

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

versus

LEE BAILEY

Criminal Action Number

1:24-cr-398-JPB-LRS

**REPORT AND RECOMMENDATION
ON MOTION TO SUPPRESS TANGIBLE EVIDENCE AND
STATEMENTS AND MOTION TO DISMISS INDICTMENT**

Defendant Lee Bailey is charged with knowingly possessing a firearm while being a convicted felon under 18 USC §§ 922(g)(1) and 924(e). [Doc. 1.] The charges stem from Bailey throwing a gun away when a policeman stopped a public altercation in a high crime area late one night. Bailey moves to suppress the gun as well as a statement he made to the police officer after he was arrested. After an evidentiary hearing and briefing, the Court **RECOMMENDS** that Bailey's Motion to Suppress be **DENIED**. [Docs. 21, 50, 59-61.]

Bailey also moves to dismiss the indictment, arguing that the felon-in-possession statute, 18 USC § 922(g)(1), violates the Second Amendment. [Doc. 22]. Based on controlling Eleventh Circuit precedent, the Court **RECOMMENDS** that this motion, too, be **DENIED**.

Facts

At almost midnight on Monday, August 19, 2024, Atlanta Police Department Officer Oliver Smith was on patrol, driving his marked police car southbound on Boulevard in Atlanta. [Tr. (Doc. 49)¹ at 27, 32, 34; Gov't Ex. 5.] As he approached the intersection of Boulevard and Wabash Avenue, which he was familiar with as being a high crime area frequently having fights, shootings, drug use, and prostitution, Officer Smith saw a crowd of people pushing each other and heard through his open car window what sounded like a confrontation. [Tr. at 27, 29, 30-31, 34, 35.] Officer Smith saw a person dressed in all white, later identified as the Defendant, Lee Bailey, pushing against someone with his left arm while holding a gun in his right hand. [*Id.* at 34, 37-39, 62-63.] The black firearm was plain to see against Bailey's white clothing. [*Id.* at 39, 40.]

Officer Smith stopped his car in the middle of the four-lane road, activated his body camera, and left his car without shutting the door or turning on its blue lights. [*Id.* at 34, 36, 48-49; Gov't Ex. 1 at 1:51, 4:10-4:20.] He unholstered his gun in "low ready" position, not directly pointed towards Bailey but angled toward the ground, ready in case needed. [Tr. at 38, 45-47.] He ordered Bailey to stop and drop the gun. [*Id.* at 45.] Bailey, instead, walked away from Officer Smith, and Officer Smith asked what Bailey had in his hand. [Gov't Ex. 1 at 1:58-2:10.]

¹ Citations are to transcript pages rather than those in the CM/ECF header.

When Bailey was between some cars he tossed the gun, which Officer Smith heard hit a fence and the concrete sidewalk. [Tr. at 38-39, 44.]² The sounds of something hitting the fence and sidewalk are audible on both Officer Smith's body-worn camera and his car's dashboard camera video recordings. [*Id.* at 60; Gov't Ex. 1 at 2:09; Gov't Ex. 3 at 1:10.]²

Officer Smith called for backup and detained Bailey, handcuffing him, while trying to secure the scene and ensure that nobody picked up the firearm. [Tr. at 40-41, 42, 47.] When backup arrived, Officer Smith looked for the gun, which he found nearby. [*Id.* at 42-43, 48; Gov't Ex. 1 at 2:12-3:25.] The entire episode from Officer Smith leaving his police car to finding the gun took around 95 seconds. [Gov't Ex. 1 at 1:50-3:25.]

Officer Smith took Bailey to the back seat of his police car. [Tr. at 51.] Bailey was visibly drunk, slurring his words and stumbling, and Bailey told the officers that he was intoxicated. [*Id.* at 51-52.] On the way to the police car, Officer Smith spoke to Bailey, telling him that pulling a gun while drunk "ain't going to work, bro." [Gov't Ex. 1 at 5:24.] Bailey denied pulling a gun. [*Id.* at 5:28.] Officer Smith responded: "What are you talking about? . . . I saw you with a gun. Why did you throw it? If you didn't pull nothing, why did you throw it? You think I'm stupid? Huh? You drunk." [*Id.* at 5:28-5:39.] Bailey responded: "No. Bro. I ain't throw no gun. I had a bottle." [*Id.* at 5:40-

² The date and time stamp on the dashboard camera video is inaccurate and appears to be approximately three hours ahead of the time of recording. [Tr. at 59; Gov't Ex. 3.]

45.] Bailey continued speaking, denying having a gun and saying that he had been drinking, while Officer Smith placed him in the back seat of his police car. [*Id.* at 5:35-6:34.]

Outside the car, Officer Smith explained what he saw to Officer Wilson and a third officer. [*Id.* at 6:35-7:30.] He then went back to Bailey, took Bailey's driver's license out of his wallet, and began entering Bailey's information into a computer while sitting in the front seat of his police car. [*Id.* at 7:30-9:00] Bailey started speaking to Officer Smith, who responded: "So why'd you pull the gun up?" [*Id.* at 9:04-9:07.]

Officer Smith spent several minutes typing information into his computer, speaking with another police officer over his radio and with Officer Wilson through the open passenger-side car window about investigating Bailey's criminal history. [*Id.* at 7:30-10:40.] Meanwhile, Bailey asked for a bathroom, but the officer said he would have to "hold it." [Tr. at 53; Gov't Ex. 1 at 10:41.] Although Bailey's statement is hard to hear on the video recording, Bailey told Officer Smith that he is a convicted felon, and Officer Smith told Officer Wilson that Bailey had admitted it. [*Id.* at 10:52-11:05.] Officer Wilson told Officer Smith to continue checking the information on his own. [*Id.* at 11:00-11:10.]

Several minutes later while still in the police car, Officer Smith asked Bailey why he had a gun if he was a felon and, later, if he had ever been to prison. [*Id.* at 15:42, 20:10.]

Discussion

A. Motion to Suppress Tangible Evidence

Bailey seeks to suppress the firearm that was recovered during his arrest, arguing that the seizure of the firearm is tainted because it flows from his initial unlawful seizure by Officer Smith. [Doc. 21 at 5.] The government contends that Bailey lacks standing to challenge seizure of the firearm because he abandoned the gun before Officer Smith detained him. [Doc. 59 at 2.] Alternatively, the government argues that even if Bailey was detained before abandoning the firearm, the initial seizure was lawful because Officer Smith had reasonable suspicion to detain and probable cause to arrest him. [*Id.* at 2-3.]

Bailey concedes that by tossing the firearm, he abandoned it, and therefore Officer Smith's recovering the gun from the sidewalk does not violate his Fourth Amendment rights. [Doc. 60 at 3 ("If Officer Smith did *not* detain Mr. Bailey at the time of his initial encounter, but only after Mr. Bailey allegedly threw the gun, then Mr. Bailey has no right to contest the seizure of the gun or its use at trial" (emphasis in original)).] Bailey's argument, however, is that he only abandoned the gun after he was illegally seized, and therefore the gun should be suppressed as fruit of the poisonous tree. [*Id.* at 3-4.] The problem with this argument is that even if the Court were to agree that an illegal seizure of a person taints the later recovery of abandoned property, Bailey's premise fails. Bailey was not illegally seized before he threw

the gun.

The Fourth Amendment prohibits unreasonable seizures by the government, including unjustified arrests or detentions. *California v. Hodari D.*, 499 U.S. 621, 623–26 (1991). A seizure can result from a government actor’s use of physical force or a person’s submission to a show of authority. *Id.* at 625–26 (1991). Evidence obtained from an illegal detention may be suppressed. *Id.*

Not all warrantless seizures are unreasonable, however. Police may detain a suspect briefly for an “investigative stop” if they have a reasonable, articulable suspicion based on objective facts that the person has engaged in, or is about to engage in, criminal activity. *Terry v. Ohio*, 392 U.S. 1 (1968); *United States v. Tapia*, 912 F.3d 1367, 1370 (11th Cir. 1990). “Reasonable suspicion” requires less support and certainty than does probable cause. *Tapia*, 912 F.2d at 1370. The level of suspicion required for reasonable suspicion is less than “a fair probability,” and is “considerably less than proof of wrongdoing by a preponderance of the evidence.” *United States v. Sokolow*, 490 U.S. 1, 7 (1989); *United States v. Smith*, 201 F.3d 1317, 1323 (11th Cir. 2000). Reasonable suspicion must, however, be more than just an “inchoate and unparticularized suspicion or ‘hunch.’” *Sokolow*, 490 U.S. at 7 (citation omitted). Law enforcement must have “some minimal level of objective justification” taken from the totality of the circumstances. *Id.* at 7, 8 (citations omitted). The “determination of reasonable suspicion

must be based on commonsense judgments and inferences about human behavior.” *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000).

And not all interactions with the police amount to seizures or detentions requiring even the lower showing of reasonable suspicion. “A ‘seizure’ does not occur every time a police officer interacts with a citizen.” *United States v. Knights*, 989 F.3d 1281, 1286 (11th Cir. 2021). Officers may “approach[] individuals on the street or in other public places and put[] questions to them if they are willing to listen.” *United States v. Drayton*, 536 U.S. 194, 200 (2002). The officers need no reasonable suspicion justifying these consensual encounters, because the Fourth Amendment is not implicated by them. *Knights*, 989 F.3d at 1286. “But officers need reasonable suspicion if an encounter becomes an investigatory stop.” *Id.* “An investigatory stop occurs only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen.” *Id.* (citations, alteration, and internal quotation marks omitted).

Based on this standard, the Court finds that Bailey was not seized before he abandoned his gun. Although Officer Smith ordered Bailey to stop, drop the gun, and eventually to come speak with him, Bailey did not acquiesce to this show of authority, instead walking away from Officer Smith until after he tossed his weapon. Contrary to Bailey’s argument, Officer Smith did not point his gun at Bailey. *See* Doc. 60 at 10, 11. Instead, he angled his gun towards the ground in “low ready” position. And the video recordings establish, again contrary to Bailey’s

argument, that Officer Smith did not block Bailey’s path with his police car. *See* Doc. 60 at 11. Instead, Officer Smith parked his car in the middle of the four-lane road while Bailey was among the crowd congregating on the corner. [Gov’t Ex. 1 at 1:51, 4:10-4:20.]

Bailey relies on *Torres v. Madrid*, 592 U.S. 306 (2021), to support his argument that he was seized even though he did not submit to Officer Smith’s commands. But *Torres* is inapposite. [Doc. 60 at 12-13.] In that case, police fired 13 shots at the defendant, shooting her twice while she drove away when they attempted to speak with her. 592 U.S. at 309-10. The Supreme Court held that the use of physical force, even if that force does not successfully restrain someone, is a seizure. 592 U.S. at 309, 310, 315-18. But this case, unlike *Torres*, does not involve physical force, at least prior to Bailey throwing the gun and being handcuffed. And so, as the Supreme Court makes clear, Bailey was not detained until he submitted to the officer’s show of authority:

The common law distinguished the application of force from a show of authority, such as an order for a suspect to halt. The latter does not become an arrest unless and until the arrestee complies with the demand.

Id. at 311. *See also, Hodari D.*, 499 U.S. at 626 (“An arrest requires *either* physical force . . . *or*, where that is absent, *submission* to the assertion of authority.”) (emphasis in original)). Because Bailey had not acquiesced to Officer Smith’s show of authority before throwing the

gun, he had not yet been seized, and Bailey's Fourth Amendment rights were not implicated.

But even had Bailey been seized before he threw his weapon, the facts provided Officer Smith with at least reasonable suspicion justifying the investigative seizure. On seeing Bailey holding a gun in the middle of an altercation around midnight in a high crime area, Officer Smith acted within his authority when he ordered Bailey to stop, drop his weapon, and to come speak with him. These facts are more than a hunch, and more than satisfy the low standard of objective facts required to justify an investigative stop. *See United States v. Hardy*, 806 F. App'x 718, 721 (11th Cir. 2020) ("Courts have articulated specific factors that, when present, may support a finding of reasonable suspicion. Among others, these include: presence in a high-crime area; nervous or evasive behavior; unprovoked flight or conspicuous avoidance of police; a visible bulge in the individual's clothes that could signify a gun; or corroboration of reports or tips to the police. While the presence of simply one of these factors, *standing alone*, cannot serve as the basis for a *Terry* stop, reasonable suspicion is often found when more than one of these factors are present.") (internal citations omitted) (emphasis in original).

Bailey observes that merely being present in a high crime area does not justify an investigative detention. [Doc. 60 at 15 (citing cases).] He then argues that the other facts here cannot be relied upon and that the record contradicts them. In particular, Bailey disputes that there was a

fight on the street corner, pointing out that neither video recording from Officer Smith's body-worn and dashboard cameras show the fight that Officer Smith testified to seeing. [*Id.*] But neither camera shows the full field of view available to Officer Smith. Bailey also suggests that the person Bailey pushed or fought told Officer Smith that he and Bailey were only joking, not fighting. [Doc. 60 at 16.] But the recording shows that person telling Officer Smith that Bailey and he had "got into it." [Gov't Ex. 1 at 2:39-2:55.] Regardless, whatever that witness said is irrelevant, considering that the witness spoke to Officer Smith only after Bailey had thrown the gun and been handcuffed. In other words, whether or not Officer Smith had reasonable suspicion and thus legally detained Bailey before Bailey threw the gun must be determined independent of whatever the witness later told the officer.

But whether or not there was actually an altercation, Bailey's more serious problem is that Officer Smith saw him holding a gun amongst a group of people in a high-crime area the middle of the night. Bailey points out that neither video actually show Bailey's holding a firearm. Again, neither video shows Officer Smith's full field of view, and it is unsurprising that neither video shows the gun that Bailey was trying to keep from the police officer's sight after Officer Smith got out of his car and was approaching him. Bailey disputes that Officer Smith saw him throw the gun, although throughout the video Officer Smith says that he saw Bailey throw it. Regardless, both the body-worn and dashboard camera videos corroborate Officer Smith's testimony that he heard the

gun being thrown, as both recordings include what sounds like a gun hitting a fence and the concrete sidewalk. [Tr. at 60; Gov't Ex. 1 at 2:09; Gov't Ex. 3 at 1:10.]

Officer Smith's account of seeing the public altercation and Bailey's having a gun that he later threw away is corroborated by other evidence. The videos show Officer Smith leaving his police car in the middle of Boulevard, a four-lane road, without blue lights and with the doors open, corroborating the urgency felt by Officer Smith. [Tr. at 49.] Further, Officer Juan Wilson, a 15-year Atlanta Police veteran whose duties include training other officers, and someone who worked multiple nights each week with Officer Smith, testified that Officer Smith's voice on the radio call sounded like something was going on, consistent with there being an altercation. [Tr. at 110-111, 112, 120-122.]

Officer Smith's testimony that he saw Bailey holding a gun is likewise corroborated both by Officer Smith's singling out Bailey, among a group of people, to stop, drop his gun, and to come speak to him, and also by Officer Smith recovering a gun near where he heard it hit the fence and sidewalk. Finally, if, as Bailey argues, Bailey did not actually throw the gun, his motion to suppress would still fail. If the gun that Officer Smith recovered were not one thrown by Bailey, then Bailey would have no standing to challenge Officer Smith's seizing a gun that he found on the public sidewalk.

The Court finds that Officer Smith testified credibly that he stopped and urgently got out of his car upon seeing Bailey holding a gun during what appeared to be an altercation near the corner of Boulevard and Wabash Avenue, a high crime area, around midnight on Monday, October 19, 2024. Officer Smith may have had probable cause to arrest Bailey for assault when he saw him holding a gun in the middle of a fight, or for battery when he saw him pushing another person. Regardless, Officer Smith had at least reasonable suspicion sufficient to justify an investigative stop. And when Bailey chose to throw his gun away, he abandoned it. *See United States v. Knight*, 336 F. App'x 900, 903 (11th Cir. July 8, 2009) (“When individuals abandon contraband during a chase with law enforcement, they have no expectation of privacy to challenge seizure of the property”) (citations omitted). Bailey’s motion to suppress seizure of the firearm should be denied.

B. Motion to Suppress Statements

Bailey also seeks to suppress a statement he made to Officer Smith on the grounds that (1) the police initiated a custodial interrogation of him without reading him his rights as required by *Miranda v. Arizona*, 384 U.S. 436 (1966), and (2) the statement was not voluntary because it was coerced from Bailey while he was intoxicated. [Doc. 60 at 21-25.] In particular, Bailey told Officer Smith that he is a convicted felon, and the government intends to introduce that statement as part of its case-in-chief. [Doc. 59 at 16.] It does not seek to introduce any of Bailey’s

other statements to the police that night. [*Id.* at 17.] The government concedes that Bailey was in custody and had not been warned of his *Miranda* rights at the time he said he was a felon. [*Id.* at 16.] The issue then is whether Bailey’s statement that he is a convicted felon was made in response to interrogation, or whether Bailey made that statement spontaneously and voluntarily.

1. Bailey’s statement was spontaneous, rather than in response to interrogation, and so *Miranda* does not apply.

In *Miranda*, the Supreme Court held that a suspect who is in custody must be advised of his right to remain silent and of his right to the assistance of counsel before any interrogation by law enforcement. But *Miranda* only applies where “a person in custody is subjected to either express questioning or its functional equivalent.” *Rhode Island v. Innis*, 446 U.S. 291, 300-01 (1980). Officers engage in the “functional equivalent” of express questioning when they use “any words or actions . . . (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.” *Id.* at 301. In determining “whether the police practice was so coercive that it was likely to evoke an incriminating response,” we must “focus[] primarily upon the perceptions of the suspect, rather than the intent of the police.” *United States v. Stubbs*, 944 F.2d 828, 832 (11th Cir.1991) (citations, quotation marks, and emphasis omitted). “Voluntary and spontaneous comments

by an accused . . . are admissible evidence if the comments were not made in response to government questioning.” *Cannady v. Dugger*, 931 F.2d 752, 754 (11th Cir.1991). *See also Miranda*, 384 U.S. at 478 (“Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today.”)

Viewing the video from Officer Smith’s body-worn camera confirms that Bailey’s statement that he is a convicted felon was made spontaneously and not in response to interrogation. While Bailey was handcuffed in the back seat of Bailey’s police car, Officer Wilson told Officer Smith to determine whether Bailey was a convicted felon, and Officer Smith spent several minutes on his computer entering Bailey’s information to obtain his criminal history. Bailey was not asked about his criminal history, the police officers instead investigating by relaying information through Officer Smith’s computer and over the radio. While the officers were investigating, Bailey volunteered to Officer Smith that he is a convicted felon, and Officer Smith told Officer Wilson that Bailey had admitted he was a felon. Even after Bailey’s admission, Officer Wilson told Officer Smith to continue verifying the information on his own. Because Bailey said that he was a felon spontaneously, and not during questioning by law enforcement, the statement is not subject to suppression.

Bailey argues, however, that because he had been asked other questions before admitting that he is a convicted felon, everything that

followed, whether or not responsive to questioning, should be suppressed. [Doc. 60 at 22-23.] Bailey, however, provides no authority for the proposition that a spontaneous statement should be suppressed based on an earlier interrogation. A review of case law shows otherwise. *See United States v. Fautz*, 812 F. Supp. 2d 570, 640-42 (D.N.J. 2011) (collecting and analyzing cases where a spontaneous statement was made by a suspect after having made initial statements in response to interrogation that were later held inadmissible under *Miranda* or that were not offered by the prosecution).

Even if Officer Smith's questions to Bailey in response to Bailey's exculpatory statements—"Why did you throw it?" [Gov't Ex. 1 at 5:28-39] and "So why'd you pull the gun up" [Gov't Ex. 1 at 9:04-9:07]—qualified as interrogation, they were separate from Bailey's spontaneously saying he was a felon. [Gov't Ex. 1 at 10:55-11:05.] This is not a case where a defendant, in the middle of an interrogation, spontaneously makes additional admissions. Here, while there were two or three isolated questions earlier that arguably qualified as interrogation, Bailey told Officer Smith he was a convicted felon without having been asked and while he was not even being spoken to.

Sometime later while the two were still sitting in the police car, Officer Smith asked Bailey why he had a gun if he was a felon [Gov't Ex. 1 at 15:42], and if he had ever been to prison [Gov't Ex. 1 at 20:10], but these questions came well after Bailey's admission, so they could

not have somehow converted the earlier spontaneous statement into a response to interrogation.

2. Bailey's statement was voluntary.

Bailey also argues that his statement should be suppressed because it was not voluntary, but instead was coerced while he was intoxicated. [Doc. 60 at 23.] The government concedes that Bailey was intoxicated but argues that he was not so incapacitated that he did not understand and appreciate his surroundings and the seriousness of the situation. [Doc. 59 at 19-20.]

A court looks at the totality of the circumstances when evaluating voluntariness, and the question ultimately is whether the defendant's statement "was the product of an essentially free and unconstrained choice." *Hubbard v. Haley*, 317 F.3d 1245, 1252 (11th Cir. 2003) (internal quotation marks omitted). "Those cases where courts have found confessions to be involuntary have contained a substantial element of coercive police conduct." *United States v. Patterson*, No. 1:06-cr-500-1-TWT, 2007 WL 2331080, at *4 (N.D. Ga. Aug. 10, 2007) (internal quotation marks omitted). "Sufficiently coercive conduct normally involves subjecting the accused to an exhaustingly long interrogation, the application of physical force or the threat to do so, or the making of a promise that induces a confession." *United States v. Thompson*, 422 F.3d 1285, 1295–96 (11th Cir. 2005) (internal quotation marks omitted). "The burden is on the prosecution to establish, by a

preponderance of the evidence, that a challenged confession was voluntary.” *United States v. Lall*, 607 F.3d 1277, 1285 (11th Cir. 2010).

Government coercion is typically required to render a statement involuntary. *See Colorado v. Connelly*, 479 U.S. 157, 165, 167 (1986). So even if a defendant has a mental illness that interferes with their free will, absent police coercion their statements are voluntary. *Id.* And this makes sense. *Miranda* and the exclusionary rule are prophylactic measures that protect the Fifth Amendment right against compelled self-incrimination by deterring future violations. *Michigan v. Tucker*, 417 U.S. 433, 444 (1974); *Vega v. Tekoh*, 597 U.S. 134, 149 (2022); *Davis v. United States*, 564 U.S. 229, 236-37 (2011). But where a statement is spontaneous, it is not compelled. And where there is no government coercion, there is no deterrent effect and no need to incur the societal costs that the prophylactic rule imposes. *See Stone v. Powell*, 428 U.S. 465, 489-90 (1976); *Black v. Wigington*, 811 F.3d 1259, 1267 (11th Cir. 2016) (“Because the exclusionary rule exacts a heavy toll on both the judicial system and society at large by requiring courts to ignore reliable, trustworthy evidence, the rule does not apply unless its deterrence benefits outweigh its substantial social costs.”) (internal quotation marks and citations omitted).

Here, the Court finds that Bailey’s statement was voluntary. The record shows that Bailey was not physically threatened or harmed, nor was he made any promises in exchange for his statements. While Officer Smith had his gun at “low ready” initially when he saw Bailey

with a firearm, Officer Smith re-holstered his weapon within seconds after Bailey no longer had a gun, and before he was handcuffed. [Gov't Ex. 1 at 2:09 (sound of gun hitting fence and sidewalk), 2:15 (shadow of Officer Smith returning his gun to its holster).]

Bailey argues that being arrested, handcuffed, and placed in the back of a police car is inherently coercive, particularly while Bailey was intoxicated, but Bailey provides no authority that arresting a drunk person automatically results in suppression of their spontaneous statements. [Doc. 60 at 24.] The record includes none of the coercive police conduct, such as an exhaustingly long interrogation, the application of physical force, threats, or promises, that would render a confession involuntary. And the record shows that Bailey was aware that he was prohibited from possessing a firearm, ignored police commands when he saw advantage in doing so, and appropriately responded to the police officers' verbal commands and conversation throughout the episode. The Court finds that Bailey understood his situation and his surroundings sufficiently that his statements were voluntary.

C. Motion to Dismiss the Indictment

Bailey moves to dismiss the indictment, arguing that the felon-in-possession of a firearm statute, 18 USC § 922(g)(1), violates the Second Amendment. [Doc. 22.] Bailey acknowledges that the Eleventh Circuit rejected a Second Amendment challenge to the statute in *United States*

v. Rozier, 598 F.3d 768 (11th Cir. 2010). [*Id.*, at 1.] But Bailey argues that *Rozier* was abrogated by the Supreme Court’s recent decisions in *N.Y. State Rifle & Pistol Assoc., Inc. v. Bruen*, 597 U.S. 1 (2022) and *United States v. Rahimi*, 602 U.S. 680 (2024). [*Id.*]

In his motion, Bailey concedes that the Eleventh Circuit has already decided this issue, holding that *Rozier* has not been abrogated and remains good law. [*Id.* at 1-2]; *United States v. Dubois*, 139 F.4th 887, 893-94 (11th Cir. 2025). Bailey presents the motion to dismiss “to preserve arguments that may be made on appeal.” [*Id.* at 2.]

Because the Eleventh Circuit has already held that the felon-in-possession of a firearm statute does not violate the Second Amendment and because the Eleventh Circuit has already held that this precedent has not been abrogated by recent Supreme Court decisions and remains good law, Bailey’s motion to dismiss indictment must be denied. [Doc. 22.]

Conclusion

The undersigned **RECOMMENDS** that Bailey’s Motion to Suppress [Doc. 21] be **DENIED** with respect to the gun recovered by the police and Bailey’s statement to them that he is a felon.

The undersigned further **RECOMMENDS** that Bailey’s Motion to Dismiss Indictment [Doc. 22] be **DENIED** based on controlling authority.

The defense’s Motion for Leave of Absence [Doc. 29] is **GRANTED**.

No other motions remain pending. This case is **CERTIFIED READY FOR TRIAL**.

SO ORDERED and RECOMMENDED, June 3, 2026.

A handwritten signature in blue ink, reading "Law R. Sommerfeld".

LAWRENCE R. SOMMERFELD
UNITED STATES MAGISTRATE JUDGE