

Approved: A.M. Griswold
JACOB WARREN/ANDREA M. GRISWOLD
Assistant United States Attorneys

Before: _____
HONORABLE HENRY B. PITMAN
United States Magistrate Judge
Southern District of New York

18 MAG 2824

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: UNITED STATES OF AMERICA : SEALED COMPLAINT
: :
: : Violations of 18 U.S.C. § 2;
- v. - : : 21 U.S.C. §§ 812, 841(a)(1),
: : 841(b)(1)(C), and 846
KASHAWN LYONS and : :
TERRICK WHITAKER, : :
: : COUNTY OF OFFENSE:
Defendants. : : BRONX
: :
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SOUTHERN DISTRICT OF NEW YORK, ss.:

GUY GARGANO, being duly sworn, deposes and says that he is a Detective with the New York City Police Department (the "NYPD"), and charges as follows:

COUNT ONE
(Narcotics Conspiracy)

1. From at least in or about February 2018 through in or about March 2018, in the Southern District of New York and elsewhere, KASHAWN LYONS and TERRICK WHITAKER, the defendants, and others known and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to violate the narcotics laws of the United States.

2. It was a part and an object of the conspiracy that KASHAWN LYONS and TERRICK WHITAKER, the defendants, and others known and unknown, would and did distribute and possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

3. The controlled substance that KASHAWN LYONS and TERRICK WHITAKER, the defendants, conspired to distribute and possess with intent to distribute was a quantity of mixtures and substances containing detectable amounts of heroin and fentanyl, in violation of Title 21, United States Code, Section 841(b)(1)(C).

(Title 21, United States Code, Section 846.)

COUNT TWO

(Narcotics Distribution - KAWSHAWN LYONS)

4. On or about November 30, 2017, in the Southern District of New York, KAWSHAWN LYONS, the defendant, intentionally and knowingly distributed and possessed with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

5. The controlled substance involved in the offense was a quantity of mixtures and substances containing detectable amounts of fentanyl, in violation of Title 21, United States Code, Section 841(b)(1)(C).

6. The use of such controlled substance resulted in the serious bodily injury and death of Matthew Azimi on or about November 30, 2017 in the Bronx, New York, in violation of Title 21, United States Code, Section 841(b)(1)(C).

(Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C); and Title 18, United States Code, Section 2.)

COUNT THREE

(Narcotics Distribution - KAWSHAWN LYONS)

7. On or about February 27, 2018, in the Southern District of New York, KAWSHAWN LYONS, the defendant, intentionally and knowingly distributed and possessed with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

8. The controlled substance involved in the offense was a quantity of mixtures and substances containing detectable amounts of heroin and fentanyl, in violation of Title 21, United States Code, Section 841(b)(1)(C).

(Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C); and Title 18, United States Code, Section 2.)

COUNT FOUR

(Narcotics Distribution - TERRICK WHITAKER)

9. On or about February 21, 2018, in the Southern District of New York, TERRICK WHITAKER, the defendant, intentionally and knowingly distributed and possessed with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

10. The controlled substance involved in the offense was a quantity of mixtures and substances containing detectable amounts of heroin and fentanyl, in violation of Title 21, United States Code, Section 841(b)(1)(C).

(Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C); and Title 18, United States Code, Section 2.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

11. I am a Detective with the NYPD, and I have been personally involved in the investigation of this matter. This affidavit is based upon my personal participation in the investigation of this matter, my conversations with law enforcement agents, witnesses, and others, as well as my examination of reports, records, and recorded conversations. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

THE OVERDOSE DEATH OF MATTHEW AZIMI

12. From my involvement in this investigation, including my conversations with other law enforcement officers and my review of medical examiner reports and cell phone records, I have learned, among other things, the following:

a. On November 30, 2017 at approximately 6:15 p.m., Matthew Azimi, a 36-year-old teacher, was found dead inside a faculty bathroom at a special education public school in the Bronx (the "School") where Azimi was a teacher. The NYPD responded to the School and began investigating Azimi's death.

b. NYPD officers observed a syringe and a pink glassine bag with no stamp or other distinctive marking next to Azimi's body. Based on my training and experience, I know that pink glassines are unique in this area of the Bronx both because of the color of the glassine bag and the fact that there was no stamp on the glassine bag. In my experience, it is typical for a drug dealer to include an identifying feature on the packaging of his or her drugs sold to customers so that customers can differentiate that dealer's "product" from that of other drug dealers. The pink glassine bag with no stamp appeared to serve that function.

c. I have reviewed the New York City Office of Chief Medical Examiner's autopsy report for the autopsy conducted on Azimi following his death. From my review, I have learned, among other things, that the cause of Azimi's death was "Acute Fentanyl Intoxication." From my training and experience, I know that fentanyl is a synthetic opioid more potent and dangerous than heroin.

d. Approximately three hours before Azimi died on November 30, 2017, Azimi, using his cellphone (the "Victim Cellphone"), engaged in three phone calls with another cellphone ("Target Cellphone-1"). Based on my review of the contents of the Victim Cellphone, I know that Target Cellphone-1 was saved in the Victim Cellphone as "K" - which is the first initial of the first name of KASHAWN LYONS, the defendant - on the day that Azimi died. At approximately 3:27 p.m. that day, the Victim Cellphone called Target Cellphone-1 and engaged in a telephone call that lasted approximately 35 seconds. Approximately thirteen minutes later, at approximately 3:40 p.m., Target Cellphone-1 called the Victim Cellphone and engaged in another telephone call that lasted approximately 32 seconds.

e. Based on my review of surveillance video from a retail pharmacy (the "Pharmacy") a few blocks away from the School, I have learned, that at approximately 4:05 p.m., less than half-an-hour after the Victim Cellphone and Target Cellphone-1 exchanged calls, Azimi was observed purchasing syringes.

f. At approximately 4:12 p.m., seven minutes after Azimi purchased syringes at Pharmacy, Target Cellphone-1 again called the Victim Cellphone and engaged in a telephone call that lasted approximately 17 seconds. This was the last completed call on the Victim Cellphone before Azimi was found dead in the bathroom of the School.

g. Between 3:27 p.m. when the Victim Cellphone connected for the first call with Target Cellphone-1 and the time Azimi was found dead hours later, the Victim Cellphone only had completed calls with one cellphone: Target Cellphone-1. During this time period, the Victim Cellphone did not send or receive any text messages. ¹

h. Based on the three completed calls that occurred between the Victim Cellphone and Target Cellphone-1 between 3:40 p.m. and 4:12 p.m. on November 30, 2017; the absence of any other completed calls or text messages on the Victim Cellphone during that time period; Azimi's purchase of syringes from Pharmacy at 4:05 p.m. after speaking with Target Cellphone-1; and the fact that Azimi's last call before his death was with Target Cellphone-1, I believe Azimi arranged to purchase narcotics during these three calls with Target Cellphone-1.

Law Enforcement Identifies "K" as KASHAWN LYONS

13. As described above, prior to his overdose on November 30, 2017, Azimi saved Target Cellphone-1 in his phone as "K". Based on my participation in this investigation, I believe "K" is KASHAWN LYONS, the defendant. My belief is based, in part, on the following:

a. After Azimi's overdose death, I and other NYPD officers investigated Target Cellphone-1. Toll record information for Target Cellphone-1 reflected calls to an individual ("Individual-1") associated with a particular address on Bryant Avenue in the Bronx, New York (the "Bryant Avenue Address"), which is approximately two blocks from the School.²

b. Based on my review of records from the United States Probation Office for the Southern District of New York, and publicly available federal court records, I have learned, among other thing that: (i) LYONS provided the Probation Office with the Bryant Avenue Address as his residence; (ii) LYONS was released from federal prison in or about September 2017 after serving a three-year term of imprisonment for a firearms

¹ The last text message sent by Azimi was at approximately 12:50 p.m. on November 30, 2017.

² Based on my review of law enforcement records and social media records, Individual-1 is believed to be a paramour of LYONS' mother.

offense; (iii) LYONS is currently on federal supervised release in connection with that conviction; and (iv) a condition of LYONS' supervised release is that he commit no federal, state or local crimes.

c. I have reviewed of a photograph of LYONS (the "Lyons Photograph") from a law enforcement criminal history database. Since Azimi's overdose death, I have also conducted surveillance on numerous occasions in the vicinity of the Bryant Avenue Address. During this surveillance, I identified an individual outside of the Bryant Avenue Address.

d. Based on my surveillance and on my review of the Lyons Photograph, I believe the individual depicted in the LYONS Photograph is the same individual I have observed outside of the Bryant Avenue Address. During this surveillance, I have also observed LYONS drive a white BMW (the "BMW"), which he parks in the vicinity of the Bryant Avenue Address.

e. Based on my review of phone records for Target Cellphone-1, I believe LYONS was using Target Cellphone-1 on November 30, 2017, the day that Azimi died of a drug overdose. Specifically, I have learned, among other things, the following:

- i. Subscriber records for Target Cellphone-1 indicate that Target Cellphone-1 was subscribed in the name of a female individual (the "Subscriber"). Based on my review of a publicly available Facebook Account associated with LYONS, I know that LYONS is Facebook Friends with the Subscriber's daughter. The address affiliated with the Subscriber (the "Subscriber Address") is approximately two miles away from the Bryant Avenue Address.
- ii. Toll records for Target Cellphone-1 for November 29-30, 2017, reflect call activity consistent with calls placed or received by LYONS. For example, during that two day time period, I identified numerous calls to and from Target Cellphone-1 and individuals believed to be associated with LYONS, including several of LYONS' Facebook friends, LYONS' mother's boyfriend, and TERRICK WHITAKER, the defendant, who, as described in this Complaint, sells narcotics with LYONS.

- iii. Historical location data from Target Cellphone-1, indicates that Target Cellphone-1 was in the vicinity of the Bryant Avenue Address and the School on November 30, 2017. Historical location data from Target Cellphone-1 for the larger period of November 29, 2017 through February 28, 2018 also indicates that Target Cellphone-1 was predominantly in the vicinity of the Bryant Avenue Address and the School during these months.
- iv. The Subscriber Address for Target Cellphone-1 is inconsistent with the historical location data from Target Cellphone-1 for the period November 29, 2017 through February 28, 2018. Accordingly, it appears that the Subscriber of Target Cellphone-1 was not the user of Target Cellphone-1 during this time period, which included November 30, 2017, the date that Azimi died of a drug overdose.

f. I have identified an email sent from a prison email system on or about November 20, 2017 (the "November 20 Email"), by an individual believed to be related to LYONS, to an unidentified recipient. The November 20 Email states, in substance and in part: "[I] spoke to Kayshawn he said that whenever u and [UF] re ready to come visit me yall can ues his bmw, its brand new so he wants u 2 open it up... this is his #." The nine digit number provided is Target Cellphone-1. The November 20 Email was sent 10 days before the calls between the Victim Cellphone and Target Cellphone-1.

g. I have reviewed a telephone call LYONS made in or about April 2015 while incarcerated in federal prison for the firearms offense referenced in paragraph 13b. At the beginning of this call, LYONS introduces himself as "K."

Undercover Purchases of Pink Glassines Containing
Fentanyl-Laced Heroin from LYONS and WHITAKER

14. My belief that KAWSHAWN LYONS, the defendant, sold Azimi the lethal dose of fentanyl on or about November 30, 2017 is also based on the fact that an undercover NYPD Officer ("UC-1") has successfully purchased pink glassines of fentanyl-laced heroin from LYONS and TERRICK WHITAKER, the defendant, at or in the vicinity of the Bryant Avenue Address in or about February 2018.

15. Based on my conversations with UC-1, my review of law enforcement reports and records, as well as my own surveillance, I have learned, among other things, the following:

a. On February 8, 2018, at approximately 6:10 p.m., UC-1 approached an individual later identified TERRICK WHITAKER, the defendant, outside of the Bryant Avenue Address.³ UC-1 asked to speak with KASHAWN LYONS, the defendant.⁴ WHITAKER then went inside the Bryant Avenue Address and, after a few minutes, came back out with LYONS. LYONS told UC-1 that if he (LYONS) sold UC-1 heroin right then, that UC-1 would need to shoot it up in front of him (LYONS). Based on my training and experience, it is common for drug dealers to require new customers to actually use the narcotics they are selling the new customer in front of them on the first occasion to ensure the new customer is not an undercover police officer. UC-1 responded that if LYONS did not want to sell heroin to UC-1, then UC-1 would just buy from another dealer.

b. On or about February 15, 2018, UC-1 approached LYONS in the vicinity of the Bryant Avenue Address. LYONS and UC-1 discussed UC-1 buying heroin from LYONS. LYONS then provided a cellphone number ("Target Cellphone-2") to UC-1.

c. On or about February 21, 2018, at approximately 3:20 p.m., UC-1 called Target Cellphone-2 and spoke to LYONS. UC-1 asked to purchase heroin, and LYONS arranged for UC-1 to pick up one bundle of heroin for \$70. Specifically, LYONS told UC-1 that he (LYONS) was stuck in traffic, but that UC-1 should go to the Bryant Avenue Address to pick up the heroin from LYONS' "cousin." UC-1 then went to the Bryant Avenue Address and purchased eight glassines of heroin for \$70 from TERRICK

³ Based on my own personal surveillance and UC-1's personal observations, WHITAKER was identified by comparing a photograph of WHITAKER from a criminal history database (the "Whitaker Photograph") and comparing that Photograph to the individual UC-1 approached on or about February 8, 2018. The Photograph of WHITAKER matches the individual UC-1 approached on February 8, 2018. In addition, and as later described herein, WHITAKER was captured on a video-recorded purchase of fentanyl-laced heroin on or about February 27, 2018.

⁴ UC-1 did not ask for LYONS by name but instead described certain features of his appearance. As described above, WHITAKER then went inside and came back out with LYONS.

WHITAKER, the defendant. The glassine bags were pink and bore no stamp. After making the February 21, 2018 purchase, UC-1 called LYONS back on Target Cellphone-2 to inform LYONS that the bundle was short by two glassines.

d. On or about February 27, 2018, UC-1 called Target Cellphone-2 and spoke with LYONS. LYONS again arranged for UC-1 to purchase one bundle of heroin for \$70. LYONS instructed UC-1 to go to the Bryant Avenue Address to pick up the heroin. UC-1 then went to the Bryant Avenue Address the same day and approached LYONS and WHITTAKER, who were both sitting outside the Bryant Avenue Address. UC-1 then purchased twelve glassines of heroin from LYONS for \$70, and LYONS told UC-1, in substance and in part, that LYONS had also given UC-1 the "two" that he (referring to WHITTAKER) had shorted UC-1. Once again, the glassine bags were pink in color and bore no stamp. The February 27, 2018 purchase of heroin by UC-1 from LYONS was video and audio recorded.

e. Based on my review of laboratory reports, I have learned, among other things, that the substances UC-1 purchased on or about February 21, 2018 and February 27, 2018 from LYONS and WHITAKER tested positive for the presence of heroin and fentanyl.

f. Based on my comparison of the glassine bag found near Azimi's body following his overdose, it appears to be the same type of pink glassine bag that contained the fentanyl-laced heroin that UC-1 purchased from LYONS and WHITAKER on or about February 21, 2018 and February 27, 2018.

Both Target Cellphone-1 and Target Cellphone-2 Were Used By
LYONS

16. Based on my review of subscriber and toll records for Target Cellphone-1 and Target Cellphone-2, I believe both were used by KASHAWN LYONS, the defendant. This belief is based, in part, on the following:

a. Subscriber and toll Records for Target Cellphone-1 indicate that the level of toll activity on Target Cellphone-1 began to decline in February 2018 and service to Target Cellphone-1 was terminated on February 28, 2018.


b. I have reviewed the incoming and outgoing calls for Target Cellphone-1 for the month of February 2018 and compared the activity with the incoming and outgoing calls for Target

Cellphone-1 for the month of March 2018. I identified approximately fourteen numbers that had twenty or more incoming or outgoing calls with either Target Cellphone-1 or Target Cellphone-2. Approximately two-thirds of these numbers were common, that is both Target Cellphone-1 and Target Cellphone-2 exchanged calls with that number.

c. As part of my comparison of call activity on Target Cellphone-1 and Target Cellphone-2, I observed that several of the numbers that exchanged calls with both Target Cellphone-1 and Target Cellphone-2 are known to be connected to KASHAWN LYONS, the defendant. For example:

- i. In February 2018, Target Cellphone-1 exchanged approximately 37 calls with TERRICK WHITAKER, the defendant, with whom LYONS is believed to sell heroin and fentanyl, as described in this Complaint. In March 2018, Target Cellphone-2 exchanged approximately 80 calls with WHITAKER.
- ii. Both Target Cellphone-1 and Target Cellphone-2 exchanged numerous calls with individuals I know from my investigation to be family members or friends of LYONS.

WHEREFORE, I respectfully request that KASHAWN LYONS and TERRICK WHITAKER, the defendants, be arrested and imprisoned or bailed, as the case may be.



GUY GARGANO
Detective
NYPD

Sworn to before me this
4th day of April, 2018

S/Henry Pitman

THE HONORABLE HENRY B. PITMAN
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK