

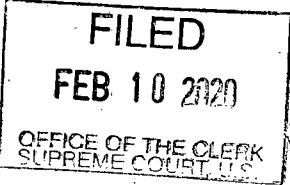
19-7720

No.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



LAMONT JONES Petitioner

vs.

Frank B. Bishop, Jr. Warden, Et. Al.
Brian E. Frost, The Attorney General
of the State of Maryland Respondents

COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Lamont Jones
14100 McMullen Hwy., SW
Cumberland, Maryland, 21502

QUESTIONS PRESENTED

- I. Did the 4th Circuit Court of Appeals abuse it's discretion in upholding the District Court's conviction that the evidence against Jones was sufficient to sustain a conviction for Racketeering Conspiracy under 18 U.S.C. §1962(d), when the evidence showed that Jones did not advance the objectives of UDH but was merely associated with members of the UDH organization;
- II. Did the 4th Circuit Court of Appeals abuse it's discretion in upholding the District Court's conviction when the District Court allowed two cooperating witnesses to testify about conversations in which they were informed about crimes allegedly committed by Jones, and when it allowed the statements to be admitted pursuant to the co-conspirator hearsay exception;
- III. Did the 4th Circuit Court of Appeals abuse it's discretion in upholding the District Court's conviction when the District Court improperly relied on Jones' uncorroborated confession in finding him responsible for the murder of Harry Hicks;
- IV. Did the 4th Circuit Court of Appeals abuse it's discretion in upholding the District Court's conviction when Jones was sentenced to Life imprisonment in spite of the District Court finding that all of Jones' criminal history is over-represented and that he is in need of mental health treatment, and did the District Court render a reasonable sentence under the circumstances?

LIST OF PARTIES

*All Parties appear in the caption of the case on the cover page.

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JURISDICTIONAL STATEMENT

On March 18, 2015, a twenty-one count First Superseding Indictment was returned against Lamont Jones, and twelve other co-defendants, charging Lamont Jones with Count One: Conspiracy to Participate in Racketeering Activity, in violation of 18 U.S.C. §1962(d), and Count Two: Conspiracy to Distribute and Possess with Intent to Distribute Narcotics, in violation of 21 U.S.C. §846. (J.A. Vol.I at 26-72). The United States District Court for the District of Maryland was a court of original subject matter jurisdiction pursuant to 18 U.S.C. §3231. The United States Court of Appeals for the Fourth Circuit has jurisdiction over this appeal pursuant to 28 U.S.C. §1291 and 18 U.S.C. §3742.

TABLE OF AUTHORITIES CITED

Cases

Bourjaily v. United States
48 U.S. 171 (1987)

Gall v. United States
552 U.S. 38 (2007)

United States v. Bumpass
60 F.3d 1099 (4th Cir. 1996)

United States v. Cornell
780 F.3d 616 (4th Cir. 2015)

United States v. Graham
711 F.3d 445 (4th Cir. 2013)

United States v. Ince
21 F.3d 576 (4th Cir. 1994)

United States v. Lymas
781 F.3d 106 (4th Cir. 2015)

United States v. Martinovich
810 F.3d 232 (4th Cir. 2016)

United States v. Mouzone
687 F.3d 207 (4th Cir. 2012)

United States v. Urbanik
801 F.2d 692 (4th Cir. 1986)

STATUES

18 U.S.C. §1961

18 U.S.C. §1962

18 U.S.C. §3231

18 U.S.C. §3553

18 U.S.C. §3742

21 U.S.C. §846

21 U.S.C. §1291

RULES

Fed. R. Crim. P. 801

Fed. R. Crim. P. 804

STATEMENT OF THE CASE

I. Procedural Facts

On March 18, 2015, a twenty-one count First Superseding Indictment was returned against Lamont Jones, charging him with Count One: Conspiracy to Participate in Racketeering Activity, in violation of 18 U.S.C. §1962(d), and Count Two: Conspiracy to Distribute and Possess with Intent to Distribute Narcotics, in violation of 21 U.S.C. §846 (J.A. Vol.I at 26-72).

On June 12, 2018, a bench trial began in front of the Honorable George L. Russell, III in the United States District Court for the District of Maryland. On June 19, 2018, Judge Russell found Mr. Jones guilty of both count one and two of the indictment. On January 24, 2019, Judge Russell sentenced Mr. Jones to a life term of imprisonment for Count One, and 240 months for Count Two, to run concurrently with Count One. (J.A. Vol.I at 552-573).

II. Substantive Facts

On January 12, 2018, following its opening statement, the government presented its case in chief.

The government's first witness was Ronald Hall, who agreed to cooperate with the government after pleading guilty to narcotics conspiracy. (J.A. Vol.I at 90). Mr. Hall testified that he was a member of a group known as "Up Da Hill" ("UDH") that originated in the Cherry Hill neighborhood of Baltimore, Maryland. (J.A. Vol.I at 95-96). Mr. Hall explained that in addition to UDH, the other groups that existed in Cherry Hill were known as Coppin Court, Little Spelman and Hillside. (J.A. Vol.I at 96). Mr. Hall testified that these other groups all had ongoing feuds with UDH, which often resulted in violent clashes between the members of the respective groups. (J.A. Vol.I at 96-97).

Mr. Hall confirmed that UDH members sold illegal drugs, such as "[h]eroine, crack, coke, weed and pills" on their respective territory within the neighborhood. (J.A. Vol.I at 100-101). Mr. Hall explained the

operational aspects of a "drug shop," a group of individuals working together in the neighborhood to sell the drugs to prospective buyers. (J.A. Vol.I at 101-103). Additionally, Mr. Hall explained that members of UDH used neighborhood homes in Cherry Hill, known as "stash houses" to store drugs and firearms. (J.A. Vol.I at 105-108). Mr. Hall first began selling drugs in the early nineties, and eventually began to run his own drug shops, employing other persons, and earning thousands of dollars each day at various points in his drug-dealing career. (J.A. Vol.I at 112-125). Mr. Hall also sold and supplied drugs to other members of UDH for them to sell to their own prospective customers. (J.A. Vol.I at 129).

Mr. Hall first identified Lamont Jones as a person from "Up Da Hill" that "hung at Trina's house." (J.A. Vol.I at 107-108). Mr. Hall considered Lamont Jones a member of UDH because "[h]e used to hang Up Da Hill with everybody." (J.A. Vol.I at 125). Mr. Hall testified that he believed Lamont Jones sold drugs, both inside of UDH territory in Cherry Hill, but also in other parts of Baltimore not affiliated with UDH. (J.A. Vol.I at 125-127, 155-156). Mr. Hall claimed that Lamont Jones once approached him because "[h]e wanted me to get him some heroin so he could take on Pennsylvania Avenue." (J.A. Vol. at 128). Mr. Hall testified that Lamont Jones never worked for him at any of his drug shops throughout the years. (J.A. Vol.I at 153-154).

Over defense objection, Mr. Hall described a conversation he had with other members of UDH about Lamont Jones regarding an "incident related to a drug addict." (J.A. Vol.I at 129-131). According to Mr. Hall, he heard that Lamont Jones "stabbed a fiend for telling on his cousin." (J.A. Vol.I at 133). Additionally, Mr. Hall testified about the criminal activities involving members other than Mr. Jones, including a pair of bank robberies, a shooting that occurred at a social club, and various retaliatory shootings and homicides. (J.A. Vol.I at 133-139, 143-147). Mr. Hall related a conversation he had with another co-conspirator, in the presence of Mr. Jones, who claimed to have recently committed a murder with Mr. Jones, a story that Mr. Jones did not corroborate in the presence of Mr. Hall. (J.A. Vol.I at 141-142, 158).

Darius Matthews, a cooperating witness that pled guilty to conspiracy to distribute cocaine, testified that he was a member of a group known as "Hillside" in the Cherry Hill neighborhood of Baltimore City. (J.A. Vol.I

at 196-197). Mr. Matthews opined that Lamont Jones "align[ed] himself" with the group Up Da Hill because he "was hanging around [the] same people I was hanging around." (J.A. Vol.I at 204). Mr. Matthews noted that Lamont Jones was his best friend prior to (Matthews) moving "down Hillside." (J.A. Vol.I at 205). Mr. Matthews testified that he witnessed Mr. Jones shoot his friend and another unknown person in November 2007 at a recreation center, which is located in Hillside territory.

Victor Price pled guilty to conspiracy to participate in a racketeering enterprise and agreed to testify against Mr. Jones in exchange for potential sentencing relief. (J.A. Vol.I at 218-220). Mr. Price admitted to selling drugs as early as 1997, mostly working for others, and typically grossed upwards of a few thousand dollars each day in drug sales. (J.A. Vol. at 228-237). Mr. Price knew Lamont Jones from the same neighborhood in which he grew up, and considered Mr. Jones to be a member of Up Da Hill. (J.A. Vol.I at 238). Mr. Price never witnessed Lamont Jones sell drugs, but suspected he may have been involved in the drug trade because he frequently saw drug addicts congregate near Jones' mother house. (J.A. Vol.I at 240). Mr. Price also testified to numerous shootings and murders that he either participated in, or was otherwise aware of, between members of UDH and other rival groups. (J.A. Vol.I at 241-248). Mr. Price claims to have witnessed Mr. Jones, along with another individual he knows as "Mikel" robbing "[r]egular dudes out there selling drugs," in the Brooklyn neighborhood of Baltimore City. (J.A. Vol.I at 248).

Dontay Purnell, a self-proclaimed member of the group known as Little Spelman, pled guilty to conspiracy to participate in a racketeering enterprise and agreed to cooperate with the government and testify against Mr. Jones for potential sentencing relief. (J.A. Vol.I at 255-256). Mr. Purnell sold drugs in the section of the Cherry Hill neighborhood designated for the Little Spelman group beginning in 2006 (J.A. Vol.I at 263). Mr. Purnell testified that he was unaware of the type of drugs the rival groups in Cherry Hill sold in their respective territories. (J.A. Vol.I at 266,277). Mr. Purnell had no knowledge of the inner workings of UDH, but he believed that Lamont Jones was a member due to seeing Jones' "being up there," and associated with other members of UDH. (J.A. Vol.I at 268, 278).

Bryan Turner pled guilty to conspiracy to distribute and posses with intent to distribute more than one kilogram of heroin and more than 280 grams of crack cocaine. (J.A. Vol.I at 332). Mr. Turner decided to cooperate with the government in 2016 after receiving a sentence of 180 months in 2014. (J.A. Vol.I at 333). Mr. Turner joined UDH between 2000 and 2002, and sold drugs, mostly as a "floater", and sold drugs in different locations "Up Da Hill." (J.A. Vol.I at 339,348). During his time with UDH Mr. Turner and his associate, Victor Price, were ordered to kill a suspected police informant in 2009, and in 2011 he participated in a bank robbery with other members of UDH (J.A. Vol.I at 355-358).

Mr. Turner identified Lamont Jones as a member of UDH, because he "practically watched him grow up." (J.A. Vol.I at 353). Mr. Turner claimed to have seen Lamont Jones selling crack cocaine on UDH territory and on one occasion witnessed him possessing a firearm. (J.A. Vol.I at 354). Mr. Turner testified about the murder of Harry Hicks, a member of a rival organization, and claimed to have heard Mr. Jones implicate himself in the murder. (J.A. Vol.I at 362-368). On cross-examination, Mr. Turner admitted that he never had any direct dealings with Lamont Jones in relations to any of the prior crimes he committed on behalf of UDH. (J.A. Vol.I at 369-373).

Brandon Sykes agreed to cooperate with the government after being found guilty of conspiracy to posses 5 kilograms of cocaine and conspiracy to possess a firearm for drug trafficking conviction, and receiving a sentence of 120 months. (J.A. Vol. I at 425-426). Mr. Sykes earned thousands of dollars selling drugs both for himself and others, starting from a young age in the "Up Da Hill" section of Cherry Hill. (J.A. Vol.I at 435-441). Mr. Sykes testified that he was "raised beside" Lamont Jones in Cherry Hill. (J.A. Vol.I at 441). Mr. Sykes claims to have watched Mr. Jones selling drugs in UDH territory. (J.A. Vol.I at 442-443). Over defense objection, Mr. Sykes testified that Bryan Turner informed him that Lamont Jones was involved in the murder of a member of a rival organization, Harry Hicks. (J.A. Vol.I at 452).

Melody Hicks and Detective Dawnyell Taylor- Henriques each testified about the events they witnessed on the day Harry Hicks was murdered in January 2011. (J.A. Vol.I at 299-317. Detective Al Marcus explained the investigative steps taken by the Baltimore City Police Homicide Division

of Mr. Hicks' murder. (J.A. Vol.I at 318-330). Lastly, Pamela Woodard described her recollection of the day Harry Hicks was murdered and her subsequent interaction with the police investigating his death. (J.A. Vol.I at 378-386).

Detective Antonio Cabezas and Police Officer Patrick Carpenter and Brian Kratz testified about two separate arrests of Mr. Jones in February and May of 2011, respectively. (J.A. Vol.I at 462-474, 477-482). In February of 2011, Detective Cabezas identified Mr. Jones as the individual who helped him purchase narcotics in the 600 block of Cumberland Street. 7.43 grams of heroin was recovered and submitted into evidence after Mr. Jones and another individual were arrested. (J.A. Vol.I at 472-473, 476). In May 2011, Mr. Jones was observed selling drugs alone in the 1900 block of Brunt Street. Police approached Mr. Jones, arrested him and recovered four vials of cocaine from a nearby ground stash. (J.A. Vol.I at 485).

SUMMARY OF ARGUMENT

The evidence was insufficient to prove that Lamont Jones knowingly joined the UDH racketeering conspiracy. Lamont Jones' mere association with members of UDH does not prove he knowingly agreed to further the objectives of the organization. The district court abused its discretion by admitting a series of statements against Mr. Jones pursuant to the co-conspirator exception to hearsay rule because the statements were not made in furtherance of the UDH conspiracy. The district court improperly relied on Lamont Jones' uncorroborated extrajudicial confession in its decision to find him guilty in the murder of Harry Hicks, when the evidence against him was not powerful. The district court's imposition of a life sentence was not reasonable under the circumstances, considering Lamont Jones' significant mental health issues and the sentencing disparity between Jones' sentence and the other co-defendants with similar conduct, including murder.

ARGUMENT

- I. The evidence was insufficient to prove that Lamont Jones knowingly joined a racketeering conspiracy.

A. Standard of Review

"We will uphold a defendant's conviction if, 'viewing the evidence in the light most favorable to the government, there is substantial evidence in the record to support the verdict.' [I]n the context of a criminal action, substantial evidence is evidence that a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt'." United States v. Cornell, 780 F.3d 616, (4th Cir. 2015). (Original citations omitted).

B. Lamont Jones' mere association with members of UDH is not enough to prove he knowingly agreed to participate in a racketeering conspiracy.

18 U.S.C. §1962(c). a section of The Racketeering Influenced and Corrupt Organization Act, ("RICO") makes it "unlawful for any person employed by or associated with any enterprise engaged in, or the activities which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity." 18 U.S.C. 1961(a) defines racketeering activity as any threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance... which is chargeable under State law and punishable by imprisonment for more than one year..." 18 U.S.C. 1961(5) notes that a "pattern of racketeering activity requires at least two acts of racketeering activity..."

In order to convict a defendant of a racketeering conspiracy in violation of 18 U.S.C. §1962(d), "the government must prove that an enterprise affecting interstate commerce existed; that each defendant knowingly and willfully agreed that he or some other member of the conspiracy would commit at least two racketeering acts. To prove a RICO conspiracy, the government must establish (1) that two or more people agreed to commit a substantive RICO offense and (2) that the defendant knew of and agreed to the overall objective of the RICO offense." United States v. Mouzone, 687 F.3d 207 (4th Cir. 2012).

The government alleged that the predicate acts of the UDH organization

included dealing in illegal narcotics; bank robbery and murder. The government's theory at trial was that Mr. Jones also participated in numerous acts of violence on behalf of UDH, including two shooting incidents and an assault. The government called four former members of UDH to testify against Lamont Jones at trial.

The first member of UDH to testify was Ronald Hall. (J.A. Vol.I at 89-163). Mr. Hall testified that he has been a member of the group currently known as UDH since the early nineties, when the group was formerly known as Veronica Avenue, or the VA boys or the Hooligans. (J.A. Vol.I at 93). During his long tenure with the group, Mr. Hall first sold illegal narcotics for others, before eventually managing his own drug shops, employing other persons in the group and made upwards of ten-thousand dollars a day during his peak drug sales. (J.A. Vol.I at 112-125). Mr. Hall acknowledged the ongoing violence between the rival groups in Cherry Hill and UDH, dating as far back to the early nineties and continuing up until the time of the indictment in this case. (J.A. Vol.I at 96-100). He acknowledged that he either participated in or was aware of acts of violence with other UDH members, and that he always carried a firearm for protection from rival groups. (J.A. Vol.I at 133-147).

Mr. Hall testified that he considered Lamont Jones to be a member of UDH because Jones "used to hang Up Da Hill with everybody." (J.A. Vol.I at 125). Mr. Hall conceded that Lamont Jones is considerably younger than he is, and the two never had much direct contact with each other, but instead would be "running around each other all the time because we from up the same way." (J.A. Vol.I at 157). More importantly, Mr. Hall acknowledged that Jones never worked for him at any of the numerous drug shops he presided over in Cherry Hill. (J.A. Vol.I at 153-154).

Victor Price testified that he joined UDH in 1997, and knew Lamont Jones from growing up together in the same neighborhood (J.A. Vol.I at 150, 166). Mr. Price sold drugs for various shops throughout Cherry Hill. (J.A. Vol.I at 156-165). Additionally, Mr. Price testified that he and other members of UDH committed multiple acts of violence on behalf of UDH, against persons belonging to rival organizations, including the murder of a member of his own group, believed to be cooperating with law enforcement. (J.A. Vol.I at 242-247).

Mr. Price testified that other members of UDH informed him that Lamont

Jones was "on the team," which signified to him that Jones was selling drugs in Cherry Hill. (J.A. Vol.I at 240). Mr. Price claimed to have witnessed Jones selling drugs in Cherry Hill between between the years 2005-2007. (J.A. Vol.I at 246). Additionally, Mr. Price testified, without providing corroborating details, that he allegedly witnessed Lamont Jones and alleged UDH member "Mikel," robbing "regular dudes out there selling drugs" in 2009. (J.A. Vol.I at 248). Mr. Price did not testify that Lamont Jones participated in any of the numerous acts of violence he committed, including the murder of the alleged cooperating witness. (J.A. Vol.I at 249).

Bryan Turner, another cooperating member of UDH, testified that he joined the group between the years 2000 and 2002. (J.A. Vol.I at 339). Mr. Turner first worked for other members of UDH, and then eventually sold drugs for himself in different parts of UDH territory. (J.A. Vol.I at 340-341, 346-351). In 2009, after being ordered to do so, Mr. Turner and Victor Price, murdered a fellow UDH member believed to be cooperating with police. (J.A. Vol.I at 358-359. Mr. Price also robbed a bank with other members of UDH in 2011, not including Lamont Jones. (J.A. Vol.I at 356-357

Mr. Turner admitted that Lamont Jones never worked with him in the drug business, nor did Jones plan or participate in the murder of the alleged cooperating witness, and Jones did not plan or participate in the bank robbery in 2011. (J.A. Vol.I at 369-373). Mr. Turner testified that he witnessed Mr. Jones selling drugs in UDH territory, and considered Lamont Jones to be a member of UDH because he "Practically watched him grow up." (J.A. Vol.I at 353-354).

Brandon Sykes, the last cooperating witness from UDH, testified that he worked at various drug shops managed by UDH members in addition to selling drugs on his own. (J.A. Vol.I at 435-441). Mr. Sykes considered Lamont Jones to be a UDH member because "he hung around us all time." Although he claimed to have "watched him sell drugs" in UDH territory, Mr. Sykes acknowledged that he and Lamont Jones did not work directly with one another in dealing drugs. (J.A. Vol.I at 442, 459-460). Mr. Sykes also participated in two bank robberies with other members of UDH, neither of which involved Mr. Jones. (J.A. Vol.I at 447-449, 461).

The government failed to prove that Lamont Jones knowingly agreed to participate in the affairs of UDH. Mr. Jones simply was born into the same

neighborhood that the group operated its criminal enterprise. The government will likely argue that Lamont Jones selling drugs on UDH territory, socializing with other members of UDH and frequenting an alleged stash house utilized by UDH is proof of Lamont Jones' membership in UDH. However, in Mouzone, this court explained that "the RICO conspiracy statute does not criminalize mere association with an enterprise... criminal liability will attach only to the knowing agreement to participate in an endeavor which, if completed would constitute a violation of the substantive statute." Mouzone, 687 F.3d at 218. (internal citation omitted). The mere fact that Lamont Jones grew up and even socialized with certain members of UDH does not prove he knowingly joined a racketeering conspiracy.

The evidence was insufficient to prove that Lamont Jones sold drugs to further the goals of UDH, rather than for his own personal gain. The evidence at trial established that Mr. Jones was twice arrested selling drugs outside of UDH territory. Even assuming arguendo, that Lamont Jones occasionally sold drugs in UDH territory, the government presented no witnesses to provide any information as to the frequency of his alleged dealings. None of the cooperating witnesses worked directly with Mr. Jones in their drug dealings, nor did any of them testify as to the quantity of drug(s) Mr. Jones sold, his source of supply, or any other relevant information that a coconspirator would typically know. Second, the government presented no evidence that Lamont Jones knew or participated in any illegal activities inside the so-called "stash house." The mere fact that Mr. Jones may have frequented this house, which is a residential home, and socialized with other members of UDH, does not indicate that Jones utilized the home for the same illegal purposes as other members of UDH.

C. The evidence is not sufficient to prove that the alleged predicate crimes committed by Lamont Jones were either committed by him or done in furtherance of the conspiracy.

The government presented evidence that UDH members worked with one another selling drugs, participated in robberies together, and retaliated against rival gangs with acts of violence, including murder. The

government will likely argue that Lamont Jones was a member of the UDH conspiracy because he sold drugs on UDH territory, allegedly murdered a rival gang member, and committed numerous acts of violence to further the objectives of UDH. However, Mr. Jones asserts that the evidence was insufficient to prove that some of the crimes were even committed by him, or if they were committed in furtherance of the UDH conspiracy, and not for some other reason.

DRUG SALES

As discussed *supra*, the evidence was not sufficient to prove that Lamont Jones sold drugs to further the objectives of UDH. More importantly, the evidence of Mr. Jones dealing drugs was not sufficient to qualify his actions as a predicate crime in the context of a RICO conspiracy. The fact that Mr. Jones sold drugs in UDH territory, a neighborhood into which he was born and raised, cannot be the sole basis this Court uses to assess whether Lamont Jones' drug dealing qualifies as a predicate crime in the UDH conspiracy. Other factors, such as the alleged co-conspirators knowledge of Mr. Jones' drug dealing, and any collaboration with them in their respective drug dealing ventures are paramount to the determination of whether Lamont Jones sold drugs to further the objectives of UDH or instead sold drugs simply for his own personal gain.

The government also presented evidence of three acts of violence allegedly committed by Lamont Jones, ostensibly to prove that Mr. Jones is a member of UDH. A fourth act of violence, the 2011 murder of a rival gang member, does not qualify as a predicate crime, but the sufficiency of the evidence regarding Jones' involvement in the murder and his connection to the UDH organization are tenuous.

2006 STABBING of MR. MICHAEL COOK

Mr. Michael Cook testified that shortly after purchasing drugs in 2006, he and a friend were stopped by the Baltimore Police and his friend provided information regarding the persons selling the drugs (J.A. Vol. I at 168-170). Approximately two weeks later, Mr. Cook testified that he was stabbed with a screwdriver while walking down the street, by a person who

said something to the effect of "that's what you get for snitching..." (J.A. Vol.I at 171). Mr. Cook subsequently identified Lamont Jones via photo array in the days after the attack. (J.A. Vol.I at 172-174). Additionally, the government elicited testimony from Ronald Hall, over defense objection, that he was told by other members of UDH that "Butt Juice stabbed a fiend for telling on his cousin, his little cousin." (J.A. Vol.I at 132-133).

The stabbing of Michael Cook does not qualify as a RICO predicate because the government's evidence contradicts any argument that the assault was committed in furtherance of a conspiracy. According to Ronald Hall's account, Mr. Jones assaulted Mr. Cook to protect his "little cousin," an individual not connected to the UDH organization. In other words, the motivation for the assault on Mr. Cook was completely personal in nature, and did not further the objectives of UDH.

2007 SHOOTING AT HILLSIDE RECREATION CENTER

Mr. Darrius Matthews, a childhood friend of Lamont Jones, testified that Mr. Jones was responsible for a shooting that occurred at a recreation center in the Hillside section of Cherry Hill in 2007. (J.A. Vol.I at 208-211). Mr. Matthews' friend Maurice, a fellow member of the Hillside organization, was shot along with another young man not affiliated with any of the Cherry Hill groups. Id. Detective Christopher Kazmarek investigated the shooting in 2007, and was unable to make any arrests after speaking with witnesses on the scene, including the victims of the shooting, viewing a surveillance video, and assessing the ballistic evidence. (J.A. Vol.I at 180-192). Mr. Matthews did not speak with law enforcement about the shooting until years after the incident had occurred, after he had pled guilty to a federal indictment, and entered into a cooperation agreement with the government. (J.A. Vol.I at 196-197, 212).

The evidence does not support the prosecution's theory that Lamont Jones shot a rival gang member on enemy territory. First, other than the identification years later of Mr. Jones as the shooter by Mr. Matthews, no other evidence corroborates Mr. Jones' alleged involvement in the shooting. Second, the theory regarding Mr. Jones' alleged motive is

questionable because one of the injured victims was not affiliated with any rival organization, and could have been the gunman's intended target. (J.A. Vol.I at 213). The evidence is not sufficient to prove that Lamont Jones is the shooter, or that the motive for the shooting was related to furthering the objectives of the UDH organization.

2012 SHOOTING OF EARL BURTON

In March 2012, Lamont Jones confessed to police that he shot Mr. Earl Burton because Mr. Burton had been bullying him. (J.A. Vol.I at 544-545). The shooting occurred outside of UDH territory. (J.A. Vol.I at Ex. No. 1 at 280A, 518). The government presented no evidence that Mr. Burton was connected to any of the groups in Cherry Hill. Therefore, it is entirely plausible that the shooting of Earl Burton was not done in furtherance of a conspiracy, but rather motivated by Lamont Jones' personal animus against Mr. Burton.

2011 MURDER OF HARRY HICKS

Harry Hicks, a member of the Coppin Court organization, was murdered in January 2011. The government called Mrs. Melody Hicks, an eyewitness to the murder, (J.A. Vol.I at 300-305). Mrs. Hicks testified that she did not see the faces of the assailants. (J.A. Vol.I at 302). Detective Dawynell Taylor-Henriques, an off-duty homicide detective identified indicted co-conspirator Steven Jackson, as the person she saw running from the scene of the murder. (J.A. Vol.I at 316-317). Detective Al Marcus, from the Baltimore City Homicide Detective investigated Mr. Hicks's murder and was unable to make an arrest in connection with the murder. (J.A. Vol.I at 328).

The government did not present any corroborating forensic or eyewitness testimony of Lamont Jones' alleged involvement in the Hicks murder. The government will likely contend that it need not prove beyond a reasonable doubt that Lamont Jones actually committed the murder in order for the district court to sentence him accordingly, because the district court is entitled to make its own findings. For example, in Mouzone, the jury did not find beyond a reasonable doubt that murder or conspiracy to commit

murder was a conspiracy objective, but the sentencing judge found that the defendant was involved in the murder of a rival drug competitor, and increased his offense level under the Guidelines to correspond with murder. *Mouzone*, 687 F.3d at 220. However, in *Mouzone*, the government presented witnesses that worked directly with the defendant to commit the murder. In this case, none of the witnesses had direct knowledge of the circumstances surrounding Mr. Hicks' murder. The evidence in the case was insufficient to prove that Lamont Jones was involved in the murder of Harry Hicks, and his alleged involvement was also not supported by a preponderance of the evidence.

D. CONCLUSION

Even in the light most favorable to the government, the evidence did not establish that Lamont Jones knowingly agreed to participate in the UDH organization. Mr. Jones' mere association with members of the group is not sufficient to prove a violation of the RICO conspiracy statute. Rather, the evidence at trial simply established that Lamont Jones grew up in the same neighborhood where UDH ran its criminal enterprise. The evidence is not sufficient to establish an illicit relationship between Lamont Jones and UDH. Rather, it is clear from the evidence that Mr. Jones independently coexisted with the UDH. For example, Jones did not work directly with any of the cooperating witnesses in their respective drug dealings. Mr. Jones sold drugs both in and outside of Cherry Hill for his own personal financial gain. Furthermore, Mr. Jones did not participate in any other criminal activity with any other member of UDH. The evidence was not sufficient to prove that the other alleged predicate crimes were either committed by Mr. Jones or done in furtherance of a conspiracy. The government did not establish that Lamont Jones knowingly agreed to participate in the affairs of UDH and further its objectives, or willfully agree that he or another member would commit at least two racketeering acts. Therefore, Lamont Jones' conviction on Count One must be vacated and his case remanded for a new trial.

II. The District Court abused its discretion when it admitted a series of statements pursuant to the coconspirator hearsay exception.

A. Standard of Review

"We review a district court's admission of a statement under rule 801(d)(2)(E) for abuse of discretion." *United States v. Graham*, 711 F.3d 445, (4th Cir. 2013)

B. None of the statements were made in furtherance of the UDH racketeering conspiracy.

Federal Rule Evidence 801(d)(2)(E) governs the admissibility of co-conspirator statements, and allows for the admissions of a statement at trial that "was made during and in furtherance of the conspiracy." In order for a statement to be admissible pursuant to the co-conspirator exception to the hearsay rule, "there must be evidence that there was a conspiracy involving the declarant and the non-offering party, and that the statement was made during and in furtherance of the conspiracy." *Bourjaily v. United States*, 483 U.S. 171 (1987). In *Graham*, this Court explained "[t]he existence of the three prongs of admissibility for coconspirator statements (existence of a conspiracy, membership therein of the defendant and declarants, and the statements being made in the course of and in furtherance of the conspiracy) must be supported by a preponderance of the evidence." 711 F.3d at 453.

In *United States v. Urbanik*, 801 F.3d 692 (4th Cir. 1986) this Court noted that the "[t]he requirement that the statements have been in furtherance of the conspiracy is designed to assure their reliability and to be consistent with the presumption that the co-conspirator would have authorized them." In *Urbanik*, an alleged co-conspirator identified the defendant as his marijuana supplier, during a conversation with another person whom had come to his house to buy cocaine. The two men remained in each others company "hanging out shooting the breeze about weightlifting." *Id.* at 698. This Court held that the statement identifying the defendant as a marijuana supplier "can fairly be treated only as the sort of idle conversation which though it touches upon, does not further a conspiracy and should not be admitted under Rule 801(d)(2)(E)." *Id.*

In this case, the district court allowed three statements by members of

the UDH organization that implicated Lamont Jones in criminal activity. First, Ronald Hall testified that members of UDH informed him that Lamont Jones "stabbed a fiend for telling on his cousin." (J.A. Vol.I at 132-133). Second, Mr. Hall testified that Steven Jackson, in Lamont Jones' presence, told him that he and Lamont Jones had killed Harry Hicks. (J.A. Vol.I at 140-142). Lastly, Brandon Sykes testified that Bryan Turner informed him that Lamont Jones killed Harry Hicks (J.A. Vol.I at 452).

The statement regarding the stabbing is inadmissible against Mr. Jones pursuant to the coconspirator exception because it referenced an event outside the UDH conspiracy. The government argued the statement was admissible because "they were discussing this as members of UDH because of fear of retaliation and the police... that even retrospective discussions with members of the same group are co-conspirator statements to keep the gang up to date on what's going on, for team building." (J.A. Vol.I at 131). However, as discussed *supra*, the government's own evidence establishes that the stabbing, even if committed by Jones, was committed for purely personal reasons, and not to further any UDH objective. Therefore, this Court should treat Mr. Hall's conversation with other UDH members regarding a rumor about Mr. Jones as nothing more than "idle chatter."

Likewise, this court should treat the statements about Lamont Jones' alleged involvement in the murder of Harry Hicks as "idle chatter." As discussed *supra*, the government presented insufficient evidence that Lamont Jones was involved in the murder of Harry Hicks. Additionally, Lamont Jones' reaction to Mr. Jackson's statement calls into question the veracity of the statement itself. Bryan Turner's statement to Brandon Sykes is based on an alleged rumor with no corroborating evidence.

The error of admitting these three statements "cannot be considered harmless." *Urbanik*, 801 F.2d at 698. As this court explained in *Urbanik*, "[t]he proper test of harmlessness of nonconstitutional error is whether we, in appellate review, can say, 'with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgement was not substantially swayed by the error.'" (internal citation omitted). In this case, there was not "sufficient untainted evidence to support the conviction" without the admission of the hearsay statements. *Id.* Therefore, the error was not harmless, because (1) Ronald

Hall's statement was not relevant to Lamont Jones' participation in a UDH conspiracy and (2) the district court had no other factual basis upon which it could find Lamont Jones responsible for the murder of Harry Hicks.

CONCLUSION

The district court abused its discretion in admitting the three statements pursuant to the co-conspirator exception to the hearsay rule. The statements were nothing more than "idle chatter" between members of a conspiracy of which Lamont Jones did not belong. The first statement, implicating Mr. Jones in a stabbing, even if committed by Mr. Jones, was not done to further the objectives of the UDH conspiracy. The remaining two statements implicating Mr. Jones in the murder of Harry Hicks were also not supported by any corroborating evidence. Without the use of the statements, the evidence supporting whether Lamont Jones was responsible for the murder, and whether the stabbing was in furtherance of the UDH conspiracy, was not persuasive enough to support a conviction on those issues. Therefore, the error cannot be deemed harmless and Lamont Jones is entitled to a new trial.

III. The district court's finding that Lamont Jones was responsible for the murder of Harry Hicks was improperly influenced by his uncorroborated confession.

A. Standard of Review

"In assessing whether it is 'highly probable' that the error did not affect or substantially sway a judgement of conviction, we must consider three factors: (1) the centrality of the issue affected by the error; (2) the steps taken to mitigate the effects of the error and (3) the closeness of the case."

United States v. Ince, 21 F.3d 576 (4th Cir. 1994)

B. The prosecution improperly used Lamont Jones' uncorroborated confession to implicate him in the murder of Harry Hicks.

In this case, Bryan Turner testified that Lamont Jones was present when Steven Jackson told him that he and Jones killed Harry Hicks. (J.A. Vol.I at 366-368). According to Mr. Turner, in response to Mr. Jackson's statement, Lamont Jones allegedly said "[I] told you I wasn't going to do no bluffing, I was going to run down on him." (J.A. Vol.I at 368). On cross-examination, Bryan Turner admitted that he had no prior knowledge of or involvement with the murder, nor did he know whether Lamont Jones was being truthful when he made the statement. (J.A. Vol.I at 371).

At trial, the government argued that the statement made by Jones was in furtherance of the UDH conspiracy. (J.A. Vol.I at 365). However, assuming arguendo, that the district court considered Mr. Jones a member of UDH conspiracy at the time the statement was made, only Mr. Jackson's portion of the statement would be admissible against Mr. Jones. Mr. Jones' subsequent statement to Mr. Turner is inadmissible hearsay and does not meet the criteria of any hearsay exception.

Rule 804(b)(3) of the Federal Rules of Evidence allows the statement of a criminal defendant to be used against him if it "...is supported by corroborating circumstances that clearly indicate it's trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability." In *United States v. Bumpass*, 60 F.3d 1099 (4th Cir. 1995), this Court disallowed a statement offered by a defense witness that exculpated the defendant from a shooting. The Bumpass court pointed to six factors "which are relevant to determining whether sufficient corroboration exist to justify admitting a statement under the rule, including (1) whether the declarant had at the time of making the statement pled guilty or was still exposed to prosecution for making the statement, (2) the declarant's motive in making the statement and whether there was a reason for declarant to lie, (3) whether the declarant repeated the statement and did so consistently, (4) the party or parties to whom the statement was made, (5) the relationship of the declarant with the accused, and (6) the nature and strength of independent evidence relevant to the conduct in question," *Id.*

The main issue in the Harry Hick's murder is the identity of the second gunman. The issue is central to the case, because Lamont Jones' alleged participation in the murder dramatically increases his advisory guideline

range upon conviction. The government argument of course, is that Lamont Jones was the second gunman. However, as noted *supra*, the government failed to present any corroboration, either forensic or eyewitness evidence, that suggests that Lamont Jones participated in the murder of Harry Hicks. Notwithstanding the absence of any corroborating evidence, the government offered Mr. Jones' alleged confession to prove the truth of the matter asserted, that he in fact was responsible for the murder of Harry Hicks.

The district court did not take any steps to mitigate the effect of the potential error of receiving Mr. Jones' alleged confession. The district court considered the statement as a whole, without parsing out and analyzing the coconspirator portion of the statement from the confession portion. As this Court noted in *Ince*, "a trial court would have to go through extraordinary lengths to cure the harm caused by an erroneously admitted confession. Evidence of a confession can have such a devastating and pervasive effect that mitigating steps, no matter how quickly and ably taken, cannot salvage a fair trial for the defendant." *Ince*, 21 F.3d at 583.

In *Ince*, the Court noted "that the 'single most important factor' in a nonconstitutional harmless inquiry [is] whether the case was 'close'" 21 F.3d at 584. (original citation omitted). In this case, the other evidence upon which the district court could have found Lamont Jones responsible for the murder of Harry Hicks "was simply not powerful." *Id.* at 585. It is reasonable to believe that the district court could have reached a different conclusion regarding Mr. Jones' culpability in the murder without the benefit of the uncorroborated confession. Even if the district court was inclined to find Lamont Jones guilty of knowingly joining a racketeering conspiracy, the evidence implicating Mr. Jones in the Harry Hicks murder was by no means overwhelming, and the district court may have found him not responsible for the death of Harry Hicks without the benefit of the tainted confession.

C. CONCLUSION

The effect of Mr. Jones' alleged confession on the district court was indisputable, and it is clear that the district court relied heavily on

this confession in finding Lamont Jones directly responsible for Mr. Hicks' murder. (J.A. Vol. I at 552-576). The uncorroborated confession does not qualify as an exception to the rule on hearsay, and lacks the corroborating circumstances required by Rule 804(b)(3). Even if the district court was likely to find Lamont Jones guilty of racketeering conspiracy based on other predicate acts, the evidence at trial implicating him in the Harry Hicks murder was not powerful. The district court did not take adequate steps to analyze the portions of the statements or explain how it would have reached a different outcome in spite of the uncorroborated confession. Accordingly, because of these factors and the closeness of the case, it must be remanded for a new trial.

IV. The district court's imposition of a life sentence was not reasonable under the totality of the circumstances.

A. Standard of Review

"We review the reasonableness of a sentence under 18 U.S.C. 3553(a), using an abuse of discretion standard, regardless of whether the sentence is inside, just outside, or significantly outside the Guideline range." (internal citation omitted). *United States v. Lymas*, 781 F.3d 106 (4th Cir. 2015).

B. The district court committed significant procedural error in sentencing Lamont Jones.

In *Gall v. United States*, 552 U.S. 38 (2007) the Supreme Court explained that in conducting sentence review the appellate court "must first ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the §3553(a) factors, selecting a sentence based on clearly erroneous facts, or adequately explain the chosen sentence...[after ensuring] the district court's sentencing decision is procedurally sound, the appellate court should then consider the substantive reasonableness of the sentence

imposed under an abuse of discretion standard... the court will of course, take into account the totality of the circumstances, including the extent of any variance from the Guidelines range." Furthermore, this Court has held that "[i]f we determine a procedural error exists, a review for a second prong -- substantive reasonableness -- is unnecessary." *United States v. Martinovich*, 810 F.3d 232 (4th Cir. 2016).

In this case, the district court failed to truly consider the §3553(a) factors, selected a sentence based on clearly erroneous facts, and failed to adequately explain the sentence. For example, the district court sentenced Lamont Jones to life imprisonment in spite of also finding that "the defendant has some significant mental health issue and cognitive issues, stemming from at least in part lead poisoning..." (J.A. Vol.I at 572). Although the district court acknowledged that Mr. Jones' criminal history is overrepresented and reduced his Criminal History Category from a four (IV) to a one (I), (J.A. Vol.I at 572-573), the district court seemed to give outsized importance to the fact that Lamont Jones "has never formally or otherwise accepted responsibility for all the conduct, nor has he expressed remorse for the taking of the lives that the Court found after the guilty verdict in this case." (J.A. Vol.I at 572). The district court seemed to suggest that Lamont Jones would receive less than a life sentence if he had pled guilty in advance of trial, similar to the other co-defendants in the case. (J.A. Vol.I at 571). In so doing, the district court focused solely on what it perceived as Lamont Jones' lack of acceptance of responsibility. Similar to the judge in Lymas, the district court in this case "rejected one of the foundational principles in the Guidelines themselves -- proportionality in sentencing, which matches punishment with culpability." (internal citation omitted). Lymas, 781 F.3d at 113. Furthermore, the district court failed to adequately explain why the punishment for similar conduct, including murder, warranted differences in the co-defendants' respective sentences.

C. CONCLUSION

The district court abused it's discretion when it sentenced Lamont Jones to a term of life imprisonment. The court failed to adequately address how certain mitigating factors, such as Mr. Jones' extensive lead poisoning

and mental health issues impacted it's decision to render a life sentence. Additionally, the district court created a significant sentencing disparity amongst the co-defendants in this case, by sentencing Lamont Jones to a term of imprisonment far exceeding any other co-defendant with similar conduct, including those co-defendants that committed murder. Lamont Jones must be resentenced to a term of imprisonment less than life, in but not greater than necessary to achieve the objectives of 18 U.S.C. §3553(a).

CONCLUSION

Now therefore, Lamont Jones respectfully prays this Honorable Court hold that: 1) the evidence was insufficient to prove that Lamont Jones knowingly joined a racketeering conspiracy in violation of 18 U.S.C. §1962(d); 2) the district court abused its discretion by admitting a series of statements pursuant to the co-conspirator exception to hearsay rule; 3) improperly relied on Lamont Jones' uncorroborated extrajudicial confession in its decision to find him guilty in the murder of Harry Hicks; and must vacate his conviction on Count One and remand this case for a new trial. In the alternative, Mr. Jones requests that this Court remand his case for resentencing because of the unreasonableness under the totality of the circumstances.