

United States Court of Appeals for the Fifth Circuit

No. 23-60570
Summary Calendar

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.

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

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

* 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.