

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-13132

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DAVID GIBSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Georgia
D.C. Docket No. 4:22-cr-00032-CDL-ALS-1

Before JORDAN, JILL PRYOR, and KIDD, Circuit Judges.

PER CURIAM:

Following jury selection, David Gibson pled guilty without a plea agreement to violating 18 U.S.C. § 922(g)(3) (prohibiting, as relevant here, any person “who is an unlawful user of or addicted

to any controlled substance” from possessing “in or affecting commerce, any firearm or ammunition”). The district court later denied Mr. Gibson’s motion to withdraw the guilty plea and imposed a sentence of 30 months’ imprisonment.

Mr. Gibson appeals, raising a number of issues. After a review of the record, and with the benefit of oral argument, we affirm in part and relinquish jurisdiction to the district court in part.¹

I

Mr. Gibson first argues that § 922(g)(3) is facially unconstitutional under the Second Amendment. See Br. for Appellant at 10–17. His guilty plea does not foreclose such a claim, see *Class v. United States*, 583 U.S. 174, 178 (2018), so we address the argument.

A defendant who mounts a constitutional facial challenge to a criminal statute on non-First Amendment grounds bears a heavy burden. He must “establish that no set of circumstances exists under which the Act would be valid.” *United States v. Rahimi*, 602 U.S. 680, 693 (2024) (internal quotation marks and citation omitted). Every circuit that has addressed the issue, both before and after *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), has held that § 922(g)(3) is not facially unconstitutional because our history and tradition support disarming individuals who are presently intoxicated. See, e.g., *United States v. Seiwert*, 152 F.4th 854, 872 (7th

¹ Because we write for the parties, we assume their familiarity with the record and set out only what is necessary to explain our decision.

Cir. 2025); *United States v. Stennerson*, 150 F.4th 1276, 1285 (9th Cir. 2025); *United States v. Daniels*, 124 F.4th 967, 974 (5th Cir. 2025), *cert. denied*, 146 S. Ct. 2792 (2026); *United States v. Seay*, 620 F.3d 919, 925 (8th Cir. 2010). We agree with those circuits and reject Mr. Gibson’s facial challenge. *Cf. Rahimi*, 602 U.S. at 700 (“Our tradition of fire-arm regulation allows the Government to disarm individuals who present a credible threat to the physical safety of others.”).²

II

Mr. Gibson also makes a number of related arguments about his guilty plea to the § 922(g)(3) charge: that there was an insufficient factual basis for his plea; that he was denied his due process rights because he was not told what the term “unlawful user of . . . any controlled substance” means; and that his plea was involuntary because he did not know what mens rea § 922(g)(3) requires after *Rehaif v. United States*, 588 U.S. 225, 237 (2019) (“We conclude that in a prosecution under 18 U.S.C. § 922(g) and § 924(a)(2), the Government must prove both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm.”). *See* Br. for Appellant at 17–29.

² As part of his facial attack, Mr. Gibson argues that *Bruen* abrogated our cases upholding § 922(g) against Second Amendment challenges, such as *United States v. Rozier*, 598 F.3d 768, 770–71 (11th Cir. 2010). But we have recently rejected that very same argument. *See United States v. Dubois*, 139 F.4th 887, 888–89 (11th Cir. 2025) (addressing § 922(g)(1)), *cert. denied*, No. 25-6281, 2026 WL 135685 (U.S. Jan. 20, 2026).

After Mr. Gibson filed his brief, the Supreme Court decided *United States v. Hemani*, 608 U.S. 772 (2026), which involved an as-applied Second Amendment challenge to § 922(g)(3). In that case the Court affirmed the dismissal of an indictment charging a violation of § 922(g)(3), explaining that under the Second Amendment the government could not “automatically strip [a non-dangerous defendant] of his Second Amendment right to possess a firearm because he uses marijuana a few times a week.” *Id.* at 794. *See also id.* at 794–95 (similarly rejecting the government’s contention that § 922(g)(3) only requires a showing that the defendant “regularly uses any amount of any controlled substance”).

We asked the parties to submit supplemental briefs addressing *Hemani*, and they have done so. Under the circumstances, we think the best resolution of the rest of this appeal is to remand the case to the district court for it to reconsider Mr. Gibson’s motion to withdraw the guilty plea in light of *Hemani*.

During the plea colloquy, the district court had the government lay out the elements of a § 922(g)(3) offense. The prosecutor stated that the government would have to prove, among other things, that Mr. Gibson was “an unlawful user of controlled substance[s] in close proximity to the time he possessed the firearm.” D.E. 69 at 16. Later on, the prosecutor proffered that (1) on November 17, 2022, federal and local law enforcement agents executed a federal search warrant on Mr. Gibson’s residence, and found 26 firearms; (2) Mr. Gibson admitted that he “has been a regular user of marijuana and has dabbled in methamphetamine”; (3)

23-13132

Opinion of the Court

5

Mr. Gibson admitted to smoking methamphetamine the night before and the morning of the execution of the search warrant; (4) Mr. Gibson overdosed on narcotics in a home in Georgia on September 11, 2021; and (5) Mr. Gibson pled guilty to a state charge of unlawful possession of methamphetamine in February of 2021. *See id.* at 31–32.

Although Mr. Gibson admitted to most of those proffered facts, he told the district court that he “wasn’t a regular user like that. My dad passed away. I started using [a] little bit of it and I got caught with it[.]” *Id.* at 33. Nevertheless, he agreed that he “did use drugs *at some point* while those guns were there at the house[.]” *Id.* (emphasis added). *See also id.* at 34 (“I smoked some marijuana. I hit a joint probably two or three times.”).

Hemani left a number of issues about § 922(g)(3) unanswered. *See, e.g., Hemani*, 608 U.S. at 794 (“We do not address efforts to ban addicts, . . . , or those presently intoxicated, from possessing a firearm We do not even address whether the government could bring a prosecution under § 922(g)(3) accompanied by individualized proof that the defendant's use of marijuana (or any other drug) renders him a danger to himself or others.”). To our knowledge no circuit court has delineated the permissible reach of § 922(g)(3) (i.e., explained what constitutes constitutionally sufficient evidence for a conviction) after *Hemani*. And the Fifth Circuit has recently commented that, with respect to what evidence suffices to make a conviction under § 922(g)(3) constitutional, *Hemani*

“does not make the answer obvious.” *United States v. Nyandoro*, ___ F.4th ___, 2026 WL 2619961, at *7 (5th Cir. Sept. 4, 2026).

Nevertheless, we reject Mr. Gibson’s evidentiary contention that the government’s proffer was insufficient to make out a violation of § 922(g)(3). Our cases hold that a defendant who pleads guilty waives non-jurisdictional challenges like one based on the alleged insufficiency of the evidence. See *United States v. Viscome*, 144 F.3d 1365, 1370 (11th Cir. 1998) (“Appellant Viscome also attacks the sufficiency of the government’s evidence regarding the interstate nexus element [of 18 U.S.C. § 844(i)]. However, Viscome’s guilty plea waived all non-jurisdictional defects in the proceedings against him; and Viscome’s sufficiency of the evidence challenge is non-jurisdictional.”).

As for Mr. Gibson’s due process and involuntariness arguments, the resolution is less clear. Take, for example, Mr. Gibson’s mens rea argument. The prosecutor advised Mr. Gibson during the plea colloquy that the government had to prove, among other things, that he “knew that he was an unlawful user of [a] controlled substance.” D.E. 69 at 16. Mr. Gibson’s claim that he was not properly informed of the mens rea requirement for § 922(g)(3) after *Rehaif* can only be decided once there is a constitutional baseline for what sort of a narcotics user falls within the ambit of that provision. And, as of now, there are no authorities providing any guidance on that latter matter.

Given the intervening decision in *Hemani*, and the uncertain legal landscape, we think it is best to remand the case to the district

23-13132

Opinion of the Court

7

court for it to re-evaluate Mr. Gibson's motion to withdraw the guilty plea in light of *Hemani*. We relinquish jurisdiction to the district court for the limited purpose of having it re-evaluate Mr. Gibson's motion to withdraw the guilty plea. Once the court has received supplemental briefing from the parties on the issue and ruled again on Mr. Gibson's motion, it shall notify us so that we can then proceed as appropriate with the remainder of the appeal.

III

We reject Mr. Gibson's facial challenge to § 922(g)(3) and claim of evidentiary insufficiency. But we remand to the district court and relinquish jurisdiction so it can re-evaluate Mr. Gibson's motion to withdraw the guilty plea in light of *Hemani*.

**AFFIRMED IN PART AND JURISDICTION
RELINQUISHED TO THE DISTRICT COURT IN PART.**