

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

DEVEON JAMEAR SMITH,

Petitioner

vs.

UNITED STATES OF AMERICA,

Respondent.

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

APPENDIX

John Keith Rigg
317 Sixth Avenue, Suite 1300
Des Moines, Iowa 50309
Telephone: (515) 284-7930
Email: jkrigg@dwx.com
COUNSEL FOR PETITIONER
DEVEON JAMEAR SMITH

APPENDIX TABLE OF CONTENTS

A.	Order Denying Defendant’s Motion to Dismiss Indictment	A-1
B.	Judgment and Sentencing	B-1
C.	Opinion of the Eighth Circuit Court of Appeals	C-1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>v.</p> <p>DEVEON JAMEAR SMITH,</p> <p>Defendant.</p>	<p>No. 4:22-cr-00127-RGE-HCA</p> <p>ORDER DENYING DEFENDANT’S MOTION TO DISMISS INDICTMENT</p>
--	--

I. INTRODUCTION

A grand jury in the Southern District of Iowa returned an indictment charging Defendant Deveon Jamear Smith with possessing a firearm as an unlawful user in violation of 18 U.S.C. §§ 922(g)(3) and 924(a)(8). Redacted Indictment 1, ECF No. 4. Smith moves to dismiss the indictment, arguing the Supreme Court’s decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111 (2022), has rendered § 922(g)(3) unconstitutional. Def.’s Mot. Dismiss, ECF No. 31; *see also* Def.’s Br. Supp. Mot. Dismiss, ECF No. 31-1. The Government resists. Gov’t’s Resist. Def.’s Mot. Dismiss, ECF No. 32. For the reasons set forth below, the Court denies Smith’s motion.

II. DISCUSSION

The Second Amendment provides: “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. “[T]he Second and Fourteenth Amendments protect the right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense.” *Bruen*, 142 S. Ct. at 2122 (citing *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. Chicago*, 561 U.S. 742, (2010)); *see also id.* at 2131 (“The Second Amendment . . . ‘surely elevates above all other interests the right of law-abiding, responsible citizens to use arms’ for self-defense.” (quoting

Heller, 554 U.S. at 635)). Such a right also applies outside the home. *Id.* at 2135.

“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.” *Id.* at 2129–30.

Here, Smith asserts a Second Amendment challenge to 18 U.S.C. § 922(g)(3). *See* ECF Nos. 31, 31-1. Section 922(g)(3) prohibits “any person . . . who is an unlawful user of or addicted to any controlled substance . . . to . . . possess . . . any firearm” 18 U.S.C. § 922(g)(3). The Court assumes for purposes of its analysis that because § 922(g)(3) restricts the “possess[ion]” of “any firearm,” it regulates conduct protected by the Second Amendment. *But see United States v. Daniels*, 610 F. Supp. 3d 892, 894 (S.D. Miss. 2022) (recognizing there is “some doubt” that § 922(g)(3) is “textually covered by the Second Amendment, insofar as it has been interpreted to guarantee the right to keep and bear arms to ordinary, law-abiding, responsible citizens concerned with self-defense”).

Having found § 922(g)(3) implicates conduct protected by the Second Amendment, the Court turns to whether § 922(g)(3) “is consistent with this Nation’s historical tradition of firearm regulation.” *Bruen*, 142 S. Ct. at 2126. When analyzing regulations “unimaginable at the founding,” courts determine whether the regulation at issue is “relevantly similar” to a “historical regulation” that was consistent with the “historically fixed meaning” of the Second Amendment. *Id.* at 2132. “[W]hether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are ‘central’ considerations when engaging in an analogical inquiry.” *Id.* at 2133 (quoting *McDonald*, 561 U.S. at 767).

For the reasons stated in the Government’s thorough and well-reasoned brief, the Court finds § 922(g)(3) “is consistent with this Nation’s historical tradition of firearm regulation.” *Id.* at 2126; *see also* Order Den. Def.’s Mot. Dismiss, *United States v. Wilson*, No. 4:22-cr-00069-RGE-

HCA (S.D. Iowa April 6, 2023), ECF No. 30.

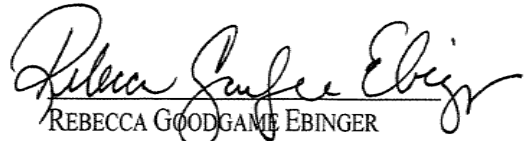
III. CONCLUSION

Smith is not entitled to relief.

IT IS ORDERED that Defendant Deveon Jamear Smith's Motion to Dismiss, ECF No. 31, is **DENIED**.

IT IS SO ORDERED.

Dated this 20th day of June, 2023.


REBECCA GOODGAME EBINGER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA

v.

Deveon Jamear Smith

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:22-cr-00127-001

USM Number: 53044-510

J. Keith Rigg
Defendant's Attorney

THE DEFENDANT:

- ☒pleaded guilty to count(s) One of the Indictment filed on September 22, 2022.
- ☐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:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 922(g)(3), 924(a)(8)	Unlawful User in Possession of a Firearm	08/13/2022	One

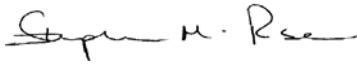
☐ See additional count(s) on page 2

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.

November 16, 2023
Date of Imposition of Judgment


Signature of Judge

Stephanie M. Rose, Chief U.S. District Judge
Name of Judge Title of Judge

November 16, 2023
Date

DEFENDANT: Deveon Jamear Smith
CASE NUMBER: 4:22-cr-00127-001

IMPRISONMENT

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

57 months as to Count One of the Indictment filed on September 22, 2022.

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

That the defendant be placed at FCI Sandstone if commensurate with his security and classification needs. The Court further recommends that the defendant be made eligible to participate in the 500-hour Residential Drug Abuse Treatment Program (RDAP) and have the opportunity to participate in mental health treatment and vocational training in welding, plumbing, and technical apprenticeships.

☒ 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 _____ 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 _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Deveon Jamear Smith
CASE NUMBER: 4:22-cr-00127-001

Judgment Page: 3 of 7

SUPERVISED RELEASE

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

Three years as to Count One of the Indictment filed on September 22, 2022.

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 which 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: Deveon Jamear Smith
CASE NUMBER: 4:22-cr-00127-001

Judgment Page: 4 of 7

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.
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.
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. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. 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: Deveon Jamear Smith
CASE NUMBER: 4:22-cr-00127-001

Judgment Page: 5 of 7

SPECIAL CONDITIONS OF SUPERVISION

You shall not knowingly associate or communicate with any member of the SMG and Strap Gang criminal street gangs, or any other criminal street gang.

You must submit to a mental health evaluation. If treatment is recommended, you must participate in an approved treatment program and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment and/or compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

You must participate in a program of testing and/or treatment for substance abuse, as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Office. At the direction of the probation office, you must receive a substance abuse evaluation and participate in inpatient and/or outpatient treatment, as recommended. Participation may also include compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. You must not use alcohol and/or other intoxicants during the course of supervision.

You must participate in a cognitive behavioral treatment program, which may include journaling and other curriculum requirements, as directed by the U.S. Probation Officer.

You will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

DEFENDANT: Deveon Jamear Smith

CASE NUMBER: 4:22-cr-00127-001

CRIMINAL MONETARY PENALTIES

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

- ☐ Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 100.00	\$0.00	\$ 0.00	\$ 0.00	\$ 0.00

- ☐ 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>
TOTALS		\$0.00	\$0.00

- ☐ 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, 109A-1, 109A-2, 109A-3, 109A-4, 109A-5, 109A-6, 109A-7, 109A-8, 109A-9, 109A-10, 109A-11, 109A-12, 109A-13, 109A-14, 109A-15, 109A-16, 109A-17, 109A-18, 109A-19, 109A-20, 109A-21, 109A-22, 109A-23, 109A-24, 109A-25, 109A-26, 109A-27, 109A-28, 109A-29, 109A-30, 109A-31, 109A-32, 109A-33, 109A-34, 109A-35, 109A-36, 109A-37, 109A-38, 109A-39, 109A-40, 109A-41, 109A-42, 109A-43, 109A-44, 109A-45, 109A-46, 109A-47, 109A-48, 109A-49, 109A-50, 109A-51, 109A-52, 109A-53, 109A-54, 109A-55, 109A-56, 109A-57, 109A-58, 109A-59, 109A-60, 109A-61, 109A-62, 109A-63, 109A-64, 109A-65, 109A-66, 109A-67, 109A-68, 109A-69, 109A-70, 109A-71, 109A-72, 109A-73, 109A-74, 109A-75, 109A-76, 109A-77, 109A-78, 109A-79, 109A-80, 109A-81, 109A-82, 109A-83, 109A-84, 109A-85, 109A-86, 109A-87, 109A-88, 109A-89, 109A-90, 109A-91, 109A-92, 109A-93, 109A-94, 109A-95, 109A-96, 109A-97, 109A-98, 109A-99, 109A-100, 109A-101, 109A-102, 109A-103, 109A-104, 109A-105, 109A-106, 109A-107, 109A-108, 109A-109, 109A-110, 109A-111, 109A-112, 109A-113, 109A-114, 109A-115, 109A-116, 109A-117, 109A-118, 109A-119, 109A-120, 109A-121, 109A-122, 109A-123, 109A-124, 109A-125, 109A-126, 109A-127, 109A-128, 109A-129, 109A-130, 109A-131, 109A-132, 109A-133, 109A-134, 109A-135, 109A-136, 109A-137, 109A-138, 109A-139, 109A-140, 109A-141, 109A-142, 109A-143, 109A-144, 109A-145, 109A-146, 109A-147, 109A-148, 109A-149, 109A-150, 109A-151, 109A-152, 109A-153, 109A-154, 109A-155, 109A-156, 109A-157, 109A-158, 109A-159, 109A-160, 109A-161, 109A-162, 109A-163, 109A-164, 109A-165, 109A-166, 109A-167, 109A-168, 109A-169, 109A-170, 109A-171, 109A-172, 109A-173, 109A-174, 109A-175, 109A-176, 109A-177, 109A-178, 109A-179, 109A-180, 109A-181, 109A-182, 109A-183, 109A-184, 109A-185, 109A-186, 109A-187, 109A-188, 109A-189, 109A-190, 109A-191, 109A-192, 109A-193, 109A-194, 109A-195, 109A-196, 109A-197, 109A-198, 109A-199, 109A-200, 109A-201, 109A-202, 109A-203, 109A-204, 109A-205, 109A-206, 109A-207, 109A-208, 109A-209, 109A-210, 109A-211, 109A-212, 109A-213, 109A-214, 109A-215, 109A-216, 109A-217, 109A-218, 109A-219, 109A-220, 109A-221, 109A-222, 109A-223, 109A-224, 109A-225, 109A-226, 109A-227, 109A-228, 109A-229, 109A-230, 109A-231, 109A-232, 109A-233, 109A-234, 109A-235, 109A-236, 109A-237, 109A-238, 109A-239, 109A-240, 109A-241, 109A-242, 109A-243, 109A-244, 109A-245, 109A-246, 109A-247, 109A-248, 109A-249, 109A-250, 109A-251, 109A-252, 109A-253, 109A-254, 109A-255, 109A-256, 109A-257, 109A-258, 109A-259, 109A-260, 109A-261, 109A-262, 109A-263, 109A-264, 109A-265, 109A-266, 109A-267, 109A-268, 109A-269, 109A-270, 109A-271, 109A-272, 109A-273, 109A-274, 109A-275, 109A-276, 109A-277, 109A-278, 109A-279, 109A-280, 109A-281, 109A-282, 109A-283, 109A-284, 109A-285, 109A-286, 109A-287, 109A-288, 109A-289, 109A-290, 109A-291, 109A-292, 109A-293, 109A-294, 109A-295, 109A-296, 109A-297, 109A-298, 109A-299, 109A-300, 109A-301, 109A-302, 109A-303, 109A-304, 109A-305, 109A-306, 109A-307, 109A-308, 109A-309, 109A-310, 109A-311, 109A-312, 109A-313, 109A-314, 109A-315, 109A-316, 109A-317, 109A-318, 109A-319, 109A-320, 109A-321, 109A-322, 109A-323, 109A-324, 109A-325, 109A-326, 109A-327, 109A-328, 109A-329, 109A-330, 109A-331, 109A-332, 109A-333, 109A-334, 109A-335, 109A-336, 109A-337, 109A-338, 109A-339, 109A-340, 109A-341, 109A-342, 109A-343, 109A-344, 109A-345, 109A-346, 109A-347, 109A-348, 109A-349, 109A-350, 109A-351, 109A-352, 109A-353, 109A-354, 109A-355, 109A-356, 109A-357, 109A-358, 109A-359, 109A-360, 109A-361, 109A-362, 109A-363, 109A-364, 109A-365, 109A-366, 109A-367, 109A-368, 109A-369, 109A-370, 109A-371, 109A-372, 109A-373, 109A-374, 109A-375, 109A-376, 109A-377, 109A-378, 109A-379, 109A-380, 109A-381, 109A-382, 109A-383, 109A-384, 109A-385, 109A-386, 109A-387, 109A-388, 109A-389, 109A-390, 109A-391, 109A-392, 109A-393, 109A-394, 109A-395, 109A-396, 109A-397, 109A-398, 109A-399, 109A-400, 109A-401, 109A-402, 109A-403, 109A-404, 109A-405, 109A-406, 109A-407, 109A-408, 109A-409, 109A-410, 109A-411, 109A-412, 109A-413, 109A-414, 109A-415, 109A-416, 109A-417, 109A-418, 109A-419, 109A-420, 109A-421, 109A-422, 109A-423, 109A-424, 109A-425, 109A-426, 109A-427, 109A-428, 109A-429, 109A-430, 109A-431, 109A-432, 109A-433, 109A-434, 109A-435, 109A-436, 109A-437, 109A-438, 109A-439, 109A-440, 109A-441, 109A-442, 109A-443, 109A-444, 109A-445, 109A-446, 109A-447, 109A-448, 109A-449, 109A-450, 109A-451, 109A-452, 109A-453, 109A-454, 109A-455, 109A-456, 109A-457, 109A-458, 109A-459, 109A-460, 109A-461, 109A-462, 109A-463, 109A-464, 109A-465, 109A-466, 109A-467, 109A-468, 109A-469, 109A-470, 109A-471, 109A-472, 109A-473, 109A-474, 109A-475, 109A-476, 109A-477, 109A-478, 109A-479, 109A-480, 109A-481, 109A-482, 109A-483, 109A-484, 109A-485, 109A-486, 109A-487, 109A-488, 109A-489, 109A-490, 109A-491, 109A-492, 109A-493, 109A-494, 109A-495, 109A-496, 109A-497, 109A-498, 109A-499, 109A-500, 109A-501, 109A-502, 109A-503, 109A-504, 109A-505, 109A-506, 109A-507, 109A-508, 109A-509, 109A-510, 109A-511, 109A-512, 109A-513, 109A-514, 109A-515, 109A-516, 109A-517, 109A-518, 109A-519, 109A-520, 109A-521, 109A-522, 109A-523, 109A-524, 109A-525, 109A-526, 109A-527, 109A-528, 109A-529, 109A-530, 109A-531, 109A-532, 109A-533, 109A-534, 109A-535, 109A-536, 109A-537, 109A-538, 109A-539, 109A-540, 109A-541, 109A-542, 109A-543, 109A-544, 109A-545, 109A-546, 109A-547, 109A-548, 109A-549, 109A-550, 109A-551, 109A-552, 109A-553, 109A-554, 109A-555, 109A-556, 109A-557, 109A-558, 109A-559, 109A-560, 109A-561, 109A-562, 109A-563, 109A-564, 109A-565, 109A-566, 109A-567, 109A-568, 109A-569, 109A-570, 109A-571, 109A-572, 109A-573, 109A-574, 109A-575, 109A-576, 109A-577, 109A-578, 109A-579, 109A-580, 109A-581, 109A-582, 109A-583, 109A-584, 109A-585, 109A-586, 109A-587, 109A-588, 109A-589, 109A-590, 109A-591, 109A-592, 109A-593, 109A-594, 109A-595, 109A-596, 109A-597, 109A-598, 109A-599, 109A-600, 109A-601, 109A-602, 109A-603, 109A-604, 109A-605, 109A-606, 109A-607, 109A-608, 109A-609, 109A-610, 109A-611, 109A-612, 109A-613, 109A-614, 109A-615, 109A-616, 109A-617, 109A-618, 109A-619, 109A-620, 109A-621, 109A-622, 109A-623, 109A-624, 109A-625, 109A-626, 109A-627, 109A-628, 109A-629, 109A-630, 109A-631, 109A-632, 109A-633, 109A-634, 109A-635, 109A-636, 109A-637, 109A-638, 109A-639, 109A-640, 109A-641, 109A-642, 109A-643, 109A-644, 109A-645, 109A-646, 109A-647, 109A-648, 109A-649, 109A-650, 109A-651, 109A-652, 109A-653, 109A-654, 109A-655, 109A-656, 109A-657, 109A-658, 109A-659, 109A-660, 109A-661, 109A-662, 109A-663, 109A-664, 109A-665, 109A-666, 109A-667, 109A-668, 109A-669, 109A-670, 109A-671, 109A-672, 109A-673, 109A-674, 109A-675, 109A-676, 109A-677, 109A-678, 109A-679, 109A-680, 109A-681, 109A-682, 109A-683, 109A-684, 109A-685, 109A-686, 109A-687, 109A-688, 109A-689, 109A-690, 109A-691, 109A-692, 109A-693, 109A-694, 109A-695, 109A-696, 109A-697, 109A-698, 109A-699, 109A-700, 109A-701, 109A-702, 109A-703, 109A-704, 109A-705, 109A-706, 109A-707, 109A-708, 109A-709, 109A-710, 109A-711, 109A-712, 109A-713, 109A-714, 109A-715, 109A-716, 109A-717, 109A-718, 109A-719, 109A-720, 109A-721, 109A-722, 109A-723, 109A-724, 109A-725, 109A-726, 109A-727, 109A-728, 109A-729, 109A-730, 109A-731, 109A-732, 109A-733, 109A-734, 109A-735, 109A-736, 109A-737, 109A-738, 109A-739, 109A-740, 109A-741, 109A-742, 109A-743, 109A-744, 109A-745, 109A-746, 109A-747, 109A-748, 109A-749, 109A-750, 109A-751, 109A-752, 109A-753, 109A-754, 109A-755, 109A-756, 109A-757, 109A-758, 109A-759, 109A-760, 109A-761, 109A-762, 109A-763, 109A-764, 109A-765, 109A-766, 109A-767, 109A-768, 109A-769, 109A-770, 109A-771, 109A-772, 109A-773, 109A-774, 109A-775, 109A-776, 109A-777, 109A-778, 109A-779, 109A-780, 109A-781, 109A-782, 109A-783, 109A-784, 109A-785, 109A-786, 109A-787, 109A-788, 109A-789, 109A-790, 109A-791, 109A-792, 109A-793, 109A-794, 109A-795, 109A-796, 109A-797, 109A-798, 109A-799, 109A-800, 109A-801, 109A-802, 109A-803, 109A-804, 109A-805, 109A-806, 109A-807, 109A-808, 109A-809, 109A-810, 109A-811, 109A-812, 109A-813, 109A-814, 109A-815, 109A-816, 109A-817, 109A-818, 109A-819, 109A-820, 109A-821, 109A-822, 109A-823, 109A-824, 109A-825, 109A-826, 109A-827, 109A-828, 109A-829, 109A-830, 109A-831, 109A-832, 109A-833, 109A-834, 109A-835, 109A-836, 109A-837, 109A-838, 109A-839, 109A-840, 109A-841, 109A-842, 109A-843, 109A-844, 109A-845, 109A-846, 109A-847, 109A-848, 109A-849, 109A-850, 109A-851, 109A-852, 109A-853, 109A-854, 109A-855, 109A-856, 109A-857, 109A-858, 109A-859, 109A-860, 109A-861, 109A-862, 109A-863, 109A-864, 109A-865, 109A-866, 109A-867, 109A-868, 109A-869, 109A-870, 109A-871, 109A-872, 109A-873, 109A-874, 109A-875, 109A-876, 109A-877, 109A-878, 109A-879, 109A-880, 109A-881, 109A-882, 109A-883, 109A-884, 109A-885, 109A-886, 109A-887, 109A-888, 109A-889, 109A-890, 109A-891, 109A-892, 109A-893, 109A-894, 109A-895, 109A-896, 109A-897, 109A-898, 109A-899, 109A-900, 109A-901, 109A-902, 109A-903, 109A-904, 109A-905, 109A-906, 109A-907, 109A-908, 109A-909, 109A-910, 109A-911, 109A-912, 109A-913, 109A-914, 109A-915, 109A-916, 109A-917, 109A-918, 109A-919, 109A-920, 109A-921, 109A-922, 109A-923, 109A-924, 109A-925, 109A-926, 109A-927, 109A-928, 109A-929, 109A-930, 109A-931, 109A-932, 109A-933, 109A-934, 109A-935, 109A-936, 109A-937, 109A-938, 109A-939, 109A-940, 109A-941, 109A-942, 109A-943, 109A-944, 109A-945, 109A-946, 109A-947, 109A-948, 109A-949, 109A-950, 109A-951, 109A-952, 109A-953, 109A-954, 109A-955, 109A-956, 109A-957, 109A-958, 109A-959, 109A-960, 109A-961, 109A-962, 109A-963, 109A-964, 109A-965, 109A-966, 109A-967, 109A-968, 109A-969, 109A-970, 109A-971, 109A-972, 109A-973, 109A-974, 109A-975, 109A-976, 109A-977, 109A-978, 109A-979, 109A-980, 109A-981, 109A-982, 109A-983, 109A-984, 109A-985, 109A-986, 109A-987, 109A-988, 109A-989, 109A-990, 109A-991, 109A-992, 109A-993, 109A-994, 109A-995, 109A-996, 109A-997, 109A-998, 109A-999, 109A-1000, 109A-1001, 109A-1002, 109A-1003, 109A-1004, 109A-1005, 109A-1006, 109A-1007, 109A-1008, 109A-1009, 109A-1010, 109A-1011, 109A-1012, 109A-1013, 109A-1014, 109A-1015, 109A-1016, 109A-1017, 109A-1018, 109A-1019, 109A-1020, 109A-1021, 109A-1022, 109A-1023, 109A-1024, 109A-1025, 109A-1026, 109A-1027, 109A-1028, 109A-1029, 109A-1030, 109A-1031, 109A-1032, 109A-1033, 109A-1034, 109A-1035, 109A-1036, 109A-1037, 109A-1038, 109A-1039, 109A-1040, 109A-1041, 109A-1042, 109A-1043, 109A-1044, 109A-1045, 109A-1046, 109A-1047, 109A-1048, 109A-1049, 109A-1050, 109A-1051, 109A-1052, 109A-1053, 109A-1054, 109A-1055, 109A-1056, 109A-1057, 109A-1058, 109A-1059, 109A-1060, 109A-1061, 109A-1062, 109A-1063, 109A-1064, 109A-1065, 109A-1066, 109A-1067, 109A-1068, 109A-1069, 109A-1070, 109A-1071

DEFENDANT: Deveon Jamear Smith
CASE NUMBER: 4:22-cr-00127-001

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 ☐ 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:
- All criminal monetary payments are to be made to:
Clerk's Office, United States District Court, P.O. Box 9344, Des Moines, IA 50306-9344.
- While on supervised release, you shall cooperate with the United States Probation Office in developing a monthly payment plan, which shall be subject to the approval of the Court, consistent with a schedule of allowable expenses provided by the United States Probation Office.

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
---	--------------	-----------------------------	--

- ☐ 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 A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

United States Court of Appeals
For the Eighth Circuit

No. 23-3570

United States of America

Plaintiff - Appellee

v.

Deveon Jamear Smith

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Central

Submitted: September 23, 2024

Filed: January 3, 2025

[Unpublished]

Before COLLOTON, Chief Judge, LOKEN and SHEPHERD, Circuit Judges.

PER CURIAM.

Deveon Smith entered a conditional guilty plea to one count of being an unlawful drug user in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(3) and 924(a)(8), pursuant to a plea agreement which reserved Smith's right to appeal

the district court's¹ denial of his motion to dismiss the indictment. The district court sentenced Smith to 57 months' imprisonment, followed by 3 years of supervised release. Smith appeals, asserting that the district court erred in denying his motion to dismiss the indictment based on New York State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022). Having jurisdiction under 28 U.S.C. § 1291, we affirm.

Smith was indicted following a traffic stop where officers recovered marijuana and a loaded handgun belonging to Smith. Smith filed a motion to dismiss the indictment, arguing that § 922(g)(3) was facially invalid in light of the Supreme Court's ruling in Bruen. The district court denied the motion, concluding that Bruen did not render § 922(g)(3) unconstitutional, and determining that while § 922(g)(3) implicated protected Second Amendment conduct, it "is consistent with this Nation's historical tradition of firearm regulation." After the denial of his motion to dismiss the indictment, Smith pled guilty pursuant to a conditional plea agreement that specifically preserved his right to appeal that denial. Over two months after entering his guilty plea, Smith filed a motion to reconsider the order denying his motion to dismiss the indictment, which, for the first time, mentioned an as-applied challenge to § 922(g)(3). The district court denied the motion via a text order without additional comment. Thereafter, the district court sentenced Smith to 57 months' imprisonment with supervised release to follow.

Smith now appeals, asserting that the district court erred in denying the motion to dismiss the indictment as to both a facial and an as-applied challenge to § 922(g)(3). We review the denial of a motion to dismiss the indictment de novo. United States v. Sitladeen, 64 F.4th 978, 983 (8th Cir. 2023). Both of Smith's claims are without merit. First, with respect to the facial challenge, this Court has recently rejected the same argument. See United States v. Veasley, 98 F.4th 906, 918 (8th Cir. 2024) (rejecting facial challenge to § 922(g)(3) based on Bruen). Further, the recent Supreme Court opinion in United States v. Rahimi, 602 U.S. 680, 690 (2024),

¹The Honorable Stephanie M. Rose, Chief Judge, United States District Court for the Southern District of Iowa.

does not call into question the validity of that holding. See id. (finding 18 U.S.C. § 922(g)(8), which prohibits individuals subject to domestic violence restraining orders from possessing firearms, facially constitutional in light of history and tradition of disarming those “who threaten physical harm to others from misusing firearms”).

Second, with respect to Smith’s as-applied challenge, such challenge does not survive a guilty plea, United States v. Seay, 620 F.3d 919, 922 n.3 (8th Cir. 2010), and Smith failed to preserve this challenge in his conditional guilty plea. The plea agreement specifically “preserve[d] the right to appeal the Court’s denial of Defendant’s Motion to Dismiss, entered on June 20, 2023.” It made no mention—and indeed could not—of the order denying the motion for reconsideration that was not filed until *after* Smith entered his guilty plea. Rule 11(a)(2) of the Federal Rules of Criminal Procedure requires that the defendant “reserv[e] in writing the right to have an appellate court review an adverse determination of a *specified pretrial motion*.” (emphasis added). The motion for reconsideration, which was the only vehicle by which he raised his as-applied challenge, was not a pretrial motion. As such, Smith waived his right to assert an as-applied challenge on appeal. See United States v. Patton, 535 F.3d 829, 835 (8th Cir. 2008) (concluding defendant waived right to appeal a suppression issue when plea agreement specified different suppression issue as preserved for appeal).

For the foregoing reasons, we affirm the judgment of the district court.
