

No. 19-8709

IN THE
Supreme Court of the United States

GREGORY GREER,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**On Writ of Certiorari
to the United States Court of Appeals for the
Eleventh Circuit**

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JUNE 8, 2020
CERTIORARI GRANTED JANUARY 8, 2021

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TABLE OF CONTENTS

	Page
United States District Court for the Middle District of Florida, No. 3:17-cr-173-J-39JRK, Relevant Docket Entries.....	1
United States Court of Appeals for the Eleventh Circuit, No. 18-12963, Relevant Docket Entries.....	11
Stipulation, <i>United States v. Greer</i> , No. 3:27-cr-173-J-39JRK (M.D. Fla. Feb. 22, 2018)	15
Jury Instructions, <i>United States v. Greer</i> , No. 3:27-cr-173-J-39JRK (M.D. Fla. Feb. 22, 2018)	17
Verdict, <i>United States v. Greer</i> , No. 3:27-cr-173-J-39JRK (M.D. Fla. Feb. 22, 2018)	19
Judgment, <i>United States v. Greer</i> , No. 3:27-cr-173-J-39JRK (M.D. Fla. July 3, 2018)	20
Excerpts of Trial Transcript, <i>United States v. Greer</i> , No. 3:27-cr-173-J-39JRK Vol. II, (M.D. Fla. Feb. 21, 2018).....	30
Excerpts of Trial Transcript, <i>United States v. Greer</i> , No. 3:27-cr-173-J-39JRK Vol. III, (M.D. Fla. Feb. 22, 2018)	50
Sentencing Transcript, <i>United States v. Greer</i> , No. 3:27-cr-173-J-39JRK (M.D. Fla. July 2, 2018)	89
Opinion, <i>United States v. Greer</i> , No. 18-12963 (11th Cir. Feb. 20, 2019)	113
Opinion on Remand, <i>United States v. Greer</i> , No. 18-12963 (11th Cir. Jan. 8, 2020)	116
Mem. Opinion, <i>Greer v. United States</i> , No. 18-9444 (S. Ct. Oct. 7, 2019)	123

Order Granting Certiorari, <i>Greer v. United States</i> , No. 19-8709 (S. Ct. Jan. 8, 2021)	124
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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
(JACKSONVILLE)

Criminal Docket for Case #: 3:17-cr-00173-BDJ-JRK-1

USA,

v.

GREER.

RELEVANT DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
08/23/2017	1	COMPLAINT as to Gregory Greer (ASL) [3:17-mj-01331-PDB] (Entered: 08/23/2017)
09/20/2017	3	INDICTMENT returned in open court as to Gregory Greer (1) count(s) 1. (JSG) Modified on 9/22/2017 to correct filed stamp date (LRB). (Entered: 09/21/2017)
09/20/2017	4	MOTION FOR ARREST Warrant by USA as to Gregory Greer. (JSG) Motions referred to Magistrate Judge James R. Klindt. Modified on 9/22/2017 to correct filed stamp date (LRB). (Entered 09/21/2017)
09/20/2017	5	ORDER granting 4 Motion for ARREST Warrant as to Gregory Greer (1). Signed by Magistrate

DATE	NO.	PROCEEDINGS
		Judge James R. Klindt on 9/20/2017. (JSG) Modified on 9/22/2017 to correct file stamp date (LRB). (Entered: 09/21/2017)
09/22/2017		Arrest of Gregory Greer on 9/22/2017 (MDC) (Entered: 09/22/2017)
09/22/2017	11	ASSERTION of Fifth and Sixth Amendment Rights by Gregory Greer (Filed in Open Court) (MDC) (Entered: 09/22/2017)
09/26/2017	16	JOINT ORAL MOTION to obtain a copy of the criminal history portion of the Pretrial Services Report as to Gregory Greer. (MDC) (Entered: 09/26/2017)
09/26/2017	18	ORDER OF DETENTION PENDING TRIAL as to Gregory Greer. Signed by Magistrate Judge James R. Klindt on 9/26/2017 (MDC) (Entered: 09/26/2017)
09/26/2017	19	ORDER (granting 16 Joint Oral Motion to obtain a copy of the criminal history portion of the Pretrial Services Report) as to Gregory Greer (1). Signed by Magistrate James R. Klindt on 9/26/2017. (MDC) (Entered: 09/27/2017)
02/13/2018	29	Proposed Jury Instructions by USA as to Gregory Greer (Taylor, Laura) (Entered: 02/13/2018)

DATE	NO.	PROCEEDINGS
02/13/2018	30	STATEMENT of the case for trial by USA. (Taylor, Laura) (Entered: 02/13/2018)
02/13/2018	31	PROPOSED verdict form filed by USA as to Gregory Greer (Taylor, Laura) (Entered: 02/13/2018)
02/20/2018	33	EXHIBIT LIST by USA as to Gregory Greer (Taylor, Laura) (Entered: 02/20/2018)
02/20/2018	34	WITNESS LIST by USA as to Gregory Greer (Taylor, Laura) (Entered: 02/20/2018)
02/22/2018	35	NOTICE OF FILING: The Court's Proposed Final Jury Instructions and Verdict Form. (AMP) Modified on 2/22/2018 (AMP). (Entered: 02/22/2018)
02/22/2018	36	NOTICE OF FILING: The Court's Final Jury Instructions. (AMP) (Entered: 02/22/2018)
02/22/2018	39	ORAL MOTION for Judgment of Acquittal by Gregory Greer. (CKS) (Entered: 02/23/2018)
02/22/2018	40	RENEWED ORAL MOTION for Judgment of Acquittal by Gregory Greer. (CKS) (Entered: 02/23/2018)
02/22/2018	41	Minute Entry for proceedings held before Judge Brian J. Davis: JURY TRIAL as to Gregory Greer held on 2/22/2018; denying 39 Oral Motion for Judgment of Acquittal and

DATE	NO.	PROCEEDINGS
		denying 40 Renewed Oral Motion for Judgment of Acquittal as to Gregory Greer (1). Defendant is remanded to the custody of the USM to await sentencing. Court Reporter: Shelli Kozachenko (CKS) (Additional attachment(s) added on 3/15/2018: # 1 Exhibit Court Exhibit 1) (CKS). Modified on 3/15/2018 (CKS) to edit entry. (Entered: 02/23/2018)
02/22/2018	42	GOVERNMENT'S EXHIBIT LIST (Filed in Open Court). (CKS) (Additional attachment(s) added on 3/8/2018: # 1 Exhibit 1, #2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20 Exhibit 20, # 21 Exhibit 21, # 22 Exhibit 22, # 23 Exhibit 23, # 24 Exhibit 24, # 25 Exhibit 25, # 26 Exhibit 26, # 27 Exhibit 27, # 28 Exhibit 28, # 29 Exhibit 29, # 30 Exhibit 30, # 31 Exhibit 31, # 32 Exhibit 32, # 33 Exhibit 33, # 34 Exhibit 34, # 35 Exhibit 35, # 36 Exhibit 36, # 37 Exhibit 37, # 39 Exhibit 38, # 40 Exhibit 39, # 41 Exhibit 40, # 42 Exhibit 41, # 43

DATE	NO.	PROCEEDINGS
		Exhibit 42, # 44 Exhibit 43) (CKS). (Entered: 02/27/2018)
02/22/2018	43	COURT'S INSTRUCTIONS TO THE JURY (Filed in Open Court). (CKS) (Entered: 02/27/2018)
02/22/2018	44	JURY VERDICT (Filed in Open Court). (CKS) (Entered: 02/27/2018)
03/19/2018	45	ADJUDICATION OF GUILT AND NOTICE OF SENTENCING re: Count(s) One of the Indictment as to Gregory Greer. Sentencing set for 5/24/2018 at 11:00AM in Jacksonville Courtroom 12 C before Judge Brian J. Davis. Signed by Judge Brian J. Davis on 3/16/2018. (CKS) (Entered: 03/19/2018)
07/02/2018	56	Minute Entry for proceedings held before Judge Brian J. Davis: SEN- TENCING held on 7/2/2018 for Gregory Greer (1), Count(s) 1, Imprisonment: 120 months; Super- vised Release: 36 months; Special Assessment: \$100.00. Court recom- mend to the BOP that defendant enroll in a residential substance abuse treatment program and that defendant receive mental health treatment. Court recommends to the BOP that defendant enroll in any vocational programs as are available. Defendant is remanded to the custody of the U S Marshal.

DATE	NO.	PROCEEDINGS
		Court Reporter: Shelli Kozachenko (CKS) (Entered: 07/03/2018)
07/03/2018	57	JUDGMENT as to Gregory Greer (1), Count(s) 1, Imprisonment: 120 months; Supervised Release: 36 months; Special Assessment: \$100.00 Signed by Judge Brian J. Davis on 07/02/2018. (CKS) (Entered: 07/03/2018)
07/16/2018	59	NOTICE OF APPEAL by Gregory Greer re 57 Judgment Filing fee not paid. (Grant, Maurice) (Entered: 07/16/2018)
08/23/2018	73	TRANSCRIPT of Digitally Recorded Initial Appearance for dates of 9/22/17 held before Judge James R Klindt, re: 59 Notice of Appeal as to Gregory Greer. Court Reporter/Transcriber Shelli Kozachenko, Telephone number 904.301.6842. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or purchased through the Court Reporter. Redaction Request due 9/13/2018, Redacted Transcript Deadline set for 9/24/2018, Release of Transcript Restriction set for 11/21/2018. (SMK) (Entered: 08/23/2018)

DATE	NO.	PROCEEDINGS
08/23/2018	74	TRANSCRIPT of Digitally Recorded Arraignment/Detention Hearing for dates of 9/26/17 held before Judge James R. Klindt, re 59 Notice of Appeal as to Gregory Greer. Court Reporter/Transcriber Shelli Kozachenko, Telephone number 904.301.6842. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or purchased through the Court Reporter. Redaction Request due 9/13/2018, Redacted Transcript Deadline set for 9/24/2018, Release of Transcript Restriction set for 11/21/2018. (SMK) (Entered: 08/23/2018)
08/23/2018	77	TRANSCRIPT of Jury Trial (Volume II) for dates of 2/21/18 held before Judge Brian J. Davis, re: 59 Notice of Appeal as to Gregory Greer. Court Reporter/Transcriber Shelli Kozachenko, Telephone number 904.301.6842. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through

DATE	NO.	PROCEEDINGS
08/23/2018	78	<p>PACER or purchased through the Court Reporter. Redaction Request due 9/13/2018, Redacted Transcript Deadline set for 9/24/2018, Release of Transcript Restriction set for 11/21/2018. (SMK) (Entered: 08/23/2018)</p> <p>TRANSCRIPT of Jury Trial (Volume III) for dates of 2/22/18 held before Judge Brian J. Davis, re: 59 Notice of Appeal as to Gregory Greer. Court Reporter/Transcriber Shelli Kozachenko, Telephone number 904.301.6842. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or purchased through the Court Reporter. Redaction Request due 9/13/2018, Redacted Transcript Deadline set for 9/24/2018, Release of Transcript Restriction set for 11/21/2018. (SMK) (Entered: 08/23/2018)</p>
08/23/2018	79	<p>TRANSCRIPT of Sentencing for dates of 7/2/18 held before Judge Brian J. Davis, re: 59 Notice of Appeal as to Gregory Greer. Court Reporter/Transcriber Shelli Kozachenko, Telephone number</p>

DATE	NO.	PROCEEDINGS
		904.301.6842. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or purchased through the Court Reporter. Redaction Request due 9/13/2018, Redacted Transcript Deadline set for 9/24/2018, Release of Transcript Restriction set for 11/21/2018. (SMK) (Entered: 08/23/2018)
11/06/2018		Pursuant to F.R.A.P. 11(c), the Clerk of the District Court for the Middle District of Florida certifies that the record is complete for purposes of this appeal re: 59 Notice of Appeal as to Gregory Greer. All documents are imaged and available for the USCA to retrieve electronically. USCA number: 18-12963-DD (EAM) (Entered: 11/06/2018)
02/20/2019	82	USCA Opinion AFFIRMING Greer's conviction and sentence as to Gregory Greer re 59 Notice of Appeal. EOD: 2/20/2019. Mandate to issue at a later date. USCA number: 18-12963-DD. (EAM) (Entered: 02/20/2019)

DATE	NO.	PROCEEDINGS
03/21/2019	83	MANDATE of USCA as to Gregory Greer. Mandate Issued: 3/21/2019. USCA Number: 18-12963-DD. (EAM) (Entered: 03/21/2019)
07/31/2019	84	Judgment Returned Executed as to Gregory Greer on 8/24/2018. Institution: FCI Jesup, GA. (AEJ) (Entered: 08/01/2019)
01/08/2020	85	USCA Opinion AFFIRM as to appeal on remand from the Supreme Court of the United States as to Gregory Greer re 59 Notice of Appeal USCA number 18-12963 (AFC) (Entered: 01/08/2020)
02/06/2020	86	MANDATE of USCA as to Gregory Greer. Mandate Issued: 02/06/2020. USCA Number: 18-12963. (AFC) (Entered: 02/06/2020)

United States Court of Appeals
for the Eleventh Circuit

—————
Court of Appeals Docket #: 18-12963
—————

UNITED STATES OF AMERICA,

v.

GREGORY GREER, a.k.a. Gregory Green.
—————

RELEVANT DOCKET ENTRIES

<u>DATE</u>	<u>PROCEEDINGS</u>
07/16/2018	CRIMINAL APPEAL DOCKETED. Notice of appeal filed by Appellant Gregory Greet on 07/16/20. Fee Status: IFP Granted. Granted. [Entered: 07/17/2018 10:04 AM]
08/22/2018	TRANSCRIPTS FILED. Transcript Order: Court Reporter: Unknown Reporter, Filer Gregory Greer, Dt. all Trans. Filed: 08/20/2018, Proceeding Type and Date: Other Hearings 10/23/2017. [Entered: 08/22/2018 01:46 PM]
08/22/2018	TRANSCRIPTS FILED. Transcript Order Court Reporter: Georgeanne Rodriguez, Filer: Gregory Greer, Dt. all Trans. Filed 08/20/2018, Proceeding Type and Date: Other Hearings 11/13/2017. [Entered: 08/22/2018 01:47 PM]

DATE	PROCEEDINGS
08/24/2018	TRANSCRIPTS FILED. Transcript Order: Court Reporter: Shelli Kozachenko, Filer: Gregory Greer, Dt. all Trans. Filed: 08/23/2018, Proceeding Type and Date: Pre-Trial Proceedings 09/22/2017 , Other Hearings 01/22/2018 , Sentencing 07/02/2018 , Pre-Trial Proceedings 09/26/2017 , Trial 02/20/2018 - 02/22/2018. [Entered: 08/24/2018 03:32 PM]
10/30/2018	Appellant's brief filed by Gregory Greer. [18-12963] (ECF: Meghan Collins) [Entered: 10/30/2018 06:01 PM]
11/05/2018	Appendix filed [1 VOLUMES] by Appellant Gregory Greer. [18-12963] (ECF: Meghan Collins) [Entered: 11/05/2018 03:25 PM]
11/21/2018	Appellee's Brief filed by Appellee USA. [18-12963] (ECF: Sara Sweeney) [Entered: 11/21/2018 10:22 AM]
11/21/2018	Supplemental Appendix [1 VOLUMES] filed by Appellee USA. [18-12963] (ECF: Sara Sweeney) [Entered: 11/21/2018 10:27 AM]
02/20/2019	Judgment entered as to Appellant Gregory Greer. [Entered: 02/20/2019 12:44 PM]
02/20/2019	Opinion issued by court as to Appellant Gregory Greer. Decision: Affirmed. Opinion type: Non-Published. Opinion

DATE	PROCEEDINGS
	method: Per Curium. The opinion is also available through the Court's Opinions page at this link http://www.ca11.uscourts.gov/opinions . [Entered: 02/20/2019 12:46 PM]
05/28/2019	Notice of Writ of Certiorari filed as to Appellant Gregory Greer. SC# 18-9444. [Entered: 05/29/2019 03:39 PM]
10/07/2019	Writ of Certiorari filed as to Appellant Gregory Greer is GRANTED. The judgment of the Eleventh Circuit is VACATED and the case is REMANDED to the Eleventh Circuit. SC# 18-9444 [Entered: 10/10/2019 12:00 PM]
11/05/2019	ORDER: The parties are directed to file supplemental letter briefs addressing the affect of the recent decision of the Supreme Court in Rehaif v. United States on this appeal. The briefs should not exceed 10 pages, single-spaced, and should be filed simultaneously within 14 days of the date of this order. ENTERED FOR THE COURT - BY DIRECTION. [Entered: 11/05/2019 05:18 PM]
11/08/2019	Judgment of U.S. Supreme Court received as to Appellant Gregory Greer. 18-9444. [Entered: 11/12/2019 12:48 PM]
11/19/2019	Supplemental Appellee's Letter Brief filed by Appellee USA. [18-12963]

DATE	PROCEEDINGS
	(ECF: Sara Sweeney) [Entered: 11/19/2019 09:51 AM]
11/19/2019	Supplemental Appellant's Letter Brief filed by Appellant Gregory Greer. [18-12963] (ECF: Meghan Collins) [Entered: 11/19/2019 10:33]
11/21/2019	Supplemental Authority filed by Appellee USA. [18-12963] (ECF: Sara Sweeney) [Entered: 11/21/2019 10:28 AM]
01/08/2020	Supreme Court remand opinion issued by court. Decision: Affirmed. Opinion type: Non-Published. Opinion method: Per Curiam. [Entered 01/08/2020 10:56 AM]
01/08/2020	Judgment entered to Appellant Gregory Greer. [Entered: 01/08/2020 10:58 AM]
06/08/2020	Notice of Writ of Certiorari filed as to Appellant Gregory Greer. SC# 19-8709. [Entered: 06/16/2020 03:52 PM]
01/12/2021	Writ of Certiorari filed as to Appellant Gregory Greer is GRANTED. SC# 19-8709. [Entered: 01/12/2021 03:31 PM]

15

U.S. District Court
Middle District of Florida

COURT EXHIBIT

Exhibit No.: 1

Case No.: 3:17cr-173-J-39JRK

USA

v.

Gregory Greer

Date Identified: 2/22/18

Date Admitted: 2/22/18

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

CASE NO. 3:17-cr-173-J-39JRK

UNITED STATES OF AMERICA

v.

GREGORY GREER

STIPULATION OF FACT

The United States of America, the defendant GREGORY GREER, and his undersigned counsel stipulate and agree to the following facts, which the jury must accept as having been proved beyond a reasonable doubt: Prior to August 17, 2017, defendant GREGORY GREER was convicted in a court of a crime punishable by imprisonment for a term of more than one year, that is, a felony offense. Defendant GREGORY GREER has not received a pardon, has not applied for clemency, and has not been authorized to own, possess, or use firearms.

By: /s/ Laura Cofer Taylor
LAURA COFER TAYLOR
Assistant United States Attorney

By: /s/ Maurice C. Grant, II
MAURICE C. GRANT, II
Attorney for Defendant

By: /s/ Gregory Greer
GREGORY GREER
Defendant

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

CASE NO. 3:17-cr-173-J-39JRK

UNITED STATES OF AMERICA

v.

GREGORY GREER

COURT'S INSTRUCTIONS TO THE JURY

Members of the jury:

It's my duty to instruct you on the rules of law that you must use in deciding this case.

When I have finished you will go to the jury room and begin your discussions, sometimes called deliberations.

Instruction 10: Possession of a Firearm by a Convicted Felon 18 U.S.C. § 922(g)(1)

It's a Federal crime for anyone who has been convicted of a felony offense to possess a firearm in or affecting interstate or foreign commerce.

The Defendant can be found guilty of this crime only if all the following facts are proved beyond a reasonable doubt:

- (1) the Defendant knowingly possessed a firearm in or affecting interstate or foreign commerce; and
- (2) before possessing the firearm, the Defendant had been convicted of a felony — a crime punishable by imprisonment for more than one year.

A "firearm" is any weapon designed to or readily convertible to expel a projectile by the action of an explosive. The term includes the frame or receiver of any such weapon or any firearm muffler or silencer.

The term "interstate or foreign commerce" includes the movement of a firearm from one state to another or between the United States and any foreign country. It's not necessary for the Government to prove that the Defendant knew the firearm had moved from one state to another, only that the firearm did, in fact, move from one state to another.

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

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

USM Number: 01458-748

UNITED STATES OF AMERICA

v.

GREGORY GREER
a/k/a "Gregory Green"

Maurice C. Grant, II, FPD
Suite 1240200 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

/s/ Brian J. Davis
BRIAN J. DAVIS
UNITED STATES DISTRICT JUDGE
July 2nd, 2018

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

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 judgement.

United States Marshall

By: _____
Deputy United States Marshall

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

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-173-39JRK

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.

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

- 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.

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

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-173-39JRK

**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.

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

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 Assessment</u> ¹	<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.

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

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVT A assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

[2-1] UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Case No. 3:17-cr-173-J-39JRK

UNITED STATES OF AMERICA,
Plaintiff,

-vs-

GREGORY GREER,
Defendant.

Jacksonville, Florida
Wednesday, February 21, 2018
10:06 a.m.
Courtroom 12C

**TRANSCRIPT OF JURY TRIAL
(VOLUME II)**

BEFORE THE HONORABLE BRIAN J. DAVIS
UNITED STATES DISTRICT JUDGE

APPEARANCES

GOVERNMENT COUNSEL:

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DEFENSE COUNSEL:

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OFFICIAL COURT REPORTER:

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Telephone: (904) 301-6842

(Proceedings reported by stenography; transcript produced by computer.)

* * *

[2-112] Q. Those are your fingers behind the –

A. Yes, ma'am.

Q. – identification?

And you were describing that you had received the identification from Greer, that he had informed you that he was staying in a room down the hall the night before, correct?

A. Yes, ma'am.

Q. And that the manager of the hotel had told you that that was not correct?

A. Correct.

Q. And what, again, was Greer's response when – after that information was revealed?

A. He basically just said, "Yeah, that's not the truth. I wasn't staying there last night."

Q. And prior to him giving that explanation, had you observed any – anything that he was doing that concerned you?

A. When I started speaking with Mr. Greer, just throughout the process of our conversation, he kept reaching back towards his beltline, mostly towards his right side but sometimes towards his left.

So I just asked him, I said, “Please keep your hands out in front of you where I can see them so that everybody feels safe.”

And he was – he was very calm at that point, and he said, “Okay,” and he kept his hands, you know, initially out [2-113] there.

A few moments later, he kind of reached back and was fidgeting with his pants. I asked him again, “Hey, please just keep your hands out in front of you. It just makes everybody safer.”

Q. And at some point did you feel that him keeping his hands in front was not sufficient?

A. Once we got to the point where he had been – I know that he had been dishonest about where he stayed, I asked for him to go and have a seat on the ground with his feet straight out in front of him, and – because that just makes it safer for me, because, again, at that point I was the only one in the hallway with him.

So I said, “Have a seat. You know, please sit down. Put your feet straight out in front of you.”

When he sits he does the same thing. He kind of brings his hand back to his – towards his right side. I asked him, “Put your hands out on your legs out in front of you,” which he – once I brought it up again the

third or fourth time, he complied, and he did put his hands out in front of him.

Q. And what's the purpose for having the legs out in front?

A. It's – it means that you have to do one or two steps before you get up and run. It's much – if you have your feet pulled up underneath you, it's one step to lunge and go.

[2-114] If you're sitting flat or cross-legged Indian style or feet straight out, it makes it – makes it harder for you to just get up and go all of a sudden.

Q. Now, so at some point you told him to sit on the floor with his legs out in front and hands out in front, right?

A. Correct.

Q. And at some point did somebody else come out of the room to engage in discussion with Mr. Greer?

A. Once I had him sit, he started to become a little more agitated. So we weren't yelling, but the voices got just a little bit higher in our – kind of our interaction back and forth. So at that point Detective Bennett walked back out into the hallway.

And I was still mostly in the doorway. Detective Bennett came out and kind of came off to my left a little bit in the hallway.

Once he got back to the hallway, that's when I said, "Why don't you go ahead and stand up. I'm just going to pat you down and make sure you don't have any weapons real quick. That way we can be 100 percent clear that everybody's safe."

Q. And what was the reason that you felt it was prudent to do a patdown?

A. Just because of everything I'd seen and all of my experience and my training over the years that it was – honestly, in my opinion, I should have done it earlier, but I [2-115] didn't.

So to this point, once I had Detective Bennett with me, I said, "This is what we need to do."

And then initially he was very compliant, said, "Okay," and . . .

Q. When Detective Bennett came back out to the doorway area and you said he went to your left –

A. Correct.

Q. – was he between you and the stairwell?

A. Correct. Again, the west end stairwell, the stairwell that we were closest to.

Q. And so at this point Detective Bennett and yourself and Mr. Greer, you're all in the hallway right around the doorway of Room 330.

A. Yes, ma'am.

Q. And you've told Mr. Greer that you're going to pat him down.

A. Yes.

Q. What was his reaction?

A. I asked for him to stand up, and he appeared to be completely compliant. He said, "Okay."

And he put one hand down on the ground, and he kind of moved his body over as if he was going to stand up and then immediately took off running straight down the hallway, actually forcing Detective Bennett out of his way as he ran [2-116] down the hallway.

MS. TAYLOR: Can we have Exhibit 9 on the screen, please.

BY MS. TAYLOR:

Q. So when he runs down the hallway, does he run in the direction of the elevators or in the direction of the stairwell?

A. Of the stairwell.

Q. And so is that the stairwell that we see at the end in this picture, Exhibit 9?

A. Yes, ma'am.

Q. And the stairwell is the door that has a window cut out of it?

A. Yes, ma'am.

Q. When he takes off toward that stairwell, what did you do? What did you see Detective Bennett do?

A. Well, Detective Bennett – as he goes, as he starts running down the hallway, Detective Bennett drops right in behind him.

I actually voice out, "He's grabbing for his waist." And I – my biggest concern was that he had a gun, but I didn't want to yell "gun" because if I yell "gun," then somebody might do something because they think I actually see a gun.

But as he's grabbing for his waist as he runs towards the door, all I yell is, "He's grabbing for his waist. He's [2-117] grabbing for his waist." And both of them, who are a little faster than me, get to the stairwell and blow through the door and take a hard right, and I am keeping up.

Q. And so when you – you refrained from announcing that you saw a gun because you did not see a gun.

A. Did not see a gun.

Q. And if you were to announce that he had a gun, that could potentially put his life in danger?

A. Correct.

Q. And so everyone's going toward that stairwell.

A. Yes, ma'am.

Q. So it's first Mr. Greer.

A. Correct.

Q. Then Detective Bennett.

A. Correct.

Q. And then you.

A. Yes, ma'am.

Q. And you said once you get through that stairwell door, everybody takes a hard right?

A. Yes, ma'am. It's just a small foyer, just enough – kind of the width of a stairwell, and then the first flight down to the next foyer that would take you down to the second floor.

MS. TAYLOR: Can we see Exhibit 12, please, Ms. Ganoë.

BY MS. TAYLOR:

* * *

[2-164] Q. – whether it was actually given back to him.

A. Correct.

Q. Okay. But you do know that a check was run on him, correct?

A. Correct.

Q. And he did not have any outstanding warrants.

A. To the best of my knowledge, no, or it would have been brought up then.

Q. Right. It would have been brought up.

A. Correct.

Q. And it was not, correct?

A. Correct.

Q. Okay. And so now you testified that Mr. Greer is, you know, touching, messing around with his waistband, correct?

A. Yes.

Q. Okay. When Mr. Greer gave you his driver's license, do you recall which hand he used?

A. I do not.

Q. Do you recall which side of his body he took the driver's license from?

A. I do not.

Q. At some point you have Mr. Greer sit on the floor, correct?

A. Correct.

Q. And that's when you had him stick his legs out forward, [2-165] and you told us why that's done.

A. Yes, sir.

Q. All right. You asked him to get up at some point because you wanted to pat him down.

A. Correct.

Q. All right. And at that point when you wanted to pat him down, did you have any reason to believe that Mr. Greer was connected to the vice operation that you were involved in?

A. At the point where he was dishonest about where he was staying, it heightened my awareness of what was going on, so yes, it was definitely a concern.

And if the interview was going to go any further, I wanted to make sure, especially with the way he was being fidgety, that I just gave him a real quick patdown so that everybody was safe, and then we would proceed from there.

Q. Okay. He told you that he was in a room – I think it was 304, I think, was the actual room that he told you.

A. Yes, sir.

Q. And as you testified, it just so happened that the manager was there and said that that room had not been occupied that night –

A. Correct.

Q. – right?

And then Mr. Greer tells you, “Yeah, I wasn’t in that room” –

[2-166] A. Right.

Q. – right?

He didn’t say he didn’t – he hadn’t stayed at the hotel. He just said that he was not in that room, 304, that he had told you about.

A. Correct.

Q. Okay. So the fact that he was there in the hotel in and of itself wasn't suspicious, correct?

A. The fact that he was just in a hotel would not be suspicious, no –

Q. All right.

A. – if that was the only part we were looking at.

Q. Right. Well, the only other thing you had was he lied about which room he was in –

A. Right.

Q. – right?

A. Correct.

Q. So you have him stand up.

Did he take offense to wanting to be patted down?

A. He appeared to be completely cooperative. And he put his hand down on the ground as if to assist himself up, like if I was down sitting on the ground and I went to get up, I would turn over and put my hand on the ground and push off the ground.

And then he went from that stance to – like, he [2-167] treated it as a sprinter's stance and just – he never showed offense of any kind. He just took out as quickly as he could.

Q. So he didn't have any problems with you telling him to sit down to begin with?

A. Not at all.

Q. So when you told him, "Just have a seat right there" –

A. Correct.

Q. – he didn't have any problem with that.

A. He sat right down.

Q. When you told him, "Stick your leg out front," he didn't have any problem with that.

A. No, sir.

Q. When you told him, "Keep your hands out in front of you where I can see you," he didn't have any problem with that.

A. Well, he did have a problem with that because I told him several times about his hands.

At each stage of the interview, as I said a little bit earlier, I kept having to remind him. I said, "Hey, man, just, you know, put your hands out where I can see them. Everybody's safe. Everybody's fine."

And he was like, "Okay. Okay," and he'd bring his hands out to in front of his person.

Q. Did it appear as though Mr. Greer was under the influence of anything?

A. It did not.

* * *

[2-201] has come into contact with us and/or the person that we're dealing with to try and make notation for either right then, if the investigation furthers itself to include those individuals, or in the future, if we come across them again speaking with another person that we've arrested for prostitution.

Q. And so you took that ID back into Room 330, correct?

A. That's correct.

Q. And did Sergeant Nelson stay at the doorway area?

A. That's correct.

Q. And what happened as you were in the room with the ID?

A. Both Mr. Greer and Sergeant Nelson, their voices, the pitch started getting a little bit higher. Working with – having worked with Sergeant Nelson for a period of time, I knew that it was kind of a heated conversation.

So I walked to the – out into the hallway with them. And as I was walking out to the hallway, Sergeant Nelson said, you know, "You're making me nervous moving your hands all around. Why don't you go ahead and have a seat on the floor," which Mr. Greer did.

Q. And at some point – well, what happened after he had him sit on the floor?

At that point you and Sergeant Nelson and Mr. Greer, you're all out in the hallway right around the area where this picture was taken from, correct?

A. That's correct.

[2-202] Q. And so what happened after Sergeant Nelson had him sit down?

A. He – he sat down. Sergeant Nelson started talking to him, asked the who, what, when, why, how. You know, "Why are you here? Did you stay here? Have you stayed here? How do you know the person inside?"

And at – during that conversation, when Sergeant Nelson asked him, "Have you stayed here?" or, "Do you stay here?" he said, "Yeah, I stayed in" – I don't remember what room he said, but he was referring to last night of that day, that he had stayed in a particular room.

When he said that, an employee, a manager possibly, stepped out of another room that was just down from 3 – or just down from 330 closer to the exit and he said, “No. That’s not true. I didn’t have anybody staying in that room last night.”

So upon hearing that, Sergeant Nelson continued to talk to him. And he, you know, did admit, “No, I didn’t stay in that room.”

And then Sergeant Nelson made the determination that we were going to go ahead and pat him down for safety reasons, due to the fact that he had been reaching around his waist area and his pockets and then he lied about having stayed there.

So he asked Mr. Greer to go ahead and – “Go ahead and stand up for me.”

[2-203] Mr. Greer –

Q. And before you – before you get to this point –

A. Okay.

Q. – could you just tell the jury where you were standing, where Sergeant Nelson was standing, kind of what the layout was?

A. Okay. Sergeant Nelson was standing in the hallway just outside of Room 330 where we were. I was standing to Sergeant Nelson’s left.

And then Mr. Greer was sitting on the floor on the other side of the hallway, I guess where – on the side of the hallway that 331 would be. And then the exit door would be behind me.

MS. TAYLOR: Ms. Ganoe, could we have Exhibit 9, please.

BY MS. TAYLOR:

Q. And so are you closer to that stairwell door?

A. Yeah. I'm – yes. I'm the closest one to the stairwell door. We're all three outside of Room 330. So – if I touch this, will they be able to see or not?

Q. It should.

A. Okay. So I'm standing –

Q. It's been a little persnickety so you might have to –

A. Okay. I'm probably not that far away, but I'm standing on that side of 330. Sergeant Nelson is just outside 330. And [2-204] then Mr. Greer would be on this side of the wall sitting on the floor.

Q. So are Mr. Greer's feet facing toward the door for 330?

A. That's correct.

Q. And so he's on the opposite wall.

A. That's correct.

Q. Okay. And so Sergeant Nelson's explaining to him that he's going to do a patdown?

A. That's correct.

Q. And what was Mr. Greer's reaction to that?

A. He said, "Okay," and he started to get up.

Q. And did he get up and submit to a patdown?

A. No. He – what he did was he rolled over and got on his – I believe it was his right knee and his right hand on the floor. And then as he was standing up, with his left foot he, kind of like a sprinter, went towards the door and pushed past me to get to the door.

Q. So did he actually, like, use your body to try and help him escape?

A. Yes.

Q. And when he did that, did you chase after him?

A. Yes.

Q. And was he running towards that stairwell door?

A. That is correct.

Q. Did you hear Sergeant Nelson make any announcement as [2-205] he – as Mr. Greer took off running?

A. Yes. As Mr. Greer was approaching the door and I was behind him, I heard Sergeant Nelson say, “He’s reaching for his side,” is what – what I heard.

As he pushed past me, Mr. Greer pushed past me running to the door, I grabbed my Taser out.

Q. And so in a situation like this where a person’s running away from you, and especially where you don’t know for sure if they have a gun, you don’t have any reason that you’re going to use deadly force?

A. No. I didn’t have any thoughts of deadly force at that – at that time.

Q. But using the Taser, which would be nondeadly –

A. Nonlethal.

Q. – to take somebody into custody, that would be within JSO policy?

A. That’s correct.

MS. TAYLOR: Ms. Ganoë, could we have Exhibit 11, please.

BY MS. TAYLOR:

Q. When you get to the point where you're standing essentially where the photographer was when this picture was taken, where was Mr. Greer?

A. When I – when I get to this point where the photographer's standing, Mr. Greer's hand is on the door, and [2-206] he's – he had taken an immediate right. So all I could see of Mr. Greer at this particular spot was his hand on the door.

Q. And you're indicating his left hand?

A. It's possible it was his left, yes. I would assume so.

Q. So essentially you're seeing, like, one hand trailing behind him as he's already gone through the doorway.

A. Correct.

Q. And was the doorway – I suppose it was at least partially open then?

A. When I approached it, it was still open.

Q. Was it about as open as this doorway appears in the photo?

A. Yes.

MS. TAYLOR: Ms. Ganoë, could we have Exhibit 12, please.

BY MS. TAYLOR:

Q. And when you go through that doorway, is this what you see to the right?

A. That's correct.

Q. When you get to this point, if you're standing where the photographer took this picture from, where is Mr. Greer?

A. He's probably halfway down the stairwell.

Q. And is there anyone between you and Mr. Greer?

A. No.

Q. And is Sergeant Nelson behind you at that point?

A. Yes.

[2-207] Q. And you said you had already taken out – you had already unholstered your Taser at this point.

A. That's correct.

Q. And so you're – you're maybe a couple steps back from where the stairs start?

A. Right.

Q. And Mr. Greer is about halfway down this particular staircase?

A. That's correct.

Q. And did you take any action to try and take him down at that point?

A. When he got to – I had gotten to about halfway down and he had stepped onto the landing, I announced, "Taser, Taser," and I deployed my Taser.

Q. Did you hear anything in that stairwell around this time?

A. Around this time, I just watched – he was still on the landing. He hadn't made the turn yet. Taser deployed. One probe struck him, I believe, in the lower

back or upper buttocks area, and then the top probe hit his glasses, the arm of his glasses that he had on.

At that point I stopped, and he made the turn. As he was making the turn, he reached to his side and then went out of sight, and it was about that time that I heard a thunk or a thud in the – on the landing.

Q. And were you expecting him to go down after you deployed

* * *

[2-240] Nelson was outside talking to Mr. Greer that their conversation got heated.

A. Their voices started escalating, yes.

Q. Okay. You actually used the word “heated.”

A. Yes.

Q. All right. Could you tell what they were actually saying?

A. I couldn't make out specifics.

Q. You just knew that their voices, between the two of them, had escalated, correct?

A. Yes, sir.

Q. Okay. And that is what brought you back outside.

A. That's correct.

Q. And when you came out, where was Mr. Greer?

A. He was standing opposite of the door as – or as I was coming to the door, he was on his way to sit on the ground, because Sergeant Nelson had said, “You know what? You're making me nervous.”

As I'm approaching the door, Sergeant Nelson is saying that. He said, "Go ahead and sit on the ground for me," which Mr. Greer is in the act of starting to sit down as I come – break the threshold of the door.

Q. Okay. And then at some point, you testified, Sergeant Nelson wanted Mr. Greer to get up to be patted down.

A. That's correct.

Q. And it was during that time that Mr. Greer headed towards [2-241] the exit door, which here in this Exhibit 9 is further down.

A. That's correct.

Q. Okay.

MR. GRANT: Can we go to No. 10.

Oh, 11.

BY MR. GRANT:

Q. Okay. Now, that's a closer view of that particular door, correct?

A. That is correct.

Q. And I believe you testified that you saw Mr. Greer exit that door and may have had his left hand behind him as he was going out the door.

A. Correct.

Q. Okay. Did you see how he opened the door?

A. He – the front of his body, whether it be his hand or where, out of my sight, hit the – I'm assuming the handle, the push handle on the door, to open it, and then he went to the right.

Q. Do you know if he – which hand he used to open the door with?

A. I don't know which hand it was.

Q. So it could have been his right hand.

A. It could have been.

Q. Could have been his left hand.

A. Could have been.

* * *

[3-1] UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Case No. 3:17-cr-173-J-39JRK

UNITED STATES OF AMERICA,
Plaintiff,

-vs-

GREGORY GREER,
Defendant.

Jacksonville, Florida
Thursday, February 22, 2018
9:00 a.m.
Courtroom 12C

**TRANSCRIPT OF JURY TRIAL
(VOLUME III)**

BEFORE THE HONORABLE BRIAN J. DAVIS
UNITED STATES DISTRICT JUDGE

APPEARANCES

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Telephone: (904) 301-6842

(Proceedings reported by stenography; transcript produced by computer.)

* * *

[3-5] **PROCEEDINGS**

Thursday, February 22, 2018

9:00 a.m.

(Outside the presence of the jury:)

COURT SECURITY OFFICER: All rise. United States District Court in and for the Middle District of Florida is now in session, the Honorable Brian J. Davis presiding.

Please be seated.

THE COURT: Good morning to all.

ALL: Good morning.

THE COURT: Is the government prepared to proceed?

MS. TAYLOR: Yes, Your Honor.

THE COURT: And is the defense?

MR. GRANT: Yes, Your Honor.

THE COURT: Very good.

Yes, ma'am.

MS. TAYLOR: I'm not sure if now might be a good time to address the stipulation of felony conviction so that we're ready to enter it at the appropriate time later this morning.

THE COURT: All right. We can do that.

MS. TAYLOR: So I have a stipulation that I previously had provided to Mr. Grant and that was signed by Mr. Grant, Mr. Greer, and myself.

So I'll just hand it back to Mr. Grant so he can look at it and verify that this is the stipulation.

[3-6] THE COURT: Very good.

MR. GRANT: Your Honor, this is the stipulation agreement that I received from Ms. Taylor. I reviewed it with Mr. Greer. He executed it, and I did as well.

It's not dated but it was within the last couple of days. I think it was probably Monday, is when we actually signed it.

MS. TAYLOR: I think it was Tuesday.

MR. GRANT: Tuesday.

MS. TAYLOR: Monday was a holiday.

MR. GRANT: I went to see him.

MS. TAYLOR: Oh, okay. I think you handed it to me on Tuesday –

MR. GRANT: Correct.

MS. TAYLOR: – and that's when I signed it.

MR. GRANT: Okay.

THE COURT: All right. And how do you wish for the Court to manage the stipulation? Do you want me to

read it to the jury, do you want to read it to the jury, or are we submitting it to them as part of the evidence for them to consider in the case? Just how would you like for it to be handled?

MS. TAYLOR: Yes, Your Honor. My preference would be for it to be submitted to the jury as a Court exhibit and for you to read it to the jury and for them to be able to have it [3-7] during their deliberations.

MR. GRANT: I would suggest to the Court that that is the appropriate way to do it because it does at that point give them more understanding that the Court has accepted it.

THE COURT: All right. I will include it, then, in the instructions to the jury.

(Court Exhibit 1 was received in evidence.)

THE COURT: Do you wish for it to be read before then or not?

MS. TAYLOR: I think that we would – depending on how timing goes this morning, if there is a kind of chunk of time left before lunch, then that may be a good time to proceed with entering the stipulation.

But certainly we would – I think we would need to have it admitted prior to us closing our case.

THE COURT: Very good. Thank you.

Are you ready to proceed?

MS. TAYLOR: Yes, Your Honor.

THE COURT: Mr. Grant?

MR. GRANT: Yes, Your Honor.

THE COURT: Please bring our jurors in.

COURT SECURITY OFFICER: All rise for the jury, please.

(Jury in at 9:03 a.m.)

COURT SECURITY OFFICER: Please be seated.

* * *

[3-21] was going on, where they were, where the suspect was, because I know he – the defendant was the only subject they were talking to.

So put two plus two together, it had to be – you know, I just wanted to find out where they were, where I could make contact with them to help assist them, so . . .

Q. Okay. And so you started going down these stairs.

A. Yes.

MS. TAYLOR: Ms. Ganoë, could we have Exhibit 13.

BY MS. TAYLOR:

Q. And did you – did you reach that first landing that we saw in the previous picture?

A. Yes, I did.

Q. And did you go past that landing?

A. Actually, I did. I was flying down the stairs. I mean, I was – I was jumping about four – I was hopping down the stairs pretty quick.

And it caught my attention. Right there under that stairwell or on the stairwell, on that center part right here, in that area right there, I saw a gun leaning against the wall.

Q. And you've indicated with the marker on the screen?

A. Uh-huh.

Q. It's right in the middle of the picture where there's – it's the wall essentially near where the handrail starts?

A. Yes. That scribble I have right there, it's right there [3-22] in that area.

And I actually went two steps past it, and it caught my attention, and I went back to get it.

Q. So you're going – you're going so fast at first –

A. Uh-huh.

Q. – you barrel right past it.

A. Yep.

Q. But you see – what did you see there?

A. And then that, on top of that smell I had already smelled in the hallway, kind of like – I think that's the point where I actually got on the radio and let them know what was going on.

Anyway, I took the gun and continued to – I grabbed the gun and continued to run down the hallway. By the time I got to the bottom stairwell, that door was still open – or, no, it was in the process of closing as well, and –

Q. Let me back you up.

So you – so you found the gun right there at that first landing.

A. Uh-huh.

Q. And if you could just make sure you say yes or no –

A. Yes.

Q. – so it's clear for the court reporter.

A. Yes.

Q. And you grabbed the gun?

[3-23] A. Yes.

Q. What was the reason that you needed to take the gun right then as opposed to coming back and, you know, carefully preserving it?

A. Uh-huh. At that point, due to – we call it exigent circumstances, I had no choice but to take that gun because the options I had was to leave it there. Somebody else can come and pick it up, which would be a safety hazard. If a kid gets it, it's a liability issue. You don't leave a loaded gun in a stairwell.

Under the circumstances, it wasn't – I didn't have the opportunity to sit there on the gun to wait for an evidence technician to properly come collect the gun, when at that point I don't know whether one of my officers had been shot with this gun. I don't know what the situation was as far as officer safety.

So my main – my main priority at that point was officer safety and collecting the evidence, and so that's what I did. I collected the gun, and I continued to run down the stairwell to help the two detectives out.

Q. And so if you – in a different situation where you found a gun that you thought might be evidence but there's no exigency, would you handle the gun differently?

A. Absolutely. I mean, if you have the time and you have plenty of officers and you have officers sit – you know, you [3-24] can have an officer sit on that gun to watch it, you know, till the evidence technician comes

and properly picks it up with gloves, that would be the ideal thing to do.

But in these circumstances, I didn't have that time. At that time the detectives hadn't got on the radio. And it just – it was – it would not have been the proper thing to do.

Officer safety comes first, and it wouldn't have been proper to leave that gun sitting there in the hallway for an evidence technician to come pick it up.

Q. Do you recall how the gun was positioned when you saw it in that stairwell?

A. Yes. I remember – this is the front of the gun and this the butt of the gun, and it was sort of – it was – the front of the gun was facing toward the window on the ground. It was sort of in a V shape, like that.

Q. And so you've indicated – well, so was the barrel of the gun pointed kind of down –

A. To the ground, yes.

Q. – in the stairwell?

A. And the hammer part was actually leaning against the wall.

Q. And you remember – do you remember what the position of the hammer was?

A. I remember it being cocked –

Q. And –

[3-25] A. – cocked back.

Q. And do you recall whether there – whether the gun had a safety and whether it was on or off?

A. Just to tell you a little story with that, I'm not that familiar with that gun. We don't use those kind of

guns. We don't train with those kind of guns. So Sergeant Nelson advised me after the fact –

MR. GRANT: Objection, Your Honor.

THE COURT: Sustained.

THE WITNESS: Sergeant Nelson is very familiar with –

MR. GRANT: Objection, Your Honor.

THE COURT: Excuse me, Officer. I sustained the objection. You need to wait to allow the prosecutor to ask another question.

You may inquire.

BY MS. TAYLOR:

Q. And the concern is any testimony about what Sergeant Nelson may or may not have told you, so if you could just testify about what you did and what your observations were.

A. Okay. Sure.

Q. So you – you're not very familiar with this particular type of gun.

A. That's correct.

Q. And –

[3-26] A. But I did observe – I'm sorry.

Q. Okay. So you grabbed the gun.

Were you wearing gloves of any sort at that time?

A. No.

Q. So you're grabbing it with your bare hand?

A. Yes.

Q. And how – how did you get ahold of it? What part of the gun did you grab?

A. I grabbed it just as if I was to grab my service weapon, and I grabbed it and – with a firm grip and took it down the hallway with me until I got out – out the hotel.

MS. TAYLOR: Your Honor, may I have permission to approach the witness?

THE COURT: You may.

BY MS. TAYLOR:

Q. Officer Anthony, I'm handing you what previously was admitted into evidence as Government's Exhibit No. 34, and there's a pair of gloves for you to use.

A. Okay.

Q. If you could take a look at that and tell the jury whether you recognize that as being the same gun that you recovered from the stairwell.

A. Yep. This is the gun that I recovered from the stairwell.

Q. And if you could very carefully just demonstrate for the jury how it – and it's been rendered safe, correct?

* * *

[3-94] A. The Westside.

Q. And do you regularly visit the south side of Jacksonville?

A. No.

Q. Do you own a Colt Combat Commander pistol?

A. I do.

Q. And do you – have you, in the last year, had that Colt Combat Commander pistol in your possession?

A. No, I have not.

Q. And why – what happened that it came out of your possession?

A. It was stolen in May of 2015.

Q. And where was it when it was stolen?

A. At my home on the Northside.

Q. And was anything else stolen with the pistol?

A. Just the holster, you know, from the same pistol.

Q. So there was a holster that was specifically supposed to go with that pistol?

A. That's correct.

Q. And what kind of holster? What material was it made out of?

A. It was a leather holster.

Q. It was leather?

A. Uh-huh. Yes.

Q. And so you were living on the Northside when that gun was stolen?

* * *

[3-100] approach the witness?

THE COURT: You may.

MS. TAYLOR: Your Honor, would it be okay for me to ask a couple of questions here at the witness stand?

THE COURT: You can.

BY MS. TAYLOR:

Q. Okay. This was previously admitted as Government's Exhibit No. 34, and I'm going to open up the box and just wanted you to take a look at it.

Do you recognize that as being the pistol that you own?

A. Yes, I do.

Q. And it's been since 2015 that it was last in your possession?

A. That's correct.

Q. Before Special Agent Latham contacted you about this pistol, you hadn't seen it since 2015?

A. That's correct.

MS. TAYLOR: I have no further questions, Your Honor.

THE COURT: Cross-examination?

MR. GRANT: May I approach the witness, Your Honor?

THE COURT: You may.

CROSS-EXAMINATION

BY MR. GRANT:

Q. Mr. Beck, I'm showing you what's been identified as

* * *

[3-133] LATHAM - RECROSS

Q. Yes. Just your regular Hanes —

A. Oh, okay. So I'm sorry. Can you rephrase the question?

Q. Yeah. Hanes, Fruit of the Loom —

A. Okay.

Q. — just like that, you know, your briefs, that's not generally going to extend beyond your hip.

A. Not normally.

Q. All right. And then also, lastly, you testified that just on the off chance you sent the ammunition for fingerprint analysis.

But you did not, on an off chance, request the DNA when you found out that there was no fingerprint match.

A. Once — once the — once you've printed a fire-arm, you can't go back to DNA.

MR. GRANT: I have no further questions.

THE COURT: Thank you, Agent Latham. If you'll watch your step leaving the stand, please.

Ms. Taylor, the government's next witness?

MS. TAYLOR: Your Honor, the United States has no further witnesses and would seek to enter the stipulation at this time.

THE COURT: Very good.

MS. TAYLOR: May I tender it to the courtroom deputy?

THE COURT: You may.

Ladies and gentlemen, a stipulation of fact has been [3-134] submitted to the Court and to you, as the jurors in this case, which is as follows:

“United States of America, the defendant Gregory Greer, and his undersigned counsel stipulate and

agree to the following facts which the jury must accept as having been proved beyond a reasonable doubt:

“Prior to August 17th, 2017, Defendant Gregory Greer was convicted in a court of a crime punishable by imprisonment for a term of more than one year, that is, a felony offense.

“Defendant Gregory Greer has not received a pardon, has not applied for clemency, and has not been authorized to own, possess, or use firearms.”

Thank you.

Your next witness?

MS. TAYLOR: Your Honor, at this time the United States rests.

THE COURT: Let me see counsel at sidebar for just a moment.

(At sidebar, out of the hearing of the jury:)

THE COURT: I'll entertain your motions outside the presence of the jury in just a moment. We'll take a lunch break.

And what is your client —

MR. GRANT: He is not going to testify.

THE COURT: All right. So we — actually, we should [3-135] probably afford enough time for us to have a charge conference. So I'm going to likely let them take a little longer lunch than usual, come back at – 1:15 should be sufficient, you think?

MS. TAYLOR: Sure.

MR. GRANT: Yes.

THE COURT: Okay. Let's do that.

(End of discussion at sidebar.)

THE COURT: Ladies and gentlemen, I need to take up – the government has announced the close of its case. I need to take up some matters outside of your hearing with the lawyers.

And because of that, you are going to have a slightly longer lunch than usual, not very much, but we're going to stand in recess for your purposes until 1:15.

Thank you very much. Please enjoy your lunch break.

COURT SECURITY OFFICER: All rise for the jury, please.

(Jury out at 11:54 a.m.)

COURT SECURITY OFFICER: Please be seated.

THE COURT: The jury is outside of the courtroom, actually on a lunch recess.

Are there motions for the Court to consider at this time?

MR. GRANT: Your Honor, at this time the defense would move for a judgment of acquittal, stating that in this [3-136] particular case, absent the presence of a holster on Mr. Greer at the time that he was detained, there is insufficient evidence to establish that he was in possession of the firearm in question.

And so we would ask the Court to grant a judgment of acquittal.

THE COURT: All right. Thank you, sir.

From the government?

MS. TAYLOR: Your Honor, in this case there's been compelling testimony from three law enforcement officers that that firearm was recovered in the hallway

that they had just run through and that they had been chasing Mr. Greer as he ran through it.

There is substantial circumstantial evidence of his possession of the firearm before running into the stairwell, including his motions, repeated motions, toward his right side that Sergeant Nelson testified to and his grabbing onto his right flank area as he ran away from the officers.

Additionally, there's the evidence that he was willingly talking with the officers prior to being informed he would be patted down and then made the decision to run, which strongly suggests that he knew that he had something on his person that was not supposed to be there.

And additionally, Officer Anthony testified that he recovered that firearm just after – just after the other [3-137] participants in the chase had run through the stairwell.

And as Mr. Grant noted, Mr. Greer did have that pistol holster on his hip when he was apprehended a short time later.

And so there is more than sufficient evidence for the jury to make a determination in this case.

And additionally, he stipulated that he has been a convicted felon, and Special Agent Latham also testified as to interstate nexus.

THE COURT: Very good.

The Court will find sufficient evidence for the jury to consider this matter and deny the motion for judgment of acquittal.

Mr. Grant, is it the Court's understanding that your client has chosen not to offer testimony in this case?

MR. GRANT: That is correct, Your Honor.

THE COURT: Is that correct, Mr. Greer, that you wish not to testify in your own behalf in this matter?

THE DEFENDANT: Yes, sir, Your Honor.

THE COURT: Okay, sir.

In light of that, when we return, we will consider the jury instructions, and you should be prepared to begin your closing arguments.

Of course, I'll give you an opportunity to offer any evidence that you might choose in the jury's presence, and if

* * *

[3-139] each – a copy of that to each of the –

MR. GRANT: Your Honor –

THE COURT: – counsel.

MR. GRANT: – if they're the proposed instructions, I got those off of ECF already.

THE COURT: All right. Well, use this one as well. The one that was on the docket probably included some alternative language. That includes the language that I would intend to give.

MR. GRANT: Okay.

THE COURT: And, Madam Clerk, if you could provide verdict forms to each of the attorneys, please.

As you can see from the copies I've distributed, the Court intends to give its first instruction, which corresponds to the government's requested instruction 2A, devoid of any annotations, of course.

The Court's second instruction regarding reasonable doubt – I'm sorry. Let me revisit that.

Actually, the government's requested instruction 2A involved – is duplicative of its requested instruction 2B. The Court's intention is to give 2B, which references the defendant not having to testify.

The Court's instruction No. 2 defines reasonable doubt and is consistent with the government's requested instruction No. 3.

[3-140] Court's instruction No. 3 regarding the consideration of direct and circumstantial evidence, argument of counsel, and comments by the Court corresponds to government's requested jury instruction B4.

The Court's instruction No. 4, credibility of witnesses, corresponds to government's requested instruction No. 5.

The Court's instruction No. 5 regarding impeachment of witnesses because of inconsistent statements or felony convictions corresponds to the government's requested instruction No. 6A.

MS. TAYLOR: Your Honor, can I make a remark about instruction 5, or would you prefer to go through all of them first?

THE COURT: No. You may make a comment about it. The Court's instruction No. 5?

MS. TAYLOR: Yes, Your Honor. In this case there was no – no evidence presented of any convictions of any sort of any of the witnesses –

THE COURT: Correct.

MS. TAYLOR: – and so if it's okay with the Court, I would suggest removing the words "felony conviction" from the title and also removing the second paragraph, since it really wasn't relevant to this case.

MR. GRANT: I have no objection, Your Honor.

[3-141] THE COURT: So the Court's instruction No. 5, we'd strike the text and in the title of the instruction "or felony conviction"? Is that your request?

MS. TAYLOR: Yes, Your Honor.

THE COURT: All right. And also the last paragraph, did you say?

MS. TAYLOR: The middle paragraph which says, "To decide whether you believe a witness, you may consider the fact that the witness has been convicted of a felony" –

THE COURT: Correct.

MS. TAYLOR: – "or a crime involving dishonesty or a false statement."

THE COURT: Very good.

And you agree to those deletions, Mr. Grant?

MR. GRANT: Correct.

THE COURT: All right. We'll make those corrections. They are well stated.

The Court intends to give instruction No. 6, which corresponds to the government's requested instruction No. 7.

The Court intends to give its instruction No. 7, which corresponds to the government's requested instruction No. 8.

The Court intends to give its instruction No. 8, which corresponds to the government's instruction No. 9.

The Court intends to give its instruction No. 9, [3-142] which corresponds to the government's requested instruction No. 10.

The Court intends to give its instruction No. 10, which corresponds to the government's instruction No. 12.

The Court intends to give its instruction No. 11, which corresponds with the government's instruction No. 11.

The Court intends to give its instruction No. 12, which corresponds with the government's requested instruction No. 13.

Given the Court's announcements of its intention, are there any objections to the instructions that the Court intends to give, from the government?

MS. TAYLOR: Beyond the one that was already addressed, Your Honor –

THE COURT: Yes, ma'am.

MS. TAYLOR: – these are acceptable to the United States.

THE COURT: Yeah. I'm going to make the corrections that you and Mr. Grant stipulated to.

Mr. Grant, other than that, are there any objections you wish to state to these instructions?

MR. GRANT: No, Your Honor.

THE COURT: Very good.

I will get corrected copies for you-all to use.

Let's turn our attention to the verdict form for just [3-143] a moment. It is simply stated, and it is as proposed by the government.

Do you have an objection, Mr. Grant?

MR. GRANT: No, Your Honor.

THE COURT: Very good.

The Court will give the instruction as distributed. Very good. Anything we need to take up before our jury comes back, from the government?

MS. TAYLOR: The only thing I can think of is perhaps moving the podium before they enter, if it would make sense to do that now.

THE COURT: You're welcome to.

Chloe, do you know how to assist in its movement? It's customary for the Court to submit a copy of the indictment for the jury's consideration as well.

I have had requested in the past that the forfeiture language be redacted. I don't know if that's your request or not, Mr. Grant.

MR. GRANT: Yes, Your Honor, as well as the convictions, since that's not part of what the jury knows.

THE COURT: What says the government?

MS. TAYLOR: I think it's appropriate for the convictions to be redacted.

And I believe — I believe what Your Honor was referring to, although I missed the first part, was that [3-144] there's an a.k.a. on the caption of the indictment, and I don't think that has any relevance to the jury's consideration.

MR. GRANT: Yeah. I'll agree to that as well.

THE COURT: That we strike a.k.a.?

MR. GRANT: Yes.

THE COURT: So I'll need to strike that and strike—

I'm going to give this to you-all so that it's clear we're talking about the same thing.

I've circled in red what — from a previously redacted copy that removed the forfeiture allegations. I've done that.

Have you-all agreed to something else, perhaps the indictment not being submitted to the jury?

MS. TAYLOR: Your Honor, I had missed that you had actually asked about forfeiture, and I had assumed you were asking about the a.k.a. I just didn't hear that part.

And so I do agree that the forfeiture language should be removed for the portion that's sent to the jury.

THE COURT: Okay. Let me show you, then, the redactions that I understand you-all agree to, and my clerk will be guided clearly by that, if you can take a look at it, Ms. Taylor.

MS. TAYLOR: I think we would probably — if we could remove the word “including” and then just make it all one paragraph, I would — that would work.

[3-145] THE COURT All right. I'll additionally strike the word “including.”

And when you say make it one paragraph, are you under the impression that the word processing capability that I have can shrink that to look like it's all on the same page or not?

MS. TAYLOR: Your Honor, I could —

THE COURT: You can probably do it.

MS. TAYLOR: I could do that. If the Court could excuse me for five minutes, I can go and run and I should be able to send you a Word version.

THE COURT: Yeah. Yeah. We'll —

MS. TAYLOR: And I can go ahead and edit it and send it the way that I think we've just agreed to and then send that?

THE COURT: That's fine.

MS. TAYLOR: Okay. Should I go do that now?

THE COURT: You can do it now, yes.

MS. TAYLOR: Thank you, Your Honor.

(Ms. Taylor left the courtroom.)

(Pause in proceedings.)

THE COURT: Chloe, if you would give a copy of that to Mr. Grant and put one in Ms. Taylor's seat.

Thank you.

(Pause in proceedings.)

THE COURT: I knew that word processing was [3-146] complicated. That's why I didn't volunteer to do it.

(Pause in proceedings.)

(Ms. Taylor entered the courtroom.)

THE COURT: If you would tender the proposed copy of the indictment for submission to the jury to our clerk.

MS. TAYLOR: I could explain the process, if that would be helpful.

THE COURT: No, as long as Mr. Grant has had an opportunity to see it and agrees that it comports with your understanding of what is appropriate.

MS. TAYLOR: I missed the a.k.a. in the text of the count, Mr. Grant just pointed out to me.

MR. GRANT: We could just get some Wite-Out and then make a copy of it.

THE COURT: I'm sorry. What — oh, I see, a.k.a. Gregory Green?

MS. TAYLOR: Yes. I got the one in the caption but forgot —

THE COURT: That's okay. I think we can handle that.

MS. TAYLOR: Okay.

THE COURT: We don't need this until the jury's excused, so, Chloe, sometime between now and then, if you could make one, two, three copies of that for us, we would appreciate it.

Thank you.

* * *

[3-149] reasons that we stated in the earlier motion.

THE COURT: Very good.

MS. TAYLOR: Your Honor, the situation has not shifted in any — in favor to the defense in any way, and so the United States rests on its previously made arguments.

THE COURT: Very good.

The Court will deny the motions, and we will proceed to argument.

Thank you.

MR. GRANT: All right. Thank you.

(End of discussion at sidebar.)

THE COURT: Ms. Taylor on behalf of the government.

MS. TAYLOR: Yes, Your Honor.

May I retrieve the firearm from the witness stand?

THE COURT: You may.

MS. TAYLOR: Thank you.

Ladies and gentlemen, all of the participants in this trial have taken their respective roles and their responsibilities very seriously. You've worked hard, paid close attention to the evidence, and you received a lot of evidence in this case.

You've heard testimony from three officers with the Jacksonville Sheriff's Office who participated in apprehending Greer and recovering his firearm from the stairwell of the Hometown Inn & Suites.

[3-150] You've heard from a print examiner, who evaluated that firearm and the ammunition and the magazine and determined that there was one print on that. And you heard from her about who that print belonged to and what her process was for making that determination.

You've heard from Special Agent Latham, the interstate nexus expert, about his analysis of the firearm and his determination about whether it traveled in interstate commerce before it ended up here in Jacksonville.

You've heard from the rightful owner of that gun, Mr. Brad Beck, who told you that that was his gun. You saw the gun case that he brought with him, and

he told you that he'd never been to that Hometown Inn & Suites before.

And you've looked at the physical evidence. There's the gun itself. There's all the ammunition that was inside of that gun, this nylon holster that was recovered from

Mr. Greer's waistband. You've seen the photograph that was taken on the day Mr. Greer was arrested, showing that holster right there on his right-hand side.

And you've heard that Gregory Greer admits he's a convicted felon, and he was a convicted felon on the date that he possessed that Colt Combat Commander pistol.

Judge Davis informed you that that was the agreement between the United States and Mr. Greer and his counsel, and it's your duty to accept the fact that he is a convicted felon [3-151] as proven beyond a reasonable doubt. And so you can place a check mark next to that element in your head because both sides agree that it's a fact.

And this is a lot of evidence to take in, and you've only had two days to do it. But ultimately the question that you're going to be called to answer is fairly simple: Did I demonstrate to you beyond a reasonable doubt that Gregory Greer was a convicted felon on August 17th of 2017 and that he knowingly possessed that Colt Combat Commander .45 caliber pistol and had that pistol traveled in interstate commerce before he possessed it?

So this case is not about whether he's a convicted felon. He's admitted that. You've heard the admission.

It's not about whether the firearm had his fingerprints or his DNA on it. Fingerprints and DNA are nice to have, but they're not essential to proving that an individual possessed an item.

The testimony from the pursuing officers was that they had just run straight through that stairwell pursuing Mr. Greer. Who knows how many times Mr. Greer might have gone down that stairwell before that chase.

Special Agent Latham told you that he does not routinely submit firearms for DNA analysis because there's a risk that DNA can be transferred, left behind in an area, and that it can be transferred onto an object that later ends up in [3-152] that area. The DNA is a red herring. It's not conclusive.

With regard to interstate nexus, Special Agent Latham told you that he relies on certain sources when he's making those determinations. He's been making these determinations for quite a number of years, and he has specialized training to do so.

He told you that he attained the acquisition and disposition records from Colt firearms and that those showed that the firearm was manufactured in Connecticut. And that's consistent with what you saw physically imprinted on the firearm, that it was manufactured in Connecticut.

Those records also show that the firearm got transferred from Connecticut to New York before it then ended up down here in Florida, so the interstate travel of that firearm is well established.

And now we come to your consideration on the law of possession. The law recognizes several different kinds of possession. A person can have actual posses-

sion. The item's right here in my hand. They can have constructive possession of something, meaning they have the ability to take direct physical control over it.

I've got a pair of gloves sitting here in front of me on the podium. I'm not touching them right now, but they're in my possession because I have the ability to take control over them, and I intend to take control over them a little bit later [3-153] when I handle the firearm.

And those are all different types of possession, and they're all possession under the law.

And that's called constructive possession, and it's also a type of possession. And Judge Davis will instruct you on that point as well.

People can have joint possession of an item. More than one person can be in possession of an item, depending on the circumstances of the case.

And whenever the word "possession" is used, for example, in the indictment in this case, in the jury instructions, that includes all these different kinds of possession. It does not mean only possession of the item in your hand and somebody saw it.

But what is the evidence that Mr. Greer did, in fact, have direct physical possession of that gun? Well, there's this holster. You heard testimony this is a holster that's meant to hold a full-size pistol, and that that's what that is. That Colt Combat Commander is the type of pistol that's meant to go in this type of holster.

You saw the photograph of that holster on Mr. Greer's hip right after he was taken into custody, and it's an empty holster.

You saw Sergeant Nelson place the Colt Combat Commander firearm into this holster, and you saw what the fit [3-154] was like. You saw that with your own eyes.

Additionally, other evidence that Mr. Greer did have actual possession of this gun, when he first came into contact with the officers, he went and knocked on the door. He had passed those officers, the two vice squad members. Detective Bennett and Sergeant Nelson had both passed him in the hallway.

They were wearing clear police gear, tactical vests containing radios, magazines for their firearms, and other police equipment. And both of them told you that those were marked "police" in bright white, large letters on a black vest, clearly visible. They were plainly marked as being police officers.

And when Mr. Greer came and knocked on that door, he was not scared of them. He was not concerned about talking with them. He willingly went and knocked on the door where he knew that those vice squad members had just gone.

And after they opened the door – and, again, he's getting visual confirmation that he's speaking to members of the Jacksonville Sheriff's Office – he continued to interact with them. He even got a little pushy with them.

Detective Bennett told you that he was repeatedly making motions side to side, trying to speak over Detective Bennett, not appearing to be intimidated by the fact that he's interacting with a law enforcement officer at that time.

He was compliant initially with Sergeant Nelson's [3-155] instructions to sit on the ground, and Sergeant

Nelson gave him that instruction because Sergeant Nelson saw him making motions repeatedly to his right side.

And Sergeant Nelson, as a very experienced law enforcement officer, was suspicious of what that might mean, the fact that he's making movements toward his right side.

Sergeant Nelson told you that he told Mr. Greer to stop making those movements, told him to sit on the ground with his feet out in front of him. And he had to remind Mr. Greer repeatedly to stop making those movements towards his right side.

And all throughout that process, all throughout those discussions, Mr. Greer was being more or less compliant. He heeded the instruction to sit on the floor. He provided his ID when it was requested. He was having apparently some sort of increasingly heated words with Sergeant Nelson and then with Detective Bennett, but he was interacting with them.

And it was not until Sergeant Nelson finally told him, "You know what? I don't like how you're acting. You're making me feel uneasy. Get up off the floor and we're going to do a patdown just to make sure we're safe" – that was the point at which Mr. Greer suddenly became uncomfortable talking to those JSO vice members.

And that was the point that he took off running down that hallway, grabbing his right flank as he fled, and tearing [3-156] toward that stairwell door to try and get away from those detectives that a moment before he had no problem interacting with.

So something about being told that he was going to get patted down apparently changed his mind about

whether he was willing to interact with those police officers.

And all of these evidence – all these pieces of evidence put together lead clearly to the conclusion that Greer had that gun on his hip when he ran into that stairwell.

And you heard additional evidence about what happened in the stairwell. Detective Bennett was the first one into the stairwell, chasing after Mr. Greer. When he went into that stairwell, he told you he was unholstering his Taser, and he was trying to do a take-down. His focus was on apprehending the subject.

He told you that he did see Mr. Greer reach for his right side as he was turning that corner, but he told you he did not see the gun in Mr. Greer's hand.

He saw him reach for his right side. He heard some sort of thunk in the hallway, and in the midst of all this going on – he's chasing Mr. Greer. He's trying to deploy his Taser. He's focused on what Mr. Greer is doing because Detective Bennett told you he was expecting Mr. Greer to go down after he tased him.

This set of glasses that were worn by Mr. Greer still [3-157] have a Taser probe embedded right in them. It was a very near miss, and at that moment Detective Bennett expected him to go down. He didn't realize that they actually somehow went right into the back of his glasses right between his ear and his head.

And so that's what Detective Bennett's focused on as he's running through that hallway. And then, once he realizes that Greer is still running and he's not being affected by the Taser, then Detective Bennett's got a new problem because he's got Sergeant Nelson right behind him.

Sergeant Nelson is going full speed down the stairs too. Detective Bennett needed to get moving. He needs to get out of Sergeant Nelson's way.

And he's also got to deal with the fact that now he's got his Taser probes that – one's lodged into Mr. Greer's rear and the other's lodged in his glasses, and he's sort of physically connected with Mr. Greer as they're – as they're running through the stairwell. So there's a lot going on at this point in time.

And you heard Officer Anthony state that when he ran into the stairwell – he heard the commotion outside that door, so he ran into the stairwell. He could hear that there was still a commotion going on somewhere in the stairwell.

So he heard some people in there that he said he assumes were the other officers. So it's only moments after [3-158] Greer, Detective Bennett, and Sergeant Nelson have run through that hallway that Officer Anthony is in the hallway.

He's going at full speed too, and he told you he's turning that corner, and he's going so fast, it actually takes him a couple steps to stop himself and stop his momentum to go back and grab that pistol.

He was in a hurry. He needed to protect the public. He needed to get that pistol out of there. He could not leave it. He could not wait for an evidence technician to come and carefully bag it up and make sure that it was fully preserved.

He needed to get it out of the hallway because he doesn't know if it's loaded. He doesn't know if somebody's been shot. There are exigent circumstances that are causing him to have to move quickly.

So he showed you exactly how he grabbed that pistol. He grabbed it in his hand, just how he would hold his service weapon. And then he continued running down the stairwell, too, to try to assist with the take-down.

Now, you also heard from the print examiner. She told you that she processed that whole firearm for prints. And she only found one print on that firearm, and that belonged to Officer Anthony.

That's a perfectly reasonable thing to see because, as Officer Anthony testified, he grabbed that gun with his bare hand. He was grabbing it, and he was putting it in his vehicle [3-159] to secure it while he went to help with the apprehension.

But Officer Anthony also told you he grabbed the gun just how he grabs his service weapon. He demonstrated that for you. He had his fingers wrapped around the grip.

And even though Officer Anthony had just had his fingers wrapped around that grip, Ms. Gissendaner did not recover fingerprints from the front of the grip. She didn't recover Officer Anthony's fingerprints from anywhere else on the firearm, just that one palm print from the back of the firearm.

So there's some more evidence that even if you're grabbing a weapon, you're not necessarily going to leave prints, because Officer Anthony didn't leave a print on the front of that weapon, or if he did, it wasn't preserved by the time that it got to Ms. Gissendaner.

And she told you fingerprints are fickle. There are a lot of things that can lead to a fingerprint not being left. It could be some people just don't really leave prints. They don't have greasy fingers. Somebody

could have just washed their hands, and all the oil is going to be removed and they're not going to leave a fingerprint.

It could be affected by the object being not handled very carefully before it's analyzed. And certainly, Officer Anthony told you he's not carefully handling that. He's not bagging it for evidence. He's grabbing it. He's putting it in [3-160] his vehicle.

He remembered putting it on the seat of his vehicle, but Sergeant Nelson told you when he photographed it, the firearm's in the floor well part of the vehicle.

So possibly this firearm – during Officer Anthony driving his patrol vehicle to try and go help the apprehension, possibly it actually moves off the seat because of the way Officer Anthony's driving.

And Ms. Gissendaner told you that that kind of movement, rubbing fabric against an item, can certainly destroy a print as well.

You also heard from Mr. Beck. He was the owner of the firearm. He's never been to the Hometown Inn & Suites. He hasn't had that gun since 2015 when it was stolen out of his home. He didn't leave the gun in that stairwell that day.

And he showed you the case for the pistol, sitting right there. He told you – well, there's a retail price sticker right there, \$879.95. Mr. Beck told you that he paid about \$700 for this pistol after it had already been used. It was the most expensive gun that he's ever owned.

It's an expensive, high-end pistol. It is not a piece of junk that one would discard in a stairwell of a random hotel when they didn't want it anymore.

When you-all reported to this courtroom – some of you may have reported on Tuesday and others of you yesterday – [3-161] you had one thing in common. You each brought a lifetime of common sense with you. And the Court will instruct you that you should use your common sense and apply reason in making a decision on this case.

Are there any common-sense reasons to be wearing a pistol holster on your hip other than possession of a pistol?

Are there any other reasons why a person would be A-okay with having an extended discussion with known police officers and then suddenly bolt at high speed for the closest doorway as soon as they're told they're going to get a patdown?

And part of your application of common sense can be to apply your reasoning to make inferences in this case.

If you look out your office window and you see that the grass is wet, the sidewalk is damp, and you see people walking inside with wet umbrellas, you can put those pieces of evidence together, and you – and one can determine that it's been raining outside. That's called circumstantial evidence, and it is evidence.

And Mr. Grant's done as good of a job as he could defending Mr. Greer's actions. It's true that none of the officers who testified told you that they saw that pistol actually in Mr. Greer's hand, but that's not the definition of possession.

As we already discussed, as Judge Davis will instruct you, possession can be joint, two or more people possessing an [3-162] item together. It can be

constructive, where a person has the power and intention to take control of the object.

You're not limited to finding that he possessed the firearm only in circumstances in which an eyewitness can say, "I saw him with the gun in his hand." That's not the law.

One more piece of evidence that was demonstrated by Sergeant Nelson was the fit of this pistol holster from Mr. Greer's waistband with that pistol.

The pistol's been rendered safe.

Fits right in there. Sergeant Nelson told you this is the kind of holster one would buy aftermarket to use with this kind of pistol.

After we've completed closing arguments, Judge Davis is going to provide you with detailed instructions on what reasonable doubt means. We can also talk about what reasonable doubt does not mean. It doesn't mean check your common sense.

The judge's instructions will tell you that you're expected to apply reason and common sense when coming to your decision. Reasonable doubt does not mean proof to a mathematical certainty. It means a real doubt, not a whim or sympathy for the defendant.

And each of you was sworn at the beginning of this trial. You took an oath that you would discharge your duties and apply the law to the facts as you found them through the witnesses.

[3-163] This is an unpleasant duty, but it's an important duty. And each of you has a responsibility to weigh this evidence, the physical evidence, the photographic evidence, the testimony that you've heard from all of the witnesses, and make a determination about whether the United States has

proved beyond a reasonable doubt that Mr. Greer committed each of those elements of the offense.

The United States submits that the burden of proof is reached in this case and that all of the elements are proven, that Mr. Greer was a convicted felon on August 17th of 2017, that that Colt Combat Commander pistol had traveled in interstate commerce before it ended up here in this holster, and that it was, in fact, in Mr. Greer's holster and in his possession on that date before it was recovered by Officer Anthony.

Thank you.

THE COURT: Thank you, Ms. Taylor.

Mr. Grant, on behalf of the defense.

MR. GRANT: May it please the Court –

THE COURT: Yes, sir.

MR. GRANT: – Counsel.

Good afternoon, ladies and gentlemen. You've reached a point in this trial where yesterday I told you it's going to be my opportunity to tell you what I believe the evidence is and how to summarize that for you.

* * *

[3-183] the crime was committed on a date reasonably close to the date alleged.

The word “knowingly” means that an act was done voluntarily and intentionally and not because of a mistake or an accident.

I caution you that the defendant is on trial only for the specific crime charged in the indictment. You have to determine from the evidence in this case whether the defendant is guilty or not guilty of that specific crime.

You must never consider punishment in any way to decide whether the defendant is guilty or not guilty. If you find the defendant guilty, the punishment is for the judge alone to decide later.

You have been permitted to take notes during the trial. Most of you, perhaps all of you, have taken advantage of that opportunity. You must use your notes only as a memory aid during deliberations.

You must not give your notes priority over your independent recollection of the evidence, and you must not allow yourself to be unduly influenced by the notes of other jurors. I emphasize that notes are not entitled to any greater weight than your memories or impressions about the testimony.

It is a federal crime for anyone who has been convicted of a felony offense to possess a firearm in or affecting interstate or foreign commerce.

[3-184] The defendant can be found guilty of this crime only if all the following facts are proved beyond a reasonable doubt:

Number 1, the defendant knowingly possessed a firearm in or affecting interstate or foreign commerce; and

Number 2, before possessing the firearm, the defendant had been convicted of a felony, a crime punishable by imprisonment for more than one year.

A firearm is a weapon designed to or readily convertible to expel a projectile by the action of an explosive. The term includes the frame or receiver of any such weapon and any firearm muffler or silencer.

The term “interstate or foreign commerce” includes the movement of a firearm from one state to another or between the United States and any foreign country.

It is not necessary for the government to prove that the defendant knew the firearm had moved from one state to another, only that the firearm did, in fact, move from one state to another.

The law recognizes several kinds of possession. A person may have actual possession, constructive possession, sole possession, or joint possession.

Actual possession of a thing occurs if a person knowingly has direct physical control of it.

Constructive possession of a thing occurs if a person

* * *

[1] UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Case No. 3:17-cr-173-J-39JRK

UNITED STATES OF AMERICA,
Plaintiff,

-vs-

GREGORY GREER,
Defendant.

Jacksonville, Florida
Monday, July 2, 2018
2:02 p.m.
Courtroom 12C

TRANSCRIPT OF SENTENCING

BEFORE THE HONORABLE BRIAN J. DAVIS
UNITED STATES DISTRICT JUDGE

APPEARANCES

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(Proceedings reported by stenography; transcript produced by computer.)

[2] **PROCEEDINGS**

Monday, July 2, 2018 2:02 p.m.

COURT SECURITY OFFICER: All rise. This Honorable Court is back in session.

Please be seated.

THE COURT: Good afternoon to all.

MR. GRANT: Good afternoon.

THE COURT: Court is convened today in connection with United States of America versus Gregory Greer. It's Case No. 3:17-cr-173.

The record should reflect that Mr. Greer is present with counsel, Mr. Grant, and that the government is represented today by Ms. Taylor, and she has with her Mark Latham of ATF.

Mr. Greer, I'm sure that Mr. Grant has explained to you that the purpose of today's hearing is for the Court to fashion a fair and appropriate sentence in connection with your having been found guilty of the offense

of possession of a firearm by a convicted felon, in violation of Title 18, United States Code, Section 922(g) (1) and 924(a) (2). That was back on February 22nd of this year.

In that connection the Court has received a presentence investigation report. You too should have received that report.

Did you?

[3] THE DEFENDANT: Yes, sir, Your Honor.

THE COURT: And did you have an opportunity to review it with your attorney?

THE DEFENDANT: Yes, sir, Your Honor.

THE COURT: Were all your questions about it answered?

THE DEFENDANT: Yes, sir, Your Honor.

THE COURT: Mr. Grant, did you timely receive the report?

MR. GRANT: We did, Your Honor.

THE COURT: You didn't file any written exceptions or objections.

Do you have any that you wish to make today?

MR. GRANT: No, Your Honor, and that's primarily – just so it's clear, I did have some concerns regarding the four-level enhancement associated with the battery on a law enforcement officer.

I reviewed the sentencing guidelines and was taken aback by the fact that even if it's uncharged that it can be a possibility of it being utilized.

THE COURT: As relevant conduct.

MR. GRANT: Correct.

And the other part that caught me aback was the fact that as opposed to *Curtis Johnson versus United States* where battery was not considered to be a violent felony if it's an [4] aggravated battery because it can be done by mere touching, now suddenly I'm being – you know, in a position where he's not being charged with an offense, but there is some evidence that comes out during the course of the trial that he pushed by an officer.

As slight as it may be, in theory it could be a felony, and so that's where we were kind of taken aback.

I've explained it to Mr. Greer. And so for those reasons we do not object, but I just want to make clear that it is such that it was not a standard type of analysis.

THE COURT: Yeah.

And to your point, the Court too took note of the enhancement. I actually – you know, much of the testimony at trial dealt with the aftermath of his movement, and I hadn't actually recalled the shoving of Detective Bennett, I think it was –

MR. GRANT: Yes.

THE COURT: – until I refreshed my recollection by looking at the – looking at the trial transcript and the report a little more closely.

I agree with you it's an unusual but actually under the circumstances lawful calculation, and we'll talk a little bit more about it as we proceed.

Ms. Taylor, did you receive the report?

MS. TAYLOR: Yes, Your Honor.

[5] THE COURT: Did you have any exceptions or objections to it?

MS. TAYLOR: I have no objections, Your Honor.

THE COURT: Very good.

Mr. Greer, the conversation that your attorney and I just had has to do with the guidelines and their calculation.

The guidelines are designed to assist the Court in fashioning a fair and appropriate sentence. Their purpose is to avoid vast disparities between defendants that are similarly situated in different jurisdictions.

So if someone in Oregon with your criminal history was charged with the same offense, the guidelines are designed so as to assist the sentencing court in Oregon to not differ significantly from the sentencing court in Florida.

THE DEFENDANT: Yes, sir.

THE COURT: And in that respect, while they were once mandatory, they are now advisory. But they use both criminal history and the seriousness of the offense to determine the recommended punishment.

And in your instance the base level offense, because it necessarily involved your having been convicted of previous felonies – and they cite the two felonies upon which they relied in the calculation and in the charge. The base level offense is given 24 levels.

Because the firearm was stolen, two additional levels [6] are added. And because, as your attorney and I just discussed – because the firearm was, at least in context, though not charged, involved in the battery and, in this case, the unpermitted touching of a law enforcement officer, four additional levels were added.

That came up to 30 levels, which is a significant level in and of itself. But added to it was a criminal

history category that took into consideration a criminal history on your behalf that actually began at age 16, when you were a juvenile, and continued with several felony adjudications, including some federal adjudications.

So that your criminal history resulted in a Category – give me just a moment – Category VI, which is actually the highest criminal category of – you can have for criminal history.

The combination of a Category VI criminal history and 30 offense levels resulted in a guidelines recommendation of between 168 and 210 months. But because you were only charged with an offense that carries a maximum penalty of 120 months, the guidelines recommendation gives way to the maximum sentence imposable, which in this instance is 120 months.

I've looked at this calculation, which was prepared by the probation department, and determined that it is accurately calculated, and I will use it in the sentencing as a recommendation for the – as it should be, for the Court to [7] consider.

Having said that, you have an opportunity during this hearing to make a statement to the Court for its consideration. Mr. Grant, on your behalf, can argue on your behalf and in mitigation of your sentence and offer additional witnesses and evidence if he chooses.

The government, of course, gets the opportunity to do basically the same thing at this time.

I'll hear from you, Mr. Grant.

MR. GRANT: Your Honor, I'll be brief, and the only reason why I say that in this particular case, as the Court is aware, there was a trial.

You sat through the hearing – through the testimony. You are well aware of what the testimony was, which goes back to the issue of the four-level enhancement.

Again, while it is technically correct, it is a situation in this case where it was – even looking at the situation in the worst light, it – the evidence does not show that Mr. Greer in any way tried to injure or cause harm to the officer. The testimony clearly was that he was trying to avoid a patdown and trying to run away from the officers.

Mr. Greer has probably one of the saddest lives I've ever seen. And to be honest – and I use this word “honest” — I did not even know about how bad his life was until probably about two weeks before the trial when I went and spoke to him [8] to try to find out what his life was like, trying to see whether or not we could resolve the case.

And after talking to him, I called and spoke to his sister, Ms. Henderson, who now lives in Pittsburgh, and she verified everything that he said to me.

THE COURT: Is that the sister that's caring for his mother?

MR. GRANT: Correct.

And you can see bits of this in the presentence investigation report. When Mr. Greer was six years old, his mother was the subject of a federal indictment in Washington, D.C. It turns out that the individuals with whom she associated was part of a notorious gang in the D.C. area.

I had no knowledge of it, but when I went back and talked to people in the office, they were like, “Oh, yeah, they did a documentary on these people.”

And when I talked to his sister, who is substantially older than him, about 19 years, she actually was responsible for raising him.

She had left the house. In fact, the presentence investigation would reflect that his two maternal siblings, his sister and his brother Cecil, were in foster care. They had left the residence. They were gone. And yet here he comes, you know, years later born to this volatile relationship in which – his parents stabbing one another.

[9] His mother goes to prison. His sister comes and starts to raise him. His father dies when he's 11 years old. His mother's a crack addict.

And he's basically living – you know, surviving in the worst times in D.C., because in the time when he was growing up, Washington, D.C., was not just the capital of the United States. It was the murder capital of the United States.

And one of those individuals who succumbed to that environment was his cousin, who he actually witnessed being killed. He actually – the paragraphs that relate to his convictions in – from paragraphs 25, 27, and 28, those all were around the same time.

So he had ran away from the halfway house, and then while he was running away from the halfway house, he was out, that's when his cousin had been killed. He then became a witness.

He was charged with the escape. He had the previous count, and then he also had a new sale of PCP. And he ended up spending a lot of time, but he was released shortly after the trial. And then he violated, and then all of a sudden then he gets these lengthy sentences, which amount to almost six years.

And then the snowball begins, because he has been caught up with those cases up until 2015, when he last served his federal sentence for those offenses.

He has basically just survived on his own as best he [10] could. And his sister tried to help him as best she could, but she had her own problems because she too was trying to raise her own kids in a volatile relationship.

Mr. Greer has two tattoos, one in the front, one in the back, “No Regrets,” “No Fear.” But the reality is there is regret, and there is fear in the sense of the life that he has lived. This is how he has psychologically tried to deal with it.

My interaction with him has been pleasant at all times. I mean, oftentimes you have clients that will complain, complain, complain. Mr. Greer doesn’t complain. Mr. Greer calls the office, talks to the secretaries, and, you know, just makes the best of whatever he’s in.

And that’s kind of what the situation is. His life has just gotten him to the point that he just muddles through and then comes out the other end and tries to adjust as best he can.

To his – to speak to that are the women in his life. He has a longstanding relationship, he breaks up; has a longstanding relationship, breaks up, and yet these same women are still back in his life right now because they see a part of him that we don’t generally see.

I mean, we see an individual who has criminal charges, has gone to prison. But we don’t see the individual who obviously is able to keep a smile on his face even though [11] he’s lived a life that’s not something to smile about.

Now, it's difficult, in terms of a trial, to try to balance, from a defense standpoint – you know, to try to get the Court's ear on what an appropriate sentence should be when an individual is still maintaining his innocence, and Mr. Greer is still maintaining his innocence.

But nevertheless, he still is an individual, and he still has to come through the system, and he still has to come out of the system.

Mr. Greer is in need of mental health treatment, some type of counseling to address what is clearly a longstanding issue that he has never been able to deal with. When I spoke to his sister, she told me that he has never grieved fully for his cousin's death. He has just never gotten there.

And that may have been because he was – right after the fact, he was sitting in a county jail. When I say county, sitting in the Washington, D.C., jail just testifying but not grieving.

And he has just gone through life just substituting one thing for another, which is primarily drugs, to overcome whatever – what is clearly an issue that needs to be addressed in his life.

Now, I understand that the guidelines, as calculated, far exceed the statutory maximum, but I would suggest to the Court that a sentence at the statutory maximum is not [12] necessary.

When I say not necessary, I'm taking in consideration that Mr. Greer has been in and out of jail. He's been in and out of violation status.

But, again, I think that the main thing that needs to be addressed this time is that there needs to be some major focus on helping him get through his mental

health issues, his grieving process, and also to get him some training, because Mr. Greer needs to start working.

That's one thing his sister told me as well. He needs to get his life focused, and he needs to recognize that you can't just always look back and talk – and think about how you have survived a horrendous life. You've got to start looking to the future, and that's what Mr. Greer needs to be. That's what Mr. Greer tells me he's trying to be.

But he's got a GED so he's – you know, while he's in prison, he can go into the various vocational trainings, but he needs to get there.

THE COURT: All right. Thank you, Mr. Grant.

Does Mr. Greer wish to make any statements to the Court?

THE DEFENDANT: Yes, sir.

MR. GRANT: Yes.

THE DEFENDANT: I did my background – good afternoon.

[13] THE COURT: Good afternoon.

THE DEFENDANT: I did my background check on you-all, Judge Davis, and I know you was a juvenile judge before.

THE COURT: I was.

THE DEFENDANT: And I know you know a lot of us make it; a lot of us don't.

Mr. Grant stated that I was going to try to make it. I'm going to make it no matter how this situation end up. I know this present time right here is going to mold my future.

Yeah, I'm going to pay the price for some of my failures, but I am going to learn, and I'm going to do what I'm supposed to do as a man. Not because of the time, because I'm almost – I'll be almost 50 by the time I get home. I've got to build from here.

And whatever you choose to do, I know it will help me, so thank you. And just that's what I want to say.

THE COURT: All right. Thank you, Mr. Greer.

THE DEFENDANT: You're welcome.

THE COURT: Ms. Taylor?

MS. TAYLOR: Yes, Your Honor.

I understand that everybody in this room essentially has heard at length the facts of this case because all of the parties have sat through the trial and heard all of the details of what happened.

What happened was serious. Mr. Greer may not have [14] intended to physically injure the officer when he did physically touch the officer while running past with that gun on his hip, but the situation that was created by Mr. Greer's confrontation of the officers and by his subsequent decision to flee was extremely dangerous.

I do know, from our prep with one of those officers, that he believed that Greer did have a gun on his side. However, he did not see a gun, which was why he, instead of yelling, "Gun," which would have upped the dangerousness level immensely, he yelled that Mr. Greer had something on his hip or words to that effect.

Had that officer yelled what he suspected, which – and which was found to be true by the jury, which was that Mr. Greer did have a gun and that he was pushing

past the officers, placing people in danger, it would have been a very different situation.

He wouldn't have just been attempted to be tased and ultimately tased at the truck, but it could have been a life-and-death situation.

And not just for Mr. Greer but for anybody else who was staying in that hotel, anybody who was along that flight path, anyone in that kitchen and bath store where he was hiding out when the officers found him during the chase.

It was during business hours. People were working at those businesses along Philips Highway that he ran through [15] while being chased by JSO.

So this is not just a, you know, traffic stop. A gun's being found in the console, and somebody says, "Yeah, that's mine." This is a very dangerous situation that happened because of Mr. Greer's choices.

And nothing about what has happened in Mr. Greer's life – I mean, certainly it sounds, and it's reflected in the PSR, that he does have – had a very sad childhood situation, absolutely, no doubt. And surely he was traumatized by what he witnessed with regard to his cousin's death.

But none of that is what caused him to be carrying a stolen gun in that drug-ridden hotel that day. None of those factors are what caused him to make that decision, and that decision is what he's here for.

You know, this isn't a case where he did this simply because he was hopelessly addicted to drugs. It's a decision that he made to be carrying that gun that day.

It was the decision that he made to confront the law enforcement officers who were attempting to do an arrest, and it was a decision that he made to flee, to

envelope himself amongst innocent civilians while he was fleeing from what he knew to be armed officers.

And so those are all his decisions and things that he needs to be held accountable for.

Additionally, it was his decision to not accept [16] responsibility for what he did, and that was despite, frankly, pretty overwhelming evidence that he did possess that gun, which the Court has heard, and I won't go into – into great detail on it.

But he's got the holster on his hip. The gun's in the stairwell he just ran through. It's an expensive gun, not one that somebody would just chuck because they didn't want it anymore.

He was running away from the police for a reason, and that evidence was sufficient to prove to a 12-person jury beyond a reasonable doubt that he did possess that gun.

And so looking at the sentencing guidelines, they accurately reflect Mr. Greer's personal history, and they accurately reflect what happened on the day that he was arrested by the Jacksonville Sheriff's Office.

While most of his serious criminal charges are somewhat old, the fact is that even after he was released from prison on those charges, his conduct on supervised release was very poor. The Court can see that he had multiple modifications of his supervision and, in fact, revocation and new sentences to imprisonment on – on those sentences.

And, in fact, on some – it looks like initially the Court was attempting to cut him a break on some of those earlier charges by putting him in the halfway house, which he then walked away from, thus obtaining a new felony.

[17] And then while he – after he’s walked away from the halfway house, he sells a – I think it was a PCP-laced cigarette to an undercover.

So he’s got a history of being given breaks, being given chances, and repeatedly failing to succeed at integrating into society and living a law-abiding life.

One other thing I want to address is Mr. – well, the defense arguments related to the fact that he has the support of the women in his life.

One woman who’s mentioned in the PSR is at paragraph 32, and that’s a woman that Mr. Greer was in a relationship with and who he was convicted of battering, and certainly the circumstances of that case are concerning.

It states that the victim had advised that Mr. Greer had repeatedly hit her in the face and head during an argument and then had fled the residence with the victim’s cell phone. And police had noted that she was bleeding heavily from the face and head. And that was only a little more than a year before Mr. Greer is arrested with a gun in this case.

So he’s got some recent, very concerning criminal history in addition to the somewhat older federal offenses that are what are primarily driving his guidelines in terms of the criminal history score in this case.

So given Mr. Greer’s criminal history, given his poor history on supervision, given his recent history, including a [18] history with violence, given that he’s got – and I’m just double-checking because I believe that he had – he was – he’s had several different firearms cases, although none especially recently until this one.

His guidelines are reflective of his history. Even without that four-point enhancement for the battery on a law enforcement officer while he was in possession of the gun and trying to escape, his guidelines still would top out above the maximum. They would be 120 to 150 months in prison.

So, I mean, either way, this Court is looking at a guidelines range that is extremely high, and that's reflective of the conduct and reflective of Mr. Greer's personal history.

And so for those reasons, the United States submits that the guidelines sentence of imprisonment is appropriate in this case, Your Honor.

THE COURT: All right. Thank you, Ms. Taylor.

As is often the case, Mr. Greer, the lawyers' arguments to the Court are both filled with truths. There's been many times that I've sat here that that hasn't been the case.

There is no doubt that you experienced a childhood that no reasonable person would wish on a child. You did your homework and learned that I was on the juvenile bench for a while, and your comment called to mind something that I would tell juveniles when they appeared before me.

[19] It was that as they were being held responsible for their decisions by the system, it needed to be clear to them that while their past – their parents, their teachers, the adults involved in their lives – may have failed them, clearly, that ultimately the society, the community, the courts were going to hold them accountable for the decisions that they make.

And while their past might explain some of their decision-making, it wasn't going to excuse it. And that's, as we sit here today, still true.

The guidelines give the Court some ability to take into account the harshness of previous experiences, and I routinely do, and I do in your case as well.

It's a question of how much of that consideration can offset the seriousness of the offenses and the seriousness of the criminal history that is brought to the sentencing process and whether or not – you know, one of the statutory purposes of sentencing is to engender lawful behavior, and that has not happened in your experience now of – 26 years?

Is my math right? No, it would be 16 years. It started at 16, and you're now 35. Is that right?

THE DEFENDANT: Yes, sir, Your Honor.

THE COURT: Yeah. Yeah, almost 20 years of experience in the system.

And just today a phrase was brought to my attention [20] that made me think of you, and probation has recently revamped some of its definitions and goals. And one of the things that it couched as an apt description of its purpose, it was to cause people to be able to lawfully self-manage.

And, you know, your comment to me, your statement to me today, was a – basically a promise to do that, that you – I mean, you realize it's time for you to change –

THE DEFENDANT: Yes, sir, Your Honor.

THE COURT: – that you're going to have to change in order to avoid lengthier sentences, because if you

look at your history, that's what's been happening. It's been getting lengthier all along.

And if you continue to do the same things you've done in the past, you're going to continue to get the same kinds of results. And perhaps you've gotten to the point in your life where you realize that, and that's a good thing.

It still doesn't cause me to be able to erase the seriousness of this offense, as the government points out, how dangerous it was for you to engage in this behavior, how recently you've engaged in dangerous behavior.

There is a necessity, as required by statute, for me to consider not only the seriousness of the offense but whether or not there's a just punishment in response to it, whether or not your sentence is designed to promote respect for the law. And it's not just you that I need to be worried about having [21] respect for the law, it's the entire community by the sentence that you get.

I need to determine whether or not the kinds of sentences that are available to the Court are such that they will serve the purposes of sentencing.

In this instance it's clear that probation wouldn't do that. You haven't demonstrated the ability to lawfully self-manage. You've been given opportunities in the past to do that, and you've failed to take advantage of them. So, I mean, obviously a probationary sentence would not be appropriate.

The question becomes, you know, what combination of sentences and types of sentences might best help you do what you need to do.

To your advantage, and I noticed this, you've gotten your GED. You did take advantage of some of the programs that were available to you while you were incarcerated, and that's a good sign. The fact that you stand before the Court today appearing to be determined to change your life is also a good sign.

The sentence that I'm going to impose is going to give you an opportunity to do that. You're going to be able to – I encourage you to try to get a vocational skill while you're in prison, to continue your studies while you're in prison.

I agree with your sister that you probably have not [22] grieved sufficiently. And if you recognize that that's the truth, it's going to be even more helpful for you to get the mental health counseling that I'm going to order.

I question whether or not you grieved sufficiently for your father's death, because at age 11, I cannot imagine experiencing that and what kind of feelings would be generated from that.

So you've got – you'll have the opportunity, and I'm going to require that you get some mental health treatment while you're in prison as well as, hopefully, some vocational treatment.

So I'm hopeful. You're right. You're going to be closer to 50 when you get out of prison. You'll be around 45 years old.

I want you to know that's not late in life. You've wasted about half of it. Whether or not you get the benefit of a quality of life going forward beyond that is really going to depend on you and your ability to stay out of the system.

It's going to be made difficult by the fact that you – you're a convicted felon. So to the extent that you can take advantage of reentry programs and reentry skills and — you need to focus on that as you near the end of your sentence and try to truly take advantage of it.

Because if you can get in, get your foot solidly grounded, you're still young enough of a man that you can have [23] a productive life, and that's what the Court really wants for you.

So having said that, I'll get you – is there any reason sentence should not now be imposed?

MS. TAYLOR: No, Your Honor.

THE COURT: Mr. Grant?

MR. GRANT: No, Your Honor.

THE COURT: There not being any legal reason why sentence shouldn't be imposed at this point, Mr. Greer, and the Court having considered the presentence investigation report, the arguments of the lawyers, your statement to the Court, all of those factors that are required pursuant to Title 18, United States Code, Sections 3551 and 3553, it is the judgment of the Court that you, Gregory J. Greer, be committed to the custody of the Bureau of Prisons to be imprisoned for a term of 120 months.

Upon release from imprisonment, you shall serve a three-year term of supervised release, and while on supervised release, you shall comply with the mandatory and standard conditions adopted by the Court in the Middle District of Florida.

In addition, you shall comply with the following special conditions:

You shall participate in a substance abuse program, outpatient or inpatient, and follow your probation officer's [24] instructions regarding this court order.

Further, you shall contribute to the cost of the services not to exceed an amount determined reasonable by your probation officer's sliding scale for substance abuse treatment services.

During and upon completion of the program, you will be directed to submit to random drug tests.

You shall also participate in a mental health program, outpatient and/or inpatient, and follow the probation officer's instructions regarding the implementation of this court order.

You shall contribute to the cost of those services not to exceed an amount determined reasonable by your probation officer's sliding scale for mental health treatment services.

You will submit to a search of your person, residence, place of business, storage units under your control, or vehicle conducted by the United States Probation Office – officer at a reasonable time, in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release.

You shall inform other residents or occupants of the premises or vehicle, respectively, that they may be subject to search pursuant to this condition. Failure to submit to a search may be grounds for revocation.

You've been convicted of a qualifying felony. [25] Therefore, you shall cooperate in the collection of DNA, as directed by your probation officer.

You shall refrain from any unlawful use of controlled substances and submit to one drug test

within 15 days of placement on supervised release and at least two periodic drug tests thereafter, as directed by your probation officer.

The Court orders that you submit to random drug testing not to exceed two tests per week.

Based on your financial status, the Court waives imposition of a fine.

Are there forfeiture matters to be determined?

MS. TAYLOR: No, Your Honor.

THE COURT: It's further ordered that you pay to the United States a special assessment of \$100.

After considering the advisory sentencing guidelines and all of the factors identified in Title 18, United States Code, Section 3553(a) (1) through (7), the Court finds that the sentence imposed is sufficient but not greater than necessary to comply with the statutory purposes of sentencing.

You're hereby remanded to the custody of the United States Marshal to await designation by the Bureau of Prisons.

The Court recommends that you receive and take advantage of all vocational and substance abuse and mental health counseling for which you may qualify during the period of your incarceration.

[26] You have a right to appeal from the judgment and sentence of this Court within 14 days. Your failure to take an appeal will result in a waiver of your right to appeal.

The government may also file an appeal if it chooses. If you are unable to afford a lawyer for purposes of taking an appeal, one will be provided for you.

If you cannot afford the fee associated with taking an appeal, the clerk will be directed to accept your notice without a fee.

The Court having pronounced sentence, does counsel for the defendant or the government have any objections to the sentence or the manner in which sentence was pronounced, other than those previously stated for the record?

MR. GRANT: Your Honor, not as to the manner. We will reserve in terms of the reasonableness.

And also if the Court could recommend Jesup for designation.

THE COURT: All right. I certainly am not opposed to recommending Jesup.

Does the government object to that recommendation?

MS. TAYLOR: No, Your Honor. And I have no other objections either.

THE COURT: Very good.

Mr. Greer, I hope that your time goes as swiftly as it can and as productively as it can and that when you are [27] released, returned to the community, that you'll have decided on and are successful at a new direction in your life.

Good luck to you.

THE DEFENDANT: All right.

THE COURT: We're in recess.

COURT SECURITY OFFICER: All rise.

(The proceedings were concluded at 2:41 p.m.)

[28] CERTIFICATE OF OFFICIAL COURT
REPORTER

UNITED STATES DISTRICT COURT)
MIDDLE DISTRICT OF FLORIDA)

I hereby certify that the foregoing transcript is a true and correct computer-aided transcription of my stenotype notes taken at the time and place indicated therein.

DATED this 22nd day of August, 2018.

s/Shelli Kozachenko
Shelli Kozachenko, RPR, CRR, CRC
Official Court Reporter

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.

No. 18-12963

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GREGORY GREER, a.k.a. Gregory Green,

Defendant-Appellant.

Non-Argument Calendar

(February 20, 2019)

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

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)

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.

No. 18-12963

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GREGORY GREER, a.k.a. Gregory Green,

Defendant-Appellant.

Non-Argument Calendar

(January 8, 2020)

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 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 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] admi[ssion] [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.

All Citations

798 Fed.Appx. 483

123
140 S.Ct. 41
Supreme Court of the United States.

No. 18-9444

GREGORY GREER,
Petitioner,
v.

UNITED STATES.

October 7, 2019

Opinion

On petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit. Motion of petitioner for leave to proceed *in forma pauperis* and petition for writ of certiorari granted. Judgment vacated, and case remanded to the United States Court of Appeals for the Eleventh Circuit for further consideration in light of *Rehaif v. United States*, 588 U.S. —, 139 S.Ct. 2191, 204 L.Ed.2d 594 (2019).

All Citations

140 S.Ct. 41 (Mem), 205 L.Ed.2d 4, 19 Cal. Daily Op. Serv. 9844

124

2021 WL 77241

Supreme Court of the United States.

19-8709

GREGORY GREER,

v.

UNITED STATES

January 8, 2021

Opinion

*1 The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari is granted.

All Citations

--- S.Ct. ----, 2021 WL 77241 (Mem), 21 Cal. Daily Op. Serv. 213