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Case Summaries: Fourth Circuit Court of Appeals (Dec. 4, 6, & 18, 2024)

Officer reasonably believed evidence relating to the crime of arrest would be found within the car; *Gant's* 'reasonable to believe' standard requires less than probable cause; motion to suppress properly denied

U.S. v. Turner, 122 F.4th 511 (Dec. 4, 2024). The defendant's brother came home one evening and noticed his gun was missing. The gun was normally kept in a locked box in the man's bedroom. He called the police to report the theft and informed them that his brother (the defendant) was the only person with knowledge of and access to the weapon. The man also told police that his brother was involved in a gang and that this gang was feuding with another local gang. The responding officer obtained a state court warrant for the defendant's arrest for the theft. The officer also discovered that the defendant was a convicted felon. The next night, the officer received a report that the defendant had carjacked someone using the same type of gun as the one taken. While the officer was trying to obtain a warrant for the carjacking incident, the victim called the officer to report that the car had been returned. The state magistrate refused to issue an arrest warrant for this incident. Around 27 hours later, the same officer received a call of shots fired at a convenience store, which he knew to be in a high crime area. The officer arrived at the store and began approaching when he saw the defendant sitting in a parked car. The officer asked the defendant to exit the car and served the warrant relating to the gun theft, placing the defendant under arrest. The officer frisked the defendant but did not find the gun or other contraband. The officer then placed the defendant in his patrol car, and he and other officers searched the car where the defendant had been sitting. The stolen gun was found in the glove box.

The defendant was charged with possession of firearm by felon and possession of a stolen firearm in the Middle District of North Carolina. He moved to suppress, arguing that the search of the car was illegal. The district court denied the motion, finding that the search was justified as a search incident to the defendant's arrest. Under *Arizona v. Gant*, 556 U.S. 332 (2009), a warrantless search of a car incident to the defendant's arrest is permitted when it is reasonable to believe the car will contain evidence relating to the crime of arrest or when the defendant is unsecured and within reaching distance of the car's interior. The district court found that it was reasonable for the officer to believe that the gun would be inside the car, and that *Gant's* "reasonable to believe" standard required less than probable cause. The defendant pled guilty, reserving his right to appeal.

On appeal, a unanimous panel of the Fourth Circuit affirmed. While neither the Fourth Circuit nor the U.S. Supreme Court has addressed the exact standard of proof for *Gant's* "reasonable to believe" standard, the court agreed with the district court that it was lower than probable cause. For one, the U.S. Supreme Court could have stated that the standard was probable cause but has never done so. "*Gant* permits a vehicular search incident to arrest when it is 'reasonable to believe evidence relevant to the crime of arrest *might* be found in the vehicle.'" *Turner* Slip op. at 8-9 (emphasis in original) (citation omitted). For another, requiring probable cause under this prong of *Gant* would collapse the search incident to arrest exception to the warrant requirement with the automobile exception. "[B]ecause the automobile exception allows for a warrantless search of a vehicle for any contraband or evidence on a

showing of probable cause, reading *Gant* to also require probable cause would rend it search-incident-to-arrest exception largely redundant." *Id*. at 9. Without delineating the outer limits of the "reasonable to believe" standard, the court was satisfied that the standard was met on these facts. The officer who encountered the defendant at the convenience store knew the defendant had an outstanding warrant relating to the theft and possession of a missing gun. He also knew the defendant was suspected of using that gun in an apparent carjacking within the last two days. The officer was aware that the defendant was gang-involved and that the defendant's gang had ongoing conflict with another gang. The officer was also responding to a report of shots fired when he encountered the defendant in a high crime area. Once the officer frisked the defendant and did not find the weapon, it was reasonable to think that the gun—the very item for which the defendant was being arrested—might be located in the car. For these reasons, the district court correctly denied the motion to suppress.

The defendant prevailed on a separate challenge to the terms of his sentence. The sentence was therefore vacated, and the case was remanded for a new sentencing hearing.

Reconsidering in light of *U.S. v. Rahimi*, the Fourth Circuit again rejects a facial Second Amendment challenge to federal possession of firearm by felon statute

U.S. v. Canada ("*Canada II*"), 123 F.4th 159 (Dec. 6, 2024). In this case from the District of South Carolina, the Fourth Circuit previously rejected the defendant's facial challenge to 18 U.S.C. 922(g)(1), the federal ban on possession of firearms by felons (that decision was summarized here). *U.S. v. Canada ("Canada I")*, 103 F.4th 257 (4th Cir. 2024). The defendant sought review of *Canada I* at the U.S. Supreme Court. The Court vacated that decision and remanded the matter for reconsideration in light of *U.S. v. Rahimi*, 144 S. Ct. 1889 (2024). *Canada v. U.S.,* ___ S. Ct. ___; 2024 WL 4654952 (Nov. 4, 2024). In *Rahimi*, the U.S. Supreme Court rejected a facial challenge to 18 U.S.C. 922(g)(8), the federal prohibition on possession of firearms by a person subject to a domestic violence restraining order ("DVPO"), finding that the nation had a historical tradition of disarming dangerous people in a manner akin to the temporary restriction on gun possession by those subject to a DVPO (more on *Rahimi* here). Reconsidering the defendant's facial challenge in light of *Rahimi*, the Fourth Circuit determined that its earlier opinion in *Canada I* did not conflict with *Rahimi.* The court therefore reaffirmed and reissued its earlier opinion with minor modifications. According to the court:

> The law of the Second Amendment is in flux, and courts (including this one) are grappling with many difficult questions in the wake of *New York Rifle and Pistol Ass'n., Inc. v. Bruen* 597 U.S. 1 (2022) and *United States v. Rahimi*, 144 S. Ct. 1889 (2024). But the facial constitutionality of Section 922(g)(1) is not one of them. No federal appellate court has held that Section 922(g)(1) is facially unconstitutional, and we will not be the first. *Canada II* Slip op. at 3.

The court assumed without deciding that some applications of Section 922(g)(1) might be unconstitutional *as applied* to a particular set of facts, but rejected the notion that the federal ban on firearm possession by felons was unconstitutional in all respects. The court also determined that it need not decide the exact method of analysis for such Second Amendment challenges. "No matter which analytical path we choose, they all lead to the same destination: Section 922(g)(1) is facially constitutional because 'it has a plainly legitimate sweep' and may constitutionally be applied in at least *some* 'set of circumstances.'" *Id*. at 4 (emphasis in original) (citation omitted).

The defendant also successfully challenged his designation as an Armed Career Criminal at sentencing. The sentence was therefore vacated, and the matter was remanded for resentencing.

Relying on pre-*Bruen* precedent, Fourth Circuit panel rejects case-by-case determination of as-applied Second Amendment challenges to 18 U.S.C. 922(g)(1)

U.S. v. Hunt, 123 F.4th 697 (Dec. 18, 2024). The defendant was convicted of possession of firearm by felon under 18 U.S.C. 922(g)(1) in the Southern District of West Virginia. The defendant's predicate felony was a state conviction for breaking and entering in 2017. On appeal, he argued that the statute violated the Second Amendment, both facially and as applied to the facts of his case. The Fourth Circuit recently rejected the argument that 18 U.S.C. 922(g)(1) was facially unconstitutional, while leaving the question of the possibility of successful as-applied challenges unresolved. *U.S. v. Canada ("Canada II")*, 123 F.4th 159 (4th Cir. 2024) (summarized above). Circuit precedent predating the U.S. Supreme Court's decision in *New York Rifle and Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), held that an as-applied Second Amendment challenge to 18 U.S.C. 922(g)(1) could only succeed if the underlying felony conviction at issue had been pardoned or if the statute of conviction had been deemed "unconstitutional or otherwise unlawful." *Hunt* Slip op. at 2 (citing *Hamilton v. Pallozzi*, 848 F.3d 614, 626 (4th Cir. 2017)). Nothing in *Bruen* or *U.S. v. Rahimi*, 144 S. Ct. 1889 (2024), specifically overruled this earlier circuit precedent, and the court determined that its earlier decision remained good law. In the words of the court:

> A panel of this court is bound by prior precedent from other panels and may not overturn prior panel decisions unless there is contrary law from an en banc or Supreme Court decision. We do not lightly presume that the law of the circuit has been overturned. Instead, a Supreme Court decision overrules or abrogates our prior precedent only if our precedent is *impossible* to reconcile with that decision. If it is possible to read our precedent harmoniously with Supreme Court precedent, we must do so. *Hunt* Slip op. at 7 (emphasis in original) (cleaned up).

In the alternative, the court found that the challenge failed on the merits. Under *Bruen* and *Rahimi*, a court must determine whether a challenged law impacts conduct protected by the Second Amendment. If so, the court must determine whether the regulation is "consistent with this Nation's historical tradition of firearm regulation." *Bruen* at 18. The defendant's challenge failed at both steps of the analysis. U.S. Supreme Court case law has stated that Second Amendment protections extend to "law-abiding citizens," and that restrictions on possession of firearms by felons are "presumptively lawful." *District of Columbia v. Heller*, 554 U.S. 570, 626, 627 n.26 (2008). The Court's subsequent decisions in *Bruen* and *Rahimi* reaffirmed this limitation on Second Amendment rights. Thus, possession of firearms by convicted felons is not conduct protected by the Second Amendment.

Assuming for the sake of argument that 18 U.S.C. 922(g)(1) does affect conduct protected by the Second Amendment, there has been a consistent historical tradition disarming both those who act inconsistent with legal norms and those who present a risk of harming others. That tradition covers people who have been convicted of felony offenses. Permanently disarming a felon is a much lesser sanction than the penalties of death and forfeiture that existed at the time of the founding for felony convictions, and those more severe penalties necessarily included disarmament. Colonial laws often required the forfeiture of guns for violations of hunting regulations. Many early legislatures prohibited entire groups of people from firearm possession based on a determination that members of the group acted outside of the norms of the day, such as "non-Anglican Protestants," and those who refused to swear oaths of

allegiance. Early laws also categorically banned firearm possession by whole groups of people when members of the group were found to present a risk of danger, such as "religious minorities . . . Catholics, or Native Americans . . ." *Hunt* Slip op. at 16. It was therefore within Congress's power to determine that felons, as a category, were not entitled to possess firearms. Joining the Eighth Circuit on the point, the court further rejected the idea that as-applied Second Amendment challenges to 18 U.S.C. 922(g)(1) must be determined on a case-by-case basis. According to the unanimous court:

> This history demonstrates that there is no requirement for an individualized determination of dangerousness as to each person in a class of prohibited persons. Instead, as here, past conduct (like committing a felony) can warrant keeping firearms away from persons who might be expected to misuse them. *Id*. (citing *U.S. v. Jackson*, 110 F.4th 1120, 1129 (8th Cir 2024)) (cleaned up).

A challenge to a sentencing enhancement was similarly rejected, and the judgment of the district court was affirmed in full.