APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4741

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTJOUN RIDDICK,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Greenbelt. Theodore D. Chuang, District Judge. (8:22-cr-00057-TDC-1)

Submitted: January 16, 2025 Decided: March 31, 2025

Before QUATTLEBAUM, RUSHING, and BENJAMIN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Brent Evan Newton, Gaithersburg, Maryland, for Appellant. Erek L. Barron, United States Attorney, Baltimore, Maryland, Joshua A. Rosenthal, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greenbelt, Maryland, for Appellee.

PER CURIAM:

Antjoun Riddick appeals his conviction following a jury trial for possessing a firearm as a convicted felon, in violation of 18 U.S.C. § 922(g)(1). On appeal, Riddick argues that § 922(g)(1) is unconstitutional, both facially and as applied to him, and that his conviction is not supported by sufficient evidence. We affirm.

The parties agree that Riddick's Second Amendment challenges to § 922(g)(1) are foreclosed by our recent decision in *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024). *See also United States v. Canada*, 123 F.4th 159, 160-62 (4th Cir. 2024). Riddick further concedes that his challenge to the sufficiency of the evidence regarding the interstate commerce element of the offense is likewise foreclosed by our precedent. *See, e.g.*, *United States v. Reed*, 780 F.3d 260, 271-72 (4th Cir. 2015) (holding that showing a firearm traveled across state lines is sufficient to establish that a defendant's possession of a firearm was in or affected interstate commerce).

We agree with Riddick's concessions. We therefore affirm the criminal judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

v.

ANTJOUN RIDDICK,

Defendant.

Criminal Action No. TDC-22-0057

ORDER

For the reasons stated on the record, during the Motion Hearing on January 9, 2023, it is hereby ORDERED that the Motion to Dismiss the Indictment under the Second Amendment, ECF No. 45, is DENIED.

Date: January 9, 2023

THEODORE D. CHUANG
United States District Judge

now stands in recess.

(Recess taken from 12:04 p.m. - 12:14 p.m.)

THE COURTROOM DEPUTY: All rise. This Honorable Court resumes in session, the Hon. Theodore D. Chuang presiding.

THE COURT: Thank you, everyone. Please be seated. Thank you for waiting. I just wanted to look at some of the cases that the parties have cited, and as is always the case in a case like this, where there's late-breaking opinions, I am not taking the view that either side is trying to oversell what they have, they're just giving me what they have, and -- for example, the Goins case does not come out and say that felons are covered by "the people," it just says "the people" is not necessarily limited to law-abiding citizens.

And then it goes on to find that at least someone with the defendant's background involved with a drug -- a drug conviction, that he was dangerous and that there is historical tradition of limiting firearms from those individuals. So as I'm sure Mr. Macbeth acknowledged, the case ends up going against him. But that little kernel that he's trying to point to, I guess it's something, but it's by no means compelling.

Similarly, from the government's side, I think the analysis in Judge Dillon's opinion from the Western District of Virginia largely focused on an as-applied analysis. There's a paragraph on the facial challenge. So it doesn't really go beyond what we already had. It cites U.S. v. Riley from the

Eastern District of Virginia, October 2022, which is more thorough than this. But again, this is what we're getting. I understand that you're trying to find tea leaves where you can find them, but I appreciate the efforts to give additional case law.

This case, as you know, has been waiting to move forward for a while. We had suppression motions. I know the original idea of this motion was -- dates back to the summer, to some degree because of the suppression motion and also because of the Court's schedule. We haven't been able to move past this motion for quite a while, and I know the defendant is detained, so I am actually prepared to rule on the motion now to keep this case moving forward.

I'll start by just setting up where we are. The motion to dismiss under the Second Amendment is -- was filed by Mr. Riddick. Mr. Riddick is arguing that the felon in possession statute, 18 United States Code Section 922(g)(1), is facially unconstitutional under the Second Amendment, in light of the Supreme Court's recent decision in New York State Rifle and Pistol Association, Inc v. Bruen, 142 S.Ct. 2111 (2022). In Bruen, the Court considered the two-step test that Courts of Appeals had generally adopted for assessing Second Amendment claims after District of Columbia v. Heller, 554 U.S. 570 (2008).

At the first step, the government could justify its

regulation by showing that the challenge law regulates activity outside the scope of the Second Amendment right as originally understood, and if it successfully does so, "then the analysis can stop there, the regulated activity is categorically unprotected," from Bruen, in terms of describing what the test had been. At the second step, the Courts engaged in a means-end analysis, applying either strict or intermediate scrutiny to the proposed -- or to the statute or regulation under challenge.

The Bruen Court generally reaffirmed the first step by stating that it "is broadly consistent with Heller," but it rejected the means-end second step. It then adopted a Second Amendment test of considering first whether the "Second Amendment's plain text covers an individual's conduct" and, if so, the Constitution presumptively protects that conduct. And then, if the regulation does cover Second Amendment conduct, rather than engaging in the means-end inquiry, which it effectively struck down, "The Government must then justify its regulation by demonstrating that is consistent with the nation's historical tradition of firearm regulation."

Although the defendant argues that the felon in possession statute fails at this new second step, because there is not a clear historical tradition of regulating gun possession by felons dating back to the founding era, this Court finds the defendant's argument fails at the first step of whether the conduct at issue is even protected by the Second Amendment. In

doing so, the Court has considered the range of opinions that have been issued by Courts around the country, including the now-vacated opinion of the Third Circuit in Range v. Attorney General, 53 F.4 262 (3d Cir. 2022), which was the only published Circuit opinion on the issue as of now and is no longer in effect until after the en banc procedures take place.

I've also considered Judge Alston's opinion in the Eastern District of Virginia in United States v. Riley, 2022 WL 7610264, Eastern District of Virginia, October, 2022. These opinions and others have concluded that Heller and McDonald effectively leave felons outside the category of "the people" as that term is set forth in the Second Amendment and that Bruen did not disturb that determination. Conversely, no Courts facing the same type of challenge have found Section 922(g)(1) to be unconstitutional based on Bruen.

So the analysis I go forward with, which I admit is borrowed from some of these other opinions, is as follows. In Heller, the Supreme Court first identified an individual right to possess a firearm under the Second Amendment, and the Court described that right as "the right of law-abiding, responsible citizens to use arms in defense of hearth and home."

The Court also specifically stated that "Nothing in our opinion should be taken to cast doubt on long-standing prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in

sensitive places, such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms."

In the first line of the Bruen opinion, the Court adopted this understanding of the scope of the Second Amendment right when it stated that in Heller and in McDonald -- McDonald is 561 U.S. 742 (2010) -- the Court "recognized that the Second and Fourteenth Amendments protect the right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense."

While the Court then expanded the right to include possession outside the home for self-defense, it cannot be fairly read to have expanded the Second Amendment right to non-law-abiding citizens. In most of its references to the Second Amendment right, including that statement of the right at the very outset of the opinion, the Bruen Court continued to frame it as the right of law-abiding citizens, including on approximately 11 occasions, and several Justices who joined the majority opinion, including Justice Alito and Justice Kavanaugh, highlighting concurring opinions, their understanding that Bruen did not disturb Heller's determination that restrictions on felons possessing firearms are presumptively lawful.

The majority opinion in Bruen demonstrated in multiple ways that its redefinition of the Second Amendment test did not overrule or alter Heller on this issue. First, it noted that it

was not questioning the constitutionality of state laws requiring a permit to carry a gun but requiring the permit to -- that if the laws require that the permit "shall issue," that the applicant met certain eligibility requirements, because those laws, as the Bruen Court described it, "are designed to ensure only that those bearing arms are, in fact, law-abiding, responsible citizens." Such a finding is inconsistent with the notion that a felon has the same Second Amendment right as a law-abiding citizen.

Second, it effectively reaffirmed Heller's similar identification of laws forbidding the carrying of firearms in sensitive places such as schools and government buildings as presumptively lawful, while then finding that category inapplicable to the general restriction before relating to the public carrying of firearms. It also ultimately struck down the New York law because "it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms."

If Bruen had expanded the Second Amendment right to encompass non-law-abiding citizens, it would have had no need reference law-abiding citizens in this manner and would have explicitly overruled Heller on these points, particularly where the Court of Appeals have frequently relied on Heller on this point separate and apart from the means-end analysis that it did reject.

So where Bruen did not alter Heller on this point, the Court finds that it also remains bound by existing Fourth Circuit precedent, holding that the Second Amendment right is limited to law-abiding citizens, precedent which I find not to have been overruled by Bruen, including United States v. Chester, 628 F.3d 673 (4th Cir. 2010), in which the Fourth Circuit held that the core right protected by the Second Amendment is "the right of a law-abiding, responsible citizen to possess and carry a weapon for self-defense," and United States v. Moore, 666 F.3d 313 (4th Cir. 2012), which likewise limited the Second Amendment right established in Heller to "law-abiding citizens."

Where the Fourth Circuit held, in Hamilton v. Pallozzi, 848 F.3d 614 (4th Cir. 2017), that "the conviction of a felony necessarily removes one from the class of law-abiding, responsible citizens for the purposes of the Second Amendment," absent narrow exceptions, the Court finds that the felon in possession statute does not implicate the Second Amendment right as currently defined by the Supreme Court.

Because the Court determines that the right covered by 18 U.S.C. 922(g)(1) is outside the scope of rights covered by the Second Amendment under Bruen, McDonald, and Heller, the Court need not engage in the analysis of analogues to 922(g)(1) in the historical tradition of the United States as outlined in Bruen. Nevertheless, to the extent a historical analysis is

necessary, the Court largely agrees with the analysis that was set forth in the now-vacated Range opinion but also in that of the Eastern District of Virginia in Riley, which I cited earlier.

In particular, as noted in this case by the government, the Court finds that there is a relevant history of disarming individuals deemed outside of the community of full-fledged members of the political community, such as those who would not take loyalty oaths. Likewise, there's a history of disarming unvirtuous citizens or potential subversives, as referenced in United States v. Carpio-Leon, 701 F3d 974 (4th Cir. 2012).

Finally, the Court notes that in Bruen, the Court effectively upheld the presumptive legality of restrictions on firearms in sensitive locations, not because of ample historical examples of such restrictions but based on the absence of disputes regarding the lawfulness of such prohibitions.

So for example, in that opinion, the Court specifically stated -- in relation to this category of laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, the Bruen Court stated, "Although the historical record yields relatively few 18th and 19th century sensitive places where weapons were altogether prohibited, e.g., legislative assemblies, polling places, and courthouses, we are also aware of no disputes regarding the

lawfulness of such prohibitions. We therefore can assume it's settled that these locations were sensitive places where arms-carrying could be prohibited consistent with the Second Amendment." And Courts can use analogies to those historical regulations of sensitive places to determine that modern regulations prohibiting the carrying of firearms in new and analogous sensitive places are constitutionally permissible.

So the Court effectively was saying that when you're in this category of presumptively lawful restriction, such as the sensitive places, it didn't dispute the idea that a historical analysis needed to be done, but it's at a very low bar for that type of analysis, effectively saying that where there were no disputes regarding the lawfulness of such prohibitions, that was sufficient. And certainly in this similar category of felons, it was treated the same way in the Heller opinion. At a minimum, there's no dispute that's been found in the historical record on this point, but as noted already, there are some historical analogues.

There are the references in the Cooley source, which although a secondary source, is at least as good as the fact that there's a citation in Bruen to Law Review articles about sensitive places. So even if I needed to reach that issue, which I don't find that I needed to, I do find, based on those points as well as the points that were raised in the Riley opinion, that the second prong would also be satisfied as well.

So for all those reasons, I'm going to deny the motion to dismiss.

So with that, what's the next step in the case? Should we set a trial date, do the parties want to have some discussion about the case before we get to that point? Have you thought about that, or where are we on that?

MS. SILVER: Your Honor, we have thought about that. The parties are in discussions, and you know, there is certainly a possibility that this will be resolved short of trial. To some degree, I feel comfortable deferring to the Court whether it would prefer to set a status date or just put a trial on the calendar. And --

THE COURT: How long would a trial in this case be?

MS. SILVER: I'll defer to the government. I don't anticipate it will be very long.

MR. HAGAN: Agreed. I can't imagine --

THE COURT: So within a week?

MR. HAGAN: Absolutely.

THE COURT: Remind me again, what's the fact pattern in this case?

MR. HAGAN: This fact --

THE COURT: There was the suppression motion, but we've been dealing with this issue more recently, so ...

MR. HAGAN: Mr. Riddick had an open warrant out of the District of Columbia. Marshals went to a residence where they