No. 11-1951

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

CORY L. GRIFFIN,
Defendant-Appellant.

On Appeal from the United States District Court
For the Eastern District of Wisconsin
The Honorable Judge Rudolph T. Randa
Case No. 08-CR-195

REPLY BRIEF OF DEFENDANT-APPELLANT CORY L. GRIFFIN

BLUHM LEGAL CLINIC
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

SARAH O'ROURKE SCHRUP
Attorney
RYAN MOORMAN
Senior Law Student
JIN YOO
Senior Law Student

Counsel for Defendant-Appellant
Cory L. Griffin

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Statutes

Rules

Other Sources

ARGUMENT

I. There was insufficient evidence to convict Griffin of constructively possessing a firearm or ammunition.

Although the government spends a significant portion of its brief establishing the knowledge element of constructive possession (Gov't Br. 10–12), Griffin readily acknowledges that under the rigorous sufficiency standard of review a rational juror could have believed that Griffin knew his father kept his hunting gun in the family home, s*ee* (Def. Br. 14–15, 21) (arguing that the government only failed to prove intent). Thus, the only remaining issue in this sufficiency claim is whether the government proved that Griffin intended to exercise dominion and control over the weapon. *See United States v. Katz*, 582 F.3d 749, 752 (7th Cir. 2009) (requiring the government to prove the defendant had the "intention to exercise dominion and control over the object"). The government argues Griffin's "practical knowledge that [it] was necessary" to "separate himself from [guns and ammunition]" proved that Griffin intended to possess the shotgun behind the kitchen door and the ammunition on the steps. (Gov't Br. 13.) The only relevant evidence the government offers to prove this claim is Griffin's signed probation conditions that prohibited him from "possessing" a firearm, which, as discussed below, does not satisfy the government's burden.[1] (Gov't Br. 13) (citing Tr. 123–26, 230; Ex. 43).

[1] The government does point to additional evidence, but even defining intent as the government does, this evidence is irrelevant to the intent inquiry and, at best, goes only to Griffin's already-acknowledged awareness. *See* (Gov't Br. 13) (asserting Griffin signed "this paperwork *knowing* that several firearms were kept at his parents' residence," Griffin told Walker his father "bought some of the recovered guns for [Griffin]," and "[Griffin] admitted

The government's argument thus turns on two questions: (1) did the government establish that Griffin knew he was prohibited from living in a home in which a co-occupant lawfully kept guns, and if so, (2) does Griffin's mere residency and awareness prove beyond a reasonable doubt that he intended to exercise dominion and control over the gun and ammunition.

First, the evidence at trial did not show that Griffin "kn[ew] he was prohibited from being around them," let alone establish that living in a home with guns constituted possession under 18 U.S.C. §§ 922(g)(1), 924 (a)(2). The probation condition that Griffin signed did nothing more than restate the requirements of § 922(g)(1); it did not provide any specialized definition of possession, which typically is understood as requiring something beyond mere presence. (Def. Br. 23) (noting the standard dictionary definition of possession is to "have and hold as property" or to "seize and take control of" an object). Moreover, LaTasha Perry, Griffin's probation officer, did not add a condition proscribing living in a house where guns are kept, even though she testified that she added conditions when necessary. *See* (Tr. 149) (Perry's testimony that "[i]f there are additional rules that . . . pertain[] to a particular client, [she would] add rules"); (Ex. 43).[2] In any event,

---

at trial that he knew the police had returned his hunter-father's guns previously relinquished in 2004 due to the same firearm prohibition." (emphasis added)). Moreover, some of these assertions are either plainly false, *see* (Tr. 232–33) (Griffin's testimony that for some reason "[his father's guns] were taken [in 2004]," but he knew nothing more and he "heard [*during trial testimony*] that the guns were returned" (emphasis added)), or unproven, *see* (Tr. 138) (Griffin signed the conditions on his release date, presumably before he returned home and "knew there were firearms kept").

[2] Although the government's brief abandoned the argument it made during closing, Perry's testimony about what her supervisees generally should do if they discover guns in their home does not establish Griffin's intent because there was no evidence that Perry related

the fact that Griffin ultimately ended up in his parents' home, which did in fact contain weapons, may be relevant for a revocation hearing, but it is insufficient for this Court's inquiry into whether Griffin intended to exercise dominion and control over his father's shotgun and ammunition.

Given the weight the government puts on Griffin's understanding of his probation conditions, it should be noted that the court tasked with determining whether Griffin violated his probation conditions rejected just such an argument. (Tr. 154–55.) At Griffin's revocation hearing, Perry and Officer Wawrzyniakowski testified about the conditions of Griffin's probation and the events surrounding the execution of the search warrant, and an administrative law judge ruled that Griffin's residency with his parents and his father's guns did not constitute possession in violation of his probation. (Tr. 154–55.)

Regardless, the government readily accepts Griffin's argument that he could legally reside in the home without possessing the firearms. *See* (Gov't Br. 15) (stating "Griffin could own a gun without possessing it; he could also live among firearms and *have nothing to do with them*") (emphasis added). This proposition fully accords with this Court's precedent. *See United States v. Thomas*, 321 F.3d 627, 636 (7th Cir. 2003) ("Even when a defendant continues to have weapons in his home that he legally obtained before his felony convictions, he is not guilty of violating 18 U.S.C. § 922(g)(1) without a showing that he exercised control over the

---

that caution to him. *See* (Tr. 141) (Perry's testimony that "if *someone* under [Perry's] supervision discovers there's a gun in a place where they're living . . . *[a] person* should notify their agent . . . so that the Agent can place *that person* in a different residence.") (emphasis added); *see also* (Def. Br. 27) (addressing this argument).

firearms" in the house, after his felony conviction); *United States v. Conley*, 291 F.3d 464, 468 n.2 (7th Cir. 2002) (holding, in the context of a challenge to multiple counts in an indictment, that Conley did not "remain[] in continuous, constructive possession over the shotgun [based on the fact that the gun] remained on his property without interruption" because "a defendant's mere presence within a dwelling is insufficient evidence, standing alone, to establish constructive possession of contraband")). Thus, this Court's cases foreclose the government's argument. *See also United States v. Brown*, 3 F.3d 673, 681, 683 (3d Cir. 1993) (defendant did not constructively possess the drugs found in multiple rooms of her home, "where large quantities of drugs were stored, cut, and packaged for sale" because "the defendant's possession of the key to [the] home, her arrival at the house, and her statement that it was her house, to the extent that these facts support findings that she resided at and had some control *over the house* and that she knew of the drugs' presence in the house, do not support an inference that she had dominion and control over the drugs found therein" (emphasis in original)).[3]

In any event, as a practical matter, the government's position would require individuals to take the affirmative step of "distancing" themselves from items they cannot legally possess, eviscerating the intent requirement of constructive

[3] The government tacks onto the end of its sufficiency argument that Mario Walker's testimony establishes that Griffin "was no stranger to firearms," thus permitting the jury to infer that he intended to "control the firearm most readily at hand." (Gov't Br.15.) To the extent this evidence even establishes this point (and the government agrees with Griffin's opening brief that the jury rejected significant portions of Walker's testimony) (Gov't Br. 15; Def. Br. 25–27), this argument is the same improper propensity argument that Griffin challenges in his prosecutorial misconduct claim. *See infra* Section III. Simply put, that Griffin was previously "around" a firearm is not valid evidence that he intended to possess the shotgun in this case. *See* Fed. R. Evid. 404(b).

possession. The intent requirement would become superfluous because every time a defendant becomes "aware" of contraband and, thus, knows he has the ability to exercise dominion and control over it, a jury could simultaneously infer he intended to exercise control over it. *Cf. United States v. Walls*, 225 F.3d 858, 867 (7th Cir. 2000) (constructive possession instructions must "adequately apprise the jury of the need to find intent").

This case lays bare the dangers of rote application of any given case's language to another when each necessarily turns on its own facts. A principled structure of constructive-possession law requires careful attention to this legal fiction's purpose in cases at the ends of the spectrum. Although defendants who lived in a home that contained a gun have often lost their sufficiency claims on appeal, all of those cases contain a plus-factor establishing a nexus that ties the defendant to the contraband, permitting an inference of intent. *See* (Def. Br. 16–18); *see also United States v. Morris*, 576 F.3d 661, 668 (7th Cir. 2009) (searching for "something more": evidence that constitutes "proximity coupled with evidence of some other factor"). The government ignores this plus-factor in all of the cases on which it relies in declaring that "[c]onstructive possession over guns and/or ammunition has been found in similar circumstances." (Gov't Br. 12) (citing cases); *see* (Def. Br. 16–18) (identifying the plus-factor in all of the government's cited cases except for *Morris* and *Caldwell*). The two cases cited by the government that were not in Griffin's opening brief also contain the plus factor. *See Morris*, 576 F.3d at 668 (noting the defendant's flight when police entered the dwelling and that the

defendant had a substantial connection to the dwelling); *United States v. Caldwell*, 423 F.3d 754, 757–58 (7th Cir. 2008) (noting police found the firearm in the defendant's nightstand and a witness saw the defendant with the firearm). The government likewise ignores the minus-factor (Def. Br. 18–21) arising from Phil Griffin's continual, lawful ownership of these weapons, which is absent from the cases on which it relies.

In the end, this case asks the Court to define the spectrum of constructive possession, and Griffin respectfully requests this Court find that this case rests outside its boundaries.

II. The jury instructions failed to apprise the jury of its need to separately find Griffin's intent.

There can be no valid conviction under a constructive-possession theory without an affirmative showing of the defendant's intent. Thus, adequate jury instructions were necessary to apprise the jury of its need to separately find Griffin's intent before delivering a guilty verdict. *See Walls*, 225 F.3d at 864 (vacating a constructive possession conviction because the jury instruction "failed to adequately apprise the jury of the need to find intent"). Given the lack of evidence showing Griffin's intent, the need for proper jury instructions was even more acute in this case. *See supra* Section I.

The government points to the district court's use of the Seventh Circuit pattern instructions as adequate proof that the jury was correctly instructed on the law. (Gov't Br. 16.) Nevertheless, this Court has declared that pattern instructions "are not law, and there are many circumstances which justify modifying [pattern

instructions] or using [non-pattern] instructions in place of or in addition to [pattern instructions]." *Aliotta v. Nat'l R.R. Passenger Corp.*, 315 F.3d 756, 765 (7th Cir. 2003) (noting that state preference for using pattern instruction must not be construed as advance approval by the state supreme court of the pattern instruction). Furthermore, incomplete instructions, even when based on pattern instructions can also be erroneous. *See United States v. McNeal*, 77 F.3d 938, 944 (7th Cir. 1996) (noting that "composing jury instructions is not a precise science" and courts review instructions in their entirety for overall fairness and accuracy); *Thomas v. Peters*, 48 F.3d 1000, 1006–07 (7th Cir. 1995) (finding error in the then Illinois Pattern Jury Instruction, although the error was ultimately harmless in the context of the entire trial); *see also United States v. Clark,* 475 F.2d 240, 248–50 (2d Cir. 1973) (reversing defendant's conviction as plain error in part because the district court's instruction failed to distinguish intent and knowledge in a possession-with-intent-to-distribute case). Here, the jury did not receive a crucial instruction that was necessary to fully and adequately inform the jury of all of the elements of constructive possession.

The government concedes that the jury instructions did not define intent but contends that its own statements during the closing argument cured the inadequacy of the instructions. (Gov't Br. 17.) This argument is flawed, however, for several reasons. First, the district court properly instructed the jury that "[a]nything that an attorney says in a Court of law is not evidence" (Tr. 286), so the jury neither could, nor should, have factored the government's closing argument into its

understanding of the legal elements of the crime. Second, it "is wrong to equate arguments of counsel with instructions from the court." *United States v. Harper*, 662 F.3d 958, 961 (7th Cir. 2011) (noting that "instructions from the court carry more weight with jurors than do arguments made by attorneys"). In recognition of this principle, the district court further instructed the jury that its job was to apply the law as the district court provided it via the jury instructions, not counsel's argument. (Tr. 285) ("And your second [job] is to apply the law to those facts as you find them, and as I give that law to you. And you must follow those instructions."). Finally, when the jury retired to the jury room, it carried with it a copy of those instructions, not a transcript of counsel's arguments. Thus, during the crucial moments of deliberations, its sole guide was the jury instructions, which in this case were incomplete.

The omission of a crucial instruction allowed the jury to find Griffin guilty without proof beyond a reasonable doubt of his intent. This plain error compromised Griffin's substantial right and affected the fairness and integrity of judicial proceedings. *See United States v. Olano*, 507 U.S. 725, 734–35 (1993). In a case with as little evidence of the Defendant's guilt as this one, closing arguments are inadequate to remediate the plain error arising from explaining and emphasizing only one of the *mentes reae* in the jury instructions.

III. The government made improper remarks during its closing argument that affected the outcome of the trial.

The final unfortunate byproduct of the government's weak evidentiary case against Griffin was the government's resort to improper inferences during closing

arguments that prejudiced the defendant. A credibility argument, which is what the government now claims it was making during closing (Gov't Br. 19–20), would have gone along the lines of "Griffin's prior convictions cast doubt on his veracity as a witness." *See, e.g., United States v. Harding*, 525 F.2d 84, 91 (7th Cir. 1975) (noting that although a prosecutor may use a prior conviction to attack a witness's credibility, going beyond that and pointing out the similarity between two offenses is improper and prejudicial); *cf. United States v. Smith*, 454 F.3d 707, 716 (7th Cir. 2006) (holding that the district court did not abuse its discretion when it allowed the prosecutor to clarify that the defendant's prior conviction was not just for mere possession because "the entirety of the government's argument" was that the prior conviction was "relevant to [defendant's] credibility").

But the government's use of Griffin's prior convictions was much different; it argued that Griffin's prior run-ins with the law showed that he intended to commit the present crime. In fact, the troubling excerpt of the government's closing argument arose directly within the government's discussion of the intent element of the felon-in-possession charge, although the government omitted this passage's crucial last sentences from its brief (Gov't Br. 18–19):

> What does your common sense tell you about a person with a serious criminal record, who knows he's not supposed to be around firearms or ammunition, who knows that his father has firearms that have been returned to him, but who nonetheless chooses to be around not just one or two of them. [(Court overruling objection)] Ladies and gentlemen, your common sense tells you that this Defendant meant very much to be around these guns and this ammunition. And that he certainly intended to exercise control over them.

(Tr. 265); *see also* (Tr. 263–66) (urging the jury to use its common sense with respect to "a person with a serious criminal record" when considering intent). Similarly, in rebuttal, the government directly implicated Griffin's intent, but not his credibility, when it contrasted him with an ex-smoker who does not intend to smoke the cigarettes that remain in the house due to his wife's habit. (Tr. 282) ("An ex-smoker who doesn't want anything to do with cigarettes? Fair enough. . . . But that's not what we're talking about here. We're talking about a person who's been in trouble.").[4]

Because the government never sought to admit Griffin's prior conviction to establish Griffin's intent during the trial, *see* Fed. R. Evid. 404(b)(2), credibility was the sole permissible use of Griffin's prior convictions. *See* Fed. R. Evid. 609; *see generally* 21A Fed. Prac. & Proc. Evid. § 5067 (2d ed. 2005) (explaining that prosecutors who offer evidence for a limited purpose must reoffer it for different uses). Indeed, it is very doubtful that the government would have been allowed to offer the evidence to prove intent because Griffin's prior drug convictions were in no way related to his pending felon-in-possession charge and as such the prejudice would have outweighed any minimal probative value. *See United States v. Hicks*, 635 F.3d 1063, 1069, 1073–74 (7th Cir. 2011) (listing the four conditions that must be met to admit prior convictions or bad acts as evidence under rule 404(b) and noting that allowing evidence of the conviction without proof of its "relevance to

[4] To be clear, the prosecutor begins this portion of its rebuttal by asking the jury not to believe Griffin's claim that he was not aware of the guns' locations. But later in that paragraph, when the relevant passage occurs, the government was no longer discussing Griffin's credibility as a witness, but rather his intent to be around the guns.

some concrete dispute between the litigants creates needless risk that a conviction will rest on the forbidden propensity inference" (internal citation omitted)).

As for the prejudice stemming from these remarks, Griffin's opening brief examined the *Darden* factors and showed that they overwhelmingly favor Griffin including, most importantly, the insufficiency of the government's proof. (Def. Br. 34); *see supra* Section I. To avoid repetition, Griffin clarifies just two important, additional points from the government's response brief.

First, with reference to the first factor—misstating the evidence—the government claims that it did not "ask[] the jury to draw improper inferences from the evidence" (Gov't Br. 20), yet its own brief on the very same page sets forth the faulty, unproven inference on which its theory of the case was built: "the fact that he was living in a residence with many barely concealed firearms and much unconcealed ammunition *even though he knew from prior experience* that this was forbidden." (Gov't Br. 19–20) (emphasis added); *see also* (Gov't Br. 13) (stating that Griffin failed to separate himself from the weapons "despite his practical knowledge" that this was necessary). As discussed in Section I, *supra*, the government simply did not prove that Griffin had this "practical knowledge"; rather, the government asked the jury to infer from Griffin's "serious criminal record" that he knew that he could not be in proximity to weapons and that his subsequent failure to distance himself from them showed his intent to possess them. Although the government concludes that "[s]uch an argument is not improper," (Gov't Br. 20), arguments based on unproven facts and speculative

inferences are improper. *United States v. Renteria*, 106 F.3d 765, 767 (7th Cir. 1997) (stating it is improper to invite "the jury to speculate as to the existence of facts that have not been subjected to the adversarial testing of the courtroom").

Second, the government mischaracterizes the invited-response doctrine of *Darden's* third factor (Gov't Br. 21) (arguing Griffin's testimony invited the government's response), as well as the defendant's opportunity to rebut, *Darden's* sixth factor (Gov't Br. 21–22) (arguing defense objections were an opportunity to rebut). The invited-response doctrine applies only to a prosecutor's rebuttal of defense counsel's argument, *see United States v. Young*, 470 U.S. 1, 11 (1985), not to a criminal defendant's testimony. Therefore, the government cannot rely on Griffin's trial testimony to justify its propensity argument as an invited response. Similarly, the government cannot claim that defense counsel's objections fulfill *Darden's* "opportunity-to-rebut" factor when, as here, those repeated objections were overruled and the district court instructed the jury that it could not consider the objections in delivering the verdict. *See United States v. Morgan*, 113 F.3d 85, 88, 90 (7th Cir. 1997) (stating that the defense counsel had no opportunity to rebut even though an objection was made); (Tr. 285–86).

Furthermore, the government improperly appealed to the jury's fear and emotion in asking it to protect the community from Griffin. The crux of the government's argument here is that its "protect-the-community" comment was merely in response to defense counsel's "government-overreaching" argument during closing. (Gov't Br. 23.) As a threshold matter, defense counsel's comment

was not improper and thus did not invite an improper response from the government. *See United States v. Henry*, 2 F.3d 792, 795 (7th Cir. 1993) (explaining that "[d]efense counsel's closing argument was entirely proper" and thus "the government['s improper response] answered an invitation never made"). Even if a response was warranted, rather than meeting defense counsel's general comment about jury service with a similarly generalized response that jury service serves law enforcement, the government personalized its response, singling out Griffin as a dangerous criminal "who refuses to obey the laws that everybody, all of us, have to abide by." (Tr. 281); *see also Henry*, 2 F.3d at 795 (stating that while the invited-response doctrine "permits the government to respond to improper defense tactics," it "is not a safety zone within which prosecutors may seek refuge" (internal citation omitted)). In short, invited responses may also be improper remarks, *see Bartlett v. Battaglia*, 453 F.3d 796, 802–03 (7th Cir. 2006) (even though the prosecutor's response was invited, it was still improper and must be analyzed for prejudice), and the government's response here did more than just "right the scale," *id.* (quoting *Young*, 470 U.S. at 12–13), it impugned the defendant in the eyes of the jury. Finally, even if defense counsel did invite the precise response that the government made, it is but one of the totality of circumstances that this Court considers, *id.* at 802–04, which on balance support a finding of prejudice.

As for harmless error, the government implies that it carries a lower burden of proof than is required of it. (Gov't Br. 24–25) (citing *Brecht v. Abrahamson*, 507 U.S. 619 (1993) and applying its standard, which is used only for constitutional

errors in federal habeas review).[5] However, cases that satisfy the *Darden* factor analysis, like this one, implicate the Constitution. *See Darden v. Wainwright*, 477 U.S. 168, 181 (1986) (applying the factors to determine if the improper comments "so infected the trial with unfairness as to make the resulting conviction a denial of due process"); (Def. Br. 33) (citing *Darden v. Wainwright* and explaining that the government's improper remarks denied Griffin his due process rights); *see also United States v. Harper*, 662 F.3d 958, 962 (7th Cir. 2011) (distinguishing constitutionally based prosecutorial misconduct claims under *Darden* with other prosecutorial misconduct claims).

As such, the Supreme Court's *Chapman* standard applies, and the government bears the burden of "prov[ing] beyond a reasonable doubt that the error complained of did not contribute to the verdict." *Chapman v. California*, 386 U.S. 18, 24 (1967). The government's sole rationale—an unsupported pronouncement that the evidence was strong and a recitation of the *Darden* factors—cannot satisfy its separate high burden of proving beyond a reasonable doubt that the improper comments were harmless. *See United States v. Olson*, 450 F.3d 655, 674 (7th Cir. 2006) (in a plain-error case explaining that the defendant must show two separate things; he must not only prove that he was denied a fair trial with the six *Darden* factors, but also that the outcome of the proceeding would have been different

[5] The government also cited this Court's decision in *United States v. Harris*, 271 F.3d 690 (7th Cir. 2001), which seemingly applied at least part of *Brecht* to a non-constitutional prosecutorial misconduct claim. To the extent that *Brecht's* "substantial and injurious effect" standard is applied here, Griffin still should win a reversal because comments that invoke the defendant's prior criminal record to support a conviction on unrelated charges and that urge the jury to decide the case based on fear of the defendant cannot help but taint the outcome of the trial.

absent the remark under *Olano*'s third prong). Like *Olson*, the government cannot win on appeal by resort to the *Darden* factors alone; it must also prove beyond a reasonable doubt that no juror was influenced by the improper comments. The government falls considerably short of meeting its burden here because, given the non-existent evidence of Griffin's intent, *see supra* Section I, it is likely that without these improper comments, the jury would have returned a verdict of not guilty.

CONCLUSION

For the foregoing reasons, the appellant, Cory L. Griffin, respectfully requests this Court to either reverse his conviction or to vacate his conviction and remand for a new trial.

Dated: January 10, 2012

Respectfully submitted,
CORY L. GRIFFIN
Defendant-Appellant

By: /s/ Sarah O'Rourke Schrup

SARAH O'ROURKE SCHRUP
Attorney
RYAN MOORMAN
Senior Law Student
JIN YOO
Senior Law Student

BLUHM LEGAL CLINIC
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Counsel for Defendant-Appellant
Cory L. Griffin

No. 11-1951

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

CORY L. GRIFFIN,
Defendant-Appellant.

CERTIFICATE OF SERVICE

I, the undersigned, counsel for the Defendant-Appellant, Cory L. Griffin, hereby certify that I electronically filed the foregoing with the clerk of the Seventh Circuit Court of Appeals on January 10, 2012, which will send notification of such filing to the attorney listed below. I also served two copies of this brief by placing them in an envelope with sufficient postage affixed and directed to the person named below at the address indicated, and depositing that envelope in the United States mail box located at 375 East Chicago Ave., Chicago, Illinois on January 12, 2012.

STEPHEN INGRAHAM
Assistant United States Attorney
530, U.S. Courthouse
517 East Wisconsin Avenue
Milwaukee, WI 53202

/s/ SARAH O'ROURKE SCHRUP
Attorney
BLUHM LEGAL CLINIC
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Dated: January 10, 2012

No. 11-1951

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

CORY L. GRIFFIN,
Defendant-Appellant.

CERTIFICATE OF COMPLIANCE WIH FED. R. APP. P. 32(a)(7)

I, the undersigned, counsel for the Defendant-Appellant, Cory L. Griffin, hereby certify that this brief conforms to the rules contained in Fed. R. App. P. 32(a)(7) for a brief produced with a proportionally spaced font. This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 12-point Century Schoolbook font.

The length of this brief is 4,237 words.

/s/ SARAH O'ROURKE SCHRUP
Attorney
BLUHM LEGAL CLINIC
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Dated: January 10, 2012