

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-10142
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

THELONIOUS WAYNE KIRBY,

Defendant- Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:22-cr-00026-TJC-LLL-1

ON REMAND FROM THE SUPREME COURT OF THE
UNITED STATES

Before NEWSOM, ABUDU, and MARCUS, Circuit Judges.

PER CURIAM:

This appeal on remand from the Supreme Court requires us to decide whether *United States v. Rahimi*, 144 S. Ct. 1889 (2024), abrogated our decision in *United States v. Rozier*, 598 F.3d 768, 770–71 (11th Cir. 2010), upholding the federal law that bars felons from possessing firearms and ammunition, *see* 18 U.S.C. § 922(g)(1). On remand and following this Court’s binding precedent in *United States v. Dubois*, 139 F.4th 887, 893 (11th Cir. 2025), we conclude that *Rahimi* did not abrogate our holding in *Rozier* that section 922(g)(1) is constitutional under the Second Amendment. We reinstate our previous opinion and affirm Thelonious Kirby’s sentence.

Kirby appeals his conviction for being a convicted felon in possession of a firearm. He argues that 18 U.S.C. § 922(g)(1) violates the Second Amendment and the Commerce Clause. The government has moved for summary affirmance, arguing that, under our binding precedent, § 922(g)(1) is constitutional.

We review a statute’s constitutionality *de novo*. *United States v. Rozier*, 598 F.3d 768, 770 (11th Cir. 2010). Summary disposition is appropriate if “the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case.” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).¹ Under our prior panel precedent rule, we are bound by our prior published decisions that have not been

¹ In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), we adopted as binding precedent all Fifth Circuit decisions issued before October 1, 1981.

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overruled by the Supreme Court or this Court sitting *en banc*. *United States v. Romo-Villalobos*, 674 F.3d 1246, 1251 (11th Cir. 2012).

The Second Amendment to the United States Constitution provides that: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II. Under federal law, a person who has been convicted of a crime punishable by more than one year’s imprisonment may not possess a firearm or ammunition that has moved through interstate or foreign commerce. 18 U.S.C. § 922(g)(1). We have held that § 922(g)(1)’s prohibition on felon disarmament does not violate the Second Amendment and that § 922(g)(1) is a valid use of the congressional Commerce Clause power. *United States v. McAllister*, 77 F.3d 387, 389–90 (11th Cir. 1996); *Rozier*, 598 F.3d at 770–71.

Kirby’s argument -- that 18 U.S.C. § 922(g)(1) violates the Second Amendment and the Commerce Clause -- is foreclosed by our binding precedents. See *McAllister*, 77 F.3d at 389–90; *Rozier*, 598 F.3d at 770–71. Moreover, we recently held that *Rozier* was not abrogated by the Supreme Court’s decisions in *N.Y. State Rifle and Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022), or *Rahimi*, 602 U.S. 680. See *Dubois*, 139 F.4th at 891–94.2 And we are bound by all of our

² We originally issued *Dubois* in March 2024. The Supreme Court released its decision in *Rahimi* in June 2024. *Dubois* filed a petition for a writ of certiorari, and the Supreme Court vacated the judgment and remanded to this Court for consideration in light of *Rahimi*. *Dubois v. United States*, 145 S. Ct. 1041, 1042 (2025). On remand, we reinstated our previous opinion, holding “that *Rahimi*

prior published decisions because they have not been overruled by the Supreme Court or this Court sitting *en banc*. *Romo-Villalobos*, 674 F.3d at 1251. Accordingly, we grant the government’s motion for summary disposition, since it is “clearly right as a matter of law” that § 922(g)(1) is constitutional. *See Groendyke Transp.*, 406 F.2d at 1162.

On remand, we reinstate our prior decision and **AFFIRM** Kirby’s sentence.³

-- like [*Bruen*] -- did not abrogate our holding in *Rozier* that section 922(g)(1) is constitutional under the Second Amendment.” 139 F.4th at 889–90.

³ Because our Court already has issued an opinion on remand in *Dubois*, Kirby’s motion to hold this case in abeyance pending *Dubois* is DENIED AS MOOT.