

# United States Court of Appeals for the Fifth Circuit

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No. 23-60570  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

March 10, 2025

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellant,*

*versus*

KINDLE TERRELL SAM,

*Defendant—Appellee.*

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Appeal from the United States District Court  
for the Southern District of Mississippi  
USDC No. 3:22-CR-87-1

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Before GRAVES, WILLETT, and WILSON, *Circuit Judges.*

PER CURIAM:\*

A grand jury charged Kindle Terrell Sam with possessing a firearm while being an unlawful user of a controlled substance, in violation of 18 U.S.C. § 922(g)(3). The district court granted Sam's motion to dismiss the indictment, and the Government appeals. We review the constitutionality of

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\* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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§ 922(g)(3) de novo. *See United States v. Perez-Macias*, 335 F.3d 421, 425 (5th Cir. 2003).

As here, we have previously considered an as-applied challenge to § 922(g)(3) in a case involving a motion to dismiss the indictment where the Government did not seek to prove that the defendant was unlawfully using a controlled substance at the time she was found in possession of a firearm. *See United States v. Connelly*, 117 F.4th 269, 272-73 (5th Cir. 2024). There, we concluded that, because there was no effort to show that Connelly, despite being a regular drug user, was intoxicated at the time she was arrested for possessing a firearm, applying § 922(g)(3) to her was unconstitutional. *Id.* at 282.

Likewise, in this case the Government did not seek to show that Sam was intoxicated or unlawfully using a controlled substance at the time he was found in possession of a firearm. *See Connelly*, 117 F.4th at 282. Nor did it seek to prove that Sam's marijuana use was so extensive as to render him analogous to the dangerously mentally ill or a danger to others. *See United States v. Daniels*, 124 F.4th 967, 976 (5th Cir. 2025). Accordingly, the district court properly determined that § 922(g)(3) was unconstitutional as applied to Sam. Though the Government asserts that § 922(g)(3) is constitutional in all its applications, it acknowledges our holding in *Connelly* and states that it raises the argument to preserve it for further review.

The district court's judgment is AFFIRMED.