANKS, GREG HANOVER, ISAAC JONES, KYLE LUCAS** and others, to distribute heroin in West Baltimore. **BROOKS** would get heroin from his supplier and deliver the drugs to street-level dealers who would sell the drugs. Over the course of the investigation, **BROOKS** received and sold over five kilos of heroin.

Whenever **BROOKS** got a shipment of drugs from his supplier, he called **KYLE LUCAS** first to coordinate the sale of the heroin. **LUCAS** and **BROOKS** were distant cousins and had been selling drugs together for several years. **BROOKS** was responsible for acquiring the drugs while **LUCAS** was in charge of finding street-level dealers. **LUCAS** recruited street level dealers to distribute to drugs around West Baltimore. Specifically, **LUCAS** recruited **ELLIOT FRANKS, GREG HANOVER**, and **ISAAC JONES** to act as street level dealers. **LUCAS** determined where the street dealers would sell drugs and what quantity of drugs each dealer would get. After all the drugs were sold, **BROOKS** received a larger portion of the drug proceeds.

**ELLIOT** had been selling cocaine with other drug dealers in Baltimore beginning in 2014. He began selling heroin for **BROOKS** and **LUCAS** in January 2016. **ELLIOT** and **ISAAC JONES** are step-brothers and have lived together in the same house since 2014. **ISAAC** knew about all of **ELLIOT'S** drug dealing activity but **ISAAC** worked full time as truck driver and did not want to deal drugs.

In June of 2017, **ISAAC** lost his job as a truck driver and, needing money, began dealing drugs with **ELLIOT**. After June, **ISSAC** and **ELLIOT** went to pick up drugs from **LUCAS** and **BROOKS**

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every week. After **ISAAC** and **ELLIOT** got the drugs, they coordinated where they were going to make sales and share proceeds.

**GREG HANOVER** began selling drugs he received from **BROOKS** and **LUCAS** in January 2015. He knew there were other street level dealers who got drugs from **BROOKS** and **LUCAS** but **GREG** has never met anyone else who gets drugs from **BROOKS** and **LUCAS** nor has **Greg** ever seen anyone pick up drugs at the same time he does.

**GREG** always carries a weapon when he sells drugs because he has been robbed before while carrying drug proceeds. After the robbery, **GREG** was paranoid about being followed. He began constantly changing meeting locations to avoid detection. Sometimes, **GREG'S** girlfriend **CELESTE DRAKE** would accompany him when he made the sales. **CELESTE** sat in the car while he made the sales. She never touched the weapon because **GREG** carried it on his person.

On three occasions, **CELESTE** went by herself to meet with potential drug buyers because Greg was afraid he would be robbed again. On these occasions, **CELESTE** got drugs from **GREG**, and conducted the sales by herself. For these three sales, **GREG** paid her \$20 from the drug proceeds.

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1. **Brooks** and **Lucas** enter guilty pleas first. Based on the information received from the government and law enforcement officers, the probation officer found that **Brooks** and **Lucas** were responsible for distributing five kilos of heroin. **Brooks** challenges this drug amount in the PSR. **Brooks** argues that the Indictment alleges only one kilo of heroin and any quantity beyond that must be proven beyond a reasonable doubt. What quantity of drugs will **Brooks** be liable for?

Answer: Five kilos, if the court finds by a preponderance of the evidence that this is the correct amount. Relevant conduct is not limited by the indictment (or the plea). The indictment tells us the legal parameters; *i.e.*, mandatory minimums and statutory maximums, but does not bind the court for relevant conduct purposes. Finally, relevant conduct must be proven by the preponderance of the evidence; not reasonable doubt.

2. Would the aggravating role enhancement apply to **Brooks**?

Answer: Yes, Brooks could get this enhancement. The factors for the court to consider under U.S.S.G. §3B1.1 are listed in Application Note 4 including: decision making authority; claim to a larger share of the proceeds; recruitment of accomplices, participation in the planning of the offense; degree of control over others. In this case, Brooks supplied drugs to lower-level members of the conspiracy, he kept a larger share of the drug proceeds, and he was the person who coordinated with the supplier to get the drugs. Therefore, he would be eligible for the aggravating role enhancement

3. **Lucas** is also challenging the drug quantity in his PSR. He argues that he should not be held responsible for the same quantity of drugs as **Brooks**. **Lucas** argues that he is liable for 2 kilos, which is the amount he personally handled. **Lucas** noted that while he and **Brooks** shared the drug proceeds equally, he only worked under **Brooks**' direction and never met the supplier. What quantity of drugs will **Lucas** be liable for?

Answer: Five kilos; the same quantity as Brooks. When looking at the acts of others, we look at the scope of Lucas' jointly undertaken activity and what he agreed to do. What did Lucas agree to do? Here, he agreed to work with Brooks to sell drugs. While the two men had different roles in the conspiracy, they worked together during the conspiracy and they had jointly undertaken criminal activity.

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4. Would the aggravating role enhancement apply to **Lucas**?

Answer: Yes, Lucas could get this enhancement. The factors for the court to consider under U.S.S.G. §3B1.1 are listed in Application Note 4 including: decision making authority; claim to a larger share of the proceeds; recruitment of accomplices, participation in the planning of the offense; degree of control over others. Lucas recruited others and he directed where the street-level dealers would sell. He also coordinated and planned the offense with Brooks.

5. **Greg** is the next defendant to be sentenced. The PSR states that **Greg** personally sold one kilo of heroin but stated that because he was part of a conspiracy, and knew there were other street level dealers, he should also be liable for the entire quantity of the conspiracy. Will **Greg** be liable for the drugs sold by others in the conspiracy?

Answer: No, Greg will not be liable for the drugs others sold in the conspiracy. Pleading guilty to a conspiracy does not mean a defendant is liable for the all the actions of others in the conspiracy. Further, the fact that Greg knew that others were involved in the conspiracy is not sufficient for relevant conduct purposes. Instead, we look at his individualized undertaking. What did Greg agree to do? In this case, Greg had an agreement with Brooks and Lucas to sell a quantity of drugs. There is no indication that he worked with other low-level drug dealers (other than Celeste whose conduct is addressed below). Greg is liable for the drugs he sold.

6. **Celeste** is sentenced a day after Greg. She made several objections to her PSR. First, she argues that her drug quantity should be limited to the three drug transactions she conducted by herself, which totaled 20 grams. What quantity of drugs is attributable to **Celeste**?

Answer: The drugs she sold on her own and the drugs Greg sold when she was with him. A defendant is always liable for the acts he or she commits during the offense of conviction, in preparation for the offense, and to avoid detection of the offense. So, Celeste is liable for the drugs she sold. The issue is whether she will also be liable for the drugs Greg sold. To answer that, we look at the scope of the jointly undertaken criminal activity. Here, Celeste joined Greg when he went to sell drugs because Greg was paranoid about getting shot. Whether she was a lookout or was there to call for back-up in the event Greg got hurt, Celeste has taken steps to join Greg's drug activity. Therefore, Celeste will be liable for the drugs Greg sold when she was with him.

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7. The PSR for **Celeste** also added a 2-level enhancement under §2D1.1(b)(1) for possession of a weapon. **Celeste** argues that she never carried a gun and therefore cannot be liable for the weapon. Will **Celeste** get the gun enhancement?

Answer: Yes, she will. Following the answer above, we know that Celeste's relevant conduct includes the Greg's activity, which includes selling drugs and carrying a weapon. The 2-level enhancement under §2D1.1(b) states that it applies when "a dangerous weapon was possessed." This means that offense, and all relevant conduct, involved the possession of a gun. Personal possession is not required to get this enhancement. Because Greg's conduct involved a gun, and because Greg's conduct was part of Celeste's relevant conduct, the 2-level enhancement will apply.

8. **Celeste** also argues that she is eligible for safety valve. The government agrees that she meets four out of the five criteria but argues that she cannot get safety valve because of the weapon. Can **Celeste** get safety valve?

Answer: Yes, she is eligible for safety valve. Although she got the enhancement for the gun under §2D1.1(b)(1), she never possessed the gun. The 2-level enhancement under §2D1.1(b)(1) is broader and applies to conduct of conspirators under jointly undertaken criminal activity. Conversely, §5C1.2(a)(2), specifically states that safety valve applies if "the defendant did not . . . possess a firearm or other dangerous weapon." When the guideline uses the term "defendant," the conduct is limited to what the defendant did and does not apply to the actions of co-conspirators. Further, Application Note 4 clarifies that the term "defendant . . . limits the accountability of the defendant to his own conduct . . ." Because Celeste did not personally possess the gun, she can get safety valve.

9. Finally, **Celeste** argues that she is eligible for a minor role reduction because she is less culpable than other people in the conspiracy. The government agrees that she is less culpable but argues that she already received a reduction on the drug quantity and therefore, she is not eligible for further reductions. Will **Celeste** get minor role even if she is held responsible only for the quantity of drugs she sold?

Answer: Celeste is not precluded from getting a minor role reduction even though her relevant conduct was limited to her role in the conspiracy. The reduction applies to defendants who are "substantially less culpable than the average participant." Application Note 3B to §3B1.2 further states that "[a] defendant who is accountable under § 1B1.3 (Relevant Conduct) only for the conduct in which the defendant was

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personally involved who performs a limited function in the criminal activity may receive and adjustment under this guideline.”

10. **Elliot** and **Isaac** are sentenced last. **Elliot** and the government have agreed that **Elliot** is responsible for distributing two kilos of heroin in this conspiracy. However, the PSR noted that **Elliot** was selling drugs prior to joining this conspiracy, totaling 300 grams of cocaine. Government argues that the cocaine should be included in the drug quantity for the instant offense. Will **Elliot** be held responsible for the cocaine he sold before he entered the conspiracy?

Answer: Maybe, more facts are needed. Drugs are a type of offense for which expanded relevant conduct applies. In order to include the drugs that Elliot sold prior to this conspiracy, we have to determine whether prior drugs were part of the same course of conduct, common scheme or plan. That is, were they connected by common victims, common accomplices, common modus operandi? Was there similarity, regularity, temporal proximity between the offense of conviction and the prior drug sales? If the court finds that the prior drugs were part of the same course of conduct or common scheme or plan, that quantity will be added to the drug quantity calculation.

11. At **Isaac's** sentencing, the government argues that the drug quantity is two kilos, the same quantity as **Elliot**. The government notes that **Elliot** and **Isaac** lived together during the conspiracy and that **Isaac** knew that **Elliot** was selling heroin. **Isaac** argues he can only be held accountable for the drugs he sold, which totaled 1 kilo. What quantity of drugs will be attributed to **Isaac**?

Answer: The amount of drugs Isaac sold AND the amount of drugs Elliot sold after Isaac entered the conspiracy. Isaac is not liable for the acts of others that occurred prior to Isaac entering the conspiracy, even if he knew about the criminal conduct. Knowledge is not enough for relevant conduct. While it is true that Isaac and Elliot lived together during the entire time of the conspiracy, until 2017, Isaac was working as a truck driver and he did not sell drugs. Isaac entered the conspiracy in 2017 so he is responsible for all drugs he sold after that date. AND, Isaac is also responsible for the drugs that Elliot sold after 2017 as well. Once Isaac entered into the conspiracy, he worked with Elliot and they had a jointly undertaken criminal activity.