No.

In The

Supreme Court of the United States

STEVEN DEWAYNE BARNES, JR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. The Eleventh Circuit erred in concluding that officers had reasonable suspicion to conduct a *Terry* stop and frisk based on ambiguous and subjective factors, such as Petitioner's alleged nervousness and body posture, in the absence of specific, articulable facts linking Petitioner to criminal activity.

2. The Eleventh Circuit erred in upholding the district court's application of a four-level sentencing enhancement under U.S.S.G. § 2K2.1(b)(6)(B) for possession of a concealed firearm, thereby engaging in impermissible double counting and violating Petitioner's Second Amendment rights under *New York State Rifle & Pistol Ass'n v. Bruen*, 597 US 1 (2022).

LIST OF PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

RELATED CASES

There are no proceedings directly related to this case as required by Supreme Court Rule 14(1)(b)(iii).

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PETITION FOR WRIT OF CERTIORARI

COMES NOW, Petitioner, Steven Dewayne Barnes, Jr, ("Petitioner"), by and through undersigned counsel, and respectfully petitions this Honorable Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The order and opinion of the Eleventh Circuit Court of Appeals that is sought review of is in No. 23-13861-H[1] [App. 1a] unpublished opinion dated December 4, 2024.

JURISDICTION

The United States District Court for the Middle District of Florida asserted subject matter jurisdiction pursuant to 18 U.S.C. § 3231. The district court entered judgment sentencing Petitioner to 121 months of incarceration as to Count I, and to 60 months of incarceration to be served concurrently on Count 2, followed by three years of supervision, and forfeiture of the assets seized in the traffic stop. [App. 22a].

The Eleventh Circuit had jurisdiction pursuant to 28 U.S.C. §1291 and 18 U.S.C. §3742(a)(1).

This Petition seeks review of an Eleventh Circuit's Judgment dated December 4, 2024. [App. 1a]. This Honorable Court has Jurisdiction pursuant to 28 U.S.C. § 1254(1) and Rule 10 of the Rules of Supreme Cout of the United States.

[1] References to Petitioner's Appendix before this Honorable Court is made as "APP. #_".

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment II:

> 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.

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition in Court Below

On December 14, 2022, Steven Barnes, JR., ("Mr. Barnes" or "Petitioner") was indicted in a two-count indictment.

Count I charged that,

> On or about November 15, 2022, in the Middle District of Florida, the defendant, STEVEN DEWAYNE BARNES, JR., knowing that he had been previously convicted in any court of a crime punishable for a term exceeding one year, […] did knowingly possess, in and affecting interstate commerce, a firearm and ammunition, that is, a Smith and Wesson firearm. In violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(8).[2] [APPX 2, Doc. 16].

Count II charged that,

> On or about November 15, 2022, in the Middle District of Florida, the defendant, STEVEN DEWAYNE BARNES, JR., did knowingly possess a firearm, that is, a Smith and Wesson firearm, that had been shipped and transported in interstate commerce, from which the manufacturer's serial number had been removed, altered, and obliterated. In violation of 18 U.S.C. §§ 922(k) and (a)(1)(B). [APPX 2, Doc. 16].

On April 11, 2023, Mr. Barnes filed his "Motion to Suppress" (the "Motion to Suppress") [APPX C, Doc 41]. On May 5, 2023, the Government filed its "Response in Opposition to Defendant's Motion to Suppress" [APPX D, Doc 52].

On May 17, 2023, the United States District Court for the Middle District of Florida heard argument on Mr. Barnes's Motion to Suppress. [APPX E, Doc. 101]. At the conclusion of the hearing, the trial court denied Mr. Barnes's Motion and provided its reasoning on the record.

[2] All references to Petitioner's Appendix filed in the United States Court of Appeals for the Eleventh Circuit are designated "APPX" plus the relevant page numbers.

On May 17, 2023, the district court entered a one-page order adopting its oral findings denying the Motion to Suppress. [APPX F, Doc. 62].

On July 12, 2023, a 1-day bench trial was conducted before the Honorable Sherri Polster Chappell, at which time the evidence at issue was admitted against Petitioner. At the conclusion of the trial, Petitioner was convicted. [APPX H, Doc. 94].

On November 13, 2023, Petitioner's sentencing hearing was held. Petitioner was sentenced to 121 months of incarceration as to Count 1, and to 60 months of incarceration to be served concurrently on Count 2, followed by three years of supervision, and forfeiture of the assets seized in the traffic stop. [App. 1a].

On November 27, 2023, Petitioner filed his Notice of Appeal. [APPX J, Doc. 96]. Petitioner is currently incarcerated and servicing the appealed imposed sentence. On March 14, 2024, Petitioner filed his initial brief with the 11th Circuit Court of Appeals. *U.S. v. Barnes Jr.*, Case No. 23-13861-H. On April 11, 2024, Respondent filed its brief. On June 3, 2024, Petitioner filed his reply brief.

On December 4, 2024, the Eleventh Circuit entered an Opinion affirming the district court. [App. 1a].

B. Statement of Facts

On November 15, 2022, the Petitioner, Steven Barnes, was walking in his neighborhood when two members of the Fort Myers Police Department, Sgt. Jari Sanders and Det. Brandon Birch, approached Mr. Barnes in a marked patrol vehicle.

Mr. Barnes was close to his home at 3713 Washington Ave. in Fort Myers, FL and attempted to ignore the FMPD officers and walk away towards his home.

As they approached, the officers drove into the lot where Defendant's home was and began to question Mr. Barnes from their marked patrol vehicle.

Mr. Barnes relented to the officer's direction to talk with them and stopped to have a conversation with Sgt. Sanders and Det. Birch. He also noticed that there was a K9 officer in the backseat, as it was barking loudly at him.

Mr. Barnes knew Sargent Sanders and his K9 because Mr. Barnes had been previously attacked by that same K9 in the past. Mr. Barnes feared that, had he attempted to avoid an encounter with Sargent Sanders, he would be bitten again.

Sgt. Sanders and Det. Birch's report claimed that their encounter with Mr. Barnes was consensual and that Mr. Barnes was free to leave at any time despite the presence of the K9 officer.

During the initial part of the conversation, they spoke about Mr. Barnes' family members. Later, Mr. Barnes attempted show the officers a video on his cellphone of a negative encounter he recently had with other officers in the area where they forcible came into his house.

As Mr. Barnes was showing the video, the two fully uniformed and armed officers got out of their marked car and stood on each side of Mr. Barnes.

The FMPD officers claim that Mr. Barnes was shaking nervously and that he was holding his left arm still against his body. However, the video of the encounter belies such alleged shaking. Regardless, even if there had been a display of nervousness, it was consistent with being in close proximity to the dog that had caused severe lacerations to a him as well as a natural reaction to a show of authority

made by the officers. Both officers were aware that Mr. Barnes had been previously bitten by the K-9 that was in their vehicle.

Based on Mr. Barnes alleged nervousness and the alleged keeping of his left arm still to his side, the officers asked Mr. Barnes if he had a weapon, and before Mr. Barnes could even answer, the officers grabbed Mr. Barnes' arms, pulling them away from his body.

Although FMPD officers assert that they obtained Mr. Barnes consent to search his person, they did not, and that's clear on the recorded encounter. They never asked Mr. Barnes if he consented to a pat-down, nor did Mr. Barnes state that he consented to such a pat-down.

Sgt. Sanders then conducted a pat-down of the left side of Mr. Barnes' body and felt the grip of a firearm from the outside of the clothing.

Sgt. Sanders then grabbed ahold of the firearm from Mr. Barnes' waistband that was concealed by his sweatshirt.

The firearm had been completely concealed by both Mr. Barnes' sweatshirt and his left arm. The video-recorded encounter exhibited no bulge in Mr. Barnes' clothing.

The firearm collected from the search was a Smith and Wesson 9 mm. Mr. Barnes was arrested by FMPD for possession of a firearm by a convicted felon and subsequently charged for the offense in this matter. Mr. Barnes moved to suppress the firearm and the court denied it.

Mr. Barnes preserved the suppression and entered into a stipulation of facts with the Government. A bench trial was held, and Defendant was ultimately found guilty for possession of the firearm that he sought to suppress.

REASONS FOR GRANTING WRIT OF CERTIORARI

I. THE ELEVENTH CIRCUIT ERRED IN CONCLUDING THAT OFFICERS HAD REASONABLE SUSPICION TO CONDUCT A TERRY STOP AND FRISK BASED ON AMBIGUOUS AND SUBJECTIVE FACTORS, SUCH AS PETITIONER'S ALLEGED NERVOUSNESS AND BODY POSTURE, IN THE ABSENCE OF SPECIFIC, ARTICULABLE FACTS LINKING PETITIONER TO CRIMINAL ACTIVITY.

The Court's Opinion affirming the district court's denial of Petitioner's Motion to Suppress is contrary to this Court's precedent and presents a precedent-setting question of exceptional importance thereby warranting a writ of certiorari.

On April 11, 2023, Mr. Barnes filed his Motion to Suppress in which he argued that law enforcement officers unlawfully seized and searched him in violation of his Fourth Amendment rights. While initially engaging in a consensual encounter, the officers escalated the interaction by physically restraining and searching Mr. Barnes without reasonable suspicion or probable cause. The law enforcement's justifications – alleged nervousness, a purported bulge in his clothing, and a glance toward his side – fail to meet the constitutional threshold for a warrantless pat-down. Because the firearm was obtained through this unlawful search, the Motion to Suppress should have been granted, and the weapon and any other evidence derived from the unconstitutional seizure should have been suppressed. As a result, Mr. Barnes' Fourth Amendment rights were violated.

The Fourth Amendment provides,

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

U.S. CONST. amend. IV (emphasis added).

"[S]earches conducted outside the judicial process, without prior approval by a judge or magistrate, are per se unreasonable under the Fourth Amendment— subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967) (emphasis added).

The purpose of the warrant requirement is to ensure that the decision is made "by a neutral and detached magistrate instead of being judged by the officer engaged in the often-competitive enterprise of ferreting out crime." *Johnson v. United States*, 333 U.S. 10, 13-14, (1948).

A traffic stop has been recognized as a 'seizure' within the meaning of the Fourth Amendment. *See Whren v. United States*, 517 U.S. 806, 809-10 (1996). Furthermore, Courts have for centuries noted the importance of obtaining prior judicial approval. "[T]he police must, whenever practicable, obtain advance judicial approval of searches and seizures through a warrant procedure." *Terry v. Ohio, 392 US 1, 20 (1968).* The Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty. *See Gerstein v. Pugh, 420 U.S. 103, 113-114 (1975) (emphasis added).*

Unreasonable delays are those "delays for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill will against the arrested individual, or delay for delay's sake." *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991).

At the "very heart of the Fourth Amendment directive" is that

> where practical, a governmental search and seizure should represent both the efforts of the officer to gather evidence of wrongful acts and the judgment of the magistrate that the collected evidence is sufficient to justify invasion of a citizen's private premises or conversation. Inherent in the concept of a warrant is its issuance by a 'neutral and detached magistrate.

United States v. United States Dist. Court for Eastern Dist. of Mich., 407 U.S. 297, 316 (1972) (emphasis added).

In *United States Dist. Court for Eastern Dist. of Mich.*, This Court clarified,

> Over two centuries ago, Lord Mansfield held that common-law principles prohibited warrants that ordered the arrest of unnamed individuals who the officer might conclude were guilty of seditious libel. "It is not fit," said Mansfield, "that the receiving or judging of the information should be left to the discretion of the officer. The magistrate ought to judge; and should give certain directions to the officer."

United States v. United States Dist. Court for Eastern Dist. of Mich., 407 U.S. at 316 (emphasis added); *citing Leach v. Three of the King's Messengers*, 19 How. St. Tr. 1001, 1027 (1765); *See also*, *Malley v. Briggs,* 475 U.S. 335, 352 (1996).

"These Fourth Amendment freedoms cannot properly be guaranteed if [limited] solely within the discretion of the Executive Branch. The Fourth Amendment does not contemplate the executive officers of Government as neutral

and disinterested magistrates." *United States Dist. Court for Eastern Dist. of Mich.,* 407 U.S. at 317. "The historical judgment, which the Fourth Amendment accepts, is that unreviewed executive discretion may yield too readily to pressures to obtain incriminating evidence and overlook potential invasions of privacy and protected speech." *Id.*

"The Fourth Amendment contemplates a prior judicial judgment, not the risk that executive discretion may be reasonably exercised." *Id.* at 317. "This judicial role accords with our basic constitutional doctrine that individual freedoms will best be preserved through a separation of powers and division of functions among the different branches and levels of Government." *Id.* citing Harlan, Thoughts at a Dedication: Keeping the Judicial Function in Balance, 49 A. B. A. J. 943-944 (1963).

"The independent check upon executive discretion is not satisfied, as the Government argues, by 'extremely limited' post-surveillance judicial review." *Id.*, *See also, Delaware v. Prouse*, 440 US 648, 655 (1979) ("other safeguards are generally relied upon to assure that the individual's reasonable expectation of privacy is not 'subject to the discretion of the official in the field[.]'").

In the present case, the district court erred in its Fourth Amendment analysis by failing to recognize that although the initial interaction between Mr. Barnes and the officers was consensual, law enforcement did not develop any reasonable suspicion during that encounter to justify their subsequent physical seizure of Mr. Barnes' person. This Opinion misapplies well-established precedent concerning

warrantless seizures and improperly credits the government's narrative, despite inconsistencies in the evidentiary record.

The Eleventh Circuit's affirmation of the denial of Petitioner's Motion to Suppress relies on the flawed conclusion that the officer had reasonable suspicion to conduct an investigatory stop based on the totality of the circumstances, including alleged nervousness. This decision contravenes established Supreme Court principles governing reasonable suspicion and the Fourth Amendment, warranting review by this Court.

A. The Initial Encounter was Consensual but did not Give Rise to Reasonable Suspicion.

The Eleventh Circuit correctly concluded that Mr. Barnes' initial interaction with the officers was consensual. [App. 1a]. Law enforcement officers are permitted to approach individuals in public spaces and engage in voluntary conversations. *See United States v. Drayton,* 536 U.S. 194, 200 (2002). Here, Mr. Barnes voluntarily stopped to speak with the officers, engaging in casual conversation about his family and other matters. [App. 1a]. The officers did not use coercive language, draw weapons, or otherwise indicate that compliance was required.

However, the absence of coercion at the outset does not automatically justify the officers' later actions. The Fourth Amendment prohibits law enforcement from escalating a consensual encounter into an investigative detention without reasonable suspicion of criminal activity. *See Florida v. Royer,* 460 U.S. 491, 497 (1983). At no point during their conversation did the officers observe conduct that justified their decision to physically seize and search Mr. Barnes.

The case of *Florida v. Royer* provides an example where a consensual stop went beyond the permissible scope of a *Terry* stop. In that case, law enforcement officers at Miami International Airport observed Royer exhibiting behavior they associated with a "drug courier profile." 460 U.S. 491 at 493. The detectives approached Royer, requested his identification and ticket, and noted that the names on these documents did not match. *Id.* They then asked Royer to accompany them to a small room, retrieved his checked luggage without his consent, and sought permission to search it. *Id.* Royer produced a key to one suitcase, which officers opened and found marijuana. *Id.* at 502. The second suitcase, which required force to open, also contained contraband. Royer was subsequently arrested. *Id.* Royer was convicted of felony possession of marijuana. He appealed, arguing that his Fourth Amendment rights had been violated.

The Florida District Court of Appeal reversed his conviction, holding that he was unlawfully detained when he consented to the search, rendering the consent invalid. *Id.* at 495. The State of Florida sought certiorari, and the U.S. Supreme Court granted review.

The U.S. Supreme Court affirmed the Florida District Court of Appeal's decision, holding that Royer's detention exceeded the permissible scope of an investigative stop and amounted to an unlawful arrest without probable cause. *Id.* at 507.

Specifically, the Court found that Royer's encounter with law enforcement escalated from a consensual interaction to an unlawful detention when officers took

his ticket and ID, moved him to a small interrogation room, and retrieved his luggage without his consent. *Id.* at 503. This confinement, combined with the officers' actions, amounted to an arrest requiring probable cause which was lacking at that stage. *Id.* The Court emphasized that investigative stops must be limited in scope and duration and that moving Royer to a confined space while retaining his documents transformed the stop into an unconstitutional seizure. *Id.* Because the consent to search was obtained during this illegal detention, it was not voluntary but a product of the unconstitutional seizure. That Court reinforced the principle that an individual cannot be coerced into waiving their Fourth Amendment rights and that law enforcement must ensure investigative stops do not turn into de facto arrests without the requisite justification. *Id.*

The facts of *Florida v. Royer* are strikingly similar to the present case involving Mr. Barnes. In *Royer*, law enforcement officers escalated a consensual encounter into an unlawful detention when they retained the suspect's identification, moved him to a confined area, and proceeded with a search without voluntary consent. Similarly, in Mr. Barnes' case, the officers' actions transformed what they claim was a consensual encounter into an unconstitutional detention and search. As in *Royer*, where officers moved the suspect to a confined space without informing him, he was free to leave, here, Officers Sanders and Birch cut off Mr. Barnes' path of travel, physically positioned themselves around him, and placed their hands on him without a warrant or reasonable suspicion. The presence of a barking K-9 known to have

previously bitten Mr. Barnes further reinforced a coercive atmosphere that made it objectively unreasonable for Mr. Barnes to believe he was free to walk away.

Moreover, in *Royer*, the Supreme Court ruled that consent to a search is invalid if it is obtained during an unlawful detention, as any such consent is tainted by the illegality of the seizure. Here, Mr. Barnes did not freely consent to a search of his person. Instead, he was subjected to an escalating show of authority, including the physical presence of uniformed and armed officers and a prior history of force by the same K-9 unit. This created a coercive environment under which Mr. Barnes' compliance did not constitute voluntary consent.

Lastly, the Court in *Royer* reaffirmed that an investigative detention must be limited in scope and duration. Officers may not escalate a stop into an arrest without probable cause. In this case, even if there had been a basis for an initial *Terry* stop (which is doubtful given the lack of reasonable suspicion), the officers went beyond permissible limits by physically restraining Mr. Barnes before obtaining any actual consent. The officers seized Mr. Barnes and forcibly searched him based solely on alleged nervous behavior—a justification rejected in multiple federal cases, including *United States v. Beck*, 140 F.3d 1129 (8th Cir. 1998), which held that nervousness alone does not provide reasonable suspicion for a search.

In conclusion, while the Eleventh Circuit correctly determined that Mr. Barnes' initial interaction with law enforcement was consensual, the officers' subsequent actions unlawfully escalated the encounter into an unconstitutional detention and search. As established in *Florida v. Royer*, law enforcement cannot

transform a voluntary interaction into an investigatory detention or de facto arrest without reasonable suspicion or probable cause. Here, the officers physically restricted Mr. Barnes' movement, positioned themselves around him, and introduced a known aggressive K-9 to create a coercive environment that made it objectively unreasonable for him to believe he was free to leave. Furthermore, any alleged consent obtained under these circumstances was tainted by the unconstitutional seizure, rendering the search unlawful. Accordingly, the officers' conduct violated Mr. Barnes' Fourth Amendment rights, and any evidence obtained as a result should be suppressed.

B. The Officers Lacked Reasonable Suspicion to Justify the Search and Seizure.

The officers lacked reasonable suspicion to justify the seizure and search of Mr. Barnes. While law enforcement officers are permitted to engage individuals in voluntary conversation, they may not escalate such encounters into forcible searches without specific, articulable facts suggesting criminal activity. Here, the officers' justifications for detaining and searching Mr. Barnes were legally insufficient.

First, Mr. Barnes' alleged nervousness does not constitute reasonable suspicion. Nervous behavior alone is not enough to justify a Fourth Amendment intrusion. See *United States v. Santos*, 403 F.3d 1120, 1127 (10th Cir. 2005). Given Mr. Barnes' prior negative interactions with law enforcement—particularly with the K-9-unit present during the encounter—it was natural for him to exhibit signs of anxiety. The Supreme Court has cautioned against subjective interpretations of

nervousness as a basis for reasonable suspicion as it is a common reaction to police presence rather than an indicator of criminal activity.

In *Santos*, the Tenth Circuit upheld the continued detention of the defendant based on a totality of the circumstances approach, emphasizing that nervousness alone is insufficient to establish reasonable suspicion, but when combined with other factors—such as inconsistent statements, a prior criminal history involving drugs, and selective consent to a search—it may justify prolonged detention. However, the court also made clear that a refusal to consent to a search cannot itself be used to create reasonable suspicion, as doing so would undermine Fourth Amendment protections. *United States v. Santos*, 403 F.3d 1120, 1127 (10th Cir. 2005).

In this case, the officers' justification for detaining and searching Mr. Barnes relied primarily on his alleged nervous behavior and his holding his left arm close to his body. As in *Santos*, nervousness alone does not establish reasonable suspicion, particularly when it can be explained by a reasonable, non-criminal factor. Mr. Barnes had a well-documented history of being attacked by the K-9 present during the stop, making his nervousness a natural reaction rather than an indicator of criminal activity. Additionally, the officers in *Santos* at least relied on multiple corroborating factors—such as the defendant's inconsistent statements and prior drug-related offenses—whereas in Mr. Barnes' case, the officers failed to identify any objective, articulable facts linking him to criminal activity.

Furthermore, the search of Mr. Barnes' person was not based on voluntary consent but rather on an immediate, forceful seizure, unlike in *Santos*, where the

defendant's limited consent and subsequent refusal to search the suitcase played a role in the reasonable suspicion analysis. Here, the officers escalated the encounter into a full seizure without sufficient justification, violating the principle established in *Santos* that prolonged detentions must be supported by objective factors beyond mere nervousness or ambiguous physical movements.

Finally, under *Santos*, the officers' reliance on their interpretation of Mr. Barnes' behavior—such as glancing at his left side—does not meet the threshold of reasonable suspicion. The *Santos* court cautioned against placing too much weight on factors that could be innocuous or subject to multiple interpretations. Mr. Barnes' actions, including his positioning of his arm, had plausible innocent explanations, just as the defendant's nervousness and vague travel plans in *Santos* did not, by themselves, justify a prolonged detention.

Accordingly, under the reasoning of *Santos*, the officers in Mr. Barnes' case lacked sufficient reasonable suspicion to justify detaining and searching him. The firearm discovered as a result of the unlawful search constitutes fruit of the poisonous tree and should be suppressed under *Wong Sun v. United States*, 371 U.S. 471 (1963).

II. THE ELEVENTH CIRCUIT ERRED IN UPHOLDING THE DISTRICT COURT'S APPLICATION OF A FOUR-LEVEL SENTENCING ENHANCEMENT UNDER U.S.S.G § 2K2.1(B)(6)(B) FOR POSSESSION OF A CONCEALED FIREARM, THEREBY ENGAGING IN IMPERMISSIBLE DOUBLE COUNTING AND VIOLATING PETITIONER'S SECOND AMENDMENT RIGHTS UNDER *NEW YORK STATE RIFLE & PISTOL ASS'N V. BRUEN*, 597 U.S. 1 (2022).

Mr. Barnes challenges the application of U.S.S.G. § 2K2.1(a)(2), which increased his base offense level due to a prior controlled substance offense and a non-violent resisting arrest conviction. Petitioner asserts that following the Supreme

Court's decision in *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), the continued use of prior controlled substance offenses as sentencing enhancements raises significant constitutional concerns. Under *Bruen*'s historical analysis framework, Petitioner contends that firearm restrictions, including those based on prior controlled substance offenses, must be justified by historical precedent, which the government has failed to establish. Post-*Bruen* decisions, such as *United States v. Rahimi* and *Range v. Atty. Gen. of the United States of America*, demonstrate that firearm prohibitions must be grounded in the nation's historical traditions of regulation.

In *Bruen*, the Court established a two-step test for evaluating Second Amendment challenges, requiring courts to assess whether modern firearm restrictions are consistent with the nation's historical traditions of firearm regulation. This test has been applied in post-*Bruen* appellate decisions, including *United States v. Rahimi*, 61 F.4th 443 (5th Cir. 2023), and *Range v. Atty. Gen. of the United States of America*, 69 F.4th 96 (3rd Cir. 2023), both of which held that categorical bans on firearm possession must be supported by historical precedent. Here, the government has failed to demonstrate that the restriction of firearm possession based on prior controlled substance offenses aligns with this historical framework.

The Supreme Court's *Bruen* decision is critical in this context as it mandates that the government demonstrate firearm regulations are consistent with the historical tradition of firearm regulation in the United States. The Court rejected

interest-balancing approaches and affirmed that conduct falling within the plain text of the Second Amendment is presumptively protected unless the government can show a historical precedent for its restriction. In *Range v. Attorney General*, 69 F.4th 96 (3d Cir. 2023), the Third Circuit held that the government failed to establish a historical justification for permanently disarming individuals with prior convictions under § 922(g)(1), finding such prohibitions violate the Second Amendment.

Similarly, in *United States v. Rahimi*, 61 F.4th 443 (5th Cir. 2023), the Fifth Circuit held that 18 U.S.C. § 922(g)(8), which prohibits firearm possession by individuals subject to domestic violence restraining orders, violated the Second Amendment under the *Bruen* historical analysis framework. The Fifth Circuit also applied *Bruen* to hold that 18 U.S.C. § 922(g)(3), which restricts firearm possession by unlawful drug users, did not meet the historical tradition test. This reasoning was further supported in *United States v. Daniels*, No. 22-60596, 2023 WL 5091317 (5th Cir. Aug. 9, 2023), and *United States v. Harper*, Crim. No. 1:21-CR-0236 (M.D. Pa. Sept. 1, 2023), where courts dismissed charges based on the failure to establish historical precedent for disarming individuals under certain conditions.

In Petitioner's case, the district court failed to conduct a *Bruen* analysis regarding the sentencing enhancement under U.S.S.G. § 2K2.1(a)(2). Instead, the court merely overruled Petitioner's Second Amendment objection and deferred the issue for appellate review. Given the substantial precedent reevaluating firearm restrictions in light of *Bruen*, this Court should grant certiorari to determine whether

the sentencing enhancement under U.S.S.G. § 2K2.1(a)(2) violates the Second Amendment.

For the foregoing reasons, Petitioner respectfully requests that this Court grant certiorari to review the constitutionality of U.S.S.G. § 2K2.1(a)(2) in light of *Bruen* and its progeny. The government has failed to establish a historical tradition supporting the use of prior controlled substance offenses as a basis for firearm restrictions, as required under *Bruen*'s framework. Recent appellate decisions, including *Range* and *Rahimi*, demonstrate that categorical firearm prohibitions lacking historical justification cannot withstand constitutional scrutiny. Because the district court failed to conduct a proper *Bruen* analysis, this Court's review is necessary to resolve the constitutional implications of sentencing enhancements based on non-violent offenses and ensure compliance with the Second Amendment.

CONCLUSION

For the foregoing reasons, the Supreme Court should grant Steven Dewayne Barnes, Jr's Petition for Writ of Certiorari.

Respectfully submitted,

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APPENDIX

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[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-13861

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

STEVEN DEWAYNE BARNES, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:22-cr-00118-SPC-NPM-1

Before WILSON, JILL PRYOR, and BRASHER, Circuit Judges.

PER CURIAM:

Defendant-Appellant Steven Dewayne Barnes, Jr. appeals his convictions and 120-month sentence for possessing a firearm as a felon, in violation of 18 U.S.C. § 922(g), and possessing a firearm with an obliterated serial number, in violation of 18 U.S.C. § 922(k). First, Barnes argues that the district court erred in denying his motion to suppress the handgun because police officers obtained it using an unconstitutional stop and pat down search. Second, he argues that the application of a four-level sentencing enhancement under U.S.S.G. § 2K2.1(b)(6)(B) was impermissible double counting and violated his Second Amendment rights. After careful consideration, we affirm the district court.

I.

We turn first to the encounter on the streets of Fort Myers that led to Barnes' Fourth Amendment challenge and motion to suppress.[1] On the day of Barnes' arrest, he was walking down the street toward his home when two Fort Myers Police Department (FMPD) Group Violence Intervention Unit officers approached him in a marked patrol car. Witnesses had named Barnes as a suspect in two recent drive-by-shootings—one of which occurred the

[1] The following reflects the district court's findings after hearing both officers' testimony, finding it credible, and watching the body camera footage of the incident.

night before. The two officers were patrolling the area, trying to find out where Barnes was living. Both officers were very familiar with Barnes, had encountered him before, and knew he was a felon.[2] One of the officers, Sergeant Sanders, testified he had "lots of conversations" with Barnes over the last eight to ten years and had monitored Barnes as a juvenile probation officer.

When Sergeant Sanders saw Barnes, he stopped beside him, rolled down the window, and greeted him. He did not activate the car's lights or sirens. Barnes walked up to the driver's side of the patrol car, and they began a casual conversation. Sanders congratulated Barnes on finishing probation and asked Barnes about his mother's health, his child, and his brother. At the beginning of the conversation, Sanders' K9 partner, Balor, barked loudly from the back seat, and Sanders tried to quiet him down. Once, Balor had bitten Barnes while helping to arrest him. Since then, Sergeant Sanders had other conversations with Barnes with Balor in the car and Barnes did not appear nervous.

On this particular day, both officers noticed Barnes' uncharacteristically nervous body language and demeanor. When they first saw him, Barnes was walking down the street normally, carrying a grocery bag, with both arms moving freely. But the entire

[2] Barnes had been convicted of the following felonies in Lee County Circuit Court: (1) Resisting an Officer with Violence, Possession of a Weapon School Property, and Carrying a Concealed Firearm on September 28, 2015; (2) Possession of Cannabis with Intent to Sell on November 13, 2017; and (3) Fleeing or Attempting to Elude a Law Enforcement Officer on July 15, 2019.

time he spoke with the officers, he kept his left arm pressed firmly against his left hip, in what the officers described as an unnatural and awkward position. His hands and knees were visibly shaking. When Barnes held up his cell phone to show the officers a video, the two officers got out of the car and stood on either side of him to watch. Even when he took out his phone, Barnes' left arm stayed pressed against his side. His right hand and legs continued shaking.

Based on his prior interactions with Barnes, Sergeant Sanders suspected Barnes was carrying a concealed weapon. He asked Barnes if he had a gun. Barnes immediately looked down to his left side, directly to where he had been pressing his arm. At this time, the other officer, Detective Birch, saw a bulge in Barnes' waistline. The officers grabbed Barnes' arms. Sergeant Sanders patted down the left side of Barnes' body. He felt the grip of a firearm from outside Barnes' clothing and removed a loaded handgun concealed in his waistband. The officers then put Barnes in handcuffs. After the arrest, Barnes told Detective Birch that he could have just walked across the parking lot to his house rather than stop to speak with the officers. Detective Birch agreed.

A federal grand jury indicted Barnes for two counts of unlawful possession of a firearm under 18 U.S.C. § 922. He moved to suppress evidence of the gun. The district court denied the motion; it found that the encounter was a consensual police-citizen interaction until the officers grabbed Barnes' arms, and that the officers developed reasonable suspicion that Barnes was illegally carrying a firearm before their search and seizure of his person.

A.

In reviewing a district court's denial of a motion to suppress, we review its "findings of fact for clear error and its application of the law to those facts *de novo*." *United States v. Luna-Encinas*, 603 F.3d 876, 880 (11th Cir. 2010). We construe all facts in the light most favorable to the party that prevailed in the district court. *United States v. Morley*, 99 F.4th 1328, 1336 (11th Cir. 2024).

A factual finding is clearly erroneous only if, after reviewing all the evidence, we have a "definite and firm conviction" that the district court made a mistake. *United States v. Villarreal*, 613 F.3d 1344, 1349 (11th Cir. 2010) (quotation marks omitted). We afford substantial deference to the district court's credibility determination "unless it is contrary to the laws of nature, or is so inconsistent or improbable on its face that no reasonable factfinder could accept it." *United States v. Holt*, 777 F.3d 1234, 1255 (11th Cir. 2015) (quotation marks omitted).

B.

The Fourth Amendment safeguards the rights of the people to be free from unreasonable searches and seizures. U.S. Const. amend. IV. Not all interactions between police officers and citizens are "seizures" for Fourth Amendment purposes. *See Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968). Law enforcement officers do not violate the Fourth Amendment "merely by approaching individuals on the street or in other public places" and asking questions. *United States v. Drayton*, 536 U.S. 194, 200 (2002). A brief, consensual and non-

coercive interaction does not require Fourth Amendment scrutiny. *United States v. Perkins*, 348 F.3d 965, 969 (11th Cir. 2003).

An interaction only becomes a seizure when the police "exert a show of authority that communicates to the individual that his liberty is restrained, meaning he is not free to leave." *United States v. Baker*, 290 F.3d 1276, 1278 (11th Cir. 2002). "The societal pressure to stop and speak with law enforcement is not a sufficient restraint of liberty to raise the interaction to a level that requires constitutional protection." *Id.* Nor does "the very presence of a police car" driving parallel to a pedestrian. *Michigan v. Chesternut*, 486 U.S. 567, 575 (1988). So long as a reasonable person would feel free "to disregard the police and go about his business," the encounter is consensual. *California v. Hodari D.*, 499 U.S. 621, 628 (1991).

In determining whether a police-citizen encounter was a seizure, we consider:

> whether a citizen's path is blocked or impeded; whether identification is retained; the suspect's age, education and intelligence; the length of the suspect's detention and questioning; the number of police officers present; the display of weapons; any physical touching of the suspect, and the language and tone of voice of the police.

United States v. Jordan, 635 F.3d 1181, 1186 (11th Cir. 2011) (quotation marks omitted).

The Fourth Amendment does not prohibit a police officer from briefly detaining a person, even without probable cause to

make an arrest, if they have a reasonable suspicion based on objective facts that the person has engaged in criminal activity. *United States v. Bruce*, 977 F.3d 1112, 1116 (11th Cir. 2020). Reasonable suspicion does not require the observation of illegal conduct, *United States v. Lewis*, 674 F.3d 1298, 1303 (11th Cir. 2012), but does require "at least a minimal level of objective justification" for making an investigatory stop. *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000). The stop must be based on "specific, articulable facts and rational inferences." *United States v. Briggman*, 931 F.2d 705, 709 (11th Cir. 1991).

After legally stopping an individual, a law enforcement officer, for his own protection and safety, may conduct a pat down to find weapons that he reasonably suspects are in the individual's possession. *Ybarra v. Illinois*, 444 U.S. 85, 93 (1979). If an officer feels a concealed object that he reasonably believes may be a weapon, he may continue the search beyond the outer clothing and remove the concealed object. *United States v. Johnson*, 921 F.3d 991, 997 (11th Cir. 2019) (en banc). Definitive evidence of a weapon or an absolute certainty that the individual is armed is not required. *United States v. Bishop*, 940 F.3d 1242, 1248 (11th Cir. 2019).

In the reasonable suspicion inquiry, "the totality of the circumstances—the whole picture—must be taken into account." *United States v. Cortez*, 449 U.S. 411, 417 (1981). Officers may "draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person." *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (quotation marks omitted).

An officer may assess the situation "in light of his specialized training and familiarity with the customs of the area's inhabitants." *Id.* at 276. When "viewed in totality with the other relevant factors, knowledge of a defendant's criminal history could cause a reasonable officer to have heightened safety concerns." *Bishop*, 940 F.3d at 1249 n.4. The presence of "a visible, suspicious bulge" in an individual's clothing may also give rise to reasonable suspicion, particularly when the individual is present in a high-crime area. *Jordan*, 635 F.3d at 1187.

Nervous and evasive behavior is a "pertinent factor in determining reasonable suspicion." *Wardlow*, 528 U.S. at 124. While a certain level of nervousness is to be expected during encounters with the police, a suspect's shaking and acting extremely or abnormally nervous is a valid consideration. *See, e.g.*, *United States v. Harris*, 928 F.2d 1113, 1117 (11th Cir. 1991); *United States v. Perkins*, 348 F.3d 965, 970 (11th Cir. 2003).

Our first task is to establish at what point in Barnes' encounter the Fourth Amendment becomes relevant, that is, when the officers 'seized' Barnes. *See Terry*, 392 U.S. at 16. Neither party appears to meaningfully dispute the district court's conclusion that Barnes was not seized until the officers physically restrained him and removed the firearm.[3] We agree that the initial conversation

[3] Barnes' opening brief expressly claims that he was seized when the officers placed their hands on him. But it also alludes to the fact that Barnes did not feel free to leave during the initial conversation, stating he "chose to

between Barnes and the officers was a consensual citizen-officer interaction—not a seizure. *See Jordan*, 635 F.3d at 1186. Until the officers made physical contact, there was no "show of authority" telling Barnes he was not "free to leave." *Baker*, 290 F.3d at 1278.

The two officers drove up to Barnes as he was walking down the street and called out to him. The two officers were sitting in the vehicle when Barnes approached the patrol car on his own. The car pulled into a parking lot and was not positioned in a way that blocked Barnes' path of travel toward his apartment complex. The officers did not activate the patrol car's lights or sirens. Instead, the officers spoke to Barnes in a casual manner through an open car window, asking questions about how he and his family were doing. The officers did not ask for any type of identification because they were very familiar with Barnes.

Barnes argues he was fearful of Balor, the K-9 officer, who was barking from the back seat when Barnes first approached the car. But Sanders quieted him down quickly, and for the entire conversation, the dog remained secured in the back seat. Neither officer got out of the car and approached Barnes until he invited them

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participate" in a discussion with uniformed officers, possessing firearms, with a K-9 in their vehicle, "out of fear of what might happen if he refused."

While we recognize the complex power dynamics at play, our case law is clear that any "societal pressure" Barnes felt in this moment to stop and speak with the officers does not raise the interaction to a level requiring constitutional protection. *See Baker*, 290 F.3d at 1278. Driving next to Barnes in a police car, being uniformed, and possessing weapons also hold little weight in the analysis. *Drayton*, 536 U.S. at 204; *Michigan*, 486 U.S. at 575.

to look at a video on his cell phone. After the arrest, Barnes said that he could have just walked into his house rather than stop and talk to the officers, and Detective Birch agreed.

By the time Barnes was seized and searched, the officers had reasonable suspicion based on their own experience and specialized training that he was illegally carrying a concealed weapon. *See Jordan*, 635 F.3d at 1187. Both officers served on the FMPD for more than ten years and were familiar with the area. *See Arvizu*, 534 U.S. at 276. The officers also knew that Barnes had been named as a suspect in two drive-by shootings in the area, including one that occurred about twelve hours prior. They were familiar with Barnes' criminal history and had apprehended him on at least one prior occasion. As Barnes had been convicted of resisting an officer with violence and fleeing a law enforcement officer, this record could reasonably cause them to have heightened safety concerns. *Bishop*, 940 F.3d at 1249 n.4.

The officers were also familiar with Barnes' mannerisms. Sergeant Sanders had many conversations with Barnes in the past, including other conversations where Balor was present. He noted that Barnes' body language was unusual, and Barnes exhibited an extreme level of nervousness during this interaction. On the officers' body-worn camera video, after Barnes is in handcuffs, Sergeant Sanders articulates the same "objective and concrete facts" that made him suspicious that Barnes was carrying a weapon. He tells Barnes, "I was talking to you, man, things were cool, and then you

started taking your left hand and pushing it against that gun. Your knees were shaking so bad you about fell over."

The body-worn camera footage reveals that Sergeant Sanders kept his eyes on the left side of Barnes' body, which is also where he limited his search. Detective Birch testified that he saw a bulge in the left-side of Barnes' waistband. *See Jordan*, 635 F.3d at 1187. This was the same side where Barnes was pressing his arm and where he looked down when Sanders asked if he had a gun. Although Barnes contends that the body-camera videos are inconsistent with the officers' statements that he was shaking and visibly nervous and do not show a bulge, the videos do not directly contradict the officers' testimony. Barnes is not visible in most of the videos. The portions where he is visible do not clearly show that he was not shaking, and there is also a slight bulge underneath Barmes' sweatpants pocket visible on Officer Birch's camera footage when he approaches Barnes. As a result, we do not have a definite and firm conviction the district court made a mistake. *Villarreal*, 613 F.3d at 1349.

Barnes also argues that when Sanders asked if he had a gun, and he glanced down to his left side, he could have been looking at Detective Birch's body camera which beeped and vibrated at the same time, or to a notification on his cell phone. First, Barnes looked down to his left side, where the gun was hidden, while he was holding his cell phone in his right hand and Birch stood on his right side. More importantly, these alternate explanations do not change the "whole picture" of the encounter. Barnes' glance to his

left side when he was asked about having a gun, combined with his uncharacteristically nervous and evasive body language, and the bulge in his pocket created more than a "minimal level of objective justification" to conduct a *Terry* stop and search for potential firearms. *Wardlow*, 528 U.S. at 123. Accordingly, we affirm the district court's denial of Barnes' motion to suppress.

II.

We turn next to Barnes' appeal of his sentence. For his conviction for unlawful firearm possession under 18 U.S.C. § 922, Barnes received a base offense level of 24, because he "committed any part of the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense." U.S.S.G. § 2K2.1(a)(2).

The guidelines call for a four-level increase if 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 at the government's request because Barnes possessed the firearm while committing the Florida third-degree felony of unlawfully carrying a concealed firearm. *See* Fla. Stat. § 790.01(3). Barnes argues that this enhancement resulted in impermissible double counting and violated his Second Amendment rights. We address each argument in turn.

A.

"We review de novo the interpretation and application of the Sentencing Guidelines." *United States v. Cingari*, 952 F.3d 1301, 1305 (11th Cir. 2020). This includes a claim of double counting.

United States v. Dudley, 463 F.3d 1221, 1226 (11th Cir. 2006). We also review the constitutionality of the Sentencing Guidelines de novo. *United States v. Matchett*, 802 F.3d 1185, 1191 (11th Cir. 2015).

B.

"Impermissible double counting occurs only when one part of the Guidelines is applied to increase a defendant's punishment on account of a kind of harm that has already been fully accounted for by application of another part of the Guidelines." *United States v. Osorto*, 995 F.3d 801, 822 (11th Cir. 2021) (quotation marks omitted). Punishment of two kinds of harms based on the same conduct is permissible under the Guidelines when "neither enhancement fully accounts for both harms." *United States v. Asante*, 782 F.3d 639, 648 (11th Cir. 2015) (quotation marks omitted and alteration adopted). "We presume that the [Sentencing] Commission intended to apply separate sections cumulatively unless otherwise specified." *United States v. Flanders*, 752 F.3d 1317, 1340 (11th Cir. 2014).

The enhancement under U.S.S.G. § 2K2.1(b)(6)(B) applies if the sentencing court finds "the firearm or ammunition facilitated, or had the potential of facilitating, another felony offense." *United States v. Bishop*, 940 F.3d 1242, 1250 (11th Cir. 2019) (quotation marks omitted). "Another felony offense" is "any federal, state or local offense other than the explosive or firearms possession or trafficking offense, punishable by imprisonment for a term exceeding

one year, regardless of whether a criminal charge was brought, or a conviction obtained." U.S.S.G. § 2K2.1, cmt. 14(C).[4]

The government argued, and the district court agreed that the four-level enhancement should apply because Barnes was committing the Florida felony offense of illegally carrying a concealed weapon while he was committing the federal crime of felon in possession of a firearm. According to Barnes, enhancing his sentence for concealing the same firearm he was convicted of possessing punishes him twice for the same harm. We disagree. While the underlying conduct involves the same firearm, the conduct for which Barnes was convicted is distinct from the conduct on which the enhancement was based. *See United States v. Jackson*, 276 F.3d 1231, 1234 (11th Cir. 2001).

Section 922(g)(1) prohibits "anyone who has been convicted of a crime punishable by more than one year of imprisonment" from keeping a firearm or ammunition. The statute requires the government to prove the defendant (1) knew he possessed a firearm, and (2) knew he belonged to the relevant category of persons barred from possessing said firearm. *Rehaif v. United States*, 588 U.S. 225, 237 (2019). Under § 922(k), the government must prove the defendant (1) possessed a gun with an obliterated serial number

[4] A sentencing court may consider the Sentencing Commission's interpretation of a Guideline as contained in the Commentary to the extent that a Guideline is "genuinely ambiguous." *United States v. Dupree*, 57 F.4th 1269, 1279 (11th Cir. 2023) (en banc).

and (2) knew the number was obliterated. *United States v. Haile*, 685 F.3d 1211, 1220 (11th Cir. 2012) (per curiam).

The felony offense possessing the firearm "facilitated" was carrying a concealed weapon in violation of Florida Statutes § 790.01(3). The law is "designed to prevent a person with a weapon from taking some undue advantage over an unsuspecting adversary, who is not aware that the person is carrying a weapon." *Dorelus v. State*, 747 So. 2d 368, 370 (Fla. 1999) (quotation marks omitted). The prosecution must not only prove the defendant knowingly and unlawfully possessed a firearm, but that the firearm was concealed from ordinary sight. *See id.*

Barnes' convictions under 18 U.S.C. § 922 punish his possession of a firearm based on his *status* as a felon and the fact the gun had an obliterated serial number. By contrast, the Florida law punishes his *active conduct* of illegally carrying a concealed weapon. A "substantial difference—in terms of the likelihood of immediate violence flowing from the crime—exists between the offense of carrying a concealed weapon and the offense of possessing a weapon as a convicted felon." *Cf. United States v. Hall*, 77 F.3d 398, 402 n.4 (11th Cir. 1996). In carrying a concealed weapon, "the person has taken the extra step of having the weapon immediately accessible." *Id.* at 401. As the Florida felony addressed this additional harm, the district court did not err in enhancing Barnes' sentence under § 2K2.1(b)(6)(B).

C.

Finally, Barnes argues that enhancing his sentence for possessing a concealed firearm under U.S.S.G. § 2K2.1(b)(6)(B) violates his Second Amendment rights. At its core, the Second Amendment protects the "right of law-abiding, responsible citizens to use arms in defense of hearth and home." *District of Columbia v. Heller*, 554 U.S. 570, 592, 634–35. (2008). But the right is "'not unlimited.'" *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022) (quoting *Heller*, 554 U.S. at 626. Many regulations, like those prohibiting possession of firearms by "'felons and the mentally ill,'" are "'presumptively lawful.'" *See, e.g.*, *United States v. Rahimi*, 144 S. Ct. 1889, 1902 (2024) (quoting *Heller*, 554 U.S. at 626, 627, n. 26). In the Eleventh Circuit, "felons are categorically 'disqualified' from exercising their Second Amendment right." *United States v. Dubois*, 94 F.4th 1284, 1293 (11th Cir. 2024).

In *Bruen*, the Supreme Court introduced a new framework for analyzing Second Amendment challenges. 597 U.S. at 39. At the first step, the court must decide whether the challenged law burdens conduct protected by the plain text of the Second Amendment. *Id.* at 17, 32. If so, the government must demonstrate the restriction burdens the Second Amendment right in a way that is "consistent with this Nation's historical tradition of firearm regulation." *Id.* at 24, 30. Courts should analyze "how and why the regulations burden *a law-abiding citizen's* right to armed self-defense." *Id.* at 29 (emphasis added). *Bruen* also explained that "narrow, objective" licensing laws that are designed to ensure only that those

bearing arms in the jurisdiction are, in fact, "law-abiding, responsible citizens" do not infringe on Second Amendment rights. *Id.* at 39 n.9.

Here, Barnes argues the district court erred by not conducting a historical analysis under *Bruen* before applying the §2K2.1(b)(6)(B) enhancement. But this argument fails. In *Bruen*, the Supreme Court reached the historical analysis step only after finding the Second Amendment protected the rights of the petitioners—"two ordinary, *law-abiding*, adult citizens"—to bear arms in public for self-defense. 597 U.S. at 31–33 (emphasis added). By its very terms, § 2K2.1(b)(6)(B) does not burden protected conduct by a law-abiding citizen. It penalizes an individual's possession of a firearm "in connection with" another felony offense. The enhancement applies only where the firearm "facilitated, or had the potential of facilitating, another felony offense," § 2K2.1 cmt.14(A)).

As a felon, Barnes is disqualified from Second Amendment protections "under any and all circumstances," *United States v. Rozier*, 598 F.3d 768, 770 (11th Cir. 2010). This includes illegally concealing a firearm without meeting the "narrow, objective requirements" of Florida's licensing laws, *Bruen*, 597 U.S. at 39 n.9. Even if possessing a firearm as a felon and concealing that firearm without a license is protected by the Second Amendment, regulations preventing such conduct, including the laws at issue here, are presumptively lawful. *See Rahimi*, 144 S. Ct. at 1902.

Accordingly, the district court's decision is **AFFIRMED.**

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-13861

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

STEVEN DEWAYNE BARNES, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:22-cr-00118-SPC-NPM-1

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: December 4, 2024

For the Court: DAVID J. SMITH, Clerk of Court

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v.

STEVEN DEWAYNE BARNES, JR.

Case Number: 2:22-cr-118-SPC-NPM

USM Number: 33817-510

Joseph A. Davidow, CJA
9015 Strada Stell Ct Ste 106
Naples, FL 34109-4373

JUDGMENT IN A CRIMINAL CASE

Defendant was found guilty to Counts One and Two of the Indictment. Defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 U.S.C. §§ 922(g)(1) and 924(a)(8)	Possession of a Firearm by a Convicted Felon	November 15, 2022	One
18 U.S.C. §§ 922(k) and 924(a)(1)B)	Possession of a Firearm with an Obliterated Serial Number	November 15, 2022	Two

Defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS ORDERED that 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 any material change in the defendant's economic circumstances.

Date of Imposition of Judgment:

November 13, 2023

SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

November 14, 2023

»

Steven Dewayne Barnes, Jr.
2:22-cr-118-SPC-NPM

IMPRISONMENT

Defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **121-MONTHS. Such term consists of 121 months as to Count One and 60 months as to Count 2, counts to run concurrently.**

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

1. **Incarceration in a facility close to home (FCI Coleman).**

2. **Participation in any and all educational programs, to include vocational training.**

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

RETURN

I have executed this judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By: _____
Deputy U.S. Marshal

Steven Dewayne Barnes, Jr.
2:22-cr-118-SPC-NPM

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of **3-YEARS. Such term consists of 3 years as to Count One and 3 years as to Count 2, counts to run concurrently.**

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.
4. Defendant shall cooperate in the collection of DNA, as directed by the probation officer.

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

Steven Dewayne Barnes, Jr.
2:22-cr-118-SPC-NPM

STANDARD CONDITIONS OF SUPERVISION

As part of Defendant's supervised release, Defendant must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for Defendant's 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 Defendant's conduct and condition.

1. Defendant must report to the probation office in the federal judicial district where Defendant is authorized to reside within 72 hours of Defendant's release from imprisonment, unless the probation officer instructs Defendant to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, Defendant will receive instructions from the court or the probation officer about how and when Defendant must report to the probation officer, and Defendant must report to the probation officer as instructed.
3. Defendant must not knowingly leave the federal judicial district where Defendant is authorized to reside without first getting permission from the court or the probation officer.
4. Defendant must answer truthfully the questions asked by Defendant's probation officer
5. Defendant must live at a place approved by the probation officer. If Defendant plans to change where Defendant lives or anything about Defendant's living arrangements (such as the people Defendant lives with), Defendant 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, Defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. Defendant must allow the probation officer to visit Defendant at any time at Defendant's home or elsewhere, and Defendant must permit the probation officer to take any items prohibited by the conditions of Defendant's supervision that the probation officer observes in plain view.
7. Defendant must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses Defendant from doing so. If Defendant does not have full-time employment Defendant must try to find full-time employment, unless the probation officer excuses Defendant from doing so. If Defendant plans to change where Defendant works or anything about Defendant's work (such as Defendant's position or Defendant's job responsibilities), Defendant 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, Defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. Defendant must not communicate or interact with anyone Defendant knows is engaged in criminal activity. If Defendant knows someone has been convicted of a felony, Defendant must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If Defendant is arrested or questioned by a law enforcement officer, Defendant must notify the probation officer within 72 hours.
10. Defendant 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. Defendant 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 Defendant poses a risk to another person (including an organization), the probation officer may require Defendant to notify the person about the risk and Defendant must comply with that instruction. The probation officer may contact the person and confirm that Defendant has notified the person about the risk.
13. Defendant 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:_____

Steven Dewayne Barnes, Jr.
2:22-cr-118-SPC-NPM

ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

1. Defendant shall participate in a substance abuse program (outpatient and/or inpatient) and follow the probation officer's instructions regarding the implementation of this court directive. Further, Defendant shall contribute to the costs of these services not to exceed an amount determined reasonable by the Probation Office's Sliding Scale for Substance Abuse Treatment Services. During and upon completion of this program, Defendant is directed to submit to random drug testing.

2. Defendant shall submit to a search of Defendant's person, residence, place of business, any storage units under Defendant's control, computer, or vehicle, conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. Defendant shall inform any other residents that the premises may be subject to a search pursuant to this condition.

3. Defendant shall submit to random drug testing not to exceed 104 tests per year.

Steven Dewayne Barnes, Jr.
2:22-cr-118-SPC-NPM

CRIMINAL MONETARY PENALTIES

Defendant shall pay the following total criminal monetary penalties under the schedule of payments set forth in the Schedule of Payments.

	Assessment	AVAA Assessment[1]	JVTA Assessment[2]	Fine	Restitution
TOTALS	**$200.00**	**$0.00**	**$0.00**	**WAIVED**	**$0.00**

SCHEDULE OF PAYMENTS

Special assessment shall be paid in full and is due immediately.

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

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be 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, unless otherwise directed by the court, the probation officer, or the United States attorney.

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

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.

FORFEITURE

Defendant shall forfeit to the United States those assets previously identified in the Indictment (Doc. 16) and Order of Forfeiture (Doc. 89), that are subject to forfeiture.

[1] Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
[2] Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.