

APPENDIX

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United States District Court for the Southern District of Iowa

Presiding: Honorable Stephanie M. Rose

Case No. 4:18-cr-00152-001

: Clerk's Court Minutes – Motion Hearing

Plaintiff(s)

: Defendant(s)

United States of America

: Ryan Nicholas Haynes

:

:

:

:

Plaintiff(s) Counsel: Kristin M. Herrera and Mikaela J. Shotwell

Defendant(s) Counsel: Andrew James Graeve and James F. Whalen

Court Reporter: Kelli Mulcahy

: Interpreter: N/A

Motion(s) for Ruling:

Ruling

/

Ruling Reserved

[31] Defendant's Motion to Suppress

DENIED

:

[39] Defendant's Motion to Dismiss

DENIED

:

[40] Defendant's Motion to Compel

DENIED

:

[41] Defendant's Motion for Pretrial Ruling on Admissibility of Evidence

DENIED AS MOOT :

Proceedings:

1:30 Court in session. Defendant present with counsel. 1:31 Court takes up Defendant's Motion to Suppress [31]. 1:41 Government calls Detective Luke Harden; witness sworn; testifies. 2:43 Witness excused. 2:46 Government calls Officer Brady Pratt; witness sworn; testifies. 2:56 Witness excused. 2:57 Defense presents argument. 3:01 Government presents argument. 3:08 Defense presents rebuttal argument. 3:11 Defendant's Motion to Suppress [31] is Denied. 3:17 Court breaks. 3:30 Court returns. 3:31 Court takes up Defendant's Motion to Dismiss [39] and Defendant's Motion to Compel [40]. 3:32 Defense presents argument. 3:36 Government presents argument. 3:39 Defendant's Motion to Dismiss [39] and Defendant's Motion to Compel [40] are Denied. 3:40 Defendant's Motion for Pretrial Ruling on Admissibility of Evidence [41] has been withdrawn by defense counsel and is Denied as Moot. 3:41 Court takes up Government's Motion in Limine [46]. 3:43 Government presents argument. 3:46 Defense presents argument. 3:50 Government's Motion in Limine [46] is Granted in Part and Denied in Part. 3:56 Court takes up Defendant's Motion in Limine [47]. 3:59 Defense presents argument. 4:00 Government presents argument. 4:01 Defendant's Motion in Limine [47] is Granted in Part and Denied in Part. 4:02 Court takes up pretrial matters. 4:14 Adjourn.

Time Start: 1:30 pm

Time End: 4:14 pm

Date: October 29, 2018

/s./ K. Chrismer

Deputy Clerk

APPENDIX A APP. 001

Courtroom, First Floor
U.S. Courthouse
123 East Walnut Street
Des Moines, Iowa
Monday, October 29, 2018
1:30 p.m.

BEFORE: THE HONORABLE STEPHANIE M. ROSE, Judge.

APPEARANCES:

For the Plaintiff:

KRISTIN M. HERRERA, ESQ.
MIKAELA J. SHOTWELL, ESQ.
Assistant U.S. Attorneys
U.S. Courthouse Annex
110 East Court Avenue, Suite 286
Des Moines, Iowa 50309

For the Defendant:

JAMES F. WHALEN, ESQ.
Federal Public Defender
ANDREW J. GRAEVE, ESQ.
Assistant Federal Public Defender
400 Locust Street, Suite 340
Des Moines, Iowa 50309

KELLI M. MULCAHY, CSR, RDR, CRR
United States Courthouse
123 East Walnut Street, Room 115
Des Moines, Iowa 50309

1 what happened here. In fact, Mr. Haynes asked officers. He
2 said, "Can I move?

3 "No.

4 "Okay."

5 And he sat there and he followed their instructions. It's
6 hard to imagine how following officers' instructions can somehow
7 be twisted into reasonable suspicion, Your Honor.

8 And, finally, on the search incident to arrest issue, our
9 position is that he was seized before there was any disclosure
10 of a marijuana roach and that the disclosure of the marijuana
11 roach did not constitute some independent intervening cause that
12 justified the following search because the taint of the initial
13 seizure was not wiped away by it.

14 And I think that is it, Your Honor. Thank you.

15 THE COURT: Thank you, Mr. Graeve.

16 Just for purposes of the record, I will admit Government
17 Suppression Exhibits 1 through 5 and Defendant's Suppression
18 Exhibits A, B, and C.

19 (Government Exhibit Nos. 1 - 5 and
20 Defendant's Exhibits A - C were
21 received in evidence.)

22 THE COURT: For the reasons largely outlined by Judge
23 Vaudt in her well-written order and by the Government in its
24 resistance to the motion to suppress, which is found at 32, I do
25 deny here Defendant's motion to suppress.

1 I find credible the testimony of Officers Harden and Pratt.
2 That testimony is largely corroborated by the body camera
3 videos, and, where not directly corroborated, again, I find that
4 testimony credible.

5 There's no question in my mind here that there was probable
6 cause to stop this bus for traffic violations. I personally
7 observed that there's no light on that license plate in
8 Government Exhibit 5.

9 I believe the testimony of the officers when they say that
10 bus made at least two turns without a turn signal. I believe
11 the officers when they say there's not a light illuminating that
12 license plate, and, again, I saw that myself in looking at the
13 videos.

14 So they have probable cause -- or they have, you know,
15 reason to stop the bus. They've got probable cause that there
16 are traffic violations that have been established, so they pull
17 this -- the bus over.

18 Yes, Mr. Haynes at that point is seized. He's allowed to
19 be seized under the Eighth Circuit case law. The traffic stop
20 allows the officers to seize the passenger and driver of the
21 vehicle that's committed a traffic stop and conduct the traffic
22 investigation, to ask the identity of each of the people in that
23 vehicle, to get driver's license information and registration
24 information and insurance information.

25 It allows all that to be done in a timely way. By my count

1 and looking at the camera corroboration here, no more than eight
2 minutes goes by from the time they roll out of their police cars
3 to the point that the defendant essentially runs away with his
4 gun off into the night.

5 So it's not like they delayed this thing for hours and
6 hours while they were waiting on a drug dog or while they were
7 waiting for additional teams to arrive to help them search or
8 while they were, you know, watching Snapchat videos and hoping
9 to get more information. They're moving along quickly with
10 their investigation. They're not doing anything improper.

11 They're allowed to pull all of the occupants off the bus,
12 if they want to, for a routine traffic stop, but here there's
13 probable cause to search that entire bus because I find and
14 believe that the officers smelled marijuana coming out of those
15 windows when they approached the bus.

16 So they have probable cause to search the bus, and then the
17 question becomes do they have a reasonable suspicion to pat the
18 defendant down. Well, we don't even get there because the
19 defendant comes off the bus, empties his pockets. They haven't
20 touched him yet. I think they have maybe a hand on his arm, but
21 they're not patting him down, they're not doing anything to him.

22 He empties out his pockets. There's a marijuana cigarette
23 there. That, clearly, under Eighth Circuit law, gives them
24 probable cause to do an entire arrest and search of the
25 defendant, and, again, off he runs.

1 I don't have any reason to believe that that series of
2 events alone isn't enough, but even if they have to have
3 reasonable suspicion because the officer put his hand on the
4 defendant and the defendant, I think, understandably, believed a
5 search was imminent, given the language that's being used
6 between the two people, the defendant and the officer who is
7 getting him off the bus, I find reasonable suspicion here
8 exists.

9 The defendant is on a party bus. I don't know what the
10 fact that the female who rented the party bus is Caucasian has
11 to do with anything, but even if he's on a bus with a woman who
12 is unrelated to these other gentlemen who caused problems, what
13 the police know is that he's associated with these gang members
14 because he appears in at least one video with them, at least
15 according to the transcripts I read prior to this hearing; that
16 they have guns; that they're known to be criminal gang members;
17 that he's on the same bus as at least a couple of these folks;
18 that that bus has the odor of marijuana coming out of it; that
19 these are men -- these other men are known to be armed with
20 guns; and that the defendant is behaving in a manner that's
21 beyond normal nervousness.

22 Whether it's asking if he can leave, whether it's asking if
23 he can move, whether it's wiggling around in his seat, whatever
24 he's doing is different enough to the police officers that, in
25 their experience and in their education, what he's doing

1 warrants further investigation on their part or further and
2 heightened concern, and that's really all reasonable suspicion
3 is.

4 How much we can see on that body cam video -- you can't see
5 everything. It's dark. You know, the camera looks in one
6 direction. Officers can hear much differently and see much
7 differently than the body camera shows us. It helps, certainly,
8 corroborate what happened that night, but it doesn't tell the
9 whole story.

10 So here I would also find, if it's necessary, reasonable
11 suspicion to do that pat-down search that officers didn't get a
12 chance to conduct because the defendant self-disclosed the
13 marijuana and then ran away.

14 So I do find here for those reasons, and, again, for the
15 reasons articulated by Judge Vaudt and by the Government in its
16 resistance, that Defendant's motion should be denied.

17 We have a lot more to cover during our hearing today. I
18 want to take a quick break and give everybody a chance to use
19 the restroom, give our court reporter a little time off for her
20 hands. So why don't we come back at 3:30, and we'll pick up at
21 that time.

22 (Recess at 3:17 p.m. until 3:29 p.m.)

23 THE COURT: Thank you. You can be seated.

24 We are back on the record in the presence of the defendant
25 and counsel on both sides to conclude the remainder of our

UNITED STATES OF AMERICA

v.

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:18-cr-00152-001

USM Number: 18757-030

Andrew James Graeve and James F. Whalen
Defendant's Attorney

☐ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s)
which was accepted by the court.

☒ was found guilty on count(s) One of the Indictment filed on July 24, 2018.
after a plea of not guilty.

Title & Section

Nature of Offense

Offense Ended

Count

18 U.S.C. §§ 922(g)(1),

Felon in Possession of a Firearm

07/29/2017

One

924(a)(2)

☐ See additional count(s) on page 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.

March 13, 2019

Date of Imposition of Judgment

Gary H. Rose

Signature of Judge

Stephanie M. Rose, U.S. District Judge

Name of Judge

Title of Judge

March 13, 2019

Date _____

DEFENDANT: Ryan Nicholas Haynes
CASE NUMBER: 4:18-cr-00152-001

IMPRISONMENT

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

120 months as to Count One of the Indictment filed on July 24, 2018.

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

The defendant be placed at FCI Sandstone, or if not available, as close to Iowa as possible, as commensurate with his security and classification needs. The Court further recommends that the defendant be provided mental health treatment and counseling.

☒ 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 _____ 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 _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Ryan Nicholas Haynes
CASE NUMBER: 4:18-cr-00152-001

Judgment Page: 3 of 7

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :
Three years as to Count One of the Indictment filed on July 24, 2018.

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 (34 U.S.C. § 20901, *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 other conditions on the attached page.

DEFENDANT: Ryan Nicholas Haynes
CASE NUMBER: 4:18-cr-00152-001

Judgment Page: 4 of 7

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: Ryan Nicholas Haynes
CASE NUMBER: 4:18-cr-00152-001

Judgment Page: 5 of 7

SPECIAL CONDITIONS OF SUPERVISION

You will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

You must participate in an approved treatment program for anger control. Participation may include inpatient/outpatient treatment. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

You must participate in a cognitive behavioral treatment program, which may include journaling and other curriculum requirements, as directed by the U.S. Probation Officer.

You must submit to a mental health evaluation. If treatment is recommended, you must participate in an approved treatment program and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment and/or compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

You must participate in a program of testing and/or treatment for substance abuse, as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Office. At the direction of the probation office, you must receive a substance abuse evaluation and participate in inpatient and/or outpatient treatment, as recommended. Participation may also include compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. You must not use alcohol and/or other intoxicants during the course of supervision.

DEFENDANT: Ryan Nicholas Haynes
 CASE NUMBER: 4:18-cr-00152-001

Judgment Page: 6 of 7

CRIMINAL MONETARY PENALTIES

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

- ☐ Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

	<u>Assessment</u>	<u>JVTA Assessment *</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$ 0.00	\$ 0.00	\$0.00

- ☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* 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, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS	\$0.00	\$0.00	

- ☐ 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:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** 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: Ryan Nicholas Haynes
CASE NUMBER: 4:18-cr-00152-001

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 payment of \$ 100.00 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 _____ (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:
All criminal monetary payments are to be made to the Clerk's Office, U.S. District Court, P.O. Box 9344, Des Moines, IA. 50306-9344.
While on supervised release, you shall cooperate with the Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the Probation Office.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of 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

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

☐ 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:
a Glock Model 22, .40 caliber handgun (SN: GCD930) and ammunition, as outlined in the Preliminary Order of Forfeiture filed on February 12, 2019.

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) JVT A assessment, and (8) costs, including cost of prosecution and court costs.

United States Court of Appeals
For the Eighth Circuit

No. 19-1607

United States of America

Plaintiff - Appellee

v.

Ryan Nicholas Haynes

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Des Moines

Submitted: January 16, 2020

Filed: May 5, 2020

Before SMITH, Chief Judge, LOKEN and GRUENDER, Circuit Judges.

GRUENDER, Circuit Judge.

Ryan Nicholas Haynes appeals his conviction and sentence for being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). We affirm.

I.

In July 2017, police officers followed a bus in downtown Des Moines, Iowa. Officer Luke Harden observed both that the bus did not properly signal while making multiple turns and that it did not have a light illuminating its license plate. The officers initiated a traffic stop.

As the officers approached the driver, passengers were moving about the bus, and Officer Harden believed that some passengers were rowdy. He also noted a strong smell of marijuana emanating from the bus. Officer Harden boarded the bus and assisted in removing an individual that another officer had observed passing what appeared to be a marijuana cigarette.

Haynes was seated toward the front of the bus. Officer Harden noticed that Haynes was making “furtive movements and gestures” and seemed nervous compared to the other passengers. Eventually, Officer Harden asked Haynes to leave the bus. As he did so, Haynes, unprompted by the officers, began emptying his pockets. Haynes pulled out a marijuana cigarette and showed it to the officers.

Officer Harden then conducted a pat-down search of Haynes and felt what he believed to be a firearm in Haynes’s left pant leg. Harden did not make Haynes aware of the fact that he felt the firearm and instead attempted to handcuff him. As he did so, Haynes pulled away and began to flee on foot. The officers pursued Haynes, running between alleys and buildings, over fences, and through shrubbery. During the chase, the officers lost sight of Haynes. Eventually, Haynes stopped and the officers took him into custody.

The officers did not find a weapon on Haynes after the chase. After retracing Haynes’s steps, however, they recovered a firearm between two townhomes and in front of a fence that Haynes jumped. Later, an officer dusted the firearm for fingerprints but was unable to lift any fingerprints from the firearm or magazine.

Officers did not check the firearm, magazine, or ammunition for DNA, nor did they check the identity of the last known purchaser of the firearm.

In September 2017, Haynes was arraigned in Iowa state court. Seven weeks before his state trial date, he was charged by federal indictment in the Southern District of Iowa with being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). On August 14, 2018, Haynes was arrested on a federal warrant. Haynes later filed a motion to suppress the evidence resulting from Officer Harden's pat down and a motion to dismiss that alleged a Speedy Trial Act violation. The district court¹ denied both motions. Haynes proceeded to trial, and the jury returned a guilty verdict.

After his conviction, Haynes filed a motion for judgment of acquittal, and alternatively, a motion for a new trial based upon insufficient evidence, which the district court denied. At the sentencing hearing, the district court calculated a total offense level of 28 and a criminal history category of VI, resulting in an advisory sentencing guidelines range of 140 to 175 months' imprisonment. But because the statutory maximum sentence for the crime is 120 months, *see* § 924(a)(2), that necessarily became the guidelines recommendation. *See* U.S.S.G. § 5G1.1(a) ("Where the statutorily authorized maximum sentence is less than the minimum of the applicable guideline range, the statutorily authorized maximum sentence shall be the guideline sentence."). The court sentenced Haynes to 120 months' imprisonment.

Haynes appeals his conviction and sentence on several grounds. He argues that the district court erred in denying his motion to dismiss and in denying his motion to suppress. He also argues that insufficient evidence existed to support his conviction. Finally, he asserts that the district court's sentence is substantively unreasonable. We address each argument in turn.

¹The Honorable Stephanie M. Rose, United States District Judge for the Southern District of Iowa.

II.

A.

Haynes asserts both that the district court erred in finding no Speedy Trial Act (“the Act”) violation and abused its discretion by failing to hold an evidentiary hearing on the matter.

We review a district court’s findings of fact as to whether a defendant’s rights under the Speedy Trial Act were violated for clear error and review its legal conclusions *de novo*. *United States v. Aldaco*, 477 F.3d 1008, 1016 (8th Cir. 2007). The Act provides that an indictment must be filed against an individual “within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges.” 18 U.S.C. § 3161(b). The thirty-day clock to return an indictment under the Act begins when there is a federal arrest or summons. *See United States v. Beede*, 974 F.2d 948, 950 (8th Cir. 1992) (“Only a federal arrest, not a state arrest, triggers § 3161(b).”).

Haynes does not dispute that, if the federal arrest and indictment dates are used, the Act was not violated. He argues, however, that an exception applies and that the thirty-day clock began to run on the date of his state arrest because there is evidence of collusion between Iowa and federal prosecutors. *See United States v. Sims*, 779 F.2d 16, 17 (8th Cir. 1985). He alleges the federal prosecutor brought charges seven weeks before the date of his state trial in order to avoid the results of a pending Iowa Supreme Court case that, according to Haynes, would have supported his pending motion to suppress in state court.²

There is no evidence that Iowa and federal prosecutors colluded. We have held that mere delay between a state arrest and federal indictment does not constitute

²We will assume without deciding that a federal indictment on the eve of a state court suppression hearing can implicate the Speedy Trial Act collusion exception.

evidence of collusion. *See id.* Haynes offers no evidence beyond the timing of his federal indictment to suggest that it was a result of collusion. Additionally, Haynes's reliance on a District of Massachusetts case, *United States v. Ganious*, 635 F. Supp. 2d 80, 85 (D. Mass. 2009), is unavailing. In *Ganious*, the court held that the defendant was not entitled to an evidentiary hearing on collusion even though he was arrested by state agents who were part of a federal task force, prosecuted by a state prosecutor who was also a Special Assistant United States Attorney, and held in custody for 404 days before his arraignment on federal charges. *Id.* at 82-86. As that court also noted, "mere delay cannot show the existence of a ruse without active federal involvement in the state prosecution." *Id.* at 86. Because Haynes does not offer any evidence of such active involvement other than speculation about the timing of his federal arraignment coinciding with a state supreme court decision, the Government did not violate the Speedy Trial Act.

Haynes also argues that the district court abused its discretion by failing to hold an evidentiary hearing regarding the existence of collusion. *See United States v. Santos-Pulido*, 815 F.3d 443, 445 (8th Cir. 2016). A district court must hold an evidentiary hearing when the moving party identifies material facts in the record "that are actually in dispute." *See United States v. Saucedo*, No. 19-1693, 2020 WL 1870254, at *3 (8th Cir. Apr. 15, 2020). Haynes offered the district court mere speculation that his federal and state prosecutors colluded and does not "identify any material facts in the record . . . that are actually in dispute." *Id.* Therefore, the district court did not abuse its discretion in denying an evidentiary hearing.

B.

Haynes next argues that the district court erred in denying his motion to suppress because he was unlawfully seized and then unlawfully searched by the officers. When reviewing a district court's ruling on a motion to suppress, we review factual findings for clear error and legal conclusions *de novo*. *United States v. Oliver*, 950 F.3d 556, 563 (8th Cir. 2020). A factual finding is "clearly erroneous" when a court reviews the evidence in its entirety and is "left with the definite and

firm conviction that a mistake has been made.” *United States v. Guzman*, 926 F.3d 991, 997 (8th Cir. 2019). “A finding based on the credibility of live witnesses can almost never be clearly erroneous.” *United States v. E.R.B.*, 86 F.3d 129, 130 (8th Cir. 1996).

Although Haynes does not dispute that the officers lawfully stopped the bus for traffic violations, he argues that he was unlawfully seized when Officer Harden ordered him off the bus.

“[A]n officer making a traffic stop may order passengers to get out of the car pending completion of the stop.” *Maryland v. Wilson*, 519 U.S. 408, 415 (1997) (noting that any “intrusion on the passenger is minimal”); *see also United States v. Cloud*, 594 F.3d 1042, 1045 (8th Cir. 2010). The Supreme Court has explained that “the possibility of a violent encounter stems . . . from the fact that evidence of a more serious crime might be uncovered during the stop,” a possibility equally applicable to both drivers and passengers, and that passengers are less likely to have access to dangerous weapons when they are outside the vehicle. *Wilson*, 519 U.S. at 414.

Officer Harden lawfully ordered Haynes off the bus, particularly as the smell of marijuana alerted the officer that “evidence of a more serious crime” than failure to use a turn signal “might be uncovered during the stop.” *See Wilson*, 519 U.S. at 414. Haynes’s effort to distinguish the situation here from *Wilson* by relying on *United States v. Henderson*, 463 F.3d 27 (1st Cir. 2006), is fruitless. In that case, an officer demanded a passenger’s information, including his social security number, to investigate him for failure to wear a seatbelt. *See id.* at 29. The court held that the demand of information was not proper under *Wilson* because the questioning “expanded the scope of the stop, changed the target of the stop, and prolonged the stop.” *Id.* at 46. But here, prior to Haynes producing the marijuana cigarette, Officer Harden did not ask Haynes any questions but merely ordered him off the bus in keeping with *Wilson*. Therefore, Haynes was not unlawfully seized.

Haynes further argues that he was unlawfully searched by Officer Harden because he did not consent to a search and Harden did not have a reasonable suspicion that Haynes was armed and dangerous. But we have held that once probable cause for an arrest exists, an officer may conduct a pat-down search incident to arrest. *See United States v. Jerde*, 481 F. App'x 280, 282-83 (8th Cir. 2012) (finding that, after a suspect voluntarily produced a marijuana pipe, an officer had probable cause to arrest him, and therefore a pat down of the suspect was lawful); *see also Sibron v. New York*, 392 U.S. 40, 77 (1968) (Harlan, J., concurring) (reasoning that a defendant may not validly say, “Although the officer had a right to arrest me at the moment when he seized me and searched my person, the search is invalid because he did not in fact arrest me until afterwards”).

Once Haynes produced his marijuana cigarette, Officer Harden had probable cause to arrest him and therefore was permitted to search him. *See United States v. Binion*, 570 F.3d 1034, 1040 (8th Cir. 2009) (holding that a suspect’s admission to carrying an ounce of marijuana in his pants created probable cause for an arrest); *see also Rawlings v. Kentucky*, 448 U.S. 98, 111 (1980) (explaining that, when police already possess probable cause for an arrest and “the formal arrest followed quickly on the heels of the challenged search of petitioner’s person,” it is not “particularly important that the search preceded the arrest rather than vice versa”); *State v. Horton*, 625 N.W.2d 362, 363-64 (Iowa 2001) (holding that an officer had probable cause to believe a defendant had committed a drug offense when he observed “marijuana roaches” in plain view, and further concluding that a subsequent pat down was justified as a search incident to arrest even though the pat down technically preceded formal arrest); Iowa Code § 124.401(5) (criminalizing possession of marijuana). Thus, Haynes was not unlawfully seized or searched, and the district court did not err in denying his motion to suppress.

C.

Haynes also argues that the evidence was insufficient to support his conviction because the evidence did not demonstrate (1) that he knowingly possessed a firearm or (2) that he knew he was prohibited from possessing a firearm. We review sufficiency of the evidence arguments *de novo*, viewing the evidence in the light most favorable to the jury verdict. *United States v. Reddest*, 512 F.3d 1067, 1069-70 (8th Cir. 2008). “We reverse only if no reasonable jury could have found the defendant[] guilty.” *United States v. Johnson*, 450 F.3d 366, 372 (8th Cir. 2006). All credibility determinations are resolved in favor of the jury’s verdict. *United States v. Wiest*, 596 F.3d 906, 910 (8th Cir. 2010).

First, Haynes’s argument that the Government failed to prove that he knowingly possessed a firearm is unavailing. See *United States v. McDonald*, 826 F.3d 1066, 1072 (8th Cir. 2016) (holding that, in order to prove the element of knowing possession, “it is sufficient if the [G]overnment proved [the defendant] had actual or constructive possession of the firearm”). Although there were no fingerprints or DNA linking Haynes to the weapon, Officer Harden testified he was “100 percent certain” that he felt a gun during his pat down of Haynes. Moreover, while no officer saw Haynes drop a gun while he ran, officers saw him jump over a fence and stop immediately thereafter. And officers testified that they found a loaded handgun in a flowerbed next to the fence that Haynes jumped, indicating that Haynes dropped it there. After hearing this evidence, the jury was entitled to weigh the credibility of Officer Harden’s testimony and credit his statement that he felt a gun on Haynes’s person during the pat down. See *Wiest*, 596 F.3d at 910. Therefore, a reasonable juror could have found that Haynes knowingly possessed a firearm.

Second, Haynes’s argument that the Government did not present sufficient evidence that he knew he was a convicted felon prohibited from possessing a firearm as required by *Rehaif v. United States*, 588 U.S. ---, 139 S. Ct. 2191 (2019), also fails. In *Rehaif*, “the Supreme Court held that to sustain a conviction under 18 U.S.C. § 922(g), the government must prove both that the defendant knew that he possessed

a firearm and knew of his prohibited status.” *United States v. Warren*, 951 F.3d 946, 951 (8th Cir. 2020). We have held that a reasonable juror could conclude that a defendant knew of his prohibited status under *Rehaif* when the defendant stipulated at trial that “he had been previously convicted of a crime punishable [by] a term exceeding one year,” the defendant was imprisoned for a term longer than one year for a previous offense, and the defendant fled the scene of the crime. *Warren*, 951 F.3d at 951 (discussing the same “reasonable juror” standard that is used in reviewing the sufficiency of the evidence, but in the plain error context); *see also United States v. Hollingshed*, 940 F.3d 410, 415-16 (8th Cir. 2019). Because Haynes had previously been imprisoned for a term longer than one year, he fled the scene of his pat down, and he stipulated at trial that he had been previously convicted of a crime punishable by a prison term of longer than one year, there was sufficient evidence that he knew of his prohibited status.³

Haynes also argues that the district court abused its discretion in denying his motion for a new trial based on his claim of insufficient evidence. *See Hallmark Cards, Inc. v. Murley*, 703 F.3d 456, 462 (8th Cir. 2013) (noting that we review a denial of a motion for a new trial for an abuse of discretion and will not reverse absent a “miscarriage of justice”). Based on the strength of the evidence detailed above, we likewise find no abuse of discretion in denying the motion for a new trial.

³Haynes also claims that the district court plainly erred in failing to instruct the jury on whether he knew of his prohibited status when he possessed a firearm. To establish plain error, a defendant must show that the error affected his substantial rights. *See United States v. Olano*, 507 U.S. 725, 732 (1993). Because sufficient evidence demonstrated that Haynes knew of his prohibited status, Haynes cannot demonstrate that a failure to so instruct the jury affected his substantial rights, *see Warren*, 951 F.3d at 951, and therefore the district did not plainly err.

D.

Lastly, Haynes argues that his sentence is substantively unreasonable because he claims the district court unfairly punished him for not accepting a plea bargain. We review the substantive reasonableness of a sentence for an abuse of discretion. *United States v. Stoner*, 795 F.3d 883, 884 (8th Cir. 2015).

“[I]t will be the unusual case when we reverse a district court sentence—whether within, above, or below the applicable Guidelines range—as substantively unreasonable.” *United States v. Feemster*, 572 F.3d 455, 464 (8th Cir. 2009) (en banc). A court is required to carefully weigh the factors in 18 U.S.C. § 3553(a) when imposing a sentence. *United States v. McGlothen*, 556 F.3d 698, 702 (8th Cir. 2009). “A sentencing court abuses its discretion when it fails to consider a relevant factor, gives significant weight to an irrelevant or improper factor, or considers only appropriate factors but nevertheless commits a clear error of judgment by arriving at a sentence that lies outside the limited range of choice dictated by the facts of the case.” *United States v. Hernandez*, 518 F.3d 613, 616 (8th Cir. 2008).

Haynes asserts that comments made by the district court at sentencing demonstrate that it gave undue weight to his decision not to plead guilty, suggesting it imposed its sentence as punishment for that decision. He acknowledges that this was not an improper factor to consider because the sentencing guidelines provide that a defendant who accepts responsibility by pleading guilty may be eligible for a sentence reduction. *See United States v. Wilcox*, 487 F.3d 1163, 1175 (8th Cir. 2007) (“It is settled that a court, consistent with the Constitution, may grant leniency in return for a plea of guilty, and may withhold similar leniency from a defendant who proceeds to trial.”). We therefore consider whether the district court committed a clear error of judgment in weighing the appropriate factors. *See United States v. David*, 682 F.3d 1074, 1077 (8th Cir. 2012).

In light of the aggravating factors here, the district court did not commit a “clear error of judgment by arriving at [its] sentence.” *See Hernandez*, 518 F.3d at 616. For example, the court considered the short amount of time—14 months—that Haynes had refrained from criminal activity since his release from prison. The court also noted that Haynes, a felon with a “very violent history who ha[d] no business being around guns,” was on a bus using marijuana and carrying a loaded handgun. Moreover, the sentence imposed here was within the guidelines range and not greater than the statutory maximum. *See United States v. Saguto*, 929 F.3d 519, 525 (8th Cir. 2019) (“[W]e may presume a within-Guidelines sentence is reasonable.”). Therefore, we find no abuse of discretion in the district court’s sentencing decision.

III.

For the foregoing reasons, we affirm.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 19-1607

United States of America

Plaintiff - Appellee

v.

Ryan Nicholas Haynes

Defendant - Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Des Moines
(4:18-cr-00152-SMR-1)

JUDGMENT

Before SMITH, Chief Judge, LOKEN, and GRUENDER, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

May 05, 2020

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Revision of Part V of the Eighth Circuit Plan to Implement the Criminal Justice Act of 1964.

V. Duty of Counsel as to Panel Rehearing, Rehearing En Banc, and Certiorari

Where the decision of the court of appeals is adverse to the defendant in whole or in part, the duty of counsel on appeal extends to (1) advising the defendant of the right to file a petition for panel rehearing and a petition for rehearing en banc in the court of appeals and a petition for writ of certiorari in the Supreme Court of the United States, and (2) informing the defendant of counsel's opinion as to the merit and likelihood of the success of those petitions. If the defendant requests that counsel file any of those petitions, counsel must file the petition if counsel determines that there are reasonable grounds to believe that the petition would satisfy the standards of Federal Rule of Appellate Procedure 40, Federal Rule of Appellate Procedure 35(a) or Supreme Court Rule 10, as applicable. *See Austin v. United States*, 513 U.S. 5 (1994) (per curiam); 8th Cir. R. 35A.

If counsel declines to file a petition for panel rehearing or rehearing en banc requested by the defendant based upon counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion to withdraw must be filed on or before the due date for a petition for rehearing, must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for rehearing, and must request an extension of time of 28 days within which to file *pro se* a petition for rehearing. The motion also must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

If counsel declines to file a petition for writ of certiorari requested by the defendant based on counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

A motion to withdraw must be accompanied by counsel's certification that a copy of the motion was furnished to the defendant and to the United States.

Where counsel is granted leave to withdraw pursuant to the procedures of *Anders v. California*, 386 U.S. 738 (1967), and *Penson v. Ohio*, 488 U.S. 75 (1988), counsel's duty of representation is completed, and the clerk's letter transmitting the decision of the court will notify the defendant of the procedures for filing *pro se* a timely petition for panel rehearing, a timely petition for rehearing en banc, and a timely petition for writ of certiorari.