No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Roberto Antwan Williams,

Petitioner,

v.

United States of America,

Respondent.

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

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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Table of Contents

United States Court of Appeals
For the Eighth Circuit

No. 24-1582

United States of America

Plaintiff - Appellee

v.

Roberto Antwan Williams

Defendant - Appellant

Appeal from United States District Court
for the District of Minnesota

Submitted: October 25, 2024
Filed: March 18, 2025

Before LOKEN, SMITH, and GRASZ, Circuit Judges.

LOKEN, Circuit Judge.

A jury convicted Roberto Williams of two counts of being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The district court[1]

[1]The Honorable Wilhelmina M. Wright, United States District Judge for the District of Minnesota, now retired, ruled on pretrial motions, the denial of which Williams appeals, and presided over the trial.

sentenced him to concurrent 120-month sentences on each count. The two felon-in-possession charges arose out of separate incidents. On July 31, 2020, St. Cloud police officers, investigating a reported assault with a firearm and attempted robbery, stopped a car the victim reported being at the scene. Williams was in the passenger seat; his fiancée, Bianca Ellison, was in the driver's seat. A search uncovered a 9mm Smith & Wesson handgun, a magazine, and ammunition in the glove compartment. On November 13, Ellison brought her five-year-old son to the St. Cloud Hospital after sustaining a fatal gunshot wound to the head at the home of Ellison and Williams. A security camera captured Williams placing a black backpack in a garbage bin outside the home. A warrant search recovered two firearms in the garbage bin.

Williams appeals his conviction, raising four issues. We will separately discuss the first three in Parts II, III, and IV of this opinion -- denial of Williams's motion to suppress evidence obtained during the July 31 stop; denial of his motion to suppress evidence from an allegedly overbroad warrant search of his cell phone in November 2020; and denial of his motion to exclude evidence of five prior Illinois convictions because they were constitutionally invalid and could not be predicates for the § 922(g) felon-in-possession offenses.

The fourth issue Williams raises on appeal -- denial of his pretrial motion to dismiss because § 922(g)(1) violates the Second Amendment right to keep and bear arms -- is barred by controlling Eighth Circuit precedent. The issue has generated substantial conflict among the circuit courts and among members of this court. The Supreme Court remanded our two initial decisions rejecting the claim for further consideration in light of its decision in United States v. Rahimi, 602 U.S. 680 (2024). On remand, our panels reaffirmed the constitutionality of § 922(g)(1). On November 5, 2024, the court with four dissenters denied petitions for rehearing en banc of the panel decisions. United States v. Jackson, 121 F.4th 656 (8th Cir. 2024); United States v. Cunningham, 121 F.4th 1155 (8th Cir. 2024). These recent decisions have not ended the debate nationwide and are potentially subject to further Supreme Court

review. But they are controlling precedent for our panel. We affirm the district court's denial of Williams's motion to dismiss.

I. Background

In the early morning hours on July 31, 2020, a victim reported an assault with a firearm and attempted robbery. St. Cloud Police Officer Benjamin Eckberg arrived at the scene and met the victim, Ousman Bah, near the site of the assault. Although Bah spoke quickly with a thick accent, Eckberg understood that a man grabbed Bah and that he saw a firearm during the altercation. Bah told Eckberg that a silver SUV, then stopped at a nearby red light, was at the scene during the assault. Officer Eckberg radioed Sergeant Roger Baumann in a nearby patrol vehicle to stop the SUV because it was leaving the area and the victim said that witnesses or persons involved in the assault may be inside.

Baumann caught the SUV, turned on his emergency lights, and the SUV pulled over. Williams was in the front passenger seat, with his hands in the air shaking. Ellison, in the driver's seat, told Baumann they had come from a nearby gas station. Baumann had observed the SUV drive past the gas station without stopping. He smelled a strong odor of marijuana, and Williams matched Bah's description of the assailant that Officer Eckberg had radioed to Baumann shortly after the stop.

Baumann directed Officer Dwayne Bergsnev, who had arrived at the scene, to detain Williams. When Baumann observed a small plastic bag on the driver's side floorboard, which he believed to be narcotics, he detained Ellison. Eckberg brought Bah to the scene. Bah identified Williams as the assailant. The officers arrested Williams and searched the SUV, finding the Smith & Wesson handgun and ammunition and bags containing heroin, cocaine base, and ecstacy pills in the sunglasses compartment. Laboratory testing of the handgun revealed the major DNA

profile matched that of Williams. Possession of the Smith & Wesson handgun was the basis for Count 1 of the indictment.

On November 13, 2020, St. Cloud Hospital reported to the St. Cloud Police Department that Ellison brought her five-year-old son there after suffering a gunshot wound to the head. He was pronounced dead at the hospital. Investigating officers interviewed Williams, Ellison, and Williams's daughter, who told them she found a purple and black firearm next to Ellison's son when she discovered him in the home. Williams told officers he accompanied Ellison and her son to the hospital. A neighbor's security camera showed that he stayed at the house and, after Ellison left, placed a black backpack in a garbage bin and covered it with a bag of trash. A warrant search recovered two firearms in the garbage bin; cocaine, ecstacy pills, and synthetic marijuana in the garbage bin and the home; and drug paraphernalia and digital scales in a bedroom. One of the firearms, a 9mm Taurus handgun, matched the daughter's description of the gun she found. Possession of the two guns was the basis for Count 2.

On November 16, St. Cloud Police Investigator Ryan Ebert applied for a warrant to search Williams's LG smartphone for evidence he possessed the gun involved in the November 13 shooting. A Stearns County District Court Judge issued the warrant that day, authorizing officers to search the LG smartphone and seize "[a]ny and all information stored within the cellular phone," including but not limited to email addresses, calls, text messages, photographs, videos, browsing history, and "all information as it relates to social media communication and any data included within stored applications . . . between 10-22-20 and 11-16-20." Officers discovered a photograph of the purple and black Taurus handgun found in the garbage bin. A text message said, "My new toy."

Williams's federal felon-in-possession offenses apply to any person "who has been convicted in any court of, a crime punishable by imprisonment for a term

exceeding one year." 18 U.S.C. § 922(g)(1). Williams has five prior Illinois felony convictions the government alleged were requisite predicate offenses. Prior to trial, Williams filed a motion in limine to exclude evidence of the five convictions because they are now invalid under Illinois law. The district court denied this motion as an impermissible collateral attack on a state conviction in federal court. See Lewis v. United States, 445 U.S. 55, 56, 65-67 (1980); United States v. Bena, 664 F.3d 1180, 1185 (8th Cir. 2011).

II. The SUV Search

Williams argues that the July 2020 stop of the SUV violated his Fourth Amendment right "to be secure . . . against unreasonable searches and seizures." U.S. Const. amend. IV. The district court concluded that the stop was supported by reasonable suspicion of criminal activity. "We review the denial of a motion to suppress de novo but the underlying factual determinations for clear error, giving due weight to inferences drawn by law enforcement officials." United States v. Tamayo-Baez, 820 F.3d 308, 312 (8th Cir.) (quotation omitted), cert. denied, 580 U.S. 997 (2016).

"A traffic stop for a suspected violation of law is a 'seizure' of the occupants of the vehicle. . . . [T]o justify this type of seizure, officers need only 'reasonable suspicion' -- that is, a particularized and objective basis for suspecting the particular person stopped of breaking the law." Heien v. North Carolina, 574 U.S. 54, 60 (2014) (quotation omitted). An officer has reasonable suspicion when he "is aware of particularized, objective facts which, taken together with rational inferences from those facts, reasonably warrant suspicion that a crime is being committed." United States v. Hanel, 993 F.3d 540, 543 (8th Cir. 2021) (quotation omitted). "[T]he Fourth Amendment only requires that police articulate some minimal, objective justification for an investigatory stop." Tamayo-Baez, 820 F.3d at 312 (quotation omitted).

Williams argues the district court erred because the sole basis for Sergeant Baumann's stop was Bah's statement to Officer Eckberg that there were potential witnesses to the assault in the SUV. Williams asserts that seizing witnesses to a crime "is a clearly established constitutional violation," relying on a statement in Davis v. Dawson, a § 1983 action in which defendants asserted the defense of qualified immunity: "There is also a robust consensus that seizing witnesses to a crime in similar circumstances is a clearly established constitutional violation." 33 F.4th 993, 999 (8th Cir. 2022) (citations omitted). But Williams would have us ignore the phrase "in similar circumstances." In Davis, "the officers admit[ted] there was no probable cause to believe the witnesses had committed a crime"; they were detained for over three hours and interviewed solely as "witnesses to a homicide" and "never suspects." Id. at 996, 998.

Here, the officers did not stop the SUV solely because its occupants were witnesses. The district court credited Officer Eckberg's testimony that victim Bah, in his initial, frenetic recount of a terrifying assault, communicated that there were either "witnesses or other involved parties" inside the SUV. We agree this gave Officer Eckberg reasonable suspicion to order Sergeant Baumann to make an investigatory stop of a vehicle whose occupants had been linked to a criminal incident.[2] Reviewing courts "must look at the totality of the circumstances" and must "allow[] officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them." United States v. Arvizu, 534 U.S. 266, 273 (2002); cf. United States v. Roberts, 787 F.3d 1204, 1209-10 (8th Cir. 2015) (upholding investigatory stop of a vehicle

[2]"When multiple officers are involved in an investigation, probable cause [or reasonable suspicion] may be based on their collective knowledge and need not be based solely on the information within the knowledge of the arresting officer as long as there is some degree of communication." United States v. Robinson, 664 F.3d 701, 703 (8th Cir. 2011) (quotation omitted).

seven blocks from the scene of a shooting based on witness accounts that the vehicle "may have been involved in the shooting").

The district court credited Officer Eckberg's testimony. "We give great deference to a lower court's credibility determinations because the assessment of a witness's credibility is the province of the trial court." United States v. Wright, 512 F.3d 466, 472 (8th Cir. 2008) (quotation omitted). The suppression hearing record contains no "extrinsic evidence that contradicts [Officer Eckberg's] story," nor is the story "so internally inconsistent or implausible on its face that a reasonable fact-finder would not credit it." United States v. Harper, 787 F.3d 910, 914 (8th Cir. 2015) (quotation omitted). The district court did not err in concluding that Eckberg had reasonable suspicion to order the traffic stop.

III. The Cell Phone Search

Williams's motion to suppress conceded the warrant application and affidavit provided a sufficient basis for the issuing magistrate to find probable cause. Relying on an earlier District of Minnesota decision suppressing evidence from a cell phone search, Williams instead argued that this cell phone warrant authorized a "general exploratory search," violating the Fourth Amendment requirement that a warrant "particularly describ[e] . . . the persons or things to be seized." The district court, acknowledging that the warrant limited the files to be searched to a three-week time frame, nonetheless concluded that the warrant "was insufficiently particular and unconstitutionally overbroad" because the files to be searched were not limited to information related to felony gun and drug possession. However, the court denied the motion to suppress because "Investigator Ebert relied on it in good faith, and therefore, the evidence should not be suppressed under the Leon good faith exception." Williams appeals that ruling.

The Leon good faith rule provides that evidence obtained in executing a warrant will not be excluded at trial "when an officer acting with objective good faith has obtained a search warrant from a judge or magistrate and acted within its scope," even if the warrant is later invalidated. United States v. Leon, 468 U.S. 897, 920 (1984). "[S]uppression is appropriate only if the officers were dishonest or reckless in preparing their affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause." Id. at 926. Applying the Leon rule, we recognize four circumstances that preclude a finding of good faith:

> (1) when the affidavit or testimony supporting the warrant contained a false statement made knowingly and intentionally or with reckless disregard for its truth, thus misleading the issuing judge; (2) when the issuing judge wholly abandoned his judicial role in issuing the warrant; (3) when the affidavit in support of the warrant is so lacking in indicia of probable cause as to render official belief in its existence *entirely unreasonable*; and (4) when the warrant is so facially deficient that no police officer could reasonably presume the warrant to be valid.

United States v. Cannon, 703 F.3d 407, 412 (8th Cir.) (quotation omitted, emphasis in original), cert. denied, 569 U.S. 987 (2013).

On appeal, Williams argues that no reasonable officer would believe that a warrant authorizing seizure of "any and all" information on his phone was consistent with the Fourth Amendment. He argues the use of "any and all" language, followed by a non-exclusive list of broad categories of electronically stored information, authorizes the kind of "general, exploratory rummaging" prohibited by the Fourth Amendment. Coolidge v. New Hampshire, 403 U.S. 443, 467 (1971). "In assessing the objective reasonableness of a police officer's belief in the validity of a warrant, we look to the totality of the circumstances, including any information known to the officer but not presented to the issuing judge." United States v. Saddler, 19 F.4th

1035, 1040 (8th Cir. 2021) (quotation omitted); see United States v. Henderson, 416 F.3d 686, 695 (8th Cir. 2005).

Here, as the district court emphasized, Investigator Ebert both requested the warrant and examined the cell phone contents. "This fact is significant because in assessing whether reliance on a search warrant was objectively reasonable under the totality of the circumstances, it is appropriate to take into account the knowledge that an officer in the searching officer's position would have possessed." United States v. Curry, 911 F.2d 72, 78 (8th Cir. 1990), cert. denied, 498 U.S. 1094 (1991); see Massachusetts v. Sheppard, 468 U.S. 981, 989 n.6 (1984) ("[T]he officer who directed the search[] knew what items were listed in the affidavit presented to the judge, and he had good reason to believe that the warrant authorized the seizure of those items.").

Investigator Ebert's affidavit in support of the warrant application included more particularized language about the scope of the requested search and explained, based on his experience, the common practice of sharing photos, videos, and messages about guns and drugs over platforms such as Facebook, Facebook Messenger, Snapchat, and traditional text messaging. We agree with the district court that it is reasonable to believe that Ebert conducted a more circumscribed search than the language of the warrant literally authorized. Williams asserts that Ebert deliberately chose not to limit the scope of the warrant. But there is no evidence suggesting Ebert failed to act in good faith or improperly took advantage of the lack of particularity in executing the warrant. Ebert testified that he simply used standard department language that had been approved on many previous occasions.

Accordingly, we agree with the district court that the Leon good faith exception applies and affirm the denial of Williams's motion to suppress evidence seized from the warrant search of his cell phone. We need not consider, and take no position on

whether the district court correctly concluded that the cell phone warrant "was insufficiently particular and unconstitutionally overbroad."

IV. The Prior Illinois Felony Convictions

Williams argues the district court erred in denying his motion to exclude evidence of his five prior Illinois convictions because they are no longer valid predicate felony convictions to support a § 922(g)(1) conviction. Williams was convicted in 2004 and 2005 of aggravated unlawful use of a weapon ("AUUW"). The Supreme Court of Illinois and the Seventh Circuit later declared unconstitutional under the Second Amendment the portion of the Illinois AUUW statute he was convicted of violating, 720 Ill. Comp. Stat. Ann. 5/24-1.6(a)(1), (a)(3)(A) (West 2005). See People v. Aguilar, 2 N.E.3d 321, 327 (Ill. 2013); Moore v. Madigan, 702 F.3d 933, 942 (7th Cir. 2012). Therefore, Williams asserts, these convictions are void *ab initio* and cannot disqualify him from possessing a firearm under § 922(g)(1). He also argues that his 2008 conviction under a separate sentencing enhancement of the AUUW statute, 720 Ill. Comp. Stat. Ann. 5/24-1.6(d) (West 2007), is tied to the later-invalidated provision and cannot serve as a predicate offense. And his 2010 and 2017 convictions for unlawful use or possession of a weapon by a felon in violation of 720 Ill. Comp. Stat. Ann. 5/24-1.1(a) (West 2010) are invalid because they were predicated on the prior invalid AUUW convictions. We review *de novo* the question of whether a prior conviction qualifies as a predicate felony for the purpose of § 922(g). United States v. Miller, 678 F.3d 649, 651 (8th Cir. 2012).

The district court concluded Williams's motion in limine was an impermissible collateral attack on an underlying state conviction in federal court. In Lewis, the Supreme Court held that a prior state felony conviction obtained in violation of the defendant's Sixth Amendment right to counsel could nevertheless serve as a predicate felony for the precursor to § 922(g)(1). 445 U.S. at 56, 65-67. The Court explained that "the fact of a felony conviction imposes a firearm disability until the conviction

is vacated or the felon is relieved of his disability by some affirmative action . . . . No exception . . . is made for a person whose outstanding felony conviction ultimately might turn out to be invalid for any reason." Id. at 60-62. "Congress clearly intended that the defendant clear his status *before* obtaining a firearm." Id. at 64. Therefore, a defendant whose conviction had not been previously overturned or vacated may not pursue a new form of collateral attack in a federal firearms prosecution. Id. at 67.

Following Lewis, we have rejected attempts by defendants to collaterally attack their predicate state convictions in defending prosecutions under § 922. See, e.g., Bena, 664 F.3d at 1185-86 (8th Cir. 2011) (rejecting as an impermissible collateral attack a constitutional challenge to a predicate no-contact order in a § 922(g)(8) prosecution); United States v. Elliott, 128 F.3d 671, 672 (8th Cir. 1997) (applying Lewis to foreclose collateral attack in a § 922(g)(1) prosecution); United States v. Dorsch, 363 F.3d 784, 787-88 (8th Cir. 2004) (applying Lewis to bar challenge to predicate prior commitment element in a § 922(g)(4) prosecution).

Williams argues that Lewis was superseded by a subsequent amendment to the definition of "crime punishable by imprisonment for a term exceeding one year" in § 922(g)(1). In Dickerson v. New Banner Institute, Inc., the Supreme Court held that whether one has been "convicted" for the purposes of § 922 "is necessarily . . . a question of federal, not state, law, despite the fact that the predicate offense and its punishment are defined by the law of the State." 460 U.S. 103, 111-12 (1983). Therefore, Iowa's expunction of the defendant's prior conviction did not nullify the conviction for the purposes of the firearms prohibitions in § 922(g)(1) and (h)(1). Id. at 114-15. In 1986, Congress amended the definition of "crime punishable by imprisonment for a term exceeding one year" in the Firearms Owners' Protection Act:

> What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for

> which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.[3]

Here, Williams argues, Illinois law is the "law of the jurisdiction in which the proceedings were held." Following its decision in Aguilar declaring § 5/24-1.6(a)(1), (a)(3)(A) unconstitutional, the Supreme Court of Illinois stated that this provision was "void *ab initio*; that is, it is as if the law had never been passed." In re N.G., 115 N.E.3d 102, 123 (Ill. 2018). The court stated that a conviction based on this unconstitutional statute can have "no legal force or effect, and can be given none," but it also acknowledged that "nullification is not self-executing. Judicial action is necessary." Id. (citation omitted).

This clarification in N.G. confirms that Williams's prior convictions were not automatically vacated and therefore remained valid predicate felony convictions for his federal felon-in-possession charges. A person challenging a conviction under an invalid statute still must "raise[] his or her challenge through an appropriate pleading in a court possessing jurisdiction over the parties and the case." N.G., 115 N.E.3d at 125. Therefore, under Lewis and our precedent applying that decision, we cannot entertain the collateral attack on Williams's Illinois convictions. Section 921(a)(20) did not displace or overrule Lewis. Its analysis continues to apply in felon-in-possession cases, as we recognized in Bena, Elliott, and Dorsch. Construing § 921(a)(20) in Custis v. United States, 511 U.S. 485, 491 (1994), the Supreme Court held that "[t]he provision that a court may not count a conviction 'which has been . . . set aside' creates a clear negative implication that courts *may* count a conviction that has *not* been set aside."

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[3]Pub. L. No. 99-308, § 101(5), 100 Stat. 449, 450 (1986) (codified at 18 U.S.C. § 921(a)(20)).

Williams acknowledged at oral argument that he has yet to take affirmative action to vacate any of the five Illinois convictions. Therefore, he failed to "clear his status *before* obtaining a firearm," Lewis, 445 U.S. at 64, and the Illinois convictions remained outstanding when he violated § 922(g)(1). The Seventh Circuit rejected the same claim in United States v. Thompson, 901 F.3d 785 (7th Cir. 2018), applying Lewis and declining to set aside a plea of guilty to a § 922(g)(1) charge based on a predicate Illinois conviction under the now-unconstitutional AUUW statute here at issue. Thompson "could have filed petition in state court to have his conviction vacated but failed to do so." Id. at 787; see United States v. Marks, 379 F.3d 1114, 1119 (9th Cir. 2004) ("The focus of the inquiry under §§ 921(a)(20) and 922(g)(1) is whether someone has been convicted of a felony under state law, not whether that conviction is constitutionally valid, nor whether it may be used as a predicate conviction for subsequent state prosecutions.").

Applying these authorities, we conclude the district court properly denied Williams's motion in limine because it is an impermissible collateral attack on an underlying state conviction that has not been vacated by an Illinois court with jurisdiction over these state criminal matters.

The judgment of the district court is affirmed.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,	Case No. 21-cr-0254 (WMW/LIB)
Plaintiff,	
v.	**ORDER ON MOTIONS IN LIMINE AND PRETRIAL MOTIONS**
Roberto Antwan Williams,	
Defendant.	

Before the Court are Defendant Roberto Antwan Williams's Motion to Dismiss and Motion to Sever, (Dkts. 92, 93), and both parties' motions in limine, (Dkts. 94, 95, 96, 100, 101, 102, 103, 104, 105, 106, 111). For the reasons addressed below, the motions are granted in part and denied in part.

A grand jury returned an indictment in this case on November 23, 2021. Counts 1 and 2 of the indictment charge Williams with unlawful possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1) and 924(a)(2).

The jury trial in this case is scheduled to commence on August 16, 2023.

I. Motion to Dismiss

Williams moves to dismiss the indictment, arguing that Section 922(g)(1) is unconstitutional, both facially and as applied in this case. Williams contends that the Second Amendment and Fourteenth Amendment guarantee his right to possess a firearm and that this is particularly true as some of the underlying convictions have been found to be unconstitutional. The United States opposes the motion.

The United States Court of Appeals for the Eighth Circuit has concluded that "that there is no need for felony-by-felony determinations regarding the constitutionality of § 922(g)(1) as applied to a particular defendant." *United States v. Cunningham*, 70 F.4th 502, 506 (8th Cir. 2023) (citing *United States v. Jackson*, No. 22-2870, 69 F.4th 495, 501–02 (8th Cir. 2023)). The longstanding prohibition on possession of a firearm by a felon is constitutional. *Id.* (collecting cases).

The Eighth Circuit's holdings in *Jackson* and *Cunningham* directly controvert Williams's facial challenge to the constitutionality of Section 922(g)(1). Williams does not provide any arguments as to why this Court should reach a different conclusion. In support of his as-applied challenge, Williams argues that five of his underlying felony convictions are predicated on statutes that have been found to be unconstitutional. But the United States's original indictment alleges that Williams has eight felony convictions. Therefore, even if Williams's as-applied argument is correct, the United States may still seek to prove that Williams is prohibited from possessing a firearm based on one or more of Williams's other three felony convictions. Williams has not established that Section 922(g)(1) is unconstitutional as applied to him. As such, the Court denies Williams's motion to dismiss.

II. Motion to Sever

Williams moves to sever the two counts in this case, arguing that severance is warranted to prevent the jury from improperly considering evidence of Williams's possession of a firearm on one occasion as propensity evidence. The United States opposes

this motion, contending that Williams has not met his "heavy burden" to demonstrate prejudice from the joinder of the counts.

The Court addressed this argument when it adopted the September 9, 2022 Report and Recommendation and denied without prejudice Williams's earlier motion to sever. Specifically, the Court adopted the September 9, 2022 Report and Recommendation and rejected Williams's argument that introduction of evidence of one alleged instance of unlawful possession would be prejudicial as to the other alleged instance of unlawful possession. In the present motion to sever, Williams does not provide any change in circumstances that warrants severance. *See United States v. Billups*, 442 F. Supp. 2d 697, 706 (D. Minn. 2006). Accordingly, Williams's motion to sever is denied.

III. Motions In Limine

A. Controlled Substance Evidence

Williams moves to exclude controlled substance evidence that was discovered next to the firearms. Williams argues that there is not clear and convincing evidence that he possessed the controlled substances. The United States moves to admit the controlled substance evidence, arguing that the evidence is admissible to show motive for possession of the firearms.

"Rule 404(b) is a rule of inclusion rather than exclusion and admits evidence of other crimes or acts relevant to any issue in the trial, unless it tends to prove only criminal disposition." *United States v. Claybourne*, 415 F.3d 790, 797 (8th Cir. 2005) (internal citation omitted). Rule 404(b) pertains "to the admission of wrongful-act evidence that is extrinsic to the charged offense. Rule 404(b) does not exclude other wrongful conduct that

is intrinsic to the charged offense." *United States v. Williams*, 796 F.3d 951, 961 (8th Cir. 2015). Intrinsic evidence is evidence that "is offered for the purpose of providing the context in which the charged crime occurred. Such evidence is admitted because the other crime evidence completes the story or provides a total picture of the charged crime." *United States v. Brooks*, 715 F.3d 1069, 1076 (8th Cir. 2013) (quoting *United States v. Ruiz-Chavez*, 612 F.3d 983, 988 (8th Cir. 2010)).

The controlled substances at issue here were found next to the firearms. The United States intends to introduce the controlled substances to establish context as to why Williams allegedly possessed the firearms. The controlled substance evidence, therefore, is intrinsic to the charged crime. *United States v. Fogg*, 922 F.3d 389, 393 (8th Cir. 2019) (concluding that evidence of drugs and drug paraphernalia seized along with a short-barreled shotgun after a car chase was clearly intrinsic because it completed the story or provided context to the charged crime). For this reason, the controlled substance evidence discovered during the incidents leading to Counts 1 and 2 is admissible. Williams's motion in limine to exclude the controlled substance evidence, therefore, is denied and the United States's motion in limine to admit the controlled substance evidence is granted.

B. Evidence of STRmix Analysis

Williams also moves to exclude evidence of the STRmix analysis performed on the firearms at issue in Count 2 of the indictment. Williams contends that such analysis will not be helpful to the jury and that its probative value is substantially outweighed by the danger of confusing the issues, misleading the jury, or wasting time. The United States disagrees. The United States contends that the evidence is admissible and Williams's

arguments pertain to the weight and persuasiveness of the STRmix Analysis—not its admissibility.

The admission of expert testimony is governed by Rule 702, Fed. R. Evid., which provides:

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.

When evaluating the admissibility of expert testimony, the trial court serves as the gatekeeper to "ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable." *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 589 (1993). Expert testimony, like any other evidence, can be excluded if its probative value is substantially outweighed by the danger of confusing the issues, misleading the jury, or wasting time. Fed. R. Evid. 403.

Count 2 of the indictment alleges that Williams possessed two different firearms in violation of Section 922(g)(1), a Kel Tec firearm and a Taurus firearm. STRmix Analysis performed on the Kel Tec firearm revealed a mixture of DNA from five or more people, and concluded that a major DNA profile matched K.G., Williams's daughter. The analysis also concluded that Williams could not be excluded as a possible contributor to the mixture.

The analysis performed on the Taurus firearm also revealed a mixture of DNA from five or more persons and concluded that Williams's DNA was likely part of this mixture.[1]

Williams does not challenge the principles and methods of the STRmix Analysis. *See United States v. Lewis,* 442 F. Supp. 3d 1122, 1127 (D. Minn. 2020) (discussing the principles and methods of STRmix Analysis). But Williams questions the conclusions that are drawn from the testing. Williams's argument to exclude the STRmix Analysis, primarily pertains to the reliability of the STRmix Analysis—not its admissibility. STRmix Analysis's reliability, however, is appropriately addressed through cross-examination. *See Robinson v. GEICO Gen. Ins. Co.*, 447 F.3d 1096, 1100 (8th Cir. 2006); *see also United States v. Washington*, No. 8:19-cr-299, 2020 WL 3265142, at *4 (D. Neb. June 16, 2020) ("[E]ven if there are questions about the reliability of testimony based on STRmix statistics, such questions generally go to the weight of the witness's testimony, not its admissibility") (internal quotations omitted). For this reason, Williams's motion to exclude the STRmix Analysis results, therefore, is denied.

C. Evidence of Prior Convictions

Williams also seeks to exclude evidence of his prior convictions, arguing that these convictions are predicated on a firearm ban that was held unconstitutional by the Illinois Supreme Court and the United States Court of Appeals for the Seventh Circuit. The United

[1] Williams does not dispute that the STRmix Analysis appears to support the hypothesis that Williams was a contributor to the mixture along with four unidentified, unrelated individuals found on the Taurus firearm.

States objects, arguing that Williams's effort to mount a collateral attack on the underlying state convictions is impermissible in this federal prosecution.

A defendant cannot collaterally attack an underlying state court conviction in a federal court prosecution alleging a violation of 18 U.S.C. § 922. *United States v. Bena*, 664 F.3d 1180, 1185 (8th Cir. 2011); *see also Lewis v. United States*, 445 U.S. 55, 56 (1980) (denying defendant ability to collaterally attack underlying conviction under predecessor statute to 18 U.S.C. § 922(g)(1)).

Williams contests the validity of the underlying convictions. However, such a challenge must be presented in the court of conviction. *See United States v. Hoeft*, No. 4:21-CR-40163-KES, 2023 WL 2586030, at *6 (D.S.D. Mar. 21, 2023) (denying a defendant's collateral attack on a state court conviction in a federal court prosecution). Because Williams cannot collaterally attack his underlying state convictions in this matter in U.S. District Court, his argument fails to establish that evidence of his prior convictions of state court offenses is inadmissible here. Williams's motion to exclude evidence of the prior convictions, therefore, is denied.

D. 911 Call

The United States moves to admit a recording of the 911 call that O.B. made to police to provide the context for the traffic stop and the subsequent arrest that led to the discovery of the gun. The United States contends that this 911 call is admissible as a present-sense impression and an excited utterance. Williams disagrees, arguing that admitting a recording of the 911 call would violate Williams's Sixth Amendment right to confront the witness and any statements made by O.B. are inadmissible hearsay.

The present-sense-impression exception to the hearsay rule provides that "[a] statement describing or explaining an event or condition, made while or immediately after the declarant perceived it" is "not excluded by the rule against hearsay," Fed. R. Evid. 803(1), and an excited utterance is admissible if the statement relates to a startling event or condition and was made while the declarant was under the stress of excitement that it caused," Fed. R. Evid. 803(2).

O.B. made the 911 call immediately after individuals allegedly assaulted and attempted to rob him at gunpoint. Although the call occurred minutes after the incident, the call was placed with sufficient contemporaneity to the underlying events to constitute a present-sense impression. *United States v. Hawkins*, 59 F.3d 723, 730 (8th Cir. 1995) (victim placed 911 call 7 minutes after incident from a nearby store); *United States v. Mejia–Valez*, 855 F.Supp. 607 (E.D.N.Y.1994) (admitting two 911 calls—the first 2 to 3 minutes a shooting and the other approximately 16 minutes after shooting); *see also United States v. Dean*, 823 F.3d 422, 428 (8th Cir. 2016). The Court also concludes that O.B.'s statements were made under the stress of excitement from the assault and, therefore, fall under the excited-utterance exception. O.B. made the call shortly after the assault allegedly occurred. While on the phone, he spoke very rapidly and made several references to being killed. For these reasons, the 911 calls are admissible under both the present-sense impression exception and the excited-utterance exception to the rule against hearsay.

Williams contends that admission of the 911 call would violate his Sixth Amendment right to confront and cross examine the eyewitness who made the call. The Confrontation Clause of the Sixth Amendment "bars the admission of testimonial hearsay

unless the declarant is unavailable and the defendant has had a prior opportunity for cross examination." *United States v. Clifford*, 791 F.3d 884, 887 (8th Cir. 2015) (citing *Crawford v. Washington*, 541 U.S. 36, 68 (2004)). Witness statements made in response to police interrogation ordinarily are testimonial. *Id.* But witness statements are nontestimonial when "the primary purpose of an interrogation is to respond to an ongoing emergency." *Michigan v. Bryant*, 562 U.S. 344, 358 (2011) (internal quotation marks omitted).

The statements made during the 911 call are not testimonial because the information O.B. provided was in response to an ongoing emergency. *United States v. Robbins*, 948 F.3d 912, 916 (8th Cir. 2020). Immediately after O.B. was able to break free from those who allegedly assaulted him, O.B fled and hid in his vehicle where he called law enforcement and reported the attempted robbery. Questions elicited by the 911 operator were focused at "ending a threatening situation." *Michigan*, 562 U.S. at 361. Because the 911 call was made to enable police to identify and apprehend an armed and threatening individual, these statements are not testimonial. *See United States v. Mitchell*, 726 F. App'x 498, 501 (8th Cir. 2018). As such, Williams's Confrontation Clause argument fails.

In summary, the Court, grants the United States's motion to admit the 911 Call.

E. Background Regarding Investigation

In support of Count 1 of the indictment, the United States seeks to elicit facts related to the context of the 911 stop. Absent such information, the government argues, the jury might erroneously assume that law enforcement officers lacked any basis to stop the vehicle. Williams does not oppose this motion. But Williams contests the admissibility of

any testimony that indicates he matched the description of the person suspected of the assault.

Generally, evidence of other crimes committed by a defendant is inadmissible. *United States v. Moore*, 735 F.2d 289, 292 (8th Cir. 1984) (internal citations omitted). But evidence that provides the context in which a crime occurred, that is to say, the *res gestae*, is an exception to this general rule. *United States v. Morrison*, 748 F.3d 811, 812 (8th Cir. 2014) (quoting *United States v. Savage*, 863 F.2d 595, 599 (8th Cir. 1988). "Although *res gestae* evidence sometimes implicates the defendant in other acts," when those acts are "inextricably intertwined with the charged crime, they are not extrinsic, and thus not merely character evidence." *Id.* (internal quotation marks omitted). For this reason, evidence that provides the context of a defendant's arrest is admissible in a felon-in-possession case. *United States v. Savage*, 863 F.2d 595, 599–600 (8th Cir. 1988). A jury is entitled to know the circumstances and background of a criminal charge. *Moore*, 735 F.2d at 292. A jury is not expected to make its decision in a void—without knowledge of the time, place, and circumstances of the acts which form the basis of the charge. *Id.*

The court may exclude relevant evidence if its probative value is substantially outweighed by the danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence. Fed. R. Evid. 403. As a general rule, when weighing the probative value of evidence against the dangers and considerations enumerated in Rule 403, the balance should be struck in favor of admission. *United States v. Robertson*, 948 F.3d 912, 917 (8th Cir. 2020).

The United States seeks to introduce evidence that law enforcement officers stopped the vehicle because the officers had information that the occupants might have witnessed the assault and robbery and that the officers arrested Williams because he matched the description of the suspect. This information is helpful to a jury because it provides context for the stop and the subsequent discovery of the firearm within the vehicle. Such evidence, the United States argues, "completes the story" of the charged offense and is admissible at trial. *United States v. Young*, 753 F.3d 757, 770 (8th Cir. 2014) (internal quotation marks omitted); *see also United States v. Carroll*, 207 F.3d 465, 468 (8th Cir. 2000). Williams contests the admissibility of any statements identifying him as matching the appearance of the suspect of the investigation as unfairly prejudicial. The Court, however, concludes that the evidence's potentially prejudicial effect does not substantially outweigh the evidence's probative value.

These statements are helpful to understand why officers conducted the arrest and, without the statements, there is a risk that the jury will be confused as to why officers stopped and searched the vehicle. Moreover, Williams does not address why a limiting instruction directing the jury to refrain from drawing any inferences from the investigation would not mitigate the prejudicial effect of these statements.

In summary, the Court grants the United States's motion to admit evidence related to the background regarding the investigation.

F. Statements Regarding National Police Controversies

The United States moves to preclude Williams from referencing national or local controversies about the use of force by police officers, absent a showing that any such

argument or line of inquiry is relevant. The United States requests that counsel address any such testimony or argument with the Court outside the presence of the jury before the testimony or argument is offered. Williams does not oppose this motion. The Court grants the motion. Should Williams intend to address national or local controversies pertaining to the use of force by police officers, Williams must first demonstrate that the argument or testimony is relevant and admissible.

G Impeachment Evidence of Prior Felony Conviction

The United States seeks an order permitting the use of Williams's 2017 felony conviction of unlawful possession of a firearm by a felon as impeachment evidence in the event that Williams's chooses to testify. Williams opposes the motion, arguing that such impeachment would be highly prejudicial and that the prejudice would substantially outweigh any probative value.

When a defendant testifies at trial, the defendant's prior criminal conviction of an offense that is punishable by imprisonment for more than one year is admissible to attack the defendant's character for truthfulness "if the probative value of the [conviction] outweighs its prejudicial effect to that defendant." Fed. R. Evid. 609(a)(1)(B). "[B]ecause of the common sense proposition that one who has transgressed society's norms by committing a felony is less likely than most to be deterred from lying under oath," such convictions are probative of witness credibility. *United States v. Chauncey*, 420 F.3d 864, 874 (8th Cir. 2005) (internal quotation marks omitted).

Because it is uncertain that Williams plans to testify in this matter, the United States's motion is denied without prejudice as premature.

H. Hearsay Statements

The United States moves for an order precluding Williams from offering into evidence his own self-serving hearsay. Williams does not oppose this motion. A criminal defendant's prior out-of-court exculpatory statements are hearsay if they are merely consistent with the defendant's plea of not guilty. *See United States v. Waters*, 194 F.3d 926, 930–31 (8th Cir. 1999) (holding that the district court did not err by refusing to admit evidence of the defendant's prior statements consistent with plea of not guilty); *United States v. Chard*, 115 F.3d 631, 634–35 (8th Cir. 1997) (same). Here, the United States has not identified any self-serving hearsay that exists and that Williams intends to offer into evidence. The Court declines to issue an advisory opinion. Accordingly, the United States's motion is denied without prejudice as premature.

I. Reference to Punishment

The United States moves to preclude Williams from referring to any potential punishment that he might face if convicted. Williams does not oppose this motion. Because any punishment attributable to an offense has no bearing on whether the United States has proven the elements of that offense beyond a reasonable doubt, such punishment is not relevant evidence. *See* Fed. R. Evid. 401, 402. This motion is granted.

J. Narrow Indictment

The United States moves to narrow the indictment and seeks to remove specific references to Williams's criminal convictions. Williams does not oppose this motion.

Independent and unnecessary allegations in an indictment may be ignored by the Court. *United States v. McIntosh*, 23 F.3d 1454, 1457 (8th Cir. 1994) (citing *United States*

v. Miller, 471 U.S. 130, 144 (1985)). "Allegations in the indictment that are not necessary to establish a violation of a statute are surplusage and may be disregarded if the remaining allegations are sufficient to charge a crime." *Id.* An allegation may be stricken from an indictment if it adds nothing to the indictment, and the remaining allegations state the elements of an offense. *United States v. Nabors*, 762 F.2d 642, 647 (8th Cir. 1985).

Here, the proposed change simply narrows the indictment and does not broaden or add anything to the indictment. The removal of specific references merely pertains to matters of form. The United States's motion to narrow the indictment is granted.

ORDER

Based on the foregoing analysis and all the files, records and proceedings herein, **IT IS HEREBY ORDERED**:

1. Defendant Roberto Antwan Williams's motion to dismiss, (Dkt. 92), is **DENIED**;

2. Defendant Roberto Antwan Williams's motion to sever counts, (Dkt. 93), is **DENIED**;

3. Defendant Roberto Antwan Williams's motion in limine to exclude evidence of controlled substances, (Dkt. 94), is **DENIED**;

4. Defendant Roberto Antwan Williams's motion in limine to exclude evidence of STRMix analysis, (Dkt. 95), is **DENIED**;

5. Defendant Roberto Antwan Williams's motion in limine to exclude evidence of invalid conviction, (Dkt. 96), is **DENIED**;

6. Plaintiff United States of America's motion in limine to admit the 911 Call, (Dkt. 100), is **GRANTED**;

7. Plaintiff United States of America's motion in limine to admit the context of the investigation, (Dkt. 101), is **GRANTED**;

8. Plaintiff United States of America's motion in limine to exclude statements regarding national police controversy, (Dkt. 102), is **GRANTED**;

9. Plaintiff United States of America's motion in limine to admit controlled substance evidence, (Dkt. 103), is **GRANTED**;

10. Plaintiff United States of America's motion in limine to admit impeachment evidence of prior felony conviction, (Dkt. 104), is **DENIED without prejudice**;

11. Plaintiff United States of America's motion in limine to exclude Defendant's statements as hearsay, (Dkt. 105), is **DENIED without prejudice**;

12. Plaintiff United States of America's motion in limine to exclude statements referencing punishment, (Dkt. 106), is **GRANTED**;

12. Plaintiff United States of America's motion in limine to narrow the indictment, (Dkt. 111), is **GRANTED**.

Dated: August 10, 2023

s/Wilhelmina M. Wright
Wilhelmina M. Wright
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-1582

United States of America

Appellee

v.

Roberto Antwan Williams

Appellant

Appeal from U.S. District Court for the District of Minnesota
(0:21-cr-00254-ADM-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

May 19, 2025

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler