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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

United States of America,

Plaintiff,

vs.

Criminal Action No. 3:24-cr-12

Malachi Jamir Sweeney-Teal,

Defendant.

Proceedings had in the pretrial hearing in the  
above-styled action on April 18, 2024, before the Honorable  
Gina M. Groh, United States District Judge, at Martinsburg,  
West Virginia.

APPEARANCES

On behalf of the United States of America:

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On behalf of the defendant:

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The defendant was present in person.

Proceedings reported by means of stenotype; transcript produced  
by official court reporter.

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## 1 P R O C E E D I N G S

2 (April 18, 2024, at 11:25 A.M.)

3 - - -

4 THE COURT: We'll call our case.

5 THE CLERK: This is the case of the United States of  
6 America versus Malachi Jamir Sweeney-Teal, Criminal Number  
7 3:24-cr-12, defendant 1.8 The government is represented by counsel, Kyle Kane. The  
9 defendant is present in person and by counsel, Kristen Leddy.

10 Are the parties ready to proceed?

11 MR. KANE: The United States is ready.

12 MS. LEDDY: The defense is ready, Your Honor.

13 THE COURT: All right, Counsel, I think this case,  
14 although the issues are a bit different, is in the same posture  
15 as the other. There's a conditional plea in this. So the  
16 parties want the Court to rule on the motion to dismiss filed  
17 by the defendant; and then if this case survives, you all are  
18 going to the magistrate judge to enter a plea. So there's not  
19 going to be a trial in this case on Tuesday unless something  
20 screws up with the plea; correct?

21 MS. LEDDY: That's correct, Your Honor.

22 MR. KANE: That's correct, Your Honor.

23 THE COURT: Okay. I will say the only other thing  
24 other than this motion that would have been on the plate for  
25 our pretrial today anyway, would have been the annotated

1 voir dire.

2 And, Ms. Leddy, it looks as though you followed the  
3 Court's -- basically, my general voir dire, and you tailored  
4 your submitted proposed voir dire to that, so there wasn't  
5 much in addition. There wasn't -- I don't know if there was  
6 any overlap.

7 I don't think there is any objection to this voir dire if  
8 we go to trial, is there, Mr. Kane?

9 MR. KANE: No, Your Honor.

10 THE COURT: Okay. So thank you. You made that  
11 easy.

12 MS. LEDDY: Thank you, Your Honor.

13 THE COURT: All right. So the only thing left for  
14 the Court to decide in this case is the defendant's motion to  
15 dismiss the superseding indictment. I read the motion. I read  
16 the government's response. And we can get started with your  
17 argument, Ms. Leddy.

18 MS. LEDDY: Thank you, Your Honor.

19 As Your Honor stated, we're here before the Court on a  
20 motion to dismiss the indict -- the superseding indictment.  
21 Count 1 charges a violation of 18 U.S.C. 922(g)(3), and Count 2  
22 alleges a violation of 18 U.S.C. 922(o)(1). And we're lucky to  
23 be before the Court today after a previous hearing wherein my  
24 noted colleagues explained the framework -- the historical  
25 framework that brings us to -- before the Court today from

1 *McDonald* and *D.C. v. Heller*, and the Supreme Court's recent  
2 decision in *Bruen*, which is the basis of our motion to dismiss.

3 THE COURT: So what you're saying is you're going to  
4 cut that part out because Mr. Kane represented the government  
5 in that case, too, and I certainly understand it, so we can  
6 move forward from that point.

7 MS. LEDDY: Thank you, Your Honor. Furthermore, I  
8 do go into the history of the statutory framework as well in my  
9 motion, so I would incorporate that as well.

10 THE COURT: Of course.

11 MS. LEDDY: So I would begin with the questions or  
12 the one step that *Bruen* asks the Court to resolve to analyze  
13 the motion to dismiss. And that is whether the Second  
14 Amendment's plain text covers the conduct that's alleged here.  
15 If so, the Constitution will presumptively protect that  
16 conduct.

17 So we begin by asking, does the Second Amendment's plain  
18 text cover an individual's conduct? And the plain text of the  
19 Second Amendment, as the Court is aware, discusses the right of  
20 the people to keep and bear arms. And there are two parts to  
21 the plain text: the conduct and the who.

22 So we're talking about the right of Mr. Sweeney to  
23 possess firearms inside and outside of his home. And we ask,  
24 "Is Mr. Sweeney among the people?" And to answer this  
25 question, I -- my -- I developed my argument from the Fifth

1 Circuit's holding in the *United States v. Daniel*, which was an  
2 as-applied challenge to the application of 922(g)(3) in that  
3 case. And in that case, the Fifth Circuit held that the  
4 defendant in that case, *Daniels*, even as a marijuana user was a  
5 member of the political community. That he had a presumptive  
6 right to bear arms and that by infringing on that right,  
7 922(g)(3) contradicts the plain text of the Second Amendment.

8         The Court goes on to say that more than just model  
9 citizens enjoy the right to bear arms and that because  
10 *Daniels* -- that -- excuse me -- that model citizen was just a  
11 shorthand to exclude from the discussion folks such as mentally  
12 ill and felons, people who were historically stripped of their  
13 Second Amendment rights.

14         So the government in its response says that only  
15 law-abiding citizens are -- have conduct that's covered by the  
16 Second Amendment. But as the Court -- the Fifth Circuit has  
17 stated, it's not just model citizens. That the plain text of  
18 the Second Amendment makes no distinction between law  
19 abiding/non-law abiding, felon/non-felon, drug user/not drug  
20 user. So we argue here, Your Honor, that Mr. Sweeney-Teal  
21 should be included as part of the people. And as I said, the  
22 Fifth Circuit held that Mr. Daniels was part of the people.

23         After the Court makes this determination about whether or  
24 not Mr. Sweeney-Teal is protected by the Constitution, the  
25 burden under *Bruen* shifts to the government to demonstrate that

1 922(g)(3) is consistent with the Nation's historical traditions  
2 of firearms regulation.

3         So in *Daniels*, the Court asks what kind of similarity are  
4 we looking for? Distinct similarity or less precise relevant  
5 similarity? And the Court goes on to find that *Bruen* doesn't  
6 require more than relevant similarity here. So it discusses  
7 how the founders were familiar with intoxication by alcohol and  
8 that they were familiar with the use of marijuana plants, but  
9 they were not familiar with the widespread use of marijuana as  
10 a narcotic nor the modern drug trade. However, though  
11 intoxication was generally a persistent social problem, the  
12 founding generation had no occasion to consider the  
13 relationship between firearms and intoxication.

14         So the Court here considered several analogues and found  
15 that the statutes that were relevant fell into three different  
16 groups: statutes that disarmed intoxicated individuals,  
17 statutes disarming the mentally ill or insane, and statutes  
18 disarming those adjudged dangerous or disloyal. And it goes  
19 into its analysis of each of those different types of statutes  
20 and finds that, in short, neither the restrictions on the  
21 mentally ill nor the regulatory traditions surrounding  
22 intoxication can justify *Daniels*' conviction.

23         Perhaps the government can show that Daniel -- the drugs  
24 *Daniels* used were so powerful that anyone who used them is  
25 permanently impaired in a way that's comparable to ongoing

1 mental illness or that the government can demonstrate that  
2 Daniels' drug use was so regular and so heavily -- heavy that  
3 he was continually impaired. But the Court found in the Fifth  
4 Circuit that the government could not show evidence of any of  
5 those things, so it -- let me back up and make sure I'm  
6 covering everything -- so that Daniels' marijuana use was not  
7 shown to predispose him to armed conflict or that he had a  
8 history of drug-related violence. That's with regard to  
9 922(g)(3).

10 He's among the people covered by the Second Amendment,  
11 and there's no historical tradition distinctly similar to  
12 922(g)(3) giving rise to an exception to the Second Amendment's  
13 unqualified mandate. So Count 1 should be dismissed.

14 With regard to 922(o)(1), we ask the Court to use the  
15 same analytical framework, but I do not have any case law that  
16 is after the issuance of *Heller* that discusses 922(o)(1). So  
17 when the Court -- after the Court reaches a decision upon  
18 whether or not he is part of the people, the Court would have  
19 to -- or the government would have to have a burden of showing  
20 that 922(o)(1) is relevantly similar to -- or a historical  
21 analogue. And I don't have any case law that discusses that  
22 statutory section.

23 THE COURT: Anything further?

24 MS. LEDDY: That's it, Your Honor.

25 THE COURT: All right. Thank you.



1 Mr. Kane.

2 MR. KANE: Thank you, Your Honor.

3 Your Honor, again, I would incorporate my entire brief,  
4 all the case law cited in that.

5 For Mr. Sweeney-Teal, I think it's important to start  
6 with a little bit of factual background that we provided in our  
7 response because of what the (g)(3) charge is.

8 Mr. Sweeney-Teal was -- is alleged to have brandished a firearm  
9 equipped with a Glock switch, which is a machine gun, at some  
10 juveniles in Martinsburg. When he was placed under arrest, he  
11 was in possession of fentanyl pills that were tested and were  
12 positive for fentanyl. And he made a statement that night to  
13 police that he is addicted to opiates, and he gave a statement  
14 to ATF agents two days later that not only is he addicted to  
15 opiates, but at the time of their interview, he was undergoing  
16 withdrawal. So he is a person that at the time of the  
17 possession was actively addicted to opiates, and I think that  
18 that is relevant for the Court's consideration in this case.

19 THE COURT: On Count 1.

20 MR. KANE: On Count 1. So, Your Honor, we lay out  
21 the same argument that we just made in the Jacobs' case in our  
22 brief regarding the *Heller* decision, how *Bruen* affected that,  
23 and the application to non-virtuous, dangerous citizens, which  
24 I think that there is plenty of support for that. People who  
25 are intoxicated are dangerous in certain circumstances.

1           The *Daniels* Court interestingly finds that the laws  
2 related to people intoxicated by alcohol are relevant,  
3 historical analogues. They just didn't find them persuasive.  
4 So that case is also on a cert. petition to the Supreme Court  
5 right now. In the government's cert. petition, they point out  
6 six reasons why people who are intoxicated should be considered  
7 dangerous and that that should have been given more weight.  
8 Drug users may mishandle firearms or use firearms to commit  
9 crimes. Drug users often commit crimes in order to obtain  
10 money or buy drugs. Violent crime may occur as part of drug  
11 business or culture. Armed drug users endanger police. Armed  
12 drug users endanger themselves. Sorry. It's five reasons.

13           And the argument there is that the historical tradition  
14 that they pointed to in that case of not being able to possess  
15 firearms while intoxicated and showing up for military service  
16 while intoxicated, you know, those sort of laws, that they  
17 should have been given more weight. And I think that this  
18 Court is able to apply the weight to those analogues that it  
19 sees fit. It's not bound by the Fifth Circuit's determination  
20 in that regard.

21           The government also points to -- and I'm just really  
22 relying on the *Daniels* opinion's recitation of that because I  
23 think that it does go through a detailed analysis of some of  
24 those. But there's the mental ill -- mentally ill and just the  
25 dangerous people who are -- can be prohibited from possessing

1 firearms. And we reiterate the five reasons we just gave that  
2 people who are addicted to or using opiates would be considered  
3 dangerous, particularly when they have firearms, and in this  
4 situation, were in possession of a firearm, brandished a  
5 firearm while they're in possession, and addicted to opiates.

6 THE COURT: But hasn't that been a longstanding  
7 problem? Addiction, alcoholism --

8 MR. KANE: It has --

9 THE COURT: We'll hear stories about how, you know,  
10 you probably have the marshals high on morphine arresting  
11 people in the Wild West. Thomas Jefferson was probably drunk  
12 from the wine in his vineyards. That's been a longstanding  
13 problem.

14 MR. KANE: It has, Your Honor. And I would just  
15 point out that there have been other applications or other  
16 cases involving Section (g)(3) that have been decided since  
17 *Heller* around the country and in this district that have found  
18 (g)(3) to be constitutional. There is the opinion out of the  
19 Ninth Circuit in *Dugan* that said Section (g)(3) has the same  
20 historical pedigree as other portions of 922(g), which are  
21 repeatedly upheld by numerous courts since *Heller*. And this --  
22 page 8 of my motion has some of those.

23 There's a case out of this district that I believe is on  
24 appeal right now. *United States v. Wendell Beverly*. There was  
25 an initial order denying the motion to dismiss (g)(3) that was

1 issued. It was then reheard, I believe, after the trial and  
2 was denied again.

3 But in this district, since *Heller*, since *Bruen*, (g)(3)  
4 has found -- has been found to be constitutional and that's at  
5 the Fourth Circuit right now. I'm not aware of any Fourth  
6 Circuit precedent since *Bruen* on (g)(3), so I guess I'll leave  
7 (g)(3) there.

8 I think that the history of disarming dangerous people is  
9 here. I think that the history of disarming intoxicated people  
10 is here. And as applied to him, he was actively addicted and  
11 in possession of opiates at the time that he had the firearm in  
12 this case.

13 THE COURT: But when we look back to the  
14 government's burden to establish a historical tradition of laws  
15 disarming those similarly situated to the defendant, there  
16 weren't any drug bans for drug users taking a look back --

17 MR. KANE: No --

18 THE COURT: -- to 1791 or thereabouts.

19 MR. KANE: There is at least one prohibition noted  
20 in *Daniels* of disarming people who were intoxicated by alcohol.  
21 There is not anything that I've seen in any of the briefs that  
22 I've read, any of the opinions I've read about disarming drug  
23 users; but there have been opinions since *Heller* around the  
24 country, in this district, affirming the constitutionality of  
25 (g)(3) on a historical analysis and saying that, you know --

## SETH COX - DIRECT EXAMINATION

1 this is the same argument about the categories. It's not just  
2 about an exact twin.

3         The Fifth Circuit said that, hey, alcohol is close, and  
4 we can use that. They discounted the weight of the tradition,  
5 but I think that the government's position in the *Daniels* case  
6 is still correct. That the mentally ill are analogous to drug  
7 users because of the effect that drugs have on your brain and  
8 that the dangerous citizenry is applicable to drug users as  
9 well because all the reasons that, you know, I said here, but  
10 all the reasons that we frequently talk about the danger that  
11 drugs and guns have together. I think that you can easily fit  
12 (g)(3) into someone who is addicted or using drugs into a  
13 dangerous person in that historical tradition of disarmament  
14 falls.

15         Turning to the machine gun --

16                 THE COURT: Are you going to have some testimony on  
17 the machine gun? Because I know if we're looking at *Heller*,  
18 *Heller* clarifies that the Second Amendment protects those that  
19 are in common use and those typically possessed by law-abiding  
20 citizens for lawful purposes but not those firearms that are  
21 dangerous and unusual.

22                 MR. KANE: Well, I -- Agent Cox is here. I guess I  
23 can call him. I was going to rely on the cases cited on  
24 page 17 of our brief that are post-*Heller* decisions, post --  
25 obviously, post-*Miller* decisions, but post-*Heller* decisions

## SETH COX - DIRECT EXAMINATION

1 that have concluded machine guns fall outside the Second  
2 Amendment scope. That's *U.S. v. One Palmetto State Armory*,  
3 *Hollis v. Lynch*, and *United States v. Henry*. Those are out of  
4 the Third, Fifth, and Ninth Circuits. So I think that there is  
5 case law -- not out of the Fourth Circuit -- that has found  
6 machine guns to do that.

7 If the government would permit me, I could call Special  
8 Agent Cox.

9 THE COURT: Thank you.

10 MR. KANE: Special Agent Cox.

11 (The witness, Seth Cox, was sworn in.)

12 THE CLERK: Please watch your step as you walk up.

13 DIRECT EXAMINATION

14 BY MR. KANE:

15 Q. Would you state your name for the record, please.

16 A. Seth Cox.

17 Q. And how are you employed?

18 A. Special agent with ATF stationed here in Martinsburg,  
19 West Virginia.

20 Q. And you became involved in an investigation of Malachi  
21 Sweeney-Teal in the fall of last year?

22 A. I did.

23 Q. And that involved the possession of a firearm that was  
24 affixed with a Glock switch; is that correct?

25 A. That's correct.

## SETH COX - DIRECT EXAMINATION

1 Q. Can you explain what a Glock switch is?

2 A. It is a small device that goes on to a Glock model  
3 firearm. Essentially fits on the back of the slide. That  
4 small firing pin release on the back of the slide can be  
5 removed. These parts are purchased after market. It's not  
6 something that Glock creates. They only have one model that  
7 they produce that's wholly automatic. That firing system is  
8 built into that firearm. With these, they're aftermarket  
9 products that we're seeing through our investigations that are  
10 inserted. It allows the firearm to function as a fully  
11 automatic firearm.

12 Q. Okay. Two questions. The fully automatic firearm that  
13 Glock does make, for what purpose do they make that?

14 A. Military and law enforcement generally.

15 Q. So that's not something that's generally available to the  
16 public?

17 A. No.

18 Q. Okay. And is that something that's available in the  
19 United States?

20 A. No, it's not.

21 Q. Okay. Now, you said that the Glock switch converts the  
22 Glock to a fully automatic firearm.

23 A. It does.

24 Q. And what -- when that -- what does that mean in terms of  
25 the machine gun statute?

## SETH COX - DIRECT EXAMINATION

1 A. Essentially that firearm will fire more than one round  
2 with a single trigger.

3 Q. Okay. And the firearm fixed with a Glock switch in this  
4 case, was that tested?

5 A. It was.

6 Q. And did it fire multiple rounds with a simple pull of the  
7 trigger?

8 A. It did. So -- excuse me -- Firearms Enforcement Officer  
9 Nicholas Campbell conducted that testing. He's the one that  
10 did the -- essentially researched the firearm. Recreated what  
11 needed to be done to shoot, and he did that. I only observed  
12 that process, but I was there when he fired it. I believe he  
13 did two, five-round bursts of that firearm.

14 Q. Okay. Now, you said that the Glock switches are an  
15 after-market product. How would one come to possess a Glock  
16 switch?

17 A. Historically right now, trends, you know, it's an  
18 aftermarket. A lot of these are coming from other countries  
19 that are purchased online. China is a big, essentially,  
20 source. They're purchased online in aftermarket areas,  
21 inserted by the user of the firearm generally on their own.

22 Q. Is it something that's available to the public at a gun  
23 shop?

24 A. No.

25 Q. Is it something that would be available for purchase at a



## SETH COX - DIRECT EXAMINATION

1 gun show?

2 A. No.

3 Q. Okay.

4 THE COURT: Why not?

5 THE WITNESS: They're regulated by the government.

6 So essentially you would need -- you need to be a Class 3  
7 dealer, military, law enforcement. I'd have to do my research  
8 again, but --

9 THE COURT: That's fine.

10 THE WITNESS: -- the machine gun protect -- the  
11 Firearm Protection Owners Act. After 1984, there's certain  
12 firearms that you cannot buy unless you --

13 THE COURT: So to boil it down, it can't legally be  
14 sold here like that unless it's one of those exceptions you've  
15 explained to us?

16 THE WITNESS: Correct. The general public  
17 generally -- there's certain parameters that you can do with  
18 authorized dealers, license -- that you -- general day-to-day  
19 citizens like a regular GCA, Gun Control Act, firearm cannot be  
20 purchased by a lawful citizen to have a machine gun.

21 BY MR. KANE:

22 Q. Okay. So a machine gun would be an unusual weapon?

23 A. Correct. We don't come across them too often, especially  
24 here in the Northern District, but they're starting to become  
25 more prevalent here in the Northern -- or excuse me -- Eastern

## SETH COX - DIRECT EXAMINATION

1 Panhandle of West Virginia.

2 Q. And you talked about a five-round burst that was able to  
3 be accomplished from the test-fire. If you can recall, can you  
4 explain to the Court how quickly that gun fired those five  
5 rounds?

6 A. I would say probably under one and a half seconds.

7 Q. Okay.

8 A. Maybe a second. It was very rapid.

9 Q. Okay. And that is -- how distinct is that from being  
10 able to fire five rounds without that equipped?

11 A. I'd say five rounds, you'd probably get it off in maybe  
12 two seconds; but it's considerably -- exponentially, it gets  
13 very fast. In this example, the firearm held a 30-round  
14 magazine. Shooting all those rounds by a single trigger pull  
15 would take quite some time. Thirty rounds in that magazine  
16 probably could be done in under five seconds.

17 Q. And the five-round burst that was accomplished, was that  
18 only because there was only five rounds loaded into it?

19 A. Yeah. That's just what generally the FEOs over our  
20 technical center -- that's usually what they base their  
21 parameters on. The five-round burst.

22 Q. So if you had a -- the Glock fixed with a Glock switch,  
23 and you had a 30-round fully-occupied magazine, you could fire  
24 all 30 rounds with a single pull of the trigger?

25 A. You could unless there was a malfunction of the firearm.

## SETH COX - DIRECT EXAMINATION

1 Q. And I think you said that the actual Glock switches are  
2 only available to military and law enforcement uses?

3 A. The Glock -- from my recollection and my experience with  
4 these firearms, Glock only makes one fully automatic handgun.  
5 The Glock switches are something that's been designed to  
6 essentially circumvent the standard practice of a single  
7 trigger pull with the Glock firearms.

8 Q. Okay. So the typical firearm possessed by citizens for  
9 self-defense cannot operate -- or cannot fire more than one  
10 shot with a single action of the trigger?

11 A. That's correct.

12 Q. Okay.

13 MR. KANE: Those are my questions, Your Honor.

14 THE COURT: So, Agent, just so I understand the  
15 mechanics of this, this Glock in question, before it was  
16 modified -- well, at all times -- it was a handgun; right?

17 THE WITNESS: It was.

18 THE COURT: Okay. So before the modification, if I  
19 want to fire that, I have to pull the trigger, and then I have  
20 to re-aim before -- well, if I -- let's say I'm shooting at  
21 something. I have to re-aim?

22 THE WITNESS: Essentially what that firearm is going  
23 to do is when you shoot the firearm, that slide is going to go  
24 back, eject that shell, and as it goes forward, the trigger is  
25 going to reset, which is going to allow you to have to pull

## SETH COX - DIRECT EXAMINATION

1 that trigger again. So if that's your second round, you're  
2 going to shoot a second round. Kick that shell out. The slide  
3 is going to go forward, and the trigger is going to reset.  
4 You're going to pull a third time. A machine gun -- that auto  
5 sear that you put in the back, essentially to drop in the Glock  
6 switch, defeats that purpose and allows you to just hold the  
7 trigger and that round is going to reset, reset, reset, which  
8 allows it to function very quickly.

9 THE COURT: So as long as I'm holding that  
10 trigger --

11 THE WITNESS: That gun is going to go essentially  
12 boom until it runs out of rounds.

13 THE COURT: So it's harder to control?

14 THE WITNESS: Oh, I've shot it myself before. It  
15 doesn't matter how big you are, they all have a propensity to  
16 go straight up in the air or go sideways. It's going to go  
17 across you.

18 THE COURT: I presume that's part of the  
19 dangerousness --

20 THE WITNESS: Yes.

21 THE COURT: -- of that modification?

22 THE WITNESS: In my experience, my proficiency with  
23 firearms, I'm much more accurate with a regular firearm.  
24 Shooting it with a single trigger pull, you're able to control  
25 that firearm much easier. A fully automatic firearm, if I put

## SETH COX - DIRECT EXAMINATION/CROSS-EXAMINATION

1 two targets side by side and shot 30 rounds, I know that my  
2 grouping with my regular firearm, my duty-issued firearm, would  
3 be much more accurate. I don't even know if I'd be able to  
4 keep all the rounds on the target with a fully automatic  
5 firearm.

6 THE COURT: Thank you.

7 THE WITNESS: Sure.

8 THE COURT: Any follow-up on that, Mr. Kane?

9 MR. KANE: One follow-up on that.

10 BY MR. KANE:

11 Q. At the same time that you would be less accurate, those  
12 rounds would be discharged exponentially faster as you said?

13 A. Correct.

14 MR. KANE: No further questions, Your Honor.

15 THE COURT: Thank you.

16 Ms. Leddy, any questions for the agent?

17 MS. LEDDY: Just briefly, Your Honor.

18 CROSS-EXAMINATION

19 BY MS. LEDDY:

20 Q. Agent Cox, when did you become involved in the case?

21 A. You mean the exact date or --

22 Q. The timing.

23 A. I believe it was the evening after. I'd have to  
24 recollect my reports, but I know essentially I assisted with  
25 this. Was contacted by the local law enforcement and state

## SETH COX - CROSS-EXAMINATION

1 police.

2 Q. So you joined the investigation after his arrest and  
3 after he was taken into custody?

4 A. That's correct.

5 Q. Okay. But you -- have you reviewed the reports from the  
6 arresting officers?

7 A. I have.

8 Q. Can you tell us if there was any statement made by  
9 Mr. Sweeney-Teal about the functionality of the Glock switch at  
10 the time of the incident?

11 A. From my recollection, I believe he did make a statement  
12 that he knew it was on there, but he knew it didn't work.

13 Q. So it was -- it was -- he reported that it was not  
14 operational at the time?

15 A. Yes.

16 Q. And then there's the report of -- and I'm sorry. I  
17 forget the officer's name who conducted the firearms testing  
18 here.

19 A. FEO Campbell.

20 Q. He had to insert a pin or do some sort of reworking to  
21 see if it would actually operate it?

22 A. Yes. He essentially took a metal punch, which is part of  
23 his tool kit there aside of his desk. And generally what he  
24 did is the Glock switch has a little circle in the back about  
25 the size of a pencil. That's a little metal punch that he had.

## SETH COX - CROSS-EXAMINATION

1 He just stuck that in there. And that's what was in lieu of  
2 the selector switch. Essentially, this firearm lacked the  
3 selector switch because you could turn it on and off  
4 essentially. So you could go from full auto to semi-auto.  
5 That fire -- this Glock lacked that selector switch, so he just  
6 merely stuck the pin in, and it fired as a fully automatic  
7 firearm.

8 Q. So at the time of the incident, the firearm that he had  
9 functioned as a regular Glock semi-automatic; not as a fully  
10 automatic Glock switch-controlled firearm?

11 A. In the area that it was recovered, when it recovered,  
12 yes, the switch had been removed. Now, I don't know who did  
13 that or how quickly it had been done, but, for example, as  
14 quickly as Mr. Campbell was able to put that back in, that's  
15 how manipulable these are. So they can be removed very  
16 quickly.

17 In my training and experience, these Glock switches --  
18 there's websites. There's information out and readily  
19 available on the internet to teach people how to manipulate and  
20 very quickly to detect -- insulate themselves from law  
21 enforcement, essentially, if they were to be recovered. So if  
22 law enforcement stops you, and you're in the vehicle, there's  
23 information that is publicized to show you how to remove that.  
24 And I've also had cases in my past experience where the  
25 defendants or the subjects have known that law enforcement is

## SETH COX - CROSS-EXAMINATION/REDIRECT EXAMINATION

1 coming. They will put the Glock switch in, take it out, while  
2 they've been contacted by law enforcement.

3 Q. But you're not aware of that happening in this case?

4 A. No. I'm just saying -- I was just trying to illustrate  
5 that it wasn't on the scene. But my investigation was that  
6 they were ascertained when it was done, but potentially could  
7 have been done. It's a very quick process.

8 MS. LEDDY: Nothing further, Your Honor.

9 THE COURT: Any further, Mr. Kane?

10 MR. KANE: Yeah. Just a little bit of clarification  
11 with that question.

12 REDIRECT EXAMINATION

13 BY MR. KANE:

14 Q. Ms. Leddy asked you about whether the Glock could fire  
15 automatically at the time of the incident. You gave your  
16 response, but I want to draw a distinction.

17 In Count Number 2, what was charged as the machine gun,  
18 is the machine gun conversion device; is that correct?

19 A. That's correct.

20 Q. And that's the Glock switch that we talked about?

21 A. In and of itself, yes.

22 Q. So the Glock switch, itself, it exists to convert a  
23 semi-automatic firearm into an automatic firearm; is that  
24 correct?

25 A. That's correct.



## SETH COX - REDIRECT EXAMINATION

1 Q. Does it have any other purpose?

2 A. No.

3 Q. Okay. So that, itself, is the machine gun that you're  
4 referring to?

5 A. That's correct.

6 Q. Okay.

7 THE COURT: Anything further, Ms. Leddy?

8 MS. LEDDY: Nothing further, Your Honor.

9 THE COURT: You can return to your seat. Thank you.

10 THE WITNESS: Thank you.

11 (Witness excused.)

12 THE COURT: Any further argument, Mr. Kane?

13 MR. KANE: No, Your Honor. Thank you.

14 THE COURT: Ms. Leddy.

15 MS. LEDDY: Your Honor, we ask the Court to make an  
16 as-applied finding in this case. And we move -- we're moving  
17 to dismiss both counts, and we ask the Court to find that  
18 Mr. Sweeney-Teal is of the people and that the government  
19 cannot meet its burden of showing a historical analogue statute  
20 that proscribes his conduct. Thank you.

21 THE COURT: Thank you. I don't find there's any  
22 question that this defendant is of the people. *Heller*  
23 determined that the Second Amendment applies to all Americans.  
24 Therefore, that shifts the burden to the government both with  
25 regard to Count 1 and Count 2.

1           Let's start with Count 1. The government must establish  
2 that 922(g)(3) is consistent with this Nation's historical  
3 tradition of firearm regulation. The historical tradition, as  
4 we discussed in the last case, can be established by analogical  
5 reasoning. Long-standing problems must be distinctly similar  
6 to historical analogue. So the government has a high burden  
7 here with regard to Count 1 to establish a historical tradition  
8 of laws disarming those similarly-situated to this defendant;  
9 in this case, a drug user.

10           It's -- I don't find that the government met its burden  
11 with regard to this count to show that a person who is a drug  
12 user is banned for life from owning guns. At the time of the  
13 ratification of the Constitution, we can all acknowledge that  
14 drug use was a known thing, and there was no ban on drug users  
15 from owning guns.

16           Based upon that, I don't find that the government has met  
17 its burden with regard to Count 1. So the defendant's motion  
18 to dismiss with regard to Count 1 is granted. And I'll note  
19 the government's exception to that.

20           Now, we looked to *Heller* for analysis with regard to  
21 Count 2 because defendant possessed a banned gun, and we know  
22 that that case involved a handgun ownership ban. *Heller*  
23 directly talks about automatic weapons and says that they're  
24 not of common use. In fact, they are unusual. And I know when  
25 we began the discussion with Mr. Kane, I had commented that in

1 the *Heller* decision, the Supreme Court clarified what arms the  
2 Second Amendment protects. It protects those that are in  
3 common use and those typically possessed by law-abiding  
4 citizens for lawful purposes but not those that are dangerous  
5 and unusual.

6         So this statute under which the defendant is charged in  
7 Count 2 is not a prohibition from him owning any guns. It's a  
8 ban, a prohibition on him modifying a legal gun into a machine  
9 gun. So it's a bit of a different analysis. This machine gun  
10 conversion device turns a regular Glock into a machine gun.  
11 And we know *Heller* has told us that these automatic guns are  
12 not of common use; and from the testimony of Agent Cox, which I  
13 find was competent and credible, I understood that from his  
14 testimony, it's not of common use. In fact, it's not -- cannot  
15 be lawfully sold and is not lawfully sold by anyone here in the  
16 United States with two exceptions: to law enforcement and to  
17 military.

18         So it's not typically possessed by a law-abiding citizen  
19 for lawful purposes, and it is dangerous, and it's unusual.  
20 It's dangerous because it turns a regular Glock handgun into a  
21 machine gun. It's hard to control. And it's unusual because  
22 no one sells them. It's a modification.

23         Therefore, I find that the government has met its burden  
24 pursuant to Count 2, and the defendant's motion to dismiss with  
25 regard to Count 2 is denied. So that leaves us proceeding to

1 trial on not Count 1 but to Count 2.

2 Anything further with regard to the government's  
3 position?

4 MR. KANE: Thank you for noting our exceptions to  
5 Count 1, and I think that's it today.

6 THE COURT: Anything further, Ms. Leddy?

7 MS. LEDDY: Nothing further, Your Honor.

8 THE COURT: Defendant is remanded.

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(Hearing concluded at 12:05 P.M.)

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CERTIFICATE

I, Kate A. Slayden, Registered Professional Reporter and Official Court Reporter of the United States District Court for the Northern District of West Virginia, do hereby certify that the foregoing is a true and correct transcript of the proceedings had in the above-styled action on April 18, 2024, as reported by me.

I certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Given under my hand this 10th day of May 2024.

/s/Kate A. Slayden

Kate A. Slayden, RPR  
Official Reporter, United States  
District Court for the Northern  
District of West Virginia