NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted January 4, 2024
Decided January 4, 2024

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 23-1616

UNITED STATES OF AMERICA, *Plaintiff-Appellee*,	Appeal from the United States District Court for the Central District of Illinois.
v.	No. 20-cr-40057-001
JAJUAN A. HUNT, *Defendant-Appellant*.	Sara Darrow, *Chief Judge*.

O R D E R

Jajuan Hunt pleaded guilty to possessing a firearm as a convicted felon, *see* 18 U.S.C. §§ 922(g)(1), and was sentenced to 120 months in prison. Hunt filed a notice of appeal, but his appointed lawyer asserts that the appeal is frivolous and seeks to withdraw under *Anders v. California*, 386 U.S. 738, 744 (1967). Counsel's brief explains the nature of the appeal and addresses issues that an appeal of this kind might be expected to involve. Because counsel's analysis appears thorough, and Hunt did not respond to the motion, *see* CIR. R. 51(b), we limit our review to the subjects that counsel discusses. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014). We grant the motion and dismiss the appeal.

After police were called to investigate Hunt's involvement in a two-vehicle accident, they saw an open can of beer in the center console of his vehicle. This prompted a search of his car, and in the glove compartment they found a pistol with an obliterated serial number. They arrested Hunt for driving under the influence. He later admitted to police that he bought the firearm and knew that, as a felon, he was prohibited from purchasing a gun.

Hunt moved to suppress evidence from the vehicle search, arguing that the police did not conduct a valid search incident to arrest because they lacked reasonable suspicion that the vehicle contained additional evidence of his driving under the influence. The district court denied the motion. The court explained that the police conducted a lawful search incident to arrest based on their reasonable belief that the vehicle contained evidence of a DUI offense. Regardless, the court added, the evidence inevitably would have been discovered through routine procedures related to an inventory search of the vehicle.

Hunt then entered a conditional guilty plea, reserving his right to appeal the court's denial of his motion to suppress. At sentencing, the district court calculated a guidelines range of 100 to 120 months in prison (based on Hunt's total offense level of 25 and criminal history category of V, capped at 120 months due to the statutory maximum). After considering mitigating and aggravating factors, the court sentenced him to 120 months and 3 years' supervised release.

Counsel reports that after he advised Hunt of the risks and benefits of withdrawing his guilty plea, Hunt confirmed that he wishes to challenge only the denial of his motion to suppress as well as his sentence. Counsel therefore properly refrains from discussing the validity of Hunt's guilty plea. *See United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012); *United States v. Knox*, 287 F.3d 667, 671 (7th Cir. 2002).

Counsel first considers but appropriately rejects challenging the district court's ruling on Hunt's motion to suppress. Officers may conduct a warrantless search of a vehicle incident to arrest if they reasonably believe that the vehicle contains evidence of the offense of arrest. *Arizona v. Gant*, 556 U.S. 332, 351 (2009). Here, Hunt—upon questioning after the car accident—slurred his speech, admitted taking two shots of liquor, and failed two field sobriety tests. Police also saw an open beer can in plain view in the vehicle's center console. *See United States v. Wimbush*, 337 F.3d 947, 951 (7th Cir. 2003) (discovery of open container of alcohol in vehicle justified warrantless search of

vehicle). When conducting a search incident to arrest, police may search all areas in the vehicle in which evidence of criminal activity may be found, including trunks and glove compartments, *see Gant*, 556 U.S. at 346–47 (citing *United States v. Ross*, 456 U.S. 798, 820–21 (1982)), such as the one in which police found Hunt's firearm. Further, as counsel also notes, even absent a valid search, the evidence inevitably would have been discovered during an inventory of Hunt's vehicle, given the police department's policy of making an inventory of items found in cars that have been impounded. *See United States v. Cartwright*, 630 F.3d 610, 613–15 (7th Cir. 2010) (upholding application of inevitable discovery doctrine for vehicle towed under a "sufficiently standardized" police policy).

Counsel next considers whether Hunt could mount a non-frivolous challenge to the constitutionality of 18 U.S.C. § 922(g)(1), the firearm statute under which he was convicted, in the aftermath of *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). In *Bruen*, the Supreme Court held that the Second Amendment requires the government to prove that firearm statutes, like § 922(g)(1), are "consistent with this Nation's historical tradition of firearm regulation." 142 S. Ct. at 2126. But Hunt did not challenge the statute's constitutionality in the district court, so our review would be for plain error. *See Greer v. United States*, 141 S. Ct. 2090, 2096 (2021). And given our recent acknowledgment that the historical assessment on this question is inconclusive, *see Atkinson v. Garland*, 70 F.4th 1018, 1024 (7th Cir. 2023), we agree with counsel that any error, if there was one, would not be plain. *See United States v. Miles*, 86 F.4th 734, 740–41 (7th Cir. 2023).

Further, counsel considers whether Hunt could raise any nonfrivolous argument regarding the four-point enhancement to his offense level for possessing a firearm in connection with another felony offense. *See* U.S.S.G. § 2K2.1(b)(6)(B). But we agree with counsel that the district court did not err in determining that the government had shown, by a preponderance of the evidence, that Hunt admitted to trading crack cocaine for the firearm. Video evidence from police questioning recorded Hunt stating that he exchanged "an 8-ball" (slang for an eighth of an ounce of cocaine) for the firearm. *See United States v. Slone*, 990 F.3d 568, 572–73 (7th Cir. 2021) (enhancement justified by evidence pointing to proximity of firearm and defendant's past dealings in drugs).

Counsel relatedly considers challenging the court's alternative finding that the four-level enhancement would also be supported based on Hunt's felony offense of intimidation. 720 ILCS 5/12-6; U.S.S.G. § 2K2.1(b)(6)(B). Here too we agree with counsel

that this challenge would be frivolous because the district court reasonably accepted the government's version of events, *see United States v. Waldman*, 835 F.3d 751, 756 (7th Cir. 2016), based on Hunt's threat to shoot the occupant of another vehicle involved in the accident after she called the police.

Finally, counsel considers and rightly rejects challenging the substantive reasonableness of Hunt's sentence. We presume that a sentence within the applicable guidelines range is reasonable. *See United States v. Cunningham*, 883 F.3d 690, 701 (7th Cir. 2018). Counsel does not identify a reason to challenge that presumption, and we discern none. The district court reasonably weighed the § 3553(a) factors by emphasizing the seriousness of the offense (driving while intoxicated showed an "incredibly reckless" disregard for public safety), the need for deterrence (Hunt's past incarceration did not deter him from possessing a firearm), and Hunt's personal characteristics (having a challenging childhood and anger management issues). *See id.* at 701–02.

Counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED.