

No. 26-_____

In the
Supreme Court of the United States

MAURICE SMITH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PETITIONER'S APPENDIX

K. ANTHONY THOMAS

TIMOTHY M. SHEPHERD

Counsel of Record

OFFICE OF THE FEDERAL PUBLIC DEFENDER

22 South Clinton Avenue

Station Plaza #4, 4th Floor

Trenton, New Jersey 08609

(609) 690-0414

timothy_shepherd@fd.org

Counsel for Petitioner

October 5, 2026

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Appendix A

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-2734

UNITED STATES OF AMERICA

v.

MAURICE SMITH,

Appellant

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. No. 2:23-cr-00129-022)
District Judge: Honorable William S. Stickman, IV

Submitted Under Third Circuit L.A.R. 34.1(a)
November 14, 2025

Before: RESTREPO, McKEE, and AMBRO, *Circuit Judges*

(Opinion filed: December 16, 2025)

OPINION*

McKEE, *Circuit Judge*.

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Maurice Smith appeals the District Court’s denial of his motion to suppress evidence seized from his residence pursuant to a search warrant, and his motion to dismiss his indictment.¹ For the reasons that follow, we will affirm the District Court.

I.²

Smith argues that: (1) the District Court erred in finding that the search warrant was supported by probable cause; and (2) the *Leon* “good faith” exception to the exclusionary rule does not apply. We need not determine whether the warrant was supported by probable cause because the good faith rule of *Leon* does apply given the circumstances surrounding this search.³

In *United States v. Leon*, the Supreme Court held that “a warrant issued by a magistrate normally suffices to establish that a law enforcement officer has acted in good faith in conducting the search.”⁴ “[O]ur good-faith inquiry is confined to the objectively ascertainable question whether a reasonably well trained officer would have known that the search was illegal despite the magistrate’s authorization.”⁵ “[S]uppression of evidence obtained pursuant to a warrant should be ordered only on a case-by-case basis and only in those unusual cases in which exclusion will further the purposes of the exclusionary

¹ After the District Court denied his motion to suppress and motion to dismiss, Smith entered a conditional guilty plea, reserving his right to appeal both rulings.

² The District Court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 28 U.S.C. § 1291. Our review of the District Court’s ruling on the good faith exception is plenary. *United States v. Williams*, 3 F.3d 69, 71 n.2 (3d Cir. 1993).

³ See *United States v. Leon*, 468 U.S. 897, 925 (1984) (holding that courts can “reject suppression motions posing no important Fourth Amendment questions by turning immediately to a consideration of the officers’ good faith”).

⁴ *Id.* at 922 (citation modified).

⁵ *Id.* at 922 n.23.

rule[,]” which “is designed to deter police misconduct rather than to punish the errors of judges and magistrates.”⁶

Smith attempts to rely on an exception to the holding in *Leon*.⁷ He asserts that the warrant was “based on an affidavit ‘so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.’”⁸ However, the “threshold for establishing this exception is a high one,”⁹ and Smith fails to meet his burden.

We realize that, perhaps because officers wished to camouflage their real reason for searching the residence, the affidavit completely omitted the fact that Peters and Latimer were suspects in a drug trafficking conspiracy investigation that began as early as July 2022. Additionally, the affidavit did not allege any recent drug transactions, nor did it contain any allegation that firearms were being used in furtherance of drug trafficking. Instead, it relied on generalized assertions about Peters’ need for protection and speculative inferences rooted in nothing more than his status as a fugitive.

Nevertheless, the affidavit was not “bare bones,” nor did it “rely on [Affiants’] unsupported belief that probable cause exist[ed].”¹⁰ The officers described their training and experience, outlined their surveillance efforts, and provided a narrative that, although

⁶ *Id.* at 916, 918.

⁷ See *United States v. Hodge*, 246 F.3d 301, 308 (3d Cir. 2001) (citing *Leon*, 468 U.S. at 922–23).

⁸ *Leon*, 468 U.S. at 923 (citation modified).

⁹ *Messerschmidt v. Millender*, 565 U.S. 535, 547 (2012).

¹⁰ *United States v. Pavulak*, 700 F.3d 651, 664 (3d Cir. 2012) (citation modified).

flawed, was not devoid of factual content. Moreover, it does not appear that the Affiants executed the search.¹¹

Accordingly, it was not “entirely unreasonable” for law enforcement to conclude the warrant was valid; thus, *Leon* applies.¹² Because the good faith exception applies, we will affirm.

II.¹³

Smith also moved to dismiss his indictment, arguing that 18 U.S.C. § 922(g)(1) violates the Second Amendment as applied to him. However, Smith concedes that his argument is foreclosed by our decisions in *United States v. Moore* and *United States v. Quail* because he was under supervision at the time of his indictment.¹⁴ We agree.

¹¹ See *United States v. Zimmerman*, 277 F.3d 426, 438 (3d Cir. 2002) (reasoning that, “particularly where the affiant is also one of the executing officers, it is somewhat disingenuous, after having gone to the magistrate with [a] paltry showing . . . to suggest . . . [that] the search and seizure are insulated because the officer’s reliance on that error was objectively reasonable”).

¹² *Id.* at 437; *Leon*, 468 U.S. at 923.

¹³ We have jurisdiction pursuant to 28 U.S.C. § 1291. We review the District Court’s legal conclusions de novo and its factual findings for clear error. *United States v. Moore*, 111 F.4th 266, 268 n.1 (3d Cir. 2024), cert. denied, No. 24-968, 2025 WL 1787742 (U.S. June 30, 2025).

¹⁴ *Moore*, 111 F.4th at 272 (holding “that convicts may be disarmed while serving their sentences on [federal] supervised release”); *Quail*, 126 F.4th 215, 217 (3d Cir. 2025) (extending *Moore*’s logic to “appl[y] with equal force to defendants who are on state supervised release—including a sentence of parole or probation”).

III.

For the reasons discussed above, we will affirm the District Court's orders denying Smith's motion to suppress evidence pursuant to the search warrant and motion to dismiss his indictment, and the District Court's judgment of sentence.

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-2734

UNITED STATES OF AMERICA

v.

MAURICE SMITH,

Appellant

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. No. 2:23-cr-00129-022)

SUR PETITION FOR REHEARING

Present: CHAGARES, *Chief Judge*, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, BOVE, MASCOTT, MCKEE*, and AMBRO*. *Circuit Judges*

The petition for rehearing filed by the Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of

*Hon. Theodore A. McKee's and Hon. Thomas L. Ambro's votes are limited to panel rehearing.

the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/Theodore A. McKee
Circuit Judge

Dated: July 7, 2026
PDB/cc: All Counsel of Record

Appendix CIN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MAURICE SMITH,

Defendant.

Criminal No. 2:23-cr-129 - 22

Hon. William S. Stickman IV

MEMORANDUM OPINION

WILLIAM S. STICKMAN IV, United States District Judge

On October 17, 2023, Maurice Smith (“Smith”) was charged by superseding indictment at Count Five with Possession of a Firearm by a Convicted Felon in violation of 18 U.S.C. § 922(g)(1). (ECF No. 538). It is alleged that on or about August 31, 2022, knowing that he had previously been convicted of crimes punishable by a term of imprisonment exceeding one year, Smith possessed a Glock 43x, 9mm pistol, bearing serial number BPGL565, and Aguila and W.I.N. ammunition. (*Id.* at p. 9). The qualifying prior convictions were identified as follows: (1) March 19, 2015, Firearms Not to Be Carried Without a License in the Allegheny County Court of Common Pleas, Pennsylvania at Docket Number CP-02-CR-700-2014; (2) September 7, 2016, Burglary in the Allegheny County Court of Common Pleas, Pennsylvania at Docket Number CP-02-CR-15164-2015; and, (3) September 7, 2016, Robbery and Firearms Not to Be Carried Without a License in the Allegheny County Court of Common Pleas, Pennsylvania at Docket Number CP-02-CR-15168-2015. (*Id.*). The Government has provided the following summary of Smith’s prior felonious conduct:

In March of 2015, Smith was convicted of Firearms No[t] To Be Carried Without a License, a felony of the third degree. He was sentenced to nine to eighteen months incarceration, followed by two years' probation. Approximately three months later, he was convicted for Retail Theft and Possession of a Controlled Substance, for which he was sentenced to probation.

While serving these sentences, the defendant was arrested for Burglary, Robbery, and Conspiracy to Commit Robbery, all first-degree felony offenses, on November 3, 2015. In that instance, the defendant pointed a firearm at his victim and stole his phone, which also contained money and cards within the phone case. The defendant fled from the scene into an abandoned building. The defendant surrendered to police, who later found the stolen items and firearm hidden inside of the building. On September 7, 2016, the defendant was convicted and sentenced to four to eight years' incarceration, followed by 3 years' probation.

On the same day that the defendant pleaded guilty to the Burglary and Robbery case, he pleaded guilty to two additional felony cases. On October 11, 2015, the defendant and his coconspirator, Kendre Cain, took \$150.00 and an Apple iPhone from their victim at gun point. [A]n additional felony. The defendant was charged with felony Robbery and Conspiracy. On September 7, 2016, he was sentenced to four to eight years incarceration. The defendant was convicted of Escape, a felony of the third degree, and sentenced to three years' probation. Importantly, the defendant was still on supervision for these charges at the time of the instant offense.

(ECF No. 873, pp. 2-3).

Smith filed a motion to dismiss the indictment against him arguing that § 922(g)(1) is unconstitutional under the Second Amendment as applied to him. (ECF Nos. 849, 850 and 890). For the following reasons, the Court will deny Smith's motion (ECF No. 849).

I. STANDARD OF REVIEW

The Federal Rules of Criminal Procedure require that an indictment be a plain, concise and definite written statement of the essential facts constituting the offense charged. Fed. R. Crim. P. 7(c)(1). An indictment is sufficient if it includes the elements of the offense intended to be charged, apprises the defendant of what he must be prepared to defend against at trial, and enables him to plead a former acquittal or conviction in the event of a subsequent prosecution. *United States v. Rawlins*, 606 F.3d 73, 78-79 (3d Cir. 2010); *United States v. Vitillo*, 490 F.3d

314, 321 (3d Cir. 2007). An indictment that fails to charge all elements of a crime must be dismissed. *United States v. Cochran*, 17 F.3d 56, 57 (3d Cir. 1994).

A motion to dismiss an indictment is governed by Rule 12 of the Federal Rules of Criminal Procedure (“Rule 12”), which states: “[a] party may 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).

[T]he scope of a district court’s review at the Rule 12 stage is limited. “[A] pretrial motion to dismiss an indictment is not a permissible vehicle for addressing the sufficiency of the government’s evidence.” *United States v. DeLaurentis*, 230 F.3d 659, 660 (3d Cir. 2000) (citations omitted). “The government is entitled to marshal and present its evidence at trial, and have its sufficiency tested by a motion for acquittal pursuant to Federal Rule of Criminal Procedure 29.” *Id.* at 661. There is no criminal corollary to the civil summary judgment mechanism. *Id.* In evaluating a Rule 12 motion to dismiss, a district court must accept as true the factual allegations set forth in the indictment. *United States v. Sampson*, 371 U.S. 75, 78–79, 83 S.Ct. 173, 9 L.Ed.2d 136 (1962); *United States v. Besmajian*, 910 F.2d 1153, 1154 (3d Cir. 1990). “Evidentiary questions—such as credibility determinations and the weighing of proof—should not be determined at this stage.” *Bergrin*, 650 F.3d at 265 (internal marks and citation omitted). Thus, a district court’s review of the facts set forth in the indictment is limited to determining whether, assuming all of those facts as true, a jury could find that the defendant committed the offense for which he was charged. *Panarella*, 277 F.3d at 685; *DeLaurentis*, 230 F.3d at 660.

United States v. Huet, 665 F.3d 588, 595-96 (3d Cir. 2012), *abrogated on other grounds*. Under Rule 12, the Court can dismiss criminal charges in an indictment where there is an infirmity of law in the prosecution, such as an unconstitutional statute.

II. ANALYSIS

The Second Amendment provides that “[a] well regulated Militia, being necessary to the security of a free State, the right of people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II. In 2008, the Supreme Court held that, “on the basis of both text and history,” the Second Amendment protects *an individual’s* right to keep and bear arms. *District of*

Columbia v. Heller, 554 U.S. 570, 595 (2008). The Supreme Court made clear, however, that “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Id.* at 626.

Relevant to the instant motion, the Supreme Court stated:

Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.

Id. at 625-27. It further noted that “these presumptively lawful regulatory measures” were only examples and not an exhaustive list. *Id.* at 627 n.26. “[T]here will be time enough to expound upon the historical justifications for the exceptions we have mentioned if and when those exceptions come before us.” *Id.* at 635.

In June 2010, the Supreme Court held that the Second Amendment right, elucidated in *Heller*, is incorporated against the states. See *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010). More specifically, it held that the “the right to keep and bear arms for the purpose of self-defense” in the home recognized by the Second Amendment “is fully applicable to the states.” *Id.* The Supreme Court reiterated its observations in *Heller*, 554 U.S. at 626, that the right protected by the Second Amendment (like the rights protected elsewhere in the Constitution) is not unlimited and stated plainly: “We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as ‘prohibitions on the possession of firearms by felons and the mentally ill,’ ‘laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.’ We repeat those assurances here.” *McDonald*, 561 U.S. at 786 (quoting *Heller*, 544 U.S. at 626-27). “[I]ncorporation does not imperil every law regulating firearms.” *Id.*

In 2022, the Supreme Court articulated an approach to addressing challenges invoking the Second Amendment in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022). It rejected the kinds of tests developed by the courts of appeal which employed a “means-end” scrutiny. *Bruen*, 142 S. Ct. at 17-20. In their place, the Supreme Court articulated a new test:

In keeping with *Heller*, we hold that when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command.’

Id. at 17 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50, n.10 (1961)). *Bruen* does not explicitly address the propriety of firearm possession bans for persons previously convicted of a felony crime; however, it refers to those falling under the protection of the Second Amendment as “law-abiding” people. Thus, *Bruen* does not upset the Supreme Court’s consistent endorsement of felon disarmament. The Supreme Court explicitly stated that it is “[i]n keeping with *Heller*.” *Id.*

Since then, the United States Court of Appeals for the Third Circuit directly applied *Bruen* in *Range v. Attorney General United States of America*, 69 F.4th 96 (3d Cir. 2023) (*en banc*). The Third Circuit evaluated an as-applied challenge under *Bruen* to the prohibition on felons possessing guns in § 922(g)(1). Range pleaded guilty in 1995 to making a false statement to obtain food stamps. *Id.* at 98. At the time he pleaded guilty, his conviction was considered a misdemeanor punishable by up to five years’ imprisonment. *Id.* But his conviction precluded him from possessing a firearm under § 922(g)(1). *Id.* To reemphasize – Range was not a felon; he committed a nonviolent misdemeanor offense relating to false statements on paperwork for public benefits. Range wanted to possess a hunting rifle and a shotgun for home defense, so he

sought a declaration that § 922(g)(1) violates the Second Amendment as applied to him. *Id.* at 99.

The Third Circuit applied the *Bruen* analysis and ruled in Range’s favor. After determining that Range was one of “the people” to whom the Second Amendment applies, and his proposed conduct (owning a hunting rifle) was protected by the Second Amendment, the Third Circuit then asked whether the government carried its burden to justify stripping Range of that right. In order to justify § 922(g)(1), as it applied to Range, the government needed to show that the statute was “consistent with the Nation’s historical tradition of firearm regulation.” *Id.* (quoting *Bruen*, 142 S. Ct. at 2130). Ultimately, the Third Circuit determined that the government had not met its burden because a review of sources from the founding era and early Republic do not reveal that the disarmament of people like Range was practiced or contemplated. Rather, a review of those sources demonstrated that at the time of the ratification of the Second Amendment, disarmament was limited to individuals who were viewed as dangerous to the community. *Id.* at 103–04. In other words, the Third Circuit held that the government failed to show that the historical tradition of firearms regulation would have deprived Range of his Second Amendment right to possess a firearm in light of his conviction for making false statements on an application for public benefits. *Id.* at 106.

Notably, the Third Circuit emphasized that its decision in *Range* “is a narrow one.” *Id.* at 106. It did not invalidate § 922(g)(1). As Judge Ambro stated in a concurrence joined by two other judges, § 922(g)(1) “remains. . . because it fits within our Nation’s history and tradition of disarming those persons who legislature believe would, if armed, pose a threat to the orderly functioning of society.” *Id.* at 110 (citations omitted). Furthermore, the majority opinion

recognized that the statute is constitutional when applied to violent felons. *Range*, 69 F.4th at 104.

Smith's "as applied" challenge fails. Applying the *Bruen* framework to this case, the threshold question is whether Smith is one of "the people" protected by the Second Amendment despite having prior felony convictions. *Range*, 69 F.4th at 101. In *Range*, the Third Circuit majority held that "the people" in the constitutional text refers to all Americans and not only law-abiding persons. *Id.* The Third Circuit agreed with a statement of then-Judge Amy Coney Barrett that "'all people have the right to keep and bear arms,' though the legislature may constitutionally 'strip certain groups of that right.'" *Id.* at 102 (quoting *Kanter v. Barr*, 919 F.3d 437, 452 (7th Cir. 2019) (Barrett, J., dissenting)). Accordingly, as the Government concedes (ECF No. 873, p. 13), Smith is one of "the people" protected by the Second Amendment.

Having determined that Smith is one of "the people," the next question is whether "'the Second Amendment's plain text covers [Smith's] conduct,' and 'the Constitution presumptively protects that conduct.'" *Range*, 69 F.4th at 103 (quoting *Bruen*, 142 S. Ct. at 2126). The Third Circuit in *Range* considered the defendant's underlying offense of conviction. Consequently, the Court, contrary to Smith's argument otherwise, must consider Smith's alleged criminal conduct and his criminal history.

Smith was located in a house that was the subject of a search warrant. The Government has represented that five firearms, extended magazines, and ammunition were recovered. (ECF No. 873, p. 2). While being present in a house with firearms is not necessarily disruptive to the orderly functioning of society, it is alleged by the Government that only one firearm was licensed and registered. Two others had obliterated serial numbers. The Government has alleged that the gun which is the subject of the charge pending against Smith had his DNA present on textured

areas. Smith has advanced no argument that he possessed the gun in the residence for self-defense. It is hard for him to make such an argument as he is classified as a person prohibited from possessing a firearm by virtue of his criminal history.

Smith, unlike Range, is a violent felon. The Government has outlined some of Smith's criminal history in its response. (ECF No. 873). As noted in the superseding indictment, Smith has been convicted of carrying a firearm without a license on two separate occasions. He has also been convicted of burglary and robbery. Of note, Smith used a firearm to commit these offenses. In other words, he has robbed innocent people at gunpoint. Smith's criminal history demonstrates that he has engaged in conduct reasonably likely to cause danger to life and limb and general mayhem. Added to this, Smith has a propensity to do so while under court supervision. He was on state probation at the time he engaged in the charged criminal conduct.

Section 922(g)(1)'s ban on firearm possession by persons, like Smith, is consistent with our country's historic tradition of regulating firearms. While, as *Range* observed, there is no historical tradition from the colonial era or early Republic categorically disarming those merely convicted of crimes (particularly, crimes relating to the sort of conduct that Range committed), there is a long history of disarming people who pose a danger to society. As early as the seventh century, English law permitted the disarmament of violent and dangerous people. Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 Wyo. L. Rev. 249, 258 (2020) (citing Ancient Laws and Institutes of England 3 (Benjamin Thorpe ed., 1840) (describing the Laws of King Aethelbirht as banning the provision of arms to another "where there is strife"). A millennium later, in the seventeenth century, King Charles II ordered the Lord Mayor of London to disarm "dangerous and disaffected persons." *Id.* at 259 (citing 10 Calendar of State Papers, Domestic Series, Domestic Series of the Reign of Charles II,

1660-1670 237 (1895)). This included Catholics who, following the failed gunpowder plot, were viewed as disloyal and potentially dangerous. *Id.* at 258 (citing 1 Stuart Royal Proclamations: Royal Proclamations of King James I 1603-1625, 247-48 (June 2, 1610) (James F. Larkin & Paul I. Hughes eds., 1973)).

Colonial laws mirrored English models and similarly disarmed those persons viewed as a danger to public order, including American Indians, Catholics, Quakers, slaves, and freed Black people. There is no question that such laws imposing discriminatory class-wide disarmament would, thankfully, fail constitutional scrutiny under modern standards. Nevertheless, they demonstrate that at the time of the founding, the American colonists were accustomed to laws depriving people posing a threat to society (as they viewed it) from possessing arms. Colonial laws also disarmed those whose actions made them a danger to the community. Laws passed in Massachusetts Bay and New Hampshire forbade the carrying of arms “in an aggressive and terrifying manner.” *Id.* at 262. Likewise, Virginia allowed the disarmament of those “who ride, or go, offensively armed, in Terror of the People.” *Id.* at 262 (citing George Webb, The Office of Authority of a Justice of the Peace 92-93 (1736)).

At the time of the ratification of the Second Amendment, alongside the several states’ declarations of rights, the framers and the people understood that the right to keep and bear arms extended to all “peaceable” citizens. Wyoming LR at 266 (citing 2 BERNARD SCHWARTZ, THE BILL OF RIGHTS: A DOCUMENTARY HISTORY 675 (1971)); *see also* Stephen Halbrook, THAT EVERY MAN BE ARMED 86 (revised ed. 2013) (“[T]he Second Amendment...originated in part from Samuel Adams’s proposal...that Congress could not disarm any peaceable citizens.”). Samuel Johnson’s dictionary from the time of ratification defined “peaceable” as “1. Free from war; free from tumult; 2. Quiet; undisturbed; 3. Not violent; not bloody; 4. Not quarrelsome; not

turbulent.” 2 Samuel Johnson, A DICTIONARY OF THE ENGLISH LANGUAGE (5th ed. 1773).¹ The prevailing view that “peaceable” citizens were secure in their right to keep and bear arms excluded those who did not fall within that definition—those who were, conversely, dangerous. As Third Circuit Judge Thomas M. Hardiman’s concurring opinion in *Binderup v. Att’y Gen. United States of America*, 836 F.3d 336, 368 (3d Cir. 2016) observed:

[T]he debates from the Pennsylvania, Massachusetts and New Hampshire ratifying conventions, which were considered “highly influential” by the Supreme Court in *Heller*...confirm that the common law right to keep and bear arms did not extend to those who were likely to commit violent offenses. Hence the best evidence we have indicates that the right to keep and bear arms was understood to exclude those who presented a danger to the public.

(internal citations omitted).

The disarming of people who pose a danger to society is deeply rooted in our country’s legal traditions. “The right to keep and bear arms always has been subject to careful limitations,” which “are at their zenith when applied to people who are the antithesis of the law-abiding citizen who wants to exercise his or her right to self-defense, whether at home or in public, and who may also enjoy the various sports and other activities that involve guns.” *Atkinson v. Garland*, 70 F.4th 1018, 1037 (7th Cir. 2023) (Wood, J., dissenting). Holding § 922(g)(1) unconstitutional as applied to a defendant like Smith would strip Congress of its ability to protect the public from a clear and present danger. This is not something that the Court is willing to condone. Smith’s background shows that he poses a danger to society. It is consistent with the Supreme Court’s observation in *Heller* and its progeny, as well as historical tradition, to deprive him of his right to possess a firearm. The prohibition on firearm possession by felons under § 922(g)(1) does not violate the Second Amendment, particularly as applied to Smith.

¹ Johnson’s dictionary is an authoritative resource for the meaning of words as understood by the founding generation. The Supreme Court cited to it in *Heller* to interpret the language of the Second Amendment. *See Heller*, 554 U.S. at 582-84.

In sum, § 922(g)(1) is constitutional as applied to Smith.

III. CONCLUSION

For the foregoing reasons, Smith's motion will be denied. An Order of Court will follow.

BY THE COURT:

A handwritten signature in black ink, appearing to read "W. S. Stickman IV", written over a horizontal line.

WILLIAM S. STICKMAN IV
UNITED STATES DISTRICT JUDGE

3-1-2024

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MAURICE SMITH,

Defendant.

Criminal No. 2:23-cr-129 - 22

Hon. William S. Stickman IV

ORDER OF COURT

AND NOW, this 1 day of March 2024, for the reasons set forth in the Memorandum Opinion filed this day, IT IS HEREBY ORDERED that Defendant Maurice Smith's Motion to Dismiss Count Five, Superseding Indictment (ECF No. 849) is DENIED.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'W. S. Stickman IV', written over a horizontal line.

WILLIAM S. STICKMAN IV
UNITED STATES DISTRICT JUDGE

Appendix D

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MAURICE SMITH,

Defendant.

Criminal No. 2:23-cr-129 - 22

Hon. William S. Stickman IV

MEMORANDUM OPINION

WILLIAM S. STICKMAN IV, United States District Judge

Defendant Maurice Smith (“Smith”) filed a Motion to Suppress Firearm and Accompanying Ammunition Seized from 21 Trent Street (ECF No. 851).¹ The Government filed a response arguing that Smith’s motion should be denied. After careful consideration of the record and the parties’ arguments, the Court will deny Smith’s motion for the following reasons.

I. STANDARD OF REVIEW

The Fourth Amendment requires that search warrants be supported by probable cause. U.S. Const. Amend. IV. The probable cause standard for property searches under the Fourth Amendment is well-established. Whether probable cause exists is to be determined by a practical and commonsense approach. *Illinois v. Gates*, 462 U.S. 213 (1983). The appropriate inquiry is “whether, given all the circumstances set forth in the affidavit ... including the [veracity] and ‘basis of knowledge’ of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Id.* at 238–39. When

¹ The Court has jurisdiction over the suppression motion under 18 U.S.C. § 3231.

reviewing a magistrate (or state court judge's) determination of probable cause to issue a warrant, a district court should "[pay] great deference" to the magistrate's decision. *Id.* at 236. This standard means that "the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants." *Id.* at 237, n.10. In *Massachusetts v. Upton*, 466 U.S. 727, 728 (1984), the Supreme Court emphasized that a reviewing court is not to conduct a "*de novo* probable cause determination" but is to decide merely "whether the evidence reviewed as a whole provided a substantial basis for the ... finding of probable cause." Such deference, however, "does not mean that reviewing courts should simply rubber stamp a magistrate's conclusion." *United States v. Miknevich*, 638 F.3d 178, 182 (3d Cir. 2011) (citing *United States v. Tehfe*, 722 F.2d 1114, 1117 (3d Cir. 1983)). Rather, the duty of the reviewing court is to "ensure that the state district justice had a 'substantial basis' for concluding that the affidavit supporting the warrant established probable cause." *United States v. Mortimer*, 387 F. App'x 138, 140 (3d Cir. 2005) (citing *United States v. Jones*, 994 F.2d 1051, 1054 (3d Cir. 1993)); *see also United States v. Conley*, 4 F.3d 1200, 1205 (3d Cir. 1993) ("Keeping in mind that the task of the issuing magistrate is simply to determine whether there is a fair probability that contraband or evidence of a crime will be found in a particular place, a reviewing court is to uphold the warrant as long as there is a substantial basis for a fair probability that evidence will be found.") (internal quotation marks omitted).

II. FACTUAL BACKGROUND

An Application for Search Warrant and Authorization ("Warrant") was applied for on August 31, 2022 at 9:15 a.m. by United States Marshals Service ("USMS") Deputized Task Force Officer and Pittsburgh Bureau of Police ("PBP") Narcotics Detective Joseph Novakowski ("Novakowski") and PBP Officer John Denis ("Denis"). That same day, the Honorable Kelly E.

Bigley of the Criminal Division of the Court of Common Pleas of Allegheny County, Pennsylvania, issued the Warrant. The items to be searched and seized were identified as “the bodies of Damon PETERS [] and Micah LATIMER []. Any and all firearms, to include that observed being carried by Damon Peters during surveillance, ammunition, firearm components.” (ECF No. 851-1, p. 1). The description of the place to be seized was “21 Trent Street Pittsburgh PA 15219. This is a two story red brick structure, marked with ‘21’ in white next to the front door. Allegheny County Parcel ID: 0010-J-00087-0000-0.” (*Id.*).

The Affidavit of Probable Cause (“Affidavit”) to the Warrant explains that a felony warrant was obtained for Damon Peters (“Peters”) on April 27, 2022. Peters was charged with various violations of the Pennsylvania Crimes Code – i.e., two counts of aggravated assault, carrying a firearm without a license, discharging a firearm in an occupied structure, possessing instruments of crime, and recklessly discharging a weapon – for a shooting incident between him and an unknown individual on April 17, 2022. (*Id.* at 2). Novakowski and Denis believed that Peters “would need to retain possession of a firearm in order to protect himself from retaliation.” (*Id.* at 3).

An arrest warrant was also obtained for Micah Latimer (“Latimer”) on August 4, 2022. Latimer was charged with simple assault, in violation of the Pennsylvania Crimes Code, for a domestic violence incident that occurred that day. Latimer’s listed address was “21 Trent Street Pittsburgh PA 15219” (“21 Trent Street”). (*Id.* at 2).

According to the Affidavit, Peters had been wanted for months and the officers had developed information that he was frequenting 21 Trent Street. On August 30, 2022, Denis observed a vehicle Peters was a passenger in park in front of 211 Saint Joseph Street. As Peters walked to the front door of 211 Saint Joseph Street, Denis observed Peters “holding a distinct L-

shape object in the front object of his hoodie,” that he “immediately recognized this as a firearm.” (*Id.* at 3). After that, Denis and another detective positioned themselves to observe the front of 21 Trent Steet. They watched Latimer exit and return to the residence four times. At 1725 hours, they observed Latimer and Peters both exit the residence. Peters was holding a fanny pack with his right hand, “which was immediately recognized as a firearm” by the officers. (*Id.*).

The Government has represented that the following regarding the execution of the Warrant on August 31, 2022, at 11:40 a.m. (ECF No. 898, p. 2). Peters was observed leaving 21 Trent Steet with a firearm in his hand at 10:58 a.m., and returning at 11:27 a.m. When the Warrant was executed at 11:40 a.m., Smith exited the residence along with various other individuals, including Peters and Latimer. A Sig Sauer with an extended magazine and an obliterated serial number was recovered from under the couch in the living room. In the second-floor bedroom, officers recovered a stolen silver and tan SCCY 9mm pistol with a red dot sight and a Ruger 9mm pistol with an obliterated serial number from a storage seat at the foot of a bed. Officers also recovered a 9mm magazine under a dresser in the same room. Smith’s identification was recovered from the nightstand in this room. In the second-floor middle bedroom, officers recovered a 9mm Glock magazine, a plastic bag of ammunition, and a box of new and unused stamp bags. Ammunition and indicia for Latimer were recovered from the third-floor left bedroom. A Glock 43x was recovered from the third-floor left bedroom closet and it was registered to the known girlfriend of Peters. (*Id.*).

III. ANALYSIS

The Court is cognizant of its limited role. Its role is not to determine whether probable cause actually existed. *United States v. Hodge*, 246 F.3d 301, 305 (3d Cir. 2001). Instead, it

must decide whether the issuing state court judge had “a ‘substantial basis’ for finding probable cause.” *Id.* (quoting *United States v. Jones*, 994 F.2d 1051, 1054 (3d Cir. 1993)). The Court holds that a substantial basis exists to support the probable cause finding of the state court judge.

There is ample evidence identified in the Affidavit that established a fair probability that Peters and Latimer, and evidence of a crime (i.e., illegal possession of firearms, ammunition, and firearm components), would be found at 21 Trent Steet. “If there is probable cause to believe that someone committed a crime, then the likelihood that that person’s residence contains evidence of the crime increases.” *Jones*, 994 F.2d at 1055-56 (quoting *Gates*, 462 U.S. at 232). This is certainly true as to Latimer; he had an active arrest warrant and 21 Trent Street was his residence. As to Peters, there was enough evidence set forth in the Affidavit for the state court judge to conclude that Latimer’s residence was a place where Peters was frequently visiting (and possibly staying), after being a fugitive for months. It was reasonable for the state court judge to infer that any firearms used by Peters would be found there with him given that Peters’s felony arrest warrant was for a shootout and the officers’ experience led them to conclude that Peters “would need to retain possession of a firearm in order to protect himself from retaliation.” (*Id.* at 3). *See United States v. Burton*, 288 F.3d 91, 103 (3d Cir. 2002) (“[D]irect evidence linking the residence to criminal activity is not required to establish probable cause.... Instead, probable cause to search can be based on an accumulation of circumstantial evidence that together indicates a fair probability of the presence of contraband at the home of the arrested.”); *United States v. Whitner*, 219 F.3d 289, 296 (3d Cir. 2000) (state court judge was permitted to draw “reasonable inferences about where evidence is likely to be kept, based on the nature of the evidence and the type of offense.” (quotation marks omitted)). The state court judge was entitled

to “give considerable weight to the conclusions of experienced law enforcement officers regarding where evidence of a crime is likely to be found.” *Id.* at 296.

Magistrate judges (or state court judges) reviewing search warrant applications regularly defer to the assessments of experienced law enforcement officers on matters within their competence, and reviewing courts (like this Court) must defer to their credibility determinations. *See, e.g., Burton*, 288 F.3d at 99, 105. Here, the officers observed Peters with what they knew based on their training and experience to be a concealed firearm on two different occasions while they were conducting surveillance. While their experience-based conclusion that Peters was in possession of a firearm, alone, may not be enough to establish probable cause, the magistrate here correctly examined the totality of the circumstances and found a sufficient nexus between it, his prior criminal conduct, and fugitive status. The Court would note that “[t]he suspected wrongful conduct, possession of weapons, is by its nature a continuous activity.” *United States v. Strickland*, 237 F. App’x 773, 779 (3d Cir. 2007) (citation omitted). Consequently, the passage of time between the shootout and the time it took to ascertain Peters’s whereabouts is of little significance given the fact that once he was located he was observed to be in possession of a concealed firearm.

After a deferential and commonsense review of the Affidavit, and considering the totality of circumstances, the officers’ training and experience, and assessing all reasonable inferences, the Court finds that the state court judge had a substantial basis for concluding that probable cause existed to authorize the Warrant. Accordingly, the Court will deny Smith’s motion to suppress the evidence found during the search.

Though the Court finds that the facts as stated in the Warrant establish a substantial basis to support the probable cause finding of the state court judge, had it held otherwise, the Warrant

was not based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable. The officers executed the Warrant in good faith.

Under the good faith exception to the exclusionary rule, “a court should not suppress evidence seized under a warrant’s authority, even if that warrant is subsequently invalidated, unless ‘a reasonably well trained officer would have known that the search was illegal despite the magistrate’s authorization.’” *United States v. Stearn*, 597 F.3d 540, 561 (3d Cir. 2010) (quoting *United States v. Zimmerman*, 277 F.3d 426, 436 (3d Cir. 2002)). “Ordinarily, the ‘mere existence of a warrant ... suffices to prove that an officer conducted a search in good faith,’ and will obviate the need for ‘any deep inquiry into reasonableness.’” *Id.* (quoting *United States v. Hodge*, 246 F.3d 301, 308 (3d Cir. 2001)). The United States Court of Appeals for the Third Circuit has announced the following four situations in which an officer’s reliance on a warrant would not be reasonable, and would therefore not trigger the exception:

- (1) when the magistrate judge issued the warrant in reliance on a deliberately or recklessly false affidavit;
- (2) when the magistrate judge abandoned his judicial role and failed to perform his neutral and detached function;
- (3) when the warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; or
- (4) when the warrant was so facially deficient that it failed to particularize the place to be searched or the things to be seized.

Id. (cleaned up).

The fourth exception is the only one Smith can touch upon to obviate the good faith exception – i.e., that “the good faith exception does not apply where the affidavit is ‘so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.’” *Id.* (quoting *United States v. Leon*, 468 U.S. 897, 923 (1984)). The “threshold for establishing this exception is a high one.” *Messerschmidt v. Millender*, 565 U.S. 535, 546 (2012). An affidavit is

“so lacking in indicia of probable cause” when it contains nothing more than a bare bones assertion that evidence will be found in the place searched. *Leon*, 468 U.S. at 925. An affidavit is a “bare bones” affidavit where it relies only on an officer’s unsupported belief that probable cause exists. *United States v. Pavulak*, 700 F.3d 651, 664 (3d Cir. 2012) (citing *United States v. Ritter*, 416 F.3d 256, 263 (3d Cir. 2005)); *see also Gates*, 462 U.S. at 239 (identifying the affidavits in *Nathanson v. United States*, 290 U.S. 41 (1933), and *Aguilar v. Texas*, 378 U.S. 108 (1964), as “bare bones” affidavits because each contained only an officer’s belief that probable cause existed without providing any factual details)).

The Court holds that the Affidavit was not a bare bones document. It outlined the officers’ extensive experience and training in investigations and arrests. Novakowski participated in hundreds of undercover operations as well as numerous fugitive investigations. Denis completed numerous search warrants and court orders for cell phones, social media accounts, and other media outlets to assist in locating and apprehending fugitives. Additionally, Denis has been involved in dozens of narcotics, firearms and warrant arrests. The Affidavit sets forth several factual bases indicative of Peters and Latimer’s criminal behavior and outlined the officers’ surveillance and investigative efforts into Peters and Latimer. The officers concluded that Latimer resided at 21 Trent Street, and Peters was frequenting the residence. The officers were of the firm opinion, based on their knowledge and experience, that Peters would likely be armed with a firearm. The Affidavit set forth how on two different occasions in one day, Peters was observed with what the officers knew based on their training and experience to be a secreted firearm. A Pennsylvania state court judge was called upon to assess facts demonstrating illegal activity by Peters and Latimer and exercised her judgment in finding probable cause. The Court finds that the Affidavit was not so lacking that reasonably well-trained officers would have

known that it was illegal despite the state court judge's authorization. In other words, the officers who executed the Warrant acted reasonably in relying on the Warrant's authority.

IV. CONCLUSION

For these reasons of law and fact, Smith's Motion to Suppress Firearm and Accompanying Ammunition Seized from 21 Trent Street (ECF No. 851) will be denied. An Order of Court will follow.

BY THE COURT:

A handwritten signature in black ink, appearing to read "2/11/8 Stk IV", written over a horizontal line.

WILLIAM S. STICKMAN IV
UNITED STATES DISTRICT JUDGE

3-14-24

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MAURICE SMITH,

Defendant.

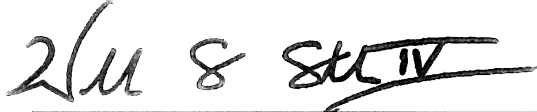
Criminal No. 2:23-cr-129 - 22

Hon. William S. Stickman IV

ORDER OF COURT

AND NOW, this 14th day of March 2024, for the reasons set forth in the Memorandum Opinion filed this day, IT IS HEREBY ORDERED that Defendant Maurice Smith's Motion to Suppress Firearm and Accompanying Ammunition Seized from 21 Trent Street (ECF No. 851) is DENIED.

BY THE COURT:

A handwritten signature in black ink, appearing to read "W S Stickman IV", written over a horizontal line.

WILLIAM S. STICKMAN IV
UNITED STATES DISTRICT JUDGE