

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Case No. 18-3669

UNITED STATES OF AMERICA

Plaintiff-Appellee,

v.

MICHAEL WAYNE PARSONS

Defendant-Appellant

BRIEF OF APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

The Honorable JOHN M. GERRARD, Chief United States District Court Judge

UNITED STATES OF AMERICA
Plaintiff-Appellee

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SUMMARY AND STATEMENT REGARDING ORAL ARGUMENT

Michael W. Parsons was a convicted felon fleeing pending charges brought in the State of Tennessee. He was arrested in Nebraska after landing a private plane he owned while headed to Canada. A lengthy investigation commenced related to unrelated criminal matters ultimately resulting in the search of the plane he had flown to Nebraska. Located in the plane was a LAR-15 rifle and several hundred rounds of ammunition.

Parsons, a sovereign citizen, proceeded to trial where he was convicted by a jury of being a felon in possession of a firearm. He was subsequently sentenced to 84 months in prison to be followed by a three-year term of supervised release. Parsons has appealed raising the sole issue of the sufficiency of the evidence.

The United States respectfully submits that the issues presented in this appeal can be readily resolved by reference to the trial record and oral argument is not needed. However, should the Court determine oral argument would be helpful, the United States respectfully submits ten minutes per side would be sufficient.

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STATEMENT OF THE ISSUE

I. WHETHER SUFFICIENT EVIDENCE WAS PRESENTED TO ESTABLISH PROOF BEYOND A REASONABLE DOUBT THAT PARSONS WAS A CONVICTED FELON WHO KNOWINGLY POSSESSED A FIREARM

United States v. White, 816 F.3d 976 (8th Cir. 2016)

United States v. Eldridge, 984 F.2d 943 (8th Cir. 1993)

STATEMENT OF THE CASE

Michael W. Parsons was indicted by a Grand Jury sitting in the District of Nebraska on April 19, 2017. (DCD 1).¹ The Indictment charged Parsons with a single count of being a felon in possession of a firearm in violation of Title 18, United States Code, Section 922(g)(1). On August 28, 2018, the case proceeded to trial before a jury. (DCD 143). On August 30, 2018, the government rested and Parsons filed a motion pursuant to Fed. R. Crim. P. 29 asking to have the case dismissed for failure to present a prima facie case. The motion was denied. (DCD 150).

Parsons testified during the trial and the case was submitted to the jury on August 30, 2018. (DCD 150). On that same date, the jury returned a verdict of guilty. (DCD 150).

On December 7, 2018, Parsons appeared for sentencing. The Honorable Chief Judge John M. Gerrard sentenced Parsons to a term of imprisonment of 84 months, consecutive to any state sentences imposed, or to be imposed, in Tipton County, Tennessee, and further ordered him to serve a three-year term of supervised release following his release from prison. (DCD 174). On December 9, 2018, Parsons filed a timely Notice of Appeal. (DCD 182). On December 13,

¹ “DCD” refers to the filings in the District Court Docket.

2018, the Judgment was filed by the district court. (DCD 187). This Court has jurisdiction over the appeal pursuant to 28 U.S.C. § 1291.

THE EVIDENCE AT TRIAL

Michael W. Parsons was convicted of aggravated assault in Tipton County, Tennessee, in 2009. A certified copy of the conviction was introduced into evidence. (Ex. 31).² The government proved that Parsons was the same Michael Parsons who was the subject of that proceeding by calling Lieutenant Daniel Walls of the Tipton County Sheriff's Office to testify. Lieutenant Walls was present during the trial, a trial where the defendant represented himself, and he identified Parsons as being the person who was the subject of the Tennessee judgment. (T. 128-36).³ The conviction was for a felony offense. (T. 136; Ex. 32, 33).

Anthony Todd Weverka was the board president of the Arapahoe Municipal Airport Authority in Arapahoe, Furnas County, Nebraska. (T. 144). He met Parsons in person in January of 2017 when Parsons piloted a plane that landed at the Arapahoe Airport. (T. 151). Parsons had called Weverka a month or two prior and asked about the possibility of stopping at the airport. (T. 153).

Parsons arrived at the airport, which was not staffed fulltime, before Weverka did. (T. 155). The plane was unusual as it had no tail number. (T. 156).

² "Ex." refers to the exhibits offered during the proceedings.

³ "T." refers to the Transcript of Trial Proceedings Before the Honorable John M. Gerrard United States District Judge and Jury

No one else was with Parsons and there were no other passengers at the airport. (T. 158).

Parsons told Weverka that he was heading to Cut Bank, Montana, and that he was originally from Tennessee. (T. 158-9). Parsons told Weverka he was a “sovereign” and said he was member of the Chilcotin Nation. (T. 167). Parsons spent the night at the airport office. (T. 168). Parsons claimed to be an “ambassador” of the Chilcotin Nation and also claimed to be a diplomat. (T. 194).

Parsons was arrested the following day by state and federal law enforcement officers. The plane stayed in the hangar for two and one-half to three months. Although the hangar was typically locked, there were people that had access to the hangar. (T. 168-70). Weverka himself had entered the plane to service the battery but had never searched it. (T. 170). At one point, when he entered the plane, he did observe some ammunition boxes. (T. 170). He never saw a gun in the plane. (T. 170).

Furnas County Sheriff Kurt Kapperman first learned of Parsons on January 11, 2017. (T. 208). Kapperman received word that a warrant had been issued for Parsons’ arrest and that his cell phone had been “triangulated” and determined to be in the general vicinity of Arapahoe, Nebraska. (T. 212). He and other state and federal agencies met in the morning hours of January 12, 2017, and made plans to locate and arrest Parsons. (T. 214).

The initial information provided to Kapperman was that Parsons had been travelling in a car. (T. 215). Based upon information given to Kapperman he had determined that Parsons was likely located somewhere near the Arapahoe Airport. (T. 217). Parsons was later located and arrested in an administration building at the airport on January 12, 2017. (T. 245-9).

Parsons was transported to the Furnas County Jail on that same date. (T. 249). Sheriff Kapperman did not know how Parsons had arrived at the airport until later. (T. 249). When he did learn that Parsons had flown to the airport in a plane he, (Kapperman), did not search the plane and he said he never observed a firearm from outside the plane. (T. 256-7).

Parsons was held at the Furnas County Jail and, later, at the Phelps County Jail. While in those locations, his telephone calls were recorded and those calls were monitored by law enforcement.

Special Agent Montie Czaplewski of the Federal Bureau of Investigation (FBI) told the jury about the FBI's involvement in the investigation. The FBI was brought into the case on January 10, 2017, as a result of a lead sent from the FBI office in Memphis, Tennessee. (T. 328). The FBI knew there was a warrant for Parsons' arrest and Agent Czaplewski had been told that Parsons might be travelling in a Ford Taurus. (T. 331-2). Agent Czaplewski and other law enforcement personnel met with each other in the early morning hours of January

12, 2017, for the purpose of locating Parsons and taking him into custody. Parsons was located in the administration building at the Arapahoe airport, was taken into custody, and later transported to the Furnas County Sheriff's Office. (T. 338-9). At that point, the FBI had no further interest in him. (T. 339).

On January 12, 2017, the FBI learned that Parsons had actually flown, rather than driven, to the airport. However, Agent Czaplewski did not return to examine the aircraft because, at the time, the FBI had no interest in his mode of transport. They had simply been tasked with locating a fugitive. (T. 341-2).

Parsons remained in state custody while extradition proceedings to the State of Tennessee were being pursued. On or about February 16, 2017, the FBI was brought back into the case and asked to conduct a covert investigation into an unrelated criminal matter.⁴ (T. 340).

⁴ An "unrelated" matter was referenced several times during the trial, however, no evidence regarding the substance of the investigation was presented to the jury. For the purpose of clarity in the record, however, the nature of the allegations was presented to the district court and is in the record for this Court's understanding. Essentially, the FBI had learned that a supporter of Parsons, located in Canada, who held herself out as the "Chief Justice" of the Universal Supreme Court of the Country of Chilcotin, had issued purported arrest warrants calling for the arrest of the Tipton County, Tennessee, Judge presiding over Parsons' state charges and the Furnas County Sheriff in whose custody Parsons found himself. It was alleged she had also contacted a bounty hunter in New Orleans, Louisiana, and tried to hire him to kidnap the judge and the sheriff. The government possessed no evidence to indicate that Parsons was even aware of the scheme, let alone a participant in it. (Revised Presentence Investigation Report, Part A, ¶ 24). As a consequence, the jury was not told about the substance of the "unrelated" matter.

After the covert investigation had run for several weeks, the FBI obtained a federal search warrant allowing agents to search the plane and recover, in particular, firearms and ammunition. The warrant was obtained on March 20, 2017, and was executed on March 22, 2017. (T. 343-7). All of the contents of the plane were removed. Before removal of the items in the plane, it was not possible to see whether there were any firearms inside it. (T. 348-49). In conducting the search, the agents located a Rock River LAR-15 semi-automatic rifle and several hundred rounds of ammunition. (T. 350). The rifle, (Ex. 1), had the serial number CM75496. (T. 352). The FBI was aware by the time of the search that Parsons was a convicted felon and had also learned that there might be firearms in the plane. (T. 343).

Aside from the firearm and ammunition, there was nothing in the plane that constituted contraband or that would have been illegal for Parsons to possess. Venue items with Parsons' name were also found in the search of the plane.

Agent Czaplewski told the jury how it was determined that firearms might be located in the plane. Parsons was being held in the Phelps County Jail when he made three recorded telephone calls, excerpts of which were later played for the jury. (T. 422-5; Exs. 35, 36, 37). All of those calls were made before the plane had been searched. (T. 423).

In the calls Parsons did not explicitly reference firearms. However, he repeatedly expressed concern that his calls were being recorded and said that someone needed to retrieve the plane “immediately.” He was also heard to make reference to the “Nation’s item” and “gifts” that he was bringing on the plane. (Exs. 35, 35A, 36, 36A, 37, 37A).⁵ As an example, in one call between Parsons and Sue Holland, (the purported Chief Justice of the Universal Supreme Court of the Chilcotin Nation), Parsons made the following remarks: “Let me make a statement as this is all being recorded.” He later continued, “But I need to get that laptop away from here and uh, uh, you uh, hmm, oh how do I say this? Uh. The only thing they’ve got of my property of significance is the laptop here.” After listing several benign items that were located in the office when he was arrested, he continued “Uh, all the stuff that belongs to, without saying anything, you know, the gifts and stuff that I bought for uh, and the property that belongs to Stanley and them, uh.” He concluded by saying, “Now that you know, I told Pat somebody’s gotta go get that plane and get it away from there. Because who knows what.” (Exs. 36, 36A).

The rifle found in the airplane several weeks later was directly tied to Parsons. Deborah Davenport formerly worked at Southeastern Guns in

⁵ Exhibits 35A, 36A, and 37A are transcripts of the telephone calls found in Exhibits 35, 36, and 36. The court did not admit the transcripts into evidence. However, they were offered and are part of the record.

Birmingham, Alabama. (T. 474-5). She identified the LAR-15 with the serial number CM75496 as having been sold by Southeastern Guns in 2006. She knew that because an ATF Form 4473 had been signed by the purchaser, one Matthew Lovan, and the form contained the serial number CM75496. (T. 482-91).

Matthew Lovan was an air traffic controller living in the State of Tennessee. He knew Michael Parsons having met him in 2008 in Tennessee through a friend named Bravo. (T. 497-8). Lovan was introduced to him because he, (Lovan), was interested in selling his Rock River Arms LAR-15 that he had purchased from a gun shop in Alabama and Parsons was interested in purchasing it. (T. 498-9). Lovan sold the LAR-15 to Parsons in 2008 and he never saw the rifle again. (T. 500). He identified his signature on the ATF Form 4473 and said the gun referenced in the form was the one he sold to Parsons. (T. 503-4). Lovan knew the firearm worked as he had actually fired it himself. (T. 506).

Special Agent Cory Shelton of the Bureau of Alcohol Tobacco, Firearms and Explosives is an interstate nexus expert. The LAR-15 recovered from Parson's plane, (Ex. 1), was designed to expel a projectile by means of action of an explosive. (T. 525-6). The gun was manufactured by Rock River Arms in the State of Illinois. (T. 530). It was not an antique firearm. (T. 530). Of the hundreds of rounds of ammunition recovered during the search of the plane, some were manufactured in Missouri and some were manufactured in Russia. (T. 532-4).

Following the conclusion of the government's case in chief, and after denial of a Rule 29 motion, (T. 573), Parsons presented evidence. He took the witness stand and told the jury that he was an ambassador of the Chilcotin Nation which, he claimed, is a Native American nation in British Columbia. (T. 628). He claimed to be a Native American minister and a radio talk show host. (T. 632).

Parsons claimed that in January of 2017 he was travelling on official business for the Chilcotin Nation. (T. 635). He denied knowing there was a firearm on the plane. (T. 644). Although he said he was born in the State of Tennessee, he denied having been born in the United States because, he claimed, the United States is a "corporation." (T. 645-6). He specifically denied having ever been convicted of a felony offense, (T. 648), or having ever been convicted of failing to appear for trial in Tipton County, Tennessee⁶. (T. 650). He admitted that a trial had taken place and that someone named "Michael Parsons" was found guilty of failing to appear. However, he claimed it was not a conviction of him because he was not a "juristic person." (T. 650). Nonetheless, he admitted he was at the trial and that the jury returned a verdict of guilty. (T. 649-51).

⁶ After Parsons' arrest in Nebraska he was returned to Tennessee to face pending state charges. Parsons was convicted of failing to appear for a jury trial in Tipton County, Tennessee, that had been scheduled for January 10, 2017. The charges he was facing alleged Felony Possession of a Weapon. (Revised Presentence Investigation Report, Part B, ¶ 56). Following his conviction in Tennessee he was returned to Nebraska to answer to the instant federal charges.

Parsons further claimed not to be subject to the jurisdiction of the district court. (T. 658). He also said he was not a prohibited person. (T. 659). He did admit that he had purchased a firearm from Matthew Lovan, (T. 660), and further admitted that Exhibit 1, the LAR-15, appeared to be the same firearm. (T. 661). He said he had traded it to a friend approximately six months after he purchased it. He testified the friend lived in the State of Mississippi. (T. 662). The friend had allegedly passed away and Parsons said he had never seen the gun afterwards. (T. 663). He admitted that everything found on the plane but the gun and ammunition belonged to him. (T. 668-9). Interestingly, he never offered an explanation for how the LAR-15 travelled from his late-friend's possession in Mississippi to Arapahoe, Nebraska, and into the back of his plane.

After the close of all evidence the case was submitted to the jury. The jury quickly returned a verdict of guilty.

SUMMARY OF THE ARGUMENT

The record clearly proved Parsons was a convicted felon. A certified copy of the record of conviction was introduced into evidence and a witness who was present at the trial identified Parsons as the person who was the subject of the conviction.

Proof of possession was established by the fact that the gun and ammunition were found inside a plane Parsons piloted while traveling alone. Venue items

bearing his name were found inside. A witness testified to selling the exact gun found in the plane to him. The fact that others had access to the hangar where the gun was stored does not negate a finding of knowing possession where other evidence ties the defendant to the weapon. United States v. White, 816 F.3d 976, 986 (8th Cir. 2016).

Lastly, the guns and ammunition traveled in interstate commerce. The gun was traced from its manufacturer in Illinois to the gun dealer in Alabama who sold it to a witness who, in turn, sold it to Parsons in Tennessee. Parsons, in turn, physically transported the items from Tennessee to Nebraska.

ARGUMENT

I. SUFFICIENT EVIDENCE WAS PRESENTED TO ESTABLISH PROOF BEYOND A REASONABLE DOUBT THAT PARSONS WAS A CONVICTED FELON WHO KNOWINGLY POSSESSED A FIREARM.

Parsons piloted a plane, by himself, that contained a LAR-15 rifle and several hundred rounds of ammunition. He was a convicted felon at the time. The evidence established that the exact rifle recovered from the plane had been sold to Parsons by a witness who testified at trial. The jury heard that Parsons made cryptic remarks about “a gift” or “item” that were somewhere on the plane while he frantically tried to get someone to remove the plane before it was searched. Both the firearm and ammunition had been manufactured in states other than Nebraska and, in fact, had been transported across state lines by Parsons himself.

The evidence was overwhelming that Parsons knowingly possessed a firearm while being a prohibited person.

A. Standard of Review

This Court reviews claims “regarding the sufficiency of the evidence supporting a criminal conviction de novo, viewing evidence in the light most favorable to the government, resolving conflicts in the government’s favor, and accepting all reasonable inferences that support the verdict. Reversal is only warranted where the court concludes that no reasonable jury could find all the elements beyond a reasonable doubt.” United States v. Iu, 917 F.3d 1026, 1030 (8th Cir. 2019), (citations omitted).

The charge of being a felon in possession of a firearm or ammunition in violation of 18 U.S.C. § 922(g)(1) has three essential elements. The government must prove beyond a reasonable doubt “(1) that [defendant] had a previous conviction for a crime punishable by imprisonment exceeding one year, (2) that he knowingly possessed the firearm and ammunition, and (3) that the firearm and ammunition traveled in or affected interstate commerce.” United States v. White, 816 F.3d 976, 985 (8th Cir. 2016); 18 U.S.C. § 922(g)(1). “For purposes of Section 922(g)(1), however, firearms possession may be either actual or constructive; . . . constructive possession exists when a person has ownership,

dominion, or actual control over the contraband.” United States v. Eldridge, 984 F.2d 943, 946 (8th Cir. 1993)(citations omitted).

Parsons Was a Convicted Felon

Prior to commencement of trial the United States filed a written notice advising Parsons that it was willing to enter into a stipulation. The offer to stipulate read:

on or about the 11th day of January, 2017, the defendant had been previously convicted of a crime punishable by imprisonment for more than one year. The government offers to enter into such a stipulation in lieu of introducing court records establishing the defendant was convicted of aggravated assault, an offense punishable by imprisonment for more than one year, on or about November 23, 2009, in the Circuit Court of Tipton County, Tennessee.

(Notice of Willingness to Stipulate to Prior Felony Conviction, Filing 62). The offer was made pursuant to Old Chief v. United States, 519 U.S. 172 (1997).

Parsons told his counsel he “wouldn’t stipulate to anything.” (T. 27-8).

The government introduced into evidence a certified copy of Parsons’ conviction for aggravated assault out of Tipton County, Tennessee, in 2009. (Ex. 31; T. 131-2). The document contained Parsons’ name and date of birth of May 5, 1961. (Ex. 31). It further showed that the date of the offense was September 24, 2007, and that sentence was imposed on January 8, 2010. The Tennessee statute that was violated was described as “TCA # 39-13-102” and the box for “Felony”

was checked. (Ex. 31). It established that Parsons was sentenced to three years imprisonment. (Ex. 31).

The government established beyond all doubt that Parsons was the same “Michael W. Parsons” who was the subject of the conviction. When Parsons was arrested at the Arapahoe Airport a number of his personal belongings were recovered from the office where he was taken into custody. Among the documents was an application for a Tennessee driver’s license in Parsons’ name. (Ex. 15; T. 246). The date of birth reflected on the application was the same, (May 5, 1961), as shown on the conviction document, (Ex. 31).

In addition to the documentary evidence, the United States also called a witness who directly identified Parsons as the person who was the subject of the conviction reflected in Exhibit 31. Lieutenant Daniel Walls of the Tipton County Sheriff’s Office knew Parsons from prior contacts and, in fact, he testified at the trial of the case referenced in Exhibit 31. (T. 135-6). Lieutenant Walls identified Parsons as being the same Michael W. Parsons who was the subject of the conviction referenced in Exhibit 31. (T. 135-6).

The government moved the court to take judicial notice of two Tennessee statutes, namely Tennessee Code Annotated, §§ 39-13-102 and 40-35-111. (T. 514). The statutes were marked as Exhibits 32 and 33. (T. 516). After researching the effective dates of the statutes, the court took judicial notice of both

statutes. (T. 551-2). The copies of the statutes were offered and received into the record although they were not sent to the jury. (T. 552). The court then instructed the jury: “You are instructed that aggravated assault is a crime punishable by imprisonment for more than one year under the laws of the State of Tennessee.” (Final Jury Instructions, Instruction # 8; Filing No. 153).

The evidence that Parsons was a convicted felon was voluminous and beyond dispute. The first of the elements was proven beyond a reasonable doubt.

The Defendant Knowingly Possessed a Firearm and Ammunition

The government proved that Parsons piloted a plane, by himself, to the Arapahoe Municipal Airport. (T. 151-8). A later search of the airplane yielded a Rock River LAR-15 semi-automatic rifle and several hundred rounds of ammunition. The rifle, Exhibit 1, had a visible serial number of CM75496. Also located in the plane were multiple documents, (i.e., an application for insurance and a hangar receipt), bearing Parsons’ name. (Exs. 9 and 10; T. 363-70).

The rifle was, indeed, a firearm as defined under federal law according to an expert employed by the Bureau of Alcohol, Tobacco and Firearms. It was designed to expel a projectile by means of an explosion, (T. 525-6), and, in fact, its previous owner had actually fired it. (T. 506).

Lastly, the government introduced three recorded jail calls between Parsons and others during the time he was incarcerated at the Phelps County Jail. The calls

were placed after his arrest but before the plane was searched. In the calls Parsons was heard to express fear that his calls were being recorded, heard to reference the “Nation’s item” and “gifts” that he was bringing on the plane, all while demanding that someone be located to remove the plane from the airport. (Exs. 35, 36 and 37; 35A, 36A and 37A). There was literally nothing else found in the plane that constituted contraband or would be illegal for someone to possess. (T. 412). Thus, the only reasonable interpretation of Parsons’ comments in the jail calls was that the “Nation’s item” and “gifts” were the rifle and ammunition, items of great concern to a convicted felon sitting in jail.

The defendant argues the evidence was insufficient to prove knowing possession by him of either the rifle or the ammunition. His claims focus on the following facts:

- No one saw him put the gun and ammunition on the plane;
- No DNA testing or fingerprinting tied the defendant to the firearm and ammunition;
- No inventory search was conducted at the time of his arrest;
- The plane sat for three months at the Arapahoe Airport before it was searched; and
- Numerous people had access to the hangar where it was stored and likewise had access to the plane.

From those facts, Parsons argues that no reasonable jury could have found knowing possession was proven beyond a reasonable doubt.

Parsons' facts are true, albeit incomplete. However, his conclusion that no reasonable jury could have found the element of knowing possession to be proven beyond a reasonable doubt is flawed.

No witness testified to seeing Parsons place the gun and ammunition on the plane because he flew the plane from Tennessee and landed it, fully loaded, in Nebraska. The gun was at the very back of the plane and covered in such a fashion that it could not be seen from outside. (T. 348-54). However, it was undisputed in the evidence that the defendant flew the plane that contained the items.

It is also correct that no fingerprint evidence or DNA testing tied Parsons to the rifle or ammunition. The rifle was submitted to the FBI crime lab for testing. DNA was located on the rifle⁷, however, the FBI was not able to obtain a DNA sample from Parsons for comparison purposes. (T. 444). The FBI had attempted to obtain a DNA sample from Parsons through the United States Marshal. However, Parsons had been resistant to providing any biological samples such as

⁷ Fingerprint testing was not conducted. SA Czaplewski testified that the FBI lab, in his experience, will test for either DNA or fingerprints but not both as their "testing methods ... will allow for one but not both." (T. 444).

fingerprints or DNA or even submitting to testing for tuberculosis⁸. (T. 460).

Eventually the FBI dropped the pursuit of a DNA sample when a gun trace and subsequent witnesses, discussed below, eliminated the need for DNA testing. (T. 460-1).

The fact the plane was not searched at the time of his arrest makes sense given the reasons for Parsons' capture. When the FBI was called into the case in January of 2017, it was simply for the purpose of taking a fugitive from justice into custody pursuant to a Tennessee warrant. After he was taken into custody the FBI had no further interest in him and no interest in his airplane. It was a simple fugitive recovery. (T. 339-42). The plane ended up sitting for several months because the FBI was later called in to assist, covertly, in the investigation of the kidnapping plot described earlier in this brief. (*See*: Page 7, footnote 4).

Lastly, Parsons is correct that during the three months the plane sat in the hangar there were a limited number of people who had access to the plane. The

⁸ Parsons' presumed resistance to collection of biological samples was not a figment of the agent's imagination. The defense called a Deputy United States Marshal to testify during the trial. The deputy testified that, some months before trial, the Marshal's Service had obtained a court order to obtain a blood draw from Parsons for use in tuberculosis testing. When Parsons was transported to a clinic for the draw he became combative and physically resisted. He had to be forcibly pulled into the clinic, yelling and screaming. The blood draw was only able to be taken after he was forcibly strapped into a restraint chair. (T. 623-4). No buccal swab for use in DNA testing was collected from him as the court order did not address DNA collection. (T. 626).

jury was well aware of that fact. Anthony Todd Weverka, the President of the Airport Authority, had entered the plane to try and service the battery. The plane was likely rolled out of the way so other planes could enter or exit the hangar.

While ordinarily the fact that a plane was left unsecured in an area accessible to others could prove problematic to any effort to establish knowing possession of its contents, that is not the case here. That is because the rifle was unique. It had a serial number, namely CM75496. (T. 352; Ex. 1). That serial number allowed the gun to be traced from its manufacturer, (Rock River Arms, T. 530), to the gun dealer who purchased it, (Southeastern Guns in Birmingham, Alabama), (T. 474, 486-91), to the man, (Matthew Lovan), who bought it from the dealer. (T. 491). Lovan told the jury he sold the very gun located on the airplane to Michael Parsons. (T. 500-04). That occurred in 2008. (T. 509). The fact that others had access to the plane for several months does nothing to break the linkage between Parsons and the rifle. The serial number proves he possessed it.

The fact that others may have had access to the plane does not mean a jury could not reasonably conclude the defendant possessed the rifle and ammunition. In United States v. White, 816 F.3d 976 (8th Cir. 2016), this Court upheld a jury's determination that a defendant possessed a firearm found in his storage unit despite his claim that others also had a key to the unit. Id. at 986. The panel noted that there was other evidence tying the defendant to the unit and, with regard to the

defendant's claim that others had access and might have planted the gun, the Court held "[a]lthough [defendant] was free to present his alternative theory, the jury was not required to accept it." Id.

This Court has likewise held constructive possession can be established when the accused has dominion and control over the vehicle transporting the gun so long as it is proven he knew the firearm was present. United States v. Eldridge, 984 F.2d 943, 946 (8th Cir. 1993), (firearm found in trunk of car the defendant was operating). Other courts have held that constructive possession can be proven by showing a gun was recovered from an area the defendant once controlled when there are venue items found in the location despite evidence that others may have had access to that area. United States v. Villasenor, 664 F.3d 673, 681 (7th Cir. 2011), cert. denied, 568 U.S. 859 (2012), (officers let into defendant's apartment by someone other than the defendant and found a gun and various items in the defendant's name). It has also been held that prior observations of a defendant in possession of a firearm can support the inference that he knowingly possessed ammunition found at a later time. United States v. Wilson, 107 F.3d 774, 780 (10th Cir. 1997).

In sum, the evidence establishing Parsons' knowing possession of a firearm and ammunition was overwhelming. The items were found in a plane he piloted. Venue items bearing his name were found in the plane. He was heard making

cryptic remarks in recorded jail calls while trying to find someone to quickly retrieve the plane. Lastly, the serial number on the gun allowed a trace of the LAR-15 from its manufacturer directly into his hands. Parsons offered no explanation, plausible or otherwise, for how that rifle ended up in his plane in Arapahoe, Nebraska.

The Firearm and Ammunition Traveled in or Affected Interstate Commerce

Parsons himself transported the LAR-15 and ammunition in interstate commerce having piloted a plane containing the items from the State of Tennessee to the State of Nebraska. Aside from his personal transportation of the items, there was undisputed additional evidence proving the interstate nexus element of 18 U.S.C. § 922(g)(1).

The government called SA Cory Shelton of the Bureau of Alcohol, Tobacco and Firearms to testify regarding his research into the origins of the rifle and ammunition. He testified the LAR-15, (Ex. 1), was manufactured by Rock River Arms in the State of Illinois and that some of the ammunition was manufactured in Missouri while other ammunition was manufactured in Russia. (T. 532-4). Deborah Davenport testified the LAR-15 was sold from Southeastern Arms in Birmingham, Alabama, to Matthew Lovan. (T. 490-1). Matthew Lovan testified he met Parsons in Tennessee and sold him the gun. (T. 497, 500). The evidence proving an effect on interstate commerce was overwhelming.

CONCLUSION

For the foregoing reasons the United States respectfully submits the defendant's conviction should be affirmed.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on April 18, 2019, the foregoing was electronically filed with the Clerk of the Court for the Eighth Circuit Court of Appeals using the CM/ECF system. A paper copy will be served on participants in this case by U.S. Mail, postage prepaid, within five days of the Court's notice that the brief has been reviewed and filed.

I hereby certify that a copy of the Government's brief was mailed on _____, 2019, to:

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CERTIFICATION OF VIRUS SCAN

Pursuant to Rule 28A(h)(2) of the Eighth Circuit Rules of Appellate Procedure, I hereby certify the full text of the Appellee's Brief has been scanned for viruses using McAfee Endpoint Security, and is virus-free. The brief was created using Microsoft Word 2016.

Dated: April 18, 2019.

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CERTIFICATION OF COMPLIANCE

This brief complies with the word limit of Fed. R. App. P. 32(a)(7)(B) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), and relying on the word processor word count feature, this document contains 5,321 words. This brief was created using Microsoft Word 2016, Times New Roman 14 font.

Dated: April 18, 2019.

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