

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

January 31, 2025

Lyle W. Cayce
Clerk

No. 24-40137

UNITED STATES OF AMERICA,

Plaintiff—Appellant,

versus

ALI DANIAL HEMANI,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:23-CR-18-1

Before HAYNES, HIGGINSON, and DOUGLAS, *Circuit Judges*.

PER CURIAM:*

A grand jury charged Ali Danial Hemani 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 Hemani’s motion to dismiss the indictment, and the Government appealed. In the meantime, various decisions have occurred and, most relevant at this point, our court in *United States v. Connelly*, 117 F.4th 269 (5th Cir. 2024), ruled on an “as-applied”

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

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case similar to this one. As here, *Connelly* concerned a motion to dismiss the indictment where the government did not seek to prove that Connelly was unlawfully using a controlled substance at the time she was found in possession of a firearm. Our court 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 possessing a firearm, applying § 922(g)(3) to her was unconstitutional as applied.¹ Following that decision, Hemani filed a Rule 28(j) letter stating we should affirm the court's dismissal. Based on that same case, the Government filed a motion for summary affirmance (joined by Hemani) because, despite disagreeing with that case, it concluded that it applies here and is not relevantly distinguishable.² Thereafter, another panel of our court issued an opinion in *United States v. Daniels*, No. 22-60596, applying *Connelly* in the context of a § 922(g)(3) conviction. 2025 WL 33402 (5th Cir. Jan. 6, 2025). There, our court held that Daniels's conviction was unconstitutional because of jury instructional error. *Daniels* did not address whether the government's evidence was deficient, holding only that the jury was improperly instructed. Here, the Government concedes its evidence is deficient under *Connelly*'s binding precedent and that this deficiency is dispositive.

Given the parties' agreement on summary affirmance and the application of our precedent here, we AFFIRM.

¹ It denied the facial challenge.

² While seeking summary affirmance, it reserves the right for further review.