

APPENDIX

Judgment entered February 25, 2019, *United States v. Arthur Tyrone Lee Jr.*, S.D. Iowa No. 4:18-cr-00061-JAJ-HCA..... A2

Judgment entered July 24, 2020, *United States v. Arthur Tyrone Lee Jr.*, Eighth Circuit Court of Appeals No. 19-1421 A9

Opinion entered July 24, 2020, *United States v. Arthur Tyrone Lee Jr.*, 814 Fed. Appx. 170 (8th Cir. 2010) (Mem)..... A10

Stipulation re: Felony Conviction, October 12, 2018..... A14

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA

v.

Arthur Tyrone Lee Jr.

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:18-CR-00061-001

USM Number: 18550-030

Alfredo G. Parrish

Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s)☐ pleaded nolo contendere to count(s)
which was accepted by the court.☒ was found guilty on count(s) One, Two, and Three of the Indictment filed on March 29, 2018.
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), 851	Possession with Intent to Distribute 50 Grams or More of Actual Methamphetamine	12/13/2017	One
18 U.S.C. § 924(c)(1)(A)(i)	Possession of a Firearm in Furtherance of a Drug Trafficking Crime	12/13/2017	Two
18 U.S.C. §§ 922(g)(1), 924(a)(2)	Felon in Possession of a Firearm and Ammunition	12/13/2017	Three

☐ 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.

February 25, 2019

Date of Imposition of Judgment

Signature of Judge

John A. Jarvey, Chief U.S. District Judge

Name of Judge

Title of Judge

February 25, 2019

Date

DEFENDANT: Arthur Tyrone Lee Jr.
CASE NUMBER: 4:18-CR-00061-001

IMPRISONMENT

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

360 months, consisting of 300 months as to Count One and 120 months as to Count Three, to be served concurrently, plus 60 months as to Count Two of the Indictment filed on March 29, 2018, to be served consecutively to Counts One and Three.

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

That the defendant be placed at FCI Sandstone, due to the proximity of his family and the availability of vocational programming.

☒ 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: Arthur Tyrone Lee Jr.
CASE NUMBER: 4:18-CR-00061-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

Ten years, consisting of ten years as to Count One, five years as to Count Two, and three years as to Count Three of the Indictment filed on March 29, 2018, to be served concurrently.

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: Arthur Tyrone Lee Jr.
CASE NUMBER: 4:18-CR-00061-001

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: Arthur Tyrone Lee Jr.

CASE NUMBER: 4:18-CR-00061-001

SPECIAL CONDITIONS OF SUPERVISION

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 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.

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.

DEFENDANT: Arthur Tyrone Lee Jr.

CASE NUMBER: 4:18-CR-00061-001

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	\$ 300.00	\$ 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: Arthur Tyrone Lee Jr.
CASE NUMBER: 4:18-CR-00061-001

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 \$ 300.00 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 Kimber Ultra Carry II, .45 caliber handgun (S/N: KU311898), as set forth in the Preliminary Order of Forfeiture granted by the Court on October 29, 2018.

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

A9
**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 19-1421

United States of America

Plaintiff - Appellee

v.

Arthur Tyrone Lee, Jr.

Defendant - Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Des Moines
(4:18-cr-00061-JAJ-1)

JUDGMENT

Before COLLOTON, BENTON, and GRASZ, Circuit Judges.

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

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.

July 24, 2020

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

/s/ Michael E. Gans

United States Court of Appeals
For the Eighth Circuit

No. 19-1421

United States of America

Plaintiff - Appellee

v.

Arthur Tyrone Lee, Jr.

Defendant - Appellant

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

Submitted: March 20, 2020

Filed: July 24, 2020

[Unpublished]

Before COLLOTON, BENTON, and GRASZ, Circuit Judges.

PER CURIAM.

Arthur Lee appeals after a jury convicted him of possession with intent to distribute methamphetamine, *see* 21 U.S.C. § 841(a)(1), possession of a firearm in furtherance of a drug trafficking offense, *see* 18 U.S.C. § 924(c), and possession of a firearm by a person previously convicted of an offense punishable by more than one

year in prison, *see* 18 U.S.C. § 922(g)(1). The district court¹ sentenced him to 360 months in prison. The evidence at trial showed that investigators seized a .45 caliber pistol, ammunition, and methamphetamine during a search of a house leased by Lee. The parties stipulated at trial that before the date of the search, Lee had been convicted of a crime that was punishable by a term of imprisonment of more than one year. At sentencing, the record showed that Lee had sustained three prior felony convictions in Iowa and served more than a year in prison on two of them after revocations of probation. R. Doc. 104, ¶¶ 51, 56, 57.

Lee's counsel originally moved to withdraw and filed a brief under *Anders v. California*, 386 U.S. 738 (1967). Counsel argued that the prosecutor appealed to racial bias when he used the term "slave" during opening statement and closing argument. In an opening statement, the prosecutor said that "[a]ccording to an ancient proverb, a secret can be your slave if it's kept; but once it's disclosed, it can quickly become your master." The prosecutor continued that Lee "possessed such a secret, a secret that when he quietly kept it was an incredibly profitable one; but when he lost it, it threatened to become his master." In closing argument, the prosecutor sounded a similar theme, referring to Lee's stash house as his "secret" that he could make a "slave" until the secret was exposed. Lee did not object to these statements during the trial. Counsel also maintained in the *Anders* brief that there was insufficient evidence to support the verdicts. Lee filed a pro se brief raising a claim of ineffective assistance of counsel.

We denied counsel's motion to withdraw and ordered supplemental briefing to address whether, in light of *Rehaif v. United States*, 139 S. Ct. 2191 (2019), there was a plain error warranting relief on the sufficiency of evidence. *Rehaif* held that in a prosecution for unlawful possession of a firearm under § 922(g), the government

¹The Honorable John A. Jarvey, Chief Judge, United States District Court for the Southern District of Iowa.

must prove that the defendant knew he belonged to category of persons barred from possessing a firearm. *Id.* at 2200.

In his supplemental brief, Lee argues that the stipulation at trial that he had been convicted of a crime punishable by more than a year in prison was insufficient to satisfy the knowledge element under § 922(g)(1). Lee also argues that if the § 922(g) conviction is reversed, then he is entitled to a new trial on Counts 1 and 2, because the evidence of his prior conviction was irrelevant to those counts and prejudicial.

After considering the supplemental briefs and relevant authorities, we conclude that the evidence was sufficient to support Lee's conviction for unlawful possession of a firearm. Lee made a general motion for judgment of acquittal at the close of the government's case, so we assume for the sake of analysis that he preserved a challenge to the sufficiency of the evidence on the knowledge element under § 922(g). See *United States v. Owens*, No. 19-1516, 2020 WL 3980243, at *5 (8th Cir. July 15, 2020); *United States v. May*, 476 F.3d 638, 640 (8th Cir. 2007). During trial, Lee stipulated that he had been convicted of an offense punishable by more than a year in prison. A rational jury could have inferred from the stipulation that Lee knew about his status as a person convicted of such an offense. It is reasonable to infer that "a felony conviction would be a significant life event that a person would know about when it happened and remember at a later date." *Owens*, 2020 WL 3980243, at *5. And "it is highly improbable that a person could be convicted of a felony without being aware that his possible sentence would exceed one year's imprisonment." *Id.* (quoting *United States v. Miller*, 954 F.3d 551, 559 (2d Cir. 2020)). We therefore uphold the conviction under § 922(g)(1). Accord *United States v. Staggers*, 961 F.3d 745, 754 (5th Cir. 2020).

As to the arguments raised in the *Anders* brief, we conclude that the district court did not plainly err in allowing the prosecutor's comments during opening

statement and closing argument. The remarks, when viewed in context, did not invoke racial biases and did not deprive Lee of a fair trial. We also conclude there was sufficient evidence presented at trial to support Lee's convictions on Counts 1 and 2. Witness testimony, Lee's rental of the house, and indicia of residency found in the locked north bedroom reasonably supported a finding that Lee possessed the methamphetamine and firearm found in the house, that he intended to distribute the drugs, and that he possessed the firearm in furtherance of a drug trafficking offense.

Insofar as Lee asserts that he received ineffective assistance of counsel, we decline to address the claim in this direct appeal. Any such claim may be raised in a collateral proceeding under 28 U.S.C. § 2255. *See United States v. Hernandez*, 281 F.3d 746, 749 (8th Cir. 2002).

The judgment of the district court is affirmed.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,

v.

ARTHUR TYRONE LEE, JR.,

Defendant.

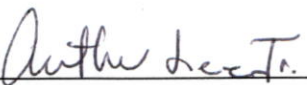
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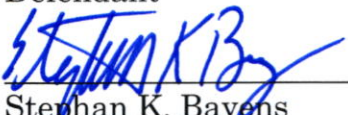
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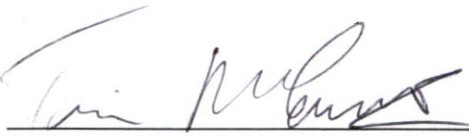
STIPULATION
FELONY CONVICTION

The parties hereby stipulate and agree as follows for the purposes of trial of the above case:

Before December 13, 2017, the defendant, ARTHUR TYRONE LEE, JR., had been convicted of a crime that was punishable by a term of imprisonment of more than one year.


Arthur Tyrone Lee, Jr. Date 10-12-18
Defendant


Stephan K. Bayens Date 10-12-18
Assistant U.S. Attorney


Timothy McCarthy Date 10-12-18
Attorney for Defendant