

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

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UNITED STATES OF AMERICA,	:	CASE NO. 1:04-CR-211
	:	
Plaintiff,	:	
	:	
vs.	:	ORDER
	:	[Resolving Doc. No. 29]
EMMANUEL ONUNWOR,	:	
	:	
Defendant.	:	
	:	

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JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

The Court now considers the United States of America ("Government")'s Motion for Pretrial Determination as to Legal and Evidentiary Matters [Doc. No. 29]. With this motion, the Government asks the Court to rule on (1) the admissibility of admissions that Onunwor allegedly made during a proffer session, and (2) how it should handle evidence potentially relevant to sentencing (in the event of a guilty verdict) under the cloud of uncertainty the Supreme Court sent upon the federal judiciary with its decision in *Blakely v. Washington*, 124 S.Ct. 2531 (June 24, 2004). The Court's rulings follow.

With regard to the proffer, the Court reiterates its decision announced on August 16, 2004, following a hearing on a motion to suppress, to hold this issue in abeyance until trial.

With regard to the sentencing factors, the Court notes that the Sixth Circuit has recently determined that the Federal Sentencing Guidelines remain constitutional despite *Blakely*. See *United States v. Koch*, No. 02-6278 (6th Cir. Aug. 13, 2004). Because the Court cannot locate an official opinion published on

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this case, it presumes accurate the following order, as quoted on the *Sentencing Law and Policy* weblog:

We hold, with a formal opinion and dissenting opinion to follow, that the decision of the U.S. Supreme Court in *Blakely v. Washington*, 124 S. Ct. 2531(2004), does not invalidate the appellant's sentence under the federal Sentencing Guidelines. Accordingly, the district courts within the Sixth Circuit are hereby instructed to continue sentencing defendants in accordance with the Guidelines, as they did prior to *Blakely*. In the interest of judicial economy, and pending a definitive ruling by the Supreme Court, we recommend that the district courts within this circuit also announce at the time of sentencing a sentence pursuant to 18 U.S.C.A. Sec.3553(a) (West 2000 & Supp.2004), treating the Guidelines as advisory only.

Douglas A. Berman, "I'm Home . . . and Grumpy about the Sixth Circuit," *Sentencing Law and Policy*,

Aug. 14, 2004, *available at*

[http://sentencing.typepad.com/sentencing\\_law\\_and\\_policy/2004/08/im\\_home\\_and\\_gru.html](http://sentencing.typepad.com/sentencing_law_and_policy/2004/08/im_home_and_gru.html).

Because the Sixth Circuit has instructed United States District Courts to apply the Guidelines, but also to provide as an alternative the sentence that the Court would enter under a discretionary sentencing regime, the Court intends to do just that. Thus, the Court will not bifurcate the trial into a "guilt phase" and a "sentencing phase." Nor will the Government need to put on at trial any additional evidence regarding sentencing factors. The only way such additional evidence would be necessary is if the Supreme Court were to rule that the Guidelines are severable. Only then will the Government need to prove sentencing factors to a jury, beyond a reasonable doubt. Should the Supreme Court later determine that the Guidelines are non-severable,<sup>1/</sup> once any Guideline runs afoul of *Blakely*, the entire Guideline system will fall. Should that occur, we will return to a regime of discretionary sentencing, which of course would not

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<sup>1/</sup> For the reasons articulately expressed by Judge Gertner in *United States v. Mueffelman*, No. 01-CR-10387-NG (D. Mass. July 26, 2004), the Court finds that this outcome is the most likely.

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require the Government to prove sentencing factors to a jury, beyond a reasonable doubt.

IT IS SO ORDERED.

Dated: August 19, 2004

*s/ James S. Gwin* \_\_\_\_\_

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE