

APPENDICES

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UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 24-4392

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GERALD KEMONDRE TAYLOR,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Roderick Charles Young, District Judge. (3:23-cr-00129-RCY-1)

Submitted: August 26, 2025

Decided: September 30, 2025

Before NIEMEYER and HEYTENS, Circuit Judges, and KEENAN, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Jeremy C. Kamens, Federal Public Defender, Salvatore M. Mancina, Assistant Federal Public Defender, Laura J. Koenig, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Alexandria, Virginia, for Appellant. Erik S. Siebert, United States Attorney, Olivia L. Norman, Assistant United States Attorney, James Reed Sawyers, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

A federal grand jury indicted Gerald Kamondre Taylor for possession of a machinegun, in violation of 18 U.S.C. § 922(o). Taylor moved to dismiss the indictment, arguing that § 922(o) violated the Second Amendment on its face and as applied under *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). The district court denied the motion and Taylor pleaded guilty, reserving the right to appeal the denial of his motion to dismiss the indictment. The district court sentenced Taylor to 24 months of imprisonment and Taylor appeals, challenging the constitutionality of § 922(o). We affirm.

“When reviewing the denial of a defendant’s motion to dismiss an indictment, we review the district court’s legal conclusions de novo and its factual findings for clear error.” *United States v. Skinner*, 70 F.4th 219, 223 (4th Cir. 2023). Pursuant to *Bruen*, in deciding whether a regulation is consistent with the Second Amendment, we first ask “whether the plain text of the Second Amendment guarantees the individual the right to possess” machineguns. *Bianchi v. Brown*, 111 F.4th 438, 447 (4th Cir. 2024), *cert. denied*, *Snope v. Brown*, 145 S. Ct. 1534 (2025) (internal quotation marks omitted). “If not, that ends the inquiry.” *United States v. Price*, 111 F.4th 392, 398 (4th Cir. 2024), *cert. denied*, 145 S. Ct. 1891 (2025). “But if it does, then, second, we must ask whether the [g]overnment has justified the regulation as consistent with the principles that underpin our nation’s historical tradition of firearm regulation.” *Id.* (internal quotation marks omitted).

Here, the inquiry ends with the first step of the *Bruen* test. At that step, courts ask “whether the weapons regulated by the challenged regulation were in common use for a lawful purpose, [such as] self-defense.” *Id.* at 400. “We know from Supreme Court

precedent that short-barreled shotguns and machineguns are not in common use for a lawful purpose.” *Id.* at 403; *see District of Columbia v. Heller*, 554 U.S. 570, 624 (2008) (noting it would be “startling” to suggest that the National Firearms Act’s restrictions on machineguns might be unconstitutional). Taylor concedes that his weapon qualifies as a machinegun because it shoots multiple rounds with one function of the trigger. We conclude that § 922(o) is constitutional on its face and as applied to Taylor’s conduct in possessing a machinegun.

Accordingly, we affirm the judgment of the district court. We dispense with oral argument because the facts and legal contentions are adequately addressed in the materials before this court and argument would not aid in the decisional process.

AFFIRMED

FILED: September 30, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-4392
(3:23-cr-00129-RCY-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

GERALD KEMONDRE TAYLOR

Defendant - Appellant

JUDGMENT

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. 3:23CR129 (RCY)
)
 GERALD KEMONDRE TAYLOR,)
 Defendant.)
 _____)

MEMORANDUM OPINION

This matter is before the Court on Defendant Gerald Kemondre Taylor’s (“Mr. Taylor,” or “the Defendant”) Motion to Dismiss the Indictment. ECF No. 16. The Defendant seeks dismissal of the indictment charging him with Illegal Possession of a Machinegun, in violation of 18 U.S.C. § 922(o), based on the Supreme Court’s decision in *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111 (2022). *See* Mot. Dismiss Indictment (“Mot. Dismiss”) 1–2, 6–9, ECF No. 16. The Defendant brings both facial and as-applied challenges to § 922(o). For the reasons stated below, the Court will deny the Defendant’s motion in full.

I. BACKGROUND

On May 24, 2023, officers with the Richmond Police Department’s Special Violence Interdiction Unit were conducting surveillance near the Woodland Crossing Apartments in Richmond, Virginia. Gov’t’s Resp. 1–2, ECF No. 22. The officers were patrolling this area because they believed an individual suspected of robbery was nearby. Mot. Dismiss 2; Gov’t’s Resp. 1.

While conducting surveillance, the officers saw Mr. Taylor begin a livestream on Instagram. *See* Mot. Dismiss 2; Gov't's Resp. 1–2. During that livestream, Mr. Taylor flashed what appeared to be a “Glock-style firearm in [his] waistband[,] with a machinegun conversion device on the rear of the slide.” Gov't's Resp. 2. Recognizing Mr. Taylor to be in the nearby

Woodland Crossing Apartments, the officers proceeded to the area. *See* Mot. Dismiss 2; Gov't's Resp. 2. Upon arrival, the officers located Mr. Taylor in an open-air stairwell in one of the apartment buildings. Mot. Dismiss 2; Gov't's Resp. 2. The officers then detained Mr. Taylor and found him to be in possession of a Glock-style handgun with a machinegun conversion device (known as a "switch") attached to the firearm. Mot. Dismiss 2; Gov't's Resp. 2. The switch attached to the firearm converted it into a gun capable of firing multiple bullets with a single trigger pull. Mot. Dismiss 2; Gov't's Resp. 2. After being read his *Miranda* rights, Mr. Taylor admitted to knowing the function of a switch—i.e., that it made the firearm in his possession capable of firing in a fully automatic manner. Gov't's Resp. 2.

On October 4, 2023, a grand jury indicted Mr. Taylor for illegal possession of a machinegun, in violation of 18 U.S.C. § 922(o). Indictment 1, ECF No. 1. Mr. Taylor was arraigned on December 19, 2023, ECF No. 13, and filed the instant Motion to Dismiss, ECF No. 16, the Indictment on January 2, 2024. The Government filed its Response to the Defendant's Motion to Dismiss the Indictment on January 25, 2024. ECF No. 22. The Defendant filed his Reply on February 1, 2024. ECF No. 23.

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 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(o), is unconstitutional on its face and as applied to him because it violates the Second Amendment under *Bruen*'s new text-and-history test.

18 U.S.C. § 922(o) makes it “unlawful for any person to transfer or possess a machinegun,” subject to two narrow exceptions not presently at issue. *See* 18 U.S.C. § 922(o).

The Defendant argues that *Bruen* “upended Second Amendment doctrine” with its text-and-history test. Mot. Dismiss 1. He argues that “[c]riminalizing gun possession pursuant to 18 U.S.C. § 922(o) is unconstitutional under *Bruen*'s ‘text and history’ standard,” and that, as a result, the burden shifts to the government to show that § 922(o) is “consistent with our country’s historical traditions in regulating guns.” *Id.* at 6–7 (quoting *New York State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2138 (2022)). The Defendant ultimately concludes that the government cannot meet its burden, and that § 922(o) is therefore unconstitutional both facially and as applied to him. *See id.* at 7–9.

This Court has already carefully considered and denied each of the arguments set forth in this Motion to Dismiss. *See United States v. Lane*, --- F. Supp. 3d ---, 2023 WL 5663084 (E.D. Va. Aug. 31, 2023).¹ Other federal courts have persuasively done the same, with similar outcomes. *See, e.g., United States v. Hoover*, 635 F. Supp. 3d 1305, 1325 (M.D. Fla. 2022); *United States v. Simien*, 655 F. Supp. 3d, 540, 553 (W.D. Tex. 2023). The briefing in the present case provides no new arguments from those posed in *Lane* and therefore no reason for this Court to deviate from its

¹ In *Lane*, this Court found that the plain text of the Second Amendment does not cover the possession of machineguns because “[m]achineguns are ‘dangerous and unusual’ weapons” that are “not . . . ‘in common use.’” *Lane*, 2023 WL 5663084, at *16; *see Lane* 2023 WL 5663084, at *13–16. Accordingly, § 922(o)’s ban on the transfer and possession of machineguns is constitutionally permissible. *See Lane*, 2023 WL 5663084, at *13–16.

prior analysis; as such, the Court 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. 16, will be denied.

An appropriate Order shall issue.

/s/ 

Roderick C. Young
United States District Judge

Richmond, Virginia

Date: February 7, 2024

² The Defendant here argues that § 922(o) 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(o) facially criminalizes possessing machineguns, and the statute applies to the Defendant because he was possessing a machinegun. 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 *13–16.