APPENDICES

FILED: June 12, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-4659
(3:24-cr-00057-JAG-1)

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANDREW CHAFIN,

Defendant - Appellant.

O R D E R

Andrew Chafin appeals his conviction for possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). He argues that § 922(g)(1) is facially unconstitutional and unconstitutional as applied to him following *New York State Rifle & Pistol Ass'n v. Bruen*, in which the Supreme Court held that a firearm regulation is valid under the Second Amendment only if it "is consistent with this Nation's historical tradition of firearm regulation." 597 U.S. 1, 17 (2022). The Government moves for summary affirmance in light of our recent decisions in *United States v. Canada*, in which we considered and rejected the same argument,

holding that "Section 922(g)(1) is facially constitutional because it has a plainly legitimate sweep and may constitutionally be applied in at least some set of circumstances," 123 F.4th 159, 161 (4th Cir. 2024) (internal quotation marks omitted), and *United States v. Hunt*, where we affirmed "the Supreme Court's repeated instruction that longstanding prohibitions 'on the possession of firearms by felons . . . are presumptively lawful,'" 123 F.4th 697, 708 (4th Cir. 2024) (citing *United States v. Rahimi*, 602 U.S. 680, 699 (2024)), *petition for cert. filed*, No. 24-6818 (U.S. Mar. 20, 2025). The Government contends that Chafin's arguments on appeal are foreclosed by *Canada* and *Hunt*, and thus, are "manifestly unsubstantial." *See* 4th Cir. R. 27(f)(1). Chafin concedes that his arguments are foreclosed but nevertheless opposes summary affirmance.

Because the only issues raised in Chafin's appeal are foreclosed by our decisions in *Canada* and *Hunt*, we conclude that summary affirmance is warranted. Accordingly, we grant the Government's motion for summary affirmance.

Entered at the direction of the panel: Judge Harris, Judge Heytens, and Senior Judge Floyd.

For the Court

/s/ Nwamaka Anowi, Clerk

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J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA,

v. Criminal Action No. 3:24cr57

ANDREW CHAFIN,
Defendant.

MEMORANDUM ORDER

This matter comes before the Court on a motion to dismiss the indictment pursuant to *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), filed by the defendant, Andrew Chafin. (ECF No. 18.) On April 2, 2024, the grand jury returned a single-count indictment charging Chafin with felon in possession of a firearm and ammunition, in violation of 18 U.S.C. § 922(g)(1) (Count One). Chafin now moves to dismiss the indictment, arguing that § 922(g)(1) violates the Second Amendment as applied to him, given that his prior felony convictions were for nonviolent crimes. Here, the government has met its burden under *Bruen*. Accordingly, the Court will deny the motion to dismiss.

I. BACKGROUND

Chafin has two prior felony convictions for third-degree felony petit larceny and grand larceny. (EFC No. 18, at 1.) According to Chafin, those convictions stem from instances in 2018 in which he "shoplift[ed] energy drinks from a Wegman's and a Food Lion." (*Id.*)

On March 13, 2023, police in Petersburg found Chafin passed out at the wheel of his car, which was stopped at an intersection. (*Id.* at 1–2; ECF No. 21, at 2–3.) Chafin had a gun in the car, which the officers seized. (ECF No. 18, at 2; ECF No. 21, at 2.) The police learned of Chafin's previous felony convictions and arrested him for possessing a firearm as a felon. (ECF No. 18, at 2–3; ECF No. 21, at 2–3.)

Governor Northam restored Chafin's voting rights by executive order on September 30, 2019. (ECF No. 18, at 11.) Although Chafin petitioned the Henrico County Circuit Court to restore his right to possess a gun in 2021, the court denied his request. (ECF No. 21, at 2 n.1.)

II. ANALYSIS

In *United States v. Ebron*, this Court held that § 922(g)(1) does not violate the Second Amendment either facially or as applied to those convicted of violent felonies. *See United States v. Ebron*, No. 3:24cr47, 2024 WL 2097228, *5 (E.D. Va. May 9, 2024). And the Fourth Circuit has since held that "[§] 922(g)(1) is facially constitutional because it 'has a plainly legitimate sweep' and may constitutionally be applied in at least *some* 'set of circumstances.'" *United States v. Canada*, --- F.4th ----, 2024 WL 2807182, at *1 (4th Cir. June 3, 2024) (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008)).

Here, Chafin brings an as-applied challenge based on his status as a nonviolent felon. An as-applied challenge "test[s] the constitutionality of a statute applied to the [defendant] based on the record." *Cap. Associated Indus., Inc. v. Stein*, 922 F.3d 198, 204 (4th Cir. 2019).

As explained below, the Supreme Court in *Bruen* established a two-part test for reviewing Second Amendment challenges. The Fourth Circuit has not addressed as-applied challenges to § 922(g)(1) since *Bruen*. But most circuits since *Bruen* have rejected such challenges, either by relying on their pre-*Bruen* precedent or by holding that the defendant's claim failed at step one or two of *Bruen*.[1] In contrast, only two circuits have found § 922(g)(1) unconstitutional as applied to those convicted of nonviolent felonies. *See United States v.*

[1] *See, e.g.*, *United States v. Jackson*, 69 F.4th 495, 505 (8th Cir. 2023) (rejecting an as applied challenge by a nonviolent felon because "legislatures traditionally employed status-based restrictions to disqualify categories of persons . . . . who deviated from legal norms or . . . who presented an unacceptable risk of dangerousness"); *see also Vincent v. Garland*, 80 F.4th 1197 (10th Cir. 2023) (relying on pre-*Bruen* circuit precedent to reject an as-applied challenge by a nonviolent felon).

Duarte, 101 F.4th 657 (9th Cir. 2024); *Range v. Att'y Gen.*, 69 F.4th 96, 101 (3d Cir. 2023) (en banc).

Bruen's first step requires courts to ask whether "the Second Amendment's plain text covers an individual's conduct." 597 U.S. at 24. If so, "the Constitution presumptively protects that conduct." *Id.* At the second step, the government bears the burden to "justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* To meet that burden, the government must "identify a well-established and representative historical *analogue*" to the modern regulation, "not a historical *twin*." *Id.* at 30.

At step one, the parties dispute whether the phrase "the people" in the Second Amendment includes felons like Chafin.[2] This Court has already concluded that "the people" includes felons. *Ebron*, 2024 WL 2097228, at *3. As the Supreme Court stated in both *Heller* and *Bruen*, the Second Amendment right applies to "all Americans." *Heller*, 554 U.S. at 581; *Bruen*, 597 U.S. at 70 (quoting *Heller*, 554 U.S. at 581).

At step two, the government first offers up historical "laws authorizing capital punishment and estate forfeiture for felons" as analogues to the modern ban on gun possession by felons. (ECF No. 21, at 23.) Those punishments "were commonly authorized punishments in the American colonies up to the time of the founding." (*Id.* (citing *Folajtar v. Att'y General of the United States*, 980 F.3d 897, 904–05 (3d Cir. 2020).) And they applied beyond "crimes of

[2] Before reaching *Bruen*'s two-part test, the government contends that pre-*Bruen* case law settles this case. *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570, 626, 626 n.26 (2008) (stating that "[n]othing in [the Court's] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons" and calling felon disarmament laws "presumptively lawful regulatory measures"); *United States v. Moore*, 666 F.3d 313 (4th Cir. 2012) (finding § 922(g)(1) constitutional as to violent felons); *United States v. Pruess*, 703 F.3d 242 (4th Cir. 2012) (extending *Moore*'s reasoning to nonviolent felons). As this Court concluded in *Ebron*, *Bruen*'s two-part, text-and-history test controls. *See Ebron*, 2024 WL 2097228, at *2.

violence" to crimes like forgery and counterfeiting. (*Id.* at 24 (citing *Folajtar*, 980 F.3d at 905).) For felonies that did not carry the death penalty, States often took the view that "common law felons were '"civilly dead," having lost all rights including the right to possess property of any kind.'" (*Id.* (quoting Don B. Kates, *A Modern Historiography of the Second Amendment*, 56 UCLA L. Rev. 1211, 1231 n.100 (2009)).) The government further cites the "Dissent of the Minority" from the Pennsylvania constitutional convention, which included a constitutional proposal that would have mandated that "no law shall be passed for disarming the people or any of them unless for crimes committed." (*Id.* at 25 (quoting *Medina v. Whitaker*, 913 F.3d 152, 158 (D.C. Cir. 2019)).)

The government argues that although felonies "have become less severe over time," felonies "were—and remain—the most serious category of crime." (*Id.* (quoting *Medina*, 913 F.3d at 158).) Thus, "it is difficult to conclude that the public, in 1791, would have understood someone facing death and estate forfeiture to be" covered by the Second Amendment. (*Id.* (quoting *Medina*, 913 F.3d at 158).)

The government also points to "laws that 'categorically disqualified people from possessing firearms based on a judgment that certain individuals were untrustworthy parties to the nation's social compact.'" (*Id.* at 26 (quoting *Range v. Atty' Gen.*, 53 F.4th 262, 274 (3d Cir. 2022) (per curiam), *rev'd en banc*, 69 F.4th 96, 101 (3d Cir. 2023)).) Its examples mostly include Founding-era laws that disarmed those who refused to take oaths of allegiance to their State. (*Id.* at 26–27 (listing statutes from Massachusetts, Rhode Island, North Carolina, Virginia, New Jersey, and Pennsylvania).)

In this case, the government has met its burden of providing a historical basis for disarming those convicted of larceny. Chafin has a grand larceny conviction, and larceny was

"one of the nine common law felonies." *Folajtar*, 980 F.3d at 910. "At common law, there was no distinction between grand and petit larceny except in the punishment, which was death in the one case and whipping in the other." *Bell v. Commonwealth*, 167 Va. 526, 531, 189 S.E. 441, 444 (1937). In at least some cases, that held true until the Founding: Delaware, for example, punished larceny "by mutilation and death for [a person's] third offense." *United States v. Coombes*, 629 F. Supp. 3d 1149, 1163 (N.D. Okla. 2022) (citing 1 *Laws of the State of Delaware From October 14, 1700 to August 18, 1797*, 296-97 (Samuel & John Adams 1797)). And other similar "nonviolent crimes such as forgery and horse theft were capital offenses." *Medina*, 913 F.3d at 158). Courts have noted that the sentences imposed in the late 1700s for "non-violent offenses involving deceit and wrongful taking of property" included "death or forfeiture of a perpetrator's entire state"—punishments that "subsumed disarmament." *United States v. Jackson*, 69 F.4th 495, 503 (8th Cir. 2023). Those severe punishments for common-law larceny and similar Founding-era offenses reflect a history and tradition of ensuring that those convicted of larceny could not bear arms. Accordingly, § 922(g)(1) does not violate the Second Amendment as applied to Chafin.

III. CONCLUSION

For foregoing reasons, the Court DENIES Chafin's motion to dismiss the indictment. (ECF No. 18.)

It is so ORDERED.

Let the Clerk send a copy of this Order to all counsel of record.

Date: 17 June 2024
Richmond, VA

/s/
John A. Gibney, Jr.
Senior United States District Judge