

ELLETT V. UNITED STATES APPENDIX

TENTH CIRCUIT
UNPUBLISHED OPINION

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

July 28, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JASON EUGENE ELLETT, a/k/a
Jason Owens,

Defendant - Appellant.

No. 25-5140
(D.C. No. 4:24-CR-00193-SEH-1)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before **MATHESON, CARSON, and ROSSMAN**, Circuit Judges.

A grand jury indicted Jason Eugene Ellett on one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). He moved to dismiss the indictment, arguing under *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), and *United States v. Rahimi*, 602 U.S. 680 (2024), that § 922(g)(1) violates the Second Amendment as applied to him. The district court denied the

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

motion to dismiss, and Mr. Ellett pleaded guilty. The court sentenced him to a five-year term of probation.

On appeal, Mr. Ellett renews his as-applied challenge to § 922(g)(1) “for preservation purposes and potential future review.” Aplt. Br. at 7. But he concedes, as he must, our precedent forecloses his challenge. *See id.*; *see also id.* at 12–14.

In *United States v. McCane*, 573 F.3d 1037, 1047 (10th Cir. 2009), we held § 922(g)(1) does not violate the Second Amendment. We have since upheld *McCane*, even after *Bruen* and *Rahimi*. *See Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025), *cert. denied*, 146 S. Ct. 1768 (2026); *cf. Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 118–19 (10th Cir. 2024) (explaining neither *Bruen* nor *Rahimi* altered the Supreme Court’s view that “prohibitions on the possession of firearms by felons” are “presumptively lawful”) (internal quotation marks omitted).

Further, as Mr. Ellett acknowledges, *see* Aplt. Br. at 37–38, the application of § 922(g)(1) does not depend on whether the predicate felony was a violent or nonviolent offense. *See Vincent*, 127 F.4th at 1266 (“*McCane* . . . upheld the constitutionality of § 922(g)(1) for all individuals convicted of felonies,” including “nonviolent offenders”); *United States v. Warner*, 131 F.4th 1137, 1148 (10th Cir. 2025) (“[E]ven after *Rahimi*, § 922(g)(1) is constitutional as applied to non-violent felons.”).

At bottom, despite Mr. Ellett’s insistence that *Vincent*, *Warner*, and *Polis* were “wrongly decided,” Aplt. Br. at 14, and that *McCane* is no longer good law, *see id.* at 18–21, he agrees these cases are binding in our circuit. *See United States v. Lira-*

Ramirez, 951 F.3d 1258, 1260 (10th Cir. 2020) (“We must generally follow our precedents absent en banc consideration.”). We affirm the district court’s judgment.

Entered for the Court

Veronica S. Rossman
Circuit Judge

DISTRICT COURT
OPINION AND ORDER
DENYING MOTION TO DISMISS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 24-CR-00193-SEH

JASON EUGENE ELLETT,

Defendant.

OPINION AND ORDER

Before the Court is Defendant's opposed motion to dismiss the indictment. [ECF No. 17]. For the reasons provided below, the motion is DENIED.

I. Background/Procedural History

A federal grand jury charged Jason Eugene Ellet in a one count indictment with being a felon in possession of a firearm and ammunition in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(8). [ECF No. 2]. Ellett moves to dismiss the indictment; he contends that the criminal statute under which he is charged, Section 922(g)(1), is unconstitutional as applied to him. [ECF No. 17 at 2]. Because *United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009) remains binding Tenth Circuit precedent, this Court is obligated to follow that decision and deny Ellett's motion. However, even under the framework set out in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1

(2022), the result is the same. Because this Nation’s historical tradition of firearm regulation at and around the time of the founding includes laws that are analogous to the contemporary disarmament of convicted felons like Ellett, Section 922(g)(1) is a valid exercise of congressional authority.

II. Analysis

A. The Parties’ Arguments

Ellett makes four main arguments to support his position that Section 922(g)(1) is unconstitutional as applied to him. First, Ellett argues that the Tenth Circuit’s decision in *Vincent v. Garland*, 80 F.4th 1197 (10th Cir. 2023) was vacated by the Supreme Court, is no longer binding on this Court, and was incorrectly decided. [ECF No. 17 at 2–3, 12–15]. Second, Ellett is among “the people” protected by the Second Amendment. [*Id.* at 5–8]. Third, the Second Amendment’s plain text covers Ellett’s alleged conduct. [*Id.* at 8–9]. And fourth, the government cannot meet its burden to show that Section 922(g)(1) is consistent with the Nation’s historical tradition of firearm regulation. [*Id.* at 9–12]. This, according to Ellett, is because the Nation’s historical tradition only supports disarmament of individuals who have a proclivity for violence or whose firearm possession would threaten public safety. [*Id.* at 9–12]. Because Ellett’s prior felonies are non-violent in nature, he argues that the Court should hold that “there is no historical tradition supporting the permanent, perpetual disarmament of persons who have been

alleged to have committed crimes like Mr. Ellett's alleged prior felonies." [*Id.* at 12].

The government's response is nearly identical to its response in two cases that were recently before the undersigned: *United States v. Sutton*, No. 24-CR-00168-SEH, 2024 WL 3932841 (N.D. Okla. Aug. 23, 2024); and *United States v. Wallace*, No. 24-CR-00121-SEH, 2024 WL 4256707 (N.D. Okla. Sept. 20, 2024).

Ellett was granted leave to file a reply in support of his motion. [ECF No. 20]. In his reply, Ellett argues that the Court should not consider factual allegations included in the government's response that are not contained in the indictment. [ECF No. 21 at 1]. Ellet further argues that the Court should follow the decision in *United States v. Forbis*, No. 23-CR-00133-GKF, 2024 WL 3824642 (N.D. Okla. Aug. 14, 2024) and determine that it is not bound by the Tenth Circuit's decision in *Vincent* and *McCane*, and focus on whether Ellet's underlying felonies demonstrate that he poses a danger to the public if armed. [ECF No. 21 at 1–4]. Additionally, Ellett asserts that one of the predicate convictions listed in the indictment (bail jumping under Okla. Stat. tit. 22, § 1110) is not punishable by imprisonment for a term exceeding one year and cannot support a conviction under Section 922(g)(1), and the Court should strike that predicate offense from the indictment pursuant to Fed. R. Civ. P. 7(d). [*Id.* at 2].

Ellett also reiterates in his reply that the relevant conduct for Second Amendment protection is firearm possession, not possession of a firearm “while holding a particular status.” [ECF No. 21 at 4–5]. Finally, Ellett provides several specific responses to the government’s historical analysis of firearm regulation. [*Id.* at 5–10].

B. Discussion

Most of the arguments raised by the parties in this case were raised and addressed by the Court in *Sutton* and *Wallace*. The Court has carefully considered these arguments and finds that for the reasons explained in *Sutton* and *Wallace*, Section 922(g)(1), as applied to Ellett, is a constitutional limitation on his Second Amendment rights. The Court will, however, specifically address a few additional points.

First, the Court assumes without deciding that Ellett is among “the people” protected by the Second Amendment.

Second, the Court agrees that it is bound by the factual allegations in the indictment. *See United States v. Welch*, 327 F.3d 1081, 1090–91 (10th Cir. 2003), *abrogation on other grounds recognized in United States v. McBride*, 94 F.4th 1036, 1043 n.9 (10th Cir. 2024). However, this point is not outcome-determinative under the Court’s analysis. If Ellett is a convicted felon, regardless of the facts or circumstances of his underlying felonies, restricting his Second Amendment rights under Section 922(g)(1) comports with this

Nation's history and tradition of firearm regulation. *See Sutton*, 2024 WL 3932841, at *5–9.

Third, Ellett contends that because bail jumping under Okla. Stat. tit. 22, § 1110 is not punishable by imprisonment for a term exceeding one year, a conviction under that statute cannot support a conviction under Section 922(g)(1). However, Ellett was not convicted under Okla. Stat. tit. 22, § 1110. He pled guilty to bail jumping under Okla. Stat. tit. 59, § 1335. Judgment and Sentence on Motion to Revoke Suspended Sentence at 1, *State of Oklahoma v. Ellett*. (Dist. Ct. of Tulsa Cnty. State of Okla. Apr. 12, 2016) (online docket sheet available at <https://oscn.net/dockets/GetCaseInformation.aspx?db=ottawa&number=CF-2011-272>).¹ Unlike Okla. Stat. tit. 22, § 1110, Okla. Stat. tit. 59, § 1335 permits punishment by imprisonment for a term exceeding one year.

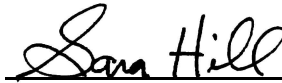
¹ The Court takes judicial notice of this state court filing. *GeoMetWatch Corp. v. Behunin*, 38 F.4th 1183, 1205 (taking judicial notice of filings from a state court); *St. Louis Baptist Temple, Inc. v. Federal Deposit Ins. Corp.*, 605 F.2d 1169, 1172 (10th Cir. Sept. 19, 1979) (“it has been held that federal courts, in appropriate circumstances, may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.”); *Thompson v. Sanders*, No. 17-CV-308-GKF-FHM, 2017 WL 11493746, at *1 n.1 (N.D. Okla. Nov. 16, 2017) (quoting *Thompson* with approval to take judicial notice of Oklahoma state court charges); Fed. R. Evid. 201(c)(1) (“The Court ... may take judicial notice on its own”); 21B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 5106.4 (2d ed. 2017) (June 2024 update).

Therefore, the Court denies Ellet's request to strike the bail jumping charge from the Indictment pursuant to Fed. R. Crim. P. 7(d).

III. Conclusion

For the reasons explained in the Court's prior orders cited above and the additional reasons stated in this order, Defendant Jason Eugene Ellett's motion to dismiss the indictment [ECF No. 17] is DENIED.

DATED this 11th day of October, 2024.

A handwritten signature in black ink, reading "Sara Hill", is written over a horizontal line.

Sara E. Hill
UNITED STATES DISTRICT JUDGE

DISTRICT COURT
JUDGMENT AND
SENTENCE



UNITED STATES DISTRICT COURT

Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

JASON EUGENE ELLETT
a/k/a "Jason Owens"

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:24-CR-00193-SEH-1

USM Number: 26523-511

Robert Allen Ridenour and Jared Guemmer
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count One of the Indictment

☐ pleaded nolo contendere to count(s)
which was accepted by the Court.

☐ was found guilty on count(s)
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 922(g)(1) and 924(a)(8)	Felon in Possession of a Firearm and Ammunition	6/8/23	1

The defendant is sentenced as provided in this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant must notify the Court and United States Attorney of material changes in economic circumstances.

August 21, 2025

Date of Imposition of Judgment

Sara E. Hill

Signature of Judge

Sara E. Hill, United States District Judge

Name and Title of Judge

August 22, 2025

Date

DEFENDANT: Jason Eugene Ellett
CASE NUMBER: 4:24-CR-00193-SEH-1

PROBATION

You are hereby sentenced to probation for a term of: Five years.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*
7. ☐ You must make restitution in accordance with 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663, 3663A, and 3664. *(check if applicable)*
8. You must pay the assessment imposed in accordance with 18 U.S.C. § 3013.
9. If this judgment imposes a fine, you must pay in accordance with the Schedule of Payments sheet of this judgment.
10. You must notify the court of any material change in your economic circumstances that might affect your ability to pay restitution, fines, or special assessments.

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Jason Eugene Ellett
CASE NUMBER: 4:24-CR-00193-SEH-1

STANDARD CONDITIONS OF PROBATION

As part of your supervision, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when to report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by the probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may, after obtaining Court approval, notify the person about the risk or require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

AO 245B (Rev. 11/16) Judgment in a Criminal Case
Sheet 4B — Probation

DEFENDANT: Jason Eugene Ellett
CASE NUMBER: 4:24-CR-00193-SEH-1

SPECIAL CONDITIONS OF PROBATION

1. The defendant shall submit his person, property, residence, office, vehicle, cellular telephone, computer, or any other electronic communication device, to a search conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
2. The defendant shall successfully participate in a program of testing and treatment, to include inpatient treatment, for drug and alcohol abuse, at a treatment facility and on a schedule determined by the probation officer. The defendant shall abide by the policies and procedures of the testing and treatment program to include directions that the defendant undergo urinalysis or other types of drug testing consisting of no more than eight tests per month if contemplated as part of the testing and treatment program. The defendant shall waive any right of confidentiality in any records for drug and alcohol treatment to allow the probation officer to review the course of testing and treatment and progress with the treatment provider.

U.S. Probation Officer Use Only

A U.S Probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this Judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

AO 245B (Rev. 11/16) Judgment in a Criminal Case
Sheet 5 — Criminal Monetary Penalties

DEFENDANT: Jason Eugene Ellett
CASE NUMBER: 4:24-CR-00193-SEH-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$100	N/A	N/A	N/A	N/A

☐ The determination of restitution is deferred until
An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS \$ _____ \$ _____

☐ Restitution amount ordered pursuant to Plea Agreement \$ _____

☐ The defendant must pay interest on any fine or restitution of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the Judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The Court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Jason Eugene Ellett
CASE NUMBER: 4:24-CR-00193-SEH-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A** ☒ Lump sum payment of \$ 100 due immediately, balance due
- ☐ not later than _____, or
- ☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B** ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C** ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this Judgment; or
- D** ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E** ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The Court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** ☐ Special instructions regarding the payment of criminal monetary penalties:
- Any monetary payment is due in full immediately, but payable on a schedule to commence no later than 60 days following imposition of sentence in equal monthly payments of \$100 or 10% of net income (take home pay), whichever is greater, over the duration of the term of probation and thereafter as prescribed by law for as long as some debt remains. Notwithstanding establishment of a payment schedule, nothing shall prohibit the United States from executing or levying upon property of the defendant discovered before or after the date of this Judgment.

Unless the Court has expressly ordered otherwise, if this Judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several
Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
Firearms and ammunition are forfeited as directed in the Preliminary Order of Forfeiture, ECF No. 49.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.