

imprisonment for a term exceeding one year “to . . . possess in or affecting commerce, any firearm” *Id.*

The defendant was tried by a jury on this charge on November 30, 2000. He stipulated to the fact of his prior conviction and two employees of Bud’s Gun & Pawn Shop in Weber City, Virginia, testified that the defendant had pawned the firearm described in the indictment on April 29, 2000. An agent of the federal Bureau of Alcohol, Tobacco and Firearms (“BATF”) testified that he had test-fired the rifle and found it operational. He also testified that the defendant had admitted that he had pawned the rifle.

The government’s final witness was BATF agent Larry Hall. Without objection, Hall qualified as an expert in the “interstate nexus of firearms.” (Tr. 32.) He testified that in his opinion the rifle in question had been manufactured by Sturm, Ruger & Company, Incorporated, at its plant in Newport, New Hampshire. (Tr. 32-33.)

The defendant offered no evidence and the jury convicted him. Thereafter, he filed a timely motion for a new trial on the sole ground that Agent Hall’s testimony had been insufficient to prove that the firearm had traveled in interstate commerce during its existence. The motion has been briefed and is ripe for decision.

II

Under Federal Rule of Criminal Procedure 33, a district court may grant a new trial on motion of the defendant “if the interests of justice so require.” Fed. R. Crim. P. 33. “Such motions are left to the discretion of the district court and should only be granted in limited circumstances.” *United States v. United Med. & Surgical Supply Corp.*, 989 F.2d 1390, 1405 (4th Cir. 1993). One reason to grant a new trial is if the evidence “weights so heavily against the verdict that it would be unjust to enter judgment” *United States v. Arrington*, 757 F.2d 1484, 1485 (4th Cir. 1985).

Proof that the possessed firearm had previously traveled in interstate commerce is sufficient under the felon-in-possession criminal statute. *See Scarborough v. United States*, 431 U.S. 563, 566 (1977). Evidence that the firearm was manufactured outside of the state of possession is proof of this interstate nexus. *See United States v. Cox*, 942 F.2d 1282, 1286 (8th Cir. 1991). Expert testimony relating to the place of manufacture of the firearm in question is admissible to assist the jury in making this factual determination. *See United States v. Ware*, 914 F.2d 997, 1002 (7th Cir. 1990).

Morrison argues in support of his motion that Agent Hall’s testimony did not “exclude the possibility that the firearm at issue was manufactured in Virginia.” (Def.’s Reply at 3.)

The defendant's counsel vigorously cross-examined Agent Hall on the basis of his opinion that the rifle was manufactured in New Hampshire, and while Agent Hall testified that he could not say whether the written material he had relied upon was "accurate 100 percent of the time or not" (Tr. 45), his opinion was sufficiently certain to be admissible. Agent Hall testified that he had relied on not only the *Blue Book of Gun Values*, but also information from other BATF personnel, as well as his past training. (Tr. 42-43.) The weight of that testimony was for the jury to determine. In the absence of any evidence to the contrary, it is not surprising that the jury chose to accept Agent Hall's opinion.

Accordingly, justice does not require that I grant a new trial.

III

For the foregoing reasons, it is **ORDERED** that the Motion for New Trial (Doc. No. 17) is denied.

ENTER: February 19, 2001

United States District Judge