

No. _____

In the Supreme Court of the United States

Asa Lea,

Petitioner

v.

United States of America,

Respondent

**On Petition for Writ of Certiorari to the United States Court of Appeals for
the District of Columbia Circuit**

Appendix

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Index of Appendices

| | |
|--|---------|
| Appendix A: Judgment and Opinion of U.S. Court of Appeals for the District of Columbia Circuit | App. 1 |
| Appendix B: Judgment, Order, and Memoranda Opinions of U.S. District Court | App. 6 |
| Appendix C: Orders of U.S. Court of Appeals for the District of Columbia denying Petition for Rehearing and Rehearing <i>en Banc</i> | App. 17 |
| Appendix D: Judgment of U.S. District Court | App. 19 |

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-3017

September Term, 2020

FILED ON: NOVEMBER 25, 2020

UNITED STATES OF AMERICA,
APPELLEE

v.

ASA LEA, ALSO KNOWN AS ASA LORENZO-LAMIYAH LEA,
APPELLANT

Appeal from the United States District Court
for the District of Columbia
(No. 1:19-cr-00089-1)

Before: ROGERS, PILLARD, and WALKER, *Circuit Judges*.

JUDGMENT

In this appeal from a conviction by a jury of unlawful possession of a firearm by a felon, 18 U.S.C. § 922(g)(1), appellant contends that the district court erred in denying his motion to suppress evidence and statements, and in denying his motion for judgment of acquittal and for a new trial based on insufficient evidence. This case was considered on the record from the United States District Court for the District of Columbia, and on the briefs and oral argument of the parties. The Court has afforded the issues full consideration and has determined they do not warrant a published opinion. *See* D.C. Cir. Rule 36(d). For the following reasons, it is

ORDERED and ADJUDGED that the judgment of the district court be **AFFIRMED**.

I.

Lea contends that he was seized in violation of the Fourth Amendment when Metropolitan Transit Police Department Officers Woods and Wooley first approached him because “[a] reasonable person, sitting in a bus shelter, approached by officers, who identified themselves by displaying their police badges and by stating ‘police’ in a loud clear voice, would believe that he was not free to leave.” Appellant’s Br. 17. He also contends his statements to the officers should have been suppressed as violative under the Fifth Amendment.

This court reviews *de novo* the district court's legal conclusions on a motion to suppress, including whether a seizure occurred, whether law enforcement had reasonable suspicion or probable cause to effectuate a seizure, and whether an individual was in custody and thus entitled to *Miranda* warnings. *See United States v. Cooper*, 949 F.3d 744, 748 (D.C. Cir. 2020) (Fifth Amendment); *United States v. Castle*, 825 F.3d 625, 632 (D.C. Cir. 2016) (Fourth Amendment). In contrast, the district court's factual findings are reviewed "only for clear error" with "due weight" given to inferences drawn from those facts and the district court's credibility determinations. *Ornelas v. United States*, 517 U.S. 690, 699 (1996); *see United States v. Delaney*, 955 F.3d 1077, 1082 (D.C. Cir. 2020). Although the court "may consider both evidence offered at the suppression hearing and the trial," where, as here, the district court made factual findings, our task is to review those factual findings and, "assuming they are not clearly erroneous, determine whether they support the contested seizure." *Castle*, 825 F.3d at 632 (quoting *United States v. Bailey*, 622 F.3d 1, 5 (D.C. Cir. 2010)).

Applying well-settled Fourth and Fifth Amendment principles, the district court correctly rejected Lea's contentions. Not every citizen-police encounter triggers Fourth Amendment scrutiny. Rather, it is implicated only when an individual has been seized. *Florida v. Bostick*, 501 U.S. 429, 434 (1991). A "seizure occurs 'when physical force is used to restrain movement or when a person submits to an officer's 'show of authority.'" *Delaney*, 955 F.3d at 1081 (quoting *United States v. Brodie*, 742 F.3d 1058, 1061 (D.C. Cir. 2014)). "Whether police action amounts to a 'show of authority' requires the court to ask whether a 'reasonable person' 'in view of all the circumstances surrounding the incident, . . . would have believed that he was not free to leave.'" *Castle*, 825 F.3d at 632 (quoting *United States v. Wood*, 981 F.2d 536, 539 (D.C. Cir. 1992)). That "reasonable person" is not the defendant, but the average person innocent of any crime. *United States v. Goddard*, 491 F.3d 457, 460 (D.C. Cir. 2007). In performing this totality-of-the-circumstances analysis, courts consider a non-exclusive list of factors, including "whether the suspect was physically intimidated or touched, whether the officer displayed a weapon, wore a uniform, or restricted the defendant's movements, the time and place of the encounter, and whether the officer's use of language or tone of voice indicated that compliance with the officer's request might be compelled." *Delaney*, 955 F.3d at 1081 (quoting *Castle*, 825 F.3d at 632–33). If this assessment indicates that "a reasonable person would feel free to disregard the police and go about his business, the encounter is consensual, and no reasonable suspicion is required." *Bostick*, 501 U.S. at 434 (internal quotation marks and citation omitted).

Lea's initial interaction with Officers Woods and Wooley bears all the hallmarks of a consensual encounter: the officers did not touch Lea or brandish their weapons, which were concealed; Lea's movement was not restricted; the officers wore plain clothes; the encounter took place during the day in a public setting; and the officers spoke to Lea in a clear, calm manner. Viewing the record evidence holistically, and giving due weight to the district court's factual findings, there was no show of authority that would communicate to a reasonable person in Lea's position that he was not free to leave. Because, therefore, Lea was not seized within the meaning of the Fourth Amendment when the officers approached him at the bus shelter and asked what he was smoking, Lea's answer — "Some weed" — supplied the officers with probable cause to

believe he was committing a crime in their presence. *See* D.C. Code § 48-911.01. The search that produced the firearm was a lawful search incident to arrest. *See United States v. Bookhardt*, 277 F.3d 558, 564 (D.C. Cir. 2002).

Indeed, Lea's case is virtually indistinguishable from our precedent. *See United States v. Jones*, 973 F.2d 928 (D.C. Cir. 1992), *vacated in part on other grounds*, 997 F.2d 1475 (D.C. Cir. 1993) (en banc); *United States v. Winston*, 892 F.2d 112 (D.C. Cir. 1989). Lea attempts to distinguish these decisions, but his distinctions are not of constitutional dimension. First, Lea contrasts that the police encounters in those cases occurred in bus stations whereas he was confronted by Officers Woods and Wooley while sitting in a small, three-sided bus shelter. The Supreme Court rejected this same argument raised by a bus passenger, explaining that to the extent the individual's freedom of movement is restricted during a police encounter, "this is the natural result of choosing to take the bus; it says nothing about whether the police conduct is coercive." *United States v. Drayton*, 536 U.S. 194, 201–02 (2002). Second, Lea emphasizes that unlike the officers in *Jones* and *Winston*, Officers Woods and Wooley did not seek his permission to ask questions. This contention is also foreclosed by Supreme Court precedent, which "make[s] it clear that a seizure does not occur simply because a police officer approaches an individual and asks a few questions." *Bostick*, 501 U.S. at 434; *see Drayton*, 536 U.S. at 200; *accord United States v. Gross*, 784 F.3d 784, 788 (D.C. Cir. 2015). Finally, Lea points out that Officers Woods and Wooley initiated the encounter by displaying their badges rather than asking innocuous questions like the officers in *Winston* and *Jones*. That argument fails too, for the "presence of the officer as a figure of governmental authority does not, by itself, constitute the 'show of authority' necessary to make a reasonable person feel unfree to leave." *Goddard*, 491 F.3d at 461 (quoting *Gomez v. Turner*, 672 F.2d 134, 142 (D.C. Cir. 1982)).

In any event, Lea cannot surmount the obstacles presented by *Terry v. Ohio*, 392 U.S. 1 (1968), and its progeny. Under *Terry*, "the police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot.'" *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (quoting *Terry*, 392 U.S. at 30). Although the requisite level of suspicion to justify a *Terry* stop is "less demanding than that for probable cause," *id.*, the officer "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion," *Terry*, 392 U.S. at 21; *see United States v. Edmonds*, 240 F.3d 55, 59 (D.C. Cir. 2001). The facts available to Officers Woods and Wooley before they approached Lea — the smell of marijuana emanating from Lea's vicinity and Lea sitting alone smoking a hand-rolled cigarette — were sufficient to detain Lea briefly in order to investigate a possible violation of D.C. Code § 48-911.01. *Cf. United States v. Jones*, 584 F.3d 1083, 1086–88 (D.C. Cir. 2009); *United States v. Turner*, 119 F.3d 18, 18–19 (D.C. Cir. 1997). As such, even if the initial encounter between Lea and the officers constituted a seizure, it would be a valid *Terry* stop.

Lea also contends the district court should have suppressed his statements on the grounds that they were solicited in violation of his Fifth Amendment rights under *Miranda v. Arizona*, 384

U.S. 436 (1966). The police “are not required to administer *Miranda* warnings to everyone whom they question,” *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977), but rather “only when a suspect interrogated by the police is ‘in custody,’” *Thompson v. Keohane*, 516 U.S. 99, 102 (1995). The *Miranda* custody analysis is a two-step inquiry. *See Howes v. Fields*, 565 U.S. 499, 508–09 (2012); *Cooper*, 949 F.3d at 748. As an “initial step,” the court must “ascertain whether, in light of ‘the objective circumstances of the interrogation,’ a ‘reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave.’” *Fields*, 565 U.S. at 509 (quoting *Stansbury v. California*, 511 U.S. 318, 322–23 (1994), then *Thompson*, 516 U.S. at 112). If the individual would have felt free to leave, the inquiry ends; a restraint on freedom of movement is a prerequisite for *Miranda* custody. *See Maryland v. Shatzer*, 559 U.S. 98, 112 (2010). If, however, the individual’s freedom of movement was restrained, the court “must then ask ‘the additional question whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*.’” *Cooper*, 949 F.3d at 748 (quoting *Fields*, 565 U.S. at 509). If so, then the individual is “in custody” and therefore “entitled to the full panoply of protections prescribed by *Miranda*.” *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984).

Lea’s Fifth Amendment argument falters at the starting gate. Although identifying a seizure and custodial interrogation are distinct inquiries, if a citizen-police interaction was consensual because a reasonable person in the individual’s position would have felt free to terminate the encounter, then the individual was not in custody for purposes of the Fifth Amendment. *See Shatzer*, 559 U.S. at 112. Thus, because Lea was not seized when he admitted to smoking marijuana, he was not subjected to a custodial interrogation either. That conclusion remains the same even if the initial encounter is viewed as a *Terry* stop, for the Supreme Court has explained that the “temporary and relatively nonthreatening detention involved in a traffic stop or *Terry* stop does not constitute *Miranda* custody.” *Id.* at 113 (internal citation omitted). In sum, because Lea’s Fourth and Fifth Amendment contentions are without merit, the district court did not err in denying his motion to suppress.

II.

Lea’s challenge to the district court’s denial of his motion for a judgment of acquittal or a new trial is also unpersuasive. Lea contends that the evidence presented at trial was insufficient to support his conviction because the only evidence tending to show he possessed a firearm was the testimony of Officers Woods and Wooley, but their testimony was “inherently incredible.” Appellant’s Br. 30. In his view, no reasonable juror could credit the officers’ testimony because they testified to having seen appellant smoking a marijuana cigarette but never recovered a cigarette from the scene.

A defendant seeking to set aside his conviction on sufficiency-of-the-evidence grounds faces a steep climb. *See United States v. Salamanca*, 990 F.2d 629, 635 (D.C. Cir. 1993). The court will not second-guess the jury’s verdict so long as “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *United States v. Bostick*, 791 F.3d

127, 137 (D.C. Cir. 2015) (quoting *United States v. Gaskins*, 690 F.3d 569, 576 (D.C. Cir. 2012)). In making that determination, the court reviews the evidence “in the light most favorable to the government, drawing no distinction between direct and circumstantial evidence.” *United States v. Vega*, 826 F.3d 514, 522 (D.C. Cir. 2016) (quoting *United States v. Dykes*, 406 F.3d 717, 721 (D.C. Cir. 2005)). And, mindful that the jury is best positioned to evaluate witnesses, *see United States v. Bikundi*, 926 F.3d 761, 788 (D.C. Cir. 2019), the court’s analysis “giv[es] full play to the right of the jury to determine credibility, weigh the evidence and draw justifiable inferences of fact,” *Vega*, 826 F.3d at 522 (quoting *Dykes*, 406 F.3d at 721). This deferential standard of review “impinges upon ‘jury’ discretion only to the extent necessary to guarantee the fundamental protection of due process of law.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

Lea does not come close to identifying incredible testimony. For starters, Lea identifies no inconsistencies “so glaring that the police officers’ testimony ‘must be a fabrication.’” *United States v. Streater*, 70 F.3d 1314, 1318 (D.C. Cir. 1995) (quoting *United States v. Gilliard*, 847 F.2d 21, 24 (1st Cir. 1988)). The officers’ testimony regarding Lea’s marijuana cigarette is entirely consistent. Officer Woods testified that he “smelled the odor of burnt marijuana in the air” and observed Lea “inhaling and exhaling what appeared to be . . . a hand-rolled cigarette.” Trial Tr. 204–05 (Nov. 20, 2019). He also recalled Lea placing the cigarette on the bench but acknowledged that it was not found during a sweep of the area after Lea’s arrest. Officer Wooley’s testimony dovetails with Officer Woods’ account, stating that he saw Lea smoking a hand-rolled cigarette shortly after smelling marijuana, *id.* at 252, and that the cigarette “was placed on the bench initially” but was not recovered, *id.* at 266. Nor is the officers’ failure to locate the cigarette “highly questionable in light of common experience and knowledge.” *Jackson v. United States*, 353 F.2d 862, 867 (D.C. Cir. 1965). Reasons for the cigarette’s disappearance are not hard to conjure; for instance, as Officer Woods suggested, it could have blown away. Trial Tr. 224. At that point, the officers had already recovered a gun from Lea’s possession, leaving little reason to continue looking for the cigarette. Under the circumstances, Lea has presented no basis for this court to reverse the district court because the officers’ testimony about the marijuana cigarette was inherently incredible much less to enter a judgment of acquittal or grant a new trial.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing *en banc*. *See* Fed. R. App. P. 41(b); D.C. Cir. R. 41.

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Michael C. McGrail
Deputy Clerk

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLUMBIA3 ----- x
4 THE UNITED STATES OF AMERICA,5 Plaintiff,
6 vs.Criminal Action No.
1:19-cr-00089-CRC-1
Monday, August 12, 2019
10:21 a.m.

ASA LEA,

7 Defendant.
8 ----- x9
10 TRANSCRIPT OF MOTION HEARING
11 HELD BEFORE THE HONORABLE CHRISTOPHER R. COOPER
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

14 For the United States: **ANDREA DUVALL, ESQ.**
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 wlw@wwelchattorney.com21 Court Reporter: Lisa A. Moreira, RDR, CRR
22 Official Court Reporter
23 U.S. Courthouse, Room 6718
24 333 Constitution Avenue, NW
25 Washington, DC 20001
 202-354-3187Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription

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| 1 | | I N D E X |
| 2 | | |
| 3 | <u>WITNESS</u> | <u>PAGE</u> |
| 4 | MTPD OFFICER LEMUEL WOODS | |
| | (By Ms. Duvall) | 4 |
| | (By Mr. Welch) | 25 |
| | (By Ms. Duvall) | 31 |
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1 he was smoking, but confirmed that the odor was coming from
2 him and that he was smoking something, I think they had
3 probable cause to arrest at that point.

4 THE COURT: Okay.

5 Mr. Welch, last word.

6 MR. WELCH: My reply is that there were officers
7 on each side of him. At that point he acquiesces to their
8 identifying themselves as police officers by displaying
9 badges, by the statement that they are police.

10 The fact that later on, when they try to take him
11 into custody and take him downtown, he resists is after the
12 fact. That's beside the point. It's the show of authority
13 at the outset before the interrogation begins that matters
14 at that point. A reasonable person would not have felt free
15 to leave or to push his way by a couple of police officers
16 in this situation.

17 These are not officers who are simply saying, "Hi,
18 how are you doing? You know, has the 90 bus come yet?"
19 These officers approach him, identify themselves as police
20 officers, and the first question that they ask is, Your
21 Honor, "What are you smoking?"

22 THE COURT: Okay.

23 All right. Thank you.

24 MR. WELCH: Thank you.

25 THE COURT: All right. The Court will make the

1 following findings of fact:

2 Based on the testimony of Officer Woods, which the
3 Court found to be credible, that on March 5, 2019, at
4 approximately 4:15 in the afternoon Metro Transit Police
5 Officers Woods and Wooley were riding on the 90 bus route
6 near 8th and K Streets Northeast. The officers were in
7 plain clothes with their weapons concealed.

8 After having exited the bus to attend to an
9 alleged fare evader on the other side of the street, the
10 officer noticed the defendant sitting on the opposite side
11 of the street under the enclosed shelter smoking what the
12 officer describes as a brown cigarette; that based on the
13 smell both officers suspect it was marijuana.

14 The officers approached the person later
15 identified as the defendant, identified themselves as police
16 officers by showing their badges, and Officer Wooley asked
17 the defendant what he was smoking. The defendant responded
18 that he was smoking, quote, some weed.

19 Officer Woods responded that smoking marijuana in
20 public was illegal and asked the defendant for
21 identification so that he could write him a citation.

22 The defendant answered that he did not have ID,
23 but identified himself as one Tyrone Kelly and gave a date
24 of birth. He also admitted in questioning that he had been
25 arrested previously.

1 When Officer Wooley checked the name given by
2 defendant against the arrestee database, that check turned
3 up negative. The officers then placed the defendant under
4 arrest.

5 The defendant responded, "I'm not going with you
6 all" and attempted to flee.

7 The officers took him down, and he resisted their
8 hold. The officers eventually maintained the defendant
9 under control and then conducted a search of the defendant's
10 person finding a handgun and ammunition. The government's
11 motion says a digital scale, but there was no testimony to
12 that effect that I recall from Officer Woods.

13 A subsequent search of the defendant's backpack
14 revealed \$1,682 in cash and three plastic bags of what
15 Officer Woods described as a green, leafy substance.

16 All right. Applying the law to those facts, the
17 Court will deny the defendant's motions to suppress both the
18 tangible evidence seized and his one statement regarding the
19 substance being smoked being weed.

20 While the Court understands why many people would
21 not believe that they were free to leave under the
22 circumstances, Supreme Court and D.C. Circuit authority
23 establish, quote, that a seizure does not occur simply
24 because an officer approaches a citizen and asks a few
25 questions, *U.S. v. Lewis*, D.C. Circuit 1990, *U.S. v. Gross*,

1 D.C. Circuit 2015 citing *Florida v. Bostick*, Supreme Court
2 1991. These instances arise quite frequently and, having
3 reviewed the case law, the Court concludes that the mix of
4 factors here do not give rise to a conclusion that the
5 officers' interaction with the defendant rose to a level of
6 a seizure. There were no orders. There was no restriction
7 of movement, no guns drawn, no physical contact.

8 Because there was no seizure, the defendant's
9 statement acknowledging smoking marijuana prior to his
10 arrest is admissible. No *Miranda* warning was required
11 before the officers asked the defendant what he was smoking
12 because there was no seizure, and, therefore, the
13 questioning was not a custodial interrogation.

14 As for the search following the arrest, the arrest
15 was lawful. There was probable cause to believe, not simply
16 based on his statement but also based on their observation,
17 that the defendant was smoking marijuana in public, which is
18 a crime. The search of his person and immediate
19 surroundings was therefore a constitutional search incident
20 to his arrest.

21 All right. With that, should we set a status for
22 30 days?

23 All discovery has been provided, Ms. Duvall?

24 MS. DUVALL: Your Honor, yes, to my knowledge.

25 THE COURT: Okay. Is there a plea offer

1 THE COURT: Okay? But I would encourage you all
2 to work that out sooner rather than later, okay?

3 MR. WELCH: I understand, Your Honor.

4 THE COURT: And we'll issue a pretrial scheduling
5 order. All right.

6 (Whereupon the hearing was

7 concluded at 11:17 a.m.)

8

9 **CERTIFICATE OF OFFICIAL COURT REPORTER**

10

11 I, LISA A. MOREIRA, RDR, CRR, do hereby
12 certify that the above and foregoing constitutes a true and
13 accurate transcript of my stenographic notes and is a full,
14 true and complete transcript of the proceedings to the best
15 of my ability.

16 Dated this 3rd day of September, 2019.

17

18 /s/Lisa A. Moreira, RDR, CRR
19 Official Court Reporter
20 United States Courthouse
21 Room 6718
22 333 Constitution Avenue, NW
23 Washington, DC 20001

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

ASA LEA,

Defendant.

Case No. 19-cr-89 (CRC)

ORDER

For the reasons stated in the accompanying Memorandum Opinion, it is hereby
ORDERED that [56] Defendant's Motion for Judgment of Acquittal and New Trial is
DENIED.

This is a final appealable Order.

SO ORDERED.



CHRISTOPHER R. COOPER
United States District Judge

Date: January 15, 2019

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,
v.
ASA LEA,
Defendant.

Case No. 19-cr-89 (CRC)

MEMORANDUM OPINION

In November 2019, a jury convicted Asa Lea of unlawful possession of a firearm and ammunition by a felon. Mr. Lea now moves for a judgment of acquittal and a new trial, arguing that the evidence presented at trial was insufficient to convict him of the crime. Finding ample evidence to support the conviction, the Court will deny the motions.

On March 5, 2019, Lea was approached by two Metro Transit Police Department officers, Lemuel Woods and Carroll Wooley, who suspected that he was smoking marijuana at a bus stop. The officers eventually arrested Mr. Lea and recovered a gun from his front coat pocket. At his trial in November 2019, the government presented testimony from both arresting officers and the crime scene recovery officer as well as physical evidence recovered from Mr. Lea, including the firearm, ammunition, a digital scale, and \$1,782 in currency. The defense presented testimony from a chemist employed by the D.C. Department of Forensic Sciences and Metro Transit Police Officer Justin Guida. On November 21, 2019, the jury convicted Mr. Lea of unlawful possession of a firearm and ammunition by a person convicted of crime punishable by imprisonment for a term exceeding one year, in violation of 18 U.S.C. § 922(g)(1).

Mr. Lea now moves for a judgment of acquittal under Federal Rule of Criminal Procedure 29 and a new trial under Federal Rule of Civil Procedure 33 based on insufficiency of the evidence. The Court should grant a Rule 33 motion on the ground that the verdict is against

the weight of the evidence “only in the extraordinary circumstances where the evidence preponderates heavily against the verdict.” United States v. Rogers, 918 F.2d 207, 213 (D.C. Cir. 1990) (quoting United States v. Ashworth, 836 F.2d 260, 266 (6th Cir. 1988)). “[The relevant question” with respect to a Rule 29 motion “is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Jackson v. Virginia, 443 U.S. 307, 319 (1979). Mr. Lea has not satisfied either of these high bars.

His sole argument is that the only trial evidence that tended to show his possession of the firearm at issue—the testimony of Officers Wood and Wooley—was “inherently incredible” because the officers testified that they observed Lea smoking a hand-rolled cigarette, but that cigarette was not among the items seized from him.¹ Def. Mot. 4-5. Not so. As the government points out, the officers’ testimony about the cigarette bears only on the irrelevant issue of whether they credibly believed that Lea was smoking marijuana when they initially approached him.² The absence of physical evidence of the cigarette hardly makes the officers’ testimony that they saw and recovered a firearm from Lea’s front jacket pocket “inherently incredible.” That consistent firsthand testimony from both officers—in conjunction with the physical evidence of the gun, ammunition, digital scale, and currency recovered from Mr. Lea—was sufficient to convince any rational juror that he possessed a firearm on March 5, 2019.

Accordingly, the Court sees no basis for ordering a new trial or entering a judgment of acquittal.

¹ At trial, the parties stipulated that the firearm had traveled through interstate commerce and that Mr. Lea had been and knew that he had been convicted of a crime punishable by imprisonment for a term exceeding one year.

² The Court addressed Mr. Lea’s Fourth Amendment challenges at a suppression hearing on August 12, 2019.

For the foregoing reasons, the Court will deny [56] Defendant's Motion for Judgment of Acquittal and New Trial. A separate Order shall accompany this memorandum opinion.



CHRISTOPHER R. COOPER
United States District Judge

Date: January 15, 2019

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-3017

September Term, 2020

1:19-cr-00089-CRC-1

Filed On: January 13, 2021

United States of America,

Appellee

v.

Asa Lea, also known as Asa Lorenzo-lamiyah
Lea,

Appellant

BEFORE: Rogers, Pillard, and Walker, Circuit Judges

ORDER

Upon consideration of appellant's petition for panel rehearing filed on December 28, 2020, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-3017

September Term, 2020

1:19-cr-00089-CRC-1

Filed On: January 13, 2021

United States of America,

Appellee

v.

Asa Lea, also known as Asa Lorenzo-lamiyah
Lea,

Appellant

BEFORE: Srinivasan, Chief Judge; Henderson, Rogers, Tatel, Garland*,
Millett, Pillard, Wilkins, Katsas, Rao, and Walker, Circuit Judges

O R D E R

Upon consideration of appellant's petition for rehearing en banc, and the
absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

*Circuit Judge Garland did not participate in this matter.

FILED

FEB 24 2020

UNITED STATES DISTRICT COURT

District of Columbia

Clerk, U.S. District and
Bankruptcy Courts

UNITED STATES OF AMERICA) JUDGMENT IN A CRIMINAL CASE
 v.)
 ASA LEA) Case Number: 19-CR-89 (CRC)
) USM Number: 59540-007
) William Lawrence Welch, III
) 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) 1s of the Superseding Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

| <u>Title & Section</u> | <u>Nature of Offense</u> | <u>Offense Ended</u> | <u>Count</u> |
|----------------------------|---|----------------------|--------------|
| 18 USC 922(g)(1) | Unlawful Possession of a Firearm by a Person Convicted of a Crime Punishable by Imprisonment for a Term Exceeding One Year | 3/5/2019 | 1 |

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.

2/21/2020
Date of Imposition of Judgment

Signature of Judge

Honorable Christopher R. Cooper, U.S.D.C. Judge
Name and Title of Judge

2/24/20
Date

DEFENDANT: ASA LEA

CASE NUMBER: 19-CR-89 (CRC)

IMPRISONMENT

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

33 months (2 years and 9 months) with credit for time served.

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

Defendant to placed in a facility within the Washington, D.C. area for family purposes.

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 2 p.m. 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 _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ASA LEA

CASE NUMBER: 19-CR-89 (CRC)

SUPERVISED RELEASE

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

24 months (2 years)

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 the location where 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: ASA LEA

CASE NUMBER: 19-CR-89 (CRC)

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: ASA LEA

CASE NUMBER: 19-CR-89 (CRC)

ADDITIONAL SUPERVISED RELEASE TERMS

You shall comply with the following special conditions:

1. Substance Abuse Testing- You must submit to substance abuse testing to determine if you have used a prohibited substance. You must not attempt to obstruct or tamper with testing methods.
2. Substance Abuse Treatment- You must participate in an inpatient and/or outpatient substance abuse treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).
3. Cognitive Behavioral Treatment - You must participate in a cognitive behavioral treatment program and follow the rules and regulations of that program (provider, location, modality, duration, intensity, etc.). The probation officer will supervise your participation in the program. Such programs may include group sessions led by a counselor or participation in a program administered by the probation office.

The Probation Office shall release the presentence investigation report to all appropriate agencies, which includes the United States Probation Office in the approved district of residence, in order to execute the sentence of the Court. Treatment agencies shall return the presentence report to the Probation Office upon the defendant's completion or termination from treatment.

Pursuant to 18 USC § 3742, you have the right to appeal the verdict and sentence. If you choose to appeal, you must file any appeal within 14 days after the Court enters judgment. If you are unable to afford the cost of an appeal, you may request permission from the Court to file an appeal without cost to you.

As defined in 28 USC § 2255, you also have the right to challenge the conviction entered or sentence imposed if new and currently unavailable information becomes available to you or, on a claim that you received ineffective assistance of counsel in entering a plea of guilty to the offense(s) of conviction or in connection with sentencing.

If you are unable to afford the cost of an appeal, you may request permission from the Court to file an appeal without cost to you.

DEFENDANT: ASA LEA
CASE NUMBER: 19-CR-89 (CBC)

Judgment — Page 6 of 7

DEFENDANT: ASA LEA

CASE NUMBER: 19-CR-89 (CRC)

CRIMINAL MONETARY PENALTIES

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

TOTALS \$ Assessment \$ JVTA Assessment* \$ Fine \$ Restitution

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.

Name of Payee **Total Loss**** **Restitution Ordered** **Priority or Percentage**

- 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 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: ASA LEA

CASE NUMBER: 19-CR-89 (CRC)

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 with 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:

The financial obligations are immediately payable to the Clerk of the Court for the U.S. District Court, 333 Constitution Ave NW, Washington, DC 20001. Within 30 days of any change of address, you shall notify the Clerk of the Court of the change until such time as the financial obligation is paid in full.

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:

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) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.