

United States Court of Appeals
for the Fifth Circuit

No. 25-30438

United States Court of Appeals
Fifth Circuit

FILED

August 26, 2026

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MAURICE MITCHELL,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 3:24-CR-164-1

Before DUNCAN, OLDHAM, and WILSON, *Circuit Judges*.

STUART KYLE DUNCAN, *Circuit Judge*:

Appellant Maurice Mitchell raises a Second Amendment challenge to his conviction under 18 U.S.C. § 922(g)(1) for being a felon in possession of a firearm. Principally, he argues that his Louisiana felony conviction for attempting to disarm a police officer lacks sufficient Founding-era analogues under *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U.S. 1 (2022). We disagree. Mitchell’s predicate crime is functionally identical to robbery, and our precedent permits application of § 922(g)(1) to robbers. In other words, because Mitchell was convicted of trying to disarm a police officer, we can constitutionally disarm Mitchell.

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In addition, Mitchell argues that the district court abused its discretion by giving a flight instruction to the jury and that the evidence was insufficient to convict him. He fails to show error in either regard.¹ Accordingly, we AFFIRM.

I

On January 8, 2023, officers responding to a reported burglary at a storage facility saw Mitchell riding a bicycle near a row of units. When the officers identified themselves, Mitchell fled, crashed his bike, and was caught on foot within about a minute. Returning to the crash site, officers discovered a loaded revolver and a spent casing in a bag attached to Mitchell's bike. Officers took no photographs, did not collect the bike or bag as evidence, and found no signs of forced entry at the facility.

Mitchell has a robust criminal history. In 2008, he was convicted of cocaine possession after pleading down from possession with intent to distribute. In 2015, he was convicted of firearm possession by a convicted felon, felony cocaine possession, and felony oxycodone possession after being stopped by police while riding a bicycle with an attached bag containing a gun and drugs. In 2017, Mitchell was convicted of attempting to disarm a peace officer under Louisiana law. *See* LA. REV. STAT. ANN. § 14:34.6. This

¹ Mitchell also argues that § 922(g)(1) exceeds Congress's power under the Commerce Clause. This argument, however, is foreclosed by our precedent. *See United States v. Kimble*, 142 F.4th 308, 310 n.2 (5th Cir. 2025) ("Kimble also avers that (g)(1) exceeds Congress's power under the Commerce Clause. That theory is similarly foreclosed."). Mitchell's motion to hold this case in abeyance pending our court's eventual en banc decision in *United States v. Squire*, No. 25-30324, is DENIED.

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incident involved Mitchell's trying to grab pepper spray from an officer while being tased during a trespass arrest.

In August 2024, a federal grand jury indicted Mitchell on one count of being a felon in possession of a firearm under 18 U.S.C. § 922(g)(1), arising from the events on January 8, 2023. Before trial, Mitchell twice moved to dismiss the indictment, arguing the Second Amendment barred his prosecution. In opposition, the government argued that Mitchell's prior drug convictions were analogous to Founding-era laws criminalizing receipt, possession, and trafficking of contraband, and, further, that his conviction for attempting to disarm an officer was analogous to theft. The district court denied Mitchell's motions to dismiss based on the drug-possession convictions and did not address Mitchell's attempted disarmament conviction.

The case proceeded to trial. Over Mitchell's objection, the district court gave a flight instruction permitting the jury to consider Mitchell's flight as evidence of consciousness of guilt. When the jury indicated it had been unable to reach a unanimous verdict, the court instructed it to continue deliberating. Roughly two hours and forty minutes later, the jury returned a guilty verdict. The court sentenced Mitchell to 36 months in prison, followed by three years of supervised release.

Mitchell timely appealed.

II

We review *de novo* a preserved challenge to a criminal statute's constitutionality. *United States v. Howard*, 766 F.3d 414, 419 (5th Cir. 2014). If objected to, we review a flight instruction for abuse of discretion;

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otherwise, we review for plain error. *United States v. Martinez*, 190 F.3d 673, 675 (5th Cir. 1999); *United States v. Fairley*, 880 F.3d 198, 208 (5th Cir. 2018).

Typically, we review sufficiency challenges *de novo*, asking whether any rational jury could have found the crime proved beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979). But when a defendant fails to properly renew a motion for acquittal, he must show a “manifest miscarriage of justice,” meaning a record “devoid of evidence of guilt” or evidence “so tenuous” that the conviction “shock[s]” the conscience. *United States v. Avants*, 367 F.3d 433, 449 (5th Cir. 2004).

III

Mitchell brings an as-applied² Second Amendment challenge to his § 922(g)(1) conviction. That provision makes it

unlawful for any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce, or possess in or affecting interstate commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 922(g)(1) (cleaned up). The Second Amendment protects “the right of the people to keep and bear Arms.” U.S. CONST. amend. II; *see District of Columbia v. Heller*, 554 U.S. 570 (2008).

A

Modern Second Amendment analysis goes like this. First, courts ask “whether the Amendment’s terms cover the conduct in question.” *United*

² A facial challenge to § 922(g)(1) is foreclosed by our precedent. *See, e.g., United States v. Cisneros*, 130 F.4th 472, 477 (5th Cir. 2025) (citations omitted).

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States v. Hemani, 608 U.S. ___, 146 S. Ct. 1677, 1685 (2026) (citing *Bruen*, 597 U.S. at 24). “If so, the Constitution ‘presumptively’ protects it.” *Ibid.* Second, the government must “overcome that presumption” by showing the regulation in question—here, § 922(g)(1)—is “consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 1685–86.

To meet that burden, the government need not “point to a historical twin or precise historical precursors” to the modern law. *Id.* at 1686 (quoting *United States v. Rahimi*, 602 U.S. 680, 692 (2024)) (cleaned up). Instead, “the government may reason by analogy, showing that its contemporary regulation is relevantly similar to ones well-established in the Nation’s history.” *Ibid.* (quoting *Bruen*, 597 U.S. at 28–30) (cleaned up). Two key features are the challenged law’s purpose and operation—what the Supreme Court calls the “why” and “how.” *Ibid.* “The more closely a contemporary law mirrors a well-established historical analogue in purpose and operation, the more likely it is to be upheld.” *Ibid.* And the opposite is true: “Conversely, the more a modern law diverges from traditional laws in purpose and operation, the less likely it is to survive review.” *Ibid.* (citing *Bruen*, 597 U.S. at 29; *Rahimi*, 602 U.S. at 692).

B

With that framework in mind, we turn to the parties’ arguments. Mitchell argues that his predicate felonies for drug-possession and attempted disarming of a police officer lack any relevant historical analogues. So, he contends, section 922(g)(1) cannot be applied to him consistent with his right to bear arms.

The government essentially agrees with Mitchell as to his drug-possession priors: it concedes our precedent forecloses using those as relevant felonies under § 922(g)(1). See *United States v. Hembree*, 165 F.4th 909, 915–18 (5th Cir. 2026) (holding § 922(g)(1) cannot be constitutionally

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applied to the predicate of simple methamphetamine possession). But the government offers two additional responses to Mitchell's arguments. First, it argues that his conviction for attempting to disarm a police officer is effectively a robbery crime, the kind of offense for which our Nation has historically disarmed people. Separately, the government argues that we have historically disarmed repeat offenders like Mitchell.

We agree with the government's first argument, so we need not consider the second.

As the government points out, the predicate Louisiana crime, "Disarming of a peace officer," is "basically a situation-specific robbery offense." One commits it by "tak[ing] possession of any law enforcement equipment" from "the person of a peace officer" (or from an area within his "immediate control") "through the use of force or threat of force." LA. REV. STAT. ANN. § 14.34.6(A). The parallels with robbery are plain as day. Both crimes involve taking property from another's person without his consent by using real or threatened force. *See* LA. REV. STAT. ANN. § 14:65(A) (defining simple robbery as "the taking of anything of value belonging to another from the person of another or that is in the immediate control of another by use of force or intimidation but not armed with a dangerous weapon"); *see also, e.g., Stokeling v. United States*, 586 U.S. 73, 77–78 (2019) (observing common law robbery involved using "force" or "violence" to overcome resistance); *id.* at 80–81 (discussing state definitions of "nonaggravated robbery as requiring force that overcomes a victim's resistance").

And, as the government further argues, our precedents permit disarmament under § 922(g)(1) for robbery, theft, and burglary. *See, e.g., United States v. Schnur*, 132 F.4th 863, 870 (2025) (rejecting as-applied challenge to § 922(g)(1) based on "Schnur's 1994 and 1996 convictions for

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robbery and burglary”).³ Founding-era laws disarmed those who “threat[ened] . . . the physical safety of others.” *Rahimi*, 602 U.S. at 700. Section 922(g)(1) tracks the “purpose and operation” of those “historical analogue[s]”: namely, to permanently keep guns away from dangerous individuals. *Hemani*, 146 S. Ct. at 1686. Accordingly, Mitchell’s § 922(g)(1) conviction can constitutionally be predicated on his felony conviction for attempting to disarm a police officer.

Mitchell responds with various arguments, none of which persuade us. He contends that, during the Founding era, “resisting arrest” was not severely punished like robbery, burglary, or theft, but only incurred “fines and temporary punishment.” But even assuming Mitchell is correct about that historical detail—something we do not decide—it is beside the point. He was not convicted of resisting arrest, a separate crime under Louisiana law. *See* LA. REV. STAT. ANN. § 14:108 (“Resisting an officer”). He was convicted of attempting to disarm a police officer, which as noted is virtually identical to robbery.

Mitchell also emphasizes that he was convicted only of *attempted* disarmament, not the “completed” crime. As he points out, he “did not actually succeed in taking the pepper spray away from the officer.” Why this should make any difference escapes us. To convict him of attempted disarmament, the government proved Mitchell specifically intended to commit the crime, even though he did not accomplish it. *See* LA. REV.

³ *See also United States v. Quiroz*, 125 F.4th 713, 724–25 (5th Cir. 2025) (rejecting as-applied challenge to § 922(g)(1) based on burglary conviction); *United States v. Diaz*, 116 F.4th 458, 467–71 (5th Cir. 2024) (same for car theft); *United States v. Charles*, No. 23-50131, 2025 WL 416092, at *1 (5th Cir. Feb. 6, 2025) (per curiam) (unpublished) (theft and burglary); *United States v. Arredondo*, No. 24-50386, 2025 WL 1249901, at *1 (Apr. 30, 2025) (per curiam) (unpublished) (robbery); *United States v. Collette*, No. 22-51062, 2024 WL 4457462, at *2 (5th Cir. Oct. 10, 2024) (per curiam) (unpublished) (theft).

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STAT. ANN. § 14:27(A). Mitchell says this is not enough. Evidently, the Second Amendment does not allow us to disarm failed robbers, only successful ones. Mitchell cites no precedent for that weird notion.

Finally, Mitchell tries to downplay his crime. While conceding that his offense “involved the use of force” and that “violence-based predicate offenses can support disarmament,” Mitchell contends he was merely “reacting to an arrest.” He insists he was “unarmed during the encounter,” which he calls a “scuffle over pepper spray,” a “non-lethal defense tool, not a firearm.” None of this moves the needle.

The statute under which Mitchell was convicted criminalizes forcibly taking from an officer “law enforcement equipment”—a term that includes “firearms [or] weapons” as well as “self-defense sprays, chemical weapons, or electro-shock weapons.” LA. REV. STAT. ANN. § 34.6(B)(1). It takes little imagination to grasp the peril this statute seeks to prevent. *See, e.g., State v. Williams*, 2012-1600 (La. App. 1 Cir 4/26/13), 2013 WL 1792646 at *4 (unpublished) (defendant shot after stealing taser and tasing officer); *State v. Merritt*, 04-204 (La. App. 5 Cir. 6/29/04), 877 So. 2d 1079, 1081 (defendant shot after attempting to take officer’s gun). As the government puts it, the law addresses the “risk of harm to officers and the public by keeping officers’ weapons out of the hands of . . . criminal suspects.”

While Mitchell tries to downgrade his offense to a “react[ion]” or “scuffle,” this is not the place to relitigate his conviction. The fact remains that Mitchell was convicted of violating a statute designed to avoid the immediate threat of violence against the police. The Second Amendment does not bar the disarmament of such “offenders . . . [who] pose a ‘credible threat to the physical safety of others’”—especially, police officers. *United States v. Cordova*, 176 F.4th 381, 382 (5th Cir. 2026) (quoting *United States v. Reyes*, 141 F.4th 682, 686 (5th Cir. 2025) (per curiam)).

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IV

Mitchell next argues that the district court abused its discretion by giving a flight instruction to the jury. We disagree.⁴

“Evidence of an accused’s flight is generally admissible as tending to establish guilt.” *Martinez*, 190 F.3d at 678. Specifically, a flight instruction is proper where trial evidence supports four inferences: (1) the defendant’s conduct constituted flight; (2) the flight resulted from consciousness of guilt; (3) this guilt related to the charged crime; and (4) the defendant felt guilty because he actually committed the offense. *United States v. Murphy*, 996 F.2d 94, 97 (5th Cir. 1993). This is a threshold determination in which the district court asks only whether the trial evidence is “sufficient” to provide “reasonable support” for each inference, viewing the evidence in the light most favorable to the government. *United States v. Kalish*, 690 F.2d 1144, 1156 (5th Cir. 1982); *see also United States v. Templeton*, 624 F.3d 215, 225 (5th Cir. 2010). It is irrelevant whether the defendant can offer a competing innocent explanation for his flight, so long as a reasonable view of the evidence would also support giving the instruction. *Templeton*, 624 F.3d at 225–26.

In this case, the evidence was sufficient to reasonably support each required inference. As the government correctly argues, Mitchell’s flight and subsequent hiding of his bike supported an inference that he was conscious of his illegal conduct, especially given the evidence presented in court that

⁴ The government argues that plain error review should apply here, because at the charge conference Mitchell stated he had “no objection” to the flight instruction. Mitchell responds that his “no objection” comment, read in context, was only an acceptance of specific wording used in the proposed instruction, not a statement that he no longer objected to the instruction in general. Because we hold there was no abuse of discretion in any event, we need not decide whether Mitchell properly preserved his objection to the flight instruction.

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the bike belonged to him. Mitchell counters that the police's unannounced, late-night approach gave him reason to flee independent of any knowledge of the gun. He also argues that abandoning his bag was just as consistent with ignorance of its contents as it was with a guilty mind. We disagree. Merely because there were possible alternative interpretations of the evidence does not make the flight instruction inappropriate. *Templeton*, 624 F.3d at 225; *see also Martinez*, 190 F.3d at 678 (dismissing defendant's competing explanation that "his flight could have stemmed from a fear of thugs or of arrest" because the evidence also supported the view that he fled due to consciousness of guilt).⁵

In sum, Mitchell fails to show that the district court abused its discretion by issuing a flight instruction.

V

Finally, Mitchell argues the evidence was insufficient to support a guilty verdict. Because Mitchell moved for a judgment of acquittal only at the close of the government's case, yet neither renewed the motion nor filed a

⁵ Mitchell offers two additional arguments, neither of which holds water. First, he argues the flight instruction was materially identical to the one that produced reversible error in *United States v. Myers*, 550 F.2d 1036, 1048 n.19, 1049–51 (5th Cir. 1977). But that case is distinguishable. In *Myers*, there was a significant question whether a flight occurred *at all*. 550 F.2d at 1049–50. And even had there been a flight, it was unclear which crime Myers was fleeing from—the crime for which he was being charged or a different one he committed in the interim. *Id.* at 1050. Our case is quite different: Mitchell was actively committing the offense for which he was charged when he fled from the police. Second, Mitchell argues that when the district court made its fourth inference—that Mitchell felt guilty because he actually committed the crime—it effectively usurped the jury's factfinding role. *See Murphy*, 996 F.2d at 97. But Mitchell offers no support for his contention that a district court's deciding a threshold evidentiary matter causes it to "usurp" the jury's role. *See, e.g., United States v. Theagene*, 565 F.3d 911, 917–18 (5th Cir. 2009) (recognizing that judges determine sufficiency of evidence for an entrapment instruction as a threshold matter).

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post-verdict motion, his sufficiency challenge is reviewed only for a “manifest miscarriage of justice.” *See Avants*, 367 F.3d at 449.⁶

Mitchell stresses that no witness, fingerprint, or physical evidence tied him to the firearm. He points out that the government’s forensic expert testified that a DNA profile recovered from the gun was inconsistent with Mitchell’s reference sample. Mitchell further argues that a woman present with him on the night of his arrest is a more plausible owner of the bag, given her ties to the storage facility and unexplored connection to the bicycle. He adds that certain statements he made after his arrest indicate he was not conscious of his possession. And, finally, he argues the government’s shoddy investigation (no photos, fingerprints, or DNA testing of the woman) left the case built on speculation, as evidenced by the jury’s initial deadlock.

This argument fails. Mitchell has in no way shown that his trial was “devoid of evidence of guilt” or that the evidence was “so tenuous that a conviction is shocking” to the conscience. *Avants*, 367 F.3d at 449. The jury could have rejected (and evidently did reject) the evidentiary lapses Mitchell points to. Instead, the jury could have made (and evidently did make) reasonable inferences from the evidence consistent with Mitchell’s guilt. *See United States v. Martinez*, 921 F.3d 452, 466 (5th Cir. 2019) (“[D]efendants cannot obtain an acquittal simply by ignoring inferences that can logically be drawn from the totality of the evidence.”). For example, as the government points out, the bag’s conspicuous placement on Mitchell’s own bicycle, his flight, his abandonment of the bag, and the evidence that he rode the bike regularly, taken together, gave the jury ample reason to reject Mitchell’s “borrowed bike” theory. All that is to say: a reasonable jury could have voted to convict Mitchell.

⁶ In his reply brief, Mitchell acknowledges this is the correct standard of review.

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In sum, the guilty verdict against Mitchell was not a “manifest miscarriage of justice.” *Avants*, 367 F.3d at 449.

VI

Mitchell’s conviction is AFFIRMED.