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FILED: July 29, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-4191
(3:23-cr-00105-RCY-1)

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HENRY LEON MARROW, JR.,

Defendant - Appellant.

O R D E R

Henry Leon Marrow, Jr., pled guilty, pursuant to a conditional plea agreement, to possession of a firearm as a felon, in violation of 18 U.S.C. § 922(g)(1). The district court sentenced Marrow to 42 months' imprisonment. Marrow now appeals, challenging his § 922(g)(1) conviction as both facially unconstitutional and unconstitutional as applied to him under the Second Amendment, relying on the Supreme Court's decision in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022).

The Government moves for summary affirmance based on our recent decisions in *United States v. Canada*, 123 F.4th 159, 160-61 (4th Cir. 2024), which rejected a facial Second Amendment challenge to § 922(g)(1), and *United States v. Hunt*, 123 F.4th 697, 700 (4th Cir. 2024), *cert. denied*, No. 24-6818, 2025 WL 1549804 (U.S. June 2, 2025), which held that as-applied Second Amendment challenges to § 922(g)(1) are generally not viable.* The Government contends that the only issues Marrow presents on appeal are “manifestly unsubstantial” after *Canada* and *Hunt*. See 4th Cir. R. 27(f)(1). Although Marrow concedes that *Canada* and *Hunt* defeat his Second Amendment arguments, he nevertheless opposes summary affirmance.

Because *Canada* and *Hunt* foreclose the only issues that Marrow pursues on appeal, we conclude that summary affirmance is proper. We thus grant the Government’s motion for summary affirmance.

Entered at the direction of the panel: Judge King, Judge Wynn, and Judge Berner.

For the Court

/s/ Nwamaka Anowi, Clerk

* In *Hunt*, the Court reaffirmed “that a person who has been convicted of a felony cannot make out a successful as-applied challenge to Section 922(g)(1) unless the felony conviction is pardoned or the law defining the crime of conviction is found unconstitutional or otherwise unlawful.” 123 F.4th at 700 (internal quotation marks omitted). Marrow does not argue that either circumstance is present here.

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UNITED STATES COURT OF APPEALS
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No. 24-4191
(3:23-cr-00105-RCY-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

HENRY LEON MARROW, JR.

Defendant - Appellant

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 Case No. 3:23CR105 (RCY)
)	
HENRY MARROW,)	
Defendant.)	
)	

MEMORANDUM OPINION

This matter is before the Court on Defendant Henry Marrow’s (“Mr. Marrow” or “the Defendant”) Motion to Dismiss the Indictment, ECF No. 20. The Defendant seeks dismissal of Count I of the indictment, which charges him with Possession of a Firearm and Ammunition by a Convicted Felon, in violation of 18 U.S.C. § 922(g)(1), based on the Supreme Court’s decision in *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. ----, 142 S. Ct. 2111 (2022). *See* Mot. Dismiss Indictment (“Mot. Dismiss”) 1–2, 6–17, ECF No. 20. The Defendant brings both facial and as-applied challenges to § 922(g)(1). For the reasons stated below, the Court will deny the Defendant’s Motion in full.

I. BACKGROUND

Mr. Marrow was indicted on August 15, 2023, on one count of Possession of a Firearm and Ammunition by a Convicted Felon pursuant to 18 U.S.C. § 922(g)(1), and one count of Possession with Intent to Distribute Cocaine pursuant to 21 U.S.C. § 841(a)(1), (b)(1)(C). Indictment 1–2, ECF No. 1. Mr. Marrow was arraigned on August 22, 2023. ECF No. 15. Mr. Marrow’s status as a convicted felon is not in dispute.

II. LEGAL STANDARD

Federal Rule of Criminal Procedure 12 allows parties to “raise by pretrial motion any defense, objection, or request that the court can determine without a trial on the merits.” Fed. R.

Crim. P. 12(b)(1). The Defendant here requests that the Court dismiss Count I of the indictment against him. “An indictment may be dismissed if the statute on which the indictment is premised is unconstitutional.” *United States v. Kearney*, 2023 WL 3940106, at *1 (E.D. Va. June 9, 2023); see *United States v. Brown*, 715 F. Supp. 2d 688, 689 (E.D. Va. 2010); cf. Fed. R. Crim. P. 12(b)(3)(B) (permitting a defendant to, before trial, file a motion alleging a “defect in the indictment”).

III. DISCUSSION

The Defendant argues that the statute upon which his indictment is premised, 18 U.S.C. § 922(g)(1), is unconstitutional on its face and as applied to him because it violates the Second Amendment under *Bruen*’s new text-and-history test.

Section 922(g)(1) reads, in relevant part:

It shall be unlawful for any person . . . who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . . [to] possess in or affecting commerce, any firearm or ammunition.

18 U.S.C. § 922(g)(1).

The Defendant argues that *Bruen* “upended Second Amendment doctrine” with its text-and-history test. Mot. Dismiss 1. He argues that “§ 922(g)(1) regulates conduct the Second Amendment protects,” meaning that § 922(g)(1) is “presumptively unconstitutional under *Bruen*’s plain text standard” and that the burden thus shifts to the government to “show[] that § 922(g)(1) is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 11, 16–17; see also *id.* 6–11.

This Court has already carefully considered and denied each of the arguments set forth in this Motion to Dismiss. See *United States v. Lane*, 2023 WL 5663084 (E.D. Va. Aug. 31, 2023).¹


¹ In *Lane*, this Court held that the Fourth Circuit’s pre-*Bruen* precedents upholding § 922(g)(1)’s constitutionality remain good law and require denial of a motion to dismiss an indictment under § 922(g)(1). See *Lane*, 2023 WL 5663084, at *1, 7–10. Alternatively, this Court held that *Bruen* reaffirmed the Supreme Court’s

Other courts in this district have persuasively done the same, with similar outcomes. *See, e.g., United States v. Riley*, 635 F. Supp. 3d 411 (E.D. Va. 2022); *United States v. Finney*, No. 2:23cr13, 2023 WL 2696203 (E.D. Va. Mar. 29, 2023). This Court finds no reason to deviate from this prior analysis and instead adopts in full the reasoning previously set forth in its Memorandum Opinion in *United States v. Lane*.²

IV. CONCLUSION

For the reasons detailed above, the Defendant's Motion to Dismiss the Indictment, ECF No. 20, will be denied.

An appropriate Order shall issue.



Roderick C. Young
United States District Judge

Richmond, Virginia
Date: October 25, 2023

instruction that “the people” whose conduct the Second Amendment protects includes only “law-abiding citizens” and not felons like the Defendant here. *See id.* at 10–13.

² The Defendant here argues that § 922(g)(1) is unconstitutional both facially and as applied to him. But the Defendant, as did the defendant in *Lane*, makes the same argument for both his facial and his as-applied challenges: § 922(g)(1) facially criminalizes possessing a firearm or ammunition as a felon. And the statute applies to the Defendant because he was a felon possessing a gun or ammunition. Because the Defendant argues both challenges in the same way (and does so by making the same arguments that the defendant made in *Lane*), the Court here can dispose of both challenges by relying on *Lane*'s single and complete *Bruen* analysis. *See Lane*, 2023 WL 5663084, at *4–13.

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

UNITED STATES OF AMERICA)

v.)

HENRY MARROW,
Defendant.)
_____)

Criminal Case No. 3:23CR105 (RCY)


ORDER

This matter is before the Court on the Defendant's Motion to Dismiss the Indictment (ECF No. 20). For the reasons stated in the accompanying Memorandum Opinion, the Defendant's Motion to Dismiss the Indictment (ECF No. 20) is DENIED.

The parties are ORDERED to contact the courtroom deputy of the undersigned within three (3) days of the entry of this Order, to reschedule the jury trial in this matter. Upon scheduling of the jury trial, the Court will issue an updated Criminal Scheduling Order.

Let the Clerk file this Order electronically and notify all counsel accordingly.

It is so ORDERED.



/s/ Roderick C. Young
United States District Judge

Richmond, Virginia
Date: October 25, 2023