

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

GEORGE HENRY PURDY, III,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX

/s/ Kevin Joel Page

JASON HAWKINS
Federal Public Defender
Northern District of Texas
TX State Bar No. 00759763
525 Griffin Street, Suite 629
Dallas, TX 75202
(214) 767-2746
(214) 767-2886 Fax

KEVIN J. PAGE **
Assistant Federal Public Defender
Northern District of Texas
TX State Bar No. 24042691
525 Griffin Street, Suite 629
Dallas, TX 75202
(214) 767-2746
(214) 767-2886

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Appendix A Opinion of Fifth Circuit, CA Nos. 23-10501, 23-10502,
United States v. Purdy, III, 2024 WL 1905757 (5th Cir. May 1, 2024)(unpublished).

Appendix B Judgment and Sentence of the United States District Court
for the Northern District of Texas, entered May 3, 2023.
United States v. Purdy, III, Dist. Court 4:22-CR-302-Y.

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

No. 23-10501
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 1, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

GEORGE HENRY PURDY, III,

Defendant—Appellant,

CONSOLIDATED WITH

No. 23-10502
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

GEORGE HENRY PURDY,

Defendant—Appellant.

No. 23-10501
c/w No. 23-10502

Appeals from the United States District Court
for the Northern District of Texas
USDC Nos. 4:22-CR-302-1,
4:16-CR-196-1

Before SMITH, HIGGINSON, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:*

George Purdy, III, pleaded guilty of possessing a firearm after a felony conviction in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). He appeals, raising a claim of sentencing error and urging that § 922(g)(1) is unconstitutional. Purdy also appeals the judgment revoking his supervised release in a separate matter, but, because he does not brief any challenge to the revocation or the revocation sentence, he has abandoned those issues. *See Yohey v. Collins*, 985 F.2d 222, 224–25 (5th Cir. 1993).

For the first time on appeal, Purdy contends that § 922(g)(1) violates the Second Amendment in light of *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022). Our review is for plain error. *See United States v. Snarr*, 704 F.3d 368, 382 (5th Cir. 2013). Because it is not clear that *Bruen* or other existing precedent dictates that § 922(g)(1) is unconstitutional, Purdy cannot show plain error. *See United States v. Jones*, 88 F.4th 571, 573–74 (5th Cir. 2023), *cert. denied*, 2024 WL 1143799 (U.S. Mar. 18, 2024) (No. 23-6769).

Purdy also contends that, as interpreted by this court, § 922(g)(1) is unconstitutional because it exceeds Congress’s authority to regulate commerce. As he concedes, that argument is foreclosed. *See United States v. Perryman*, 965 F.3d 424, 426 (5th Cir. 2020).

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 23-10501
c/w No. 23-10502

Finally, Purdy maintains that the district court erred in relying on statements in the presentence report (“PSR”) that a domestic partner told police he threatened her with a pistol. A sentencing court “may consider any information which bears sufficient indicia of reliability to support its probable accuracy.” *United States v. Harris*, 702 F.3d 226, 230 (5th Cir. 2012) (internal quotation marks and citation omitted). Whether this standard is met in a given instance is a factual finding reviewed for clear error. *United States v. Ortega-Calderon*, 814 F.3d 757, 760 (5th Cir. 2016).

“Bald, conclusionary statements do not acquire the patina of reliability by mere inclusion in the PSR.” *United States v. Elwood*, 999 F.2d 814, 817-18 (5th Cir. 1993). Here, however, the statements are part of a “detailed and specific” account. *United States v. Parkerson*, 984 F.3d 1124, 1129 (5th Cir. 2021). The PSR indicates this account was corroborated in part by the presence of marks on the victim’s body, Purdy’s admission that a dispute occurred, and the discovery of a pistol and ammunition in his apartment. Purdy fails to show that consideration of the victim’s allegations, as summarized in the PSR, was clearly erroneous. In turn, because he did not present rebuttal evidence or otherwise demonstrate that the allegations were unreliable, the district court was entitled to accept them. *See Harris*, 702 F.3d at 230.

Purdy criticizes the reasoning employed in *Harris* and *Parkerson* with respect to burden-shifting and information based on police investigations. We reject his criticisms under the rule of orderliness. *See United States v. Traxler*, 764 F.3d 486, 489 (5th Cir. 2014).

The judgments are AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: 4:22-CR-302-Y(1)

Frank L. Gatto, assistant U.S. attorney

GEORGE HENRY PURDY III

Rachel M. Taft, attorney for the defendant

On December 7, 2022, the defendant, George Henry Purdy III, entered a plea of guilty to count one of the one-count indictment. Accordingly, the defendant is adjudged guilty of such count, which involves the following offense:

<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE CONCLUDED</u>	<u>COUNT</u>
18 U.S.C. §§ 922(g)(1) and 924(a)(2)	Possession of a Firearm by a Convicted Felon	July 30, 2022	1

The defendant is sentenced as provided in pages two through three of this judgment. The sentence is imposed under Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission under Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 for count one of the one-count indictment.

The defendant shall notify the United States attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Sentence imposed May 2, 2023.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed May 3, 2023.

IMPRISONMENT

The defendant, George Henry Purdy III, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 87 months on count one of the one-count indictment. This sentence shall run concurrently with any sentence that may be imposed in case no. 1742085D in Criminal District Court No. 1, Tarrant County, Texas. Further, this sentence shall run consecutively to any sentence that may be imposed by this Court in case no. 4:16-CR-196-Y(1).

The Court recommends that the defendant be incarcerated at FMC-Fort Worth, Fort Worth, Texas, for treatment or removal of a recently lanced and drained cyst on his neck, and that he participate in a program that addresses alcoholism.

The defendant is remanded to the custody of the United States marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of 3 years on count one of the one-count indictment.

The defendant, while on supervised release, shall comply with the standard conditions recommended by the U. S. Sentencing Commission at §5D1.3(c) of the United States Sentencing Commission Guidelines Manual, and shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the probation officer, as authorized by the Justice for All Act of 2004;

report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Federal Bureau of Prisons;

refrain from any unlawful use of a controlled substance. The defendant must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court;

participate in outpatient mental-health treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered (copayment) at a rate of at least \$25 per month; and

participate in an outpatient program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration. Restitution is not ordered because there is no victim other than society at large.

FORFEITURE

Under 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), it is hereby ordered that the defendant's interest in the following property is condemned and forfeited to the United States: A Stallard Arms (HiPoint), Model JS, 9-millimeter pistol, bearing serial no. 072361, including any ammunition, magazines, and/or accessories recovered with the firearm.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

United States marshal

BY _____
deputy marshal