

NO. _____

In the
Supreme Court of the United States

SHAWN K. BEVER, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

APPENDIX A
TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Wesley P. Page
Federal Public Defender

Jonathan D. Byrne
Appellate Counsel

Lex A. Coleman
Senior Litigator
Counsel of Record

OFFICE OF THE FEDERAL PUBLIC DEFENDER
Southern District of West Virginia
300 Virginia Street, East, Room 3400
Charleston, West Virginia 25301
304/347-3350
lex_coleman@fd.org

Counsel for Petitioner

2025 WL 702082

Only the Westlaw citation is currently available.

United States Court of Appeals, Fourth Circuit.

UNITED STATES of America, Plaintiff - Appellee,

v.

Shawn K. BEVER, Defendant - Appellant.

No. 23-4521

|

Submitted: July 30, 2024

|

Decided: March 5, 2025

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. [David A. Faber](#), Senior District Judge. (2:22-cr-00164-1)

Attorneys and Law Firms

ON BRIEF: [Wesley P. Page](#), Federal Public Defender, [Lex A. Coleman](#), Senior Litigator Assistant Federal Public Defender, Jonathan D. Byrne, Appellate Counsel, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Charleston, West Virginia, for Appellant. [William S. Thompson](#), United States Attorney, [Francesca C. Rollo](#), Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, West Virginia, for Appellee.

Before NIEMEYER, HARRIS, and [HEYTENS](#), Circuit Judges.

Opinion

Affirmed by unpublished per curiam opinion.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

***1** Shawn K. Bever appeals the district court's denial of his motion to dismiss the indictment and the criminal judgment setting forth his conviction and sentence for possession of a firearm by a convicted felon, in violation of [18 U.S.C. §§ 922\(g\)\(1\), 924\(a\)\(2\) \(2018\)](#). He argues that [§ 922\(g\)\(1\)](#) is unconstitutional—and his conviction therefore infirm—following [New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1, 17 \(2022\)](#) (holding that a firearm regulation is valid under

the Second Amendment only if it “is consistent with this Nation's historical tradition of firearm regulation”).

We considered and rejected the same argument in *United States v. Canada*, 123 F.4th 159, 161 (4th Cir. 2024) (holding that “[§] 922(g)(1) is facially constitutional because it has a plainly legitimate sweep and may constitutionally be applied in at least *some* set of circumstances” (internal quotation marks omitted)). The holding in *Canada* forecloses Bever's facial challenge to § 922(g)(1). To the extent that Bever also asserts an as-applied challenge to § 922(g)(1), we recently held “that neither *Bruen* nor [*United States v.*] *Rahimi*[, 602 U.S. 680 (2024),] abrogates [our] precedent foreclosing as-applied challenges to [§] 922(g)(1)” and, further, “that [§] 922(g)(1) would pass constitutional muster even if we were unconstrained by circuit precedent.” *United States v. Hunt*, 123 F.4th 697, 702 (4th Cir. 2024). Thus, *Hunt* forecloses Bever's as-applied challenge.

Accordingly, the district court did not err in denying the motion to dismiss the indictment, and we affirm Bever's 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

All Citations

Not Reported in Fed. Rptr., 2025 WL 702082

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APPENDIX B
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TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Wesley P. Page
Federal Public Defender

Jonathan D. Byrne
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Lex A. Coleman
Senior Litigator
Counsel of Record

OFFICE OF THE FEDERAL PUBLIC DEFENDER
Southern District of West Virginia
300 Virginia Street, East, Room 3400
Charleston, West Virginia 25301
304/347-3350
lex_coleman@fd.org

Counsel for Petitioner

669 F.Supp.3d 578
United States District Court, S.D. West Virginia,
at Charleston.

UNITED STATES of America

v.

Shawn K. BEVER

CRIMINAL NO. 2:22-00164

|

Signed April 18, 2023

Synopsis

Background: Defendant who was indicted on a single-count of felon in possession of a firearm filed motion to dismiss the indictment.

[Holding:] The District Court, [David A. Faber](#), Senior District Judge, held that statute prohibiting felon from possessing firearm did not violate Second Amendment.

Motion denied.

Procedural Posture(s): Pre-Trial Hearing Motion.

West Headnotes (3)

[1] Weapons 🔑 [Possession After Conviction of Crime](#)

Statute prohibiting felon from possessing firearm prohibits the possession of firearms by all persons convicted of a felony, whether violent or non-violent. [18 U.S.C.A. § 922\(g\)\(1\)](#).

[3 Cases that cite this headnote](#)

[2] Weapons 🔑 [Right to bear arms in general](#)

The Second Amendment protects the right to keep and bear arms. [U.S. Const. Amend. 2](#).

[3 Cases that cite this headnote](#)

[3] **Weapons** 🔑 Violation of right to bear arms

Weapons 🔑 Possession After Conviction of Crime

Statute prohibiting felon from possessing firearm was consistent with the United States' historical tradition of firearm regulation and, thus, did not violate Second Amendment. U.S. Const. Amend. 2; 18 U.S.C.A. § 922(g)(1).

6 Cases that cite this headnote

Attorneys and Law Firms

[Nowles Heinrich](#), Lesley Shamblin, United States Attorney's Office, Charleston, WV, for United States of America.

[Lex A. Coleman](#), Public Defender, Federal Public Defender's Office, Charleston, WV, for Shawn K. Bever.

MEMORANDUM OPINION

[David A. Faber](#), Senior United States District Judge

On August 24, 2022, Bever was indicted on a single-count of felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). He moved to dismiss the indictment in light of the Supreme Court's decision in [New York State Rifle and Pistol Association, Inc. v. Bruen](#). According to Bever, [Bruen](#) renders § 922(g)(1) unconstitutional. On January 4, 2023, the court denied Bever's motion to dismiss. The reasons for that decision follow.

Analysis

[1] It is a violation of federal law for a convicted felon to possess a firearm. See 18 U.S.C. § 922(g)(1). This law, commonly known as the felon-in-possession statute, prohibits the possession of firearms by all persons convicted of a felony, whether violent or non-violent.¹ The ban against possession of firearms by all felons has been *579 in place since 1961. See [United States v. Booker](#), 644 F.3d 12, 24 (1st Cir. 2011) (noting that “the current federal felony firearm ban differs considerably from the version of the proscription in force just half a century ago” and that “[t]he law was expanded to encompass all individuals convicted of a felony ... in 1961”); see also [United](#)

[States v. Skoien](#), 614 F.3d 638, 640 (7th Cir. 2010) (“The Federal Firearms Act [enacted in 1938] covered only a few violent offenses; the ban on possession by all felons was not enacted until 1961.”) (emphasis in original) (en banc). “In 1968, Congress changed the ‘receipt’ element of the 1938 law to ‘possession,’ giving [18 U.S.C. § 922\(g\)\(1\)](#) its current form.” [Skoien](#), 614 F.3d at 640.

[2] On the other hand, the Second Amendment to the United States Constitution protects the right to keep and bear arms: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” [U.S. Const. amend. II](#). Until 2008, challenges to the constitutionality of the felon-in-possession statute were routinely rejected because courts interpreted the rights conferred by the Second Amendment “as a collective right, connected with service in an official state militia, rather than a freestanding, individual right of the citizenry.” [United States v. Smith](#), 742 F. Supp.2d 855, 857 (S.D.W. Va. 2010) (Johnston, J.); see also [Love v. Pepersack](#), 47 F.3d 120, 124 (4th Cir. 1995) (“[T]he Second Amendment only confers a collective right of keeping and bearing arms which must bear a reasonable relationship to the preservation or efficiency of a well-regulated militia.”) (cleaned up).

In 2008, in its “first in-depth examination of the Second Amendment,” the Supreme Court held that the Second Amendment right to keep and bear arms was an individual right, independent of militia service. [District of Columbia v. Heller](#), 554 U.S. 570, 595, 635, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008). In so doing, the [Heller](#) court made clear that “[l]ike most rights, the right secured by the Second Amendment is not unlimited,” and that “the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” [Id.](#) at 626, 128 S.Ct. 2783. According to the [Heller](#) Court:

Although we do not take an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding 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 guns.

[Id.](#) at 626-27, 128 S.Ct. 2783.

Two years later, the Court restated the “central holding in [Heller](#): that the Second Amendment protects a personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home.” [McDonald v. City of Chicago](#), 561 U.S. 742, 780, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010). The [McDonald](#) court went on to hold that the Second Amendment right is a fundamental right that applies to the states pursuant to the Due Process Clause of the Fourteenth

Amendment. See [id.](#) at 791, 130 S.Ct. 3020. In so holding, the Court reaffirmed its earlier guidance on [Heller](#)'s scope:

It is important to keep in mind that [Heller](#), while striking down a law that prohibited the possession of handguns in the home, recognized that the right to keep and bear arms is not a right to keep and carry any weapon whatsoever *580 and for whatever purpose. We made it clear in [Heller](#) that our holding did not cast doubt on such longstanding regulatory measures as prohibitions on the possession of firearms by felons and the mentally ill, laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws on the commercial sale of arms. We repeat those assurances here.

[Id.](#) at 786, 130 S.Ct. 3020 (cleaned up).

Following [Heller](#) and [McDonald](#), courts, including the United States Court of Appeals for the Fourth Circuit, analyzed Second Amendment challenges to firearms regulations using a two-step approach. See [United States v. Hosford](#), 843 F.3d 161, 165 (4th Cir. 2016). Under the first step, a court would determine “whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment guarantee[.]” [Id.](#) Under the second step, “if the challenged regulation d[id] burden conduct within the scope of the Second Amendment as historically understood, the court must apply an appropriate form of means-end scrutiny.” [Id.](#) (internal citations and quotations omitted). Utilizing this two-step approach, courts routinely rejected challenges to the constitutionality of 18 U.S.C. § 922(g)(1). See [United States v. Moore](#), 666 F.3d 313, 316-17 (4th Cir. 2012) (“We begin our analysis by noting the unanimous result reached by every court of appeals that § 922(g)(1) is constitutional, both on its face and as applied. The basis for the various decisions by our sister circuits has varied, but all have uniformly rejected challenges to § 922(g)(1)[.]”).

On June 23, 2022, the Court decided [New York State Rifle and Pistol Association, Inc. v. Bruen](#), 597 U.S. 1, 142 S. Ct. 2111, 213 L.Ed.2d 387 (2022). In [Bruen](#), the Court considered a challenge to a New York law that required a person to demonstrate that “proper cause” exists in order to obtain a concealed carry license for a firearm. [Id.](#) at 2123. According to the Court,

The standard for applying the Second Amendment is as follows: When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then

justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then, may a court conclude that the individuals's conduct falls outside the Second Amendment's unqualified command.

[Id.](#) at 2129-30 (internal citation and quotation omitted). The [Bruen](#) Court explicitly rejected lower courts' use of means-ends analysis. See [id.](#) at 2127 (“Despite the popularity of this two-step approach, it is one step too many. Step one of the predominant framework is broadly consistent with [Heller](#), which demands a test rooted in the Second Amendment's text, as informed by history. But [Heller](#) and [McDonald](#) do not support applying means-end scrutiny in the Second Amendment context. Instead, the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.”). The Court ultimately held that the New York law's proper-cause requirement violated the Second and Fourteenth Amendments. See [id.](#) at 2156.

The concurring and dissenting opinions in [Bruen](#) reiterated that its decision did not “disturb[] anything that we said in [Heller](#) or [McDonald](#) ... about restrictions that may be imposed on the possession or carrying of guns.” [Id.](#) at 2157 (Alito, J., concurring). Justice Alito went on to write that “[Heller](#) correctly recognized that the Second Amendment codifies that right of ordinary law-abiding Americans to protect *581 themselves from lethal violence by possessing and, if necessary, using a gun.” [Id.](#) at 2161. Justice Breyer's dissent, joined by Justices Sotomayor and Kagan, wrote that he understood “the Court's opinion today to cast no doubt on [Heller](#)’s treatment of laws prohibiting possession of firearms by felons. [Id.](#) at 2189.

Justice Kavanaugh, joined by Chief Justice Roberts, also wrote separately to “underscore ... the limits of the Court's decision.” [Id.](#) (Kavanaugh, J., concurring). According to Justice Kavanaugh, “as [Heller](#) and [McDonald](#) established and the Court today again explains, the Second Amendment is neither a regulatory straightjacket nor a regulatory blank check.... Properly interpreted, the Second Amendment allows a variety of gun regulations.” [Id.](#) at 2162 (cleaned up). Justice Kavanaugh went on to quote [Heller](#) and what he deemed to be “the principal opinion in [McDonald](#).”

Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.... [N]othing in

our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill.

Id.

In addition, the majority opinion in Bruen made repeated references to the right to bear arms as belonging to “law-abiding” citizens. Id. at 2122.

[In Heller and McDonald, we] 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. In this case, petitioners and respondents agree that ordinary, law-abiding citizens have a similar right to carry handguns publicly for their self-defense. We too agree.

Id. The Court also noted on several occasions that petitioners were “ordinary, law-abiding, adult citizens.” Id. at 2134; see also id. at 2124-25 (referring to petitioners as “law-abiding, adult citizens”). And, finally, the majority opinion ultimately held that “New York’s proper-cause requirement violates the Fourteenth Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms.” Id. at 2156 (emphasis added).

Post-Bruen, a number of criminal defendants have raised the same challenge that Bever makes herein: that 18 U.S.C. § 922(g)(1) violates the Second Amendment right of a convicted felon to possess firearms. These challenges have been routinely rejected although courts have decided the issue in various ways. See, e.g., United States v. Williams, CRIMINAL ACTION NO. 1:21-CR-00362-LMM-LTW-1, 2022 WL 17852517, at *2 (N.D. Ga. Dec. 22, 2022)) (“[T]he Court concludes that Rozier remains controlling precedent in this circuit. As a district court bound to follow this circuit’s controlling precedent, it is not for the Court to decide whether Bruen may ultimately be held to abrogate Rozier.”); United States v. Carpenter, Case No. 1:21-cr-00086-DBB, 2022 WL 16855533, at *4 n.39 (D. Utah Nov. 10, 2022). Some courts have concluded that nothing in Bruen upsets their appeals court precedent explicitly upholding the constitutionality of § 922(g)(1) and, therefore, further analysis is unnecessary. See, e.g., United States v. Siddoway, Case No. 1:21-cr-00205-BLW, 2022 WL 4482739, at *1 (D. Idaho Sept. 27, 2022) (“Although Mr. Siddoway would like the Court to scrutinize the history of felon-in-possession *582 statutes, such examination is unnecessary at this time. The Court is bound by Vongxay [594 F.3d 1111 (9th Cir. 2010)] and the motion must be denied.”).

Other courts have pointed to the concurring and dissenting opinions in [Bruen](#) which stated that nothing in [Bruen](#) disturbed the court's earlier decisions in [Heller](#) and [McDonald](#) upholding prohibitions against felons possessing firearms. See, e.g., [United States v. Dawson](#), 3:21-CR-00293-RJC-DCK, 2022 WL 17839807, at *1 (W.D.N.C. Dec. 21, 2022) (“The defendant admits he is a convicted felon, ... thus, his reliance on [Bruen](#) is misplaced.”).

And some courts have relied on both, looking to both their appeals court precedent, as well as the language in [Heller](#), [McDonald](#), and [Bruen](#), in rejecting challenges to the constitutionality of 922(g) (1). See, e.g., [United States v. Robinson-Davis](#), Case No. 7:22-cr-00045, 2023 WL 2495805, at *3 (W.D. Va. Mar. 14, 2023) (“Although courts have cited various reasons for denying these [Bruen](#) challenges, this court adopts what it believes is the most salient rationale, and the one that militates denial of Defendant's motion. Lower courts must take the Supreme Court at its word that its recent jurisprudence, which has further strengthened Second Amendment rights, should not be read to push § 922(g)(1) outside the safe harbor of the presumptively valid firearms regulations not subject to heightened scrutiny.... [T]his court must conclude that the Fourth Circuit decisions in [Moore](#) and [Pruess](#), both of which affirmed the constitutionality of § 922(g)(1) after [Heller](#), remain good law and require denial of Defendant's motion.”) (internal quotations omitted); [Carpenter](#), 2022 WL 16855533, at *3 (“There is nothing in [Bruen](#) to indicate that either [Heller](#), Tenth Circuit precedent based on [Heller](#), or § 922(g)(1) are no longer valid.”); [United States v. Butts](#), CR22-33-M-DWM, 637 F.Supp.3d 1134, 1136-37 (D. Mont. Oct. 31, 2022) (“While [Bruen](#) clarifies the standard courts must apply in assessing firearm regulations, [Bruen](#)’s impact on existing precedent is less clear. This uncertainty takes two forms: (1) the impact of what Butts characterizes as Supreme Court ‘dicta’ and (2) the precedential value of the Ninth Circuit's decision in [United States v. Vongxay](#), 594 F.3d 1111 (9th Cir. 2010), which upheld § 922(g)(1) pre-[Bruen](#). As it turns out, contrary to Butts's position, both provide independent, legal grounds for denying Butts's motion.”).

A number of courts have analyzed § 922(g) under the test laid out in [Bruen](#) and concluded that the statute does not violate the Second Amendment. Some courts have reached this conclusion based on the first part of the [Bruen](#) test, holding that the reference to “the people” in the Second Amendment does not include felons. See, e.g., [United States v. Hill](#), Criminal Action H-22-249, 2022 WL 17069855, at *5 (S.D. Tex. Nov. 17, 2022) (“This Court holds that 18 U.S.C. § 922(g)(1) remains constitutional in the aftermath of [Bruen](#); in applying its test, this Court finds that felons are not covered under the plain text of the Second Amendment, because they are not within the categories of individuals which the plain text ‘presumably protects.’ Therefore, an analysis of whether such regulation is justified by our historical tradition is unnecessary.”).²

***583** Other courts have considered the second part of the [Bruen](#) test and concluded that while convicted felons might be included in “the people” referenced in the Second Amendment, disarming them is nevertheless consistent with this Nation's historical tradition of firearm regulation. See, e.g., [United States v. Goins](#), Criminal No. 5:22-cr-00091-GFVT-MAS-1, 2022

WL 17836677, at *1 (E.D. Ky. Dec. 21, 2022) (rejecting defendant's as-applied challenge to 18 U.S.C. § 922(g)(1) because “the British common law that informed our founding era enactments included the power to disarm individuals who posed a danger to public safety” and defendant's “criminal record suggests that his crimes were similarly dangerous”).

Finally, other courts have applied the [Bruen](#) test but nevertheless conclude that an in-depth historical analysis is unnecessary as to 18 U.S.C. § 922(g)(1). See, e.g., [United States v. Price](#), CRIMINAL ACTION NO. 2:22-cr-00097, 635 F.Supp.3d 455, 466-67 (S.D.W. Va. Oct. 12, 2022) (“I do not find it necessary to engage in the historical analysis test articulated in [Bruen](#) as to U.S.C. § 922(g)(1). Rather, I am convinced that the Supreme Court left generally undisturbed the regulatory framework that keeps firearms out of the hands of dangerous felons through its decision in [Bruen](#) by reaffirming and adhering to its reasoning in [Heller](#) and [McDonald](#). Mr. Price essentially argues that [Bruen](#) should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons, which is a marked departure from [McDonald](#) and [Heller](#) that was specifically not taken by the Supreme Court in [Bruen](#).”) (Goodwin, J.).³

[3] At the time the court denied defendant's motion to dismiss, every court to have considered the issue had rejected [Bruen](#) challenges to the constitutionality of 18 U.S.C. § 922(g)(1). This court, relying on the unanimous nature of those decisions concluded that the federal felon-in-possession statute does not run afoul of the Second Amendment post-[Bruen](#). That overwhelming consensus has only grown with the passage of time. As of today's date, “over 100 district courts have held that federal law prohibiting felons from possessing firearms remains valid even after [Bruen](#).” [Robinson-Davis](#), 2023 WL 2495805, at *2. This court remains convinced that nothing in [Bruen](#) upsets the Fourth Circuit's decision in [Moore](#) upholding the constitutionality of 18 U.S.C. § 922(g)(1). And, consistent with the decisions of other judges of this court, the court concludes that 18 U.S.C. § 922(g)(1) is consistent with the United States’ historical tradition of firearm regulation. See [United States v. Bradley](#), CRIMINAL ACTION NO. 2:22-cr-00098, 2023 WL 2621352, at *2 (S.D.W. Va. Mar. 23, 2023) (Berger, J.); [Price](#), 635 F.Supp.3d at 465-67. For all these reasons, defendant's motion to dismiss the indictment was denied.

IT IS SO ORDERED this 18th day of April, 2023.

All Citations

669 F.Supp.3d 578

Footnotes

- 1 Specifically, the statute makes it illegal for a person who has been convicted of a “crime punishable by imprisonment for a term exceeding one year” to possess a firearm. [18 U.S.C. § 922\(g\)\(1\)](#).
- 2 The [Hill](#) court noted that “[e]ven if th[e] Court were to undertake a historical analysis, its conclusion would be that felon-in-possession statutes do fall within our historical tradition of firearm regulation, for the reasons enumerated by other district courts nationwide that have engaged in this analysis to-date, all of which ha[ve] answered the question in the affirmative.” [Hill](#), 2022 WL 17069855, at *5.
- 3 The [Price](#) court went on to “find that even if the Supreme Court intended for courts to re-examine felon-in-possession statutes, the Government has met its burden of proving that [Section 922\(g\)\(1\)](#) fits comfortably within the nation's longstanding tradition of disarming unvirtuous or dangerous citizens.” [Price](#), 635 F.Supp.3d at 466 n.4.

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OFFICE OF THE FEDERAL PUBLIC DEFENDER
Southern District of West Virginia
300 Virginia Street, East, Room 3400
Charleston, West Virginia 25301
304/347-3350
lex_coleman@fd.org

Counsel for Petitioner

UNITED STATES DISTRICT COURT

Southern District of West Virginia

UNITED STATES OF AMERICA

v.

SHAWN K. BEVER

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:22CR00164-001

USM Number: 20348-510

Lex A. Coleman

Defendant's Attorney

THE DEFENDANT:☒ pleaded guilty to count(s) single-count indictment☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

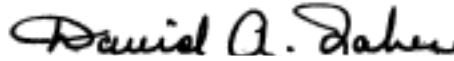
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC §§ 922(g)(1) and 924(a)(2)	Felon in possession of firearm	11/17/2021	One

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☐ The defendant has been found not guilty on count(s) _____☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 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. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/1/2023

Date of Imposition of Judgment



Signature of Judge

David A. Faber, Senior United States District Judge

Name and Title of Judge

8/3/2023

Date

DEFENDANT: SHAWN K. BEVER
CASE NUMBER: 2:22CR00164-001

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

Fifteen (15) months

☒ The court makes the following recommendations to the Bureau of Prisons:

- (1) The defendant be incarcerated at the nearest suitable facility to Craigsville, West Virginia.
- (2) The BOP medically assess the defendant for issues related to his 2018 motorcycle accident.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

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 UNITED STATES MARSHAL

DEFENDANT: SHAWN K. BEVER
CASE NUMBER: 2:22CR00164-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

three (3) years

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You 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.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☐ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: SHAWN K. BEVER
CASE NUMBER: 2:22CR00164-001**STANDARD CONDITIONS OF SUPERVISION**

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer, except you may exercise your Fifth Amendment right to remain silent when an answer may result in self-incrimination.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change. The probation officer shall make reasonable accommodations to this full-time work condition to accommodate the defendant's disabilities arising from his 2018 motorcycle accident.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: SHAWN K. BEVER
CASE NUMBER: 2:22CR00164-001

ADDITIONAL STANDARD CONDITIONS OF SUPERVISION

- 1) If the offender is unemployed, the probation officer may direct the offender to register and remain active with Workforce West Virginia. The probation officer must make reasonable accommodations under this condition to accommodate the defendant's disabilities arising from his 2018 motorcycle accident.
- 2) Offenders shall submit to random urinalysis or any drug screening method whenever the same is deemed appropriate by the probation officer and shall participate in a substance abuse program as directed by the probation officer. Offenders shall not use any method or device to evade a drug screen.
- 3) As directed by the probation officer, the defendant will make copayments for drug testing and drug treatment services at rates determined by the probation officer in accordance with a court-approved schedule based on ability to pay and availability of third-party payments.
- 4) A term of community service is imposed on every offender on supervised release or probation. Fifty hours of community service is imposed on every offender for each year the offender is on supervised release or probation. The obligation for community service is waived if the offender remains fully employed or actively seeks such employment throughout the year. The probation officer must make reasonable accommodations under this condition to accommodate the defendant's physical disabilities.
- 5) The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers), and shall reside in a residence free from such items.
- 6) The defendant shall not purchase, possess, or consume any organic or synthetic intoxicants, including bath salts, synthetic cannabinoids, or other designer stimulants.

DEFENDANT: SHAWN K. BEVER
CASE NUMBER: 2:22CR00164-001**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 100.00	\$	\$	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$	<u>0.00</u>	\$	<u>0.00</u>
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: SHAWN K. BEVER
 CASE NUMBER: 2:22CR00164-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A** ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
- ☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B** ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C** ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D** ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E** ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** ☒ Special instructions regarding the payment of criminal monetary penalties:
 If not paid immediately, the defendant shall pay any remaining balance of the \$100 special assessment in payments of \$25 per quarter through participation in the Bureau of Prisons' Inmate Financial Responsibility Program. Any remaining balance shall be paid during the term of supervised release.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
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- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.