

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

STACEY MILLER,

Defendant.

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ORDER

01-CR-0071-C

Defendant Stacey Miller has filed a Motion to Preserve the Status Quo, in which he asks the court to enjoin the government from destroying the cocaine base seized from him and used as evidence against him at his criminal trial or alternatively, order the government to have the cocaine tested independently to determine how much is cocaine and how much is baking soda. Defendant says that he intends to file a § 2255 motion based on a claim that his sentencing was illegal because the cocaine base for which he was held accountable included more than 50% baking soda.

Defendant's motion will be denied. Even if defendant is correct and the cocaine base contained as much baking soda as he claims, it would make not entitle him to a reduction in his sentence. He is accountable for the cocaine base *mixture*, not just for the amount of

pure cocaine within the mixture. United States v. Tucker, 20 F.3d 242, 245 (7th Cir. 1994) (defendant accountable for water and baking soda contained in cocaine base mixture under 21 U.S.C. § 841(b)(1)(B)(iii), as defined by U.S.S.G. § 2D1.1(c)). See also Chapman v. United States, 500 U.S. 453 (1991) (weight of LSD includes medium in which it is contained). Enjoining the government from destroying the cocaine base would be of no assistance to defendant.

ORDER

IT IS ORDERED that defendant Stacey Miller's motion to preserve the status quo is DENIED.

Entered this 17th day of December, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge