

No. ___-

IN THE SUPREME COURT OF THE UNITED STATES

CHAD PRESTON BREWER,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

APPENDIX

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Northern District of Texas

APPENDIX A

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-10158
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

September 6, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHAD PRESTON BREWER,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
No. 3:17-CR-42-1

Before SMITH, ELROD, and WILLETT, Circuit Judges.

PER CURIAM:*

Chad Brewer was convicted, on a guilty plea, of (1) being a felon in

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

possession of ammunition, in violation of 18 U.S.C. § 922(g)(1), and (2) possession with intent to distribute a controlled substance. He challenges only the former. He has filed an unopposed motion for summary disposition, conceding that his arguments are foreclosed. He raises them only to preserve them for possible further review.

Brewer asserts, relying on *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012) (“NFIB”), that § 922(g)(1) is unconstitutional because it regulates conduct that falls outside the Commerce Clause. He concedes that the issue is foreclosed by *United States v. Alcantar*, 733 F.3d 143, 145–46 (5th Cir. 2013). In *Alcantar*, we noted that our decisions have “consistently upheld the constitutionality” of 18 U.S.C. § 922(g)(1), which we described as “a valid exercise of Congress’s authority under the Commerce Clause.” *Id.* at 145. We explained that *NFIB* “did not address the constitutionality of § 922(g)(1), and it did not express an intention to overrule the precedents upon which our cases—and numerous other cases in other circuits—relied in finding statutes such as § 922(g)(1) constitutional.” *Id.* at 146.

Citing *United States v. Wallace*, 889 F.2d 580, 583 (5th Cir. 1989), Brewer contends that this court’s construction of § 922(g) is contrary to the plain language of the statute because we do not interpret the phrase “possess in or affecting commerce” as requiring proof that the defendant’s possession of the ammunition was in or affecting commerce, but only that the ammunition itself “crossed state lines.” We have held, however, that evidence that “the [ammunition] traveled in or affected interstate commerce” suffices to establish the interstate-commerce “nexus” of the statute. *United States v. Gresham*, 118 F.3d 258, 265 (5th Cir. 1997). One panel of this court may not overrule a

decision of another panel in the absence of an intervening contrary or superseding decision by this court sitting en banc or by the Supreme Court. *See United States v. Traxler*, 764 F.3d 486, 489 (5th Cir. 2014). Therefore, Brewer’s argument is foreclosed.

Relying on *Flores-Figueroa v. United States*, 556 U.S. 646 (2009), Brewer challenges his conviction on the ground that the indictment did not allege, and the factual basis did not establish, that he knew that his possession of the ammunition was in or affecting interstate commerce. Under *United States v. Dancy*, 861 F.2d 77, 81–82 (5th Cir. 1988), a § 922(g)(1) conviction “requires proof that the defendant knew that he had received (or possessed or transported) [ammunition] but does not require proof that he knew that the [ammunition] had an interstate nexus.” *United States v. Schmidt*, 487 F.3d 253, 254 (5th Cir. 2007). Brewer admits that his argument is foreclosed by *United States v. Rose*, 587 F.3d 695 (5th Cir. 2009), which was decided after *Flores-Figueroa*. Indeed, in *Rose*, *id.* at 705–06, we determined that *Dancy* remains good law even after *Flores-Figueroa*.

The motion for summary disposition is GRANTED, and the judgment is AFFIRMED. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

v.

CHAD PRESTON BREWER
 Defendant.

JUDGMENT IN A CRIMINAL CASE

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Case Number: 3:17-CR-00042-M(1)

USM Number: 55385-177

Lara Meghan Wynn

Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input checked="" type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	Counts 1 and 2 of the Indictment, filed on January 24, 2017.
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

<u>Title & Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(1) and 924(a)(2) Felon in Possession of Ammunition	04/21/2016	1
21 U.S.C. §§ 841(a)(1) and (b)(1)(A) Possession with Intent to Distribute a Controlled Substance	04/21/2016	2

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)
 Count(s) is are dismissed on the motion of the United States.

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.

January 10, 2018

Date of Imposition of Judgment


 Signature of Judge

BARBARA M. G. LYNN
CHIEF UNITED STATES DISTRICT JUDGE

Name and Title of Judge

1-26-17

Date

DEFENDANT: CHAD PRESTON BREWER
CASE NUMBER: 3:17-CR-00042-M(1)

IMPRISONMENT

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

ONE HUNDRED SIXTY-EIGHT (168) MONTHS. This consist of one hundred twenty (120) months on Count 1, and one hundred sixty-eight (168) months on Count 2, to run concurrently to each other, for a total imprisonment term of **ONE HUNDRED SIXTY-EIGHT (168) MONTHS**. The sentence shall run concurrently with any sentence that may be imposed in the following state cases because they are related to the instant offense: Unlawful Possession with Intent to Deliver a Controlled Substance Case Nos. F-1654056, F-1654057, F-1654059, 1654060, and F-1654061; Unlawful Possession of a Controlled Substance, Case No. F-1654058; and Possession of Marijuana, Case No. F-1651062, all of which are pending in the 204th Judicial District Court of Dallas County, Dallas, Texas.

RETURN

I have executed this judgment as follows:

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: CHAD PRESTON BREWER
CASE NUMBER: 3:17-CR-00042-M(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **THREE (3) YEARS on count 1, and FIVE (5) YEARS on count 2, to run concurrently with each other, for a total supervised release term of FIVE (5) YEARS.**

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*)
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. (*check if applicable*)
5. You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)
7. You must participate in an approved program for domestic violence. (*check if applicable*)

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: CHAD PRESTON BREWER
CASE NUMBER: 3:17-CR-00042-M(1)

STANDARD CONDITIONS OF SUPERVISION

1. the defendant shall not leave the judicial district without the permission of the court or probation officer;
2. the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. the defendant shall support his or her dependents and meet other family responsibilities;
5. the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: CHAD PRESTON BREWER
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SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate in a program (inpatient and/or outpatient) approved by the U.S. Probation Office for treatment of narcotic, drug, or alcohol dependency, which will include testing for the detection of substance use or abuse. The defendant shall abstain from the use of alcohol and/or all other intoxicants at any time. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$15 per month.

The defendant shall provide to the probation officer any requested financial information.

DEFENDANT: CHAD PRESTON BREWER
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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$200.00	\$.00	\$.00

The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.
 The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution amount ordered pursuant to plea agreement \$

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution
 the interest requirement for the fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: CHAD PRESTON BREWER
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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payments of \$ _____ due immediately, balance due
 not later than _____, or
 in accordance C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D Payment in equal 20 (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:
It Is ordered that the Defendant shall pay to the United States a special assessment of \$200.00 for Counts 1 and 2 which shall be paid immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:
One round of Hornaday .40 caliber ammunition, nine rounds of Federal Cartridge Company 9 millimeter ammunition, four rounds of Prvi Partizan .40 caliber ammunition, seven rounds of Aguila .38 caliber ammunition, eight rounds of Remington .40 caliber ammunition, thirty-eight rounds of Federal 9 millimeter ammunition, two rounds of Ruger ammunition, and any US Currency recovered.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.