

APPENDIX

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United States Court of Appeals
for the Fifth Circuit

No. 24-30287

United States Court of Appeals
Fifth Circuit

FILED

December 11, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

SHANNON LAMON ANDERSON,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:23-CR-180-1

Before GRAVES, WILLETT, and WILSON, *Circuit Judges.*

PER CURIAM:*

Shannon Lamon Anderson was indicted for possession of a firearm by a felon under 18 U.S.C. § 922(g)(1). The district court denied his motion to dismiss the indictment, and Anderson raises two arguments on appeal: (1) § 922(g)(1) is facially unconstitutional; and (2) the district court erred in assessing a two-level sentencing enhancement for obstruction of justice. We AFFIRM.

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

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I

On February 4, 2023, police officers observed a driver of a white pickup truck, later identified as Shannon Lamon Anderson, drive recklessly through a parking lot, brandish a handgun outside of the driver's side window, and fire a shot in the air. Officers pursued the vehicle, conducted a traffic stop, arrested Anderson, and discovered a 9mm pistol in the console of his truck, noting that the barrel was still warm, indicating that it had just been fired.

Anderson was charged in state court with illegally discharging a firearm and possession of a firearm by a felon. Approximately three weeks after the incident, Anderson called an acquaintance from the Caddo Parish Correctional Center and attempted to coerce that person into signing a false affidavit stating that the pistol had accidentally gone off and that no one had intentionally pulled the trigger. Anderson stated that he would write the affidavit, that the acquaintance needed only to sign it and would not get into any trouble, and that the affidavit would possibly get Anderson out of jail. Anderson also discussed seeking an affidavit from the gun's registered owner (who was also the truck's owner) in which the owner would take responsibility for the gun.

On August 9, 2023, the government issued a federal indictment, charging Anderson with possession of a firearm by a convicted felon under 18 U.S.C. § 922(g)(1). Anderson moved to dismiss the indictment, urging, as relevant here, that based on the Supreme Court's decision in *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), § 922(g)(1) violated the Second Amendment on its face. The district court denied his motion. Anderson then pleaded guilty pursuant to a plea agreement in which he reserved the right to appeal the denial of his motion to dismiss the indictment.

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The pre-sentence report assessed a base offense level of 20 and increased the level by four because Anderson committed the instant offense after a qualifying conviction for a crime of violence, and he used the firearm he possessed in connection with another felony offense, the illegal discharge of a firearm. U.S.S.G. § 2K2.1(a)(4), (b)(6)(B). It assessed an additional two-level enhancement for obstruction of justice, pursuant to U.S.S.G. § 3C1.1, citing Anderson's attempt to have an acquaintance submit an affidavit falsely stating that the gun had accidentally discharged. Because Anderson had obstructed justice, the pre-sentence report denied him credit for acceptance of responsibility. It determined his total offense level to be 28, which, with a criminal history category of III, subjected him to a Guidelines range of 97–121 months' imprisonment.

Anderson objected to the pre-sentence report's assessment of an obstruction enhancement and refusal to award him acceptance credit for acceptance of responsibility, arguing that it should automatically apply after removal of the obstruction enhancement or, alternatively, that his case was one of the extraordinary ones in which acceptance credit should apply notwithstanding the obstruction enhancement.

The probation officer recommended that the objections be overruled. At sentencing, the district court adopted the pre-sentence report without change, overruling Anderson's objections. The district court sentenced him to the low end of the Guidelines range, 97 months' imprisonment, followed by a three-year term of supervised release. He timely appealed. FED. R. APP. P. 4(b).

II

On appeal, Anderson raises both his facial challenge to § 922(g)(1) and the two-level obstruction-of-justice sentencing enhancement. We review each in turn.

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A

Anderson first contends that § 922(g)(1) violates the Second Amendment on its face because the statute does not comply with the plain text of the amendment and the Government has failed to identify a historical analogue to § 922(g)(1).

We recently denied an as-applied challenge to § 922(g)(1) and found the statute was “constitutional as applied to the facts” in *United States v. Diaz*, 116 F.4th 458, 472 (5th Cir. 2024). Because “the challenger must establish that no set of circumstances exists under which the statute would be valid” to prevail on a facial challenge, *Diaz*’s conclusion that the statute was constitutional in those set of circumstances prevents a facial challenge here. *Id.* at 471 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)).

B

Anderson next contends that that the district court erred in assessing a two-level obstruction-of-justice enhancement. We review the district court’s factual findings for clear error and its interpretation and application of the Sentencing Guidelines *de novo*. *United States v. Stubblefield*, 942 F.3d 666, 668 (5th Cir. 2019). The district court’s determination that a defendant obstructed justice under U.S.S.G. § 3C1.1 is a factual finding that gets clear-error review. *United States v. Zamora-Salazar*, 860 F.3d 826, 836 (5th Cir. 2017).

Section 3C1.1 provides for a two-level enhancement if the defendant “willfully obstructed or impeded, or *attempted* to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction” where the “obstructive conduct related to . . . the defendant’s offense of conviction and any relevant conduct” or “a closely related offense[.]” U.S.S.G. § 3C1.1 (emphasis added). Accordingly, § 3C1.1 applies even if the defendant merely attempts

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to obstruct justice, as Anderson did here. *See id.*; *see also United States v. Girod*, 646 F.3d 304, 318 (5th Cir. 2011) (noting that the enhancement applies to attempted obstruction of justice).

Anderson argues that the obstruction enhancement was error, suggesting his attempt did not impact the investigation or prosecution of the instant offense—possession of the firearm, rather than *discharging* the firearm (for which he was indicted in state court)—because his conduct predated his federal indictment and did not involve an element of his federal offense. But Anderson’s argument fails for three reasons.

First, he ignores evidence that the affidavit may have impacted the federal investigation. As the government notes, Anderson’s proposed false affidavits attempted to cloud not only the issue of who fired the gun, but also whether Anderson ever even possessed it. Anderson even asked to have someone visit the parking lot and scout for cameras so that Anderson could be sure no video evidence would contradict the false affidavit.

Second, the fact that he attempted to have his friend sign a false affidavit *before* his federal indictment is of no consequence. Indeed, we have previously upheld a district court’s finding of obstructive conduct under § 3C1.1 when a defendant induced a coconspirator to sign a false affidavit prior to the defendant’s indictment, even if the affidavit was never used. *United States v. Milton*, 147 F.3d 414, 417–18 (5th Cir. 1998); *see also United States v. Guevara*, 595 F. App’x 273, 278–79 (5th Cir. 2014) (noting that the enhancement applies to attempts to produce false documents or records and that such attempts need not have had any impact on the investigation or prosecution of the offense to constitute obstruction). Accordingly, Anderson’s argument that any false statement must cause “significant impediments” to the federal investigation is unavailing.

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And third, although the discharge of the pistol was not an element of the federal charge—possession of a firearm by a felon—Anderson’s attempt to avoid responsibility for discharging the firearm is “closely related” to the federal offense and relates to his sentence. In fact, the district court enhanced Anderson’s sentence based on his use of the firearm in connection with another felony offense, the illegal discharge of the weapon—which Anderson does not seem to dispute. *See* U.S.S.G. §§ 2K2.1(b)(6)(B), 3C1.1 (requiring that the defendant’s obstructive conduct relate to the offense of conviction and any relevant conduct or a closely related offense); *see also United States v. Miller*, 607 F.3d 144, 151 (5th Cir. 2010) (explaining that an obstruction of justice enhancement can be based on false statements “which could have had[] an influence on the relevant sentencing determinations”).

Anderson has not demonstrated any clear error on the district court’s part. *See Zamora-Salazar*, 860 F.3d at 836. As a result, Anderson’s challenge to his sentence based on the application of the § 3C1.1 enhancement fails.

III

Because Anderson cannot prevail on his facial challenge to § 922(g)(1), nor show that the district court clearly erred by applying the obstruction-of-justice sentencing enhancement, we AFFIRM.

AO 245B (Rev. 09/19 WDLA) Judgment in a Criminal Case

RECEIVED

U.S. DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

APR 26 2024

UNITED STATES DISTRICT COURT

Western District of Louisiana

Shreveport Division

DANIEL J. MCCOY, CLERK

BY:

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

SHANNON LAMON ANDERSON

Case Number: 5:23-CR-00180-1

USM Number: 73426-510

Betty Lee Marak
Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s) 1 of the Bill of Information
- pleaded nolo contendere to count(s) _____ which was accepted by the court.
- was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18:922(g)(1)	Possession Of A Firearm By A Convicted Felon With Forfeiture Notice	02/04/2023	1s

The 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.

- The defendant has been found not guilty on count(s) _____
- Count(s) All counts of the Indictment 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.

April 23, 2024
 Date of Imposition of Judgment

S. Maurice Hicks, Jr.
 Signature of Judge

S. MAURICE HICKS, JR., United States District Judge
 Name of Judge Title of Judge

4/25/24
 Date

DEFENDANT: SHANNON LAMON ANDERSON
CASE NUMBER: 5:23-CR-00180-1

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 97 months as to count 1s. On February 4, 2023, defendant was arrested by the Shreveport Police Department on charges related to the instant offense. On August 29, 2023, defendant appeared in Federal Court on a Writ of Habeas Corpus Ad Prosequendum for an initial appearance and arraignment. The federal arrest warrant on the indictment was executed on the same date. Defendant did not contest the Government’s oral motion for detention and was remanded to the custody of the U.S. Marshals Service, where he has remained. The Court notes the potential of “anticipated state sentences” in the First Judicial District Court in Shreveport, Louisiana, under Docket No. 393703, that represent relevant conduct. Pursuant to U.S.S.G. §5G1.3(c), it is the Order of the Court that these sentences shall run concurrently with any state sentences imposed in the matter from the First Judicial District Court, Caddo Parish, Louisiana. Should defendant be entitled to credit for any of the time he has already spent in custody, the Federal Bureau of Prisons will make that determination.

- The court makes the following recommendations to the Bureau of Prisons:
It is the recommendation of the Court that the defendant be allowed to participate in the 500-hour RDAP program, or any other available drug treatment programs.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:
 - at _____ a.m. p.m. on _____.
 - as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 - before 2 p.m. on _____
 - as notified by the United States Marshal.
 - as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: SHANNON LAMON ANDERSON
CASE NUMBER: 5:23-CR-00180-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: three (3) years

MANDATORY CONDITIONS (MC)

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. 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)*
5. 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)*
6. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
7. 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)*
8. You must participate in an approved program for domestic violence. *(check if applicable)*
9. The passport restriction imposed at the time of initial release is hereby suspended, and defendant’s passport is ordered released to defendant’s attorney. *(check if applicable)*
10. The passport restriction imposed at the time of initial release is continued, and defendant’s passport is ordered transferred to the U. S. Department of State. *(check if applicable)*
11. You must comply with the standard conditions that have been adopted by this court as well as any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION (SC)

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: SHANNON LAMON ANDERSON
CASE NUMBER: 5:23-CR-00180-1

SPECIAL CONDITIONS OF SUPERVISION (SP)

1. Because the presentence report and/or other reliable sentencing information indicate a high risk of future substance abuse, the defendant shall participate in an outpatient substance abuse treatment program and follow the rules and regulations of that program. The defendant shall submit to drug testing as directed by the treatment facility and probation officer during the term of supervision. The defendant shall contribute to the cost of the treatment program if financially able.
2. The defendant shall submit to a mental health evaluation. If treatment is recommended, the defendant shall participate in an approved treatment program and abide by all supplemental conditions of treatment. The Court will determine whether any such treatment will be inpatient or outpatient after the screening and/or assessment is conducted. The defendant shall contribute to the cost of this program to the extent he is deemed capable by the U.S. Probation Office.

DEFENDANT: SHANNON LAMON ANDERSON
 CASE NUMBER: 5:23-CR-00180-1

CRIMINAL MONETARY PENALTIES

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

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

- The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (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.

- 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/or penalties and it is ordered that:
 - the interest and/or penalty requirement is waived for the fine restitution.
 - the interest and/or penalty 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: SHANNON LAMON ANDERSON
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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:

The Court orders that any federal income tax refund payable to the defendant from the Internal Revenue Service will be turned over to the Clerk of Court and applied toward any outstanding balance with regard to the outstanding financial obligations ordered by the Court.

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, or, unless ordered otherwise, criminal debt payments may be made online at www.lawd.uscourts.gov/fees.

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

- Joint and Several
 - Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
 - The Court gives notice this case involves other defendants who may be held jointly and several liable for payment of all or part of the restitution ordered herein and may order such payment in the future.
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:
The Final Order of Forfeiture was signed on March 26, 2024. See record document [37].

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