No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

ROY LEE JONES, JR. — PETITIONER

VS.

UNITED STATES — RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Douglas Lee Harville # 27235
The Harville Law Firm, LLC
P.O. Box 52988
Shreveport, Louisiana 71135-2988
Telephone: (318) 222-1700
Telecopier: (318) 222-1701
lee.harville@theharvillelawfirm.com
APPELLATE ATTORNEY FOR
ROY LEE JONES, JR.,
DEFENDANT/APPELLANT/PETITIONER

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TAB A

guess I'll go in the order we've been going.

So, Mr. Sharp, would you -- do you wish to present any evidence or witnesses at this time?

MR. HARVILLE: Your Honor, before we do that, could we ask the jury to step out for one minute. I believe there are some matters that need to be addressed.

THE COURT: Okay. Okay. All right. Apologize, it's necessary sometimes. And we've got to have the courtroom for this. So we're going to just take -- better do a 15-minute, Amy, 15-minute recess.

COURT CLERK: There's coffee.

THE COURT: Yeah, you've got coffee in there ready for you. We kind of figured out now to go in there a little early, make the coffee so you have time. Anyway, we excuse the jury at this time.

(Jury leaves the courtroom)

THE COURT: All right, let the record reflect the jury is in the jury room.

Was there something that needed to be addressed at this time?

MR. HARVILLE: Your Honor, there is. Under the Federal Rules of Criminal Procedure, at this time, I would ask the Court to render a motion for -- well, I would move for a motion for judgment of acquittal, Your Honor.

Based on the evidence that's presented thusfar, I do not

believe that the government has met its burden of proving beyond a reasonable doubt that my client is guilty. I'm making, Your Honor, this argument to preserve the matter for appeal so I can raise issues of sufficiency on appeal. However, if you would like a detailed explanation, I can also put that forward.

THE COURT: I don't think you have to. If you would like, you can. But certainly I've been sitting here hearing all of it too.

So anybody else? Mr. Sharp, were you going to make a motion or two or let's get them out?

MR. SHARP: I join in the motion for directed verdict.

THE COURT: Did you want to say anything?

MR. SHARP: No.

THE COURT: Did you'll want to respond? I'm going to deny both of them. So, I mean, unless you want to respond, put something on the record, I'm going to deny both motions. There's sufficient evidence. So --

MS. JERNIGAN: Your Honor, we would just simply state that we, in light of the essential elements and the evidence that's been submitted through witness testimony, along with the exhibits, we think that we have put forth a sufficient amount of evidence so that the case could go to the jury, that would meet all of the essential elements both for the conspiracy

count as to both defendants and the distribution count as to Delewis Johnson, IV.

With respect to the quantity and the substance, the stipulations we believe satisfy those elements as relates to each of the offenses in the indictment.

With respect to the conspiracy, as the Court is aware, the essential elements for that provide that the government show that there was an agreement among two or more persons and that the defendants in this case, Delewis Johnson, IV and Roy Lee Jones, Jr. joined in it willfully knowing -- with the intent to further the unlawful purpose of the conspiracy.

In this case, the conspiracy has been defined in the indictment as a conspiracy to distribute and possess with the intent to distribute methamphetamine in the amounts specified in the indictment.

I think, based on the testimony, including the cooperators who were active members of this conspiracy, and the recovery of drugs at the conclusion of the investigation, including the pound of methamphetamine, purchased with the cooperation of a confidential informant, and all of the other evidence, we think that that is more than enough to rebut the motion for a motion for acquittal.

THE COURT: Okay. Do you want to respond? I mean, you must not have heard me deny it before you got up talking. I'm kidding. Go ahead. I'll take it back and let y'all say

this.

MR. HARVILLE: Your Honor, very briefly. It's our contention that, given the evidence presented at trial, this -- there were three drugs that were involved, or if you count cocaine and crack cocaine differently, you have marijuana, you have cocaine, crack cocaine, you have methamphetamine.

It's our contention that the government, even taking all the evidence in a light most favorable to the government, failed to prove beyond a reasonable doubt which drug was involved in the conversations regarding my client. We'd note that no crack cocaine was recovered directly from my client, would note that two of the government's witnesses who testified that they saw my client with methamphetamine, were, pursuant to the government's own expert witness, at such a low level. And that being Rodney Ceasar, Curavious Harrell, and Justin Goss. I believe counsel drew a line above them.

And the expert said that people at that level would not know about the source of supply because it's a cutthroat business, and you wouldn't want the source of supply to know who you -- the source of supply wouldn't let those members know who they are for fear of losing their business or losing their product. That makes both of their testimony extremely incredible, according to the government's own expert.

For those reasons, Your Honor, we would move for the verdict.

THE COURT: Okay. Mr. Sharp.

MR. SHARP: No.

THE COURT: Okay. I'm going to deny both motions. I believe the evidence is more than sufficient to convict the defendants of the charges that they're charged with.

So I think Mr. Johnson has two and Mr. Jones has one. And proof is more than sufficient for those. So I'll deny those motions.

Anything else? I told the jury 15 minutes if y'all need to take a little break or do anything else. Y'all want to leave to take a break now, or do you want to talk about the jury instructions, or we could just wait and do that if you want to?

But I have looked at the proposed -- do y'all want to talk about that now while we're here or whatever y'all want --

MR. HARVILLE: I'm amenable whichever way Your Honor wants to do it.

THE COURT: I don't like to waste time. But I don't want to put you in a bind either because I know y'all been busy trying this case, and I can sit up here and look at stuff, so it's kind of hard to do. But y'all want to talk about it now?

Now, the distribution one that -- that was submitted I think is right, I think is completely, exactly right like it should be.

The only one that -- the one that's submitted by the

TAB B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

UNITED STATES OF AMERICA	**CASE NO. 3:20-CR-00156-02**
VERSUS	**JUDGE TERRY A. DOUGHTY**
ROY LEE JONES, JR. (02)	**MAG. JUDGE KAYLA D. MCCLUSKY**

AMENDED MEMORANDUM ORDER

Before the Court is a Post-Verdict Motion for Judgment of Acquittal Pursuant to Federal Rule of Criminal Procedure 29(c) [Doc. No. 246] filed by the Defendant Roy Lee Jones, Jr. ("Jones"). An Opposition [Doc. No. 256] was filed by the Government on December 13, 2021.

For the reasons set forth herein Jones' Motion is DENIED.

I. BACKGROUND

On July 22, 2020, Delewis Johnson, IV ("Johnson"), Jones, Willie Todd Harris ("Harris"), Curavious O. Harrell ("Harrell"), Rodney Ceasar ("R. Ceasar"), Adriene D. Ceasar ("A. Ceasar"), and Justin R. Goss ("Goss") were indicted for conspiracy to distribute and possess with intent to distribute methamphetamine between February 2019 and continuing until December 31, 2019.

All of the Defendants, except for Johnson and Jones, pled guilty to some of the charges as a result of a plea agreement. Johnson and Jones went to trial on November 8, 2021. The five-day trial concluded on November 12, 2021 with Johnson and Jones both being found guilty of the conspiracy charge and Johnson being found guilty of an additional charge of distribution of fifty grams or more of methamphetamine as set out in Count 4 of the Indictment.

At the close of the Government's case on November 11, 2021, both Johnson and Jones made oral Motions for Judgment of Acquittal.[1] Both were denied for oral reasons set forth. The pending motion is a Motion for Post-Verdict Judgment of Acquittal by Jones pursuant to Fed. R. Cr. P. Article 29(c).

II. LAW AND ANALYSIS

In addressing a Rule 29 judgment of acquittal, it is not necessary that the evidence exclude every reasonable hypothesis of innocence, provided a reasonable trier of fact could find that the evidence establishes guilt beyond a reasonable doubt. *United States v. Casel*, 995 F.2d 1299, 1303 (5th Cir. 1993). In testing the sufficiency of the evidence, the Court must view the evidence in the light most favorable to the jury verdict and affirm if a trier of fact could have found that the government proved all essential elements of the crime beyond a reasonable doubt. *United States v. Schuchmann*, 84 F.3d 752, 753-54, (5th Cir. 1996).

The court reviews the sufficiency of circumstantial evidence in the same manner that it reviews the sufficiency of direct evidence. *United States v. DeJean*, 613 F.2d 1356, 1359 (5th Cir. 1980). The Court must affirm the jury's verdict if it was supported by substantial evidence, where a reasonable trier of fact could have found guilt beyond a reasonable doubt. *United States v. Wheeler*, 802 F.2d 778, 782 (5th Cir. 1986).

There was more than enough evidence for the jury to have found Jones guilty of Count 1. The Government charged seven different defendants in the drug conspiracy. The evidence showed that the top distributor in the conspiracy was Johnson. Johnson supplied Jones, who supplied Harris. The home of R. Ceasar and A. Ceasar was used to store some of the methamphetamine. Several intercepted phone calls between Johnson and Jones verified their

[1] [Doc. Nos. 229 and 230].

relationship. Many of the calls were of Johnson angry at Jones because Johnson had not been paid for the methamphetamine by Jones. Johnson even threatened to take Jones' truck.

There was sufficient evidence to show that Jones was also supplying methamphetamine to local drug dealer, Harris, for distribution in the Western District of Louisiana. Jones advised Harris he had two pounds of methamphetamine available in an intercepted call on May 26, 2019. Additionally, Harris confirmed in a later call to R. Ceasar that Harris received the two pounds of methamphetamine. On June 6, 2019, and on June 7, 2019, Jones made two Cash App payments to Johnson to pay the debt he owed to Johnson.

Jones contends that none of the drug evidence admitted at trial was obtained directly from him. However, the drug quantity attributable to a defendant knowingly participating in a drug conspiracy includes (1) transactions in which he directly participated; (2) transactions in which he did not personally participate, but where he knew of the transactions, or they were reasonably foreseeable to him; (3) quantities he agreed to distribute or possess with intent to distribute regardless of whether he ultimately committed the substantive act. *United States v. Pauling*, 924 F.3d 649, 657 (2d Cir. 2019).

Harrell testified at trial and verified the role of Jones as a middleman in the drug conspiracy. There was more than sufficient evidence for Jones to have been convicted of Count 1.

III. CONCLUSION

For the reasons set forth herein, together with the reasons set forth orally by the Court on November 11, 2021,

IT IS ORDERED that the Post-Verdict Motion for Judgment of Acquittal Pursuant to Federal Rule of Criminal Procedure 29(c) [Doc. No. 246] filed by Roy Lee Jones, Jr. is DENIED.

MONROE, LOUISIANA this 4th day of January 2022.

TERRY A. DOUGHTY
UNITED STATES DISTRICT JUDGE

TAB C

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
March 7, 2023
Lyle W. Cayce
Clerk

No. 22-30119

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DELEWIS JOHNSON, IV; ROY LEE JONES, JR.,

Defendants—Appellants.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 3:20-CR-156-1

Before JONES, DENNIS, and WILLETT, *Circuit Judges.*

PER CURIAM:*

Delewis Johnson and Roy Lee Jones were convicted of conspiracy to possess with intent to distribute 50 grams or more of methamphetamine or 500 grams or more of a mixture and substance containing a detectable amount of methamphetamine. *See* 21 U.S.C. §§ 846, 841. Johnson was also convicted of distributing methamphetamine. *See* 21 U.S.C. § 841. Both

* Pursuant to 5th Circuit Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Circuit Rule 47.5.4.

challenge the sufficiency of the evidence for their convictions on appeal. Jones also challenges two sentencing enhancements applied by the district court. We AFFIRM.

Appellate courts affirm on the sufficiency of the evidence if, "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979).

Both defendants challenge their convictions because, they say, the evidence did not demonstrate they trafficked methamphetamine as opposed to some other controlled substance. Yet even if that were indisputably true, it would require resentencing rather than acquittal. The relevant statute prohibits trafficking in any "controlled substance." 21 U.S.C. § 841(a)(1). The specific kind of controlled substance is "not a formal element of the conspiracy offense." *See United States v. Daniels*, 723 F.3d 562, 573 (5th Cir. 2013). Therefore, the defendants cannot challenge their *convictions* on these grounds, but merely their *sentences*. *Id.*

Moreover, there is ample evidence that both defendants trafficked in methamphetamine. First, take Jones. Two street-level distributors testified that "Dee" (Johnson's alias) supplied Jones with methamphetamine, who in turn supplied those lower on the totem pole. *See United States v. Perry*, 35 F.4th 293, 317 (5th Cir. 2022) ("This Court has long held that a defendant may be convicted on the uncorroborated testimony of a coconspirator who has accepted a plea bargain, so long as the coconspirator's testimony is not incredible.") (citations and internal quotation marks omitted). On an intercepted call, Jones told a coconspirator named Harris that Jones had "two" for him. In the following days, Harris let two other coconspirators know that Harris now had "meth" or "CDs" (slang the group used for

methamphetamine). On another call, Jones discussed paying "Dee" for "zips"—a term that a coconspirator testified referred to methamphetamine.

Jones makes essentially two arguments as to why this evidence is insufficient; both fail. First, he contends that the testimony from his coconspirators is incredible because, according to a government expert, conspirators at Jones's level in the distribution chain do not interact with street-level distributors. Second, he avers that his intercepted statements were vague and could have referred to marijuana rather than methamphetamine. But neither argument demonstrates that no rational trier of fact could have found Jones guilty. At this stage, the "evidence need not exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt, and this court will accept all credibility choices that tend to support the verdict." *United States v. Stevenson*, 126 F.3d 662, 664 (5th Cir. 1997). The jury could have rationally concluded that the expert's testimony was inapplicable to Jones's situation and rejected alternative interpretations of his ambiguous statements.

The evidence against Johnson is also sufficient. His counsel conceded that Johnson was involved in the marijuana trade with Jones and went by the name "Dee." Multiple members of the conspiracy had heard that Jones got his methamphetamine from "Dee." Jones acknowledged that his supply came from "Dee" on an intercepted call. On another call, Johnson offered to sell "broccoli" (which the prosecution interpreted as a reference to marijuana) or "the other one" to a police informant. When the informant ordered "the other one," Johnson sent a shipment to a third party's address. That shipment was stolen before the police could confiscate it, but shortly thereafter a person associated with the address was arrested with methamphetamine in his possession. The informant then placed a second order for "another one" with Johnson. Soon after, the informant received tracking information for the package, which was intercepted and found to

contain a pound of methamphetamine. Like Jones, Johnson attempts to characterize the evidence as only supporting marijuana trafficking. He also denies that he sent the tracking number for the second package. But, at best, his counter-interpretation of the evidence merely establishes that a "reasonable hypothesis of innocence" is possible—not that the jury was irrational for rejecting that hypothesis. *Stevenson*, 126 F.3d at 664. Consequently, both of Johnson's convictions survive his sufficiency of the evidence challenge.

Likewise, Jones's challenges to his sentencing enhancements fail. The first enhancement was for acting as a manager or supervisor of a drug conspiracy under U.S.S.G. § 3B1.1(b). The second was imposed because his offense involved between 10,000 and 30,000 KG of Converted Drug Weight under U.S.S.G. § 2D1.1. Both enhancements rest on factual findings that are reviewed for clear error. *United States v. Warren*, 986 F.3d 557, 567 (5th Cir. 2021) (manager/supervisor enhancement); *United States v. Betancourt*, 422 F.3d 240, 246 (5th Cir. 2005) (drug quantity). Therefore, the court should affirm if the decision below "is plausible in light of the whole record." *United States v. Blanco*, 27 F.4th 375, 382 (5th Cir. 2022).

Given Jones's role in the distribution chain, the district court did not clearly err by applying the manager/supervisor enhancement. As mentioned above, the prosecution introduced evidence that Jones supplied the street-level distributors with methamphetamine that he obtained from Johnson. This position in the distribution chain gave him control over the other conspirators' access to the drug. At minimum, then, he "exercised management responsibility over the property, assets, or activities" of the enterprise. U.S.S.G. § 3B1.1 n. 2.

Finally, the district court did not clearly err by applying the drug quantity enhancement. Jones makes several arguments to contend that his

Converted Drug Weight includes drugs he never supplied. Some of his arguments fail for the same reasons that his sufficiency of the evidence argument fails. But more fundamentally, these arguments misconstrue the legal standard. Jones is responsible for the quantity of drugs that he "knew or should have known or foreseen was involved" in the conspiracy, not just the drugs he personally trafficked. *United States v. Puma*, 937 F.2d 151, 160 (5th Cir. 1991); *see also United States v. Pofahl*, 990 F.2d 1456, 1484 (5th Cir. 1993) ("involvement in a conspiracy is presumed to continue and will not be terminated until the co-conspirator acts affirmatively to defeat or disavow the purpose of the conspiracy") (internal quotation marks omitted). Even if he did not personally supply all of the drugs at issue, he offers no argument as to why he could not have known that the conspiracy would encompass the quantities at issue. Ergo, his challenge to this enhancement cannot succeed.

AFFIRMED.