

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAYMOND BRUTON,	§
	§
Defendant Below-	§ No. 12, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ C.A. No. 00M-11-064
Plaintiff Below-	§
Appellee.	§

Submitted: April 17, 2001

Decided: May 24, 2001

Before **VEASEY**, Chief Justice, **WALSH** and **STEELE**, Justices

**ORDER**

This 24<sup>th</sup> day of May 2001, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Raymond Bruton, filed this appeal from an order of the Superior Court denying his petition for a writ of mandamus.

We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In this appeal, Bruton claims that: (a) his Fourth Amendment rights were violated by two officers from Probation/Parole who forcibly entered and searched his residence while conducting a home visit with a probationer who was living with him; (b) his Fourth Amendment rights were

violated by the use of seized drug paraphernalia belonging to the probationer to establish a parole violation against him; and (c) his right to due process under the Fourteenth Amendment was violated because witnesses who would have testified that the drug paraphernalia did not belong to him were not permitted to testify at his preliminary hearing or his revocation of parole hearing.

(3) In March 2000, two officers from Probation/Parole appeared at Bruton's residence for a routine home visit with probationer Cheryl Diggs, who lived with Bruton. Following a conversation between Bruton and the officers at the front door, the officers entered the residence, handcuffed Bruton and conducted a search that yielded a tablespoon with cocaine residue, a glassine bag with cocaine residue, two electronic scales commonly used in the distribution of drugs, 25 glassine bags commonly used for the packaging of drugs, a balance scale commonly used in the distribution of drugs, and a white powdery substance commonly used to dilute drugs.

(4) Diggs was arrested for violating her probation and Bruton was arrested for violating his parole. After a preliminary hearing at which Bruton was represented by counsel, a hearing officer found probable cause to believe

that Bruton had violated his parole. Following a revocation hearing, the Board of Parole revoked Bruton's parole and ordered his incarceration. Bruton then filed a petition for a writ of mandamus requesting that the Superior Court direct the Board of Parole to reverse its decision. The petition was dismissed by the Superior Court for lack of jurisdiction.<sup>1</sup>

(5) Bruton's claims of Fourth Amendment violations are unavailing. The United States Supreme Court has declined to extend the exclusionary rule to proceedings other than criminal trials.<sup>2</sup> Moreover, because "[a]pplication of the exclusionary rule would both hinder the functioning of state parole systems and alter the traditionally flexible, administrative nature of parole revocation proceedings," the United States Supreme Court has held that evidence seized in violation of a parolee's Fourth Amendment rights is not barred in such proceedings.<sup>3</sup> Thus, Bruton has no remedy in this proceeding for any possible Fourth Amendment violation.

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<sup>1</sup>We do not reach the issue of whether the Superior Court had jurisdiction to decide the petition for a writ of mandamus. This Court has jurisdiction to determine the issues presented in this matter pursuant to *Semick v. Department of Corrections*, Del. Supr., 477 A.2d 707, 708 (1984).

<sup>2</sup>*Pennsylvania Board of Probation and Parole v. Scott*, 524 U.S. 357, 363 (1998).

<sup>3</sup>*Id.* at 364.

(6) Bruton's claim that his Fourteenth Amendment due process rights were violated because his witnesses were not permitted to testify is without merit. The United States Supreme Court has outlined the minimum requirements of due process in parole revocation proceedings, at both the preliminary hearing and parole revocation hearing stages.<sup>4</sup> At both stages the parolee is to be afforded the opportunity to present witnesses in his own behalf. Both the hearing officer and the Board of Parole, however, have the discretionary authority to limit or bar testimony that is irrelevant or duplicative.<sup>5</sup> In this case, the only testimony Bruton's witnesses were prepared to offer was that the drug paraphernalia discovered in his residence did not belong to him. Because the record indicates that Bruton himself offered this testimony both at the preliminary hearing and at the parole revocation hearing and because the mere presence of the drug paraphernalia in Bruton's residence was sufficient to establish a parole violation, we conclude that the decision of the preliminary hearing officer and the Board of

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<sup>4</sup>*Morrissey v. Brewer*, 408 U.S. 471, 486-89 (1972).

<sup>5</sup>*Sawers v. New Castle County Board of Adjustment*, Del. Supr., No. 144, 1988, Walsh, J., 1988 WL 117514 (Oct. 26, 1988) (ORDER).

Parole not to permit additional testimony on the issue of ownership did not constitute an abuse of discretion or violate Bruton's due process rights.<sup>6</sup>

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey  
Chief Justice

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<sup>6</sup>*Id.*