

No. 17-_____

IN THE SUPREME COURT OF THE UNITED STATES

BRIAN KEITH HUETT,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

APPENDIX

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Northern District of Texas

APPENDIX A

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 17-10520
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 1, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

BRIAN KEITH HUETT,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:16-CR-262-1

Before JOLLY, OWEN, and HAYNES, Circuit Judges.

PER CURIAM:*

Brian Keith Huett challenges the sufficiency of the factual basis supporting his guilty plea to the charge of possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g). He contends that the Government failed to establish the interstate commerce and mens rea elements of the offense. Huett also contends that § 922(g) is unconstitutional facially and as applied to him because it exceeds the federal Government's power under the Commerce

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

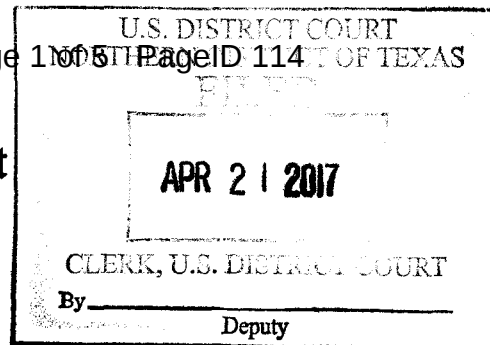
Clause. Huett concedes that these arguments are foreclosed by circuit precedent.

Huett's interstate commerce argument is foreclosed by *United States v. Daugherty*, 264 F.3d 513, 518 (5th Cir. 2001), in which this court rejected a similar argument that the Government's showing that a weapon had travelled across state lines was insufficient to satisfy the jurisdictional nexus requirement of § 922(g). His mens rea argument is foreclosed by *United States v. Dancy*, 861 F.2d 77, 81-82 (5th Cir. 1988), which held that § 922(g) does not contain a mens rea element. His Commerce Clause argument is foreclosed by *United States v. Alcantar*, 733 F.3d 143, 145-56 (5th Cir. 2013), which rejected a similar challenge to the constitutionality of § 922(g)(1).

The judgment of the district court is AFFIRMED. The Government's motion for summary affirmance is GRANTED. Its alternative motion for an extension of time is DENIED as unnecessary.

APPENDIX B

United States District Court
Northern District of Texas
Fort Worth Division



UNITED STATES OF AMERICA §

v. §

BRIAN KEITH HUETT §

Case Number: 4:16-CR-262-A(01)

JUDGMENT IN A CRIMINAL CASE

The government was represented by Assistant United States Attorney John P. Bradford. The defendant, BRIAN KEITH HUETT, was represented by Federal Public Defender through Assistant Federal Public Defender Michael A. Lehmann.

The defendant pleaded guilty on December 8, 2016 to the one count indictment filed on November 9, 2016. Accordingly, the court ORDERS that the defendant be, and is hereby, adjudged guilty of such count involving the following offense:

<u>Title & Section / Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 U.S.C. § 922(g)(1) Felon in Possession of Firearm	10/13/2016	1

As pronounced and imposed on April 21, 2017, the defendant is sentenced as provided in this judgment.

The court ORDERS that the defendant immediately pay to the United States, through the Clerk of this Court, a special assessment of \$100.00.

The court further ORDERS that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence address, or mailing address, as set forth below, until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court, through the clerk of this court, and the Attorney General, through the United States Attorney for this district, of any material change in the defendant's economic circumstances.

IMPRISONMENT

The court further ORDERS that the defendant be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 84 months. This sentence shall run concurrently with any sentence imposed in pending Case Nos. 1473940 and 1473944, in the 371st District Court of Tarrant County, and Case Nos. 1473945 and 1473941 in Tarrant County Criminal Court No. 6, as they are related to the instant offense, and consecutively to any sentence imposed in Case No. 88403030096002, Peachtree City Municipal Court, and any sentence imposed in parole revocation in Case No. 1024891R, in the 396th District Court of Tarrant County, as they are unrelated to the instant offense.

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

SUPERVISED RELEASE

The court further ORDERS that, upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years and that while on supervised release, the defendant shall comply with the following conditions:

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall not unlawfully possess a controlled substance.
3. The defendant shall cooperate in the collection of DNA as directed by the U.S. Probation Officer, as authorized by the Justice for All Act of 2004.
4. The defendant shall participate in 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 at a rate of at least \$25 per month.
5. The defendant shall refrain from any unlawful use of a controlled substance, submitting to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer pursuant to the mandatory drug testing provision of the 1994 crime bill.
6. The defendant shall participate in a 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 at the rate of at least \$25 per month.
7. The defendant shall also comply with the Standard Conditions of Supervision as hereinafter set forth.

Standard Conditions of Supervision

1. The defendant shall report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons.
2. The defendant shall not possess a firearm, destructive device, or other dangerous weapon.
3. The defendant shall provide to the U.S. Probation Officer any requested financial information.
4. The defendant shall not leave the judicial district where the defendant is being supervised without the permission of the Court or U.S. Probation Officer.

5. The defendant shall report to the U.S. Probation Officer as directed by the court or U.S. Probation Officer and shall submit a truthful and complete written report within the first five (5) days of each month.
6. The defendant shall answer truthfully all inquiries by the U.S. Probation Officer and follow the instructions of the U.S. Probation Officer.
7. The defendant shall support his dependents and meet other family responsibilities.
8. The defendant shall work regularly at a lawful occupation unless excused by the U.S. Probation Officer for schooling, training, or other acceptable reasons.
9. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.
10. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
11. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
12. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the U.S. Probation Officer.
13. The defendant shall permit a probation officer to visit him at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the U.S. Probation Officer.
14. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
15. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
16. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

The court hereby directs the probation officer to provide defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, as contemplated and required by 18 U.S.C. § 3583(f).

FINE

The court did not order a fine because the defendant does not have the financial resource or future earning capacity to pay a fine.

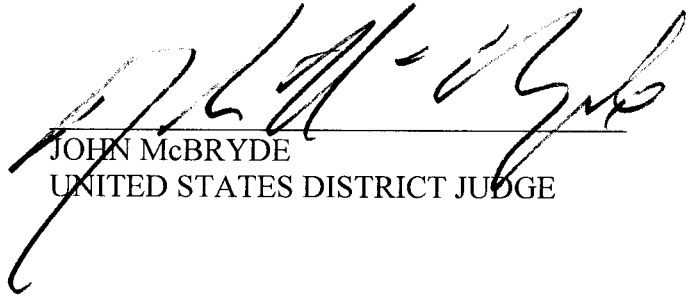
FORFEITURE

The court orders, pursuant to 18 U.S.C. §924(d) and 28 U.S.C. §2461(c), that the defendant shall forfeit to the United States of America any firearm and ammunition involved in the commission of the offense, including but not limited to the following: a Hi-Point, model JHP, .45-caliber pistol, bearing Serial No. X4117025, and five rounds of .45-caliber ammunition.

STATEMENT OF REASONS

The "Statement of Reasons" and personal information about the defendant are set forth on the attachment to this judgment.

Signed this the 21st day of April, 2017.



JOHN McBRYDE
UNITED STATES DISTRICT JUDGE

RETURN

I have executed the imprisonment part of this Judgment as follows:

Defendant delivered on _____, 2017 to _____
at _____, with a certified copy of this Judgment.

United States Marshal for the
Northern District of Texas

By _____
Deputy United States Marshal