

APPENDIX

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

REGINALD CRESHAWN DOSS,

Defendant.

No. 4:21-cr-00074-RGE-HCA

**ORDER DENYING
DEFENDANT'S
MOTION TO DISMISS
INDICTMENT**

I. INTRODUCTION

A grand jury in the Southern District of Iowa returned an indictment charging Defendant Reginald Creshawn Doss with possession of a firearm by a felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Redacted Indictment, ECF No. 5.

Trial in this matter was held from June 6 to June 7, 2022. Trial Day 1 Mins., ECF No. 73; Trial Day 2 Mins., ECF No. 80. On June 7, 2022, the jury deliberated, but did not return a verdict. ECF No. 80. Doss moved for a mistrial. ECF No. 96. The Government joined Doss's motion. *See id.* The Court granted Doss's motion and reset the matter for trial to commence on August 3, 2022. ECF No. 97; *see also* Crim. Trial Setting Order, ECF No. 102. On June 23, 2022, the United States Supreme Court decided *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111 (2022). In *Bruen*, the Supreme Court rejected the application of a means-end scrutiny to Second Amendment challenges and limited the test for Second Amendment challenges to assessing "whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding." *See* 142 S.Ct. at 2129–31. Under *Bruen*, to justify a firearm possession regulation, the government may "not simply posit that the regulation promotes an important

interest,” rather it must demonstrate the regulation “is consistent with this Nation’s historical tradition of firearm regulation.” *Id.* at 2126.

Doss argues 18 U.S.C. § 922(g)(1) is unconstitutional on its face because there is no “historical analogue” to firearms prohibitions for felons. ECF No. 106; *see also* Def.’s Br. Supp. Mot. Dismiss 3–7, ECF No. 106-1. Doss also argues § 922(g)(1) is unconstitutional as applied to him because there is “no historically analogous prohibition against possession of firearms for people with felonies similar to” Doss’s felonies, which include theft, identity theft, and forgery. ECF No. 106-1 at 7–8. As such, Doss contends the indictment charging him with a violation of § 922(g)(1) should be dismissed. ECF No. 106. The Government resists. ECF No. 122. For the reasons set forth below, the Court denies Doss’s motion.

II. DISCUSSION

The Second Amendment provides: “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 *Heller* and *McDonald*, [the Supreme Court] held that the Second and Fourteenth Amendments protect an individual right to keep and bear arms for self-defense.” *Bruen*, 142 S. Ct. at 2125; *see also* *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chic.*, 561 U.S. 742 (2010). To reach this holding, the Supreme Court examined the text and the historical background of the Second Amendment. *Heller*, 554 U.S. at 592; *see also* *Bruen*, 142 S. Ct. at 2128–29 (“*Heller*’s methodology centered on constitutional text and history. Whether it came to defining the character of the right . . . , suggesting the outer limits of the right, or assessing the constitutionality of a particular regulation.”). In recognizing the “right secured by the Second Amendment is not unlimited,” the *Heller* Court cautioned “nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons” 554 U.S. at 626. Such regulations are “presumptively lawful.” *Id.* n.26. In the years following *Heller* and

McDonald, the Courts of Appeals analyzed Second Amendment challenges under a “two-step” framework that combine[d] history with means-end scrutiny.” *Bruen*, 142 S. Ct. at 2125.

In *Bruen*, the Supreme Court reiterated “that the Second and Fourteenth Amendments protect the right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense.” *Id.* at 2122; *see also id.* at 2131 (“The Second Amendment . . . ‘surely elevates above all other interests the right of law-abiding, responsible citizens to use arms’ for self -defense.” (quoting *Heller*, 554 U.S. at 635)). The Supreme Court went on to hold “consistent with *Heller* and *McDonald*” that such a right also applies outside the home. *Id.* In examining the test to apply to Second Amendment challenges, the Supreme Court determined that *Heller* and *McDonald* did not support the application of means-end scrutiny utilized by the Courts of Appeals. *Id.* at 2127. The Supreme Court held that “[t]o justify its regulation . . . the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.” *Id.* at 2126. “Only if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command.’” *Id.* (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 35, 50 n.10 (1961)). Notably, three Supreme Court justices underscored that *Bruen* did not disturb the Supreme Court’s recognition in *Heller* and *McDonald* of restrictions that may be imposed—i.e., “longstanding prohibitions on the possession of firearms by felons.” *Id.* at 2157 (Alito, J., concurring) (“Nor have we disturbed anything that we said in *Heller* or *McDonald* . . . about restrictions that may be imposed on the possession or carrying of guns.”); *id.* at 2162 (Kavanaugh, J., joined by Roberts, C.J., concurring) (quoting cautionary language from *Heller* and *McDonald* regarding “longstanding prohibitions on the possession of firearms by felons”).

Here, Doss asserts a Second Amendment challenge to 18 U.S.C. § 922(g)(1). *See* ECF No. 106. Section 922(g)(1) prohibits “any person . . . who has been convicted in any court of, a crime

punishable by imprisonment for a term exceeding one year” from “possess[ing] . . . any firearm” The Court assumes for purposes of its analysis that because § 922(g)(1) restricts the “possess[ion]” of “any firearm,” it regulates conduct protected by the Second Amendment. *But see United States v. Daniels*, No. 1:22-cr-58-LR-RHWR-1, 2022 WL 2654232, at *2 (S.D. Miss. July 8, 2022) (recognizing there is “some doubt” that § 922(g)(3) is “textually covered by the Second Amendment, insofar as it has been interpreted to guarantee the right to keep and bear arms to ordinary, law-abiding, responsible citizens concerned with self-defense”).

At least one other district court has considered a Second Amendment challenge to a § 922(g) prohibition post-*Bruen*. *See generally id.* (analyzing a Second Amendment challenge to 18 U.S.C. § 922(g)(3), which prohibits drug users from possessing firearms). The court in *Daniels* relied, in part on Seventh Circuit’s decision in *Yancey v. United States*, 621 F.3d 681 (7th Cir. 2010). *Id.* at * 4. In *Yancey*, the Seventh Circuit observed “Congress enacted the exclusions in § 922(g) to keep guns out of the hands of presumptively risky people.” 621 F.3d at 683. Though *Yancey* focuses on § 922(g)(3), the Court, like the *Daniels* court, is persuaded *Yancey*’s analysis “suffices to show that analogous statutes which purport to disarm persons considered a risk to society . . . were known to the American legal tradition.” *See* 2022 WL 2654232, at *4.

Further, *Heller* specifically commented that it did not disturb “longstanding prohibitions on the possession of firearms by felons.” *Bruen* relied on its methodology in *Heller* and *McDonald* to reject the application of means-ends scrutiny and promulgate the test for Second Amendment challenges. Considering the *Bruen* Court’s reliance on *Heller* to delineate the test for Second Amendment challenges, and the recognition of firearms prohibitions for felons as “longstanding” in *Heller*, the Court concludes 18 U.S.C § 922(g)(1) is not unconstitutional on its face.

To prevail on his as-applied challenge, Doss must “show that the statute as applied in the particular circumstances of his case infringe on conduct that was constitutionally protected.”

United States v. Adams, 914 F.3d 602, 607 (8th Cir. 2019). The Eighth Circuit has held:

Section 922(g)(1)’s purpose reaches beyond felons who have proven themselves violent—that is, those who have already committed violent felonies. In enacting this statute, “Congress sought to keep guns out of the hands of those who have demonstrated that they may not be trusted to possess a firearm without becoming a threat to society.”

United States v. Hughley, 691 F. App’x 278, 279 (8th Cir. 2017) (quoting *Small v. United States*, 544 U.S. 385, 393 (2005)). “[N]o circuit has held the law unconstitutional as applied to a convicted felon.” *Medina v. Whitaker*, 913 F.3d 152, 155 (D.C. Cir. 2019) (noting the “Seventh and Eighth Circuits, while leaving open the possibility of a successful felon as-applied challenge, have yet to uphold one”); *see also Hamilton v. Pallozzi*, 848 F.3d 614, 626–27 (4th Cir. 2017); *United States v. Rozier*, 598 F.3d 768, 770–71 (11th Cir. 2010); *United States v. Scroggins*, 599 F.3d 433, 451 (5th Cir. 2010); *In re United States*, 578 F.3d 1195, 1200 (10th Cir. 2009).


As with Doss’s facial attack on § 922(g)(1), Doss’s as-applied challenge is undermined by Bruen’s reliance on *Heller*. Bruen set forth the test for Second Amendment challenges by examining the methodology utilized in *Heller* and reiterated in *McDonald*. In *Heller* and *McDonald*, the Supreme Court noted its historical analysis did not disrupt the “longstanding” prohibitions on the possession firearms by felons. *See McDonald*, 561 U.S. at 786 (“We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as prohibitions on the possession of firearms by felons . . . [w]e repeat those assurances here.”). The Supreme Court did not specify such “longstanding” prohibitions are limited to those convicted of violent felonies. *See also Yancey*, 621 F.3d at 684–85 (“Whatever the pedigree of the rule against even nonviolent felons possessing weapons . . . most scholars of the Second Amendment agree that the right to bear arms was tied to the concept of a virtuous citizenry and that, accordingly, the

government could disarm ‘unvirtuous citizens.’” (quoting *United States v. Vongxay*, 594 F.3d 1118, 1118 (9th Cir. 2010)). As such, the Court declines to find § 922(g)(1) is unconstitutional as applied to Doss.

IT IS ORDERED that Defendant Reginald Creshawn Doss’s Motion to Dismiss Indictment, ECF No. 106, is **DENIED**.

IT IS SO ORDERED.

Dated this 2nd day of August, 2022.


REBECCA GOODGAME EBINGER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA
 v.
 REGINALD CRESHAWN DOSS

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:21-cr-00074-001


USM Number: 74402-509

Andrew James Graeve and Mackenzi Nash
 Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s) _____
- pleaded nolo contendere to count(s) _____
 which was accepted by the court.
- was found guilty on count(s) One of the Indictment filed on May 18, 2021.
 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), 924(a)(2)	Felon in Possession of a Firearm	03/02/2021	One

See additional count(s) on page 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) _____
- 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 must notify the court and United States attorney of material changes in economic circumstances.

December 15, 2022
 Date of Imposition of Judgment


 Signature of Judge

Rebecca Goodgame Ebinger, U.S. District Judge
 Name of Judge Title of Judge

December 15, 2022
 Date

DEFENDANT: REGINALD CRESHAWN DOSS

CASE NUMBER: 4:21-cr-00074-001

IMPRISONMENT

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

120 months as to Count One of the Indictment filed on May 18, 2021, to run consecutively to the sentences imposed in Iowa District Court for Polk County Docket Numbers FECR313822, FECR314359, FECR316381, and FECR347260.

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

The defendant be designated to a facility as close to Illinois as possible, preferably FCI Pekin. The Court also recommends the defendant be afforded the opportunity to participate in continuing education for business.

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

The defendant is remanded to the custody of the United States Marshal for surrender to the ICE detainer.

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 _____ 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: REGINALD CRESHAWN DOSS
CASE NUMBER: 4:21-cr-00074-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :
Three years as to Count One of the Indictment filed on May 18, 2021.

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)*

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: REGINALD CRESHAWN DOSS
CASE NUMBER: 4:21-cr-00074-001

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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: REGINALD CRESHAWN DOSS
CASE NUMBER: 4:21-cr-00074-001

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SPECIAL CONDITIONS OF SUPERVISION

You must participate in a program of testing and/or treatment for substance abuse, as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Office. At the direction of the probation office, you must receive a substance abuse evaluation and participate in inpatient and/or outpatient treatment, as recommended. Participation may also include compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. You must not use alcohol and/or other intoxicants during the course of supervision.

You must participate in a cognitive behavioral treatment program, which may include journaling and other curriculum requirements, as directed by the U.S. Probation Officer.

You shall not knowingly associate or communicate with any member of the Black Disciples criminal street gang, or any other criminal street gang.

You will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

DEFENDANT: REGINALD CRESHAWN DOSS
 CASE NUMBER: 4:21-cr-00074-001

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CRIMINAL MONETARY PENALTIES

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

- Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 100.00	\$0.00	\$ 0.00	\$ 0.00	\$ 0.00

- 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		\$0.00	\$0.00

- 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: REGINALD CRESHAWN DOSS
 CASE NUMBER: 4:21-cr-00074-001

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 payment of \$ 100.00 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 _____ (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:
 All criminal monetary payments are to be made to:
 Clerk's Office, United States District Court, P.O. Box 9344, Des Moines, IA 50306-9344.
 While on supervised release, you shall cooperate with the United States Probation Office in developing a monthly payment plan, which shall be subject to the approval of the Court, consistent with a schedule of allowable expenses provided by the United States Probation Office.

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
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- 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 loaded Glock, model 19, nine-millimeter pistol (SN: BEGR967), as outlined in the Preliminary Order of Forfeiture entered on October 4, 2022.

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) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

Supreme Court of the United States

No. 23-6842

REGINALD CRESHAWN DOSS,

Petitioner

v.

UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Eighth Circuit.

THIS CAUSE having been submitted on the petition for writ of certiorari and the response thereto.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the motion of petitioner for leave to proceed *in forma pauperis* and the petition for writ of certiorari are granted. The judgment of the above court is vacated, and the case is remanded to the United States Court of Appeals for the Eighth Circuit for further consideration in light of *United States v. Rahimi*, 602 U. S. ____ (2024).

July 2, 2024



**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 22-3662

United States of America

Plaintiff - Appellee

v.

Reginald Creshawn Doss

Defendant - Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:21-cr-00074-RGE-1)

JUDGMENT

Before GRUENDER, STRAS, and KOBES, Circuit Judges.

This appeal from the United States District Court was initially submitted on the record of the district court and briefs of the parties, argued by counsel, and has been remanded for further consideration by order of the United States Supreme Court.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

August 28, 2024

Order Entered in Accordance with Opinion:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

Adopted April 15, 2015
Effective August 1, 2015

Revision of Part V of the Eighth Circuit Plan to Implement the Criminal Justice Act of 1964.

V. Duty of Counsel as to Panel Rehearing, Rehearing En Banc, and Certiorari

Where the decision of the court of appeals is adverse to the defendant in whole or in part, the duty of counsel on appeal extends to (1) advising the defendant of the right to file a petition for panel rehearing and a petition for rehearing en banc in the court of appeals and a petition for writ of certiorari in the Supreme Court of the United States, and (2) informing the defendant of counsel's opinion as to the merit and likelihood of the success of those petitions. If the defendant requests that counsel file any of those petitions, counsel must file the petition if counsel determines that there are reasonable grounds to believe that the petition would satisfy the standards of Federal Rule of Appellate Procedure 40, Federal Rule of Appellate Procedure 35(a) or Supreme Court Rule 10, as applicable. *See Austin v. United States*, 513 U.S. 5 (1994) (per curiam); 8th Cir. R. 35A.

If counsel declines to file a petition for panel rehearing or rehearing en banc requested by the defendant based upon counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion to withdraw must be filed on or before the due date for a petition for rehearing, must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for rehearing, and must request an extension of time of 28 days within which to file *pro se* a petition for rehearing. The motion also must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

If counsel declines to file a petition for writ of certiorari requested by the defendant based on counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

A motion to withdraw must be accompanied by counsel's certification that a copy of the motion was furnished to the defendant and to the United States.

Where counsel is granted leave to withdraw pursuant to the procedures of *Anders v. California*, 386 U.S. 738 (1967), and *Penson v. Ohio*, 488 U.S. 75 (1988), counsel's duty of representation is completed, and the clerk's letter transmitting the decision of the court will notify the defendant of the procedures for filing *pro se* a timely petition for panel rehearing, a timely petition for rehearing en banc, and a timely petition for writ of certiorari.

United States Court of Appeals
For the Eighth Circuit

No. 22-3662

United States of America

Plaintiff - Appellee

v.

Reginald Creshawn Doss

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Central

Submitted: August 12, 2024

Filed: August 28, 2024

[Unpublished]

Before GRUENDER, STRAS, and KOBES, Circuit Judges.

PER CURIAM.

A jury found Reginald Doss guilty of being a felon in possession of a firearm.
See 18 U.S.C. § 922(g)(1). On appeal, Doss argues that his conviction violates the

Second Amendment, there was insufficient evidence to convict him, and the district court¹ should have excluded prior-bad-acts evidence. We affirm.

I.

We begin with the Second Amendment challenge, which is back before us on remand after *United States v. Rahimi*, 144 S. Ct. 1889 (2024). In Doss’s view, the federal statute criminalizing possession of firearms by felons, 18 U.S.C. § 922(g)(1), is unconstitutional after *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), both on its face and as applied to him. We have already rejected this argument in two recent cases. See *United States v. Cunningham*, — F.4th —, 2024 WL 3840135, at *3 (8th Cir. Aug. 16, 2024) (concluding that 18 U.S.C. § 922(g)(1) is facially constitutional); *United States v. Jackson*, — F.4th —, 2024 WL 3711155, at *4 (8th Cir. Aug. 8, 2024) (cutting off as-applied challenges to the statute). Together, they spell the end for Doss’s constitutional challenge.²

II.

Doss’s sufficiency challenge fares no better. “We review the sufficiency of the evidence de novo, viewing the evidence in the light most favorable to the government and drawing all reasonable inferences in favor of the verdict.” *United States v. Streb*, 36 F.4th 782, 790 (8th Cir. 2022).

¹The Honorable Rebecca Goodgame Ebinger, United States District Judge for the Southern District of Iowa.

²Even if he could bring an as-applied challenge, see *United States v. Veasley*, 98 F.4th 906, 909 (8th Cir. 2024), he would not succeed. His lengthy criminal record includes over 20 convictions, many of them violent. It is safe to say that Doss “pose[s] a credible threat to the physical safety of others.” *Rahimi*, 144 S. Ct. at 1902; see *United States v. Jackson*, 85 F.4th 468, 470–72 (8th Cir. 2023) (Stras, J., dissenting from denial of reh’g en banc) (explaining that, based on Founding-era history, the government can strip “dangerous” individuals of their firearms).

The main problem, according to Doss, is that the key witness against him, a police officer in pursuit, was in no position to see whether he threw a gun. The flaw in this theory is that the jury fully considered this line of argument and rejected it, presumably because it believed that the other evidence did not rule out the officer's account. We have long held that these types of "credibility determinations are well-nigh unreviewable because the jury is in the best position to assess the credibility of witnesses." *United States v. Trotter*, 837 F.3d 864, 868 (8th Cir. 2016) (citation omitted).

Besides, there was plenty of additional evidence establishing Doss's guilt. First, Doss reached into his fanny pack for what could have been a gun before he took off running. Second, the surveillance footage shows Doss running by the dumpster where officers later located the gun. Third, body-camera audio included a contemporaneous statement from the pursuing officer that Doss had thrown a gun. And fourth, the magazine's baseplate was found broken, consistent with someone having thrown it. The point is that the jury had enough evidence to find Doss guilty without directly relying on the officer's testimony at trial.

III.

Doss's challenge to the admission of prior-bad-acts evidence also runs up against the mountain of evidence we just discussed. We review the "decision to admit" it for an abuse of discretion. *United States v. Henderson*, 613 F.3d 1177, 1182 (8th Cir. 2010) (citation omitted). Even if the evidence was inadmissible, we "will not reverse a conviction if [the] error was harmless." *United States v. Aldridge*, 664 F.3d 705, 714 (8th Cir. 2011) (citation omitted).

Any error in admitting Doss's prior firearms conviction and two social-media videos of him holding a gun was harmless. There was, as we mention above, overwhelming evidence of Doss's guilt, so the prior-bad-acts evidence could not have had a "substantial influence on the jury's verdict." *Id.* (citation omitted).

IV.

We accordingly deny the motion to file a supplemental brief and affirm the judgment of the district court.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 22-3662

United States of America

Appellee

v.

Reginald Creshawn Doss

Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:21-cr-00074-RGE-1)

ORDER

The petition for rehearing en banc is denied. The petition for panel rehearing is also denied.

Judge Erickson, Judge Grasz, and Judge Stras would grant the petition for rehearing en banc.

November 06, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik