**Moot Court Team Members: Nicole Bratton, Camila Quinones**

**Student Judge:** Sayeed Mohammed

**Case: *United States of America v. Dale Bartholomew Cooper* [[1]](#footnote-1)**

**Facts of the Case**

 On April 8, 2021 Respondent, Dale Bartholomew Cooper, was involved in multiple shootings. The first shooting involved Cooper firing multiple shots into an individual’s home after selling them marijuana. The second shooting occurred following a car accident involving Cooper, where he shot at the other driver before fleeing. The final shooting transpired when Cooper went to a restaurant with a friend and shot in the air multiple times.

 The next day, police officers identified Cooper as a suspect in the three shootings and obtained a warrant to search him home. When the police entered Cooper’s home, they found multiple guns, saw an ashtray filled with marijuana cigarette butts and could detect the smell of marijuana. After reading Cooper his Miranda rights, Cooper admitted that he owned and possessed the guns. Cooper admitted that he was a frequent marijuana user, and that he used marijuana about fourteen days per month. The police officers did not administer a drug test nor did they ask Cooper whether he had been under the influence during the shootings on April 8 or at the time of his arrest.

 Cooper was charged with violating 18 U.S.C. § 922(g)(3) which prohibits any person “who is an unlawful user of or addicted to any controlled substance to possess any firearm.” A federal grand jury indicted Cooper. He moved to dismiss his indictment on the basis that it violated the Second Amendment of the Constitution. The district court denied his motion. A jury convicted Cooper and he was sentenced to four years in prison. Cooper appealed, asserting his Second Amendment challenge that. § 922(g)(3) is unconstitutional as applied to him. The Twelfth Circuit Court of Appeals reversed. This is an appeal by the United States Government from the judgment entered by the Twelfth Circuit that held that § 922(g)(3) is unconstitutional as applied to Cooper.

**Question Presented**

1. **Whether federal statute 18 U.S.C. § 922(g)(3), which prohibits firearm possession by individuals who are unlawful users of or addicted to any controlled substance, violates the Second Amendment rights of an individual who is a frequent user of marijuana.**

The Second Amendment states: “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

To determine whether a modern firearms law is unconstitutional, the Court must ask two questions: (a) whether the Second Amendment applies by its terms; and (b) whether the given gun restriction is “consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*, 142 S. Ct. at 2126, 2130. As with the challenge to § 922(g)(8), the government bears the burden of demonstrating a tradition supporting the challenged law, and thus must show the law does not tread on the historical scope of the right in order to “justify its regulation.” *Id* at 2130.

* + - 1. **Does the Second Amendment apply to Cooper?**

The threshold analysis under the Second Amendment begins with a determination of whether the Defendant is protected under the Amendment. “‘[T]he people’ . . . unambiguously refers to all members of the political community, not an unspecified subset.” *District of Columbia v. Heller*, 554 U.S. 570, 580 . The Court noted that “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Id.* at 626. Relevant here, the Court stated that “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill.” *Id.* The fact that Cooper is not a “model” citizen does not exclude him from “the people” entitled to Second Amendment rights.” use of marijuana similarly does not exclude him from “the people.” Because Cooper is not a felon, mentally ill, or in a similar category, he has presumptive Second Amendment rights.

* + - 1. **Is the gun restriction consistent with the Nation’s historical tradition of firearm regulation?**

***The Government will argue that 18 U.S.C. § 922(g)(3) Is Constitutional because the restriction is “consistent with the Nation’s historical tradition of firearm regulation.”***

The Government will argue that “Congress may prohibit those who pose a risk to society, like felons, from exercising the right to bear arms,” and “unlawful users of controlled substances pose a risk to society if permitted to bear arms.” *United States v. Patterson*, 431 F.3d 832, 835-36 (5th Cir. 2005).

“[D]rugs and guns are a dangerous combination.” *Smith v. United States*, 508 U.S. 223, 240 (1993). The physiological effects of illegal drugs may impair drug users’ ability to handle firearms safely. Drug users often use firearms to commit crimes that fund their drug habits, to engage in violence in the course of drug deals, to endanger police officers who are investigating their drug crimes, and to commit suicide. Record Appendix 1798-1830. In § 922(g)(3), Congress sought to address those problems by disarming regular drug users and drug addicts by making it a crime for a person to possess a firearm if he “is an unlawful user” of “any controlled substance.” 18 U.S.C. § 922(g)(3).

This gun restriction is consistent with tradition because as the Seventh Circuit has noted “[i]t was not until 1968 that Congress barred the mentally ill from possessing guns, and it was in that same legislation that habitual drug users were prohibited from having guns.” *United States v. Yancey*, 621 F.3d 681 (7th Cir. 2010). (citing Gun Control Act of 1968). However, Congress’ disarmament of drug abusers did not occur in a vacuum; rather, “many states” had “restricted the right of habitual drug abusers or alcoholics to possess or carry firearms.” *Yancey*, 621 F.3d at 684. “These statutes demonstrate that Congress was not alone in concluding that habitual drug abusers are unfit to possess firearms.” *Id.*

Older cases from the nineteenth century also upheld restrictive statutes which disarmed “tramps,” *see State v. Hogan*, 58 N.E. 572, 575-76 (Ohio 1900), and “intoxicated persons,” *see State v. Shelby*, 2 S.W. 468, 469 (Mo. 1886). Holding that the notion that dangerous or unvirtuous citizens could be disarmed was rooted in history, the Seventh Circuit produced sources corroborating Congress’s finding that drug abusers are more likely to engage in gun violence and to exhibit a dangerous lack of self-control. *Yancey*, 621 F.3d at 684-85. The Court found § 922(g)(3) constitutional.

Here, the proof at trial established that Cooper violated § 922(g)(3), which makes it illegal for anyone “who is an unlawful user of or addicted to any controlled substance . . . to . . . possess . . . any firearm.” An “unlawful user” is someone who uses illegal drugs regularly and in some temporal proximity to the gun possession. *See United States v. McCowan*, 469 F. 3d 386, 391-392 (5th Cir. 2006). Cooper admitted to being a frequent marijuana user, using marijuana “approximately fourteen days out of a month.” Marijuana is a controlled substance. *See* 21 U.S.C. § 812(c), Schedule I(c)(10). Simple possession of marijuana is a misdemeanor, and possession after a previous conviction for a drug offense is a felony. 21 U.S.C. § 844(a). Law enforcement found multiple guns in Cooper’s residence and Cooper admitted that he owned and possessed the firearms.

Further, the law-enforcement officers who found Cooper in possession of firearms also detected the smell of marijuana in his home and saw marijuana cigarette butts in his ashtray. Although the government did not administer a drug test, the evidence strongly suggested that Cooper possessed firearms while under the influence of drugs—vindicating Congress’ judgment that persons such as Cooper cannot be trusted to carry arms responsibly in the first place.

***Cooper will argue that Section 922(g)(3) is Not Relevantly Similar to Historical Gun Laws and, thus, is an unconstitutional infringement of his Second Amendment Rights.***

Because there was little regulation of drugs (related to guns or otherwise) until the late-nineteenth century, intoxication via alcohol is the next-closest comparator. Despite the prevalence of alcohol and alcohol abuse, the government does not identify any restrictions at the Founding that approximate § 922(g)(3). Although a few states after the Civil War prohibited carrying weapons while under the influence, none barred gun possession by regular drinkers.

As applied to Cooper, § 922(g)(3) is a significantly greater restriction of his rights than were any of the nineteenth-century laws. Although the older laws’ bans on “carry” are likely analogous to § 922(g)(3)’s ban on “possess[ion],” there is a considerable difference between someone who is actively intoxicated and someone who is an “unlawful user” under § 922(g)(3).

The statutory term “unlawful user” captures regular users of marijuana, but its temporal nexus is vague—it does not specify how recently an individual must “use” drugs to qualify for the prohibition. Cooper himself admitted to smoking marijuana fourteen days a month, but we do not know how much he used at those times, and the government presented no evidence that Cooper was intoxicated at the time he was found with a gun.

As an alternative, the government posits that the tradition of disarming the mentally ill or the dangerous supports § 922(g)(3). As to the first, obviously mental illness and drug use are not the same thing. In fact, the federal ban on gun possession by those judged mentally ill was enacted in 1968, the same year as § 922(g)(3). But scholars have suggested that the tradition was implicit at the Founding because, “in eighteenth-century America, justices of the peace were authorized to ‘lock up’ ‘lunatics’ who were ‘dangerous to be permitted to go abroad.’”In other words, if the insane could be wholly deprived of their liberty and property, the government could necessarily take away their firearms.

However, we must ask, which is Cooper more like: a categorically “insane” person? Or a repeat alcohol user? Given his periodic marijuana usage, Cooper is firmly in the latter camp. If and when Cooper uses marijuana, he may be comparable to a mentally ill individual whom the Founders would have disarmed. Yet, while sober, he is like the repeat alcohol user in between periods of drunkenness. In short, neither the restrictions on the mentally ill nor the regulatory tradition surrounding intoxication can justify Cooper’s conviction.

As to the second, “disarming the dangerous,” not one piece of historical evidence suggests that when the Founders ratified the Second Amendment, they authorized Congress to disarm anyone it deemed “dangerous.” Instead, the government collects different statutes disarming discrete classes of persons at various points in history. Those laws suggest an abstract belief that an individual’s right to bear arms could be curtailed if he was legitimately dangerous to the public.

The government’s examples fall into two general buckets. First, states barred political dissidents from owning guns during periods of conflict. Second, both British and American governments disarmed religious minorities—especially Catholics.Each of those laws was

generally based on concerns for the safety of the polity, but each disarmament also had its own unique political or social motivations. Almost all the laws disarming dissidents were passed during wartime or periods of unprecedented political turmoil.

Assuming the Second Amendment encodes some government power to disarm the “dangerous,” *Bruen* forbids us from balancing a law’s justifications against the burden it places on rightsholders. 142 S. Ct. at 2127, 2129. To remain faithful to *Bruen*, the solution is to analogize to particular regulatory traditions instead of a general notion of “dangerousness.” We must use *Bruen’s* “why” and “how” analysis to assess whether the Founding-era restriction is relevantly similar to the modern one. Applying this to the proffered analogues, it follows that the government’s theory of danger-based disarmament falls apart. The government identifies no class of persons at the Founding who were “dangerous” for reasons comparable to marijuana users.

Absent a comparable regulatory tradition in either the eighteenth or nineteenth century, § 922(g)(3) fails constitutional muster under the Second Amendment.

1. *This problem is excerpted from the 2024 Hispanic National Bar Association (HNBA) Moot Court Competition, which DePaul team members Nicole Bratton, Camilla Quinones, and Sarah Cartagena competed in.* [↑](#footnote-ref-1)