

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3206

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LARRY PRICE and KWECI PRICE, BARBARA PRICE,

Defendants-Appellants.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CR 92 314 D)

(November 30, 1993)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:*

Barbara Price, Kweci Price, and Larry Price were each charged in a two-count indictment with conspiracy to possess with intent to distribute at least 14 grams of cocaine in violation of 21 U.S.C. §§ 841(a)(1), 846 and with knowingly using and carrying certain specified firearms in violation of 18 U.S.C. § 924(c)(1).

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

All three defendants were found guilty after a jury trial and timely appealed.

I.

A. *Factual Background*

Barbara Price is the mother of seven children, including her co-defendants Kweci and Larry Price.¹ At all times relevant to this criminal case, Barbara Price and her children lived in the Desire Housing Project in New Orleans, Louisiana. The record reflects that this housing project was notorious as a center for the distribution of illegal drugs.

At trial, New Orleans Police Officer Joseph Williams testified to the following chain of events. Officer Williams conducted an investigation of narcotics activities in the Desire Housing Project from the summer of 1990 through the summer of 1991. On June 8, 1990, he received information that a drug transaction was in progress at the intersection of Desire and Benefit Streets. Proceeding to that location with his partner, Detective Selby, Officer Williams observed Keith Joseph standing in a doorway which led to the Prices' upstairs apartment, apartment # 3603 D, in the Desire Housing Project. Officer Williams saw Joseph conduct a "quick exchange" of small objects with another unidentified individual. When Officer Williams and his partner approached Joseph, the unidentified individual fled

¹ The defendants' last name is occasionally referred to in the record as being "Howard" instead of "Price." They have used the name "Price" in their briefs, and we will do likewise in this opinion.

and Joseph ran up the steps into the housing project with the officers in pursuit. Joseph discarded a matchbox as he fled; the matchbox was later discovered to contain five bags of crack cocaine. Officer Williams chased Joseph into apartment # 3603 D, where he was met by Barbara Price, her companion Leroy Williams, and several of her children. Disregarding the statements of the apartment's occupants that no one had entered the apartment, Officer Williams conducted a search and found Joseph hiding under a bed in a rear bedroom of the apartment. Joseph was arrested for the drug transaction and for trespassing in the Prices' apartment. The time was about 11:50 p.m., and Barbara Price testified that she was in bed when Joseph entered her apartment.

On August 26, 1990, a similar series of events took place. Officer Williams again observed an apparent drug transaction in the same vicinity. One of the participants in the transaction, Sean Warner, again fled up the stairs into the housing project and took refuge in the Prices' apartment. Accompanied by Detective Eddie Messina, Officer Williams chased Warner into the Prices' living room and apprehended him there. Warner had nine bags of crack cocaine on his person at the time. Making a search of the premises, Officer Williams found a .22 caliber pistol under a mattress in a bedroom from which he had seen Larry Price emerge. Again Leroy Williams, Barbara Price, and several small children were present at the time of the arrest, and Officer Williams testified that he believed that someone other than

Warner was attempting to shut the door when he forced his way into the apartment.

Officer Williams also testified that in March 1991 a confidential informant told him that he (the informant) could buy cocaine from a source in the Prices' apartment. After making sure that the informant did not already have contraband on his person, Officer Williams gave him some money and sent him to the Prices' apartment with Detective Reginald Jock on March 6, 1991. The informant entered the apartment briefly and returned with a plastic bag containing a substance later determined to be cocaine. Using this information, the police obtained a search warrant for the Prices' apartment. Before executing the warrant, however, Detective Jock returned to the housing project on March 10, 1991, and, working undercover, purchased two pieces of purported crack cocaine from two individuals in the vacant apartment across from the Prices' apartment. The substances bought by Detective Jock, however, tested negative for cocaine.

After the attempted purchase by Detective Jock, the police executed the search warrant. The two individuals who had sold the fake cocaine to Detective Jock were arrested as they fled from the vacant apartment. Leroy Williams, Barbara Price, and several small children were present in the Prices' apartment when the police executed the search warrant; Larry and Kweci Price were not present. In one bedroom closet the police found a large plastic bag containing sixteen smaller plastic bags, each of which contained a rock of crack cocaine. Judging from the

clothes present in that bedroom, as well as a letter addressed to Kweci Price and a picture of Larry and Kweci Price, Officer Williams testified that the bedroom where the cocaine was found belonged to Kweci and Larry Price. An open box of .44 caliber ammunition was also found on top of a dresser in their bedroom, along with a razor blade with white residue on it. A loaded .38 caliber revolver was found hidden in a heating vent in an apartment hallway. Barbara Price and Leroy Williams were both arrested.

After the raid on the Prices' apartment, the police obtained arrest warrants for Kweci and Larry Price. On April 8, 1991, Larry Price was seen running up the steps to the Prices' apartment by police officers. Officer Williams chased him, picking up plastic baggies being discarded by Larry Price as he ran. Detective Selby arrested Larry Price as he attempted to escape through the back door of the apartment. In the course of a search of the apartment, Officer Williams recovered a sawed-off shotgun from the pantry area next to the kitchen. The officers recovered a total of ten plastic bags that had been discarded by Larry Price, each containing rocks of crack cocaine, and they found \$210 in cash and a digital beeper on his person.

On June 27, 1991, Officer Williams and Detective Thomas were driving in the vicinity of the housing project when they observed an individual, later identified as Jerome Edgerson, leaving the hallway that leads to the Prices' apartment. As the officers slowed their vehicle to get a better look at Edgerson, Edgerson

stepped back into the hallway and discarded a plastic sandwich bag. The officers stopped the car, and Officer Williams pursued Edgeron when he fled up the stairs to the Prices' apartment. Officer Williams also recovered the plastic bag, which contained ten smaller bags of crack cocaine. Kweci Price, Joseph Marshall, and two others were present in the Prices' apartment. Marshall threw a bag containing cocaine out a window, and Detective Thomas recovered the bag. The officers apprehended both Marshall and Edgeron, and in their search of the apartment the officers found two magazines of ammunition on the dresser in the room where Marshall was arrested, as well as a loaded revolver and a loaded nine millimeter pistol on the floor in a different bedroom. Kweci Price and the other individuals fled the scene and escaped.

Kweci Price was ultimately apprehended on September 26, 1991. Officer Williams and his partner, who is not identified in the record, observed Kweci Price standing on the sidewalk on Benefit Street during a funeral parade. The officers observed a sizable bulge in Kweci Price's pants on the right side of his thigh. When the officers stopped to investigate, Kweci Price fled, discarding a nine millimeter weapon. The officers recovered the gun and arrested Kweci Price.

At some point prior to September 26, 1991, Barbara Price moved from apartment # 3603 D to apartment # 3607 C. Police officers observed Larry and Kweci Price in the vicinity of the new apartment an average of three times a week. On October 29, 1991, Officer Williams and Detective Thomas observed an

individual loitering on the front porch of the apartment building at 3607 Benefit Street. When the individual noticed the officers, he fled into the building. Officer Williams pursued him, while Detective Thomas covered the back steps to the apartment. A different individual, variously identified as Lawrence Warner and Anthony Warner, exited the apartment, and when he saw Officer Williams he attempted to throw a plastic bag out the window on the second floor landing. The attempt was unsuccessful because the window was covered by an iron grille. Officer Williams recovered the bag, which apparently contained crack cocaine, and Detective Thomas apprehended Warner as he tried to escape.

Officer Williams then pounded on the door to apartment # 3607 C, and when Barbara Price opened the door he started to push his way in. After a "pushing match," the occupants of the apartment began to flee past Officer Williams. Among those who fled were Larry and Kweci Price. Officer Williams then explained his investigation to Barbara Price and informed her of her rights. She gave the officers permission to search the apartment. They found a loaded AK-47 near the bathroom, and in one bedroom they found two nine millimeter weapons in a dresser drawer and a .25 caliber automatic weapon and a nine millimeter pistol with laser sight under a mattress, as well as a bulletproof vest lying on the bed. The officers also found a bag containing crack and powder cocaine in the pocket of a black and red leather dress hanging in the closet in Barbara Price's

bedroom. Her bedroom also contained a box of nine millimeter ammunition and a beeper. The officers then arrested Barbara Price.

The government also introduced testimony at the Prices' trial that Barbara Price purchased a "fully loaded" Ford Explorer from Bohn Ford, a New Orleans dealership, on June 19, 1990. This truck, costing almost \$21,000, was purchased by Barbara Price by trading in a Toyota Camry that was some 18 months old and that was owned by her free and clear of any liens. She paid the balance of the purchase price with some \$7000 in cash and \$4300 in the form of a check. At trial, Barbara Price testified that she bought the Explorer on behalf of a friend, Carolyn Miles.

The parties stipulated to the fact that the substances recovered in the course of the investigation described by Officer Williams tested positive for cocaine base.

B. Procedural History

Barbara, Larry, and Kweci Price were charged in a two-count indictment with violations of the Federal Controlled Substances Act and the Federal Firearms Act. Count I of the indictment charged the three defendants with conspiring to possess with intent to distribute at least 14 grams of cocaine base from on or about June 1, 1990, until on or about October 29, 1991, in violation of 21 U.S.C. §§ 841(a)(1), 846. Count II charged the three defendants with knowingly using and carrying five firearms in connection with the drug trafficking offense in violation of 18 U.S.C. § 924(c)(1), (2). The firearms referenced in Count II

were those seized from the Prices' apartment on October 29, 1991, although additional firearms not specifically referenced in the indictment were also introduced into evidence at trial.

After a jury trial held December 7-8, 1992, all three defendants were found guilty. On March 17, 1993, the three defendants received identical sentences. They were sentenced to serve ninety-seven months for Count I and sixty months for Count II, to be served consecutively, followed by a five-year supervised release term for Count I and a three-year supervised release term for Count II, to be served concurrently. The three defendants filed timely notices of appeal, and they raise numerous points of error.

II.

Standard of Review

Each defendant raises insufficiency of the evidence as a point of error. Our standard of review is to consider the evidence in the light most favorable to the government, including all reasonable inferences that can be drawn from the evidence. United States v. Pigrum, 922 F.2d 249, 253 (5th Cir.), cert. denied, 111 S. Ct. 2064 (1991). The test is not whether the evidence excludes every reasonable hypothesis of innocence or is wholly inconsistent with every conclusion except that of guilt, but whether a reasonable trier of fact could find that the evidence establishes guilt beyond a reasonable doubt. A jury is

free to choose among reasonable constructions of the evidence.
Id. at 254.

Larry and Barbara Price also challenge the decision of the district court to admit into evidence firearms seized by the police in the Prices' apartment other than those specified in Count II of the indictment itself. A district court's evidentiary rulings are reviewed under the abuse of discretion standard. United States v. Stouffer, 986 F.2d 916, 924 (5th Cir.), cert. denied, 114 S. Ct. 115, and cert. denied, 114 S. Ct. 314 (1993). Even if an abuse of discretion is found, the error is reviewed under the harmless error doctrine. United States v. Capote-Capote, 946 F.2d 1100, 1105 (5th Cir. 1991), cert. denied, 112 S. Ct. 2278 (1992).

III.

A. Sufficiency of the Evidence: Conspiracy

To sustain a conviction for conspiracy to possess narcotics with the intent to distribute, the government must prove the following elements: (1) that an agreement between two or more persons to violate the narcotics laws existed; (2) that each alleged conspirator knew of and intended to join the conspiracy; and (3) that each alleged conspirator participated in the conspiracy. United States v. Juarez-Fierro, 935 F.2d 672, 677 (5th Cir.), cert. denied, 112 S. Ct. 402 (1991); United States v. Magee, 821 F.2d 234, 238-39 (5th Cir. 1987). An agreement between the other conspirators and the defendant need not be

proved by direct evidence, but may be inferred from concert of action. Magee, 821 F.2d at 239. Although mere presence at the scene of the crime or close connection with co-conspirators will not alone support an inference of participation in a conspiracy, presence or association is one factor that the jury may rely on, along with other evidence, in finding conspiratorial activity by a defendant. Id. Unlike many other conspiratorial offenses, 21 U.S.C. § 846 does not require proof of an overt act in furtherance of the conspiracy. United States v. Lechuga, 888 F.2d 1472, 1476 (5th Cir. 1989). With these principles in mind, we address the arguments raised by each defendant in turn.

1. *Barbara Price*

The evidence supporting Barbara Price's conviction, viewed in the light most favorable to the guilty verdict returned by the jury, may be summarized as follows. On several different occasions, individuals were seen conducting drug transactions in the hallway outside her apartment. When police officers moved to apprehend those involved in the transactions, they consistently fled to her apartment. The drug offenders seemed to have little or no difficulty gaining access to the apartment, and the occupants of the apartment generally impeded the pursuit of the police officers or denied that anyone had taken refuge in the apartment. A confidential informant bought cocaine from someone in the Prices' apartment. In the course of their many visits to and searches of the apartment, police officers found bags of cocaine both in the bedroom that appeared to belong to Larry and

Kweci Price and in a dress that appeared to belong to Barbara Price. They also frequently found various "tools of the narcotics trade," such as numerous firearms and ammunition, often of the semi-automatic variety, a razor blade covered with white residue, beepers, and cellophane bags. Barbara Price was employed as a narcotics counselor and her annual salary was some \$20,000; however, she purchased a Ford Explorer costing at least that much with a relatively new Toyota Camry that she owned outright, \$7000 in cash, and a check for the balance. She also owned clothing that was described by Detective Thomas at trial as "lavish" and that included a high percentage of leather apparel. The purchase of the Explorer and the expensive clothing tended to suggest that Barbara Price had a source of income other than her job as a narcotics counselor.

Additionally, Barbara Price's testimony at trial could have been found to be unbelievable by the jury. She maintained that she never allowed anyone to store guns in her apartment, although firearms were discovered in the apartment on numerous occasions. She testified that she had never seen the AK-47 before it was found by police officers in her apartment on October 29, 1991, and that she had never seen any of the guns that were found in the apartment over the course of the investigation. She also denied seeing the beeper that the officers found in her bedroom on October 29, 1991, and she denied seeing any drugs in her apartment that day.

We conclude that the evidence is sufficient to support Barbara Price's conviction for conspiracy to possess cocaine with intent to distribute. The presence of a significant amount of cocaine in a dress hanging in her closet at a time when she was herself present in the apartment would certainly have allowed the jury to find that Barbara Price had constructive possession of the cocaine. Coupled with this evidence was the presence of a beeper on her dresser; as Officer Williams testified, such devices constitute circumstantial evidence of involvement in drug trafficking. We have recognized as much. United States v. Elwood, 993 F.2d 1146, 1150 (5th Cir.), appeal after remand, 999 F.2d 814 (5th Cir. 1993); United States v. Landry, 903 F.2d 334, 338-39 (5th Cir. 1990). Barbara Price testified at trial that she did not know these items were present in her bedroom, and the jury's credibility determination is entitled to our deference.

A substantial amount of other circumstantial evidence supports the jury's verdict. The frequency of the occasions on which suspected drug traffickers fled to her apartment suggests that those individuals were aware they could easily obtain refuge there; indeed, this may explain why the vicinity of Barbara Price's apartment was such a popular locale for drug dealing activity. Her presence in the apartment during several incidents, including the police's March 10, 1991, execution of the search warrant and discovery of substantial evidence of drug trafficking in one apartment bedroom is a factor that the jury could assign some probative value. Under our "commonsense, fact-

specific approach," United States v. McKnight, 953 F.2d 898, 902 (5th Cir.), cert. denied, 112 S. Ct. 2975 (1992), a jury could have found that she had constructive possession of the numerous firearms found in her apartment -- firearms whose offensive nature often makes them "tools of illegal narcotics trafficking." United States v. Saget, 991 F.2d 702, 709 (11th Cir.) (citations omitted), cert. denied, --- S. Ct. --- (1993). Her insistence on the witness stand that she had never seen any of the weapons before, including the AK-47 that was discovered near the entrance to the apartment's bathroom on October 29, 1991, could have been found unbelievable by the jury. Finally, the evidence that she owned clothing and bought a Ford Explorer that would normally be beyond the reach of a person of her means was additional evidence that Barbara Price was involved in a conspiracy to possess cocaine with the intent to distribute.

We recognize that "[i]t is not enough that the defendant merely associated with those participating in a conspiracy, nor is it enough that the evidence places the defendant in a climate of activity that reeks of something foul." United States v. Sacerio, 952 F.2d 860, 863 (5th Cir. 1992) (quoting United States v. Galvan, 693 F.2d 417, 419 (5th Cir. 1982)). However, based on the "collection of circumstances," United States v. Espinoza-Seanez, 862 F.2d 526, 537 (5th Cir. 1988) (citations omitted), we must conclude that there was sufficient evidence to support Barbara Price's conviction.

2. *Larry Price*

The government refers us to the following evidence in support of Larry Price's conviction for conspiracy to possess cocaine with intent to distribute. Larry Price was present in the apartment when Officer Williams arrested Keith Joseph on June 8, 1990. When Officer Williams entered the apartment in pursuit of Sean Warner on August 26, 1990, he witnessed Larry Price emerge from a bedroom where Officer Williams later found a .22 caliber revolver under a mattress. When the police executed the search warrant on March 10, 1991, they found bags of crack cocaine, .44 caliber ammunition, packaging materials, and a razor blade covered with white residue in a bedroom of the apartment; the government offered evidence that the bedroom was used by Kweci and Larry Price based on the discovery in the room of clothing that "looked to fit both Larry and Kweci," as well as a letter addressed to Kweci and a picture of Larry and Kweci Price with another individual. Perhaps most damaging to Larry Price's case was the April 8, 1991, incident in which he was apprehended after fleeing to the apartment from police officers, discarding bags of cocaine as he fled and carrying a digital beeper on his person at the time of his arrest. Finally, on October 29, 1991, Larry Price was in the apartment and fled as the officers apprehended Anthony Warner and before they arrested Barbara Price.

We conclude that Larry Price's conviction was based on sufficient evidence. He was carrying a beeper at the time of his April 8, 1991, arrest, and we have already noted that such

devices have been held to constitute circumstantial evidence of involvement in drug trafficking. Elwood, 993 F.2d at 1150; Landry, 903 F.2d at 339. Larry Price was also carrying rocks of crack cocaine wrapped in numerous individual plastic bags at the time of his arrest. The prior search of the bedroom he shared with his brother Kweci uncovered ziploc plastic bags and a razor blade covered with white residue; Officer Williams testified that these items are often used to package crack cocaine. The totality of the evidence against Larry Price is thus similar to the evidence introduced in Landry, 903 F.2d at 338-39, in which we held that possession of a beeper, a portable telephone, substantial amounts of cocaine and money, and a box of ziploc plastic bags would support a conviction under 21 U.S.C. § 846. Based on all the evidence, a rational trier of fact could have found Larry Price guilty of conspiracy to possess cocaine with intent to distribute.

3. *Kweci Price*

Finally we consider the evidence adduced at trial against defendant Kweci Price. Most of the evidence against Kweci Price has already been recounted -- the cocaine, .44 caliber ammunition and packaging materials found in the apartment bedroom during the March 10, 1991, search, and the incident on September 26, 1991, in which Kweci Price discarded a nine millimeter weapon while fleeing from police officers. Kweci Price was also present at the apartment on October 29, 1991, when Barbara Price was arrested. One other piece of evidence that was introduced

against Kweci Price at trial must be mentioned. His parole officer, Karen Carter, testified that she was responsible for collecting probation fees from Kweci Price. She also testified that, when she asked him on one occasion how he could afford the fees without being employed, he told her that he still had "lots of profit left over" from when he was dealing drugs.

We hold that the evidence against Kweci Price was sufficient to support the jury's finding beyond a reasonable doubt that he conspired to possess cocaine with the intent to distribute. It goes without saying that the government need not show that he was ever seen to possess cocaine; for purposes of a conspiracy charge, "concert of action" rather than possession is the essence of the crime. See United States v. Salazar, 958 F.2d 1285, 1291-92 (5th Cir.) (holding that the evidence of concerted action undertaken by the defendant and others was sufficient to support the defendant's conviction for conspiracy despite the fact that he was never seen in possession of cocaine), cert. denied, 113 S. Ct. 185 (1992). Important to our conclusion is the testimony of the probation officer that Kweci Price admitted to making money by dealing drugs. From this admission, coupled with the evidence of drugs and firearms present in the Prices' apartment and in Kweci and Larry Price's bedroom, the jury could rationally have inferred that Kweci Price committed all the elements of conspiracy. A rational trier of fact could have found that, in order for Kweci Price to have made "lots of profit" from selling cocaine, he would necessarily have had to entered into an

agreement with a supplier in order to acquire the cocaine, and that he would have entered into such an agreement knowingly and intentionally. In short, the evidence against Kweci Price would allow a rational trier of fact to infer actual agreement with others to possess cocaine with intent to distribute.

We affirm Kweci Price's conviction for conspiracy to possess cocaine with intent to distribute.

B. Admission into Evidence of Extraneous Firearms

Barbara and Larry Price argue that the district court's decision to admit into evidence six guns besides those named in the indictment, plus the bullet-proof vest and various types of ammunition seized in the course of the investigation, violated Federal Rules of Evidence 401 and 403. We disagree with their contentions that these items were not relevant and that the prejudicial and inflammatory nature of the evidence outweighed its probative value. As an initial matter, we note that the prejudicial nature of proffered relevant evidence must substantially outweigh its probative value before the district court may refuse to admit such evidence; the balance is weighted heavily in favor of admitting relevant evidence. Fed. R. Evid. 403.

Admittedly, "gun possession is not probative of a defendant's predisposition to violate the drug laws." United States v. Daniels, 572 F.2d 535, 538 (5th Cir. 1978). Unlike Daniels, however, the instant case is not an entrapment case, and the weapons were not admitted to prove the disposition of the

defendants to commit drug violations. Rather, the court admitted the evidence as having some probative value with respect to the proposition that the Prices' apartment was being used by drug traffickers. Certainly firearms, particularly those of the offensive variety at issue in the instant case, are circumstantial evidence of a defendant's involvement in a cocaine conspiracy. Saget, 991 F.2d at 709. Consequently, the firearms discovered in the Prices' apartment on a recurring basis had circumstantial relevance to the issue of whether the occupants of that apartment were involved in the alleged conspiracy. The district court did not abuse its discretion by admitting the evidence. The convictions of Barbara and Larry Price are affirmed.

C. Sentencing

The appellants raise a variety of challenges to the sentences imposed on them.

1. Composition of Drugs Seized

The sentencing court found from the evidence at trial that the drugs seized during the course of the investigation were crack cocaine, also known as cocaine base. Kweci Price argues that the government's lab reports mention only cocaine, not cocaine base as alleged in Count I of the indictment, and that he therefore should have been sentenced according to the sentencing guidelines applicable to cocaine rather than cocaine base. The government responds that the stipulation agreed upon by all parties and their attorneys reflects that the suspected narcotics

seized by the police during the investigation tested positive for cocaine base. The government also points out that Kweci Price's trial counsel conceded at the sentencing hearing that he had stipulated for purposes of the trial that the substances were crack cocaine. When Kweci Price's counsel insisted that the sentencing court was required to make a separate finding regarding the composition of the substances seized, the sentencing court promptly found that the substances were crack cocaine.

Both Kweci Price and the government rely on the stipulation for support. Our inspection of the stipulation reveals that the crime laboratory reports appended to the stipulation clearly state that the specimens tested "POSITIVE FOR COCAINE," and not positive for cocaine base or crack cocaine. However, in the stipulation all the parties and their attorneys agreed that government chemists would testify, if called, that the substances seized were cocaine base. Thus, Kweci Price's assertion that there is "no proof that crack cocaine was involved in the present conspiracy" is not correct. His argument boils down to a claim that the evidence was insufficient to support the sentencing court's finding that the conspiracy involved at least 35 grams but less than 50 grams of cocaine base under the sentencing guidelines. See United States Sentencing Commission, Guidelines Manual, § 2D1.1(c)(7) (Nov. 1992).

Establishing a defendant's relevant conduct for purposes of § 2D1.1 of the sentencing guidelines does not require proof

beyond a reasonable doubt. United States v. Buckhalter, 986 F.2d 875, 879 (5th Cir.) (citing United States v. Mourning, 914 F.2d 699, 706 (5th Cir. 1990)), cert. denied, 114 S. Ct. 203, and cert. denied, 114 S. Ct. 210 (1993). The determination of such relevant conduct requires factual findings by the sentencing court by a preponderance of the evidence, which findings are subject to the "clearly erroneous" standard of review on appeal. Id. "A factual finding is not clearly erroneous as long as it is plausible in light of the record read as a whole." United States v. Sparks, 2 F.3d 574, 586 (5th Cir. 1993) (quoting United States v. Sanders, 942 F.2d 894, 897 (5th Cir. 1991)). Under this deferential standard of review, we cannot say that the sentencing court clearly erred by accepting the plain language of the stipulation, as well as the testimony of Officer Williams at the trial that the drugs seized were in fact crack cocaine.

*2. Quantity of Drugs Properly
Attributed to the Defendants*

Kweci and Larry Price also argue that the sentencing court improperly calculated their offense levels by attributing to them drugs sold or possessed by others. The sentencing court, which had, incidentally, also conducted the Prices' trial and therefore heard all the evidence firsthand, carefully considered all the amounts of drugs attributed to the Prices by the presentencing report and in fact rejected two of the incidents included in the report as attributable to the Prices. The court held that the remainder of the drugs mentioned in the presentencing report as contributing to the base offense level were reasonably

foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity. Among the incidents included by the court for sentencing purposes were those occasions when various persons fled into the Prices' apartment, discarding cocaine as they fled or carrying it into the apartment with them. The court also included the drugs found in Kweci and Larry Price's bedroom on March 10, 1991, as well as the drugs found in Barbara Price's dress on October 29, 1991.

Deferring as we must to the sentencing court's evaluation of the evidence of relevant conduct in determining the Prices' offense levels, we hold that the court's determination was not clearly erroneous. Under the preponderance of the evidence standard, the sentencing court could reasonably conclude that the drugs possessed by persons who fled to the Prices' apartment could be attributed to the Prices on the theory that they were involved in jointly undertaken criminal activity. The small arsenal found in the apartment on October 29, 1991, the admission made to the probation officer by Kweci Price, and the other circumstances of the case support a finding that the Prices were indeed involved in a scheme to distribute drugs. It was within the sentencing court's range of permissible findings to find that the individuals who fled to the Prices' apartment were involved in a scheme of criminal activity with the appellants and that the drugs carried by those individuals should be attributed to them for sentencing purposes.

The point of error is without merit.

3. *Formal Sufficiency of the Sentencing
Court's Finding of Quantity*

Barbara Price argues that she is entitled to a remand for resentencing because the sentencing court did not, in its findings of fact, specifically state the exact quantity of drugs attributed to the defendants for sentencing purposes. As she correctly points out, the sentencing court also did not state the number of guideline points resulting from its factual determination. The court's statement of reasons for imposing sentence includes a section to be filled in with the "applicable guideline ranges" as found by the court; this portion of the statement filled out for Barbara Price is left blank. As a result, she contends, it is impossible to work backwards from the applicable guideline ranges to determine which guideline was applied, and she is unaware of whether the correct guideline was applied or not. The district court is obligated to ensure that the record reflects the court's resolution of any disputed issues of material fact, and the court should normally make an express determination of the applicable guideline range, even if it should determine that a departure is warranted. United States v. Warters, 885 F.2d 1266, 1272 (5th Cir. 1989).

We agree with Barbara Price that it may be somewhat difficult to discern precisely what findings were made by the sentencing court in support of the sentence imposed, but we do not agree that reversal and remand are required. In the statement of reasons for imposing sentence, the sentencing court checked the box marked "The court determines that the applicable

guideline ranges are as indicated in the PSI Sentencing Guideline Worksheets." Barbara Price's Presentence Investigation Report, paragraph 54, states that her guideline range for imprisonment on the conspiracy charge is 97 to 121 months, based on the finding in paragraph 16 that 46.09 grams of crack cocaine and 13.87 grams of cocaine were seized during the course of the investigation. The sentencing court specifically discounted two incidents attributed to all the defendants in the report, thereby reducing the attributable amount of crack cocaine from 46.09 grams to 43.62 grams. Under the guidelines, this reduction is insufficient to alter the base offense level, so the sentencing court correctly utilized the range recommended by the report. Contrary to Barbara Price's contention, it is not impossible for us, the reviewing court, to determine the factors that were considered in her sentencing. Her point of error is without merit.

*4. Failure to Find Barbara Price
a "Minor Participant"*

Under the guidelines, a defendant who was a "minimal participant" or "minor participant" in the criminal activity for which the defendant is convicted is eligible for a reduction of his or her base offense level. U.S.S.G. § 3B1.2. Barbara Price objected to the sentencing court's failure to find that she was not entitled to such a reduction based on her minor role in the conspiracy, and she attacks this decision of the sentencing court on appeal. The sentencing court's determination is a factual finding which must be upheld unless it is clearly erroneous.

United States v. Lokey, 945 F.2d 825, 840 (5th Cir. 1991) (citing United States v. Giraldo-Lara, 919 F.2d 19, 22 (5th Cir. 1990)).

The decision not to reduce Barbara Price's base offense level based on her lesser role in the offense was not clearly erroneous. In her brief, Barbara Price claims, "It appears that her only involvement was to allow her sons and/or others to use her apartment to store various items, drugs and weapons." Even if this were true, we are not certain that such a role in a drug trafficking conspiracy would be a "minor" one. In any event, the sentencing court was entitled to disbelieve her claim; it is belied by the discovery of a substantial amount of cocaine in her dress and a beeper on her dresser. The sentencing court committed no reversible error in imposing Barbara Price's sentence.

IV.

For the foregoing reasons, the convictions and sentences of Barbara Price, Larry Price, and Kweci Price are AFFIRMED.