

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RONALD JEROME DAVIS, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX

/s/ Adam Nicholson

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Appendix A Opinion of Fifth Circuit, CA No. 23-10663,
United States v. Davis, Jr., 2024 WL 277724
(5th Cir. Jan. 25, 2024)(unpublished).

Appendix B Judgment and Sentence of the United States District
Court for the Northern District of Texas, entered June 105 2023.
United States v. Davis, Jr., Dist. Court 3:22-CR-007-M.

Appendix C Factual Resume

APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 23-10663
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 25, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

RONALD JEROME DAVIS, JR.,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:22-CR-7-1

Before BARKSDALE, GRAVES, and OLDHAM, *Circuit Judges.*

PER CURIAM:*

Ronald Jerome Davis, Jr., challenges his guilty-plea conviction, pursuant to a written plea agreement, for possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) (prohibiting felons in possession), 924(a)(2) (outlining penalty for knowing violation). He contends for the first time on appeal that the court erred in accepting his

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

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guilty plea because § 922(g)(1) violates the Second Amendment and the Commerce Clause. He also maintains his plea agreement's appeal-waiver provision should not bar consideration of his contentions. The Government disagrees. Because Davis' substantive contentions fail under plain-error review, as provided *infra*, we need not consider waiver *vel non*. See *United States v. Thompson*, 54 F.4th 849, 851 (5th Cir. 2022) (pretermittting waiver issue when court could affirm on merits).

Davis (as he concedes) did not preserve his two constitutional claims in district court. Accordingly, review is only for plain error. *E.g.*, *United States v. Broussard*, 669 F.3d 537, 546 (5th Cir. 2012). Under that standard, Davis must show a forfeited plain error (clear-or-obvious error, rather than one subject to reasonable dispute) that affected his substantial rights. *Puckett v. United States*, 556 U.S. 129, 135 (2009). If he makes that showing, we have the discretion to correct the reversible plain error, but generally should do so only if it “seriously affect[s] the fairness, integrity or public reputation of judicial proceedings”. *Id.* (citation omitted).

Davis' Second Amendment challenge is grounded in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 17 (2022) (announcing rule for assessing whether statute infringes on Second Amendment). Because no binding precedent concludes § 922(g)(1) violates the Second Amendment, our court rejects plain-error challenges to the provision under *Bruen*. *E.g.*, *United States v. Jones*, No. 23-10198, 2023 WL 8074295, at *2 (5th Cir. 21 Nov. 2023).

Additionally, Davis' assertion that § 922(g)(1) is unconstitutional because it exceeds Congress' Commerce-Clause authority is, as he concedes, foreclosed by precedent. See, *e.g.*, *United States v. Alcantar*, 733 F.3d 143, 145–46 (5th Cir. 2013) (concluding precedent forecloses contention that

No. 23-10663

§ 922(g)(1) violates Commerce Clause). He raises the issue to preserve it for possible further review.

AFFIRMED.

Judge Oldham would enforce the appeal waiver.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

v.

RONALD JEROME DAVIS, JR
Defendant.

§ **JUDGMENT IN A CRIMINAL CASE**

§

§

§ Case Number: **3:22-CR-00007-M(1)**

§ USM Number: **84195-509**

§ **Sherylynn A Kime-Goodwin**

§ Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input checked="" type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	Count 2 of the Indictment, filed January 4, 2022.
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

<u>Title & Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(1) and 924 (a)(2) Possession of a Firearm by a Convicted Felon	03/17/2021	2

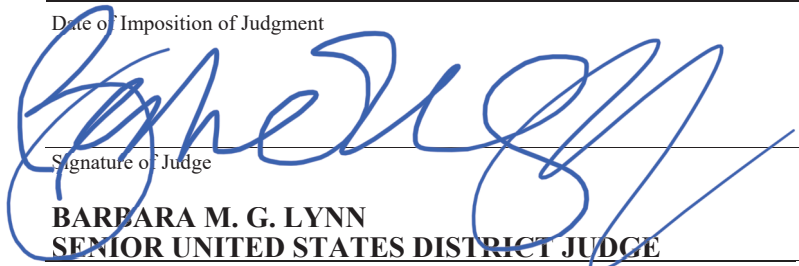
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s)
- Counts 1 and 3-5 are dismissed on the motion of the United States.**

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

June 6, 2023

Date of Imposition of Judgment



Signature of Judge

BARBARA M. G. LYNN
SENIOR UNITED STATES DISTRICT JUDGE

Name and Title of Judge

June 15, 2023

Date

DEFENDANT: RONALD JEROME DAVIS, JR
CASE NUMBER: 3:22-CR-00007-M(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

EIGHTY-SEVEN (87) MONTHS.

Pursuant to United States Sentencing Commission, Guidelines Manual, §5G1.3(c) (Nov. 2018), it is the Court's intent for the sentence to run concurrently with any sentence imposed in Case Nos. 1661023, and Discharge of a Firearm in Certain Municipalities (Case No./assigned court unknown), which is pending in the 213th District Court of Tarrant County, Fort Worth, Texas, and Case Nos. F-2153257, F-2153255, F-2153256, F-2153258, F-2153260, and F-2153259 which are pending in the 282nd Judicial District Court of Dallas County, Dallas, Texas, and Case No. 1692348, which is pending in the Tarrant County Criminal District Court No. 2, Fort Worth, Texas, and F-2176260, F-2157586, F-2157587, which are pending in the 282nd Judicial District Court of Dallas County; and Case No. MA2158424, which is pending in the Dallas County Criminal Court of Appeals 2, Dallas, Texas, and for the defendant to receive a sentence adjustment to account for any time spent in custody beginning on July 28, 2021, that the Bureau of Prisons will not credit under 18 U.S.C. §3585(b). If the Court could order the sentences to run concurrently, it would, so it is the Court's intention that the effect be the same as if the federal sentence ran concurrently from the date service of the state sentence began.

The Court orders the federal sentence to run consecutive to Case Nos. 1670323, 1670316, 1670578, which are pending in the 371st Judicial District Court of Tarrant County, in Fort Worth, Texas, and Case No. F-2151877, F-2151878, F-2151879, F-2124446, F-2124447, which are pending in the 282nd Judicial District Court of Dallas County.

The Court makes the following recommendations to the Bureau of Prisons:

The Court recommends the Defendant participate in the Residential Drug Abuse Program (RDAP), if eligible. If the defendant is not eligible, the court recommends the defendant participate in the maximum drug treatment program for which he is eligible.

The Court recommends the Defendant receive mental health counseling.

The Defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: RONALD JEROME DAVIS, JR
CASE NUMBER: 3:22-CR-00007-M(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **THREE (3) YEARS.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*
8. You must pay the assessment imposed in accordance with 18 U.S.C. § 3013.

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: RONALD JEROME DAVIS, JR
CASE NUMBER: 3:22-CR-00007-M(1)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: RONALD JEROME DAVIS, JR
CASE NUMBER: 3:22-CR-00007-M(1)

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate in outpatient mental health treatment services as directed by the probation officer until successfully discharged. These services may include medications prescribed by a licensed physician. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$20 per month.

The defendant shall participate in an outpatient program approved by the probation officer for treatment of narcotic, drug, or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, and contributing to the costs of services rendered (copayment) at the rate of at least \$20 per month.

DEFENDANT: RONALD JEROME DAVIS, JR
CASE NUMBER: 3:22-CR-00007-M(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments page.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$100.00	\$.00	\$.00	\$.00	\$.00

- The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

- Restitution amount ordered pursuant to plea agreement \$
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
 - the interest requirement is waived for the fine restitution
 - the interest requirement for the fine restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: RONALD JEROME DAVIS, JR
CASE NUMBER: 3:22-CR-00007-M(1)

SCHEDULE OF PAYMENTS

Having assessed the defendant’s ability to pay, payment of the total criminal monetary penalties is due as follows:

- A Lump sum payments of \$ _____ due immediately, balance due
 not later than _____, or
 in accordance C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal 20 (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant’s ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 2, which shall be paid immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons’ Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant’s interest in the following property to the United States:
A Ruger, Model LCP, 380 caliber pistol, bearing serial number 370-28967, and any ammunition recovered with the firearm.**

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

APPENDIX C

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

2023 JAN 12 PM 4: 02

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DEPUTY CLERK mb

UNITED STATES OF AMERICA

NO. 3:22-CR-0007-M

v.

RONALD JEROME DAVIS

FACTUAL RESUME

In support of Ronald Jerome Davis’s plea of guilty to the offense in the indictment, Davis, the defendant, Shery Kime-Goodwin, the defendant’s attorney, and the United States of America (the government) stipulate and agree to the following:

ELEMENTS OF THE OFFENSE

To prove the offense alleged in Count Two of the indictment, charging a violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2), that is, Possession of a Firearm by a Convicted Felon, the government must prove each of the following elements beyond a reasonable doubt:¹

- First.* That the defendant knowingly possessed a firearm as charged;
- Second.* That before the defendant possessed the firearm, the defendant had been convicted in a court of a crime punishable by imprisonment for a term in excess of one year;
- Third.* That when the defendant possessed the firearm, the defendant knew he had been convicted in a court of a crime punishable by imprisonment for a term in excess of one year;

¹ Fifth Circuit Pattern Jury Instruction 2.43D (5th Cir. 2019).

Fourth. That the firearm possessed traveled in interstate commerce; that is, before the defendant possessed the firearm, it had traveled at some point from one state to another.

STIPULATED FACTS

1. Ronald Davis admits and agrees that on or about March 17, 2021 in the Dallas Division of the Northern District of Texas (NDTX), knowing that he had been convicted in a court of a crime punishable by imprisonment for a term exceeding one year, that is, a felony offense, he knowingly possessed, in and affecting interstate and foreign commerce, a firearm, to wit: a Smith & Wesson, Model SD9VE, 9 millimeter pistol, bearing serial number FBH9642, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2).
2. On or about March 16, 2021, Ronald Davis was involved in a domestic dispute with L.F., the mother of Davis's child.
3. On March 17, 2021, Davis was stopped for traffic violations, namely an inoperable tail light and a missing front license plate, in the vicinity of 3500 W. Camp Wisdom Rd, in Dallas, Texas, a location within the NDTX.
4. At the time Davis's vehicle was stopped, he was in possession of the following items, which were subsequently recovered from the vehicle:
 - a Smith & Wesson, Model SD9VE, 9 millimeter pistol, bearing serial number FBH9642;

- a black backpack containing a large baggie with 9 smaller baggies containing a white rock-like substance that field tested positive for crack cocaine;
- a clear cellophane wrapper containing multicolored pills that field tested positive for methamphetamine; and
- a large cellophane wrapper and small cellophane wrapper containing a black tar substance, consistent with black tar heroin.

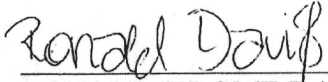
5. Davis agrees that he knowingly possessed the above-referenced firearm and that he knew he was prohibited from possessing it, as he had previously been convicted of a crime for which he served more than one year. Specifically, Davis admits that on October 13, 2009, he was convicted of Aggravated Assault with a Deadly Weapon, to-wit: a Firearm, in Tarrant County, Texas, a second-degree felony for which he was sentenced to ten years' and one day imprisonment.

6. Davis further agrees that on March 17, 2021, he knowingly possessed the controlled substances found in the backpack in his vehicle. Davis admits that on March 17, 2021, he possessed 47.56 grams of heroin, approximately 1.16 grams of methamphetamine, and .09 grams of cocaine.

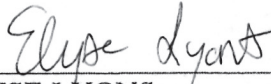
7. The defendant agrees that the defendant committed all the essential elements of the offense. This factual resume is not intended to be a complete accounting of all the facts and events related to the offense charged in this case. The limited purpose of this statement of facts is to demonstrate that a factual basis exists to support the defendant's guilty plea to the indictment.

AGREED TO AND STIPULATED on this 4 day of January, 2023.

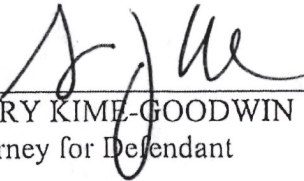
LEIGHA SIMONTON
UNITED STATES ATTORNEY



RONALD JEROME DAVIS
Defendant



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