

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

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CLERK OF COURT OF APPEALS
OF WISCONSIN

Appeal No. 2016AP001814

VILLAGE OF DEFOREST,

Plaintiff-Respondent,

vs.

ALEXEI STRELCHENKO,

Defendant-Appellant

BRIEF OF DEFENDANT-APPELLANT

ON APPEAL FROM A JUDGMENT ENTERED IN THE
CIRCUIT COURT FOR DANE COUNTY, BRANCH V,
THE HONORABLE JUDGE MCNAMARA, PRESIDING.

Respectfully Submitted,

ALEXEI STRELCHENKO,
Defendant-Appellant

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(608) 515-0994

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STATEMENT OF THE ISSUES

- I. DO STATE AND LOCAL GOVERNMENTS
HAVE MATTER JURISDICTION OVER
CIVIL AIRCRAFT BEING FLOWN IN THE
AIRSPACE OF THE UNITED STATES?

TRIAL COURT ANSWERED: YES

STATEMENT ON PUBLICATION

Defendant-appellant recognizes that this appeal, as a one-judge appeal, does not typically qualify for publication by this Court. However, given that the UAV market is a multi-million dollar per year industry that is projected to grow into the billions, and that affirming the trial court's decision would set a dangerous precedent that would cripple this industry and impede interstate commerce, we respectfully request that the Court's opinion in this case be published.

STATEMENT ON ORAL ARGUMENTS

Oral arguments would be appropriate as to clarify to the court the existing federal laws regulating aircraft and the sub-genre of the type of aircraft in question regarding this case – Unmanned Aircraft Systems. Since this is a new and developing type of law, oral arguments are very apropos to this case.

STATEMENTS OF THE CASE AND FACTS

On May 28th, 2015, Officer Shaun Hughes issued 6 citations to pilot Alexei Strelchenko for a “drone flying over residences” due “a complaint we received on 5/10/15.” One was for Unlawful Use of a Drone, and five were for Disorderly Conduct. The Honorable Municipal Court Judge Hanson found Alexei Strelchenko guilty on all charges except for one Disorderly Conduct citation. No witnesses could identify the drone. No one took a video or a picture of it, despite the proliferation of cameras on cellular phones. Lastly, there was no confession or any physical evidence tying any drone flight back to a specific operator.

Alexei Strelchenko appealed to the circuit court and was convicted of only two of the five remaining charges by a jury of his peers. The conviction was for two Disorderly Conduct charges. Following Strelchenko’s conviction, he filed his Notice of Appeal to this Court in a timely manner.

ARGUMENT

- I. FEDERAL LAW TRUMPS STATE AND LOCAL GOVERNMENT LAW WHEN IT IS IN CONFLICT WITH IT THROUGH THE SUPREMECY CLAUSE AND FEDERAL LAW STATES THAT ONLY “THE UNITED STATES GOVERNMENT HAS EXCLUSIVE SOVEREIGNTY OF AIRSPACE OF THE UNITED STATES” (49 US CODE § 40103(A)(1)), THUS THE VILLAGE OF DEFOREST DOES NOT HAVE SUBJECT MATTER JURISDICTION OVER AIRCRAFT FLYING WITHIN THE AIRSPACE ABOVE THE VILLAGE.

By federal statute, “[t]he United States Government has exclusive sovereignty of airspace of the United States” (49 U.S. Code § 40103(a)(1)). The passage of the Federal Aviation Administration Modernization and Reform Act (FMRA) of 2012, Pub.L. 112-95 confirms the federal government's intent to continue to “occupy the field” of flight through the National Airspace System (NAS), thereby invalidating (through preemption) any state or local laws that purport to regulate it. As such, Wis. State Stat. 942.10 “Use of Drone” is invalidated by the federal government’s intent to occupy the field of flight through the airspace of the United States as it is a form of regulation on aircraft, and so is DeForest’s Ordinance Amending Sec. 10.01 of the DeForest Municipal Code to Prohibit the Unlawful Use of Drones. Furthermore, Title 49 U.S.C. § 40102(a)(6) defines “aircraft” as “any contrivance invented, used, or designed to navigate, or fly in, the air.” Similarly, 14 C.F.R. § 1.1 defines “aircraft” for purposes of the FARs, including § 91.13, as “a device that is used or intended to be used for flight in the air.” The definitions are quite clear on their face and federal case law has confirmed that an Unmanned Aircraft System is an aircraft in the

decision of Michael P. Huerta v. Raphael Pirker (N.T.S.B. Nov. 17, 2014) (Docket No. CP-217).

Title 49 U.S. Code § 40103(a)(2)) states that “A citizen of the United States has a public right of transit through the navigable airspace.” The Fourteenth Amendment further protects this right from abridgement by stating that, “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.” I believe the Constitutional right to free flight through “navigable airspace” was denied to me by the DeForest Police Department when they chose to issue me Disorderly Conduct Citations for activities allegedly performed in the “navigable airspace” of the United States. Thus, the enforcement of an umbrella law such as Disorderly Conduct against me for conducting privileged activities in the airspace is outright unconstitutional. The opposing counsel will cite a plethora of minor activities that qualify as disorderly conduct from unwanted mailings to yelling, but all her cited cases will ultimately have one thing in common; they occurred on the ground and are therefore governed by local and state laws, not in the National Airspace System, which is regulated by US government, namely the FAA. If pilots of aircraft were cited any time they “disturbed” someone on the ground, we would have no interstate commerce since many living under a flight path (myself included) are so disturbed they cannot do so much so as talk to someone in their house when a 747 is coming in for landing overhead. Would the police issue a citation to a much larger and more deadly F-16 as it breaks the sound barrier with a deathening roar in DeForest? No – because that pilot’s rights are protected by federal law against the

enforcement of any local law in conflict with it (i.e. Disorderly Conduct). Likewise my rights as an FAA recognized pilot are also protected since the UAS is an aircraft and the law makes no distinction in pilots' rights between the aircraft I am alleged to have piloted and manned aircraft weighing thousands of pounds. The FAA does recognize me as an pilot of aircraft (Michael P. Huerta v. Alexei Strelchenko (N.T.S.B. Docket No. CP-30006) and has fined me \$13,200 for these flights because the FAA and the FAA alone have jurisdiction over activities in the national airspace.

According to the Supremacy Clause, federal law always trumps state law when it is in conflict with it. Clearly, this is the case here. People may feel “disturbed” by the presence of new technologies such as Unmanned Aircraft Systems much like they were when Nicola Tesla first piloted his remote control boat at New York's Madison Square Garden in 1898 – the ignorant thought it was sorcery or magic. Ignorance, however, whether it be ignorance of the law and its protection to pilots, or of the technology being used for flight, is not a sufficient nor reasonable basis for being “disturbed.” About 100 years ago, the horseless carriage was viewed as sorcery; it was loud, disturbing, and moved without the aid of a horse – now the horseless carriage is delivering to you your daily mail as it is more efficient. In about 5 years or so, an UAS will be delivering to you your daily mail, please do not set case law precedent that will interfere with the advancement of these amazing technologies.

CONCLUSION

For the reasons stated in this Brief, the judgment of the trial court should be reversed due to the legal fact that neither the Village of DeForest, nor any state or municipal court, have subject matter jurisdiction over activities that take place in the airspace of the United States. Ticketing pilots who navigate United States airspace if their flights disturb sensitive individuals on the ground would effectively put an end to interstate commerce, since no one will be inclined to pilot an aircraft, manned or unmanned.

Dated at DeForest, Wisconsin, November 11, 2016.

Respectfully Submitted,

BY:  _____

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CERTIFICATION

I certify that this brief conforms to the rules contained in s. 809.1(8)(b) and (c) for a brief produced using the following font:

Proportional serif font: Min printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of min. 2 points, maximum of 60 characters per full line of body text. The length of this brief is 1,585 words.

Dated: November 11, 2016.

Signed,



ALEXEI STRELCHENKO

BACK COVER IN BLUE X AS REQUIRED BY WISCONSIN STATUTE 809.19(9)