# United States Court of Appeals

**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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**No. 24-3048** **September Term, 2025**

FILED ON: AUGUST 26, 2026

ARTIE BYRD,
APPELLANT

v.

UNITED STATES OF AMERICA,
APPELLEE

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On Appeal from the United States
District Court for the District of Columbia
(No. 1:22-cr-00309-1)

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Before: KATSAS and PAN, *Circuit Judges*, and GINSBURG, *Senior Circuit Judge*.

**J U D G M E N T**

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs and oral argument of the parties. The court has afforded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. Cir. R. 36(d). For the reasons stated below, it is:

**ORDERED** and **ADJUDGED** that the judgment of the district court be **AFFIRMED**.

* * *

A jury convicted Appellant Artie Byrd of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). The district court sentenced him to 72 months' imprisonment, followed by 36 months of supervised release. On appeal, Byrd seeks reversal of his conviction and remand for a new trial or, alternatively, remand for resentencing. He challenges the constitutionality of his conviction, the district court's restriction on the scope of closing arguments, and the reasonableness of his above-Guidelines sentence. Discerning no error, we affirm.

## I.

In September 2022, two police officers in a patrol car observed Byrd in a car with counterfeit license plates. When they followed him, Byrd crashed his car into a bench and then ran. The officers eventually detained him and recovered a firearm. At that time, Byrd was serving a term of supervised release for his second felon-in-possession conviction. A grand jury indicted Byrd on one count of unlawful possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1). Byrd moved to dismiss the indictment on the ground that § 922(g)(1) violated his right to bear arms under the Second Amendment. The district court denied the motion, and trial proceeded.

During opening statements, Byrd's counsel argued that, on the day of Byrd's arrest, he was "a Black man in a predominantly white part of D.C. who[] [was] about to be stopped by the police, and he[] [was] scared because of so many traffic stops that have gone wrong where unarmed Black men have been killed." App. 139. Byrd did not testify at trial. Thus, before closing argument, the district court ordered Byrd's counsel to refrain from arguing that Byrd feared the police because counsel had not presented "any admissible evidence" to support that assertion. App. 550. The jury found Byrd guilty.

Over Byrd's objection, the district court imposed a 72-month sentence, which reflected an upward variance from Byrd's Sentencing Guidelines range of 41 to 51 months. The district court considered "several aggravating characteristics" in Byrd's criminal history, including a 2019 charge of accessory-after-the-fact to assault with intent to kill while armed (AWIK). App. 679. Although a jury acquitted Byrd of the charge during the pendency of the instant case, the district court reviewed the AWIK case's record and found that Byrd committed the accessory offense by a preponderance of the evidence.

In the AWIK case, Jermaine Chambers reported to the police that his co-workers — Dominic Copeland and "A.R." — robbed him and shot him in 2019. Chambers twice identified Byrd as A.R. when shown a photo of Byrd's driver's license — he made one identification on the day after the shooting, and another when he testified before the grand jury. Chambers also saw the two perpetrators driving a white Toyota Camry at the scene of the shooting. An eyewitness who observed the shooting reported that car's license plate information to 911. Law enforcement traced the car to its owner, Erik Rubio, who was a friend of Byrd. Rubio testified that he lent his car to A.R. on the day of the shooting. At trial in 2023, Chambers testified that he did not "want to get on th[e] stand." App. 909. When asked about the reason for his reluctance to testify, he expressed that "I don't do that . . . in my community . . . ." *Id.* Chambers did not make an in-court identification of Byrd as A.R., but he testified that, in 2019, A.R. had "long" hair and "dreads." App. 881. Photos of Byrd from the relevant timeframe confirmed that he had dreads in 2019. The district court concluded that "significant evidence" established that Byrd was A.R. App. 682.

Byrd timely appeals his conviction and sentence. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742.

## II.

We review the district court's denial of a motion to dismiss the indictment *de novo*. *United States v. Verrusio*, 762 F.3d 1, 13 (D.C. Cir. 2014). We review the district court's decision to limit the scope of closing argument for abuse of discretion. *United States v. Borda*, 848 F.3d 1044, 1062 (D.C. Cir. 2017). As for a sentencing decision, we review legal questions *de novo* and factual findings for clear error, *United States v. Mohammed*, 89 F.4th 158, 161–62 (D.C. Cir. 2023), and we apply a "deferential abuse-of-discretion" standard to assess the reasonableness of the sentence, *Gall v. United States*, 552 U.S. 38, 41 (2007).

## III.

Byrd challenges his conviction and his sentence. First, he argues that the statute under which he was convicted, 18 U.S.C. § 922(g)(1), is unconstitutional. Second, he argues that the district court's limitation on the scope of his closing argument prevented him from rebutting the government's case. Third, he claims the district court procedurally erred and rendered a substantively unreasonable sentence. We are unpersuaded on all counts.

### A.

Byrd was convicted of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). He contends that the statute violates the Second Amendment — both facially and as applied to him.

The Second Amendment right to possess firearms "is not unlimited," and "longstanding prohibitions on the possession of firearms by felons" remain "presumptively lawful . . . ." *District of Columbia v. Heller*, 554 U.S. 570, 626–27, 627 n.26 (2008). When a firearm regulation is challenged, we assess its constitutionality using a two-step approach. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 24 (2022). First, we examine whether "the Second Amendment's plain text covers an individual's conduct." *Id.* at 17. If so, then the Second Amendment presumptively protects such conduct, and we proceed to the second step. At the second step, the government bears the burden of "justify[ing] its regulation by demonstrating that" the challenged law — in this case, § 922(g)(1) — "is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 24.

Here, the parties agree that the Second Amendment's plain text covers Byrd's possession of a firearm, and that Byrd is among "the people" protected by the Second Amendment. *Bruen*, 597 U.S. at 32. The burden therefore shifts to the government to demonstrate that its regulation is consistent with the Nation's historical tradition of firearm regulation. The government readily meets that test because Byrd was on supervised release for a felony offense when he committed the instant offense. Section 922(g)(1) is constitutional as applied to Byrd because our Nation has a historical tradition of requiring felons to forfeit their firearms while serving their sentences. *United States v. Richardson*, No. 24-3151, 2026 WL 2451537, at *3–4 (D.C. Cir. Aug. 21, 2026) (precedential opinion). And because § 922(g)(1) is constitutional as applied to Byrd, we need not address the merits of his facial challenge — he cannot "establish that no set of circumstances exists under which the [statute] would be valid." *United States v. Rahimi*, 602 U.S. 680, 693 (2024)

(quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)); *see also id.* at 701 & n.2. We therefore affirm Byrd's § 922(g)(1) conviction.

**B.**

Byrd next challenges the district court's decision to limit his counsel's closing argument. The district court did not allow counsel to argue that Byrd fled from the arresting officers because, as a Black man, he feared law enforcement. We review the district court's ruling for abuse of discretion. *United States v. Hoffman*, 964 F.2d 21, 24 (D.C. Cir. 1992) (per curiam); *see also Borda*, 848 F.3d at 1062–63; *United States v. Stubblefield*, 643 F.3d 291, 296 (D.C. Cir. 2011).[1] It is well established that, while counsel may "argue all reasonable inferences from the facts in the record," she "may not premise arguments on evidence which has not been admitted" or "make statements as to facts not proven." *Hoffman*, 964 F.2d at 24 (cleaned up); *see also Stubblefield*, 643 F.3d at 296. Here, Byrd did not testify at trial, and there was no evidence to support an argument that he feared law enforcement. The district court thus acted well within its discretion when it precluded that line of argument. *See Hoffman*, 964 F.2d at 24.[2]

**C.**

Finally, Byrd appeals his 72-month sentence, challenging the upward variance. We review the lawfulness of a sentence under a two-step analysis. First, we assess whether the district court committed "significant procedural error." *Gall*, 552 U.S. at 51. Second, if we discern no procedural error, we then consider the substantive reasonableness of the sentence and afford "due deference to the district court's decision that the § 3553(a) factors, on a whole, justify the extent of the variance." *Id.* Here, Byrd argues that the district court committed a procedural error when it considered his alleged conduct related to the AWIK case. Byrd emphasizes that he was acquitted in that unrelated case and asserts that the district court failed to explain its reason for imposing a 21-month upward variance. Byrd also argues that his sentence was substantively unreasonable when compared to sentences for other similarly situated defendants. We find those arguments unconvincing.

We begin with the district court's consideration of Byrd's acquitted conduct. Byrd first argues that the district court violated his Fifth and Sixth Amendment rights by relying on acquitted

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[1] We reject Byrd's suggestion that *de novo* review applies because the trial court violated his constitutional right to present a defense. It is well settled that the "trial court has broad discretion in controlling the scope of closing argument," *Hoffman*, 964 F.2d at 24 (cleaned up), and this type of ruling does not rise to the level of a constitutional violation where, as here, the defendant had a "sufficient opportunity to present his defense," *United States v. Lathern*, 488 F.3d 1043, 1046 (D.C. Cir. 2007). The district court confirmed that Byrd's counsel could argue that Byrd fled for "various reasons . . . inconsistent or at least not necessarily consistent with him having a firearm." App. 553. That was sufficient leeway for Byrd to argue that his flight was not evidence of his guilt.

[2] Nor did the district court err when it instructed the jury as follows: "The statements and arguments of the lawyers are not evidence. And I want to stress that particularly if there is anything in the opening statements that was not subsequently borne out in testimony, you should ignore those arguments." App. 569. It is black letter law that "lawyers' arguments are not evidence." *United States v. Wilson*, 240 F.3d 39, 45 (D.C. Cir. 2001).

conduct. But that constitutional argument is foreclosed by "long-standing precedents of the Supreme Court and this [c]ourt," which allow district courts to "consider uncharged or even acquitted conduct in calculating an appropriate sentence, so long as that conduct has been proved by a preponderance of the evidence and the sentence does not exceed the statutory maximum for the crime of conviction." *United States v. Settles*, 530 F.3d 920, 923 (D.C. Cir. 2008) (citing *United States v. Watts*, 519 U.S. 148, 156–57 (1997) (per curiam) and collecting cases). Byrd errs in contending that those cases were "wrongly decided or are no longer good law given more recent Supreme Court precedent." Opening Br. 41. The "more recent Supreme Court precedent" that Byrd relies on dealt with the separate issue of judicial fact-finding that increases statutory mandatory minimum or maximum sentences. *See* Opening Br. 41, 42 (citing *Cunningham v. California*, 549 U.S. 270 (2007); *Alleyne v. United States*, 570 U.S. 99 (2013)). Those cases neither reversed nor abrogated *Watts* and its progeny. Under binding precedents, the district court's consideration of acquitted conduct in sentencing Byrd did not violate his constitutional rights.[3]

We next consider Byrd's argument that the district court erred in finding, by a preponderance of the evidence, that Byrd committed the accessory-to-AWIK offense. Byrd argues that the district court's finding was erroneous because it credited Chambers's out-of-court identifications — statements that were not subject to cross-examination and, in Byrd's view, unreliable given Chambers's inability to make an in-court identification.

Sentencing judges are not limited to reviewing "evidence derived from the examination and cross-examination of witnesses in open court" and may "consider responsible unsworn or 'out-of-court information'" that bears "sufficient indicia of reliability to support its probable accuracy." *United States v. Bras*, 483 F.3d 103, 108–09 (D.C. Cir. 2007) (quoting *Williams v. Oklahoma*, 358 U.S. 576, 584 (1959); U.S.S.G. § 6A1.3). Ample evidence in the record demonstrates that Chambers's out-of-court identifications of Byrd had sufficient indicia of reliability. Chambers confirmed the first out-of-court identification with a second identification during his sworn grand jury testimony. Moreover, those two identifications were corroborated by other evidence: Chambers and an eyewitness identified the getaway car as a white Toyota Camry, and the owner of the car, Rubio, testified that he lent it to A.R. on the day of the shooting. And Byrd had long dreadlocks at the time of the shooting, as did the perpetrator. Finally, the district court reasonably concluded that the passage of time, Chambers's noncooperation on the stand, or Byrd's changed hairstyle could have contributed to Chambers's failure to make an in-court identification at trial. Thus, the district court did not clearly err in finding that Byrd committed the AWIK offense by a preponderance of the evidence — the court's finding rested on substantial evidence and reasoning.

We also reject Byrd's argument that the district court did not adequately explain its reasons for imposing a 21-month upward variance. The court determined that Byrd's "conduct was more harmful or egregious than the typical" felon-in-possession case, and therefore, the Sentencing Guidelines' 41-to-51-month range did "not fully account for the described criminal conduct." *United States v. Iracks*, 106 F.4th 61, 67–68 (D.C. Cir. 2024) (cleaned up). The district court

[3] We are also unpersuaded by Byrd's contention that the acquitted conduct must relate to the instant § 922(g)(1) offense. The sentencing factors allow the district court to consider, among other things, Byrd's "history and characteristics" as well as the need "to protect the public from further crimes[.]" 18 U.S.C. § 3553(a).

discussed multiple aggravating factors, including that Byrd committed the instant offense only months after completing a prison term for his second felon-in-possession conviction. *See* App. 681; *Iracks*, 106 F.4th at 68 (upholding an upward variance where the defendant committed an offense less than ten months after his release from prison). The district court also concluded that Byrd's two prior felon-in-possession convictions had not deterred his "repeated decisions to arm [him]self in violation of the law." App. 689; *see United States v. Molina*, 952 F.2d 514, 519 (D.C. Cir. 1992) ("[S]imilarity between a defendant's current and past crimes . . . is a permissible basis for [sentence] enhancement." (emphasis omitted)). Thus, Byrd's repeated firearm offenses justified an enhanced sentence "for reasons of specific deterrence and incapacitation." *Molina*, 952 F.2d at 519; *see also Iracks*, 106 F.4th at 68; *United States v. Ransom*, 756 F.3d 770, 774 (D.C. Cir. 2014). And of course, the Guidelines did not account for Byrd's three prior probation violations and the AWIK case. The district court gave detailed explanations at the sentencing hearing and did not procedurally err.[4]

That brings us to Byrd's final claim that the sentence was substantively unreasonable. In this regard, it "will be the unusual case when an appeals court can plausibly say that a sentence is so unreasonably high or low as to constitute an abuse of discretion." *United States v. Knight*, 824 F.3d 1105, 1111 (D.C. Cir. 2016) (quoting *United States v. Gardellini*, 545 F.3d 1089, 1093 (D.C. Cir. 2008)). This is not such a case. Byrd's criminal history shows that he is not a "nonviolent offender." Opening Br. 62. Three felon-in-possession convictions, a robbery conviction, an accessory-to-AWIK charge, and multiple probation violations supported the district court's conclusion that Byrd posed a danger to the community and a heightened risk of recidivism. The 72-month sentence thus was not substantively unreasonable.

For the foregoing reasons, we affirm Byrd's conviction and sentence.

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Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. R. 41(a)(1).

**Per Curiam**

**FOR THE COURT:**
Clifton B. Cislak, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

[4] Contrary to Byrd's position, the district court adequately considered his mitigation arguments — namely that Byrd "lacked a father figure" and carried a firearm for "peaceful self-defense." App. 686–87. The district court noted that (1) Byrd described his upbringing as "decent and nice," and (2) Byrd's AWIK case and robbery conviction contradicted his assertion of peaceful self-defense. App. 686–87.