

United States Court of Appeals
For the Eighth Circuit

No. 21-2297

United States of America

Plaintiff - Appellee

v.

Wade Lawrence Duchaine

Defendant - Appellant

Appeal from United States District Court
for the District of North Dakota - Western

Submitted: March 7, 2022
Filed: March 10, 2022
[Unpublished]

Before KELLY, STRAS, and KOBES, Circuit Judges.

PER CURIAM.

Wade Duchaine appeals the judgment entered by district court¹ after he was found guilty by a jury of committing a firearm offense. He argues that 18 U.S.C.

¹The Honorable Daniel L. Hovland, United States District Judge for the District of North Dakota.

§ 922(g)(1) is unconstitutional as applied to him because his possession of the firearm was not in or affecting commerce, and thus section 922(g)(1) exceeds the power granted to Congress by the Commerce Clause, and violates the Tenth Amendment of the United States Constitution.

Duchaine's argument is squarely foreclosed by this court's precedent. See United States v. Anderson, 771 F.3d 1064, 1066 (8th Cir. 2014) ("[I]t is a cardinal rule in our circuit that one panel is bound by the decision of a prior panel." (quoting United States v. Betcher, 534 F.3d 820, 823–24 (8th Cir. 2008))); United States v. Joos, 638 F.3d 581, 586 (8th Cir. 2011) (it is well settled that Congress did not exceed its authority under Commerce Clause when enacting § 922(g); defendant's arguments to the contrary are foreclosed by this court's prior decisions); United States v. Bates, 77 F.3d 1101, 1104 (8th Cir. 1996) (rejecting Commerce Clause challenge to § 922(g), explaining that to satisfy interstate commerce element of § 922(g), it is sufficient that there exists minimal nexus that firearms have been--at some time--in interstate commerce).

Accordingly, we affirm.

1 THE DEFENDANT: I want you to make note, because part
2 of my appeal needs to be addressed. Everything that I feel
3 that has been denied of me I've wrote down, and I've wrote it
4 down because in what I've read, everything addressed at trial
5 or sometime before trial, I don't have a right to appeal it,
6 but I -- I don't know the law, so I can't tell you exactly how
7 to take it.

8 My assistance of counsel didn't help me, so I have no
9 time with the man, but you want me to come to court, basically
10 to represent myself, because I will object in trial whenever he
11 doesn't. I will ask that the evidence that he's going to allow
12 not be allowed because evidence found in somebody else's
13 vehicle without my probation officer or me being present should
14 not be allowed to be admitted.

15 The case, itself, was found by a officer whose
16 misconduct is noted. We have case -- a case that we found that
17 he's been found acting in misconduct. That's your main --
18 that's your main witness on this case.

19 The second witness would be my probation officer, who
20 was talked to after I invoked my right to an attorney. He
21 vocally gave permission to search a car, which is illegal. He
22 would have to be there physically to search somebody's property
23 other than mine. I would have to be there, present for that
24 same law to come into play.

25 Considering all that, I've also been told that it's

1 down, will choose to be a part of the criminal trial, but
2 defendants that disrupt trials are not allowed to be in
3 courtrooms, and that's crystal clear under law all the way up
4 to the United States Supreme Court that I'm familiar with.

09:04 5 Now, I understand that you've got a lot of paperwork
6 that raises objections. I told you you can file all of that.
7 I will state on the record here today that -- so that you don't
8 have to voice objections throughout the trial, that you have a
9 standing objection to all of the evidence that the government
09:05 10 introduces in this case. You have a standing objection to the
11 testimony that the government elicits from their witnesses.
12 You have a standing objection to any evidence that your
13 attorney chooses not to introduce as a part of your case so
14 that the record for you is protected.

09:05 15 You've got a standing objection. That means you
16 don't have to get up and object every time you feel that you
17 need to do so. Do you understand what I'm saying? I do the
18 same thing for attorneys who tell me that they want -- they're
19 going to object to a long list of exhibits that the government
09:05 20 is introducing. I'll simply tell them, "Counsel, you've got a
21 standing objection to Exhibits 1 through 1,000."

22 THE DEFENDANT: But if it ain't made in front of the
23 jury --

24 THE COURT: No, that's not correct.

09:05 25 THE DEFENDANT: If it ain't made in front of the

1 confirm that he does not know who the firearm or ammunition
2 belonged to and has never seen them before.

3 Now, some things have changed since this morning. We
4 had informed you this morning that Probation Officer Paul Clark
01:38 5 would be testifying. He may still testify. It's not certain
6 at this point, but we'd also informed you that Agent Jeremy
7 Schmidt would be testifying, and it does not appear he'll be
8 testifying.

9 There have been a couple of stipulations that have
01:38 10 been entered into by the parties. I will just read those to
11 you briefly so that you understand the update from where we
12 were at this morning.

13 The first one, the United States of America and the
14 defendant stipulate and agree as follows: Defendant, Wade
01:39 15 Lawrence Duchaine, prior to April 7, 2020, had been convicted
16 and knew that he had been convicted of a crime punishable by
17 imprisonment for a term exceeding one year, which prohibited
18 him from legally possessing a firearm and ammunition during the
19 time alleged in the Indictment.

20 The second Indictment (sic) is to interstate
21 commerce. The United States of America and the defendant
22 stipulate and agree as follows: At some time prior to the
23 timeframe alleged in the Indictment in this case, the firearms
24 and ammunition identified in the sole count of the Indictment
25 were transported across a state line in the United States and

1 were transported in interstate commerce, and no further
2 evidence needs to be presented to establish the interstate
3 commerce element of the charge alleged in the sole count of the
4 Indictment.

01:39 5 Now, seeing those stipulations, we no longer have to
6 worry about whether or not he's a felon or whether or not he
7 knew he was a felon or whether this gun traveled in interstate
8 commerce. That narrows it down significantly.

9 Now we're here about possession. I'd like to
01:40 10 highlight "possession" for you. The Judge will give you
11 instruction on the different kinds of possession. As you'd
12 heard, the testimony is expected that he did not have the
13 firearm on his person. It was in the rear passenger floorboard
14 behind the passenger's seat. Therefore, constructive
01:40 15 possession becomes important here. Constructive possession is
16 about control and access, and that's what this case is about.

17 It's important for you to remember that what I've
18 just said is not evidence, just as when Mr. Morrow speaks to
19 you, it is not evidence. Evidence is what the witnesses on the
01:40 20 stand testify to and the exhibits that are entered into
21 evidence.

22 I ask you to listen closely to the testimony. At the
23 end of this case, I will come back up here and go over the
24 evidence with you, and I will ask you to find the defendant
01:41 25 guilty of the offense of possession of a firearm and ammunition

1 it up, I been saying it since the beginning. If I indicate I
2 want an attorney, no questions should be asked until I can
3 consult an attorney. At that point in time, whenever they
4 continued to question, when they continued to try to trick me
09:52 5 into answering certain questions, that right there is a fruit
6 of a poisonous tree. Everything found after that fact becomes
7 not usable in court. You're allowing it.

8 THE COURT: But do you -- do you understand that you
9 have a right to testify, to tell your story to the jury? Do
09:53 10 you understand that?

11 THE DEFENDANT: Yeah, I understand that, but I also
12 understand that that prosecutor will try to make me seem just
13 like you did whenever you start stating that I stipulated, I
14 stipulated, I stipulated. I remember three times yesterday you
09:53 15 saying that you've never, ever, ever seen in this court that --
16 where people had a problem signing stipulations, so I sat down
17 there and I thought about it.

18 THE COURT: No, I --

19 THE DEFENDANT: And you coerced me, and so did
09:53 20 this -- this prosecutor -- the defendant -- the defense
21 attorney. You guys both coerced me to sign them stipulations
22 because I said no multiple times on -- in transcripts in this
23 -- the courtroom downstairs and in this courtroom that I did
24 not want to sign it, but I was asked numerous times to sign
25 them same stipulations that you guys coerced me into signing.

1 THE COURT: Well, will you let me speak now for a
2 minute? You can go back and look at the record at any time,
3 and I know with 110 percent certainty that I did not say that I
4 have never, ever seen any defendant refuse to stipulate to
09:54 5 their prior felony history and the interstate commerce and
6 nexus of firearms crossing state lines. I know that I never
7 said that. What I --

8 THE DEFENDANT: You never said "never," but you said
9 you "very seldom."

09:54 10 THE COURT: What I --

11 THE DEFENDANT: Very seldom because you coerced me.
12 You coerced me no matter which way because you know I'm not a
13 legal attorney. You know that I'm a defendant fighting for my
14 life, so you used that and you acted injusticely. You are not
09:54 15 a -- you're not fair. You're not partial to my case. You are
16 trying to find the same guilty verdict as this prosecutor and
17 as my attorney.

18 THE COURT: What I said about the stipulations, sir,
19 is that most defendants in gun cases choose to stipulate to
09:55 20 those elements that really are not in dispute; namely, prior
21 felony status and the interstate transport of a firearm or
22 ammunition across state lines.

23 The reason that most defendants do that is because it
24 avoids having their prior criminal convictions marked as
09:55 25 exhibits, received in evidence and going back to the jury so

1 the jury can look at all the paperwork concerning your prior
2 convictions.

3 I've had a number of defendants in gun cases that
4 have refused to stipulate to anything, and I told you yesterday
09:55 5 that you have the absolute right to do that. You don't have to
6 stipulate to --

7 THE DEFENDANT: And then whenever I said, "No, I will
8 not sign it," you asked me again and you continued to coerce me
9 by saying it's unheard of, and you continued to state that, "I
09:56 10 don't feel that it's on your better judgment to do so."

11 THE COURT: Oh, I agree --

12 THE DEFENDANT: And you stated all these things that
13 are on your transcript where that's coercing somebody who
14 doesn't know the law into doing something because I'm afraid of
09:56 15 something now. You're basically threatening me. You're
16 basically making me feel like I'm cornered and it's for my best
17 judgment to do so.

18 You are -- you are an officer of the law. You're a
19 judge. You shouldn't be continuing on. Once I said no, you
20 should have left it alone because that's my right, and you
21 should have left it alone. But, no, you, your prosecutor and
22 you, defense attorney, continued to ask me because of the fact
23 that you could use it against me. Oh, now we can --
24 Stipulation 1, Stipulation 2, and throw it all off because the
09:57 25 defendant turns around and admits it.

09:57

1 You know what, I didn't want to admit it. How many
2 times did I say no to you in front of this courtroom? Twice.
3 How many times did I say it in front of this attorney over
4 here? At least four times, twice on Tuesday -- last Tuesday
5 and at least three times yesterday, so that's five times.

09:57

6 I don't know the law, but I know that this man does,
7 and I know you do, and I know that what you guys did is to
8 basically -- the same thing that whenever my Miranda rights was
9 ignored, you guys ignored my request to not use the
10 stipulations. You guys ignored the fact that I've already said
11 it. You guys coerced me and made me believe that it was in my
12 best interest to sign them things, which I now find out it's
13 not in my best interest because you guys are using it against
14 me as this admission of guilt.

09:58

15 It's not an admission of guilt. It's me telling you
16 guys that I knew that I was a felon. It doesn't mean that I
17 knew there was a firearm or a firearm or a firearm. None of
18 that comes into play. Whenever you go bring that into play, I
19 would've never signed it. He never said, "Oh, they're going to
20 say because of that admission, now the firearm comes into
21 play." That's what you guys are using.

09:58

22 I don't care how many times this is going to be
23 brought up, I'll bring it back up. You guys are acting
24 unconstitutional in this case.

09:58

25 THE COURT: Will you let me speak for a while without

1 you what are called the final instructions. Just like the
2 preliminary instructions, I'm required to read those to you,
3 but you are welcome to follow along, and I've provided each of
4 you with a copy of the instructions.

02:32 5 After I read the final instructions to you, then the
6 attorneys, Mr. Duchaine have a right to present the closing
7 arguments to you. And after they conclude those, then you'll
8 go back and begin deliberating. So, again, you're welcome to
9 follow along.

02:32 10 (The Judge reads the Final Instructions in open
11 court, pages 1 through 15.)

12 THE COURT: These last two pages entitled "General
13 Closing Instructions" are ones that I'll read to you after the
14 parties have presented their closing arguments to you. Mr.

02:40 15 Ensrud.

16 MR. ENSRUD: Your Honor, Mr. Morrow, Mr. Duchaine,
17 ladies and gentlemen of the jury, I want to thank you for your
18 time and service.

19 As mentioned in my opening and in the Judge's
02:40 20 instructions, the parties have agreed to stipulate to three of
21 the four essential elements. Originally the United States was
22 required to show the defendant was a felon, he knew he was a
23 felon, and that the firearm and ammunition met the definition
24 of firearm. Now that the defendant has stipulated to those
25 three, the only element left is that the defendant possessed

1 the firearm and ammunition.

2 You have now watched an additional 23 minutes of
3 video from Officer Mehlhoff's body camera. Obviously there was
4 a lot more going on here, and much of it had nothing to do with
02:41 5 the case before you at this time. Your job as jurors and my
6 job as the prosecutor is to focus on what matters, and that is
7 the possession of the firearm.

8 Let's go back and examine the testimony and the
9 exhibits and see what the evidence shows as to possession of
02:41 10 this firearm and ammunition. As I've told you since the
11 beginning, this is a case that revolves around possession, and
12 obviously that is not actual possession. The gun was not found
13 on Mr. Duchaine's person. This is a case of constructive
14 possession, the power and ability to exercise control.

15 A lot of testimony in this case revolved around
16 ownership of the Cadillac, and that only makes sense as the
17 firearm was found in the Cadillac. You saw the video. You
18 heard the testimony from Officer Mehlhoff. From the very start
19 we need to look at consistency.

20 The reason Officer Mehlhoff first had to approach the
21 vehicle, the license plates were not consistent with this
22 vehicle. As Mr. Seykora testified, he removed the license
23 plates from the vehicle before he sold it. Wherever these
24 license plates came from, they did not match that vehicle.

25 As Judge Hovland just instructed you, consistency in

1 THE COURT: All right. Any -- Mr. Morrow, is there
2 anything that you wanted to add to the record before we close
3 for the day?

4 MR. MORROW: No. Thank you, Your Honor.

03:30 5 THE COURT: All right. Thank you all for moving this
6 case along in a streamlined fashion. Mr. Duchaine, thank you
7 for the manner in which you've conducted yourself as a part of
8 the presentation of your case. And you were, indeed, civil and
9 respectful, so I appreciate that.

03:30 10 And we'll stand adjourned while the jury deliberates.
11 (A recess was taken from 3:30 p.m. to 3:40 p.m., the
12 same day.)

13 13 (In open court, all parties and counsel are present,
14 out of the presence of the jury.)

03:40 15 THE COURT: We're back on the record with just
16 counsel and Mr. Duchaine present. I was just informed that Mr.
17 Duchaine had some objections to a few of the exhibits going to
18 the jury; specifically, Government's Exhibits 41 and 42, which
19 are the stipulations concerning his prior felony convictions
20 and the interstate transport of any firearms or ammunition
21 across state lines.

03:41 22 Mr. Duchaine, what do you want to say about those? I
23 mean, generally any exhibit that's been offered and received in
24 evidence goes back to the jury at the conclusion of the trial.
25 That's been the norm throughout the country for the last

1 hundred-plus years, but tell me what your objection is.

2 THE DEFENDANT: I feel that with me stating it
3 already, and you said that it would be noted about I really
4 feel like I was coerced. I did not at any point in time in
03:42 5 this process feel comfortable signing them stipulations. I
6 still don't, and I definitely don't more today, right now, than
7 I did when I signed them.

8 I felt coerced. I felt like -- kind of like I was
9 back-against-the-wall situation. I felt that them signatures
03:42 10 do -- had I -- do I know -- had I known how they would be
11 worded and make it look like -- I would've rather seen them
12 present my criminal history than to present how that makes it
13 sound. It makes it -- yeah, like it's -- it's not something I
14 would've agreed to had I known the actual way that would've
15 been presented, and I never in my -- on a Holy Bible would I
16 ever want that to be presented the way it was, so I would've
17 never signed it.

18 THE COURT: Were there any other exhibits that were
19 going back to the jury that you had an objection to?

03:43 20 THE DEFENDANT: Just them two stipulation ones.

21 THE COURT: All right. Mr. Ensrud, you're free to
22 comment on that objection.

23 MR. ENSRUD: They were properly admitted. I think
24 it'd be proper to note, though, the defense objection going --
03:43 25 them going back. But as you mentioned, they go because of how

1 the hearing went, so I think noting his objection on the record
2 takes care of things.

3 THE COURT: All right. So, Mr. Duchaine, your
4 objections are noted on the record to Government's Exhibit 41
03:43 5 and 42, which are the stipulations. Those exhibits were
6 properly offered and received in evidence at the very start of
7 this trial.

8 Now, if you feel that you were coerced and compelled
9 to sign them against your will, that's something that you
03:44 10 can -- that's preserved on the record, and you can argue it if
11 there is a conviction and if there is an appeal. But I'm going
12 to send the stipulations back to the jury, along with all of
13 the other exhibits that have been received in evidence to date.
14 That's what every judge in this country does and that's what --

03:44 15 THE DEFENDANT: Your Honor?

16 THE COURT: -- I will do in this case. Yes?

17 THE DEFENDANT: That's fine.

18 THE COURT: All right.

19 THE DEFENDANT: That's fine. I -- I just want -- I
03:44 20 just want it noted. I'm not trying to draw out your time. Do
21 what you do. I needed you to make it clear that you were
22 sending it against my wishes.

23 THE COURT: That what?

24 THE DEFENDANT: That they were being sent against my
03:44 25 wishes, against the -- everything I stated.

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

No: 21-2297

United States of America

Appellee

v.

Wade Lawrence Duchaine

Appellant

Appeal from U.S. District Court for the District of North Dakota - Western
(1:20-cr-00105-DLH-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Judge Erickson did not participate in the consideration or decision of this matter.

April 13, 2022

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

UNITED STATES OF AMERICA,

Plaintiff,

v.

WADE LAWRENCE DUCHAINE,

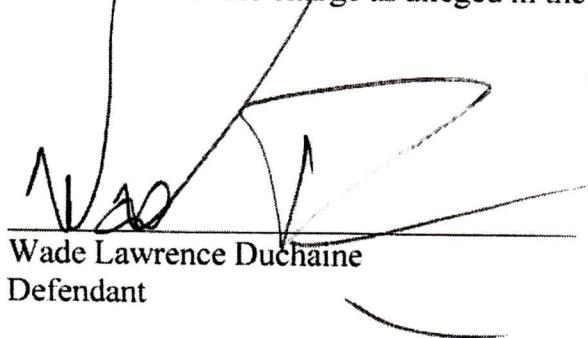
Defendant.

Case No. 1:20-cr-105

STIPULATION
(Interstate Commerce)

The United States of America and the Defendant stipulate and agree as follows: at some time prior to the timeframe alleged in the Indictment in this case, the firearms and ammunition identified in the sole count of the Indictment were transported across a state line in the United States, and were transported in interstate commerce and no further evidence need be presented to establish the interstate commerce element of the charge as alleged in the sole count of the Indictment.

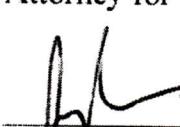
Dated 3-1-2021


Wade Lawrence Duchaine
Defendant

Dated 3/1/21


Tyler J. Morrow
Attorney for Defendant

Dated 3-1-2021


Jeremy A. Ensrud
Attorney for the United States

