

**APPENDIX TO PETITION
FOR WRIT OF CERTIORARI**

Final Judgment of the United States Court of Appeals for the Eleventh Circuit, issued
June 16, 2025 1

Order of the United States District Court for the Southern District of Alabama
Denying Motion to Dismiss, issued July 24, 2023 3

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-12969

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DUSTIN DEWAYNE GILBERT,

Defendant- Appellant.

Appeal from the United States District Court
for the Southern District of Alabama
D.C. Docket No. 1:21-cr-00110-KD-N-1

Before LAGOA, ABUDU, and WILSON, Circuit Judges.

PER CURIAM:

Dustin Gilbert appeals his conviction for possession of a firearm by a convicted felon, 18 U.S.C. § 922(g)(1). Gilbert makes one argument on appeal: Section 922(g)(1) violates the Second Amendment as applied to him. Our recent decision in *United States v. Dubois*, ___F.4th___, 2025 WL 1553843 (11th Cir. June 2, 2025), forecloses this argument. There, we explained that neither *United States v. Rahimi*, 602 U.S. 680 (2024), nor *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), abrogated our decision in *United States v. Rozier*, 598 F.3d 768 (11th Cir. 2010), which held that Section 922(g)(1) is constitutional under the Second Amendment. *Dubois*, 2025 WL 1553843, at *5; see *Rozier*, 598 F.3d at 771 (“[S]tatutory restrictions of firearm possession, such as § 922(g)(1), are a constitutional avenue to restrict the Second Amendment right of certain classes of people. *Rozier*, by virtue of his felony conviction, falls within such a class.”). As we explained in *Dubois*, “[w]e require clearer instruction from the Supreme Court before we may reconsider the constitutionality of [S]ection 922(g)(1).” *Dubois*, 2025 WL 1553843, at *5. Accordingly, we affirm Gilbert’s conviction.

AFFIRMED.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
vs.)	Criminal Action No. 21-00110-KD-N
)	
DUSTIN GILBERT,)	
)	
Defendant.)	

ORDER

This action is before the Court on Defendant Dustin Gilbert’s Bruen-Based Motion to Dismiss (doc. 44). Upon consideration, and for the reasons set forth herein, the Motion is DENIED.

I. Background

Defendant Gilbert was indicted for the offense of prohibited person in possession of a firearm pursuant to 18 U.S.C. § 922(g)(1) (doc. 1). The statute prohibits the possession of a firearm by anyone who has been convicted of a crime punishable by imprisonment for more than one year. Previously, Gilbert had been convicted of Theft of Property, First Degree, a crime punishable by imprisonment for a term exceeding one (1) year, in the Circuit Court of Baldwin County, Alabama. Gilbert filed a Bruen-Based Motion to Dismiss asserting that 18 U.S.C. § 922(g)(1) is unconstitutional under the Second Amendment (doc. 44).

II. Analysis

Relying primarily upon the decisions in New York State Rifle & Pistol Ass'n v. Bruen, — U.S. —, 142 S. Ct. 2111, 213 L.Ed.2d 387 (2022), which established a new two-step method for evaluating the constitutionality of firearm regulations, and Range v. United States, 69 F. 4th 96 (3rd Cir. June 6, 2023), Gilbert argues that 18 U.S.C. § 922(g)(1) is unconstitutional, facially and as applied to him, because the statute violates the Second Amendment to the United States’

Constitution.

However, in United States v. Rozier, 598 F. 3d 768 (11th Cir. 2010), the Eleventh Circuit rejected a Second Amendment challenge to 18 U.S.C. § 922(g)(1). Rozier remains binding precedent in this circuit. See United States v. Hunter, --- F. Supp. 3d. ---, 2022 WL 17640254, n.1 (N.D. Ala. 2022) (J. Proctor) (“The question facing this court today is whether Rozier is still good law in light of the Supreme Court’s recent ruling in [Bruen]. After careful review, the court concludes that it is. Because Rozier has not been clearly overruled or undermined to the point of abrogation, this court is bound by that decision's holding that § 922(g)(1) does not violate the Second Amendment.”) (denying the motion to dismiss the indictment filed by defendant who was indicted for violating 18 U.S.C. § 922(g)(1)). Moreover, by reaffirming and adhering to its reasoning in District of Columbia v. Heller, 554 U.S. 570, 128 S. Ct. 2783, 171 L.Ed.2d 637 (2008) and McDonald v. City of Chicago, Il., 561 U.S. 742, 130 S. Ct. 3020, 177 L.Ed.2d 387 (2010), the Supreme Court in New York State Rifle & Pistol Ass'n v. Bruen, did not change the regulatory framework that prohibits felons from possessing firearms.

DONE and ORDERED this the 24th day of July 2023.

s/ Kristi K. DuBose
KRISTI K. DuBOSE
UNITED STATES DISTRICT JUDGE