

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA : **CRIMINAL ACTION**
 :
 v. :
 :
 KAREEM JONES : **NO. 10-307**

M E M O R A N D U M

GENE E.K. PRATTER, J.

FEBRUARY 22, 2019

INTRODUCTION

Did Kareem Jones commit a drug distribution crime under Pennsylvania law? Because local law enforcement authorities did not address that question, Mr. Jones's situation is governed by the question of whether he violated a condition of his federal supervised release.

Supervised release, devised and authorized by the Sentencing Reform Act of 1984, 18 U.S.C. § 3551 *et seq.*, essentially replaced parole as a mechanism in the federal criminal justice system for easing inmates back into the public community after a term of incarceration. Parole could be authorized at some indeterminate time during a period of incarceration (thus shortening the time of incarceration), while supervised release is set at the time of sentencing to occur after a specified term of incarceration has passed. Accordingly, supervised release does not in and of itself operate as a functional shortening mechanism for a term of imprisonment; rather, it is an additional component of a sentence.

The term and conditions of supervised release are generally commensurate with the seriousness of the crime for which a defendant is convicted. Because supervised release is supposed to assist former inmates in their transition back into society, it is designed to facilitate monitoring of a supervisee by the probation department during the period of post-release

supervision. The terms of supervision require the supervisee to live by certain conditions, one of which invariably is to refrain from committing “another Federal, State, or local crime.” 18 U.S.C. § 3583(d). Other conditions typically require periodic reporting, keeping or seeking employment, submitting to periodic drug tests, and similar behavioral expectations.

If a person on federal supervision violates any of the conditions, and if the probation office issues a report of an alleged violation, a judge may do nothing, may add additional conditions, may extend the term of supervision, or, for serious violations, may revoke supervision entirely and impose a term of re-imprisonment. Such a return to prison may, in fact, be for a period longer than the initial term of incarceration imposed for the original crime of conviction.

This background of the general purpose and operation of supervised release brings the Court to Mr. Kareem Jones.

Mr. Jones pleaded guilty to a seven-count indictment in June of 2012. Five of the counts charged various drug distribution crimes involving heroin and crack cocaine and two counts concerned related firearms offenses. He was sentenced to 72 months’ imprisonment followed by five years of supervised release.

Supervision of Mr. Jones began on February 25, 2018 when he was released from prison. Five months later, the probation officer supervising Mr. Jones submitted to the Court a violation of supervised release report alleging that Mr. Jones had violated a number of the conditions of his release, the most serious of which was based on Mr. Jones’s July 26, 2018 arrest and the City of Philadelphia’s subsequent charges of possession with intent to deliver a controlled substance. Other, less serious alleged violations arose from Mr. Jones’s failure to report to the probation officer as required, to maintain employment, to submit to periodic drug testing and treatment, and the fact of a positive drug test for marijuana.

On November 6, 2018, the City of Philadelphia formally declined to proceed with its drug

charges against Mr. Jones, and the case was then withdrawn. The stated reason for the non-prosecution decision was the reportedly incomplete discovery at a “must be tried” listing because the “seizure analysis report” concerning the substance seized from Mr. Jones had not yet been completed. Be that as it may, once the local authorities opted not to prosecute, the federal prosecutors proceeded with the violation of supervised release process. The Court held an evidentiary hearing on the alleged supervision violations on January 24 and 25, 2019. It remains for the Court to determine whether any violation of supervised release occurred.

LEGAL STANDARD

Of course, if the local authorities had prosecuted Mr. Jones for the alleged crime of possession with intent to distribute, Mr. Jones would have had the right to a jury trial and the district attorney would have been obliged to prove, using only competent and admissible evidence, beyond a reasonable doubt to a jury all of the facts - - after the possible sifting out any evidence barred by the exclusionary rule - - legally necessary to support a conviction and any attendant incarceration. In all likelihood (though not mandatorily), the simultaneously pending alleged violation of federal supervised release would have been held in abeyance while the state court proceedings played out and then it is also likely that the status of the supervision violation would be to follow along on the result and consequences of the local proceedings. However, because local authorities elected not to proceed, leaving it to the federal system to respond, Mr. Jones’s situation is different.¹

There is no dispute that in this revocation proceeding, the allegations against Mr. Jones, like any supervisee, are judged according to a lower standard of proof. The Court is obliged to

¹ Certainly, in terms of the practical impact upon Mr. Jones, if he is found to have violated the condition of supervised release by way of commission of another crime, his punishment for the violation is actually and can only be a sentence that is a revision to his punishment for the original crime; it is not for the crime that amounts to the violation. Though from a defendant’s view, that may be a distinction without an immediate difference (incarceration is, so to speak, incarceration), as a legal matter it can have considerable significance.

determine by a “preponderance of the evidence [whether] the defendant violated a condition of supervised release” 18 U.S.C. § 3583(e)(3). See also, United States v. Maloney, 513 F.3d 350, 354 (3d. Cir. 2008). In a violation-of-supervised-release hearing, a defendant cannot raise a motion to suppress evidence because the exclusionary rule does not apply, given that, perhaps among other reasons, the exclusionary rule’s “deterrence benefits” do not outweigh its “substantial social costs.” Pennsylvania Bd. of Prob. and Parole v. Scott, 524 U.S. 357, 363 (1998). See also, United States v. Loy, 237 F.3d 251, 260 (3d Cir. 2001); United States v. Herbert, 201 F. 3d 1103, 1104 (9th Cir. 2000); United States v. Bazzano, 712 F.2d 826, 829 (3d Cir. 1983). A greater range of evidence, such as, for example, hearsay evidence, is admissible in a revocation hearing along, and the right to confrontation is greatly truncated. Bazzano, 712 F.2d at 829; United States v. MacCallum, 677 F.2d 1024, 1026 (4th Cir. 1982). See also Fed. R. Evid. 1101(d)(3).²

On July 26, 2018 Philadelphia Police Officer Rameen Johnson observed what he thought was Mr. Jones attempting to sell drugs at the corner of Broad and Jackson Streets in Philadelphia. Before the transaction was completed Officer Johnson intervened. Mr. Jones was immediately searched, and Officer Johnson recovered a yellow jar containing seven packets of what the officer suspected was heroin. Once back-up officers arrived at the scene, they transported Mr. Jones to South Detectives Division where Mr. Jones was again searched. This second search produced 41 more packets of suspected heroin and two packets of suspected crack cocaine. While the processing of paperwork was underway, Mr. Jones stated that he was on “federal probation” and wanted to help himself. Later, forensic analysis of the contents of the packets concluded that the 48 packets contained fentanyl and the two other packets contained crack cocaine.

Local prosecution officials withdrew the City’s case against Mr. Jones prior to presenting

² Though not the basis of any challenge to these proceedings, the Court also notes that the Double Jeopardy Clause does not apply, notwithstanding the previous filing of charges and subsequently abandonment of those charges by the City of Philadelphia. See Johnson v. United States, 529 U.S. 694, 699 (2000); United States v. Carlton, 534 F.3d 97, 101 (2nd Cir. 2008).

any evidence at a preliminary hearing. The notice of alleged violations by Mr. Jones of federal supervised release having been filed, federal prosecution authorities proceeded to request a hearing on the alleged violations. The hearing commenced on January 24, 2018 and concluded that next day.³

At the hearing and under oath, after describing his professional training and experience, Officer Johnson testified that he was in uniform and driving in an unmarked police car at about 7:30 p.m. on July 26, 2017, driving south on Broad Street. Hrg. 1/24/19 N.T. 28–29. Officer Johnson testified he saw a man he knew from previous law-enforcement contacts in the same general vicinity as Charles (“Chuck”) Taylor walking quickly, heading south on Broad Street, holding cash in his hand. The officer drove past Mr. Taylor, turned onto Jackson Street and stopped his car just beyond the intersection. Officer Johnson testified that Mr. Taylor, too, turned on to Jackson Street and approached Mr. Jones who was sitting on a bike at the corner. *Id.* at N.T. 30–32. The officer testified that he saw Mr. Taylor, holding currency in his hand, and saw Mr. Jones reach into his right pocket and “pull out a yellowish neon jar” that the officer “[knew] to be narcotics.” *Id.* at N.T. 32. As Officer Johnson got out of his car and announced himself, Mr. Taylor walked away, and the officer called for back-up. When his colleagues arrived, Officer Johnson patted down Mr. Jones and recovered the yellow jar containing seven baggies and a cell phone. At this point, Mr. Jones was placed under arrest, and other officers drove him to the station. While giving his biographical background information, according to Officer Johnson’s testimony, Mr. Jones disclosed that he was on federal supervision and hoped to help himself so as to avoid going back to jail. *Id.* at N.T. 34–35. A more extensive search of Mr. Jones ensued, producing from Mr. Jones’s underwear a sandwich baggie with 41 more packets of what Officer

³ Initially, Mr. Jones stated his intention to proceed as his own counsel. After a lengthy colloquy, Mr. Jones decided to continue with the representation by counsel.

Johnson believed to be heroin and two packets of “Ziploc” containers, one pink, one clear and a sandwich bag. No drug-use paraphernalia of any sort was found. Id. at N.T. 35.

When Officer Johnson was cross-examined, he agreed that his spotting of Chuck Taylor was “out of the corner of [his] eye,” id. at N.T. 39,⁴ as he drove down Broad Street. He acknowledged that there is no reference to Chuck (or Charles) Taylor in the various police reports and paperwork attendant to the actual July 26 incident. Id. at N.T. 44–45. In response to additional questions, Officer Johnson also acknowledged that he could not recall any descriptive details about the bicycle on which Mr. Jones was sitting when approached by Mr. Taylor who “had the money hanging in his hand” as he walked at a fast pace down the street. Id. at N.T. 50. It was clear from the officer’s testimony that there were no other people on site at the time. Likewise, there was no equivocation on the point that the transaction was not consummated.

Following Officer Johnson’s testimony, Jose Samuel, a forensic scientist, testified as to the process and results of the laboratory testing the contents of the packets seized from Mr. Jones. The 48 packets contained fentanyl and two packets contained cocaine base, according to the lab reports. There is no dispute as to the contents of the packets or the relationship of them to the seizure from Mr. Jones.

On the second day of the evidentiary hearing, Special Agent Randy Updegraff testified as an expert in the field of narcotics distribution and related activities.⁵ In preparation for his testimony Special Agent Updegraff reviewed the arrest and forensic testing paperwork as well as the packages of drugs seized from Mr. Jones, which the agent described as a collection of street

⁴ The direct and cross-examination testimony did not clarify whether Officer Johnson saw the back of Mr. Taylor walking ahead of him or the front of Mr. Taylor but via his rearview mirror after he had driven past Mr. Taylor - - or both.

⁵ Special Agent Updegraff has two decades of training, experience and teaching, most of it in the Philadelphia region, in connection with investigating the manufacture, distribution, and importation of illicit substances leading to more than a thousand narcotics arrests. He has testified as an expert witness in drugs and drug investigations approximately 30 times in federal court.

level \$10/bag dosages, which bags are individually typically bought by a user on the street from a dealer. January 25, 2019 Hearing, N.T. 16–19. Thus, Special Agent Updegraff opined that while a user would typically have one or two \$10 bags in their possession, having as many as 48 packets “is more consistent with distribution than simple possession.” *Id.* at N.T. 18–20. He also concluded from his review of the account of Officer Johnson’s observations on July 26 that it was a “typical interaction between a drug user and a drug [. . .] distributor of a street level narcotics.” *Id.* at N.T. 18. Special Agent Updegraff’s testimony and opinion did not vary on any of these salient points during cross-examination.

After the Government rested⁶ the defense called Adina Greenfield, an investigator with the Federal Community Defenders, to testify. Ms. Greenfield described her Philadelphia Police records search which, she testified, disclosed only limited drug-related arrests in the Broad and Jackson Streets vicinity where Officer Johnson observed Mr. Jones. She also stated that her search of police records documented no prior interaction between Officer Johnson and a Charles or Chuck Taylor. *Id.* at N.T. 28–34. On rebuttal, an FBI Task Force officer from the Philadelphia police force added background information about record-keeping practices in the police department and the use of various forms, including those of the type Ms. Greenfield used for her research.

DISCUSSION

Probation Officer Scales recounted in his testimony the basis for the written allegations of Mr. Jones’s violations of conditions of his supervised release. Only the allegations of most serious violation, namely, the one arising from what is claimed to be Mr. Jones’s commission of a drug distribution crime, remains in dispute to be addressed here.⁷

⁶ The Government also called the Probation Officer Scales to testify about the lesser-value alleged violations which will be addressed below.

⁷ Thus, the Court concludes that the record supports the conclusions that Mr. Jones breached the conditions of

To challenge the criminal conduct accusation against Mr. Jones, his counsel argues that Officer Johnson is not a credible witness. Counsel questions whether Officer Johnson's description of the transaction between Messrs. Taylor and Jones makes sense, whether Officer Johnson was in close enough proximity or in a position otherwise through the seating configuration and tinted glass of his car to see what he testified he saw in terms of an interrupted drug sale and whether there even is a "Chuck" or "Charles" Taylor. The final defense argument contends that Mr. Jones is a drug user, not a drug seller, and the quantity of drugs seized from him really reflected nothing more than his personal supply. Indeed, the defense acknowledges that Mr. Jones's possession of the fentanyl and the crack cocaine constitutes possession of drugs, itself a violation of conditions of supervision, albeit less serious than the crime of possession with intent to deliver the drugs.

Applying the preponderance of the evidence standard of proof required in this proceeding, and recognizing that none of the evidence put before the Court is subject to suppression or excludable by many of the conventional evidentiary rules, the Court concludes that the Government has satisfied its obligation to prove, under this relaxed standard, that Mr. Jones violated the condition of his supervision that he not commit another crime while on supervision. Even if the Court were to accept defense counsel's characterization of Officer Johnson as not credible, which the Court declines to do,⁸ (1) the undeniable fact of the considerable number of the packets of drugs seized from him, (2) the recognition that these are illicit substances (fentanyl and

his release that were the subject of Mr. Scales's testimony beyond the July 26 incident, namely that Mr. Jones was to refrain from using illicit drugs, that he comply with drug treatment program rules and regulations, that he report regularly to his probation officer and provide information to the officer as reasonably required and that he maintain employment or pursue appropriate training. These are not disputed by the defense and amply supported by evidence permitted to be considered. The consequences of these violations will be the subject of a future hearing.

⁸ Defense counsel ably presented an unquestioningly professional cross-examination of each Government witness and argued her points in an equally professional manner. Government's counsel, too, met the high standards expected of trial counsel. It may well be that under the decidedly more demanding scrutiny of the criminal trial standard of proof, a guilty verdict or an identical, limited record would have proved elusive. That, of course, is not the standard here.

crack cocaine) far different from the marijuana that is the only drug Mr. Jones previously abused according to the information presented to the Court and (3) the persuasive opinion offered by Special Agent Updegraff that the quantity of drugs, i.e., the number and packaging of the drugs seized from Mr. Jones, (4) coupled with the utter absence of any paraphernalia necessary for personal use, are more consistent with transactional activities than with personal use, satisfy the Court that the preponderance of the evidence supports the conclusion that Mr. Jones violated this primary condition of his supervised release.

CONCLUSION

Even though the ambiguities that might be argued arise from a comparison of the arresting officer's recollections and an interpretation of various records and other deductions could conceivably put this record out of reach of a conviction in a criminal trial, ambiguities are not enough to cause failure under the applicable preponderance-of-the-evidence standard. Mr. Jones has violated the condition of supervised release that requires him to refrain from criminal conduct, the consequences for which will be addressed at a hearing in the future.

BY THE COURT:

/s/ Gene E.K. Pratter
GENE E.K. PRATTER
United States District Judge

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ORDER

AND NOW, this 22nd day of February, 2019, it is hereby **ORDERED** that, for the reasons set forth in the accompanying Memorandum, the Court concludes that Kareem Jones violated his supervised release.

IT IS FURTHER ORDERED that a Final Revocation Hearing of Supervised Release Hearing is set for March 21, 2019 at 2:00 p.m. in Courtroom 10-B.

BY THE COURT:

/s/ Gene E.K. Pratter
GENE E.K. PRATTER
United States District Judge