

## United States v. Rahimi

Decided Jun 8, 2022

21-11001

06-08-2022

United States of America, Plaintiff-Appellee, v.  
Zackey Rahimi, Defendant-Appellant.

Per Curiam:

Appeal from the United States District Court for  
the Northern District of Texas USDC No. 4:21-  
CR-83-1

Before King, Costa, and Ho, Circuit Judges.

Per Curiam: [\*]

Zackey Rahimi, after being charged with various  
state offenses, pleaded guilty to a violation of  
federal law for possessing a firearm in  
contravention of a restraining order. The district  
court ordered Rahimi's federal sentence of  
imprisonment to run concurrently with certain  
state-case \*1 sentences but to run consecutively  
with other state-case sentences because the acts  
involved in the latter were not "relevant conduct"  
for purposes of U.S.S.G. § 1B1.3. Rahimi appeals,  
challenging the finding that certain acts were not  
relevant conduct. We find no clear error and  
affirm.

### I.

Zackey Rahimi was suspected to have participated  
in a series of shootings that occurred between  
December 2020 and January 2021. As a result,  
police officers obtained a warrant to search his  
residence, and when they executed the warrant,  
they found a pistol and a restraining order issued  
on February 5, 2020. The order restrained Rahimi

from possessing a firearm and warned him that  
possession of a firearm or ammunition while the  
order was in effect could be a felony under 18  
U.S.C. § 922(g) and § 924(a)(2).

A federal grand jury indicted Rahimi for  
possession of firearms in violation of sections  
922(g)(8) and 924(a)(2).<sup>1</sup> Later, Rahimi pleaded  
guilty. At sentencing, the presentence  
investigation report ("PSR") detailed Rahimi's  
lengthy criminal history. Relevant to this appeal  
are the state charges that were pending against him  
for offenses that occurred from December 2019 to  
November 2020. Three pending state charges  
resulted from Rahimi's use of a firearm in the  
physical assault of his girlfriend in December  
2019,<sup>2</sup> and another state charge arose from an  
aggravated assault with a deadly weapon of a  
different woman in November 2020. Rahimi  
objected to the PSR, arguing that the pending  
charges described relevant \*2 conduct to the  
instant offense such that the sentence for the  
instant federal offense should be ordered to run  
concurrently to the state sentences. The district  
court overruled the objection, adopted the PSR,  
and ordered the federal sentence to run  
consecutively to the pending charges because they  
were not relevant conduct. Rahimi appeals,  
arguing that the district court clearly erred by  
concluding the pending charges were not relevant  
conduct.

<sup>1</sup> Rahimi moved to dismiss the indictment on  
the ground that section 922(g)(8) on its  
face violates the Second Amendment and  
the district court denied the motion. Rahimi  
appeals this decision but acknowledges that

it is foreclosed by our binding precedent.

*United States v. McGinnis*, 956 F.3d 747 (5th Cir. 2020), cert. denied, 141 S.Ct. 1397 (2021).

- <sup>2</sup> The charges included terroristic threat of a family/household member, discharge of a firearm in certain municipalities, and family violence assault causing bodily injury.

## II.

A determination of relevant conduct is a finding of fact that is reviewed for clear error. *United States v. Brummett*, 355 F.3d 343, 344-45 (5th Cir. 2003). A district court has the discretion to order its sentences of imprisonment be served concurrently or consecutively to anticipated state terms of imprisonment. *Setser v. United States*, 566 U.S. 231, 236 (2012). A determination of relevant conduct is "not clearly erroneous as long as [it is] 'plausible in light of the record as a whole.'" *United States v. Ortiz*, 613 F.3d 550, 557 (5th Cir. 2010) (quoting *United States v. Rhine*, 583 F.3d 878, 885 (5th Cir. 2009)).

The sentencing guidelines provide that "the sentence for the instant offense shall be imposed to run concurrently to the anticipated term of imprisonment" if another offense is "relevant conduct . . . under the provisions of subsections (a)(1), (a)(2), or (a)(3) of § 1B1.3." U.S.S.G. § 5G1.3(c). "Relevant conduct is defined as 'all acts and omissions' that . . . [are] part of the 'same course of conduct' as the offense of conviction." *Ortiz*, 613 F.3d at 557 (quoting U.S.S.G. § 1B1.3(a)(2)). Two or more offenses may constitute as the same course of conduct "if they are sufficiently connected or related to each other as to warrant the conclusion that they are part of a single episode, spree, or ongoing series of offenses." § 1B1.3, cmt. (n.5(B)(ii)). Relevant

<sup>3</sup> factors include "the degree of <sup>3</sup> similarity of the offenses, the regularity (repetitions) of the offenses, and the time interval between the offenses." *Id.*

## III.

Rahimi argues that the pending charges are relevant to the instant federal charge because they are all a part of a pattern of ongoing (i.e., similar) conduct involving a firearm and domestic violence. He contends that the temporal proximity favors a finding of relevant conduct because the November 2020 conduct occurred just two months before the search of his residence (resulting in the instant charge) and the December 2019 conduct was little more than a year prior to the instant offense. Last, Rahimi argues that the number of similar crimes involving firearm possession shows regularity.

However, we conclude that the record as a whole supports the district court's finding that the pending state charges are not a part of the same course of conduct as Rahimi's possession of a firearm in violation of a restraining order. First, although the record shows some regularity to Rahimi's violent use-and thus possession-of a firearm, we have previously held that a 10-month lag between a past act and the instant offense is "not strong" evidence of temporal proximity for purposes of section 1B1.3. *United States v. Davis*, 967 F.3d 441, 442 (5th Cir. 2020) (per curiam). Second, Rahimi's December 2019 conduct involved the domestic assault of his girlfriend in a public parking lot. When warned by his passenger about the presence of another witness, Rahimi fired a shot at the witness. The instant offense involves no public violence or domestic assault and so bears little resemblance to the December 2019 events.

Similarly, Rahimi's November 2020 conduct involved the violent use of a firearm in furtherance of an assault. Indeed, Rahimi's possession of a firearm in that instance was also a violation of the

<sup>4</sup> February 2020 restraining <sup>4</sup> order, but "[a]s we have previously cautioned . . . courts must not conduct this [similarity] analysis at such a level of generality as to render it meaningless." *United States v. Rhine*, 583 F.3d 878, 888 (5th Cir. 2009).

Rahimi's violent use of the firearm in November is meaningfully different from merely possessing a firearm. *Cf. United States v. Horton*, 993 F.3d 370, 376 (5th Cir.), *cert. denied*, 142 S.Ct. 382 (2021) (finding meaningful differences in the location of the conduct and amount of drugs at issue on different occasions). Because the similarity and temporal-proximity factors are strained,<sup>3</sup> the district court's finding that these previous acts are not relevant conduct is "plausible in light of the record as a whole," and accordingly is not clearly erroneous. *Rhine*, 583 F.3d at 885.

<sup>3</sup> See *Davis*, 967 F.3d at 442 (finding no relevant conduct when the temporal proximity was "not strong" and the other two factors were "arguably absent").

### III.

5 For the foregoing reasons, we AFFIRM. \*5

[\*] Pursuant to 5th Circuit Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Circuit Rule 47.5.4.

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