

No. _____

In The Supreme Court Of The United States

CARL LANGSTON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

Petition For A Writ Of Certiorari
To The United States Court Of Appeals For The First Circuit

Petition For A Writ Of Certiorari

Robert Herrick
First Circuit Bar No. 119803
PO Box 400143
Cambridge, MA 02140
Tel: (857) 331-0847
Email: rherricklaw@gmail.com

CJA Counsel for the Petitioner

QUESTION PRESENTED FOR REVIEW

Whether the Petitioner's conviction for unlawful possession of a firearm by a felon under 18 U.S.C. § 922(g) (1) violates the Second Amendment where the predicate offenses alleged in the indictment were nonviolent?

PARTIES TO THE PROCEEDING

The caption of this case names all parties to the proceeding in the court whose judgment is sought to be reviewed.

RELATED PROCEEDINGS

United States v. Carl Langston, No. 2:21-cr-00166-GZS-1 (D. Me.) (criminal judgment entered March 30, 2023)

United States v. Carl Langston, First Circuit No. 23-1337 (Opinion and judgment issued August 2, 2024), 110 F.4th 408 (1st Cir. 2024)

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW.....	i
PARTIES TO THE PROCEEDING.....	ii
RELATED CASES.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES.....	iv
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINION BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL PROVISION INVOLVED.....	1
FEDERAL STATUTE INVOLVED.....	2
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING THE WRIT.....	6
CONCLUSION.....	11
APPENDIX INDEX.....	12

TABLE OF AUTHORITIES

CASES

<u>District of Columbia v. Heller,</u> 554 U.S. 570 (2008).....	11
<u>N.Y. State Rifle & Pistol Ass'n v. Bruen,</u> 142 S. Ct. 2111 (2022).....	PASSIM
<u>Range v. Attorney Gen. United States,</u> 69 F.4th 96 (3d Cir. 2023).....	7, 8, 9
<u>United States v. Booker,</u> 644 F.3d 12 (1st Cir. 2011).....	9
<u>United States v. Langston,</u> 110 F.4th 408 (1st Cir. 2024).....	2
<u>United States v. Matos,</u> 531 F.3d 121 (1st Cir. 2008).....	6
<u>United States v. Nichols,</u> 897 F.3d 729 (6th Cir. 2018).....	7
<u>United States v. Rahimi,</u> 144 S. Ct. 1889, 1893 (2024).....	11
<u>United States v. Torres-Rosario,</u> 658 F.3d 110 (2011).....	10

FEDERAL CONSTITUTIONAL AMENDMENTS

Second Amendment.....	PASSIM
-----------------------	--------

FEDERAL STATUTES

18 U.S.C. § 921.....	5
18 U.S.C. § 922.....i, 1, 2, 10, 11	
18 U.S.C. § 924.....	2
18 U.S.C. § 3231.....	6
28 U.S.C. § 1254.....	2
28 U.S.C. § 1291.....	6

STATE STATUTES

Me. Rev. Stat. Tit. 17-A § 353.....	9
-------------------------------------	---

PETITION FOR A WRIT OF CERTIORARI

Petitioner Carl Langston seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit.

OPINION BELOW

The Appendix contains the judgment of the United States Court of Appeals for the First Circuit (United States v. Carl Langston, 110 F.4th 408 (1st Cir. 2024) (Case No. 23-1337)). It also contains the judgment of the United States District Court for the District of Maine.

JURISDICTION

The United States Court of Appeals for the First Circuit affirmed the judgment of the district court on August 2, 2024. This petition is filed within 90 days after entry of the judgment. The petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Second Amendment to the United States Constitution provides as follows:

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

FEDERAL STATUTE INVOLVED

18 U.S.C. § 922(g)(1) provides as follows:

It shall be 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 commerce, an firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

On October 21, 2021, Langston was indicted on a charge of unlawful possession of a firearm by a felon, in violation of 18 U.S.C. §§ 922(g)(1) & 924(a)(2)(1). The indictment alleged that Langston was a felon due to his prior state convictions for unlawful trafficking in scheduled drugs and theft by unauthorized taking or transfer. Represented by counsel, Langston filed a motion to suppress the firearm, magazine and ammunition as well as any statements made at the time of his arrest.

District Judge George Z. Singal presided over an evidentiary hearing on the motion to suppress on June 2, 2022. In an order dated June 29, 2022, Judge Singal denied Langston's motion to suppress.

Langston and the Government filed a conditional plea agreement on November 21, 2022. The plea agreement did not include a waiver of appellate rights. Langston tendered a guilty plea the same day.

At a sentencing hearing held on March 30, 2023, Judge Singal sentenced Langston to 57 months of incarceration. He further imposed a term of 3 years of supervised release. Langston filed a timely notice of appeal.

On August 2, 2024, the United States Court of Appeals for the First Circuit affirmed the judgment of the district court. A petition for rehearing was not filed.

B. FACTS

*The Offense*¹

On about February 7, 2021, members of the Portland, Maine, Police Department (PPD) responded to a report that an individual involved in a physical altercation earlier in the evening was on scene and in possession of a firearm. PPD officers encountered a person on the street matching the description of the individual who was later identified as Defendant, Carl Langston. As the PPD officers approached Langston, he failed to comply with their orders to place his hands on his head. He was subsequently handcuffed and searched. During the search, a handgun was recovered from Langston's right jacket pocket along with a loaded Springfield XDS magazine, a cellphone, and other personal items.

The firearm recovered from Langston's jacket pocket was identified as a Springfield Armory (HS Produkt) .45 caliber pistol, model XDS, bearing serial number HG135281.

¹ The following summary of the offense conduct derives from the prosecution version of events. Langston admitted that he committed the offenses alleged in the indictment in a change of plea hearing held on November 21, 2022.

At the time of Defendant's arrest, he knew he had been convicted on about June 27, 2012, of Unlawful Trafficking in Scheduled Drugs, in Cumberland County Unified Criminal Court, Docket Number CUMCD-CR-2011-05779, receiving a sentence of 26 months imprisonment. Langston also knew he had been convicted on about April 6, 2009, of Theft by Unauthorized Taking or Transfer, in Cumberland County Superior Court, Docket Number PORSC-CR-2008-02515, receiving a sentence of three years imprisonment, with all but sixteen months suspended, followed by two years of probation. As a result of these convictions, Langston was purportedly prohibited from possessing firearms. At the time Langston possessed the firearms, he knew that he had been previously convicted of these crimes.

Langston had actual and/or constructive possession over the seized firearm. The Springfield Armory (HS Produkt) .45 caliber pistol, model XDS, bearing serial number HG135281 is a firearm as defined in Title 18, United States Code, Section 921(a)(3). The government's evidence would include that the firearm was manufactured outside the State of Maine.

REASONS FOR GRANTING THE WRIT

I. THE PETITIONER'S CONVICTION VIOLATES THE SECOND AMENDMENT OF THE FEDERAL CONSTITUTION.

Langston pleaded guilty to a charge of unlawful possession of a firearm following earlier convictions for felony theft and drug trafficking. Since the statutory prohibition against possession of a firearm for prior nonviolent offenses is not "part of the historical tradition that delimits the outer bounds of the right to keep and bear arms[,]" N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2127 (2022), the conviction violates Langston's rights under the Second Amendment of the federal constitution.

Langston's counsel did not challenge the constitutionality of the felon-in-possession charge in the district court. The court of appeals therefore reviewed Langston's claim for plain error. United States v. Matos, 531 F.3d 121, 122 (1st Cir. 2008). A conviction of an offense that violates the Constitution amounts to plain error. Cf. United States v. Nichols, 897 F.3d 729, 733-34 (6th Cir. 2018) (finding plain error where court imposed a sentence in excess of statutory maximum in light of Supreme Court's subsequent ruling that ACCA residual clause was unconstitutional).

This Court's decision in Bruen renders unconstitutional federal laws prohibiting defendants from possession of a firearm due to prior convictions for nonviolent offenses. Range v. Attorney Gen. United States, 69 F.4th 96 (3d Cir. 2023) (en banc). Since the predicate offenses allegedly barring Langston from possessing a firearm consisted of drug trafficking and theft by unauthorized taking or transfer, his conviction cannot stand.

In Bruen, supra, the Supreme Court announced a new framework for analyzing restrictions on the possession of firearms under the Second Amendment. The new approach anchors itself in the Second Amendment's text and the pertinent history of firearms regulation, with the government bearing the burden of "affirmatively prov[ing] that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." Id. at 2127. Thus, in the absence of comparable regulations "'immediately after [the Second Amendment's] ratification through the end of the 19th century,'" id. at 605, the Government cannot meet its burden of establishing that a firearm regulation survives constitutional scrutiny.

In Range, supra, the court of appeals considered the impact of Bruen on laws prohibiting the possession of a firearm by a felon convicted of a nonviolent offense. In its view, the prohibition against possession of a firearm by an individual due to a prior conviction is not "part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." Bruen, 142 S. Ct. at 2127.

Although federal law has prohibited the possession of a firearm by those convicted of certain offenses as far back as 1938, the earliest version of the "federal felony firearm ban ... initially covered those convicted of a limited set of violent crimes such as murder, rape, kidnapping, and burglary, but extended to both felons and misdemeanants convicted of qualifying offenses." United States v. Booker, 644 F.3d 12, 24 (1st Cir. 2011).

As the Third Circuit explained in Range, the Bruen Court's emphasis on "Founding- and Reconstruction-era sources," makes it a "dubious proposition" that the 1938 Act was "longstanding" enough to comport with the Second Amendment. Range, supra at 17, citing 142 S.Ct. at 2136, 2150. Even if it were sufficiently longstanding to satisfy the Bruen test, however, Langston's prior offenses for theft and drug trafficking would not have disqualified him

from gun ownership under the first federal felony firearm ban. Under Maine law, “[a] person is guilty of theft if: [...] The person obtains or exercises unauthorized control over the property of another with intent to deprive the other person of the property.” Me. Rev. Stat. Tit. 17-A § 353(1)(A). As a nonviolent offense, a conviction for theft cannot be the basis of a ban on possessing firearms.

Likewise, drug trafficking does not meet the historical test set forth in Bruen. As far back as 2011, the First Circuit observed that “the Supreme Court may be open to claims that some felonies do not indicate potential violence and cannot be the basis for applying a categorical ban.” United States v. Torres-Rosario, 658 F.3d 110, 113 (2011). It therefore “assum[ed] arguendo that the Supreme Court might find some felonies so tame and technical as to be insufficient to justify [the § 922(g)] ban.” Id. Although the First Circuit concluded that drug dealing was “not likely to be among” those “tame and technical” offenses, id., Langston respectfully submits that the court of appeals underestimated this Court’s skepticism of gun regulation.

This Court’s decision in Bruen makes plain that a nonviolent offense such as drug trafficking cannot support permanent dispossession of firearms. Bruen, 142 S. Ct. at

2127. As the three dissenting justices noted in Bruen, the majority's "rigid history-only approach" marked a novel framework that had never been adopted by a court of appeals. See Bruen, 142 S. Ct. at 2125-26. The Supreme Court's reasoning makes clear that a bar on gun possession due to a prior conviction would be the exception, not the rule, and would be limited to violent offenders.

Langston acknowledges that this Court has never expressly invalidated felon-in-possession statutes on Second Amendment grounds. Indeed, as recently as June 21, 2024, this Court reiterated that "many such prohibitions [against firearm possession], like those on the possession of firearms by "'felons and the mentally ill,'" are "'presumptively lawful.'" United States v. Rahimi, 144 S. Ct. 1889, 1893 (2024), quoting District of Columbia v. Heller, 554 U.S. 570, 626, 627, n.26 (2008).

Langston nonetheless maintains that a straightforward application of the Bruen test renders 18 U.S.C. § 922(g)(1) unconstitutional, at least as applied to him. During the relevant time periods of the eighteenth and nineteenth centuries, a conviction for a nonviolent felony simply did not result in permanent disarmament. The challenged statute therefore does not qualify as "part of the historical


tradition that delimits the outer bounds of the right to keep and bear arms[.]" Bruen, 142 S. Ct. at 2127.

Langston is currently serving a sentence for violating a statute that offends the Second Amendment. That his lawyer did not raise the issue in the district court is immaterial. Well before Langston's guilty plea, this Court promulgated a legal test that obviously precluded the Government from securing a conviction on the indictment. Since the entry of the judgment of conviction was plain error, this Court should grant Langston's petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

CARL LANGSTON
By His Attorney


ROBERT HERRICK, ESQUIRE
First Circuit Bar No. 119803
PO Box 400143
Cambridge, Massachusetts 02140
Tel: (857) 331-0847
Email: rherricklaw@gmail.com

Date: October 16, 2024

APPENDIX INDEX

FIRST CIRCUIT JUDGMENT AND ORDER.....1
DISTRICT COURT JUDGMENT.....33

United States Court of Appeals For the First Circuit

No. 23-1337

UNITED STATES OF AMERICA,

Appellee,

v.

CARL LANGSTON,

Defendant, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

[Hon. George Z. Singal, U.S. District Judge]

Before

Montecalvo, Lynch, and Rikelman,
Circuit Judges.

Robert Herrick for appellant.

Benjamin M. Block, Assistant United States Attorney, with
whom Darcie N. McElwee, United States Attorney, was on brief, for
appellee.

August 2, 2024

RIKELMAN, Circuit Judge. Carl Langston appeals his conviction for possessing a gun in violation of 18 U.S.C. § 922(g)(1), the felon-in-possession statute. Langston's primary argument is that this statute is unconstitutional under the Second Amendment as applied to him. In particular, he claims that the government cannot, consistent with the Second Amendment, bar him from ever possessing a gun again based on his previous convictions under Maine law for theft and drug trafficking. Because Langston challenges the constitutionality of § 922(g)(1) for the first time on appeal, we must review his claim under the plain-error standard, which requires that any error be "clear" or "obvious." And, because it is not "clear" or "obvious" that § 922(g)(1) is unconstitutional under the Second Amendment as applied to someone with Langston's criminal history, he cannot prevail under this standard. Langston also challenges the district court's denial of his motion to suppress evidence (including the gun) uncovered during a police stop, as well as several of the district court's sentencing decisions. We agree with the district court's ruling that the police stop was based on reasonable suspicion and find no errors in the court's sentencing decisions. Thus, we affirm Langston's conviction and sentence.

I. BACKGROUND

Because this appeal follows Langston's guilty plea, we draw the facts relevant to Langston's sentencing from "the

probation office's presentence investigation report (PSR), the plea agreement, . . . the transcript of the sentencing hearing," and the sentencing exhibits. United States v. Colón-Cordero, 91 F.4th 41, 45 (1st Cir. 2024); see also United States v. Ruperto-Rivera, 16 F.4th 1, 3 (1st Cir. 2021). As for the facts relevant to Langston's suppression argument, "[w]e recite [them] as found by the district court," United States v. Werra, 638 F.3d 326, 328 (1st Cir. 2011), and view them "in the light most favorable to the district court's ruling," United States v. Soares, 521 F.3d 117, 118 (1st Cir. 2008) (quoting United States v. Kimball, 25 F.3d 1, 3 (1st Cir. 1994)).

A. Langston's Arrest at The Bar on February 7, 2021

Two incidents are critical to this appeal. The first, which gave rise to Langston's conviction, took place at The Bar in Portland, Maine.

Shortly before midnight on February 6, 2021, the Portland Police Department (PPD) received a 911 call about a disturbance at The Bar. An anonymous tipster reported that "a black male wearing a black hat with horns . . . [was] yelling and had punched a white male that had a beard." The injured man reportedly had left, while "the black male was still outside yelling."

The PPD dispatched two officers, Garrick Rogers and Ryan Cannell, to investigate. When they arrived, The Bar was quiet,

and no one matching the description provided by the tipster was present. Rogers and Cannell spoke with a bouncer, who confirmed that a fight had occurred but stated that a "recurrence was unlikely unless the participants encountered each other again somewhere else that night." Satisfied that all was well for the moment, Rogers and Cannell left The Bar.

Soon after, the anonymous tipster placed another 911 call. This time, he identified himself as "Shawn" and gave his address and telephone number. Shawn reported that the man who had "started the fight" was "still in the bar." A few minutes after Shawn's call, The Bar's off-site manager called 911 to convey a report he had received from an on-site security guard. The PPD dispatch then relayed these latest tips over the radio:

One of the males involved in the fight went to his car and grabbed a 1032 gun. He's now looking for another male that he was fighting with. They said he had a pistol in his coat. Black male, 5'10", maroon jacket with a grey hood. He's currently outside the bar with his hand in his pocket.

Rogers and Cannell, along with a third officer, Zachary Theriault, returned to the scene to investigate.

When Rogers arrived back at The Bar, he saw an individual outside who matched the description from the 911 calls, down to the maroon jacket, grey hood, and black hat decorated with a horns design. That individual turned out to be Carl Langston, although Rogers did not know his name at the time. Langston appeared to be

arguing with another man outside The Bar; from Rogers's perspective, the man appeared to be blocking Langston's entrance into The Bar, and Langston appeared to be pushing against the man, trying to get in.

Rogers approached and told Langston to put his hands on his head. Langston first replied, "Who?" After Rogers repeated his command, Langston retreated slightly and said, "Nah." As he backed away from Rogers, Langston held his right arm close against his right jacket pocket, in a manner that led Rogers to believe that a gun could be located there.

Meanwhile, Theriault approached The Bar from the opposite side, moving in from behind Langston, out of Langston's sight. He observed Langston refusing to comply with Rogers's commands and, because he could not see Langston's hands from behind, worried that Langston might pull a gun out of his jacket, given the information relayed by the PPD that Langston "had a pistol in his coat." After Langston turned around and saw Theriault behind him, Theriault grabbed Langston's right wrist and shoulder to stop him from reaching for a weapon. Langston tried to break the hold and pull away, at which point Rogers entered the fray. Theriault intentionally dropped to the ground, with Langston on top of him, where the three men struggled.

Cannell then arrived on the scene and began assisting Theriault and Rogers in subduing Langston. After about a minute,

the three men successfully gained control of Langston, and Rogers handcuffed him. Theriault sustained a knee abrasion during the struggle.

Shortly after handcuffing Langston, Theriault and Rogers noticed the grip of a pistol in Langston's right pocket. They secured the pistol and, after searching Langston, found a loaded magazine. They then arrested Langston for refusing to submit to arrest or detention in violation of Maine law. Other state charges against Langston were later added, including felony assault on an officer. The state eventually dropped those charges in favor of federal prosecution.

B. Langston's Indictment and Motion to Suppress

In October 2021, a grand jury indicted Langston with one count of violating the federal felon-in-possession statute, 18 U.S.C. § 922(g)(1), based on his prior felony convictions under Maine law for theft and drug trafficking. Although the indictment and Langston's PSR contain limited information about the theft offense, it appears that Langston was convicted of violating title 17-A, section 353 of the Maine Criminal Code, which criminalizes theft by unauthorized taking or transfer. As for the drug offense, Langston was convicted of heroin trafficking in violation of section 1103(1-A)(A) of the Code.

After his indictment, Langston moved to suppress the evidence that the PPD officers had obtained when they tried to

stop him outside The Bar. He argued that the Fourth Amendment to the U.S. Constitution required the suppression of the gun and ammunition because the officers lacked "reasonable suspicion" to perform their investigatory stop of him that night. The district court held an evidentiary hearing, at which Rogers and Theriault testified. It then determined that the totality of the circumstances gave rise to reasonable suspicion that criminal activity was afoot and denied Langston's motion.

Langston then entered into a conditional plea agreement with the government in November 2022. Under that agreement, he retained the right to appeal the court's suppression order.

Before Langston's sentencing, the probation officer submitted a PSR to the district court. In the PSR, the officer calculated Langston's base offense level as fourteen; he then added four levels for possessing a firearm during felony assault on an officer and subtracted three levels for Langston's acceptance of responsibility, for a total offense level of fifteen. Combined with a criminal history category of VI, this yielded a guideline sentencing range (GSR) of forty-one to fifty-one months.

**C. Incident at The Brook Casino
During Langston's Pretrial Release**

The second incident critical to this appeal took place at The Brook casino in Seabrook, New Hampshire, four months after Langston pleaded guilty and while he was on release pending

sentencing. Langston was playing poker at The Brook when the dealer at his table accidentally exposed a card during the hand. The dealer called over a floor manager, who "followed the correct procedures to fix the mistake." Langston remained upset, however, and the floor manager asked Jason Gigliello, the casino manager, to speak with him.

To address Langston's concerns, Gigliello called the casino's surveillance team, who reviewed the hand and confirmed that the dealer had properly fixed the error. After Gigliello told Langston that "surveillance was conclusive," Langston became "combative and agitated." Gigliello then summoned security, at which point Langston "turned aggressive" and told Gigliello that he would "get[his] \$200 back one way or another." After Langston refused to leave on his own, Gigliello called the police and asked them to remove Langston from the casino. According to Gigliello's report, Langston "appeared intoxicated" and was "unsteady on his feet."

One of the Seabrook police officers who responded to Gigliello's call noted that Langston smelled like alcohol, and "it was clear that he just had too much to drink." After Langston refused to give the officers his full name or hand over his license, they took him into protective custody. They then transported him to the police station, where they found Langston's license and determined that he was on federal probation.

The Seabrook police sent a report on the incident to Langston's probation officer. Based on the police report, the probation officer concluded that Langston had violated his pretrial release conditions, which required him to refrain from drinking and to inform his probation officer about any contact with law enforcement. The probation officer then submitted several revisions to the PSR, suggesting that Langston be denied credit for acceptance of responsibility.

D. Langston's Sentencing

Shortly after the casino incident, in late March 2023, the district court held Langston's sentencing hearing. At the hearing, Langston told the court that he had no objection to the PSR, which included a recommendation for a four-level offense enhancement based on the state charge that he possessed a gun during an assault on an officer outside The Bar. Langston did object, however, to three exhibits that the government sought to introduce to prove that he violated his pretrial release conditions by drinking at the casino. Specifically, Langston objected to (1) the protective custody report from the Seabrook police, (2) an email from the Director of Casino Operations, indicating that casino staff had served Langston ten drinks (nine alcoholic) and identifying the staff who did so and when, and (3) an email from the casino's Surveillance Director, which included screenshots of staff serving Langston drinks. Langston insisted that these

exhibits were unreliable, claiming that the police report incorrectly recounted the poker-hand incident and the casino emails came from individuals with no personal knowledge of his alleged drinking. The court overruled these objections and concluded that, after reviewing all the evidence, which included surveillance footage of Langston in the police vehicle that night, "there[] [was] no question . . . that [Langston] was inebriated" at the casino.

The district court then addressed whether Langston had accepted responsibility for his offense. After hearing from both sides, the court concluded that Langston was not entitled to the acceptance-of-responsibility credit because of his conduct at the casino while he was on pretrial release (as well as because of an interim incident not at issue in this appeal). The court explained the similarities between Langston's behavior at The Bar and The Brook:

The initial offense [at The Bar] involved drinking at a bar, not cooperating with police, resisting the police. We had a later event where he was at a different bar, The Lodge, where he got into an argument with a customer and he was restrained by his companion. And then we have this event.

I find he was intoxicated at the casino. He was drinking in violation of his bail provisions. He was asked to leave multiple times and refused. I base this on the exhibits. The security guard, I note, felt he was drinking; the police smelled alcohol. When the police came he refused to give his full name multiple times, in spite of the fact

that he was on probation and subject to bail conditions.

Multiple times he gave his name as Carl, refused to give his name, acting like a -- he was toying with the police. When the police attempted to take him out, the police described him as aggressively jerking his arm. He continued to refuse to cooperate with the police, and I'm referring back again to the analogy to the earlier offense. He made comments to the casino manager, I believe it was the manager, saying I'm going to get my two dollars back -- \$[]200 back one way or another, which to me is a threat. And he didn't report this incident to the probation officer until March 21st. I understand that his position is that the policeman could have reported it, but that was not the -- the bail obligation. It was his obligation to report it, making light of his obligations. I think coupled with the original offense, it appears to me he hasn't learned much. And I find there's no acceptance of responsibility.

Without the acceptance-of-responsibility credit, the district court calculated Langston's total offense level as eighteen. Combined with a criminal history category of VI, this yielded a GSR of fifty-seven to seventy-one months. The court sentenced Langston to fifty-seven months in prison -- the lowest end of this range.

II. DISCUSSION

As we previewed above, this appeal raises three main issues. First, Langston brings an as-applied Second Amendment challenge to his statute of conviction. Second, Langston claims that the police officers did not have reasonable suspicion to stop him at The Bar. Third, Langston contends that the district court

made several errors at sentencing. We address each argument in turn and ultimately conclude that none has merit.

A. Second Amendment Challenge to 18 U.S.C. § 922(g) (1)

Langston's primary argument on appeal is that the felon-in-possession statute, 18 U.S.C. § 922(g) (1), is unconstitutional under the Second Amendment as applied to him. See U.S. Const. amend. II. In particular, he claims that § 922(g) (1) cannot, consistent with the Second Amendment, prohibit someone with previous convictions under Maine law for theft and drug trafficking from ever owning a firearm again. In Langston's view, this conclusion should have been clear and obvious to the district court after the government failed to provide any evidence that such a prohibition conforms to our historical tradition of firearm regulation. In making this argument, Langston relies on New York State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022), which was decided about nine months before his sentencing, as well as the Supreme Court's recent decision in United States v. Rahimi, 144 S. Ct. 1889 (2024).

We begin by reviewing the key legal principles that apply to Langston's constitutional challenge. The Second Amendment provides that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. In a series of decisions, the Supreme Court has determined that this provision

protects the right of an ordinary, law-abiding individual to keep and bear arms. See Rahimi, 144 S. Ct. at 1897; Bruen, 597 U.S. at 8-9; McDonald v. Chicago, 561 U.S. 742, 750 (2010); District of Columbia v. Heller, 554 U.S. 570, 595 (2008). And, when the government restricts this right, it bears the burden of justifying the restriction by showing that it is consistent with our history and tradition. See Rahimi, 144 S. Ct. at 1897; Bruen, 597 U.S. at 24.

The Supreme Court clarified the scope of the history and tradition test under the Second Amendment in Rahimi, which both parties agree provides the governing legal standard that we must apply here.¹ See Henderson v. United States, 568 U.S. 266, 268-69 (2013) (holding that an error that was not plain at the time the trial court acted may be plain at the time of appellate review based on subsequent legal developments). In Rahimi, the Court

¹ Indeed, in the wake of Rahimi, the Supreme Court granted several pending petitions for certiorari involving Second Amendment challenges to § 922(g)(1) post-Bruen, vacated the decisions below, and remanded to the appellate courts to reanalyze the challenges under Rahimi. The Court vacated the decisions regardless of whether the decision had upheld or rejected a Second Amendment challenge to § 922(g)(1). See, e.g., Range v. Att'y Gen. U.S., 69 F.4th 96, 106 (3d. Cir. 2023) (en banc) (finding § 922(g)(1) unconstitutional under Bruen as applied to an individual with a prior felony conviction for food stamp fraud), vacated sub nom. Garland v. Range, No. 23-374, 2024 WL 3259661 (July 2, 2024); United States v. Jackson, 69 F.4th 495, 505-06 (8th Cir. 2023) (reaching the opposite conclusion for individual with prior felony convictions for selling drugs), vacated, No. 23-6170, 2024 WL 3259675 (July 2, 2024).

noted that "some courts ha[d] misunderstood the methodology of [its] recent Second Amendment cases" and explained that "[t]hese precedents were not meant to suggest a law trapped in amber." 144 S. Ct. at 1897. It then held that the Second Amendment "permits more than just those regulations identical to ones that could be found in 1791" and thus does not require a "historical twin" to justify a modern firearm restriction. Id. at 1897-98 (quoting Bruen, 597 U.S. at 30). Instead, the correct constitutional inquiry is whether the restriction is "consistent with the principles that underpin our regulatory tradition," meaning whether it is "'relevantly similar' to laws that our tradition is understood to permit." Id. at 1898 (quoting Bruen, 597 U.S. at 29). "Why and how the regulation burdens the [Second Amendment] right are central to this inquiry." Id.

Applying this framework, the Supreme Court rejected Rahimi's facial constitutional challenge to § 922(g)(8). See id. This statute prohibits an individual from possessing a gun while subject to a domestic violence restraining order if the order includes a finding that the individual poses a "credible threat to the physical safety" of a protected person. 18 U.S.C. § 922(g)(8)(C)(i).

As the Supreme Court explained, Rahimi's facial attack had to fail because the provision was constitutional as applied to his own case. See Rahimi, 144 S. Ct. at 1898. A state court had

issued a restraining order against Rahimi after finding that he posed "a credible threat" to the "physical safety" of his girlfriend and their child. Id. at 1895. The government argued that disarming Rahimi was therefore justified because § 922(g)(8)(C)(i) was consistent with the principles behind the surety and going-armed laws of the 1700s and early 1800s, which it identified as relevant analogues. See id. at 1899-1902. The Supreme Court agreed. "Taken together, the surety and going[-]armed laws confirm what common sense suggests," the Court concluded, that "[o]ur tradition of firearm regulation allows the Government to disarm individuals who present a credible threat to the physical safety of others." Id. at 1901-02.

Turning back to this case, Langston contends that § 922(g)(1) is unconstitutional under the Second Amendment as applied to him. Our decision here, however, is not on the merits. Instead, because Langston concedes that he never made his Second Amendment claim to the district court, both parties agree that we must review Langston's claim only for plain error. See United States v. Sansone, 90 F.4th 1, 6 (1st Cir. 2024) ("Unpreserved claims of error, if not deemed waived, are reviewed only for plain error.").

To prevail under the plain-error standard, Langston must show that (1) the district court committed an error; (2) that error was "plain -- that is to say, clear or obvious," (3) the error

affected his substantial rights, and (4) leaving the error uncorrected would "seriously affect[] the fairness, integrity or public reputation of judicial proceedings." United States v. Ortíz-Mercado, 919 F.3d 686, 689 (1st Cir. 2019) (citations omitted). We need not address the prongs of the plain-error standard in any particular order. See Dimanche v. Mass. Bay Transp. Auth., 893 F.3d 1, 10, 12 (1st Cir. 2018).

We start with the second prong, which requires us to decide whether the error -- if there was one -- was "plain." As we have explained, a plain error must be "indisputable." United States v. Correa-Osorio, 784 F.3d 11, 22 (1st Cir. 2015) (quoting United States v. Jones, 748 F.3d 64, 70 (1st Cir. 2014)). Thus, "[t]o obtain relief from his conviction, . . . [Langston] must show not only that [§ 922(g)(1)'s application to him was unconstitutional] but also that it was obviously so." United States v. Diaz, 285 F.3d 92, 96 (1st Cir. 2002). To demonstrate that the statute was obviously unconstitutional, Langston can point either to binding on-point precedent or show "that [his] theory 'is compelled' by constitutional law, statute, regulation, or other legal mandate." United States v. Grullon, 996 F.3d 21, 33 (1st Cir. 2021) (quoting United States v. Romero, 906 F.3d 196, 207 (1st Cir. 2018)). In the plain-error context, binding on-point precedent means a decision that adopts Langston's argument that § 922(g)(1) is unconstitutional as applied to an individual with

underlying convictions under title 17-A, sections 353 and 1103(1-A) (A) of the Maine Criminal Code. See Romero, 906 F.3d at 207.

We conclude that Langston fails under the plain-error standard for at least two reasons. First, there is no binding on-point precedent: No case from the Supreme Court or our court holds that § 922(g)(1) is unconstitutional in any of its applications, much less as applied to an individual with previous convictions under these sections of the Maine Criminal Code.

Second, the legal test from Rahimi does not "compel" the conclusion that § 922(g)(1) is unconstitutional under the Second Amendment as applied to defendants with Langston's criminal history, as charged in his indictment. To be sure, an error can be plain if an outcome contrary to the district court's decision is "compelled" by "legal mandate." See Grullon, 996 F.3d at 33 (quoting Romero, 906 F.3d at 207). Our precedent therefore allows for the possibility that a statute that restricts a constitutional right could be plainly unconstitutional under a newly articulated legal test. But that is not the case here.

Rather than compelling the conclusion that § 922(g)(1) is unconstitutional, the Supreme Court's Second Amendment cases consistently reiterate, albeit in dicta, the presumptive lawfulness of the felon-in-possession statute. The Court noted in both Heller and McDonald that "nothing in [its decisions] should

be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons." Heller, 554 U.S. at 626-27; see also McDonald, 561 U.S. at 786 (repeating Heller's assurances). Heller referred to felon-in-possession laws as "presumptively lawful regulatory measures." 554 U.S. at 627 n.26. And Bruen incorporated and expanded upon the Court's statements in Heller and McDonald. See Bruen, 597 U.S. at 26, 29; see also id. at 80-81 (Kavanaugh, J., concurring) ("[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons" (alteration in original) (quoting Heller, 554 U.S. at 626-27))).

Most importantly, the Supreme Court's majority opinion in Rahimi, joined by eight justices, once again identified prohibitions on the possession of firearms by felons as "presumptively lawful." 144 S. Ct. at 1902 (quoting Heller, 554 U.S. at 627 n.26). Thus, Langston's argument that the legal test laid out in Rahimi compels the conclusion that certain applications of § 922(g) (1) violate the Second Amendment is contradicted by the text of Rahimi itself.

To be sure, Langston presents a serious constitutional claim that the Supreme Court has not yet resolved. As Langston points out, Rahimi held only that an individual may be temporarily disarmed, consistent with the Second Amendment, if a court has found that the individual poses a credible threat to the physical

safety of another. See id. at 1903. Still, the Supreme Court has stated repeatedly over sixteen years, from Heller to Rahimi, that felon-in-possession laws are presumptively lawful. Thus, on plain-error review, we cannot agree with Langston that the mere fact that the government did not introduce historical evidence to support the constitutionality of § 922(g)(1) makes it clear and obvious that Langston's conviction violates the Second Amendment.

At times, Langston has framed his Second Amendment claim as a challenge to § 922(g)(1) as applied to all individuals with nonviolent underlying convictions. To the extent that Langston is bringing this alternative claim, we conclude that his challenge fails under plain-error review for another reason: It would not have been clear and obvious to the district court that Langston fell within this category of individuals, given his prior conviction for heroin trafficking.² See United States v. Torres-Rosario, 658 F.3d 110, 113 (1st Cir. 2011) (suggesting that drug dealing was likely to be considered a violent felony).

² We note, too, that Langston has prior convictions for violent criminal conduct. For example, Langston's criminal history report shows that he was convicted of domestic violence assault in 2008 after punching his girlfriend in the face and grabbing her by her throat. Although the government did not include this conviction as an underlying offense in the indictment, it indicated at oral argument that it would have sought to file a superseding indictment relying on this conviction had Langston raised his Second Amendment argument at the district court.

In sum, Langston fails to show that § 922(g)(1) clearly and obviously violates the Second Amendment as applied to him, given his previous convictions under Maine law for theft and drug trafficking. We therefore reject his Second Amendment challenge.³

B. Fourth Amendment Challenge to the Investigatory Stop

When Langston pleaded guilty, he retained the right to appeal the district court's denial of his suppression motion. We turn to that challenge now.

Langston argues that the PPD officers violated the Fourth Amendment by stopping him outside The Bar. See U.S. Const. amend. IV; United States v. Tiru-Plaza, 766 F.3d 111, 115 (1st Cir. 2014) (explaining that the Fourth Amendment's protections

³ Although we always conduct our own independent analysis of Supreme Court precedent, the parties could not cite to any case from another circuit court that has held the felon-in-possession statute to violate the Second Amendment, in any of its applications, under the plain-error standard.

The only circuit to reach the merits of an unpreserved constitutional challenge to § 922(g)(1) did so under distinguishable circumstances, and the opinion has been vacated in the wake of Rahimi. See United States v. Duarte, 101 F.4th 657, 663 (9th Cir.), reh'g en banc granted, opinion vacated, No. 22-50048, 2024 WL 3443151 (9th Cir. July 17, 2024). In Duarte, the United States Court of Appeals for the Ninth Circuit reviewed de novo the statute's constitutionality under Bruen, even though the defendant had not raised his Second Amendment argument to the district court. See id. at 663. The court concluded that the defendant had "good cause" under Federal Rule of Criminal Procedure 12(b)(4)(B)(c)(1) for failing to raise the issue in the district court because circuit precedent foreclosed the argument and Bruen had not yet been decided. See id. By contrast, as we noted above, Bruen was decided nine months before Langston's sentencing, so he had the opportunity to raise his argument to the district court.

against unreasonable search and seizure extend to "brief investigatory stops" that fall "short of traditional arrest" (quoting United States v. Arvizu, 534 U.S. 266, 273 (2002)). For a stop like this to be constitutional under the Fourth Amendment, officers must have "a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot.'" Tiru-Plaza, 766 F.3d at 115 (quoting United States v. Sokolow, 490 U.S. 1, 7 (1989)). Langston claims that the district court erred by determining that the officers had that reasonable suspicion here.

The district court's reasonable suspicion determination is a legal conclusion that we review de novo. Id. But in doing so, we "give appropriate weight to the inferences drawn by the district court and the on-scene officers, recognizing that they possess the advantage of immediacy and familiarity with the witnesses and events." Id.

After holding an evidentiary hearing, the district court rejected Langston's Fourth Amendment challenge in a carefully reasoned opinion. It determined that the officers acted with reasonable suspicion based on three sources of information: "(1) the various accounts received from the three informants; (2) [the officers'] own observations of [Langston's] appearance and behavior immediately preceding the stop; and (3) their law

enforcement training and experience, which included their experience policing" this neighborhood.

On appeal, Langston focuses on this first category: the accounts from the various informants. He argues that the district court erred by considering both 911 calls by Shawn, as well as the information conveyed by the bar bouncer and the bar manager, in its reasonable suspicion analysis. Instead, Langston argues, only two accounts are relevant here: Shawn's second 911 call, and the off-site bar manager's "third-hand" report from his on-site security guard that a patron had a concealed gun. That's because, in Langston's view, there were two separate incidents at The Bar that night, and the police officers and the court should not have considered information related to the earlier incident (the fight) in evaluating whether Langston's stop was reasonable.

Viewing the record in this piecemeal fashion would violate our precedent. When evaluating whether reasonable suspicion exists, "our task is not to perform a divide-and-conquer analysis but to look at the totality of the circumstances." United States v. Harrington, 56 F.4th 195, 202 (1st Cir. 2022) (internal quotation marks omitted) (quoting United States v. Cruz-Rivera, 14 F.4th 32, 45 (1st Cir. 2021)). "[T]he relevant inquiry is an objective one based on all 'the cumulative information available to [the officers]' at the time of the search [or stop]." United States v. Qin, 57 F.4th 343, 349 n.7 (1st Cir. 2023) (quoting

Arvizu, 534 U.S. at 273). Indeed, Langston admits that the totality-of-the-circumstances standard applies. And he could not point to any case law suggesting that, in conducting a totality-of-the-circumstances analysis, we should disregard relevant information known to the officers simply because they already conducted some initial investigation of that information.

Langston also argues that the bar manager's 911 call, which conveyed "third-hand" information from an unknown source, cannot on its own give rise to a reasonable suspicion of criminal activity. In fact, Langston argues, that tip did not even indicate that he was engaged in any criminal behavior, given that carrying a concealed gun is not a crime in Maine. This argument, however, again misstates the legal standard. True, an anonymous, uncorroborated hearsay tip, on its own, may lack "sufficient indicia of reliability to provide reasonable suspicion to make [an] investigatory stop." Florida v. J.L., 529 U.S. 266, 270 (2000) (quoting Alabama v. White, 496 U.S. 325, 327 (1990)); see United States v. Monteiro, 447 F.3d 39, 44-45 (1st Cir. 2006). But the police did not act on the bar manager's tip alone. The full picture here included Shawn's two 911 calls, the officers' conversation with the bar bouncer (which validated the details from Shawn's first 911 call), the bar manager's call, and the officers' observations at the scene.

Considering these informational sources together, we conclude that the totality of the circumstances gave rise to a reasonable suspicion that Langston was about to engage in criminal activity -- public fighting, potentially with a gun on hand. Shawn's first 911 call, combined with the officers' conversation with the bar bouncer, suggested that a fight had occurred, and further trouble was likely if the parties encountered each other again that night. Shawn's second call, combined with the bar manager's account, suggested that a second fight was imminent because one of those parties had returned to The Bar with a weapon. And when the police arrived on the scene, their observations of Langston's interactions with another person outside The Bar and Langston's appearance, which matched the informants' descriptions, corroborated these accounts. Based on these circumstances, we agree with the district court that that the officers had reasonable suspicion to stop Langston outside The Bar that night.

C. Sentencing Challenges

Langston's remaining challenges concern the district court's sentencing decisions. To begin, he argues that the district court erred by enhancing his base offense level on the ground that he possessed a firearm during a felony assault on a police officer. Next, he contends that the district court considered unreliable hearsay evidence in concluding that he violated the conditions of his pretrial release by drinking.

Finally, and by extension, Langston argues that the district court clearly erred by finding that he had not accepted responsibility for his offense. We disagree on each of these points.

1. The Felony Assault Enhancement

We begin with Langston's challenge to the district court's four-level sentencing enhancement under section 2K2.1(b)(6)(B) of the U.S. Sentencing Guidelines. This provision allows a district court to increase a defendant's base offense level "[i]f the defendant . . . used or possessed any firearm or ammunition in connection with another felony offense." U.S.S.G. § 2K2.1(b)(6)(B). The district court applied the enhancement based on Langston's possession of the firearm during an assault on a police officer -- a felony under Maine law. See Me. Rev. Stat. Ann. tit. 17-A, § 752-A.

Ordinarily, "[when] a defendant challenges the factual predicate supporting the district court's application of a sentencing enhancement, 'we ask only whether the court clearly erred in finding that the government proved the disputed fact by a preponderance of the evidence.'" United States v. Cannon, 589 F.3d 514, 517 (1st Cir. 2009) (quoting United States v. Luciano, 414 F.3d 174, 180 (1st Cir. 2005)). Langston concedes, however, that he did not object to the enhancement before the district court and thus forfeited this claim. Still, he urges us to find that the district court plainly erred by applying this enhancement.

The government, for its part, argues that we should forgo review of this argument altogether because Langston affirmatively waived it when he told the district court that he had no objection to the PSR, which recommended the four-level increase.

We need not resolve the parties' forfeiture versus waiver disagreement. "Where a defendant's claim would fail even if reviewed for plain error, we have often declined to decide whether the defendant's failure to raise the issue below constituted waiver or mere forfeiture." United States v. Acevedo-Sueros, 826 F.3d 21, 24 (1st Cir. 2016). And here, Langston has failed to show that the district court's application of the enhancement amounted to plain error.

Langston contends that the district court erred by applying the enhancement because his conduct at The Bar could support only a misdemeanor charge for refusing to submit to arrest or detention under Maine law. In support of this argument, Langston points to two facts: Initially, he was arrested only for refusing to submit to arrest or detention, and the altercation with the officers occurred because he tried to get away from, rather than fight with, them.

Even assuming Langston is correct on both these facts, the district court's application of the enhancement still would not be clearly and obviously wrong. See Ortíz-Mercado, 919 F.3d at 689. Under Maine law, an individual can be liable for assault

on an officer regardless of whether they are trying to engage or disengage with the officer. See Me. Rev. Stat. Ann. tit. 17-A, § 752-A(1)(A) ("A person is guilty of assault on an officer if . . . [h]e intentionally, knowingly or recklessly causes bodily injury to a law enforcement officer while the officer is in the performance of his official duties."). And whatever the basis for his initial arrest at The Bar, Langston's PSR shows that the state did charge him with assault on an officer in connection with this incident. Accordingly, we reject Langston's argument that the district court plainly erred by applying the enhancement.

2. Reliability of Hearsay Evidence

We turn next to Langston's challenge to the district court's reliance on several government exhibits in concluding that Langston violated his pretrial release conditions by drinking at The Brook casino. Langston contends that the district court erred by admitting three hearsay exhibits: the protective custody report from the Seabrook police and two emails from casino managers forwarding information from casino records about what drinks Langston was served that night. Langston argues that these exhibits lacked sufficient indicia of trustworthiness to support their probable accuracy and thus the district court abused its discretion by relying on them to conclude that Langston consumed alcohol at the casino. See United States v. Rosa-Borges, 101 F.4th 66, 80 (1st Cir. 2024) (explaining that district courts may rely

on hearsay evidence in making factual findings at sentencing, so long as the evidence is supported by "sufficient indicia of reliability"); United States v. Castillo-Torres, 8 F.4th 68, 71 (1st Cir. 2021) ("Determinations of reliability are reviewed for abuse of discretion.").

Langston's arguments boil down to two claims: (1) the police report got the facts wrong about the poker-hand dispute, which undermines everything in the report, including the officer's personal observation that Langston was intoxicated,⁴ and (2) the emails from the casino managers are unreliable because the managers had no personal knowledge of whether the drinks served to Langston contained alcohol. We find neither claim convincing.

First, we see no reason why the officer's allegedly erroneous description of the poker-hand dispute would undermine the reliability of other statements in his report, including that the officer could "smell the alcohol coming from [Langston's] person" and that "it was clear that he just had too much to drink."

⁴ Langston also argues that the report is unreliable because it "depicts a patent misuse of the New Hampshire protective custody [statute]." He contends that the officer's observation that Langston smelled like alcohol was insufficient to take him into custody. But the relevant statute allows an officer to take into protective custody any person "who, in the judgment of the officer, is intoxicated." N.H. Rev. Stat. Ann. § 172-B:3(I). We see nothing in the statute, nor does Langston direct us to any authority, that suggests that an officer must observe certain other indicia of intoxication before taking a person into protective custody. Nor do we see the connection between this argument and the reliability of the officer's observations in the report.

The officer's understanding of the poker-hand dispute does not bear on his ability to make these routine observations. Second, the casino's business records -- documenting that Langston consumed alcohol -- are "entirely compatible" with and corroborated by other admissible evidence in the record. See United States v. Green, 426 F.3d 64, 67 (1st Cir. 2005). That other evidence includes Gigliello's email, which recounted that Langston "appeared intoxicated" and was "unsteady on his feet," and surveillance footage from the police cruiser, in which Langston can be seen singing and slurring his speech.

Indeed, as the district court explained at sentencing, it had reviewed the surveillance footage of Langston's behavior in the back of the police cruiser and compared that behavior to its own observations of Langston during his previous court appearances. Langston "acted so different [in the back of the cruiser] than he ha[d] any other time," the court noted, adding: "He was singing to himself, he was groggy, his voice sounded inebriated." Based on this video, the court concluded, "there's no question . . . that he was inebriated."

Under these circumstances, we find that the district court did not abuse its discretion by admitting the police report and casino records as more evidence that Langston had consumed alcohol at The Brook.

3. Acceptance-of-Responsibility Credit

In his last argument on appeal, Langston challenges the district court's decision to deny him a three-level reduction for accepting responsibility for his offense. Langston argues that, even if he did violate his bail conditions, the violations were too "attenuated" from his underlying offense to justify denial of the acceptance-of-responsibility credit.

Under the Sentencing Guidelines, a defendant who "clearly demonstrates acceptance of responsibility" is entitled to a two-level decrease in their offense level. U.S.S.G. § 3E1.1(a). A defendant who qualifies for this two-level decrease may also obtain another one-level decrease if they "timely notify[] authorities of [their] intention to enter a plea of guilty," among other requirements. Id. § 3E1.1(b).

Whether a defendant has accepted responsibility for their offense is a "factbound determination" that we review for clear error. United States v. McCarthy, 32 F.4th 59, 62-63 (1st Cir. 2022) (quoting United States v. Jordan, 549 F.3d 57, 60 (1st Cir. 2008)). Because "[t]he sentencing court is steeped in the nuances of the case, . . . we accord substantial deference to its determination that acceptance of responsibility has not been shown." Id. at 63. For this reason, "[w]e will not reverse unless -- after a careful review of all the relevant facts -- we are 'left with a definite and firm conviction that a mistake has

been committed.'" Id. (quoting Brown v. Plata, 563 U.S. 493, 513 (2011)).

The district court denied Langston the acceptance-of-responsibility credit based in part on his violation of his pretrial release conditions. Under our precedent, "a defendant's failure to comply with conditions of a bond [can] be highly relevant to assessing the sincerity of the defendant's contrition." United States v. McLaughlin, 378 F.3d 35, 40 (1st Cir. 2004) (alteration in original) (quoting United States v. Hooten, 942 F.2d 878, 883 (5th Cir. 1991)). Langston tries to distinguish this precedent by arguing that the defendant in Hooten breached the "core conditions" of his pretrial release while Langston's "putative violation was isolated and technical in nature." But the court did not deny Langston the credit simply because he consumed alcohol or failed to notify his probation officer about the incident at the casino.

Instead, the district court based its decision on the overall similarities between the incidents at The Bar and The Brook. As the court explained, both times, Langston became disruptive and then non-cooperative with police after drinking. At The Bar, he engaged in a fight, and at The Brook, he became verbally combative and "was asked to leave multiple times and refused." Each time, when police officers arrived on the scene, Langston refused to comply with their instructions. At The Bar,

Langston did "not cooperat[e] with" and "resist[ed]" the police officers when they told him to put his hands on his head. Similarly, at The Brook, Langston "refuse[d] to cooperate with the police" by declining to identify himself. We cannot say that the court clearly erred by finding that these similarities demonstrated that Langston had not "accepted responsibility in any authentic sense" for his conduct at The Bar. Jordan, 549 F.3d at 61.

We also reject Langston's argument that the district court "struck the wrong balance," id. at 62, by finding that the casino incident outweighed Langston's evidence of acceptance of responsibility, i.e., his guilty plea, see McLaughlin, 378 F.3d at 40. Whether a "single adverse incident" outweighs a defendant's "rehabilitative efforts" is a "quintessential judgment call" for the sentencing court. Jordan, 549 F.3d at 62. Nothing in the record suggests that the court clearly erred in balancing the scales here, especially given that it cited an additional adverse incident (not at issue in the appeal) in reaching its conclusion.

III. CONCLUSION

For all these reasons, we affirm Langston's conviction and sentence.

U.S. DISTRICT COURT
DISTRICT OF MAINE
United States District Court
District of Maine

UNITED STATES OF AMERICA **JUDGMENT IN A CRIMINAL CASE**

v.

CARL LANGSTON

DEPUTY CLERK

Case Number: 2:21-cr-166-GZS

USM Number: 50444509

Heather L. Gonzales, Esq.

Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s) One of the Indictment
- pleaded nolo contendere to count(s) _____ which was accepted by the court.
- was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 922(g)(1), 18 U.S.C. § 924(a)(2)	Felon in Possession of Firearm	February 7, 2021	One

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) _____.
- Count(s) _____ is 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 shall notify the court and United States attorney of material changes in economic circumstances.

03/30/2023

Date of Imposition of Judgment

Signature of Judge

George Z. Singal, U.S. District Judge

Name and Title of Judge

Date Signed

3/30/23

DEFENDANT: CARL LANGSTON
CASE NUMBER: 2:21-cr-166-GZS

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of 57 months.

- The court makes the following recommendations to the Bureau of Prisons:
- 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 _____
a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: CARL LANGSTON
CASE NUMBER: 2:21-cr-166-GZS

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of three 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 additional drug tests during the term of supervision, but not more than 120 drug tests per year thereafter, as directed by the probation officer.
 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)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments of this judgment.

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

DEFENDANT: CARL LANGSTON
CASE NUMBER: 2:21-cr-166-GZS

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: CARL LANGSTON
CASE NUMBER: 2:21-cr-166-GZS

SPECIAL CONDITIONS OF SUPERVISION

- 1) Defendant shall participate in mental health treatment, as directed by the supervising officer, until released from the program by the supervising officer. Defendant shall pay/co-pay for services during such treatment, to the supervising officer's satisfaction;
- 2) Defendant shall not use or possess any controlled substance, alcohol or other intoxicant; and shall participate in a program of drug and alcohol abuse therapy to the supervising officer's satisfaction. This shall include testing to determine if Defendant has used drugs or intoxicants. Defendant shall pay/co-pay for services during such treatment to the supervising officer's satisfaction. Defendant shall not obstruct or tamper, or try to obstruct or tamper, in any way, with any tests;
- 3) Defendant shall not associate with individuals consuming alcoholic beverages, shall not frequent business establishments whose primary product is alcoholic beverages, and shall not use any medication containing alcohol without permission from the supervising officer or a prescription from a licensed physician;
- 4) Defendant shall not own or possess any firearm or other dangerous weapon, or knowingly be at any time in the company of anyone known by the defendant to possess a firearm or other dangerous weapon; and
- 5) A United States probation officer may conduct a search of the defendant and of anything the defendant owns, uses, or possesses if the officer reasonably suspects that the defendant has violated a condition of supervised release and reasonably suspects that evidence of the violation will be found in the areas to be searched. Searches must be conducted at a reasonable time and in a reasonable manner. Failure to submit to a search may be grounds for revocation of release.

DEFENDANT: CARL LANGSTON
 CASE NUMBER: 2:21-cr-166-GZS

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Count</u>	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment *</u>	<u>JVTA Assessment **</u>
	One	\$ 100	\$ 0	\$ 0		
Totals:		\$100	\$0	\$0		

The determination of restitution is deferred until . An *Amended Judgment in a Criminal Case (AO 245C)* 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, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS	\$ _____	\$ _____	

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 Sheet 6 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: CARL LANGSTON
 CASE NUMBER: 2:21-cr-166-GZS

SCHEDULE OF PAYMENTS

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

- A Lump sum payment of \$100 due immediately, balance due
- Any amount that the defendant is unable to pay now is due and payable during the term of incarceration. Upon release from incarceration, any remaining balance shall be paid in monthly installments, to be initially determined in amount by the supervising officer. Said payments are to be made during the period of supervised release, subject always to review by the sentencing judge on request, by either the defendant or the government.
 - not later than _____, or
 - in accordance with 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 (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:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of 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

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	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:
 The Defendant shall forfeit all property constituting or derived from any proceeds said Defendant obtained directly or indirectly as a result of the violations alleged in the charging instrument, any and all property used or intended to be used in any manner or part to commit and to facilitate the commission of the violations, including but not limited to: a Springfield Armory (HS Produkt), Model, XDS, .45 caliber pistol bearing serial number HG135281 and ten rounds of .45 ACP ammunition.

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.