

STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM PICKENS COUNTY

The Honorable Jessica A. Salvini, Circuit Court Judge

Appellate Case No. 2025-000562

The State of South Carolina,

Respondent,

v.

Matthew Quinn Gillespie,

Appellant.

INITIAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF THE ISSUES PRESENTED

1. The trial court erred in refusing to direct a verdict of acquittal since S.C. Code Ann § 16-23-30(e) is an unconstitutional infringement on appellant's right to bear arms protected by the Second Amendment of the United States Constitution.
2. The trial court committed reversible error by negating the scienter requirement that appellant had knowledge that his underlying felony conviction for burglary was a crime of violence thus prohibiting him from possessing a handgun and replacing that requirement with judicial notice that appellant's burglary conviction satisfied that element of the crime.

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUES PRESENTED

1. The trial court correctly refused to direct a verdict of acquittal because S.C. Code Ann. section 16-23-30 is consistent with the Nation's historical tradition of firearm regulation and is, therefore, constitutional.
2. The trial court correctly refused to instruct the jury that the State was required to prove Appellant had knowledge that burglary was a crime of violence under South Carolina law because knowledge of the governing law is not an element of section 16-23-30.

STANDARD OF REVIEW

“In criminal cases, this Court only reviews errors of law.” *State v. Gamble*, 405 S.C. 409, 415, 747 S.E.2d 784, 787 (2013). “[T]his Court reviews questions of law de novo.” *State v. Adams*, 409 S.C. 641, 647, 763 S.E.2d 341, 344 (2014).

However, appellate courts apply “a limited scope of review in cases involving a constitutional challenge to a statute because all statutes are presumed constitutional” *Curtis v. State*, 345 S.C. 557, 569, 549 S.E.2d 591, 597 (2001). “Further, a legislative act will not be declared unconstitutional unless its repugnance to the Constitution is clear and beyond a reasonable doubt.” *Id.* at 570, 549 S.E.2d at 597.

“An appellate court will not reverse a trial court’s decision regarding a jury instruction unless there is an abuse of discretion.” *State v. Brooks*, 428 S.C. 618, 625, 837 S.E.2d 236, 239 (Ct. App. 2019). “An abuse of discretion occurs when the trial court’s ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” *Id.* (quoting *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166–67 (2007)).

ARGUMENT

1. The trial court correctly refused to direct a verdict of acquittal because S.C. Code Ann. section 16-23-30 is consistent with the Nation’s historical tradition of firearm regulation and is, therefore, constitutional.

On December 29, 2023, Appellant was detained by law enforcement at a traffic stop on suspicion of driving with a suspended license. Appellant, who had a prior conviction for burglary, admitted he had a handgun in the vehicle. Appellant was charged with possession of a handgun by a person convicted of a crime of violence. He proceeded to a jury trial, where he was convicted and sentenced to three years’ imprisonment.

During the trial, Appellant moved for a directed verdict of acquittal on the ground that the statute he was accused of violating, S.C. Code Ann. section 16-23-30, is unconstitutional in light of *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022). The trial court denied the motion.

On appeal, Appellant argues the trial court erred. Appellant contends South Carolina’s law prohibiting the possession of handguns by persons convicted of a crime of violence is an unconstitutional violation of the Second Amendment. This argument is meritless.

The Second Amendment to the United States Constitution provides that “the right of the people to keep and bear arms[] shall not be infringed.” U.S. Const. Amend. II. The United States Supreme Court has held that the Second Amendment guarantees “the individual right to possess and carry weapons in case of confrontation.” *D.C. v. Heller*, 554 U.S. 570, 592 (2008).

When a statute is challenged on the ground that it violates the Second Amendment, “the standard for applying the Second Amendment is as follows: When the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. The

government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 24.

The statute at issue in this case provides, in pertinent part:

(A) It is unlawful for a person to knowingly sell, offer to sell, deliver, lease, rent, barter, exchange, or transport for sale into this State any handgun to:

(1) a person who has been convicted of a crime of violence in any court of the United States, the several states, commonwealths, territories, possessions, or the District of Columbia or who is a fugitive from justice or a habitual drunkard or a drug addict or who has been adjudicated mentally incompetent;

...

(B) It is unlawful for a person enumerated in subsection (A) to possess or acquire handguns within this State.

S.C. Code Ann. § 16-23-30. The term “crime of violence” is expressly defined to include burglary. *Id.* § 16-23-10(3).

Appellant acknowledges that South Carolina’s prohibition on possession of handguns by persons convicted of crimes of violence is presumed to be constitutional. (App. Br. p.4). Nevertheless, he argues that section 16-23-30 violates the Second Amendment under the *Bruen* analysis. First, he argues that “the Second Amendment’s plain text covers” Appellant’s conduct in this case (i.e., possessing a handgun in his vehicle). Second, he argues that section 16-23-30 is not “consistent with the Nation’s historical tradition of firearm regulation,” such as founding-era surety and affray laws, insofar as it applies a class-wide and permanent prohibition on handgun possession by anyone convicted of a crime of violence; Appellant claims section 16-23-30 is “significantly broader than the restriction employed by the founding generation.” (App. Br. p.17).

Even assuming *arguendo* that Appellant’s conduct in this case is covered by the plain text of the Second Amendment, Appellant’s analysis overwhelmingly fails at the second step. *Bruen*

requires a “historic analogue,” not a “historic twin.” *United States v. Rahimi*, 602 U.S. 680, 701 (2024). Founding-era laws strongly suggest that persons convicted of burglary and other “crimes of violence” could be permanently deprived of the right to keep and bear arms.

History shows that the right to keep and bear arms was subject to restrictions that included prohibitions on possession by certain groups of people. There appear to be two schools of thought on the basis for these regulations. One view is that legislatures have longstanding authority and discretion to disarm citizens who are not law-abiding and are unwilling to obey the law. [The other view is] that a legislature’s traditional authority is narrower and limited to prohibiting possession of firearms by those who are deemed more dangerous than a typical law-abiding citizen. While the better interpretation of the history may be debatable, we conclude that either reading supports the constitutionality of § 922(g)(1)¹ as applied to . . . convicted felons, because the law “is consistent with the Nation’s historical tradition of firearm regulation.”

United States v. Jackson, 110 F.4th 1120, 1126 (8th Cir. 2024) (quoting *Bruen*, 597 U.S. at 24).

In fact, far from being “significantly broader” than founding-era restrictions as Appellant claims, modern felon-in-possession statutes are quite lenient compared to historical consequences for convicted felons. At the time of the common law, “virtually all felonies were punishable by death.” *Tennessee v. Garner*, 471 U.S. 1, 13 (1985); *see also id.* at n.11 (noting William Blackstone’s observation that “[t]he idea of felony is indeed so generally connected with that of capital punishment, that we find it hard to separate them; and to this usage the interpretations of

¹ Appellant admits that the application of *Bruen* to felon-in-possession statutes has not yet been ruled on by the United States Supreme Court. *See Rahimi*, 602 U.S. at 698 (“[W]e do not suggest that the Second Amendment prohibits the enactment of laws banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse”); *see also Heller*, 554 U.S. 570, 626 (“[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill”). Therefore, Appellant suggests—and Respondent agrees—that “[g]uidance . . . may be found in how the lower federal courts have addressed 18 U.S.C. § 922(g),” the analogous federal statute that prohibits, *inter alia*, the possession of firearms and ammunition by anyone who has been convicted of a crime punishable by imprisonment for more than one year. (App. Br. p.11).

the law do now conform. And therefore if a statute makes any new offence felony, the law implies that it shall be punished with death, viz. by hanging, as well as with forfeiture. . . .”) (quoting 4 W. Blackstone, Commentaries *98). “Certainly, if the greater punishment of death and estate forfeiture was permissible to punish felons, then the lesser restriction of permanent disarmament is also permissible.” *United States v. Duarte*, 137 F.4th 743, 756 (9th Cir. 2025). Even non-violent offenses could be punished with death, forfeiture of all property, or other serious penalties that “subsumed disarmament.” *Jackson*, 110 F.4th at 1127 (“Early legislatures also ordered forfeiture of firearms by persons who committed non-violent hunting offenses. . . . And they authorized punishments that subsumed disarmament—death or forfeiture of a perpetrator’s entire estate—for non-violent offenses involving deceit and wrongful taking of property.”) (collecting sources).

For these reasons, most federal courts to have considered this issue have held that legislatures may constitutionally prohibit *all* felons from possessing firearms, irrespective of whether their felonies were violent or non-violent. *See id.* at 1125 (“[W]e conclude that there is no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1).”); *United States v. Hunt*, 123 F.4th 697, 708 (4th Cir. 2024) (holding the “legislative judgment” that felons are, by definition, a dangerous class of persons “accords with historical tradition regulating non-law-abiding persons” who may constitutionally be disarmed); *Vincent v. Bondi*, 127 F.4th 1263 (10th Cir. 2025) (holding section 922(g)(1) does not violate the Second Amendment, even as applied to non-violent felons); *United States v. Dubois*, 139 F.4th 887, 891 (11th Cir. 2025) (reaffirming in light of *Bruen* that “statutes disqualifying felons from possessing a firearm under any and all circumstances do not offend the Second Amendment”) (quoting *United States v. Rozier*, 598 F.3d 768, 771 (11th Cir. 2010)); *Duarte*, 137 F.4th at 748 (“Today, we align ourselves

with the Fourth, Eighth, Tenth and Eleventh Circuits and hold that § 922(g)(1) is not unconstitutional as applied to non-violent felons like Steven Duarte.”).

Appellant argues, however, that the categorical approach blessed by those courts is flawed. Appellant points out that other federal courts have held that “certain non-violent felony convictions” might not fall within the historical understanding of a “felony” that would have justified disarmament or other serious penalties at the time of the founding. (App. Br. p.11). *See, e.g., United States v. Diaz*, 116 F.4th 458, 469 (5th Cir. 2024) (“Simply classifying a crime as a felony does not meet the level of historical rigor required by *Bruen* and its progeny . . . [because] not all felons today would have been considered felons at the Founding.”); *United States v. Williams*, 113 F.4th 637, 662 (6th Cir. 2024) (“Congress has decided to enact a class-wide disarmament of felons. As discussed above, that statute is constitutional *as it applies to dangerous individuals.*”) (emphasis added); *Range v. Att’y Gen. United States*, 124 F.4th 218, 232 (3d Cir. 2024) (holding a person convicted of making a false statement on a food stamp application, although technically a felon, was not analogous to historical felons who could be disarmed under founding-era law).

Appellant urges this Court to follow the reasoning of the second line of cases. However, even under such an approach, S.C. Code Ann. section 16-23-30 would clearly be constitutional as applied to Appellant. It should be noted that section 16-23-30 is meaningfully different from the federal felon-in-possession statute insofar as section 16-23-30 *only* applies to “crimes of violence,” whereas 18 U.S.C. section 922(g)(1) applies to *all* crimes “punishable by imprisonment for a term exceeding one year.” In other words, section 16-23-30 is *more* discerning and *more* narrowly tailored than the federal statute. To the extent Appellant is arguing that felon-in-possession statutes should take the gravity and dangerousness of the underlying felony into account, the General

Assembly has already done so by limiting the statute to “crimes of violence.” *See Williams*, 113 F.4th at 658–59 (noting the predecessor to section 922(g)(1) applied only to “crimes of violence” such as “murder, rape, assault (including assault with intent to rob), and burglary, among others,” but “[i]n 1961, the FFA’s crime-of-violence disability was replaced by the now-familiar category of all felonies. . . . In sum, felon disarmament has broadened over the years.”). The “broadening” of the federal statute’s felony designation, which has troubled some of the federal courts of appeals, is not implicated in South Carolina’s statute.

Moreover, the seriousness of the felony Appellant committed is sufficient to justify his disarmament under any statutory scheme. Appellant has a prior conviction for burglary, which is indisputably the kind of serious felony for which founding-era legislatures prescribed the harshest possible punishments.

[B]urglary was a capital offense in seven states at the founding: Connecticut (until 1796), Massachusetts (at night), Delaware, New Hampshire, New York (until 1796), South Carolina, and Rhode Island. . . . [I]f “capital punishment was permissible to respond to” burglary at the founding, then so too is . . . the “permanent disarmament” required by § 922(g)(1)

United States v. Quiroz, 125 F.4th 713, 724 (5th Cir. 2025) (collecting sources and quoting *Diaz*, 116 F.4th at 469); *see also United States v. Schnur*, 132 F.4th 863, 870 (5th Cir. 2025) (“Schnur’s 1994 and 1996 convictions for robbery and burglary, respectively, lend further support to the constitutionality of § 922(g)(1) as applied to Schnur. In *Diaz*, we discussed several colonial-era laws targeting theft and punishing it as a felony offense. . . . We held that these historical precursors established that “our country has a historical tradition of severely punishing people . . . who have been convicted of theft.”) (quoting *Diaz*, 116 F.4th at 469–70); *Williams*, 113 F.4th at 659 (“Courts have recognized that burglary is dangerous because it ‘creates the possibility of a violent confrontation between the offender and occupant.’”) (quoting *Taylor v. United States*, 495 U.S.

575, 588 (1990)). At the time of the founding, burglary was exactly the sort of crime that would have justified—at a minimum—disarmament, to say nothing of more serious punishments.

For these reasons, the trial court did not abuse its discretion in refusing to direct a verdict of acquittal, and its decision should be affirmed.

2. The trial court correctly refused to instruct the jury that the State was required to prove Appellant had knowledge that burglary was a crime of violence under South Carolina law because knowledge of the governing law is not an element of section 16-23-30.

Appellant next argues that the trial court erred in instructing the jury that burglary “is a crime of violence in South Carolina,” rather than requiring the State to prove that Appellant knew his conviction for second degree burglary was within the statute. Appellant complains that the trial court’s remark negated the State’s burden to prove the *mens rea* element of the crime “and was essentially a statement of law.” (App. Br. p.23).

This argument borders on the frivolous. The trial court’s instruction was, indeed, a statement of law, and a perfectly correct one. As a matter of law, burglary *is* a “crime of violence”—it is expressly defined as such in the controlling statute. S.C. Code Ann. § 16-23-10(3). It is not error for the trial court to declare the controlling law to the jury; on the contrary, “the South Carolina Constitution[] requires a judge to declare the law.” *State v. Stone*, 285 S.C. 386, 387, 330 S.E.2d 286, 287 (1985); *see* S.C. Const. Art. V, § 21 (“Judges shall not charge juries in respect to matters of fact, but shall declare the law.”).

Appellant attempts to analogize the trial court’s instruction in this case to that held improper in *State v. Stewart*, 433 S.C. 382, 858 S.E.2d 808 (2021). In *Stewart*, a case involving constructive possession of heroin, our Supreme Court held that the trial court erred in charging that “[t]he defendant’s knowledge and possession may be inferred when a substance is found on

the property under the defendant's control." *Stewart*, 433 S.C. at 390, 858 S.E.2d at 812. In the present case, however, the trial court never used such "permissive inference" language anywhere in its jury charge, so the relevancy of *Stewart* to the present case is not clear. To the extent Appellant seems to be saying that the trial court may *never* instruct jurors on matters of law, *Stewart* does not support such an absurd position.

In addition, Appellant argues that every crime implicitly includes a *mens rea* element, absent a clear legislative intent to the contrary. Therefore, Appellant contends actual knowledge of his status as a prohibited person is a necessary element of the crime for which he was convicted. He is mistaken. "As Justice Jackson correctly observed, 'the knowledge requisite to knowing violation of a statute is factual knowledge as distinguished from knowledge of the law.'" *Bryan v. United States*, 524 U.S. 184, 192 (1998) (quoting *Boyce Motor Lines v. United States*, 342 U.S. 337, 345 (1952) (Jackson, J., dissenting)). "The general rule that ignorance of the law or a mistake of law is no defense to criminal prosecution is deeply rooted in the American legal system." *Cheek v. United States*, 498 U.S. 192, 199 (1991) (collecting cases).

Appellant does not attempt to argue that he was mistaken about the *facts* of his crime. He knew he was in possession of a handgun. He only claims to have been ignorant about the relevant *law*: specifically, that he was a prohibited person because burglary falls within the statutory definition of a "crime of violence." Because the "knowledge requirement" refers to *factual* knowledge, rather than "knowledge of the law," Appellant's purported mistake of law is no defense to his crime. The trial court correctly refused Appellant's requested jury charge, and its ruling should be affirmed.

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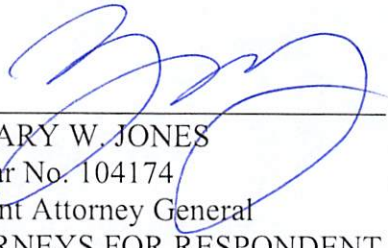
CONCLUSION

For the foregoing reasons, this Court should affirm Appellant's convictions and sentences.

Respectfully submitted,

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