In the

United States Court of Appeals

For the Seventh Circuit

No. 23-3295

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

SELDRICK R. CARPENTER,

Defendant-Appellant.

Appeal from the United States District Court for the
Central District of Illinois.
No. 1:18-cr-10009-MMM-JEH-1 — **Michael M. Mihm**, *Judge*.

ARGUED MAY 29, 2024 — DECIDED JUNE 17, 2024

Before EASTERBROOK, BRENNAN, and SCUDDER, *Circuit Judges*.

SCUDDER, *Circuit Judge*. The United States Constitution guarantees criminal defendants the right to a jury trial in two places. Section 2 of Article III provides that "[t]he Trial of all Crimes, except in Cases of Impeachment, shall be by Jury." And, for its part, the Sixth Amendment promises that in "all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and

district wherein the crime shall have been committed." This case presents the question whether a supervised release revocation proceeding held under 18 U.S.C. § 3583(e)(3) constitutes the "trial of [a] crime" or a "criminal prosecution" within the meaning of either clause. Agreeing with the district court, we hold that it does not.

I

A

Little space need be devoted to the facts. In 2020 Seldrick Carpenter commenced a six-year term of supervised release after completing a federal sentence for distributing fentanyl. For a time, Carpenter complied with his conditions. But following the death of his mother, he began using drugs and lashing out against his probation officer. When efforts to address these issues through behavioral therapy failed, Carpenter's probation officer petitioned to revoke his supervised release. The district court released Carpenter on bond pending a final revocation hearing, only then to see him come under suspicion for setting a car on fire.

B

The Probation Office alleged that Carpenter committed a litany of supervised release violations, the most serious of which included the offenses of arson, criminal damage to property, intimidation, and aggravated battery. In advance of the revocation hearing, Carpenter moved for a jury trial under the Sixth Amendment and, alternatively, under Article III, § 2, cl. 3. The district court denied the motion and presided over Carpenter's revocation hearing without a jury. In the end, it found Carpenter guilty of several violations and exercised the discretion conferred by 18 U.S.C. § 3583(e)(3) to revoke

Carpenter's supervised release. It then imposed a revocation sentence of 30 months' imprisonment.

Carpenter appeals, challenging the district court's refusal to impanel a jury and failure to recommend that the Bureau of Prisons house him in a specified low-security prison in Michigan.

II

The constitutional question pressed by Carpenter is important not only because supervised release violations occur with some frequency, but also because of the consequential deprivation of liberty that accompanies revocation. In the final analysis, we conclude that neither the Sixth Amendment nor Section 2 of Article III of the U.S. Constitution guarantee a jury trial in a revocation hearing like Carpenter's. A defendant situated like Carpenter is entitled only to those procedures dictated by the Federal Rules of Criminal Procedure and the Due Process Clause of the Fifth Amendment.

A

By its terms, the Sixth Amendment applies only to "criminal prosecutions." U.S. Const. amend VI. Carpenter contends that his supervised release revocation met that description. He begins from the observation that "the scope of the constitutional jury right must be informed by the historical role of the jury at common law." *So. Union Co. v. United States*, 567 U.S. 343, 353 (2012) (quotations omitted). From there he seeks to leverage recent scholarly research purporting to show that defendants in the founding era received jury trials in proceedings analogous to today's supervised release revocations. See Jacob Schuman, *Revocation at the Founding*, 122 Mich. L. Rev. (forthcoming 2024).

As Carpenter recognizes, however, his position collides with thirty years of contrary precedent. We have long held that supervised release revocations—whether conducted under § 3583(e)(3) or some other provision—are not "criminal prosecutions" within the meaning of the Sixth Amendment. See *United States v. Boultinghouse*, 784 F.3d 1163, 1171 (7th Cir. 2015) ("[A] revocation proceeding, because it focuses on the modification of a sentence already imposed and implicates the conditional (rather than absolute) liberty that the defendant enjoys as a result of that sentence, is not considered to be a stage of a criminal prosecution."); *United States v. Kelley*, 446 F.3d 688, 691 (7th Cir. 2006) (same); *United States v. Pratt*, 52 F.3d 671, 675 (7th Cir. 1995) (same).

Although our full court could revisit these decisions, they stand today as controlling authority. See *Wilson v. Cook Cty.*, 937 F.3d 1028, 1035 (7th Cir. 2019) ("[P]rinciples of stare decisis require that we give considerable weight to prior decisions." (quoting *McLain v. Retail Food Emp'rs Joint Pension Plan*, 413 F.3d 582, 586 (7th Cir. 2005))). They reflect the court's reasoned judgment on a question of constitutional law, and we would need "compelling reason[s]" to chart a different course. See *United States v. Lamon*, 893 F.3d 369, 372 (7th Cir. 2018) (quotations omitted). Mere disagreement with the law or a desire to see the law change is not enough. See *Tate v. Showboat Marina Casino P'ship*, 431 F.3d 580, 582 (7th Cir. 2005) ("[I]f the fact that a court considers one of its previous decisions to be incorrect is a sufficient ground for overruling it, then stare decisis is out the window, because no doctrine of deference to precedent is needed to induce a court to follow the precedents that it agrees with.").

None of this is lost on Carpenter, who candidly admits that he is asking us to overrule our precedent. In extending that invitation, he directs our attention to the Supreme Court's 2019 decision in *United States v. Haymond*, 139 S. Ct. 2369, which he reads as unsettling and indeed conflicting with our precedent. See *Wilson*, 937 F.3d at 1035 (explaining that a subsequent Supreme Court decision undermining Circuit precedent is a compelling reason to revisit a settled issue). We disagree, at least in the context of supervised release revocations conducted under the authority of 18 U.S.C. § 3583(e)(3).

Haymond involved a Sixth Amendment challenge not to § 3583(e)(3)—the provision at issue here—but instead to § 3583(k), a supervised release revocation provision applicable only to defendants required to register under the Sex Offender Registration and Notification Act. In the event such a defendant is found to have committed any one of an enumerated list of sex crimes while on supervised release, § 3583(k) requires district courts to revoke his term of supervised release and impose a revocation sentence of "not less than 5 years."

Andre Haymond had been convicted of possessing child pornography in violation of 18 U.S.C. § 2252(b)(2), an offense that carried a statutory range of 0 to 10 years' imprisonment. See *Haymond*, 139 S. Ct. at 2373. After completing a 38-month prison sentence, he began serving a ten-year term of supervised release. See *id.* While under supervision, Haymond was accused once again of possessing child pornography—one of the offenses covered by § 3583(k). See *id.* At his revocation hearing and on appeal, Haymond argued that § 3583(k) violated the Sixth Amendment by increasing his sentencing exposure based on judge-found facts. See *id.* at 2375; see also

Alleyne v. United States, 570 U.S. 99, 116 (2013) (plurality opinion) (holding that "facts that increase mandatory minimum sentences must be submitted to [a] jury"). The Tenth Circuit agreed and held § 3583(k) unconstitutional as applied to Haymond. *Haymond*, 139 S. Ct. at 2375.

The Supreme Court affirmed, but no single opinion commanded the support of five Justices. Writing for three others, Justice Gorsuch relied heavily upon the Court's prior holding in *Alleyne* and concluded that § 3583(k) violated the Sixth Amendment by compelling the district court to find facts triggering a heightened sentencing exposure: a mandatory minimum revocation sentence of five years even though the jury's verdict in Haymond's underlying criminal prosecution did not itself authorize any mandatory minimum. See *id.* at 2378–79. En route to that conclusion, Justice Gorsuch appeared to suggest that—contrary to our precedent—most, if not all, supervised release revocations are "criminal prosecutions" as that term was understood at the founding. See *id.* at 2376 (observing that, historically, "the concept of a 'crime' was a broad one linked to punishment"). The dissenting Justices disagreed. Writing for three others, Justice Alito would have held—consistent with our precedent—that *no* supervised release proceedings are "criminal prosecutions" within the meaning of the Sixth Amendment. See *id.* at 2393–95.

In a solo concurrence Justice Breyer supplied the necessary fifth vote for affirming the Tenth Circuit. See *id.* at 2385–86. He "agree[d] with much of the dissent, in particular that the role of the judge in a supervised-release proceeding is consistent with traditional parole." *Id.* at 2385. But he disagreed with Justice Gorsuch's "transplant" of *Alleyne* "to the supervised-release context." *Id.* Justice Breyer nonetheless then

explained that "three aspects" of § 3583(k) made it "less like ordinary revocation and more like punishment for a new offense, to which the jury right would typically attach." *Id.* at 2386.

> *First*, § 3583(k) applies only when a defendant commits a discrete set of federal criminal offenses specified in the statute. *Second*, § 3583(k) takes away the judge's discretion to decide whether violation of a condition of supervised release should result in imprisonment and for how long. *Third*, § 3583(k) limits the judge's discretion in a particular manner: by imposing a mandatory minimum term of imprisonment of "not less than 5 years" upon a judge's finding that a defendant has "commit[ted] any" listed "criminal offense."

Id. "Taken together," Justice Breyer concluded that "these features of § 3583(k) more closely resemble the punishment of new criminal offenses, but without granting a defendant the rights, including the jury right, that attend a new criminal prosecution." *Id.* So Justice Breyer agreed with the plurality—though on purely functional grounds rejected by the plurality—that § 3583(k) was unconstitutional as applied to Andre Haymond. See *id.*

Five Justices in *Haymond* concluded that the Sixth Amendment does apply to some supervised release proceedings. Not surprisingly, then, Carpenter contends that *Haymond* has undermined our precedent and that principles of *stare decisis* must give way to a fresh examination of the scope of the jury trial right guaranteed by the Sixth Amendment. See *Wilson*, 937 F.3d at 1035.

We view *Haymond* differently. Under *Marks v. United States*, 430 U.S. 188 (1977), an opinion of the Supreme Court can bind lower courts even if it failed to garner five votes. "When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." 430 U.S. at 193 (cleaned up). If either Justice Gorsuch's plurality opinion or Justice Breyer's concurrence fits the bill, our role as an inferior court is to apply that decision until the Supreme Court sees fit to overrule it.

No doubt the *Marks* rule can be difficult to apply. See *Nichols v. United States*, 511 U.S. 738, 745 (1994) (acknowledging that the test is sometimes "more easily stated than applied"). But here its application is straightforward. Justice Gorsuch's plurality approach would require that all revocation hearings exposing a defendant to a mandatory revocation sentence be tried to a jury. That is because, in the plurality's view, any revocation sentence a defendant receives "constitutes a part of the final sentence for his crime." 139 S. Ct. at 2380. On this conception of sentencing, any statute that imposes a mandatory minimum revocation would increase a defendant's sentencing exposure within the meaning of *Alleyne*, either by adding to the mandatory minimum Congress prescribed for a defendant's underlying offense or, as in *Haymond*, by imposing a mandatory minimum where before there was none. In either case, the plurality's approach would require that alleged supervised release violations be tried to a jury.

By contrast, Justice Breyer's narrower approach would require a jury trial in only a subset of those cases. It is not enough for the revocation of supervised release to be

mandatory. To trigger the Sixth Amendment, it must have additional characteristics that make it "less like ordinary [supervised release] revocation and more like punishment for a new offense." *Haymond*, 139 S. Ct. at 2386. Justice Breyer's opinion is thus the narrower of the two.

Accordingly, we now join all nine circuit courts to have considered the question and hold that Justice Breyer's concurring opinion controls under *Marks*. See *United States v. Doka*, 955 F.3d 290, 296 (2d Cir. 2020) ("In *Haymond*, Justice Breyer's opinion concurring in the judgment represents the narrowest ground supporting the judgment, and therefore provides the controlling rule."); *United States v. Seighman*, 966 F.3d 237, 242 (3d Cir. 2020); *United States v. Coston*, 964 F.3d 289, 295 (4th Cir. 2020); *United States v. Lipscomb*, 66 F.4th 604, 612 n.11 (5th Cir. 2023); *United States v. Robinson*, 63 F.4th 530, 540 (6th Cir. 2023); *United States v. Childs*, 17 F.4th 790, 792 (8th Cir. 2021); *United States v. Henderson*, 998 F.3d 1071, 1076 (9th Cir. 2021); *United States v. Salazar*, 987 F.3d 1248, 1259 (10th Cir. 2021); *United States v. Moore*, 22 F.4th 1258, 1268 (11th Cir. 2022). Sixth Amendment arguments in this area must therefore be assessed under the framework Justice Breyer supplied in his concurrence.

Turning back to Carpenter's case, Justice Breyer's opinion finds straightforward application. For Justice Breyer, § 3583(k) triggered the Sixth Amendment because it had three characteristics that made it "*less like ordinary revocation* and more like punishment for a new offense, to which the jury right would typically attach." 139 S. Ct. at 2386 (emphasis added). Justice Breyer's functional approach arrays supervised release proceedings along a spectrum. Ordinary revocations—like those conducted under § 3583(e)(3)—lie at one

extreme and do not trigger Sixth Amendment scrutiny. With respect to these revocation proceedings, then, our precedents in *Pratt*, *Kelley*, and *Boultinghouse* remain sound. At the other end of the spectrum lie ordinary criminal prosecutions, which everyone agrees bring with them a right to a jury trial (save the limited exception of petty offenses). Section 3583(k) lies somewhere between these two poles, but close enough to the latter to require a jury trial.

Carpenter's supervised release revocation—held as it was under § 3583(e)(3)—was precisely the kind of "ordinary revocation" that Justice Breyer took care to explain falls outside the scope of the Sixth Amendment. Although that provision vested the district court with the discretion to revoke Carpenter's term of supervised release, it did not obligate it to do so. Even more, the revocation itself did not expose Carpenter to any mandatory revocation sentence: the district court had discretion to fashion a sentence within the applicable statutory maximum. In short, Carpenter's revocation proceeding was not "like punishment for a new offense" within the meaning of Justice Breyer's controlling opinion in *Haymond*. The Sixth Amendment therefore did not compel the district court to empanel a jury to find whether Carpenter committed the alleged violations of supervised release—a result entirely aligned with our existing precedent.

B

In the alternative, Carpenter argues that he was entitled to a jury under Article III, § 2, cl. 3, the Sixth Amendment's lesser-known older cousin. That clause provides that

> The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall

> be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

U.S. Const. Art. III, § 2, cl. 3. Picking up on a minor variation in the phrasing of that clause—it applies to "The Trial of all Crimes" rather than to "all criminal prosecutions"—Carpenter contends that it can apply to supervised release revocations even if the Sixth Amendment does not. In short, he views Article III's jury guarantee as independent from and broader than that contained in the Sixth Amendment.

Though textually plausible, Carpenter's interpretation finds no footing in the history of either the Sixth Amendment or Article III. During the ratification debates, Article III, § 2, cl. 3 came under attack for failing to expressly safeguard particular attributes of the common law jury trial. For example, although the clause guaranteed a jury trial for "all Crimes," and designated the venue where those trials must take place, it did not promise that juries would be drawn from the "vicinage" (meaning from the local community). See *Williams v. Florida*, 399 U.S. 78, 93 & n.35 (1970); *Smith v. United States*, 599 U.S. 236, 246–48 (2023). This omission elicited heavy criticism in the ratification debates that followed the Constitutional Convention, see Drew L. Kershen, *Vicinage*, 29 Okla. L. Rev. 801, 816–17 (1976); Akhil Reed Amar, *The Bill of Rights as a Constitution*, 100 Yale L.J. 1131, 1197 (1991); see also *Smith*, 599 U.S. at 248, and was cause for continued concern during the early years of the Republic, see *Williams*, 399 U.S. at 94.

Fears surfaced that Article III's generality would permit the erosion of the historical jury trial in other ways as well.

Some worried that it might "admit[] of a secret trial, or of one that might be indefinitely postponed to suit the purposes of the government." *Schick v. United States*, 195 U.S. 65, 78 (1904). Others were anxious to stamp out infamous British practices, like the use of testimonial hearsay in lieu of live witness testimony. See *Crawford v. Washington*, 541 U.S. 36, 42–47 (2004) (discussing the historical impetus for the Confrontation Clause).

The Sixth Amendment emerged largely to address these and other perceived problems with the general language employed in Article III, § 2. See *Callan v. Wilson*, 127 U.S. 540, 549–50 (1888) (explaining that the ratification of the Sixth Amendment "is to be referred to the anxiety of the people of the states to have in the supreme law of the land … a full and distinct recognition" of certain common law rules); *Williams*, 399 U.S. at 94 (observing that the vicinage issue "furnished part of the impetus for introducing" the Sixth Amendment). In other words, its purpose was remedial in nature—to resolve worries and uncertainties about a particular constitutional provision.

It did so, moreover, without supplanting Article III, § 2, cl. 3. In *Callan*, the Supreme Court rejected the contention that the Sixth Amendment—because it came later in time—superseded its predecessor in Article III, § 2. See 127 U.S. at 548–49. The "letter and spirit of the constitution" supported a contrary view: that the provisions were designed to operate in tandem. *Id.* at 549. Article III, § 2 guarantees a jury in the trial of all crimes, and the Sixth Amendment then gives added content to that guarantee by "declar[ing] … what … rules" apply to those proceedings. *Id.* The Court has treated the two jury guarantees as complementary ever since. See, *e.g.*, *United*

States v. Johnson, 323 U.S. 273, 275 (1944) (observing that the Sixth Amendment "reinforced" Article III, § 2, cl. 3); *United States v. Rodriguez-Moreno*, 526 U.S. 275, 278 (1999) (same); *Peña-Rodriguez v. Colorado*, 580 U.S. 206, 210 (2017) ("The right to a jury trial in criminal cases was part of the Constitution as first drawn, and it was restated in the Sixth Amendment.").

Carpenter's contention that Article III, § 2 can apply to proceedings outside the scope of the Sixth Amendment turns this history on its head. On his reasoning, the Constitution grants two kinds of jury trials in criminal proceedings: traditional jury trials for criminal prosecutions and a weaker version with less robust protections in an amorphous case of proceedings that fall within the daylight he sees between the phrase "criminal prosecutions" and "trial of all crimes." But we find no support for this view. History and precedent make clear that the Sixth Amendment was meant to complement Article III, § 2, not to supersede or compete with it. In line with this history, we reject Carpenter's interpretation and hold that Article III, § 2, cl. 3 and the Sixth Amendment are identical in scope. Accordingly, a proceeding that does not trigger the Sixth Amendment cannot independently trigger Article III, § 2.

III

Carpenter presses one additional point targeted at his revocation judgment. At sentencing the district court agreed to recommend that the Bureau of Prisons house Carpenter at FCI Milan, a low-security prison in Michigan. Carpenter's written judgment, however, contains no such recommendation. Carpenter asks us to instruct the district court to correct that oversight. As we explained in *United States v. McHugh*, 528 F.3d 538 (7th Cir. 2008), however, and reaffirm today, we lack

jurisdiction to review such non-binding recommendations on appeal. See *id.* at 540–41.

For these reasons, we AFFIRM.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Criminal No. 1:18-10009
	)	
SELDRICK CARPENTER,	)	
	)	
Defendant.	)	

TRANSCRIPT OF PROCEEDINGS - VOLUME I
BEFORE THE HONORABLE MICHAEL M. MIHM
FINAL HEARING ON REVOCATION OF SUPERVISED RELEASE
NOVEMBER 2, 2023; 3:01 P.M.
PEORIA, ILLINOIS

APPEARANCES:

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Proceedings recorded by mechanical stenography; transcript produced by computer

INDEX

EXHIBITS

(Proceedings held in open court.)

THE COURT: Good afternoon.

MR. BRYNING: Good afternoon, Your Honor.

THE COURT: This is the case of the United States of America v. Seldrick Carpenter, Criminal Number 18-10009.

The defendant is in court represented by his attorney, Karl Bryning. The United States is represented by Darilynn Knauss.

The matter is set today for a hearing on a petition alleging violations of supervised release.

And the first matter to be addressed at this hearing is the defendant's motion for a jury trial. I've read the pleadings on that. I've read the motion, the government's response, and the defendant's reply. But I would be happy to give each side an opportunity to highlight any arguments you want me to consider.

Mr. Bryning?

MR. BRYNING: Your Honor, I would stand on the --

THE COURT: Stay seated.

MR. BRYNING: Oh. Thank you, Your Honor.

THE COURT: Stay seated. Pull the microphone over. Thank you.

MR. BRYNING: Your Honor, I would stand on the pleadings as written unless the Court has questions about them or would like to hear argument.

THE COURT: Well, just a moment. Let me -- hold on. Just a minute.

Well, I guess the biggest question I had was that -- let me get to the right spot here.

MS. KNAUSS: Your Honor, if I may? I believe the Court entered a docket entry denying the motion.

THE COURT: I did?

MR. BRYNING: That was just prior to the reply.

MS. KNAUSS: It was on October 31st.

THE COURT: I don't understand. I can't imagine I would have done that without doing it in the courtroom.

MS. KNAUSS: I'm just saying, Your Honor, it's the docket entry --

THE COURT: I appreciate that, but -- well, then I'm going to vacate that just so we can consider it. Certainly my intention to be -- consider this in person.

The government cites some cases from 2015 and 2014 indicating that the Sixth Amendment provisions

concerning jury trial do not extend to a supervised release revocation hearing. They cite some others that are older than that. Actually, the more recent one is *Stahl*, *U.S. v. Stahl*, and then that refers to the Supreme Court case from -- of *Gagnon v. Scarpelli*.

How do you respond to those -- that case authority, Mr. Bryning? I mean, it seems to me it's controlling.

MR. BRYNING: Your Honor, I think that in terms of the Sixth Amendment it is controlling at this point, so we would make our arguments to preserve them for appeal.

THE COURT: Okay. That's fair.

MR. BRYNING: Essentially, the reason for filing this motion was because it appears that the logic of the Supreme Court after *Bruen* is changing, and the reply does deal with a separate issue which is the Article III right to a jury trial which was not -- I don't believe that was addressed. So, I think even --

THE COURT: You don't have any case authority for that, correct?

MR. BRYNING: No. I don't think that issue has been litigated.

THE COURT: All right. I'm going to deny the motion for a jury trial. To me, it's clear that there's no entitlement to a jury trial for supervised release issues.

So then that brings us to the -- brings us to the petition. Let's see here. Is it just one petition or --

MS. KNAUSS: There's four, Your Honor.

THE COURT: Three?

MS. KNAUSS: Four.

THE COURT: I've got one, two -- I only have three here.

MS. KNAUSS: I can provide the docket numbers.

THE COURT: One is April 28th; one is June 8th; one is August 1st. What's the last one?

COURTROOM DEPUTY: October 10th.

THE COURT: Okay. So, what is the status? Are we going to have an evidentiary hearing?

MR. BRYNING: Yes, Your Honor. Mr. Carpenter denies all of the allegations in all of the petitions and is prepared for hearing.

THE COURT: Okay. Is the government ready to proceed?

MS. KNAUSS: Yes, Your Honor.

THE COURT: Okay.

THE COURT: Okay. Thank you. You may step down.

Do you have any other witnesses?

MS. KNAUSS: No, Your Honor.

THE COURT: All right. Mr. Bryning, do you have any witnesses?

MR. BRYNING: May I have a moment, Your Honor?

THE COURT: Sure.

(A pause was had in the record.)

MR. BRYNING: No other witnesses. The defense rests, Your Honor.

THE COURT: Okay.

MR. BRYNING: But we would move to admit the exhibits that we've published.

THE COURT: Well, I think they've already been admitted. They've all been admitted.

All right. Let's take these one at a time, take them in chronological order.

The first one is the failure to allow the home visit. Do you have any argument to make on that, Mrs. Knauss?

MS. KNAUSS: No, Your Honor. I'll stand on the evidence the Court has just heard.

THE COURT: Mr. Bryning?

MR. BRYNING: Yes, Your Honor, just briefly.

I think this was not a willful violation of supervised release. Mr. Carpenter was actually allowing Probation to enter the home. He did not want to be the first one to enter on that date. He's not charged with any of these other violations. In fact --

THE COURT: You're confusing me with that. I would think he would want to be the first one into the house. Why wouldn't he? He's -- it's his dog.

MR. BRYNING: I don't think anybody wants to get between a female Cane Corso and her pups.

THE COURT: Well, then he shouldn't have that dog. He knows he's on supervision, doesn't he?

MR. BRYNING: Well, as it turns out, we had a hearing about that, and he was ordered not to have the dogs in the home, and he had the dogs removed from the home. He was also sanctioned. So he had a sanction for that, so --

THE COURT: What's your argument on this violation?

MR. BRYNING: My argument is that it was not a willful violation because it would have been dangerous for the probation officer or anyone else to get between a female Cane Corso and her pups, especially while feeding, and that he spoke with

the probation officer on the deck of his house. He did not run from him, he did not hide from him, and this is not a willful violation of supervised release.

THE COURT: All right. I think -- my finding on this, the government has met its burden of proof by a preponderance of the evidence. If it were only this situation, I might agree with Mr. Bryning, but this is in the context of other contacts -- prior contacts they've had with him when he's impeded or interfered or obstructed them in terms of getting in the house.

And even on this occasion, it's his dog and his puppies. He knows they have a right or he should know they have a right and a duty to conduct home visits. If the dog was out, they could have maybe closed her in a bedroom or something; I don't know. But this puts the defendant in charge rather than Probation, and that's just simply not the way it's supposed to be. So, I do think it was a willful violation, and I'm going to find him guilty of that.

The next one, let's see, failure to complete cognitive-based therapy program.

Does the government have any argument on that?

MS. KNAUSS: No, Your Honor. Again, that the defendant was directed to go, and he didn't.

THE COURT: Okay. Mr. Bryning?

MR. BRYNING: Mr. Carpenter contends that he was put in jail by the probation office and was unable to attend his last appointment. He only had three absences allowed and that was his third absence.

THE COURT: Well, they say he was taken into custody on the 10th. This is -- when was he arrested?

MS. KNAUSS: May 10th.

THE COURT: As I understand it, they're saying May 10. This incident happened on May 3rd. That's a week before he was arrested.

MR. BRYNING: Says he was arrested on a warrant, and he was in custody at the time of his last appointment.

THE COURT: Well, at this point I'm not going to accept that. He's not testifying under oath. The government's informed me, I believe as an officer of the court, that he was arrested on the 10th. Is that correct?

MS. KNAUSS: Yes.

THE COURT: All right. Then I'm going to find

him guilty of that violation.

The third matter is the car fire. What is the government's argument on that?

MS. KNAUSS: Your Honor, the government's argument is that there's, in fact, two videos, first showing that -- what we suggest the video shows is that he threw an item through the back windshield. And as was testified to by Marissa Edwards, there was, in fact, a broken-out window in that car; I believe it was the back passenger both she and the detective referenced. That subsequent to that, the car was, in fact, set on fire.

We've got the information as to those two, both about --

THE COURT: Well, she can't -- in terms of Marissa, she says what? She recognized him in the video; is that correct?

MS. KNAUSS: I don't believe she did, Your Honor.

THE COURT: She did here on the witness stand.

MS. KNAUSS: I'm sorry, I guess she did. I missed that.

THE COURT: But other than that, he did not confess to her.

MS. KNAUSS: Not to her. Not to Marissa, no.

THE COURT: No.

MS. KNAUSS: But we do have the information that he was the one talking with her about the parking fees and when was the car going to get moved. He was the only one expressing that.

THE COURT: That's certainly some background on this. But then it was the witness that we watched the video on who says that he confessed to her, I think, twice.

MS. KNAUSS: That is correct. The first time he -- he first denied it, saying that the video -- you know, can't tell anything from the video. He then said he did it, but he was apologetic to her because he didn't intend for her car to be damaged. And then it was the third time that he said that he set the car on fire to mess with Marissa.

THE COURT: And his response is, as I understand it, that both of these witnesses were not telling the truth, in effect, because of this ongoing scenario of him being accused of some misconduct.

MS. KNAUSS: Well, first of all, as I recall it was -- Marissa put it on social media after she saw the video herself and stated that she believed that that was, in fact, Seldrick Carpenter that set

her car on fire.

THE COURT: In terms of what she put on social media, did she make reference to this other incident?

MS. KNAUSS: I'm just going by what Counsel here has put on today. What she was talking about, what she put on social media was information about the fire of her car.

THE COURT: Well, Mr. Bryning, this exhibit that you showed, I didn't read it word for word when you put it on. This social media filing, who did that? That social media filing, as I saw it going by, included references to this other incident.

MR. BRYNING: Yes, it did.

THE COURT: Who put it on?

MR. BRYNING: It was shared on the Alexis Scott Campaign by Dusti Moultrie.

THE COURT: So we don't know who put it on. I mean, we don't know that it was one of these two witnesses?

MR. BRYNING: It's a -- it's a family member of Alexis that has this site.

THE COURT: Okay. So, it's not either of these two, but they had to get it from somebody.

MR. BRYNING: Right. And the testimony was that a guy from the car wash came over, taped it on his phone, came over and delivered it to her, I think.

THE COURT: Right. Okay. But anyway, so I assume the biggest thing you're relying on is the fact that he supposedly admitted this on two occasions.

MS. KNAUSS: That, plus the fact that that is also corroborated by the testimony of Marissa who said that she saw the video, and she said it looked like Seldrick Carpenter to her and that she knew of him.

THE COURT: Well, the probation officer also said it looked like him. Frankly, her saying it looked like him, I can't give a lot of credibility to that based on what I saw. It's -- I think what the probation officer said has more credibility, but even with that, it's not the greatest in the world.

But anyway, Mr. Bryning, what's your argument?

MR. BRYNING: Judge, I mean, I think from this evidence you can see why this has not been picked up for state prosecution. It does not rise to the level of preponderance of the evidence, certainly

not beyond a reasonable doubt. Mr. Carpenter did not do this. You can't identify anybody in those videos, certainly not from a walk which would be the same for anybody with sagging pants or who knows how many other people. You can't identify anybody from the video. The officer couldn't even identify Mr. Carpenter from the clear video of the protest, misidentified him as his brother.

You've had an opportunity to see his brother, to see Mr. Carpenter, to see his other brother so, I mean, this is -- the video at night is too dark and grainy. You've got videos that show a person not coming from Mr. Carpenter's address, not returning to that address.

THE COURT: You certainly see on one of the videos somebody coming from that address and going over and lighting the fire, it appears.

MR. BRYNING: I -- from the clips that we saw, there is at least one clip that shows somebody coming from an address next door.

THE COURT: Yes, and I wanted to ask about that. How, how is it we have these -- it's one video camera. How do we have these two different people involved?

MS. KNAUSS: The government's position is that

it's not two different people involved. There's a passage of time between the two, but the one shows him coming out of the front of the one house --

THE COURT: I didn't mean to say two different people, but it's two different times.

MS. KNAUSS: Yes.

THE COURT: And they came from different locations.

MS. KNAUSS: Yes.

THE COURT: It looks like they came from the side of 129, not from in the house, but it's definitely two separate locations.

Anyway, go ahead, Mr. Bryning.

MR. BRYNING: Judge, nobody can be identified from these videos. That's the bottom line. And this does not rise to the level of proof even by a preponderance of the evidence, certainly not beyond a reasonable doubt. So we'd ask that you find in favor of the defendant.

THE COURT: Okay. Well --

MS. KNAUSS: Your Honor, before we end, though, I would like to point out there's a third part of this petition and that is the intimidation which occurs, ironically, the same day as the police go visit the car wash asking for the video

and then the threats that we have toward Mr. Hernandez.

THE COURT: Okay.

MS. KNAUSS: So, I think they need to be taken into conjunction.

THE COURT: That's a good point. Would you address that?

MR. BRYNING: Yes, Your Honor. Regarding the alleged -- allegation of intimidation, there was certainly a conversation between Mr. Carpenter and the people at the car wash. It's not intimidation; it does not rise to the level of a crime.

THE COURT: Says, *If you turn this video over, I'm going to kill you.* That's not intimidation?

MR. BRYNING: He never said that.

THE COURT: That's what the witness said.

MR. BRYNING: That's what the witness said, correct.

THE COURT: All right. But that's the evidence I have in front of me.

MR. BRYNING: Well, yes.

THE COURT: I can't speculate on what evidence you might have presented or could have presented, like the testimony of the defendant. I don't have that.

MR. BRYNING: Well, you also don't have to hold the credibility of the witness --

THE COURT: Well, this guy looked like a reluctant witness to me. He wasn't happy to be here.

MR. BRYNING: Well, he clearly had some kind of argument with Mr. Carpenter, but whether -- what was said is not on -- has not been recorded. I'll put it that way.

THE COURT: Okay. All right.

MR. BRYNING: That's his story.

THE COURT: All right.

MR. BRYNING: Okay? His story comes from -- that witness is one who is involved in handing out video of surveillance that covers Mr. Carpenter's home --

MS. KNAUSS: I'm going to object to that. I don't believe that's the state. I believe what was said was it came from an employee of the car wash. I don't know that he was ever identified as the person providing the video.

THE COURT: He denied that.

MR. BRYNING: He is the site manager.

THE COURT: Yes.

MR. BRYNING: And when he talked to his

supervisor, and he wouldn't hand out anything to even the police without a warrant.

THE COURT: Right.

MR. BRYNING: So, he shouldn't have been doing that. I think Mr. Carpenter was justified in going over and talking to him about not having his house surveilled 24 hours a day.

THE COURT: Well, you've lost me on that too. I mean, that's almost -- well, very many of these cameras end up showing the fronts of people's houses or streets. There's no violation of privacy that I'm aware of with a camera that's looking out that shows some houses across the street. Am I missing something?

Or are you just saying, *Well, gee, it's a private house. They shouldn't have pointed it in that direction*?

MR. BRYNING: That's what I'm saying. It's a private house. If they were going to surveil their own property, fine, but surveilling other people's houses 24/7, I think that invites a neighbor to complain at the very least.

THE COURT: All right. Well, my ruling on this is, first of all, I believe the government has met its burden of proof by a preponderance of the

evidence concerning the car fire, the arson, and committing -- knowingly causing damage to the property of Marissa Edwards.

We have background from Marissa leading up to this incident concerning the car being there for, I think she said, three weeks or more, the conversation outside the grocery store, and then the incident itself. And then we have the other victim of the arson whose car was also damaged testifying under oath -- I'm sorry, she was not under oath -- testifying that the defendant admitted doing this on two separate occasions. That's very strong evidence.

And I will say, concerning the videos, I can't make as much of the videos as the government wants me to. It certainly shows a series of events, certainly shows someone coming from his house over to that area, shows someone coming from next door, whether that's the same person or not.

But based on the evidence I have here, I think the government's clearly met their burden.

The defense has introduced the idea that these witnesses were not truthful, and they had a motivation to lie, and that was this other incident that happened some time ago, and I -- there's

nothing -- there's not nearly enough in this record for me to enter a finding that that interferes with what I heard from them to the extent that I would find that what they said was not credible.

Concerning the other part of this about the intimidation, the video clearly shows him coming over on the second occasion. The first occasion yelling -- basically yelling, but the second occasion coming up to them. This manager took the stand here and testified under oath as to what was said. That's uncontradicted at this point, and it's certainly enough to establish this violation by a preponderance of the evidence.

The last matter concerning the aggravated battery, it's my finding the government has not met its burden concerning that. I think there are all sorts of problems with that. There's no doubt that these people had a dispute -- a running dispute, disagreement which ultimately led to apparently them fighting with each other in that cell. I can't say what was happening in that cell or what was said. And the fact that another inmate supposedly said that the defendant had made some comment, I can't rely on that. So, it's just not enough.

So, I've also been thinking about this during the course of the hearing, and I think I need to make a more complete record on this Article III argument about jury trial, and I'd like to hear what the government's response is to that claim.

MS. KNAUSS: I'm just not prepared, Your Honor. I thought the Court already ruled. I did not prepare anything else for today.

THE COURT: And I apologize for that.

MS. KNAUSS: I understand. I'm just saying I'm not --

THE COURT: Okay. Well, I apologize for that. That's what I was thinking, and I was -- but I didn't intend for that to be entered before the hearing because I often do this, and sometimes I change my mind. But I'm not going to sentence today without hearing the response from the government to the Article III claim.

MS. KNAUSS: That's fine.

THE COURT: How soon could you file that?

As I understand it, there's no citation to cases. You're just saying, *Look, Judge, this is exactly and only what it says. You don't need a case to support that.* Right?

MR. BRYNING: I think it's an open question,

especially after recent rulings.

THE COURT: Okay. All right. So, how soon could you give me that?

MS. KNAUSS: How soon, Your Honor? You tell me.

THE COURT: The next time I'm going to be here is, what, the 20th or 21st?

COURTROOM DEPUTY: 21st.

THE COURT: Do I have some time that day?

(A pause was had in the record.)

THE COURT: 1:00 on the 15th, would that work for both sides?

And today is the 2nd so if you could maybe get your brief to me by -- by the 9th, that would give you a week.

MS. KNAUSS: Your Honor, I've got a matter in front of Judge McDade on the 15th at 1:30.

THE COURT: Any other time that day?

MS. KNAUSS: Is there anything in the morning? The morning is more likely to be --

THE COURT: I'm filled in the -- am I filled in the morning?

COURTROOM DEPUTY: We have a pretrial at 9:00. Maybe we could do 9:30?

THE COURT: 9:15.

MS. KNAUSS: 9:00 with Derek Griffin. Mr. Griffin is still over in Indianapolis jail or Indiana jail.

THE COURT: All right. How about 9:15 on the 15th?

MS. KNAUSS: That would work.

MR. BRYNING: That works.

THE COURT: Okay. And you'll have your brief to me by the 9th?

MS. KNAUSS: Yes, Your Honor.

THE COURT: All right. Okay. Then I think we're done today; is that correct?

Either side have anything else?

MS. KNAUSS: Not from the government, Your Honor.

MR. BRYNING: Not from the defense, Judge.

THE COURT: Okay. Thank you.

COURTROOM DEPUTY: Court's adjourned.

(Proceedings concluded at 6:10 p.m.)

CERTIFICATE OF OFFICIAL REPORTER

I, Jennifer E. Johnson, CSR, RMR, CBC, CRR, in and for the United States District Court for the Central District of Illinois, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 19th day of December, 2023.

/s/ Jennifer E. Johnson
JENNIFER E. JOHNSON
CSR, RMR, CBC, CRR
License #084-003039

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	Criminal No. 1:18-10009
SELDRICK CARPENTER, Defendant.	)	

TRANSCRIPT OF PROCEEDINGS - VOLUME II
BEFORE THE HONORABLE MICHAEL M. MIHM
FINAL HEARING ON REVOCATION OF SUPERVISED RELEASE
NOVEMBER 15, 2023; 9:13 A.M.
PEORIA, ILLINOIS

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U.S. District Court Reporter
Central District of Illinois

Proceedings recorded by mechanical stenography; transcript produced by computer

(Proceedings held in open court.)

THE COURT: Good morning.

MR. BRYNING: Good morning, Your Honor.

THE COURT: This is the case of the United States of America v. Seldrick Carpenter, Criminal Number 18-10009. The defendant is in court with his attorney, Karl Bryning. The United States is represented by Darilynn Knauss.

The matter is set for continued hearing today on the petitions alleging violations of supervised release.

I think -- well, I conducted an evidentiary hearing at the last session. We'll talk about that. But the first issue I want to address is the question of whether or not the defendant's entitled to a jury trial on these issues.

I took a look again at the order that I -- the text order I had entered and then vacated, but I vacated it because you didn't address the Article III argument. It's certainly correct in terms of the other part of this about the Fifth and Sixth Amendment, and so that stands, but we have this remaining question of whether or not Article III requires a trial.

Mr. Bryning, I've read everything that's been

filed here, but certainly give you an opportunity to highlight what you think are the most important parts of your argument.

MR. BRYNING: Thank you, Your Honor.

Should I do that here or at the podium?

THE COURT: Stay seated, please.

MR. BRYNING: So, first I would note that in the government's supplemental response to defendant's reply regarding motion for jury trial, the government states clearly that it has not identified any authority addressing the Trial of all Crimes clause relevant to supervised release.

So, I think this is certainly an open question at the very least, whether or not --

THE COURT: Can I ask you something at this point? Is this, indeed, a case of first impression, or has this been raised elsewhere?

MR. BRYNING: I, I believe it is. I'm not sure, though.

THE COURT: Okay. I thought maybe there might have been some information on the Federal Defender hotline or something.

MR. BRYNING: I think there -- people have raised this issue in various forms before, but I don't think it's been decided.

THE COURT: Okay. All right. Go ahead, please.

MR. BRYNING: But all the authority that the government cites is pre-*Bruen*, and *Bruen* was really the impetus for the filing of the original motion as well as -- in both arguments, the Article III as well as the other argument that the Court's already ruled on.

I think to -- *Bruen* makes us look at this in a new way, and what we see here is that there really is a need -- and I think this case demonstrates the need for a jury trial in revocation cases of this type.

What we have is a person who's charged with various state crimes, but the revocation process is being used in federal court to get around a jury trial and proof beyond a reasonable doubt. We have --

THE COURT: Well, I'm not sure it's accurate to say -- to characterize it "to get around." He's on supervision in this court, correct?

MR. BRYNING: He is, Judge.

THE COURT: I don't know -- I have no idea why -- there were no state charges filed here, were there?

MR. BRYNING: No.

THE COURT: And I have no idea why that's the case, but I think it might be a little bit too much to say "to get around" because he is on supervision here.

MR. BRYNING: Well, I would argue that no state prosecutor would charge these offenses -- specifically arson, intimidation, aggravated battery. I mean, the aggravated battery charge this Court found wasn't even provable by a preponderance of the evidence.

So, I don't see how this is not simply taking state charges that would not otherwise stand up to proof beyond a reasonable doubt and be entitled to a jury trial and bringing them in another forum to send a person to prison or attempt to send a person to prison.

So, I don't think we would have had a hearing here if there were a jury trial right and proof beyond a reasonable doubt for the revocation. I think maybe we would have had a hearing -- well, I don't even think we would have had a hearing on the issue of whether Mr. Carpenter prevented the probation office from conducting a home visit because I think Mr. Carpenter probably would have

admitted to that. It's a fairly low-level offense.

But then you see here that, you know, you've got the use of these uncharged alleged state offenses to bring that grade level up to A from, I believe, C. That's a significant difference. And I think what's being done is it is taking state charges that would not otherwise have been brought or be provable and using them to try to, for lack of a better phrase, jack up the guideline range.

So, the government argues that supervised release is a form of post-confinement monitoring. Here, it's more than just monitoring. I mean, what the government says is conditional liberty is really no liberty at all.

THE COURT: But that's -- it's not just them saying it, is it? There's some cases that say --

MR. BRYNING: No.

THE COURT: -- very strongly --

MR. BRYNING: Yes. All pre-*Bruen*, and I would argue that --

THE COURT: How does that change?

MR. BRYNING: Well, I would argue they're deficient under today's Supreme Court thinking because they don't have historical backing. And that was argued in the --

THE COURT: I'm not at all sure that that follows from the Second Amendment case to this.

MR. BRYNING: Well, that was what was argued in our original brief. I understand that there is Seventh Circuit precedent, and we are preserving that issue for further review.

THE COURT: Fine.

MR. BRYNING: In terms of the Article III, I don't believe there is Seventh Circuit precedent so I'm making the argument that that is, in fact, the case.

THE COURT: Okay. I understand that. And I commend you for that. Apparently as a case of first impression, then it's something that the Seventh Circuit should look at.

MR. BRYNING: We also have some references to -- a lot of these cases reference parole, a parole system. I think it's important to distinguish parole from supervised release. For 20 years in federal courts here, I've been hearing, you know, the judges say, *Look, there's a difference. There is no parole system here. It's supervised release. That is different.*

And I think that difference is important in terms of this argument because when we're talking

about parole or probation, it's essentially a balance-owed system which is where, you know, you have a set period of time. It's not an entirely separate sentence after you've completed your prison sentence -- after your prison sentence is completed. So, I think there's a difference there between a balance-owed system.

And I know in some states a prisoner can decide to forego parole or probation and instead choose to serve out the remainder of their entire sentence in order to be truly free once they're released from prison. We don't have that with supervised release. We don't have that option.

So, I think there's a difference there that's important as well.

THE COURT: All right. Thank you.

Mrs. Knauss?

MS. KNAUSS: Your Honor, the government will stand on its pleading.

THE COURT: Well, what about his argument that *Bruen* changes this in some fashion?

MS. KNAUSS: Well, I would only say --

THE COURT: I'm sorry, pull that microphone over.

MS. KNAUSS: I would only say that I'm not

aware of any authority on that. That the authority which does exist, in fact, does explain that this is, in fact, a part of the original sentence of the Court and not a new and separate proceeding. So, absent anything to indicate that *Bruen* is implicated here, again, we believe the motion should be denied.

THE COURT: Well, it's an interesting argument. As I said, I'm sure this will be appealed, as it should be; and if the Seventh Circuit tells me I'm wrong, I'll follow that instruction. But it's my ruling today that the defendant is not entitled to a jury trial under the Third Amendment.

I do believe, as the *Johnson* court said, that, "Even though the acts of violation may be criminal in their own right, a court's reliance on them for revocation of supervised release and reimprisonment is part of the penalty for the initial offense."

So, I'm going to be entering a brief written order on this, but that is -- that is my ruling. So the motion for jury trial under the Sixth or Third Amendment is denied.

Now having said that, at the last hearing we had an evidentiary hearing on a number of different

claims, and I believe I have -- my notes reflect that on the car fire arson I found liability on that. I found him guilty of the claim of intimidation. I found him guilty of the failure to successfully complete a cognitive-based therapy program. I found him guilty of refusal to permit the probation office to conduct a home visit. And I found him not guilty of the petition alleging aggravated battery on another inmate at the county jail.

MS. KNAUSS: Your Honor, if I could -- and perhaps I did not hear the Court, but I believe the Court also found him guilty of the criminal damage to property as alleged in the same petition as the arson and the intimidation.

THE COURT: Oh, okay. That was subsection A.

MS. KNAUSS: Yes.

THE COURT: I believe that's correct.

Mr. Bryning, do you agree with that?

MR. BRYNING: Yes, Judge.

THE COURT: Okay. So, as I understand it, we're talking about a Grade A violation, Criminal History Category V.

Does the government have any additional evidence to present in aggravation?

MS. KNAUSS: No, Your Honor.

THE COURT: I might start by saying that -- and I may have done this at the last hearing, but in anticipation of this hearing, the Court had asked the probation office to prepare an updated presentence report. That was done. Copies were made available to everyone, including the defendant.

Mr. Bryning, did you have a reasonable opportunity to read this and review it with your client?

MR. BRYNING: I have, Your Honor.

THE COURT: Based on your reading and review, is there anything in the report you feel is inaccurate or incomplete that you wish to challenge?

MR. BRYNING: Well, I -- Mr. Carpenter, of course, disagrees with the factual bases alleged.

THE COURT: Correct.

MR. BRYNING: And to the extent that the violation report runs contrary to our claims, he does disagree with them.

THE COURT: I understand that. And that's -- is that reflected in the PSR that will go off to the Bureau of Prisons, that we had a hearing and --

PROBATION OFFICER: No, Judge, it will not.
THE COURT: Well, let's put it in there just to be safe.
PROBATION OFFICER: Understood.
THE COURT: Okay?
All right. Mr. Carpenter, have you had a reasonable opportunity to read this report and review it with your attorney?
THE DEFENDANT: Yes, sir.
THE COURT: I'm sorry?
THE DEFENDANT: Yes, sir.
THE COURT: Based on your reading and review, is there anything in the report -- other than these matters Mr. Bryning has talked about where you're not admitting any of these violations, other than that, is there anything in the report that you feel is inaccurate or incomplete that you wish to challenge?
I'm sorry?
THE DEFENDANT: No, sir.
THE COURT: You understand you have the opportunity to present evidence in mitigation here this morning. You also have the right to make a statement to the Court on your own behalf before I impose sentence.

Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: All right. You have no additional evidence in aggravation.

Mr. Bryning, any additional evidence in mitigation?

MR. BRYNING: Judge, I would just like to acknowledge the presence in court today of Mr. Carpenter's family members. I'd ask them to stand and identify themselves for the record.

THE COURT: Okay.

MR. JAMES CARPENTER: James Carpenter, Seldrick's uncle.

MR. TEVAR CARPENTER: Tevar Carpenter, Seldrick's little brother.

MR. LATRELL CARPENTER: Latrell Carpenter, Seldrick's older brother.

THE COURT: Thank you all very much for being here.

Anything else?

MR. BRYNING: May I have a moment, Your Honor?

THE COURT: Sure.

(Defense counsel and the defendant conferred off the record.)

MR. BRYNING: Nothing further, Your Honor.

THE COURT: Okay. So, Mrs. Knauss, do you have a statement to make regarding sentence?

MS. KNAUSS: Yes, Your Honor. Do you want me to do it from the table?

THE COURT: Just stay there. Pull that microphone down. There you go.

MS. KNAUSS: Your Honor, as the violation memorandum sets forth, this defendant has repeatedly demonstrated non-compliance with the terms and conditions of his supervised release. Some are more -- for lack of a better word -- benign than others, but still it reflects his attitude toward being supervised by the United States Probation Office.

There are a number of times when he was requested to sign releases of information so that Probation could verify certain information. He refused to do that. On at least three occasions prior to the violation conduct, he refused to allow a home visit despite the fact that the probation office repeatedly advised him that this was, in fact, a condition of his supervised release, that they had to do these home visits to see how things were going. But on September 23rd of 2020, November 16 of 2021, March 16 of 2023, which was

the month before the charged violation, the defendant threw up all sorts of roadblocks and arguments as far as why they shouldn't be there and do that.

He has a number of both positive and diluted drug tests. There's failures to report. And he even at one point complained that Probation was just being too hard on him.

Now, as the Court has already found, we've got the violations as far as the refusal to allow the home visit and also his refusal -- his failure to complete cognitive-based therapy, and then the most serious offenses of all before the Court on top of those others, the criminal damage to property and the arson of not one but two cars that were parked across the street from his house. And from the evidence which was presented at the revocation hearing, it would appear that he decided to light them up simply because he didn't like where they were parked. And then when apparently he became familiar with the idea that the car wash across the street might have video of it, he went over there not once but at least two, maybe three times, threatening them, telling them that he would kill them if they turn that footage over to the police.

This conduct is just inexcusable. He has not been compliant. Based on all the activities with which he's been involved, the government's recommending a sentence of 36 months with no further supervised release.

THE COURT: All right. Thank you.

Mr. Bryning?

MR. BRYNING: Thank you, Your Honor.

Mr. Carpenter's been in jail now for 5 months and 17 days by my count. Most of these allegations are based upon accusations that no state prosecutor would ever charge, that could not be proven beyond a reasonable doubt to a jury, and one that this Court even found couldn't be proven by a preponderance of the evidence.

While in jail, Mr. Carpenter was attacked not once but twice. This is on video. It's in evidence. The Court's seen the video. He was attacked in his cell. He suffered a fractured skull, fractured orbital, traumatic brain injury and concussion. The medical reports are also in evidence, and this Court's seen them.

So, our argument is that Mr. Carpenter should receive time served. Any impact of incarceration has already been felt. He has suffered enough by

being in custody, and time served should be the sentence.

As far as supervised release in this case, supervised release is not helpful in this case. The relationship between the probation officer and Mr. Carpenter is irreparably damaged. And maybe it was from the start. Threatening to pepper-spray a supervisee in his home in front of his mother -- God rest her soul -- on day one if you don't follow my commands is not a good start.

What is referred to as conditional liberty by the government really means that the government agents are able to walk through your bedroom, able to have you wait while they go in and through your home, and that's really no liberty at all.

During this time on supervised release, Mr. Carpenter had a lot of other things going on in his life, and he may not have acted as professionally as he should have. It's understandable because his daughter was shot; his aunt died; his mother died. He tried working as a truck driver; his truck broke down. He had his hand in trying to raise dogs, trying to get a job locally. This is a man who was trying to do what he needed to do for himself and his family despite

all of the hurdles of being on supervised release.

Mr. Carpenter -- I think it's good for the Court to note that Mr. Carpenter is on supervised release for a drug felony, a Class B felony. I believe that's a non-violent drug felony. And this entire prosecution for this supervised release violation has been biased by a years-old missing person's case. I think that came out during the hearing in this case.

The probation officer actually goes to the police based upon a grainy, nighttime video from a distance, claims that he can identify Mr. Carpenter. The Court has seen that video for itself.

The police officer, I would note we only find out during cross-examination, was actually assigned to that same missing person's case, and, when confronted, he tries to minimize his involvement. Upon further cross-examination, it turns out that he actually interviewed more than one witness in that case and was familiar with the case.

So, there have been false accusations against Mr. Carpenter for years based upon this what I would characterize as cyber-bullying on social media. There have been marches and harassment.

The Court has seen video of that as well during the hearing.

Then there are people going to the car wash across the street to get video to post online to further their accusations and their harassment of Mr. Carpenter and his family, to essentially serve their vendetta which they're carrying out online.

I would note that Mr. Carpenter has strong family support. Although his mother has passed, she left the house to her children. And his brothers and uncle are here in court today. His brothers were also present for the revocation hearing.

So, our request to the Court is for a sentence of time served and no supervised release to follow.

Thank you, Your Honor.

THE COURT: All right. Thank you.

Mr. Carpenter, is there anything you would like to say to the Court on your own behalf before I impose sentence? Pull that microphone close, please.

THE DEFENDANT: I owned my own trucking company. I was trying my best to stay away from court and do right. I'm sorry that I'm in front of you again. I don't have nothing against my

probation officer, but it was -- it was hard.

THE COURT: All right. Thank you.

The Court adopts the factual findings and guideline application as contained in the report.

First of all, I want to say I'm sorry about the problems in the family, your mother dying, your sister and other stuff. I understand how traumatic that can be.

The second point I want to make is in reading this presentence report -- and I might add there's nothing that I heard here during the evidentiary hearing that changed my impression of what I read, and that was that from day one your attitude toward the probation officer was absolutely unacceptable. You're on supervised release. Their duty is to supervise you. That word, "supervise," has some meaning, and from the beginning you were non-compliant about letting them into your home, which is part of their responsibility.

Mr. Bryning says it's no surprise since you're threatened with pepper spray the first time they're there. Well, there was a reason for that, because the officer, I think, reasonably felt that he was put in danger by you. And the bottom line here is that Probation was not going to let you get away

with that, would not let you intimidate them on multiple occasions. And I won't either.

If I recall correctly, the first time it was only through the intervention of your mother that something more serious didn't happen.

I'm very troubled by this. I have these supervised release violation hearings all the time. This is very, very unusual. The consistency and the number of times that you were non-compliant, threatening or intimidating is just simply unacceptable. You had some other stuff -- some positive, failure to report. CBT didn't work. And we do have these more serious things -- the criminal damage, the arson. And as best I can tell from the record in this case, you ultimately made a decision to torch that car or, as it ended up, two cars because you didn't like the fact that that car had been parked there for a long time. I'm not chastising you for not being happy about that car being there. I might feel the same way. But I do hold you accountable for starting it on fire and ultimately involving another car.

And I also believe, as I found, that you did, in fact, intimidate or try to intimidate the people working at that car wash.

Now, Mr. Bryning says these efforts against you were furthered by going to this car wash to get the video. Well, their car had been destroyed. What's unreasonable about that?

I don't know all the details of these accusations that have been made about you about a missing person. I have no -- I have no conclusion about that at all. From all I've heard here, it may be that every one of those accusations is absolutely false, but that doesn't change anything in terms of what I've been called upon to decide in this case. If they're not true, I'm very sorry about that, and I can -- it would be very difficult to deal with that over a period of time, but that's -- in spite of Mr. Bryning's efforts to link these things together, I don't believe that's what I'm really addressing here.

So, when I impose a sentence, I should consider the conduct, consider your background. There were some efforts on your part to get involved in the trucking industry. There were problems with that.

I also acknowledge the fact of this fight at the jail. Mr. Bryning says that you were attacked. I found the government had not met its burden that

you attacked, but I'm not willing to accept his version either. It appeared to me that perhaps there were conversations that led up to that. It doesn't excuse the fact that you were injured in any way, but I just don't know what really all the background on that is.

Taking all of this into account, I'm supposed to -- I may have said this -- also consider the seriousness of the offense -- some of them are very serious -- promote respect for law, provide just punishment, provide adequate deterrence to others and to you -- and there's a big question mark concerning the "you" -- and also what the guidelines say.

The guidelines -- excuse me. The guidelines are 30 to 36 months. Taking all of this into account, the Court finds that the following sentence is sufficient but not greater than necessary to address all of the sentencing factors.

Supervised release is revoked. It is the judgment of the Court that you be committed to the custody of the Bureau of Prisons for a term of 30 months, and there will be no further imposition of supervised release.

You do, of course, have the right to file a

notice of appeal in this case. If it is your wish to appeal, I instruct you that any notice of appeal must be filed with the clerk of the court within 14 days of today's date. As your attorney, Mr. Bryning has an absolute responsibility to file that notice for you if that is your wish.

Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: Mr. Bryning, do you have any specific recommendations to the Bureau of Prisons?

MR. BRYNING: May I have a moment, Your Honor?

THE COURT: Sure.

(Defense counsel and the defendant conferred off the record.)

MR. BRYNING: Judge, we're requesting recommendation for the camp at Milan, Michigan.

THE COURT: I will recommend that.

Anything else?

MR. BRYNING: No, Your Honor.

THE COURT: Okay. Mrs. Knauss, do you have anything else?

MS. KNAUSS: No, Your Honor. Thank you.

THE COURT: All right. I would ask the marshals, give him five minutes or so to talk to his family who's here.

If you folks go into the front row, you can talk to him. You can't have physical contact with him, but we'll give you a chance to chat before he leaves.

We're in recess.

COURTROOM DEPUTY: Court is in recess.

(Proceedings concluded at 9:47 a.m.)

CERTIFICATE OF OFFICIAL REPORTER

I, Jennifer E. Johnson, CSR, RMR, CBC, CRR, in and for the United States District Court for the Central District of Illinois, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 19th day of December, 2023.

/s/ Jennifer E. Johnson
JENNIFER E. JOHNSON
CSR, RMR, CBC, CRR
License #084-003039

AO 245D (Rev. 12/03) Judgment in a Criminal Case for Revocations
Sheet 1

UNITED STATES DISTRICT COURT

Central District of Illinois

UNITED STATES OF AMERICA
V.

Seldrick R. Carpenter

JUDGMENT IN A CRIMINAL CASE
(For **Revocation** of Probation or Supervised Release)

Case Number: 18-cr-10009-001
USM Number: 12018-026
Karl Bryning
Defendant's Attorney

THE DEFENDANT:

☐ admitted guilt to violation of condition(s) _____ of the term of supervision.

☑ was found in violation of condition(s) 5,10, MC after denial of guilt.

The defendant is adjudicated guilty of these violations:

Violation Number	Nature of Violation	Violation Ended
1	Refusal to Permit the U.S Probation Office to Conduct a Home Visit	4/24/2023
2	Failure to Successfully Complete a Cognitive Based therapy Program	5/3/2023
3A	Law Violation: Criminal Damage to Property	6/25/2023
3B	Law Violation: Arson	6/25/2023

The defendant is sentenced as provided in pages 2 through 3 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☑ The defendant has not violated condition(s) MC and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Last Four Digits of Defendant's Soc. Sec. No.: 0855

Defendant's Year of Birth: 1975

City and State of Defendant's Residence:
Peoria, IL

11/15/2023
Date of Imposition of Judgment

s/Michael M. Mihm
Signature of Judge

Michael M. Mihm — US District Judge
Name of Judge — Title of Judge

11/20/2023
Date

AO 245D (Rev. 12/03) Judgment in a Criminal Case for Revocations
Sheet 1A

DEFENDANT: Seldrick R. Carpenter
CASE NUMBER: 18-cr-10009-001

ADDITIONAL VIOLATIONS

Violation Number	Nature of Violation	Violation Concluded
3C	Law Violation: Intimidation	7/14/2023

AO 245D (Rev. 12/03 Judgment in a Criminal Case for Revocations
Sheet 2— Imprisonment

DEFENDANT: Seldrick R. Carpenter
CASE NUMBER: 18-cr-10009-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :

30 months.

☐ The court makes the following recommendations to the Bureau of Prisons:

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL