

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

UNITED STATES OF AMERICA,		
v.		CRIMINAL CASE
JULIUS HOUSTON,		NO. 1:25-cr-267-SEG-JSA
Defendant.		

**REPORTS AND RECOMMENDATIONS
ON MOTIONS TO DISMISS COUNTS**

Defendant is charged with two counts in this Indictment, both related to his attempt to travel through the secure checkpoint at Atlanta’s Hartsfield-Jackson International Airport (“ATL”) on November 8, 2022: (1) knowingly possessing a “concealed dangerous weapon, that is, a Heritage Barkeep .22 caliber pistol, which would have been accessible to him during flight,” in violation of what was originally enacted as the Federal Aviation Act of 1958, 49 U.S.C. § 46505(b)(1); and (2) knowingly and willfully entering an airport area with intent to evade security procedures and restrictions, by possessing a “firearm” while entering ATL’s security checkpoint area, in violation of 49 U.S.C. § 46314(a) and (b)(2). *See* Indictment [1].

Defendant moves to dismiss on the merits. He denies, as to both Counts, that he possessed anything meeting the relevant legal definitions of a “weapon” or

“dangerous weapon” and, as to Count Two, that any application of the restrictions set forth above to his specific actions would be unconstitutionally vague. Rather, he proffers in pretrial motions that his baggage merely included a “revolver without a cylinder,” which could not constitute a violation as a matter of law under either charge. Def. Mot. Count 2 [46] at 2. Based on this proffer of additional facts, Defendant requests in separate motions that the Court dismiss both Counts One and Two. *See* Def. Mot. Count 1 [14]; Def. Mot. Count 2 [21][46].

As explained below, the Court finds that it is unripe to entertain these arguments based on facts outside the Indictment. Thus, the Court **RECOMMENDS** that Defendant’s Motions to Dismiss Counts [14][21][46] be **DENIED** without prejudice to the legal issues being re-renewed at trial based on an appropriate factual record.

II. DISCUSSION

A. Defendant’s Motions to Dismiss For Failure to State a Claim Fail Without Prejudice To Renewal At Trial

Federal Rule of Criminal Procedure 12 allows a Defendant to move to dismiss a criminal charge for “failure to state an offense.” Fed. R. Crim. P. 12(b)(3)(B)(v). In ruling on such a motion, “a district court is limited to reviewing the *face* of the indictment and, more specifically, the *language* used to charge the crimes.” *United States v. Sharpe*, 438 F.3d 1257, 1263 (11th Cir. 2006) (emphasis in original) (*citing United States v. Critzer*, 951 F.2d 306, 307 (11th Cir. 1992)). In

other words, at this juncture, the allegations in the indictment are treated as true. *See United States v. Fitapelli*, 786 F.2d 1461, 1463 (11th Cir. 1986) (“In judging the sufficiency of the indictment, the court must look to the allegations and, taking the allegations to be true, determine whether a criminal offense has been stated.”).

The Counts on their face state a claim, and Defendant does not argue otherwise. Count One alleges that Defendant concealed a “concealed dangerous weapon, that is, is a .22 Heritage Barkeep pistol, which would have been accessible to him in flight,” in violation of the statute prohibiting concealed possession of dangerous or deadly weapons in such circumstances. Count Two similar allegation that the Defendant possessed this “firearm” in the secured/sterile security screening area of ATL, in violation of regulatory security restrictions.¹

Defendant’s Motions, however, are not based specifically on the “*face* of the indictment and, more specifically, the *language* used to charge the crimes.” *Sharpe*, 438 F.3d at 1263 (emphasis in original). Rather, he argues based on facts outside the Indictment that the specific device at issue was not dangerous, and could not have been fired, and thus would not have met the applicable statutory

¹ The Government later clarified, in response a Motion for Bill of Particulars, that the relevant “procedures and restrictions” related to Count Two is 49 C.F.R. § 1540.111(a), which provides, among other things, that an individual may not possess “a weapon, explosive, or incendiary, on or about the individual’s person or accessible property” while entering a sterile or screening area of an airport. *See Gov’t Resp. [27]* at 2

restrictions. *See* Mot. Def. Count 1 [14] at 1 (“Undersigned counsel expects that there will be no dispute that the item in question was the frame of a revolver and that it did not have a cylinder. Thus, it was incapable of firing a projectile. The item was not in a state for possible or probable use to cause serious bodily injury.”); Mot. Def. Count 2 [46] at 2 (“The item at issue here was neither a weapon, an explosive, nor an incendiary. It was a revolver without a cylinder. In that state, the item lacked the capacity to cause injury.”)

The problem with Defendant’s argument is that the district courts are not free to dismiss cases before trial based on anticipated or proffered facts. The Eleventh Circuit has made clear:

There is no summary judgment procedure in criminal cases. Nor do the rules provide for a pre-trial determination of sufficiency of the evidence. Moreover, this court is constitutionally barred from ruling on a hypothetical question. The sufficiency of a criminal indictment is determined from its face. The indictment is sufficient if it charges the language of the statute.

Critzer, 951 F.2d at 307 (per curiam). Indeed, it is inappropriate for district courts to adjudicate whether the Government will be able to prove its claims as a matter of law before trial even based on “stipulated or undisputed facts.” *United States v. Salman*, 378 F.3d 1266, 1267 n. 4 (11th Cir. 2004). Defendant makes no argument that the Indictment in this case fails to allege the statutory language. Whether the Government can meet those allegations by showing only that Defendant possessed the frame of a revolver (with no cylinder)—as Defendant anticipates—is a specific

determination that must await trial.² The Motions should be **DENIED** without prejudice to these legal issues being renewed at that time.

***B. Defendant's Argument For Dismissal Of Count Two Based On
The Unconstitutionality Of The Statute, As-Applied To Facts
Outside The Record, Is Also Unripe***

Defendant makes another related argument for dismissal as to Count Two, in a separate Motion to Dismiss [46]. Defendant argues that the statute referenced in

² The Government cites extensive caselaw to show that even just the frame of a revolver, or any other disassembled components, may qualify under the statutory definition of a “firearm” under 18 U.S.C. § 921(a)(3). *See* Def. Resp. [25] at 2-4. The Defendant counters that he is not charged with a violation of illegally possessing a firearm under that statute, but rather with possessing a “dangerous weapon” under the Federal Aviation Act of 1958. Such a “weapon” has been defined as any item for which its “intended or readily adaptable use is likely to produce death or great bodily injury.” *United States v. Dishman*, 486 F.2d 727, 730 (9th Cir. 1973). Defendant argues that a mere gun frame cannot shoot and therefore is not a “dangerous weapon” for purposes of the FAA, even if it might qualify as a “firearm” under other statutes.

The undersigned finds this debate to be unripe and inappropriate for adjudication prior to trial for all the reasons set forth above. If anything, the need for a factual record before making determinations is underscored by reference to Defendant’s cases. *Dishman* was decided at trial, not in a pre-trial summary judgment-type motion. It also involved the arguably distinguishable scenario of a starter pistol that could only fire blanks, and could not be modified to fire bullets without substantial machining and drilling. 486 F.2d at 730-732. Putting aside whether *Dishman* was correctly decided, the proffered facts here are different. Defendant’s firearm supposedly merely lacked a cylinder that could be snapped in or otherwise attached. How “readily adaptable” that partially disassembled firearm was to firing capability may depend on facts not yet properly before the Court and is simply not subject to adjudication based on hypotheticals at this time.

that Count is unconstitutional as applied in the specific facts he anticipates being proven at trial. Specifically, Defendant argues:

In this case, §§ 46314(a) and (b)(2) are unconstitutionally vague as to whether they cover the conduct at issue — possessing part of a revolver but not the cylinder. The statutes do not provide fair notice such that an ordinary person would know those statutes proscribe this conduct. Likewise, the vagueness in the statutes invite arbitrary and discriminatory enforcement.

Def. Mot. [21].

This slightly re-packaged version of the same argument set forth above fares no better under the guise of a void-for-vagueness theory. Defendant does not dispute that his argument constitutes an as-applied challenge to the statutes, that is, whether the statutes are unconstitutionally vague “as to whether they cover [] the conduct at issue here – possession of part of a revolver but not the cylinder.” Def. Br. [45] at 1. The Government cites many authorities, which the Defendant does not dispute, that such an as-applied challenge must be resolved on a full factual record. *See id.*; *See* Gov. Br. [28] at 2-3. Defendant’s only argument for why it is proper for the Court to consider this question now, before trial, is that evidence offered in the evidentiary hearing on his Motions to Suppress evidence included reference to the lack of a cylinder along with photographs. Def. Br. [45] at 1.

Defendant cites no cases for the proposition that the Court can dismiss a case before trial based on facts not yet proven at trial, but which may have been introduced for other purposes in a pretrial hearing. Doing so would run afoul of the

prohibition against inventing a “summary judgment procedure in criminal cases.” *Critzer*, 951 F.2d at 307. Further, as a matter of basic fairness, the Government was not on notice that it needed to pre-try the sufficiency of the evidence on the merits or the constitutionality of the statute. At issue in the hearing was solely whether the officers in the airport violated Defendant’s Fourth Amendment rights in searching his belongings and/or his Fifth Amendment rights in asking him questions. The Government was not responsible at the time for introducing a complete, factual record to support the merits of the case, and reasons why the firearm should qualify as a “weapon” for purpose of TSA regulations. In other words, even if the Court *could* make findings of fact on the as-applied vagueness challenge before trial (which Defendant fails to cite any evidence to suggest), it cannot fairly do so based on facts in a limited hearing, for unrelated purposes, conducted without notice that these issues were on the agenda. This remains a matter to await trial and the Motion [46] should also be **DENIED** without prejudice as unripe.

CONCLUSION

As explained above, the Court **RECOMMENDS** that all of the pending Motions to Dismiss Counts [14][21][46] be **DENIED** without prejudice to renewal, if appropriate, at trial.

IT IS SO RECOMMENDED this 5th day of May, 2026.



JUSTIN S. ANAND
UNITED STATES MAGISTRATE JUDGE