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APPENDIX A

 KeyCite Red Flag - Severe Negative Treatment
Certiorari Granted, Judgment Vacated by [Greer v. United States](#), U.S.,
October 7, 2019

753 Fed.Appx. 886 (Mem)

This case was not selected for publication in West's Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S. Ct. of App. 11th Cir. Rule 36-2. United States Court of Appeals, Eleventh Circuit.

UNITED STATES of
America, Plaintiff-Appellee,
v.
Gregory GREER, a.k.a. Gregory
Green, Defendant-Appellant.

No. 18-12963
|
Non-Argument Calendar
|
(February 20, 2019)

Attorneys and Law Firms

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[Meghan Ann Collins](#), [Rosemary Cakmis](#), [Donna Lee Elm](#), Federal Public Defender's Office, Orlando, FL, [Maurice C. Grant, II](#), Federal Public Defender's Office, Jacksonville, FL, for Defendant-Appellant


Appeal from the United States District Court for the Middle District of Florida, D.C. Docket No. 3:17-cr-00173-BJD-JRK-1


Before [TJOFLAT](#), [WILLIAM PRYOR](#) and [JORDAN](#), Circuit Judges.

Opinion

PER CURIAM:

Gregory Greer appeals his conviction and sentence of 120 months of imprisonment for being a felon in possession of a firearm.  [18 U.S.C. § 922\(g\)](#). Greer argues, for the first time on appeal, that  [section 922\(g\)](#) is unconstitutional because the government is not required to prove that the firearm he possessed had a substantial effect on interstate commerce. We affirm.

We ordinarily review the constitutionality of a statute *de novo*, but because Greer challenges  [section 922\(g\)](#) for the first time on appeal, we review for plain error. [United States v. Wright](#), 607 F.3d 708, 715 (11th Cir. 2010). To establish plain error, Greer must prove that error occurred that was plain and that affected his substantial rights. *Id.*

No error, much less plain error, occurred in convicting and sentencing Greer because, as he concedes, his argument is foreclosed by precedent. We have held that “the jurisdictional element of the statute, i.e., the requirement that the felon ‘possess in or affecting commerce, any firearm or ammunition,’ immunizes  [§ 922\(g\)\(1\)](#) from [a] facial constitutional attack,” [United States v. Scott](#), 263 F.3d 1270, 1273

(11th Cir. 2001), and that [§ section 922\(g\)\(1\)](#) is constitutional as applied to a defendant who possesses a firearm that “traveled in interstate commerce,” [United States v. McAllister](#), 77 F.3d 387, 390 (11th Cir. 1996). See *Wright*, 607 F.3d at 715–16. The government proved that Greer’s firearm traveled in interstate commerce by introducing evidence that the weapon was manufactured in Connecticut, shipped to New

York, and possessed by Greer in Florida. We reject Greer’s challenge to the constitutionality of [§ section 922\(g\)](#).

We **AFFIRM** Greer’s conviction and sentence.

All Citations

753 Fed.Appx. 886 (Mem)

APPENDIX B

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

UNITED STATES OF AMERICA

v

**GREGORY GREER
a/k/a "Gregory Green"**

Case Number: 3:17-cr-173-J-39JRK

USM Number: 01458-748

**Maurice C. Grant, II, FPD
Suite 1240
200 W Forsyth St
Jacksonville, FL 32202**

JUDGMENT IN A CRIMINAL CASE

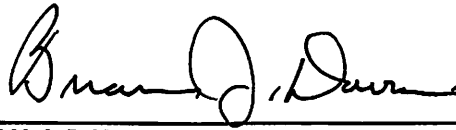
The defendant was found guilty on Count One of the Indictment. The defendant is adjudicated guilty of this offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 U.S.C. §§ 922(g)(1) and 924(a)(2)	Possession of a Firearm by Convicted Felon	August 2017	One

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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.

Date of Imposition of Sentence: July 2, 2018



**BRIAN J. DAVIS
UNITED STATES DISTRICT JUDGE**

July 2nd, 2018

Gregory Greer
3:17-cr-173-J-39JRK

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of **ONE-HUNDRED AND TWENTY (120) MONTHS**.

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

- The Court recommends confinement at FCI Jesup.
- The Court recommends that defendant receive mental health treatment.
- The Court recommends that defendant enroll in a residential substance abuse treatment program.
- The Court recommends that defendant enroll in any vocational programs as are available.

The defendant is remanded to the custody of the United States Marshal.

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

Gregory Greer
3:17-cr-173-J-39JRK

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of **THREE (3) 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 Court orders the defendant to submit to random drug testing not to exceed two tests per week.
4. You must cooperate in the collection of DNA as directed by the probation officer.

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.

Gregory Greer
3:17-cr-173-J-39JRK

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 nunchucks 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: _____

Gregory Greer
3:17-cr-173-J-39JRK

ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

1. You shall participate in a substance abuse program (outpatient and/or inpatient) and follow the probation officer's instructions regarding the implementation of this court directive. Further, you shall contribute to the costs of these services not to exceed an amount determined reasonable by the Probation Office's Sliding Scale for Substance Abuse Treatment Services. During and upon the completion of this program, you are directed to submit to random drug testing.
2. You shall participate in a mental health treatment program (outpatient and/or inpatient) and follow the probation officer's instructions regarding the implementation of this court directive. Further, you shall contribute to the costs of these services not to exceed an amount determined reasonable by the Probation Office's Sliding Scale for Mental Health Treatment Services.
3. You shall submit to a search of your person, residence, place of business, any storage units under your control, or vehicle, conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. You shall inform any other residents that the premises may be subject to a search pursuant to this condition. Failure to submit to a search may be grounds for revocation.

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments set forth in the Schedule of Payments.

	<u>Assessment</u>	<u>JVTA Assessment¹</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$0.00	\$0.00	\$0.00

SCHEDULE OF PAYMENTS

The Special Assessment in the amount of **\$100.00** is due in full and immediately.

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:
 Based on the financial status of the defendant, the Court waives imposition of a fine.

Unless the court has expressly ordered otherwise, if this judgment imposes a period of 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, unless otherwise directed by the court.

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

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.

¹ Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

APPENDIX C

798 Fed.Appx. 483

This case was not selected for publication in West's Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S. Ct. of App. 11th Cir. Rule 36-2.

United States Court of Appeals, Eleventh Circuit.

UNITED STATES of America, Plaintiff-Appellee,

v.

Gregory GREER, a.k.a. Gregory Green, Defendant-Appellant.

No. 18-12963

|

Non-Argument Calendar

|

(January 8, 2020)

Synopsis

Background: Following affirmance of his conviction for possessing a firearm as a felon on direct appeal, [753 Fed.Appx. 886](#), petitioner filed petition for writ of certiorari. The United States Supreme Court granted petition, vacated judgment, and remanded.

[Holding:] On remand, the Court of Appeals held that defendant failed to show that district court's plain error in failing to instruct jury and plain error in indictment affected his substantial rights.

Affirmed.

Procedural Posture(s): Appellate Review.

West Headnotes (1)

[1] **Criminal Law** 🔑 Requisites and sufficiency of accusation

Criminal Law 🔑 Elements of offense and defenses

Defendant failed to show that district court's plain error in failing to instruct jury to find that he knew he was felon and plain error in indictment, which failed to allege that he knew he was felon and when government was not required to prove that he knew of his prohibited status, affected his substantial rights, as required for vacatur of conviction for possessing firearm as felon; mens rea elements such a knowledge and intent could be proved by circumstantial evidence, jury could have inferred from defendant's fidgeting, flight from police, and disposal of pistol that he knew he was felon barred from possessing firearms, and, before defendant possessed pistol, he accrued five felony convictions. [18 U.S.C.A. § 922\(g\)\(1\)](#).

Attorneys and Law Firms

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Appeal from the United States District Court for the Middle District of Florida, D.C. Docket No. 3:17-cr-00173-BJD-JRK-1

ON REMAND FROM THE UNITED STATES SUPREME COURT

Before WILLIAM PRYOR, JORDAN, and TJOFLAT, Circuit Judges.

Opinion

PER CURIAM:

This appeal returns to us on remand from the Supreme Court to reconsider Gregory Greer's conviction for possessing a firearm as a felon. 18 U.S.C. § 922(g)(1). After we affirmed Greer's conviction, *United States v. Greer*, 753 F. App'x 886 (11th Cir. 2019), the Supreme Court decided *Rehaif v. United States*, — U.S. —, 139 S. Ct. 2191, 204 L.Ed.2d 594 (2019), granted Greer's petition for a writ of certiorari, vacated our judgment, and remanded for reconsideration in the light of *Rehaif*. At our direction, the parties filed supplemental letter briefs addressing the effect of *Rehaif*

on Greer's conviction. Greer requests that we vacate his conviction or, in the alternative, grant him a new trial because *Rehaif* made plain that errors occurred when his indictment failed to allege, his jury was not instructed to find, and the government was not required to prove that he knew he was a felon when he possessed the firearm. The government argues that we "may consult the whole record when considering the effect of any error on substantial rights," *United States v. Vonn*, 535 U.S. 55, 59, 122 S.Ct. 1043, 152 L.Ed.2d 90 (2002), and the record establishes that Greer knew he was a felon. Because Greer cannot establish the errors affected his substantial rights, see *Molina-Martinez v. United States*, — U.S. —, 136 S. Ct. 1338, 1343, 194 L.Ed.2d 444 (2016), we affirm his conviction.

I. BACKGROUND

Greer stipulated before trial that, when he allegedly possessed a firearm, he already had been "convicted in a court of a crime punishable by imprisonment for a term of more than one year, that is, a felony offense" and he had "not received a pardon, [had] not applied for clemency, and [had] not been authorized to own, possess, or use firearms." During trial, the district court admitted the stipulation into evidence and read it to the jury. The trial court also redacted from Greer's indictment the description of his five prior felonies before sending the indictment into the jury room.

The government introduced evidence that Greer concealed his firearm. While Greer talked to officers of the Jacksonville Sheriff's

Office outside a hotel room, he *485 touched the right side of his waistband repeatedly. As soon as the officers stated they were going to pat him down for weapons, Greer sprinted down the hotel hallway, clutching his right side. Two officers who followed Greer into the stairwell heard the dull sound of a heavy object fall to the ground as they chased him down the steps. A third officer then observed a Colt .45 caliber pistol lying askew on the landing, grabbed the weapon, and rejoined the chase. When the officers captured Greer, he had an empty nylon holster clipped inside the right side of his waistband that fit the .45 caliber pistol recovered from the landing.

The district court instructed the jury that it could find Greer guilty “only if the ... [government] proved beyond a reasonable doubt” that he “knowingly possessed a firearm in or affecting interstate or foreign commerce” and, “before possessing the firearm, [he] had been convicted of a felony, a crime punishable by imprisonment for more than one year.” The district court also instructed the jury regarding actual and constructive possession. The jury found Greer guilty of being a felon in possession of a firearm. 18 U.S.C. §§ 922(g) (1), 924(a)(2).

Greer’s presentence investigation report described his five prior felony convictions and assigned him a base offense level of 24 based on two convictions in 2001 and 2004 for controlled substance offenses. See United States Sentencing Guidelines Manual § 2K2.1(a)(2) (Nov. 2016). Greer did not object to the statements that he had served three years in prison following the revocation of his supervised release for possessing with intent to

distribute cocaine and that he had served 20 months in prison for distributing Phencyclidine (PCP).

II. STANDARD OF REVIEW

We review for plain error Greer’s new arguments regarding the sufficiency of his indictment, of the evidence, and of the jury instructions. See United States v. Reed, 941 F.3d 1018, 1020 (11th Cir. 2019).

III. DISCUSSION

Greer must surmount the “daunting obstacle” of the plain error test to obtain a vacatur of his conviction based on Rehaif. See id. at 1021. He must prove that an error occurred that was plain. See id. He also must prove that the error affected his substantial rights by “show[ing] a reasonable probability that, but for the error,” the outcome of his proceeding would have been different. United States v. Dominguez Benitez, 542 U.S. 74, 76, 82, 124 S.Ct. 2333, 159 L.Ed.2d 157 (2004). “And because relief on plain-error review is in the discretion of the reviewing court, [Greer] has the further burden to persuade [us] that the error seriously affected the fairness, integrity or public reputation of judicial proceedings.” Vonn, 535 U.S. at 63, 122 S.Ct. 1043 (alteration adopted) (citation and internal quotation marks omitted).

We assess the probability that Greer’s trial would have ended differently based on the

entire record. See [Reed](#), 941 F.3d at 1021. “It is simply not possible for an appellate court to assess the seriousness of [a] claimed error by any other means” because “each case necessarily turns on its own facts.” [United States v. Young](#), 470 U.S. 1, 16, 105 S.Ct. 1038, 84 L.Ed.2d 1 (1985) (internal quotation marks omitted). The totality of circumstances warrant consideration because, “[i]n reviewing criminal cases, it is particularly important for appellate courts to relive the whole trial imaginatively and not to extract from episodes in isolation abstract questions of evidence and procedure.” [Id.](#) (quoting [Johnson v. United States](#), 318 U.S. 189, 202, 63 S.Ct. 549, 87 L.Ed. 704 (1943) (Frankfurter, J., concurring)). “So we consider proceedings *486 that both precede and postdate the errors about which [Greer] complains.” [Reed](#), 941 F.3d at 1021.

Greer has established errors made plain by [Rehaif](#). In [Rehaif](#), the Supreme Court held that, “in a prosecution under [18 U.S.C. § 922\(g\)](#) and [§ 924\(a\)\(2\)](#), the Government must prove both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm.” [139 S. Ct. at 2200](#). The government concedes that plain error occurred when the district court failed to instruct the jury to find that Greer knew he was a felon. And, as Greer argues, [Rehaif](#) made plain that error occurred when his indictment failed to allege that he knew he was a felon and when the government was not required to prove that Greer knew of his prohibited status. See [Reed](#), 941 F.3d at 1021.

Greer cannot prove the errors in his indictment and at his trial affected his substantial rights. See [Molina-Martinez](#), 136 S. Ct. at 1343; [Dominguez Benitez](#), 542 U.S. at 82, 124 S.Ct. 2333. “Mens rea elements such as knowledge or intent may be proven by circumstantial evidence,” [United States v. Clay](#), 832 F.3d 1259, 1309 (11th Cir. 2016), and the jury could have inferred from Greer’s fidgeting, his flight from the police, and his disposal of the pistol that he knew he was a felon barred from possessing firearms. See [United States v. Blakey](#), 960 F.2d 996, 1000 (11th Cir. 1992) (“Evidence of flight is admissible to demonstrate consciousness of guilt and thereby guilt.”); [United States v. Quintero](#), 848 F.2d 154, 156 (11th Cir. 1988) (inferring knowledge from watchful conduct and abandonment of drugs). And before Greer possessed the pistol, he accrued five felony convictions and, according to the undisputed facts in his presentence investigation report, served separate sentences of 36 months and of 20 months in prison. See [United States v. Corbett](#), 921 F.3d 1032, 1042 (11th Cir. 2019) (failing to “ ‘specifically and clearly object to’ ... any of the probation officer’s factual findings ... ‘is deemed ... [an] adm[ission] [of] them’ ”). Because the record establishes that Greer knew of his status as a felon, he cannot prove that he was prejudiced by the errors or that they affected the fairness, integrity, or public reputation of his trial.

IV. CONCLUSION

We **AFFIRM** Greer’s conviction.