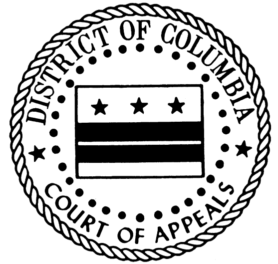


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DISTRICT OF COLUMBIA COURT OF APPEALS

Appeal No. 23-CF-560

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Delvin T. Neal,

Appellant

v.

United States of America,

Appellee

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Appeal from the Superior Court of the District of Columbia
Criminal Division

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# APPELLANT DELVIN T. NEAL'S OPENING BRIEF

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## DISCLOSURE STATEMENT

Appellant-Defendant is Mr. Delvin T. Neal. Mr. Neal was represented in Superior Court proceedings by attorney Brian McDaniel. He is represented on appeal by attorney Cecily E. Baskir. The government was represented during trial by Assistant U.S. Attorneys Kathleen Houck and Stephanie Dinan and is represented on appeal by Chrisellen Kolb, Chief of the Appellate Division of the Office of the United States Attorney.

## TABLE OF CONTENTS

DISCLOSURE STATEMENT ........ i

TABLE OF CONTENTS ........ ii

TABLE OF AUTHORITIES ........ iii

ISSUES PRESENTED ........ 1

STATEMENT OF THE CASE AND JURISDICTION ........ 1

STATEMENT OF FACTS ........ 2

SUMMARY OF ARGUMENT ........ 15

ARGUMENT ........ 17

I. The evidence at trial was insufficient to sustain Neal's robbery conviction. ........ 17

II. The trial court failed to instruct the jury properly on the intent element for robbery of the wallet. ........ 21

A. The trial court wrongly refused to instruct the jury on the claim of right defense with respect to the wallet. ........ 21

B. The trial plainly erred when it failed to instruct the jury fully on the meaning of intent to steal for the offense of robbery. ........ 30

CONCLUSION ........ 34

CERTIFICATE OF SERVICE ........ 35

REDACTION DISCLOSURE FORM

## TABLE OF AUTHORITIES

### Cases

*Adams v. United States*, 558 A.2d 348 (D.C. 1989) .......... 21

*Blocker v. United States*, 239 A.3d 578 (D.C. 2020) .......... 22

*Bonilla v. United States*, 894 A.2d 412 (D.C. 2006) .......... 21

*Brown v. United States*, 128 A.3d 1007 (D.C. 2015) .......... 18

*Corbin v. United States*, 120 A.3d 588 (D.C. 2015) .......... 18

*Curry v. United States*, 520 A.2d 255 (D.C. 1987) .......... 17

*Durphy v. United States*, 235 A.2d 326 (D.C. 1967) .......... 18

*Edwards v. State*, 181 N.W.2d 383 (Wis. 1970) .......... 24

*Fitzgerald v. United States*, 228 A.3d 429 (D.C. 2020) .......... 18

*Fredericks v. United States*, 306 A.2d 268 (D.C. 1973) .......... 19, 20

*Green v. United States*, 948 A.2d 554 (D.C. 2008) .......... 34

*Groomes v. United States*, 155 A.2d 73 (D.C. 1959) .......... 19, 32

*Higgenbottom v. United States*, 923 A.2d 891 (D.C. 2007) .......... 22

*Holloway v. United States*, 25 A.3d 898 (D.C. 2011) .......... 22

*Jackson v. United States*, 653 A.2d 843 (D.C. 1995) .......... 31

*In re As.H.*, 851 A.2d 456 (D.C. 2004) .......... 17

*In re Gil*, 656 A.2d 303 (D.C. 1995) .......... 20

**Lattimore v. United States*, 684 A.2d 357 (D.C. 1996) .......... 18, 19, 32

*Malloy v. United States*, 186 A.3d 802 (D.C. 2018) .......... 31, 34

* Asterisk indicates authorities upon which Neal chiefly relies.

*M.A.P. v. Ryan*, 285 A.2d 310 (D.C. 1971) .......................................................... 25

*Mathews v. United States*, 485 U.S. 58 (1989) .................................................. 21

*Mitchell v. United States*, 129 U.S. App. D.C. 292, 394 F.2d 767 (1968) ......... 20

*Morissette v. United States*, 342 U.S. 246 (1952) ................................. 18, 25, 32

*Pennsylvania Indemn. Fire Corp. v. Aldridge*, 73 App. D.C. 161,
117 F.2d 774 (D.C. Cir. 1941) ...................................................................... 19

*Rhodes v. United States,* 354 A.2d 863 (D.C. 1976) ........................ 26, 27, 28, 29

**Richardson v. United States*, 131 U.S. App. D.C. 168,
403 F.2d 574 (1968) ...................................................... 21, 22, 25, 26, 28, 29

*Rivas v. United States*, 783 A.2d 125 (D.C. 2001) (en banc) ............................ 17

*Robertson v. United States*, 429 A.2d 192 (D.C. 1981) .................................... 28

*Simmons v. United States*, 554 A.2d 1167 (D.C. 1989) .................................... 28

**[Curtis] Smith v. United States*, 330 A.2d 519 (D.C. 1974) .......... 22, 27, 28, 29

*State v. Ramsey*, 56 P.3d 484 (Or. Ct. App. 2002) .............................................. 24

*State v. Sawyer*, 110 A. 461 (Conn. 1920) ........................................................ 26

*State v. [Tremaine] Smith*, 118 A.3d 49 (Conn. 2015) ............................... 24, 26

*State v. Stenger*, 226 P.3d 441 (Haw. 2010) ....................................................... 24

*State v. Winston*, 295 S.E.2d 46 (W.Va. 1982) .................................................. 24

*Townsend v. United States*, 549 A.2d 724 (D.C. 1988) ..................................... 28

*United States v. Dominguez-Benitez*, 542 U.S. 74 (2004) ................................. 34

*United States v. Johnson*, 140 U.S. App. D.C. 54, 433 F.2d 1160 (1970) ......... 20

*United States v. Wagstaff*, 865 F.2d 626 (4th Cir. 1989) .................................... 18

*Watts v. United States*, 362 A.2d 706 (D.C. 1976) (en banc) ............................ 31

*White v. United States*, 613 A.2d 869 (D.C. 1992) (en banc) ...................... 32, 33

*Williams v. United States*, 113 A.3d 554 (D.C. 2015) ............................ 17, 18, 26

*Wilson v. United States*, 266 A.3d 228 (D.C. 2022) ........................ 22, 25, 26, 28

**Statutes**

D.C. Code § 22-2801 (2013)......................................................................... 18

D.C. Code § 22-3201(a) (1982) ................................................................... 19, 20

D.C. Code § 22-3211(b) (1982) ................................................................... 19, 20

**Other Authorities**

*Criminal Jury Instructions for the District of Columbia, No. 9.521
(5th ed. 2009) .......................................................................... 22, 28-29

## ISSUES PRESENTED

1. Whether the evidence at trial was insufficient to prove that Appellant Delvin T. Neal intended to steal a wallet from Sillette Sheler.

2. Whether the trial court improperly refused to instruct the jury that the claim of right defense applied to the charge of robbery of Sheler.

3. Whether the trial court plainly erred when it failed to instruct the jury fully on the intent element of robbery.

## STATEMENT OF THE CASE AND JURISDICTION

On Jan. 19, 2023, a grand jury indicted Appellant Delvin T. Neal on three charges related to an Oct. 29, 2022 incident in the parking lot at 333 Hawaii Avenue, Northeast: (1) robbery of a watch, earrings, and a chain from Andrew Street; (2) robbery of a wallet from Sillette Sheler; and (3) assault with significant bodily injury of Andrew Street. R. 13.

The Honorable Lynn Leibovitz presided over Neal's jury trial in late April and early May 2023. At the end of the government's case, Judge Leibovitz granted Neal's motion for judgment of acquittal on the charge of assault with significant bodily injury and instructed the jury instead on the lesser-included charge of assault. App. 2 (5/1/23 Tr. 11); 5/1/23 Tr. 159-60. On May 2, 2023, the jury acquitted Neal of both robbery and assault of Street and convicted Neal of the single count of robbery of the wallet from Sheler. R. 31. Exceeding the

government's recommended sentence, Judge Leibovitz sentenced Neal on June 30, 2023, to 68 months incarceration, followed by three years of supervised release. R. 39, 41. Neal timely appealed, and this appeal is from a final order that disposes of all parties' claims. R. 42.

## STATEMENT OF FACTS

In late October 2022, barber Delvin Neal bought a luxury watch that turned out to be fake. He confronted Andrew Street about the watch on Oct. 29, 2022, asking for a refund in the parking lot by Neal's barber shop at 333 Hawaii Avenue, Northeast. Unidentified men then attacked Street, and in the confusion that followed, Neal ended up with a wallet belonging to Street's mother, Sillette Sheler, as Sheler and Street drove away in Sheler's car.

The government's theory at trial (which the jury rejected) was that Neal orchestrated and aided in the parking lot assault on Street and took or aided and abetted in the taking of a watch and some jewelry from Street during the assault. *See* 5/1/23 Tr. 102-06, 108, 110. The government further argued that Neal then snatched Sheler's wallet from her immediate actual possession in order to get his money. *Id.* at 111-12. Defending himself against the charge of robbing Sheler, Neal argued that he never intended to steal her wallet and was only trying to get back his money from purchasing the fake watch. *See id*. at 116-17, 131-32, 140.

Sheler, Street, and Neal testified at trial, as did Metropolitan Police Department (MPD) detectives Ryan Tran and Ryan Savoy. In addition, the jury saw police body-worn camera footage and several clips of surveillance video from the parking lot area at 333 Hawaii Avenue, and it heard Neal on recorded jail calls made after his arrest.[1] *See* App. Vol. II (Gov. Exhs. 201-205, 301, 302, 401-407).

Street and Sheler got to know Neal at the Changing Faces Barber Shop, where Neal would cut Street's hair. *See* 4/26/23 Tr. 78-79, 112, 174, 176; 4/27/23 Tr. 22; 5/1/23 Tr. 18, 45. Neal would also buy things from them, including belts, a barber bag, glasses, trinkets, and other things that he purchased from Sheler. 5/1/23 Tr. 21, 61. Neal believed that they had a consignment shop. *Id.* at 21. Among other activities, Street said he sold high-end watches that people in the music industry would send him. 4/27/23 Tr. 26-27, 30.

In late October 2022, Street and Sheler came to the barber shop, and Street showed Neal a Hublot watch. *See* 4/26/23 Tr. 118, 178-79; 5/1/23 Tr. 22. That day, in Sheler's presence, Neal purchased a Hublot watch for $1,000 after verifying

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[1] Neal includes the video clip and jail call exhibits in Volume II of his Limited Appendix. Government Exhibit 201 (4:00 minutes), Exhibit 202 (5:15 minutes), Exhibit 203 (5:13 minutes long), and Exhibit 204 (5:11 minutes) each show parts of the parking lot area at 333 Hawaii Avenue from different angles. Government Exhibit 205 is a compilation prepared by the government that combines Exhibits 202, 203, and 204, formatting them alongside each other to provide a broader view. *See* 4/27/23 Tr. 79-80. Government Exhibits 301 and 302 are excerpts from body-worn camera footage, and Exhibits 401 to 407 are jail calls.

its authenticity on the internet with Street. 4/26/23 Tr. 118, 154, 175; 4/27/23 Tr. 30; 5/1/23 Tr. 61-62. When the watch came out verified, Neal paid Street in cash. 4/27/23 Tr. 55-57. According to Neal, they agreed that he could get his money back if the watch turned out not to be real. 5/1/23 Tr. 23.

Neal testified that later that same day, he noticed that the second hand on the watch was not working, so he took it to a watch store in Tysons Corner for repair. 5/1/23 Tr. 24. They told him the watch was fake, and Neal then called Street to ask for his money back. *Id*. at 25. Sheler, in the background of the call, told Neal that he was wrong, because "You know we don't sell fake things." *Id*. Street, who was upset that Neal had gone behind him to check the watch, hung up on Neal. *See id*. at 24-25. When Neal tried to call again, there was no answer. *Id*. at 25. He then tried texting daily because he wanted to return the watch and get his money back. *Id*. at 25-26. Disputing Neal's account, both Sheler and Street denied hearing from Neal about the watch being fake. 4/26/23 Tr. 119-20; 4/27/23 Tr. 34, 37-38.

On Oct. 29, 2022, Sheler and Street returned to the barber shop. According to Sheler, Neal had called before that day asking to purchase a second watch, spoke with Street, and told him when to come. 4/26/23 Tr. 119-20. According to Street, Neal had asked about buying a second watch when he bought the first one and then sent Street a message via Instagram about it. 4/26/23 Tr. 175-76; 4/27/23 Tr. 34. According to Neal, on the morning of Oct. 29, he had a client who was asking

about Neal's watch, so he texted Street to ask about another watch, and Street and Sheler arrived about forty-five minutes later. 5/1/23 Tr. 26-27.

When Street and Sheler arrived on Oct. 29 at the barber shop, Neal was cutting someone else's hair, and Sheler went to get coffee nearby. 4/26/23 Tr. 121, 178; 4/27/23 Tr. 35-36; 5/1/23 Tr. 27. Street showed Neal the watch on his wrist, 4/26/23 Tr. 179, but, according to Neal, his client said it was fake and refused to buy it. 5/1/23 Tr. 27-28. At that point, as Sheler returned with her coffee, Neal and Street left the barber shop and headed to the parking lot. 4/26/23 Tr. 121-23, 179; 4/27/23 Tr. 36. Neal explained that he asked Street to accompany him to Neal's parked truck, where Neal had the fake Hublot he had bought for $1,000, so that Neal could return the watch. 5/1/23 Tr. 30.

Surveillance video from the afternoon of Oct. 29, 2022, shows Neal and Street walking to a parked vehicle but only reveals their legs while they were near that vehicle. *See* App. Vol. II (Gov. Exh. 201, 202, 203, 205). While the video captured images of other people arriving at the parking lot and - after Neal and Street left the area by the first vehicle - engaging in an altercation with Street for about fifteen to twenty seconds, it does not clearly depict exactly what happened. *See id.*

Street testified that, at Neal's truck, Neal asked for his money back for the first watch, and Street refused. 4/26/23 Tr. 182-83; 4/27/23 Tr. 38. According to

Street, Neal then began to punch him multiple times. 4/26/23 Tr. 183-84, 204; *see* 4/27/23 Tr. 41. As Street tried to flee, more people arrived and beat Street, taking his watch, chain, and earrings. *See* 4/26/23 Tr. 187-89, 191, 204; 4/27/23 Tr. 48-50.

Neal, in contrast, testified that when he handed the watch to Street by the truck, Street knocked it out of his hands and then lunged at him in what Neal perceived as a threatening manner. 5/1/23 Tr. 31-33, 37. Neal struck back with one punch. *Id.* at 31, 34, 36, 41. He denied assaulting Street further, taking any of Street's property, and knowing the men who did beat Street. *Id.* at 36, 40, 42-44.

After a few moments, Sheler emerged from the barber shop, alerted by one of the barbers. *See* 4/26/23 Tr. 84-85, 124; 5/1/23 Tr. 45; App. Vol. II (Gov. Exh. 202, 203, 205). She said she stepped in and asked Neal, "What are you doing?" 4/26/23 Tr. 84, 86, 125, 134-35; 5/1/23 Tr. 45; *see also* 4/26/23 Tr. 192, 195 (Street testifying that his mother intervened and told them to get off her son). Then she, Street, and Neal walked over toward her car, a four-door Nissan Altima. 4/26/23 Tr. 91, 148; 4/27/23 Tr. 57.

Accounts of what happened next diverged at trial. According to Sheler, Neal snatched her keys as she tried to get Street into the car, but Street reflexively snatched them back before he sat in the car. 4/26/23 Tr. 91-93. After that, Neal went into the back of the car and opened the trunk, but Sheler and Street hit it

down.[2] *Id.* at 93. As Sheler continued to the driver's side of the car and opened the front door, Neal opened the back door on the driver's side of the car and took her black Coach wallet from her black purse on the floor of the car. *Id*. at 93-94, 149, 151-52. When Sheler tried to snatch the wallet back, Neal raised it up and said she could not have it back until she gave him a thousand dollars. *Id.* at 95, 153. Then Sheler shut her door and drove away with Street. *Id.* at 96-97.

According to Street, Neal tried to get the car keys from Sheler but did not succeed. 4/26/23 Tr. 196; 4/27/23 Tr. 57. Instead, Street himself snatched them first and ran to the other side of the car, telling his mother to get in. 4/26/23 Tr. 196; 4/27/23 Tr. 57, 59. Street testified that Neal went into the front seat and took the wallet from the middle console of the car, saying, "I'll give you your things back when you give me my money back." 4/26/23 Tr. 197; *see* 4/27/23 Tr. 60. Then Street went to the nearby Chinese carry-out to ask for help, begged his mother to stop arguing with Neal, and left in the car. 4/26/23 Tr. 197-98.

According to Neal, after Sheler came outside, he tried to help her get to her car because he did not want her to be assaulted during the scuffle. 5/1/23 Tr. 45. He opened the door to her car because he was trying to get her into it. *Id.* at 55. While other people tried to rummage through the car, Neal tried to stay between

[2] Sheler acknowledged on cross-examination that the surveillance video (Gov. Exh. 204) did not show the trunk open. 4/26/23 Tr. 148, 152.

them and Sheler. *Id.* at 54. He did not lean or go into the car or take anything out of the car. *Id.* at 55-56. While this was going on, Sheler dropped her wallet on the ground on the side of the car in her confusion, and Neal picked it up. *Id.* at 46; *see id.* at 57. He testified that he did not intend to take it from her – he did not want the wallet. *Id.* at 46-47. When she got into the car, he told her he would give her the wallet back if she gave him back his thousand dollars. *Id.* at 47. When he said that, his intent was to give the wallet back to Sheler or Street. *Id.* Sheler and Street then left in the car, and Neal walked back to the barber shop, still holding the wallet. *Id.* at 58. He resumed cutting hair. *Id.* at 58-59.

Surveillance video captured some of what happened by Sheler's car, but much of the video is obscured by glare. App. Vol. II (Gov. Exh. 204). When Sheler, Street, and Neal appeared, followed closely by a man in a purple hat who had been beating Street a few moments earlier, *see* 4/27/23 Tr. 49-50, Street went toward the passenger side, and Neal and Sheler went to the driver's side front door. Gov. Exh. 204 (timestamp 2:20-2:27). As Sheler then turned to go around the front of the car toward Street, Neal apparently opened the front door. *Id.* (2:29-2:30). With the driver's door remaining open, Sheler then seemed to push Street away from the passenger side front door toward the front of the car, with Neal following them empty-handed. *Id.* (2:44-2:48). About fifteen seconds later, Sheler and then Street returned to the passenger side of the car. *Id.* (3:01-3:05). Another ten

seconds or so later, Neal approached the driver's side of the car; his image then disappears into the glare. *Id.* (3:16). A person, apparently Sheler, next appeared to get into the car at the front driver's side door, as Neal walked around the front of the car from the passenger side to the driver's side holding a black object in his right hand. *Id.* (3:25-3:42). Ten seconds later, Neal exited from camera view, *id.* (3:53), the driver's side door closed, *id.* (4:01), and the car departed. *Id*. (4:19-4:30).

At some point after the incident at 333 Hawaii Avenue, Street and Sheler went to the MPD's Fourth District police station, *see* 4/26/23 Tr. 6, 7, 18, 97, 198; 4/27/23 Tr. 61, 72; App. Vol. II (Gov. Exh. 302), where Detective Ryan Tran was assigned to the case as lead detective, with assistance from Detective Ryan Savoy. 4/26/23 Tr. 44. Later that afternoon, the two detectives met Neal wearing a barber apron as he walked from the barber shop to his truck in the parking lot at 333 Hawaii Avenue. 4/26/23 Tr. 27, 45, 46, 52, 73. They spoke with him there before then arresting him. 4/26/23 Tr. 46, 53.

At trial, the jury heard a few minutes of the detectives' conversation with Neal captured by MPD Officer Alosomon's body-worn camera. 4/27/23 Tr. 76; App. Vol. II (Gov. Exh. 301). As depicted in the video clip, Savoy asked Neal what happened, and Neal explained that he was having a conversation with one guy about a watch he had bought when others pulled up and beat him. App. Vol. II

(Gov. Exh. 301). Through the clip of the conversation, Neal was holding a black wallet in his hand, and after a little more than one and half minutes, he showed the wallet to Savoy and said, "This is actually his mom's wallet. I was about to go run it to this address." *Id.* (timestamp 1:42). Savoy asked him to set the wallet on the car, and Neal complied. *Id.* (1:50). Then Neal showed Savoy the watch he had previously bought for one thousand dollars. *Id.* (2:04); 4/27/23 Tr. 123. Savoy asked what the agreement or understanding was that day when they met, and Neal explained that one of his clients wanted to buy a watch, and Neal was acting as a middleman. App. Vol. II (Gov. Exh. 301) (2:27-3:05).

Tran took the wallet that Neal set down, looked in it, and saw identification with Sheler's name on it. 4/27/23 Tr. 77; *see* 4/26/23 Tr. 71-72. Neal also gave Tran a Hublot watch, but it was unclear at trial whether it was the watch Neal had purchased for $1,000 or a different watch. 4/27/23 Tr. 122, 130; *see* 4/26/23 Tr. 71; *see also* 4/27/23 Tr. 133-34 (Tran never asked Street to confirm which watch it was). The officers then arrested Neal. 4/27/23 Tr. 123; 4/26/23 Tr. 53.

The government also introduced at trial seven excerpts from Neal's telephone calls from jail after his arrest. *See* App. Vol. II (Gov. Exh. 401-407). In those clips, which were mostly consistent with the content of Neal's trial testimony, Neal expressed frustration with the fact that the watch was fake, said that he expected to get his money back, and described what had happened when

Sheler and Street arrived at the barber shop on Oct. 29, 2022. *See id.* (Gov. Exh. 401, 402, 403, 405, 406). He mentioned the wallet only once, saying the lady left it in the barber shop. *See id.* (Gov. Exh. 404). According to the call, when he spoke to them about his money, she said, "I'm gonna go get your money," and they hopped in the car and came back later with the police. *Id.*

The defense moved for a judgment of acquittal after the close of the government's case, 5/1/23 Tr. 4, which the trial court granted as to assault with significant injury, reducing that charge to the lesser included offense of simple assault. App. 2 (*id.* at 11). The trial court denied the motion as to the two robbery charges. *See* App. 2-5 (*id*. at 11-14).

Over the government's objection, the trial court granted the defense request for a jury instruction on the claim of right defense as to the Street robbery charge. App. 31 (5/1/23 Tr. 92); *see* R. 28 (email). The trial court refused, however, to extend that instruction to the Sheler robbery. App. 32 (5/1/23 Tr. 93). It explained that it had looked at how the claim of right defense is applied in other jurisdictions, most of which - it claimed - do not allow the claim of right defense to take back "illegally gotten gains," like drug money. App. 29 (*id.* at 90). According to the trial court, that has not been the rationale used in the District, and the trial court characterized this court's claim of right jurisprudence as "a little bit antiquated … . Our Court of Appeals has never sort of come into the modern era in the way other

states have." App. 30 (*id.* at 91); *accord, id.* ("it's a bit of a primitive approach to allow violence to retake even property that specifically itself has been taken from you."). Instead, rather than focusing on illegality, the claim of right defense does not apply in the District if someone takes more than they are entitled to, according to the trial court. *See* App. 29-31 (*id.* at 90-92).

The trial court further stated that, "from the oldest cases that apply here, *Smith* and – rather *Smith* and *Robertson* – the holdings have been that claim of right is particularized to the property taken." App. 28 (*id.* at 89). On that basis, it would let the jury decide whether Neal had a good-faith belief that he had a right to take the watch from Street and whether he took more from Street than what was owed him. App. 31-32 (*id.* at 92-93). But as to Sheler, the trial court stated,

> [T]here is absolutely no claim of right and [it denied] the instruction as to Ms. Sheler because the taking of a wallet, which is in no respect, the property originally taken or for which he is owed money, and is in no respect the money he is owed. And because Ms. Sheler, he did not have a good-faith belief that Ms. Sheler engaged in the transaction, though he may have known that she also sold things at times. There is no basis in this record for him to reasonably and honestly conclude that she was the one that sold him the watch.

App. 32 (*id.* at 93).

Ultimately, the trial court instructed the jury on the intent element of robbery and the claim of right defense as follows, adding some language to the standard claim of right jury instruction to reflect the trial court's understanding of the defense:

**<u>ROBBERY</u> 4.300**

In counts I and II defendant is charged with robbery. Count I refers specifically to Andrew Street. Count II refers specifically to Sillette Sheler. The elements of the offense of robbery, each of which the government must prove beyond a reasonable doubt, are that:

* * *

6. He took the property without right to it and intending to steal it;

* * *

The government must establish that the defendant had no right to take the property, and that he intended to steal it. There can be no robbery if the defendant takes the property for a lawful purpose. It is necessary that the defendant intended to deprive complainant of his/her property and to take it for his own use.

**<u>CLAIM OF RIGHT</u> 9.521**

An element of the offense of robbery is that the defendant had the specific intent to steal. You have heard evidence that the defendant believed he had the right to take the property. If a person takes the property of another in the good-faith belief that he has the right to take it, the specific intent element of robbery is lacking. It does not matter that the defendant actually had a right to the property. It is only necessary that he believed in good faith that he was entitled to or could legally take the property.

*A good-faith belief is a generally held and honest belief. A person has no claim of right defense to robbery if he did not have a good-faith belief that he had a legal right to claim ownership of the actual property taken, or if he took more than the property he had a good-faith belief he had a right to take.*

*This claim of right instruction applies only to Count I, the charge of the robbery of Andrew Street. It does not apply to Count II, the charge of robbery of Sillette Sheler….*

The government must prove beyond a reasonable doubt that defendant did not believe in good faith that he had a right to take the property. If it does not do so, you must find him not guilty.

R. 30 at 6-7 (emphasis added to indicate language added to Crim. Jury Instruction for D.C., No. 9.521); *accord,* 5/1/23 Tr. 156, 158-59.

The jury began deliberations on May 1, 2023, and sent a note the following morning inquiring (1) whether all seven elements of robbery needed to be individually satisfied, and (2) what the legal definition is of "took" or "taken." 5/2/23 Tr. 3; R. 32. The trial court responded yes to the first question, and it explained that to prove taking, the government had to prove an actual physical taking of property by the defendant or someone the defendant was aiding and abetting. 5/2/23 Tr. 6-7; R. 33. It also reminded the jury to follow all the instructions in considering the offense. *Id*. Later that afternoon, the jury returned its verdicts acquitting Neal of both charges related to Street and convicting him only of the Sheler robbery. 5/2/23 Tr. 9-10; R. 31.

At sentencing, the trial court expressed skepticism that Neal could have believed that he bought for $1,000 a real watch that had not been stolen. *See* 6/30/23 Tr. 7-8. According to the trial court, either Neal knew that he was getting a fake watch for $1,000 or he knew he was receiving stolen property. *Id*. Had the government created any record at trial "for the abject unlawfulness of the way in which he got that watch," the trial court said it would have denied the claim of right instruction as to the Street robbery charge as well. *Id.* at 8.

In addition, although it had not instructed the jury that it should find Neal not guilty of robbery if the jury credited that Neal intended to return the wallet to Sheler when he got his money, the trial court stated, "The jury rejected Mr. Neal's explanation for why he took the wallet. The jury credited that Mr. Neal intended to deprive the owner of the property of the benefit of it, not that he was just going to give it back when he got his $1,000." *Id*. at 16.

Based on Neal's record, his age, and the fact that the trial court "did not credit that he had a genuine belief in his legitimate, lawful right to the money," the trial court exceeded the government's recommendation and sentenced Neal to 68 months incarceration. *Id.*

## SUMMARY OF ARGUMENT

Specific intent to steal is an essential element of robbery, derived from the common law of larceny. This court should reverse Neal's conviction for robbery of the wallet, because the government failed to prove that essential intent element beyond a reasonable doubt, and because the trial court failed to instruct the jury correctly and completely on it.

First, a rational jury could not find from the evidence at trial that Neal acted with intent to permanently deprive Sheler of the wallet at the time he took it, or even that he intended to use the wallet in a way inconsistent with Sheler's rights. The evidence was thus insufficient to support Neal's conviction.

In addition, the trial court understood incorrectly both the evidence and the District's binding law on the claim of right defense when it refused to instruct the jury that the claim of right instruction applied to the Sheler robbery charge. Contrary to the trial court's assertion, the evidence at trial, viewed in the light most favorable to Neal, was enough for a reasonable jury to conclude that Sheler was involved enough in the fake watch transaction that Neal honestly believed both she and Street were responsible for refunding him his $1,000. Neither the watch's murky origins nor Neal's effort to claim his money by picking up a money-holding object legally justify the trial court's refusal here to instruct the jury that the defense applied to both charged robberies.

Further exacerbating the situation, the trial court also failed to instruct the jury on the meaning of intent to deprive. It omitted any instruction that such intent would be lacking if the "jury credited that [] Neal … was just going to give it back when he got his $1,000," despite the trial court's later assumption that the jury's verdict reflected such an understanding of intent. 6/30/23 Tr. 16. Under the circumstances here, its omission constitutes reversible plain error.

For these reasons, this court should reverse Neal's conviction.

# ARGUMENT

## III. The evidence at trial was insufficient to sustain Neal's robbery conviction.

The court must reverse Neal's robbery conviction because the evidence at trial was insufficient to prove that he had the necessary intent. In reviewing sufficiency of the evidence claims, this court determines whether the evidence at trial was "strong enough that a jury behaving rationally really could find it persuasive beyond a reasonable doubt." *Rivas v. United States*, 783 A.2d 125, 134 (D.C. 2001) (en banc). It must view the evidence in the light most favorable to the government, "[b]ut this formulation does not mean that appellate review of sufficiency of the evidence is toothless." *Id.* Indeed, "[t]he fact that evidence is relevant does not automatically make it sufficient to support a criminal conviction," *id.*, for "the 'reasonable doubt' standard of proof is a formidable one." *In re As.H.*, 851 A.2d 456, 459 (D.C. 2004). If the jury is "required to cross the bounds of permissible inference and enter the forbidden territory of conjecture and speculation," the evidence is insufficient, and the court must reverse. *Rivas*, *supra*, 783 A.2d at 134 (quoting *Curry v. United States*, 520 A.2d 255, 263 (D.C. 1987)). *Cf. Williams v. United States*, 113 A.3d 554, 560 (D.C. 2015) (in assessing sufficiency of evidence for robbery, "courts may not substitute a set of assumptions about the person taking money . . . for the individualized analysis of that person's actual behavior") (citing *United States v. Wagstaff*, 865 F.2d 626, 629 (4th Cir.

1989)). In this case, a rational jury could not find that Neal had the required intent to steal the wallet from Sheler, and the court must therefore reverse the conviction.

Although codified at D.C. Code § 22-2801 (2013), "robbery retains its common law elements," and the government therefore "must prove larceny and assault" to sustain a robbery conviction. *Lattimore v. United States*, 684 A.2d 357, 359 (D.C. 1996); *accord, Williams, supra,* 113 A.3d at 560. An essential element of robbery is the specific intent to steal, derived from the common law of larceny. *Fitzgerald v. United States*, 228 A.3d 429, 439 (D.C. 2020); *Williams, supra,* 113 A.3d at 560-61; *see Lattimore, supra*, 684 A.2d at 359-60.[3]

Traditionally, the common-law definition of larceny requires proof that a defendant acted "with the intent to permanently deprive the rightful owner" of the property taken and carried away. *Durphy v. United States*, 235 A.2d 326, 327 (D.C. 1967); *accord, Lattimore, supra*, 684 A.2d at 360; *see Morissette v. United States*, 342 U.S. 246, 271 (1952) ("To steal means to *take away from one* in lawful possession without right with the *intention to keep wrongfully*.") (emphasis in original); *Corbin v. United States*, 120 A.3d 588, 591 n.3 (D.C. 2015) (citing

[3] "[F]ailure to renew a motion for a judgment of acquittal does not foreclose review of the sufficiency of the evidence." *Brown v. United States*, 128 A.3d 1007, 1014 (D.C. 2015) (cleaned up).

*Lattimore*).[4] Under common-law larceny, if a jury could properly find from the evidence that the defendant took the item "with the intention of permanently depriving [the owner] of his property," it does not matter that a defendant may have only briefly held onto the property. *Lattimore, supra*, 684 A.2d at 360; *see Groomes v. United States*, 155 A.2d 73, 75-76 (D.C. 1959) (in larceny trial where appellant gave items back to store, whether she intended to deprive owner of its property permanently at time she secured it is question for jury). But "[t]raditionally, larceny is not committed when the defendant takes property of the owner with the intent of borrowing it temporarily and of returning it thereafter." *Fredericks v. United States*, 306 A.2d 268, 270 (D.C. 1973).

In this case, the evidence fails to establish beyond a reasonable doubt that Neal intended to deprive Sheler permanently of the wallet. Viewed in the light most favorable to the government, the government's evidence of intent included that Neal (1) took the wallet from Sheler's car, (2) held it up in the air, (3) said to Sheler something to the effect that he would return it when they gave him a thousand dollars, (4) later told the police that the wallet was Sheler's and that he

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[4] *Cf. Pennsylvania Indemn. Fire Corp. v. Aldridge*, 73 App. D.C. 161, 117 F.2d 774, 775 (D.C. Cir. 1941) (comparing common-law definition of larceny to meaning of "theft" in insurance policy); D.C. Code § 22-3201(a)(2) (1982) (defining "deprive" in the theft statute, D.C. Code § 22-3211(b), as "To withhold property or cause it to be withheld from a person permanently or for so extended a period or under such circumstances as to acquire a substantial portion of its value").

was getting ready to take it to the address on the identification inside, and (5) gave the wallet to the police before he was arrested. *See* 4/26/23 Tr. 93-95, 149, 151-53, 197; 4/27/23 Tr. 60; App. Vol. II (Gov. Exh. 301). Although this evidence shows that Neal held the wallet for some period of time, it fails to prove that he had any intent to keep it permanently, or even long enough to acquire most of the wallet's value. Rather, Neal's words and actions, viewed in the light most favorable to the government, demonstrate that at most he intended to possess the wallet temporarily and then to return it to its owner. That proof falls short of larceny's (and thus robbery's) common-law required intent.

Nor does the government's evidence suffice to prove beyond a reasonable doubt that Neal intended to appropriate the wallet to a use inconsistent with its owner's rights. *Fredericks, supra,* 306 A.2d at 270 (defining intent for statutory offense, as of 1967, of grand larceny); *United States v. Johnson*, 140 U.S. App. D.C. 54, 57, 433 F.2d 1160, 1163 (1970) (same); *Mitchell v. United States*, 129 U.S. App. D.C. 292, 394 F.2d 767, 771 (1968) (rejecting "contention that larceny requires an intent to appropriate property permanently").[5] Again, a rational jury, without speculation, could not find from Neal's words and actions during a state of

[5] *See also In re Gil*, 656 A.2d 303, 305 n.7 (D.C. 1995) ("theft under District law 'does not require an intent to appropriate property permanently,' quoting *Fredericks*); D.C. Code § 22-3201(a)(1) (1982) (defining "appropriate" in the theft statute, D.C. Code § 22-3211(b), as "to take or make use of without authority or right").

some confusion that he intended to make use of the wallet in a way inconsistent with Sheler's rights as he sought his money back from the fake watch transaction before returning the wallet to Sheler. Because the evidence is insufficient to prove Neal had the required intent to steal the wallet from Sheler, his robbery conviction cannot stand.

## IV. The trial court failed to instruct the jury properly on the intent element for robbery of the wallet.

### C. The trial court wrongly refused to instruct the jury on the claim of right defense with respect to the wallet.

The trial court erred when it refused to instruct the jury that Neal could invoke the claim of right defense as to the wallet, and for this alternate reason, the court should reverse Neal's robbery conviction. "As a general proposition, a defendant is entitled to an instruction as to any recognized defense for which there exists evidence sufficient for a reasonable jury to find in his favor." *Mathews v. United States*, 485 U.S. 58, 63 (1989); *accord, Bonilla v. United States*, 894 A.2d 412, 417 (D.C. 2006); *Adams v. United States*, 558 A.2d 348, 349 (D.C. 1989). On appeal of the denial of a favorable jury instruction, this court reviews the evidence in the light most favorable to the defendant. *Adams, supra*, 558 A.2d at 349; *Richardson v. United States*, 131 U.S. App. D.C. 168, 170, 403 F.2d 574, 576 (1968). Where any evidence, however weak, supports giving the instruction, and where it "was not substantially covered in the charge actually delivered to the

jury," the failure to give the instruction is reversible error. *Blocker v. United States*, 239 A.3d 578, 590 (D.C. 2020) (quoting *Holloway v. United States*, 25 A.3d 898, 903 (D.C. 2011); *see Wilson v. United States*, 266 A.3d 228, 238 (D.C. 2022); *Higgenbottom v. United States*, 923 A.2d 891, 899 (D.C. 2007). Here, Neal was entitled to a claim of right jury instruction as to the wallet, and the trial court reversibly erred when it denied that request.

The claim of right defense, currently embodied in Criminal Jury Instructions for the District of Columbia, No. 9.521, provides that a defendant cannot be found guilty of robbery if the defendant "believed in good faith that s/he was entitled to or could legally take the property," whether or not the defendant actually had a right to the property. Crim. Jury Instruction for D.C., No. 9.521 (5th ed. 2009). While a defendant is not entitled to the claim of right instruction where the value of property taken exceeds the value of property to which the defendant believed he was entitled, the claim of right remains a valid defense to robbery in this jurisdiction. *See id.*; *Wilson, supra*, 266 A.3d at 238-39 (recognizing *Richardson* but affirming denial of jury instruction where any error was harmless and noting that defendant's associates also took items from apartment "that they did not in good faith believe belonged to them"); *[Curtis] Smith v. United States*, 330 A.2d 519, 521 (D.C. 1974) (affirming denial of jury instruction where defendant claimed $30 for bad drugs but took more than $500); *Richardson, supra*, 131 U.S. App.

D.C. at 169-70, 403 F.3d at 575-76 (reversing for failure to give instruction where defendant was owed $270 from gambling and took $138 from wallet).

In this case, the trial court wrongly refused to instruct the jury that the claim of right defense extended to Sheler's robbery. First, contrary to the trial court's conclusion, *see* App. 32 (5/1/23 Tr. 93), the jury heard sufficient evidence to find that Sheler was a participant in the sale of the fake watch and the subsequent refusal to refund Neal's money. Although Street was the primary person engaged in the watch sale, the jury also heard Sheler admit that she was present for the initial sale, 4/26/23 Tr. 118; heard that she participated in the phone call when Neal called to complain that the watch was fake, saying, "You know we don't sell fake things," 5/1/23 Tr. 25; and heard that she knew by Oct. 29, 2022 about the proposed second watch transaction, 4/26/23 Tr. 85, 119-20. Neal also testified about other commercial dealings with Sheler and said he thought Sheler and Street had a consignment shop. 5/1/23 Tr. 21, 61. This evidence, as well as evidence that Sheler supported Street with lodging and transportation, was enough for a reasonable jury to conclude that Neal believed that Sheler *and* Street were responsible for reimbursing him for the fake watch. *See* 4/26/23 Tr. 77, 113, 115; 4/27/23 Tr. 25; *see also* 4/26/23 Tr. 91, 96-97, 195; 4/27/23 Tr. 35, 60-61. *But see* 4/27/23 Tr. 69 (Street testifying that, as his mother's health aide, he takes care of

all her daily responsibilities). The trial court thereby erred when it said Sheler was not engaged in the transaction. App. 32 (5/1/23 Tr. 93).

The trial court further erred by misinterpreting this court's binding law on the claim of right defense, incorrectly asserting that "from the oldest cases that apply here, in *Smith* … and *Robertson* – the holdings have been that claim of right is particularized to the property taken." App. 28 (5/1/23 Tr. 89). Viewed properly, the claim of right defense in this jurisdiction is not as narrow as the trial court claimed, nor does it require a defendant to believe "he had a legal right to claim ownership of the actual property taken." App. 18 (5/1/23 Tr. 79); 5/1/23 Tr. 159 (trial court instruction); R. 30 at 7 (same); *see* 6/30/23 Tr. 16 (implying that Neal would have needed "a genuine belief in his *legitimate, lawful* right to the money) (emphasis added).[6]

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[6] The trial court here may also have been improperly influenced by its belief that this court's approach to the claim of right defense is "primitive" and "antiquated," in contrast to some other jurisdictions. App. 30 (5/1/23 Tr. 91). Some states, for example, reject the claim of right defense for robbery or for robbery where the property was taken in payment of a debt. *See State v. [Tremaine] Smith*, 118 A.3d 49, 57 n.7 (Conn. 2015) (identifying and distinguishing those jurisdictions from Connecticut). Others – often relying on specific state statutes – allow the defense only with respect to the taking of chattel, not money debts. *See, e.g., State v. Stenger*, 226 P.3d 441, 457 (Haw. 2010); *State v. Ramsey*, 56 P.3d 484, 487 (Or. Ct. App. 2002); *State v. Winston*, 295 S.E.2d 46, 50-51 (W.Va. 1982); *Edwards v. State*, 181 N.W.2d 383, 387-88 (Wis. 1970). Given the rationale in the District clearly linking the claim of right defense to intent to steal, it is arguable that the District's law is in fact more coherent than that of those other jurisdictions.

Over fifty years ago in *Richardson, supra*, the D.C. Circuit reversed a robbery conviction because the defendant's request for the standard claim of right defense instruction was erroneously denied.[7] *Richardson, supra*, 131 U.S. App. D.C. at 170, 403 F.2d at 576. In that case, the defendant believed that the complainant "owed him a gambling debt of $270 which he had several times unsuccessfully tried to collect." *Id*. at 575. Exercising self-help, the defendant took the complainant's wallet, reached into it, and removed $138 in cash. *Id*. The court recognized that a defendant cannot be guilty of robbery "unless he has the specific intent to take the property of another" and found that, "[v]iewing the evidence most favorably to the defendant, … he believed in good faith that he was entitled to the money. If so, he did not have that specific intent." *Id.* at 575-76. In other words, the defendant's good-faith belief in his right to the money negated robbery's intent element, regardless of any illegal origins of the debt. *Id.* (citing *Morissette, supra,* 342 U.S. 246, for the principle that "An unfounded but genuine belief that the property taken had been abandoned negatives specific intent").

Similarly, trial evidence in this case, viewed in the light most favorable to Neal, showed that he had a good-faith belief that he was entitled to a refund of the thousand dollars he had paid for a watch that turned out to be fake. *See* 5/1/23 Tr.

[7] *Richardson* is binding precedent in this court. *See M.A.P. v. Ryan*, 285 A.2d 310, 312 (D.C. 1971); *accord, Wilson, supra*, 266 A.3d at 238 n.5.

22-25; *see also* App. Vol. II (Gov. Exh. 401, 403, 406) (discussing fake watch). He took the wallet – an object commonly used to store money – as he sought the reimbursement of his funds, reasonably viewing the money-holder as a proxy for the money. *See Rhodes v. United States,* 354 A.2d 863, 864 n.4 (D.C. 1976) (not identifying taking of wallets in addition to money as reason to deny claim of right instruction); *Richardson, supra,*131 U.S. App. D.C. at 169-70, 403 F.2d at 575-76 (same). *Cf. Williams, supra*, 113 A.3d at 556 & n.3 (complainant spoke of wallet and money interchangeably, telling police his money had been taken when defendants had only the wallet but no money). Nor did any evidence at trial suggest that the value of the wallet with its contents exceeded the amount of money to which Neal believed he had a right to, such that Neal was taking more than he honestly believed belonged to him. *Compare with Wilson, supra,* 266 A.3d at 238-39 (concluding any error was harmless and noting that defendant's associates also took items from apartment "that they did not in good faith believe belonged to them"). A reasonable jury therefore could credit that Neal had an honest belief that Sheler and Street owed Neal his $1,000 for the watch and that he was trying to effectuate that exchange when he took the wallet, believing it represented at least some of the money he was owed. *Cf. State v. Sawyer*, 110 A. 461 (Conn. 1920) (cited in *[Tremaine] Smith, supra*, 118 A.3d at 57 n.7) (finding no felonious intent to support larceny conviction where landlady took tenant's hand

bag until the tenant paid the promised $5 for damage done to the room, because "belief in [a] right to take the thing involved, even though a mistaken belief, … is essentially inconsistent with the presence of an intent to steal").

Contrary to the trial court's misinterpretation, neither *Smith, supra*, 330 A.2d 519, nor its companion case *Rhodes*, *supra*, 354 A.2d 863, stands for the principle that the claim of right defense in the District of Columbia is particularized as to the nature of the property taken or that a defendant must believe he has a *legal* right to the property. Decided a few years after *Richardson*, the *Smith* court held that a claim of right instruction was not required in that case, but its rationale was not based on the particular nature of the items taken or the fact that the debt at issue stemmed from the (illegal) sale of contraband. *See id*. at 521. Instead, *Smith* validated *Richardson's* theory that the rationale for the claim of right defense lies in the lack of specific intent to rob. *Id*. at 521. It held, however, that Smith – who wanted a refund of his $30 spent on what turned out to be bad marijuana – was not entitled to the instruction because he took more than fifteen times the amount he claimed he was due and because he took it from two other people, Byrd and Batten, whom no one claimed were connected in any way to the marijuana transaction. *See id.*; *see also Rhodes, supra*, 354 A.2d at 864 (adhering to the ruling in *Smith* without suggesting that the wallets taken with cash from Byrd and Batten altered any of the analysis).

Although the trial court here referred as well to *Robertson v. United States*, 429 A.2d 192 (D.C. 1981), that case lends no support to its ruling. In *Robertson*, the court held that the evidence of an employer's actions toward the wages of other employees was properly excluded as irrelevant to the defendant's claim of right to embezzled money. *Id*. at 195-96. In dicta, the court observed that "we doubt that appellant was entitled to any instruction on the claim of right defense," because he was charged with embezzling over three times the amount to which he claimed entitlement. *Id.* at 195. At most, as in *Smith* and *Rhodes*, *Robertson* stands for the idea that the amount of money taken cannot exceed the amount of money to which a defendant has an honest belief of entitlement.[8] The cases thus do not preclude a claim of right instruction where the nature of the property taken to repay a debt may be different, as long as the defendant honestly believed he was entitled to it and the value does not exceed the amount of the debt. *See* Crim. Jury Instruction

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[8] Although *Townsend v. United States*, 549 A.2d 724, 727 n.6 (D.C. 1988), suggests a different claim of right jurisprudence, it is inconsistent with *Richardson*, relies on authorities that are inconsistent with *Richardson*, misrepresents the holding of *Smith*, and is best understood as misguided dicta unnecessary to the court's holding that Townsend was not entitled to a new trial based on newly discovered evidence.

Relying on *Townsend*, the discussion of the claim of right defense in *Simmons v. United States*, 554 A.2d 1167, 1169-70 & nn. 5, 8 (D.C. 1989), is similarly dicta and lacking in authoritative support. Neither case justifies the trial court's denial of the defense instruction here.

for D.C., No. 9.521; *see also Wilson, supra*, 266 A.3d at 238-39 (any error in failing to give instruction was harmless, evidence showed that more property was taken from apartment than what owner believed she was entitled to, and "a defendant cannot assert the claim of right defense when he takes property that he did not in good faith believe belonged to him").

Moreover, to the extent the trial court's decision to deny the instruction was motivated by its belief that Neal had no "legitimate, lawful right" to seek a refund for the watch because at the time of purchase he either knew the watch was fake or stolen, that was also error. 6/30/23 Tr. 16. Properly interpreted, the claim of right defense in the District may arise where a claimed debt originates from an illegal transaction like gambling or drug sales, as in *Smith*, *Rhodes*, and *Richardson*. *See Rhodes, supra*, 354 A.2d at 864 (marijuana sale); *Smith, supra*, 330 A.2d at 520-21 (same); *Richardson, supra,*131 U.S. App. D.C. at 169, 403 F.2d at 575 (gambling debt). What matters to the analysis is whether the defendant honestly believed "that he was entitled to *or* could legally take the property." Crim. Jury Instruction for D.C., No. 9.521 (emphasis added). It is thus not limited to circumstances where the defendant's claim of right stems from a legal transaction or where the defendant believes he has a legal claim to ownership.[9]

[9] In its instruction on the claim of right defense as to the charged Street robbery, the trial court added a sentence to the standard jury instruction that reflected its misinterpretation of the District's claim of right jurisprudence. As discussed

Nor does the charge that was actually delivered to the jury here substantially cover the claim of right defense as to the wallet. On the contrary, the trial court explicitly instructed the jury that the claim of right instruction did not apply to the robbery of the wallet charge, and the jury then proceeded to convict only as to that charge. 5/1/23 Tr. 159.

In sum, viewing the evidence in the light most favorable to Neal, enough evidence existed to raise the claim of right defense as to the wallet. The trial court therefore erred in refusing to give the requested instruction, relying instead on its flawed view of both the evidence at trial and the state of the law on the claim of right defense. Because Neal's defense to the wallet robbery charge was his lack of intent to steal, and because the claim of right defense as to the wallet was not adequately covered in the other instructions, this court should reverse Neal's sole conviction.

**D. The trial plainly erred when it failed to instruct the jury fully on the meaning of intent to steal for the offense of robbery.**

As discussed *supra* in Part I, if a jury found that Neal's intent was only to take the wallet temporarily, without acquiring or using its value in a way inconsistent with Sheler's rights, that finding would not satisfy the intent element

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above, that additional language reflects legal error. The trial court should be precluded from using that erroneous language if the Sheler robbery charge is remanded for a new trial.

of robbery. *See supra*, Part I. Based on the evidence at trial, the trial court therefore should have instructed the jury more specifically – as it later implied at sentencing that it had – that it could not find Neal guilty of robbery unless the government proved beyond a reasonable doubt that Neal intended to deprive Sheler of the wallet permanently or to make use of it in a way inconsistent with her rights. The trial court's failure to do so here was plain error. *See Watts v. United States*, 362 A.2d 706, 708-09 (D.C. 1976) (en banc) (plain error review where defense counsel did not object to instruction at trial).

For reversal under plain error review, Neal must show that the trial court's failure to instruct the jury properly on robbery's essential intent element was "[1] error that is [2] plain (meaning clear or obvious), that [3] affects substantial rights, and that, if not corrected, [4] would result in a miscarriage of justice (meaning conviction of an innocent defendant) or otherwise would seriously affect the fairness, integrity or public reputation of judicial proceedings." *Malloy v. United States*, 186 A.3d 802, 814 (D.C. 2018) (cleaned up). "When reviewing a claim of instructional error, [the] court … examine[s] the instructions in their entirety." *Jackson v. United States*, 653 A.2d 843, 847 (D.C. 1995) (citing *Watts, supra,* 362 A.2d at 709). The court will not reverse where "no rational jury, shown by its verdict to have found the facts necessary to convict the defendant under the instructions as given, could have failed, if fully instructed on each element, to have

found in addition the facts necessary to comprise the omitted element." *White v. United States*, 613 A.2d 869, 879 (D.C. 1992) (en banc).

As set forth in Part I, the common-law intent required to prove robbery in the District is an "intent to permanently deprive the rightful owner" of the taken property. *Lattimore, supra*, 684 A.2d at 360. Whether a defendant had the intent to permanently deprive another of their property at the time the defendant took it is a question for the jury. *Morissette, supra*, 342 U.S. at 276; *Lattimore, supra*, 684 A.2d at 360; *see also Groomes*, *supra,* 155 A.2d at 75.

In its jury instructions here, the trial court set forth the intent element by instructing the jury that it must find that the defendant, "took the property without right to it and intending to steal it… It is necessary that the defendant intended to deprive complainant of his or her property and to take it for his own use." 5/1/23 Tr. at 156, 158. While a more detailed definition of intent may not be necessary in all robbery cases, the evidence in this case, Neal's defense arguments, and the common law of robbery and larceny should have made it obvious to the trial court that more was necessary here. *See, e.g., supra* at 18-20. But the trial court did not define the word "deprive" or explain the temporal component of "deprive." *See id.*; R. 30 at 6-7; 5/1/23 Tr. 156-59. It also did not instruct the jury that Neal lacked the intent to deprive Sheler of her property if "he was just going to give it back when he got his $1,000." 6/30/23 Tr. 16. And even taken as a whole, the instructions did

not inform the jury that it is necessary that Neal intended to deprive Sheler permanently of her property.[10] *See supra* at 18-20; R. 30 at 6-7; 5/1/23 Tr. 156-59. The trial court's failure to clarify the full meaning of intent to deprive, especially as to permanence, constitutes error that was plain.[11]

The trial court's plain error here is reversible because, if fully instructed on each element, a rational jury could have failed to find the "facts necessary to comprise the omitted element." *White, supra*, 613 A.2d at 879. It was uncontested at trial that Neal expressed his intention to give the wallet to Sheler when he got $1,000, the amount he had paid for the watch he wanted to return. *See* 4/26/23 Tr. 95, 197; 5/1/23 Tr. 47. Neal then willingly gave the wallet to the police, again expressing the intention he had to give it back to Sheler. *See* App. Vol. II (Gov. Exh. 301). Based on that evidence of Neal's intent to have the wallet only temporarily, not making use of it in a way that went against Sheler's rights, it is highly likely the jury would have found that Neal lacked the necessary intent for robbery if it had been instructed on the meaning of "deprive" – particularly given

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[10] They also did not inform the jury of any requirement that Neal intend to appropriate the wallet to a use inconsistent with Sheler's rights.

[11] Having never given that more detailed instruction, the trial court's statement at sentencing about what the jury must have credited or rejected is unfounded. *See* 6/30/23 Tr. 16. Without any instruction that Neal lacked the necessary intent to rob Sheler if he intended to give the wallet back when he got his money refunded, the jury could have – and likely did – accept Neal's explanation but believed it counted as robbery.

the doubt the jury expressed about the government's case through its acquittals. A reasonable probability thus exists that the trial court's failure to instruct properly on the intent element had a prejudicial effect on the outcome of the trial, satisfying the third prong of plain error review. *Green v. United States*, 948 A.2d 554, 560 (D.C. 2008) (citing *United States v. Dominguez-Benitez*, 542 U.S. 74, 81-82 (2004)).

Moreover, to leave standing a conviction for a crime where a rational jury would have probably acquitted Neal due to his lack of requisite intent for robbery would be unfair and would reduce confidence in the court's integrity. The evidence of intent to steal here was controverted and not overwhelming, and the government's case was weak enough that the jury acquitted Neal of the other, related charges at trial. *Malloy, supra*, 186 A.3d at 821-22 & nn. 91-92 (distinguishing cases where court declined to reverse under fourth plain error criterion). Because the trial court plainly and prejudicially erred in failing to instruct the jury fully on the meaning of intent to steal in this case that was all about the question of intent, this court should reverse and remand for further proceedings.

## CONCLUSION

For the foregoing reasons, Neal respectfully requests that the court reverse his robbery conviction.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I certify that I have served a copy of the foregoing Brief electronically using the Appellate E-Filing system on Chrisellen Kolb, Esq., U.S. Attorney's Office, 601 D Street, NW, Washington, DC 20530, on this 21st day of March, 2024.

*/s/ Cecily E. Baskir*
Cecily E. Baskir

# District of Columbia
# Court of Appeals

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**Pursuant to Administrative Order No. M-274-21 (amended May 2, 2023), this certificate must be filed in conjunction with all briefs submitted in all criminal cases designated with a "CF" (criminal felony), "CM" (criminal misdemeanor), "CT" (criminal traffic), and "CO" (criminal other) docketing number. Please note that although briefs with above designations must comply with the requirements of this redaction certificate, criminal sub-case types involving child sex abuse, cruelty to children, domestic violence, sexual abuse, and misdemeanor sexual abuse will not be available for viewing online.**

If you are incarcerated, are not represented by an attorney (also called being "pro se"), and not able to redact your brief, please initial the box below at "G" to certify you are unable to file a redacted brief. Once Box "G" is checked, you do not need a file a separate motion to request leave to file an unredacted brief.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21, amended May 2, 2023, and Super. Ct. Crim. R. 49.1, and removed the following information from my brief:

A. All information listed in Super. Ct. Crim. R. 49.1(a) has been removed, including:

(1) An individual's social-security number
(2) Taxpayer-identification number
(3) Driver's license or non-driver's' license identification card number
(4) Birth date
(5) The name of an individual known to be a minor as defined under D.C. Code § 16-2301(3)
(6) Financial account numbers

(7) The party or nonparty making the filing shall include the following:

(a) the acronym "SS#" where the individual's social-security number would have been included;
(b) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
(c) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
(d) the year of the individual's birth;
(e) the minor's initials;
(f) the last four digits of the financial-account number; and
(g) the city and state of the home address.

B. Any information revealing the identity of an individual receiving mental health services and/or under evaluation for substance-use-disorder services. *See* DCCA Order No. M-274-21, May 2, 2023, para. No. 2.

C. All pre-sentence reports (PSRs); these reports were filed as separate documents and not attached to the brief as an appendix.

D. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

E. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

F. Any other information required by law to be kept confidential or protected from public disclosure.

Initial here

**G. I certify that I am incarcerated, I am not represented by an attorney (also called being "pro se"), and I am not able to redact this brief. This form will be attached to the original filing as record of this notice and the filing will be unavailable for viewing through online public access.**

/s/ Cecily E. Baskir
Signature

23-CF-560
Case Number(s)

Cecily E. Baskir
Name

March 21, 2024
Date

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