

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
VS.) 23-CR-36
)
ALEXANDER LEDVINA,)
)
Defendant.)

APPEARANCES:

ATTORNEY ADAM JOHN VANDER STOEP, U.S. Attorney's Office,
111 Seventh Avenue S.E., Box 1, Cedar Rapids, Iowa 52401,
appeared on behalf of the United States.

ATTORNEY MICHAEL K. LAHAMMER, Lahammer Law Firm, 425
Second Street S.E., Suite 1010, Cedar Rapids, Iowa 52401,
appeared on behalf of the Defendant.

BENCH TRIAL,

HELD BEFORE THE HON. C.J. WILLIAMS,

on the 16th day of November, 2023, at 111 Seventh Avenue
S.E., Cedar Rapids, Iowa, commencing at 8:58 a.m., and
reported by Patrice A. Murray, Certified Shorthand
Reporter, using machine shorthand.

Transcript Ordered: 7/18/24
Transcript Completed: 8/8/24

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1 (The following proceedings were held in open court.)

2 THE COURT: The matter now before the Court is
3 United States of America versus Alexander Wesley Ledvina,
4 case number 23-CR-36. This matter comes on for a bench
5 trial. The United States is represented by Assistant
6 United States Attorney Adam Vander Stoep. The defendant
7 is personally present and represented by defense Attorney
8 Michael Lahammer.

9 The Court has received the parties' pleadings in
10 this case, including the notice of bench trial filed by
11 the defendant at document number 47, the joint
12 stipulation at document number 52, the government's trial
13 brief at 55, the defense trial brief at document number
14 57, and the government's reply brief at document number
15 60.

16 Before we move into this trial, I want to talk with
17 the defendant about his waiver. The joint stipulation
18 contains language in which -- and the joint stipulation
19 is signed by the defendant -- in which he has waived his
20 right to a jury trial. But I just want to make sure that
21 we're on the same page.

22 Mr. Ledvina, you understand you have a right to have
23 this matter tried before a jury?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And it's your decision after

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1 talking with Mr. Lahammer that you want to have the Court
2 decide this issue?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: All right. Very good.

5 Any further record that the government wants to make
6 on the waiver of jury trial, Mr. Vander Stoep?

7 MR. VANDER STOEP: Your Honor, I guess, there
8 is some clarification that the government wants to go
9 over prior to the waiver of the jury trial and everything
10 that's happening with the bench trial.

11 THE COURT: All right.

12 MR. VANDER STOEP: And that's specifically, I
13 know in conversations with the Court during status
14 conferences, it was the understanding that this bench
15 trial was being done to preserve a legal issue, that
16 being the as-applied challenge to the constitutionality
17 of the statutes, specifically, a vagueness challenge as
18 to the terms "unlawful user" and "addict."

19 The thing that the government wants to clarify was,
20 after receiving the defendant's brief on this matter on
21 Monday, it looked like there was the argument regarding
22 the as-applied issue as to what does it mean to be an
23 "unlawful user," what does it mean to be an "addict," and
24 then whether or not those, as applied to the defendant's
25 conduct, are unconstitutionally vague to him. The only

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1 question is, in that defendant memo it also appeared that
2 there was a factual dispute or a factual element that was
3 being challenged, specifically, an argument under *Rehaif*
4 regarding the defendant's knowledge of -- I know this is
5 complicated -- unlawful use of a controlled substance.
6 And, again, the government acknowledges that the
7 "unlawful user" is the term that is questioned as to
8 whether or not that is void for vagueness, raised
9 facially before trial and now as applied.

10 But the question is, from a standpoint of his
11 factual knowledge of did he know that controlled
12 substances were generally illegal and, then, use of those
13 controlled substances was prohibited or against the law,
14 just from a general illegality standpoint, as opposed to
15 what does "unlawful user" mean, if there's a factual
16 dispute regarding knowledge or one of the elements that
17 needs to be proven by the government in this case, that
18 would be an issue that would implicate acceptance of
19 responsibility, and, as well, if it is actually a factual
20 dispute, that is something that the government would want
21 to then have a jury trial on.

22 I've had a conversation with defense counsel on
23 this. I think we clarified the argument. It was not an
24 argument of his knowledge element as to, you know, the
25 way the law is presently constituted, which I know the

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1 Eighth Circuit jury instructions say "unlawful user is
2 someone who uses controlled substances without a valid
3 prescription," which he stipulates to both using
4 controlled substances and doing so without ever having a
5 valid prescription. My understanding was it's an
6 as-applied challenge as to how can he know what an
7 unlawful user is because of the vague nature of that
8 term. And if I'm incorrect with that, defense counsel
9 can correct the record on it.

10 So my understanding, clarifying that, it was not a
11 challenging factual elements that the government needs to
12 prove per se. It was just more of what does that term
13 mean in this context, is it unconstitutional --
14 unconstitutionally vague as applied to the defendant.

15 I just wanted to make sure that we're all on the
16 same page here as to what is being argued and also being
17 asked of Your Honor to decide in this, because it was a
18 little confusing with the brief that was filed on Monday
19 by the defense as to what the ultimate issues are here in
20 this case.

21 THE COURT: Okay. Thank you, Mr. Vander Stoep.
22 Mr. Lahammer.

23 MR. LAHAMMER: We would agree there's no
24 factual challenge in this case, Your Honor. We're not
25 factually challenging anything. Mr. Ledvina recognizes

1 that there are laws which prohibit the possession of
2 controlled substances. He recognizes that, and that if
3 you possess controlled substances without a prescription
4 or without any other valid legal reason, it's illegal.

5 Our arguments are, particularly under *Rehaif*,
6 challenging the vagueness of "unlawful user" or "addict,"
7 if we're talking about the 4473 forms for the ATF. But
8 certainly no factual challenge here. We do -- the reason
9 for this is to preserve acceptance of responsibility.
10 And it's my understanding, in speaking with the
11 government, that that is preserved, at least the 2
12 levels. The 3rd level we'd like to argue at sentencing
13 would apply. The government's going to, I believe -- and
14 he can correct me if I'm wrong -- object to that, but I
15 think we're on the same page as far as the 2 levels for
16 acceptance.

17 THE COURT: All right. Very good.

18 Mr. Vander Stoep, do you want to add anything
19 regarding the 3rd level for acceptance, what the
20 government's position is?

21 MR. VANDER STOEP: Yes, Your Honor. As defense
22 counsel indicated, the 2 levels, like it talks about in
23 the commentary, it would be something that in rare
24 circumstances the defendant can still get those 2 levels
25 by going to trial to exercise a constitutional challenge.

1 In this case, the void for vagueness challenge that's
2 being made as applied. So under that circumstance, as
3 long as there's no factual dispute as to the elements,
4 yes, they would be preserving that, and then he would get
5 the 2 levels.

6 As for that 3rd level, just on a very simple reading
7 of that 3rd level, it indicates that the government can
8 move for that 3rd level if the defendant has assisted
9 authorities in the investigation or prosecution of his
10 own misconduct by timely notifying authorities of his
11 intention to enter a plea of guilty, thereby, permitting
12 the government to avoid preparing for trial and
13 permitting the government and the Court to allocate their
14 resources efficiently.

15 Ultimately, he has not entered a plea of guilty, and
16 we are currently at a bench trial. So just based off of
17 a reading of the 3rd level and what comes off of that, it
18 would not apply, and the government would not be moving
19 for the 3rd level, because we are here at a bench trial,
20 preparing for a bench trial, and doing that with the
21 Court at the time.

22 THE COURT: All right. Understood.

23 And so the bottom line is, I need to have a go from
24 both parties here as if we're launching a rocket ship.
25 Are we a go on a bench trial here from the government's

1 standpoint given this conversation?

2 MR. VANDER STOEP: May I have one second, Your
3 Honor?

4 THE COURT: Yes.

5 (Brief pause.)

6 MR. VANDER STOEP: Your Honor, based off of the
7 clarification of the record today, that there's no
8 factual challenge, it's just to preserve the as-applied
9 issue, the government is okay with proceeding with the
10 bench trial here today.

11 THE COURT: Mr. Lahammer?

12 MR. LAHAMMER: We are a go, Your Honor.

13 THE COURT: All right. Very good. We will
14 proceed then with this bench trial. As I understood it
15 from the parties, given our prior status conference that
16 this was going to be a trial based largely, if not
17 completely, on a factual stipulation entered into by the
18 parties, that joint stipulation is at document number 52,
19 and I have reviewed that. As I mentioned during the
20 status conference, when we talked about setting this
21 matter for a bench trial, I indicated it was my intent
22 to, nevertheless, open it up to both parties to offer any
23 additional evidence that they wish to offer as part of
24 this bench trial in addition to the stipulation. Before
25 I find out if there's any additional evidence, I just

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1 want to make sure, are there any changes or any
2 amendments that either party wants to make to the joint
3 stipulation? Anything on behalf of the United States?

4 MR. VANDER STOEP: Your Honor, the only
5 amendment -- I apologize -- is reflected in the trial
6 brief from the government and also the trial reply, which
7 I have conferred with defense counsel, and there was a
8 typographical error in one of the paragraphs. I believe
9 it was paragraph 10, if I'm not mistaken.

10 THE COURT: Having to do with 2021 versus 2022.

11 MR. VANDER STOEP: That's correct. Any time it
12 reflects 2021, that would have been a typo. It should
13 have been the year 2022.

14 THE COURT: Very good.

15 And, Mr. Lahammer, do you agree to that amendment?

16 MR. LAHAMMER: I do, Your Honor.

17 THE COURT: Very good. Anything else from the
18 government on the stipulation?

19 MR. VANDER STOEP: Nothing on the stipulation.
20 There is additional evidence, but I know Your Honor is
21 taking that up later.

22 THE COURT: I will in a moment.

23 Mr. Lahammer, anything else on the stipulation?

24 MR. LAHAMMER: No, Your Honor.

25 THE COURT: All right. Now let's move to

1 whether there's additional evidence. In the government's
2 reply brief, the government has attached Exhibit 1, which
3 is a collection of the firearms transaction records
4 having to do with the purchase of the firearms. Are you
5 moving that into evidence, Mr. Vander Stoep?

6 MR. VANDER STOEP: Yes, Your Honor.

7 THE COURT: Mr. Lahammer?

8 MR. LAHAMMER: We would object, Your Honor,
9 based on the violation of the joint stipulation in lieu
10 of trial evidence, dock 52. Page 1 specifically says
11 "Mr. Ledvina and the United States stipulate and agree
12 the following facts are true and may be considered by the
13 Court without further evidence being offered." Clearly,
14 an agreement. And admitting any new evidence would
15 violate it. Even in their own trial brief, at doc 55,
16 "The parties stipulated and agreed that the facts
17 contained in the filing are true and may be considered by
18 the Court without further evidence being offered." What
19 we're saying is this violates the agreement between the
20 parties, and we believe it's pretty straightforward that
21 neither we or the government could present additional
22 evidence. Thank you, Judge.

23 THE COURT: Thank you.

24 Mr. Vander Stoep.

25 MR. VANDER STOEP: Your Honor, the language

1 says that they "may be considered without further
2 evidence." It does not say that these are the sole facts
3 that the Court must consider in this bench trial. This
4 is additional evidence. It's also contemplated by what
5 Your Honor discussed during the status conference, about
6 that Your Honor would be willing to take additional
7 evidence. The plain language and plain terms of the
8 joint stipulation does not preclude additional evidence
9 being offered at this bench trial.

10 THE COURT: All right. I am going to accept
11 Government's Exhibit 1. The language in the joint
12 stipulation does not bar additional evidence. It simply
13 says that "the following facts are accepted without
14 further evidence being offered." Lawyers know how to
15 draft contracts. There are -- it's a common clause in
16 contracts. And it's often in, if not always, in the plea
17 agreements that the parties sign on a regular basis in
18 this court, a provision that says this is the complete
19 agreement by the parties. If the parties had intended
20 this to be the evidence and the only evidence that the
21 Court would ever accept, the parties could have easily
22 said so in this stipulation. They did not. And I don't
23 read it as barring additional evidence. And it would be
24 inconsistent as well with, during our status conference,
25 my indication that I intended to allow the parties to

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1 present additional evidence if they wanted at this bench
2 trial. Neither party objected to it at the time. And so
3 I don't find that the admission of Exhibit 1 is in
4 violation of any agreement that the parties have reached
5 in this case. So Exhibit 1 will be admitted.

6 (Whereupon, Exhibit 1 was received.)

7 THE COURT: Does the government have any
8 additional evidence it wishes to present, either in the
9 form of exhibits or testimony at this trial?

10 MR. VANDER STOEP: No, Your Honor.

11 THE COURT: Mr. Lahammer?

12 MR. LAHAMMER: No further evidence, Your Honor.

13 THE COURT: All right. So I do want to offer
14 the parties -- well, I guess, first of all, I'd just note
15 that this does complete the evidence then before the
16 Court, and I'll be basing my ruling on the evidence that
17 is consistent -- or that consists of the joint
18 stipulation and the Exhibit 1.

19 Mr. Vander Stoep, do you want to present argument
20 regarding what you believe the evidence shows in this
21 case?

22 MR. VANDER STOEP: Yes, Your Honor, briefly.
23 Your Honor, the evidence in this case, as well as the
24 elements as to what needs to be proven, are essentially
25 laid out in the government's trial memo found at document

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1 55. I'll just kind of hit some of the highlights as to
2 what the government needs to prove and how that has been
3 proven.

4 Mr. Ledvina has been charged with two counts. One
5 count is for unlawful user in possession of a firearm.
6 That essential -- or that count has three essential
7 elements.

8 One, on or about August 11, 2022, in the Northern
9 District of Iowa, the defendant knowingly possessed a
10 firearm. As Your Honor can see from the joint
11 stipulation, the defendant stipulates to possession of
12 multiple firearms on that date.

13 Two, at the time that he possessed the firearm, he
14 was prohibited from possessing a firearm, because he was
15 and he knew he was an unlawful user of a controlled
16 substance. And, Your Honor, as was indicated in the
17 reply brief, unlawful user is defined in the Eighth
18 Circuit jury instructions as an individual who uses
19 controlled substances without a valid prescription. In
20 the stipulation, the defendant acknowledges that for a
21 period of six months, March of 2022 up and to August of
22 2022, August 11th of 2022, he was using marijuana,
23 cocaine, and THC. He also acknowledges that at no point
24 in time during that time period, and at no point in time
25 at all, was the defendant ever prescribed with marijuana,

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1 THC, or cocaine. So under that term, "unlawful user," he
2 is an unlawful user of controlled substances. And he
3 admits in the stipulation to knowingly using those
4 substances. Marijuana, he admits to using it five to six
5 times a week from approximately March of 2022 up until
6 July of 2022. And then in August of 2022, he admits to
7 still consistently using marijuana.

8 Third, the firearm was transported across a state
9 line at some time during or before the defendant's
10 possession of it. Again, in the stipulation, the
11 defendant agrees that all of those firearms that were
12 seized from his residence in Cedar Rapids on August 11,
13 2022, met the definition of firearm. They were able to
14 expel a projectile by way of an explosive. And he
15 stipulated that all of those firearms had crossed through
16 interstate commerce at some point in time, either prior
17 to his possession or during his possession.

18 As to the second count that the defendant is charged
19 with, false statement made during the purchase of a
20 firearm, section 924(a)(1)(A), there are four elements.

21 One, on July 29, 2022, in the Northern District of
22 Iowa, he knowingly made a representation in an ATF Form
23 4473. Again, in the stipulation, he acknowledges that he
24 did on that date go to a firearms dealer in the Northern
25 District of Iowa, filled out ATF Form 4473, and made a

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1 representation on that form. The representation
2 specifically being that he was not an unlawful user of or
3 addicted to marijuana, or any depressant, stimulant,
4 narcotic drug, or any other controlled substance.

5 He also concedes element two, that he made that
6 representation to a federally licensed firearms dealer,
7 which is what that dealer in the Northern District of
8 Iowa was.

9 Third, the representation was false. That is
10 established through the factual stipulations, because the
11 defendant admits and stipulates that he was using
12 controlled substances -- those controlled substances
13 being marijuana and cocaine -- during that time period,
14 the same time period that he was in possession of
15 firearms.

16 And fourth, the defendant knew that representation
17 was untrue when he made the representation because,
18 again, he acknowledges that he knew that he was using
19 those substances, he knew those substances were
20 controlled substances, and he knew that he never before
21 had a prescription for any of those substances that he
22 was using.

23 Additionally, as is reflected in Government's
24 Exhibit 1, the ATF form 4473s that the defendant would
25 sign and fill out every time he would purchase a

1 firearm -- so in this case, there are 15 of these
2 forms -- that question, where he's asked if he's an
3 unlawful user of or addicted to marijuana, and then it
4 goes on, there is a warning that's contained underneath
5 that question. The warning reads as follows: "The use
6 or possession of marijuana remains unlawful under federal
7 law, regardless of whether it has been legalized or
8 decriminalized for medicinal or recreational purposes in
9 the state where you reside." Every single time the
10 defendant filled out that form, that warning would have
11 been on there, and he would have been reminded that
12 marijuana use is unlawful and illegal.

13 Your Honor, based off of the stipulations, based off
14 of the jury instructions and the state of the law in the
15 Eighth Circuit, it's the government's position that all
16 elements of the offense have been proven beyond a
17 reasonable doubt. As such, it's the government's
18 position that the defendant should be found guilty as to
19 both counts. Thank you.

20 THE COURT: Thank you, Mr. Vander Stoep. In
21 the stipulation that the parties entered at document
22 number 52, at paragraph 15, page 6, is a reference and
23 incorporation of Joint Exhibit 1, which is a series of
24 text messages located on the defendant's phone. That's
25 been provided to the Court. It is 777 pages long. I

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1 have thumbed through it. But as another court once wrote
2 in connection with a motion for summary judgment, "Judges
3 are not like pigs where we are to root out truffles." So
4 what from this text message download of 777 pages do you
5 want me to focus on and what in it do you think supports
6 your position?

7 MR. VANDER STOEP: Thank you, Your Honor. As
8 the joint stipulation does state, these are text messages
9 from the defendant's phone that was seized from him. I
10 will just go through a few of these text messages to
11 highlight for Your Honor. I believe in Your Honor's copy
12 at the bottom of every page it should have a page number;
13 is that correct?

14 THE COURT: That's correct.

15 MR. VANDER STOEP: All right. I will refer to
16 page number just to direct the Court's attention to what
17 I am referring to.

18 On page 2, there is a message from a number that
19 ends in 0120, Dylan Gremm, and it asks the defendant:
20 "Do a half G for \$50" -- or sorry, "Do a half G for 50?"

21 Moving to page 7 of the Joint Exhibit 1, another, in
22 the middle of that -- in the middle of that page, from a
23 number ending in 5877, a Dale Deaton, there's a message
24 to the defendant that says: "I've got a buddy looking
25 for bud. Can I forward him your number?"

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1 On page 12, the second message, the blue message, a
2 message again from the Mr. Dale Deaton, the message to
3 the defendant says: "I'm looking for 1 or snow."

4 Moving to page 99, middle of the page, the second
5 blue square, a message from a number ending in 1545:
6 "You should come over and smoke. Ruth got her dab pen
7 but hasn't smoked real bud for a while. We should drink,
8 bro. Jena can come if she wants."

9 The response from the defendant is, "I don't think
10 she does."

11 The following page, page 100, at the very top, first
12 blue message, "Do you want to come over? Hit a line, and
13 come chill, bro."

14 Next, moving to page 162. The very top message on
15 that page, the first blue box, is a message from a number
16 1938, Dallas Thirston, to the defendant. That message
17 says: "I'm in class until about 1. Then I was going to
18 see if you wanted to go get your food for some bud."

19 The next message on that page is: "Bring the weed
20 with you."

21 Moving over to the next page, 163. The first
22 message from Mr. Thirston to the defendant, it says:
23 "Bring the weed with you because I need to come straight
24 home afterwards. I have things to do. 5 Gs for \$50."
25 That is the second message on page 163.

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1 Turning to page 164, first blue message, also from
2 Mr. Thirston to the defendant: "Can't spend more than
3 50. My sister said she don't give me the card."

4 Second message, from Mr. Thirston to the defendant:
5 "You better hurry up and decide before 4:30."

6 Moving to page 163 [sic], messages from the
7 defendant, back to Mr. Thirston: "I'm on my way." And
8 the second message, "if you had cash."

9 THE COURT: I think you mean 165.

10 MR. VANDER STOEP: I apologize, Your Honor.
11 That is 165. Thank you.

12 Turning to page 166, first message from Mr. Thirston
13 to the defendant: "Bring the weed because, like I said,
14 I got S," and then it's got three stars, "to do after
15 this." The second message from Mr. Thirston to the
16 defendant: "1 G for \$10 you spend."

17 Moving to page 167, again, another message from
18 Mr. Thirston to the defendant: "I'm giving you a better
19 deal than I give anyone else. Anyway, I got people
20 that'll give me a quarter for what I do for you, so."

21 The next message from Mr. Thirston to the defendant:
22 "Just don't screw me over, please, or this will be the
23 last time we ever do anything like this."

24 Moving to page 168, first message from Mr. Thirston
25 back to the defendant: "Call me when you're almost

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1 here."

2 And the defendant responds, "If I wanted to pay
3 dollar for dollar for groceries, I would just go myself
4 and spend my cash like I always do."

5 Moving to page 169, from Mr. Thirston to the
6 defendant: "For 50 bucks, make it worth my while with
7 weed. If not, I'll just walk out of the store."

8 The second message from Mr. Thirston, on page 169:
9 "Just give me what you gave me last time. We'll call it
10 good."

11 Moving to page 170, the defendant responds back to
12 Mr. Thirston: "Dallas, I can go get 10 a G in cash, and
13 go spend it. I'm not doing that."

14 The second message from the defendant to the -- to
15 Mr. Thirston says: "I'm actually losing money because I
16 have to drive across town. There is zero benefit for
17 me."

18 Moving to page 171, message from Mr. Thirston to the
19 defendant: "P, just give me what you gave me last time."

20 And the defendant's response: "For the same amount
21 of food?"

22 Moving to page 72, message from Mr. Thirston to the
23 defendant: "You spent about 60 bucks last time, so,
24 yeah."

25 Defendant's response: "No. It was 90."

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1 Moving to page 209, the very bottom message in blue,
2 from number ending 8940, in the defendant's phone is
3 M'Lynn. The message reads: "Can I get a G? So I can
4 make it last. LOL."

5 Moving to page 240, a message in blue at the bottom
6 of the page from number 1127, in defendant's phone as
7 Marcus Bechtold to the defendant, that reads: "Me and my
8 friend are just chilling. He got a little blow from
9 someone. You tryin' to chill. We need some bud and he
10 needs a contact. He's a close friend of mine. Wouldn't
11 bring a stranger to you."

12 Moving to page 316, the second blue message from the
13 top, a message from a number ending in 9983, in the
14 defendant's phone as Jenaya, and the message says: "I'm
15 ready to smoke."

16 Moving to page 348, once again, the second blue
17 message from the top, again, from that same number, to
18 Jenaya, and the message to the defendant reads: "Did you
19 roll one?"

20 And defendant's response, "I will, YS."

21 Moving to page 366, this is towards the bottom of
22 the page, the second to the last message, also from the
23 number in defendant's phone for Jenaya, and the message
24 says: "You got one rolled?"

25 And the defendant's response: "Yup."

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1 Moving to page 439, very top of the page, green
2 message from the defendant, once again to that same
3 number listed in defendant's phone as Jenaya, the
4 defendant messages her saying: "Want to hang out in a
5 little bit?"

6 Her following message back says: "And do what?"

7 Defendant's response: "Smoke and talk. Then IDK.
8 Wing it like usual. LOL."

9 Moving to page 576, the middle of the page, the
10 second green message box in that page, a message once
11 again from the defendant to the number in his phone as
12 Jenaya, and it says: "We can just watch something on
13 Netflix and smoke."

14 Moving to page 705, the first blue message, so it's
15 the second message on that page, from a number ending
16 9928 in the defendant's phone as Mason Taylor, a message
17 to the defendant says: "Could I buy some blow from ya,
18 sir?"

19 The defendant's response to Mr. Taylor says: "No.
20 Wrong number."

21 And Mr. Taylor's response is: "Hahahaha. STFU."

22 Moving to page 768, the first blue message on that
23 page, so middle of the page, there is a message from an
24 individual with the name Kyle that says: "Got any bud?"

25 Moving to page 771, the last green message box on

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1 that page, the message says: "I don't got coke for you,
2 so now I'm not your friend anymore. Is that it?"

3 And finally, page 777, very top message on that
4 page, first green box, a message from the defendant to
5 Mase that says: "Landon just asked for my number so that
6 Connor could score some snow. LOL."

7 Your Honor, all of these messages show that people
8 are reaching out to the defendant for snow, or weed, or
9 asking for Gs, and they're talking prices. This is all
10 consistent with the defendant's stipulation as well that
11 he's involved with using marijuana, using cocaine, and it
12 all supports that he knew what he was doing, was involved
13 in the knowing use of these controlled, unlawful, illegal
14 substances, and it supports both of the charges that he
15 is being charged with in this case here today. And once
16 again, the government asks that Your Honor find him
17 guilty as to both of the two counts.

18 THE COURT: All right. Thank you.

19 Mr. Lahammer.

20 MR. LAHAMMER: Thank you, Your Honor. I don't
21 know if I should deem this a motion for judgment of
22 acquittal or closing arguments in this case after the --
23 all the evidence has been submitted, but I guess
24 either --

25 THE COURT: I'll consider it as both.

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1 MR. LAHAMMER: Thank you, Judge. We argue that
2 Mr. Ledvina's indictment should be dismissed because it
3 violates the Second Amendment to the U.S. Constitution
4 both on its face and as applied under the facts of this
5 case. First off, I would note a recent Eastern District
6 of Pennsylvania case Tuesday that came out, *Williams v.*
7 *Garland*, 17-CV-2641, where the Court found Title 18
8 922(g)(1), felon in possession, was unconstitutional as
9 applied to OWI convictions because there's no tradition
10 abandoning firearm ownership based on a person's history
11 of alcoholism. That goes more to our motion to dismiss
12 at the onset of this case rather than the as-applied
13 arguments in this case, but we would still argue that
14 it's applicable.

15 My arguments today aren't a recitation of the ones
16 we already made in our motion to dismiss and our trial
17 briefs. We believe those are well set out in those
18 documents. What we want to direct today our arguments
19 towards is the as-applied challenge tied to the facts of
20 this case as set forth in the stipulation and the
21 exhibits before the Court. We're not disputing what the
22 facts are, as I told the Court earlier. We are arguing
23 there are inferences that can be drawn from those facts,
24 particularly where Mr. Ledvina would have had subjective
25 knowledge that his use of controlled substances was

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1 unlawful. This comes down to whether under the
2 stipulated facts the statutes are unconstitutionally
3 vague as applied to him in the circumstances.

4 Now, the government in their brief based their
5 argument on Count 1 on Eighth Circuit cases that are --
6 that unlawful user is a person who regularly uses drugs
7 and with a temporal nexus between the drug use and the
8 firearm possession. The Eighth Circuit has not
9 considered whether the usage was unlawful in the sense
10 that the use violated federal or applicable state law.
11 As discussed in our brief, neither federal law, nor Iowa
12 law, makes the use of controlled substances unlawful.
13 None of the cases the government cites, nor any other
14 Eighth Circuit case that I'm aware of, discusses whether
15 the applicable state law prohibits the use of controlled
16 substances. Generally, what the cases discuss is the
17 need for a frequency of use requirement and a temporal
18 nexus to make the statute and the term "unlawful user"
19 constitutionally permissible, instead of
20 unconstitutionally vague, as we are arguing. The cases
21 the government cites, three are from Missouri, one from
22 South Dakota. Missouri appears to criminalize
23 possession, as does South Dakota, but not Iowa.

24 So the key here is the argument that the Eighth
25 Circuit has never addressed the issue of the use having

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1 to be unlawful in that it must be against federal or
2 applicable state law to use a controlled substance. The
3 Court shouldn't even get to the frequency or temporal
4 proximity until it's determined whether the use itself
5 was unlawful.

6 On Count 2 in the government's brief, they skim over
7 the elements, but they don't -- didn't anticipate the
8 arguments that "addicted to" defines "unlawful user." It
9 comes down to whether these terms, "unlawful user" or
10 "addicted to," are mutually exclusive or disjunctive, or
11 does it mean that it's conjunctive and both have to
12 apply. When he signed the form stating "no," was it
13 because he knew he wasn't an unlawful user and an addict?

14 So it's worth noting in *Rehaif*, the U.S. Supreme
15 Court case related to the knowing element of firearm
16 possession and being a felon, the Supreme Court
17 identified kind of a collateral question of law, saying
18 ignorance of the law can be an excuse. We would submit
19 that "unlawful user" or "addict" on Count 2 requires a
20 showing Mr. Ledvina knew that his use of a controlled
21 substance was a violation of state or federal law.

22 Briefly, on *Rahimi*, argued last week at the U.S.
23 Supreme Court, justices seemed to concentrate on
24 dangerousness. We don't have that in that we are dealing
25 with a user question and not a felon question.

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1 As to the reply brief, our argument is still there's
2 no federal or Iowa statute that makes the use of a
3 controlled substance unlawful. Congress intended that an
4 unlawful user be someone who uses controlled substance in
5 violation of federal or applicable state law. The Eighth
6 Circuit jury instruction is contrary to law and the plain
7 meaning of "unlawful user." The Treasury regulation they
8 cite cannot supplement that requirement. We would argue
9 that the government should not be allowed to bring up the
10 Treasury regulation in a reply brief as that creates a
11 whole host of issues as to whether the regulation
12 comports with the law or is even within the authority of
13 the Treasury Department.

14 Their case, *Courtney*, is not on point. First,
15 they're trying to argue that he could not be found in
16 possession of a controlled substance based on a UA
17 showing that he had used. Second, it was a supervised
18 release revocation hearing, and conditions of supervised
19 release specifically prohibit use. We don't have that
20 here.

21 The government's trying to conflate "possession" and
22 "use," where the statute is tied to "unlawful user," not
23 "unlawful possessor." And that's the issue, that the law
24 prohibits possession but not use.

25 Again -- or going to the ATF Form 4473 in the

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1 government's exhibits, that's not relevant because it's
2 an incorrect statement of the law for the reasons we've
3 stated: No law prohibits use.

4 Thank you, Judge.

5 THE COURT: Thank you.

6 It is the government's burden here, so I'm going to
7 allow the government to make a rebuttal closing argument
8 if it wishes.

9 MR. VANDER STOEP: Can I have one moment, Your
10 Honor.

11 THE COURT: You may.

12 MR. VANDER STOEP: Thank you.

13 (Brief pause.)

14 MR. VANDER STOEP: Thank you, Your Honor. Just
15 a few things I want to focus on in this case in my
16 rebuttal argument here. One is the distinction between
17 "possession" versus "use," and the argument that's being
18 advanced of there's no law that prohibits use. Your
19 Honor, one of the things that -- in a trial on this case,
20 commonsense can be used. Use of a controlled substance,
21 a controlled substance, is unlawful. There are two cases
22 that were submitted to the Court in the government's
23 reply brief -- one from the Fourth Circuit, one from the
24 Fifth Circuit -- that talks about if you are using a
25 controlled substance, that necessarily means that there

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1 was intentional ingestion of that substance. You had
2 possessed that substance. It talks about how there could
3 be other circumstances where maybe it's involuntarily
4 being used. If you involuntarily inhale something or
5 another thing, that maybe somebody walks up to you with a
6 syringe loaded full of a controlled substance and stabs
7 you with that syringe, that could be involuntary usage.
8 However, using a controlled substance -- specifically,
9 the facts as applied to the defendant in this case, his
10 Second Amendment challenge, all the facts that he
11 stipulated to -- he is knowingly smoking marijuana. He
12 admits to knowingly using cocaine. That type of usage,
13 knowing usage, is unlawful. And the defendant is not
14 permitted to do -- to do that. And the Court can use its
15 commonsense in finding that use of a controlled
16 substance, cocaine and marijuana, substances that the
17 defendant stipulated are controlled substances, was
18 unlawful.

19 Additionally, looking at the ATF Form 4473, every
20 time the defendant would sign that, there is a notice on
21 there saying that using marijuana is unlawful. Because
22 the use of marijuana, common sense, is unlawful. You
23 cannot be using marijuana or any other controlled
24 substance without -- as with the Eighth Circuit has and
25 they're law -- without a valid prescription to do so. If

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1 the defendant had a valid prescription for usage of
2 marijuana, or THC, or cocaine, then that usage would not
3 be unlawful under Eighth Circuit law. However, under
4 Eighth Circuit law, the defendant's usage of that
5 controlled substance, cocaine and marijuana, was
6 unlawful, was illegal.

7 As we discussed here today at the beginning of this
8 bench trial, there is no factual challenge as to the
9 elements. It is a question of what does as -- what does
10 the "unlawful user" and "addict" mean as applied to the
11 defendant. Does his usage of these controlled substances
12 qualify him as an unlawful user?

13 Additionally, looking at that second element -- or
14 that second count that the defendant's charged with, the
15 4473, making a knowingly false statement on that form,
16 the defendant argues that the "or" maybe means that it is
17 a synonymous term for "unlawful user," so, therefore, he
18 would not think that he was an unlawful user because you
19 need to be addicted to a substance to be an unlawful
20 user. Your Honor, again, the Court can use its
21 commonsense looking at this question: Are you an
22 unlawful user of or addicted to controlled substances?

23 It lays it out right there. It is -- it is an "or,"
24 disjunctive "or." Unlawful user or addicted to. That
25 also tracks the same language of the 922(g)(3), unlawful

1 user of or addicted to a controlled substance.

2 Again, based off of all of the elements that the
3 government must prove in this case, the law in the Eighth
4 Circuit, the factual stipulations that the defendant has
5 stipulated to and agreed to, as well as commonsense, all
6 of the elements in this case have been proven beyond a
7 reasonable doubt, and the government respectfully
8 requests that Your Honor find the defendant guilty as to
9 both counts - possession of a firearm as an unlawful user
10 of controlled substances, and making a false statement on
11 the ATF Form 4473. Thank you.

12 THE COURT: Thank you.

13 All right. That will complete the trial in this
14 matter. I am going to take this under advisement. I
15 will get a ruling out in writing as soon as I can.
16 Anything else before we adjourn on this trial,
17 Mr. Vander Stoep?

18 MR. VANDER STOEP: No, Your Honor. Thank you.

19 THE COURT: Mr. Lahammer?

20 MR. LAHAMMER: No, Your Honor. Thank you.

21 THE COURT: All right. Thank you. That
22 concludes this trial.

23 (Proceedings concluded at 9:40 a.m.)
24
25

C E R T I F I C A T E

I, Patrice A. Murray, a Certified Shorthand Reporter of the State of Iowa, do hereby certify that at the time and place heretofore indicated, a bench trial was held before the Honorable C.J. Williams; that I reported in shorthand and transcribed to the best of my ability the proceedings of said bench trial; and that the foregoing transcript is a true record of all proceedings had on the taking of said bench trial at the above time and place.

I further certify that I am not related to or employed by any of the parties to this action, and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF, I have set my hand this 8th day of August, 2024.

/s/ Patrice A. Murray

Patrice A. Murray, CSR, RMR, FCRR
Court Reporter
PO Box 10541
Cedar Rapids, Iowa 52410

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