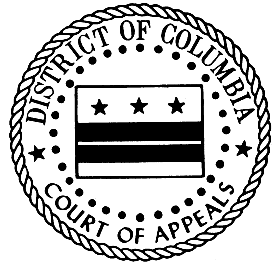

Clerk of the Court
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BRIEF FOR APPELLANT

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 23-CT-2

GIBRAM WILLIAM ARMSTEAD,

Appellant,

v.

DISTRICT OF COLUMBIA,

Appellee.

APPEAL FROM THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION,
CDC4095-22

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RECUSAL NOTICE

[Pursuant to DCCA Rule 28 a (2)]

A. LIST OF ALL PARTIES, INTERVENORS, AMICI CURIAE, AND THEIR COUNSEL IN THE TRIAL COURT OR AGENCY PROCEEDING AND IN THE APPELLATE PROCEEDING:

   a. Gibram Armstead
      Defendant / Appellant;

   b. Attorney Julie Swaney
      Counsel for Gibram Armstead at trial;

   c. Attorney Jeffrey Cargill
      Assistant Attorney General for the District of Columbia
      Counsel for the Government at trial;

   d. Attorney Sweta Patel
      Counsel for Appeal;

   e. Attorney Caroline Van Zile
      Solicitor General for the District of Columbia
      Counsel for the Government on appeal.

B. THE APPELLANT-DEFENDANT IS NOT A CORPORATION.

C. THE APPELLANT-DEFENDANT IS NOT A PARTNERSHIP.

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STATEMENT OF THE ISSUE

1. Whether the trial court erred when it failed to suppress the tangible evidence – firearm and ammunition – when it was obtained as a result of the unlawful interrogation of Mr. Gibram Armstead by police in violation of his Fifth Amendment right?
2. Whether the trial court erred when it failed to grant the motion for judgement of acquittal after the close of Mr. Armstead's case when he raised the issue that D.C. Code § 7-2502.01(a) and D.C. Code § 7-2506.01 were unconstitutional under *Bruen* when an individual has a lawful license and/or registered firearm in another jurisdiction and the individual is only traveling through the District of Columbia with no intention to stop but for a traffic violation?

STATEMENT OF THE CASE

On July 16, 2022, appellant Gibram Armstead was charged with one count of possession of unregistered firearm, one count of unlawful possession of ammunition, and one count of no permit. After a bench trial on December 2, 2022, Mr. Armstead was found guilty of attempted possession of unregistered firearm, attempted unlawful possession of ammunition, and no permit. Mr. Armstead was sentenced to 30 days incarceration, execution suspended as to all, unsupervised probation for six (6) months, for each count to run concurrent and a total of one-hundred and fifty dollars ($150) fine to the Victims of Violent Crime Compensation Act of 1981. *See* Judgment and Commitment Order. Mr. Armstead filed a timely notice of appeal on January 3, 2023.

STATEMENT OF FACTS

The government presented five witnesses in its case-in-chief: Detective Kirk Delpo, Investigator Daniel Tipps, Officer Allorie Sanders, DMV Investigator Robert Johnson, and Officer Doris Brown. Mr. Armstead testified in his defense.

On October 28, 2022, Mr. Armstead filed a motion to suppress statements and tangible evidence. The government filed its opposition on November 15, 2022. The motions hearing was consolidated into the trial testimony.

A. Government's Case-in-Chief

On July 16, 2022, MPD Detective Kirk Delpo, a member of the Violent Crime Suppression Team (formerly Gun Recovery Unit), was working overtime detail in the traffic safety division conducting seatbelt enforcement in the 1600 block of Bladensburg Road, NE. 12/7/2022 Tr 12:13-2, 13:1-12. He noticed a white Mercedes drive by with the driver not wearing a seatbelt. Tr. 13:15-16. After observing this infraction, Detective Delpo conducted a traffic stop. Tr. 14:22-25, 15:1-2. Mr. Armstead was later identified as the driver of the vehicle. While Detective Delpo was getting

Mr. Armstead's information and informing him of the reason for the stop, another MPD vehicle pulled up to the scene and four officers exited the police cruiser and surrounded Mr. Armstead's vehicle. Tr. 19:18-25, 20:1-2. These officers were a part of the Violent Crime Suppression Team, formerly known as the Gun Recovery Unit. Tr. 20:3-13. These officers wore plain clothes with bullet proof vests and were outside of Mr. Armstead's vehicle while Detective Delpo did a check of Mr. Armstead's information through the WALES system. Tr. 20:16-21, 21:4-15. The officers told him they were doing a check of his license to see if he had a valid driver's license and that it was an arrestable offense. Tr. 99:12-25. Then, Investigator Tipps ordered Mr. Armstead out of the vehicle to stand near the rear. Tr. 100:1-17.

While Detective Delpo determined through the WALES check that Mr. Armstead did not have a valid permit, Officer Tipps was speaking to Mr. Armstead and asked, "you don't have a firearm, do you?" Tr. 165:1-11. Mr. Armstead replied that he did and explained that there was a disassembled firearm in the vehicle. Tr. 101:13-25, 102:1-4. Prior to asking Mr. Armstead this question, the officer did not read him his *Miranda* rights. The officers then searched the vehicle and found rounds of ammunition scattered on the floor, a magazine in the pocket of the driver's door, the receiver portion of a firearm in the center console, and the slide portion of a firearm in a zipped backpack in the backseat of the vehicle. Tr. 40, 41, 42. After the disassembled firearm was found, Mr. Armstead was arrested for possession of unregistered firearm, unlawful possession of ammunition, and no permit when it was determined he did not have a license and registered firearm in the District of Columbia.

The evidence was collected and transported to the station by Officer Sanders. Tr. 114:6-9. The DMV Investigator Robert Johnson testified that he later conducted a search and certified that Mr. Armstead did not have a license to drive in the District of Columbia. Tr. 123:9-21. Officer

Brown testified she conducted an official check and certified that Mr. Armstead did not have a license to carry a firearm or a registered firearm in the District of Columbia. Tr. 132:20-22, 133:15-23.

B. Defense Case-in-Chief

Mr. Armstead testified on July 16, 2022, he was driving from Maryland to Virginia to meet his girlfriend at a restaurant in Arlington. Tr. 136:20-25, 137:1-11. Mr. Armstead is a valid firearm license holder in both Maryland and Virginia through his Utah firearm license. Tr. 146:6-9. At the time of the incident, Mr. Armstead believed he could travel through the District of Columbia if his firearm was disassembled. Tr. 142:1-15. He attempted to abide by the law by putting pieces of his firearm in different compartments in his vehicle. Tr. 142:16-21. However, he testified that he later learned after this incident that he misinterpreted the law and the disassembled firearm needed to be in the trunk rather than the passenger compartment. Tr. 148:4-14.

When the officers surrounded Mr. Armstead's vehicle and ordered him out of it, he testified he did not believe he was free to leave as he thought he would be arrested for not having a driver's license. Tr. 140:1-24. After Investigator Tipps questioned Mr. Armstead about having a firearm, he felt obligated to answer due to his firearm training and what he had been taught when police question individuals. Tr. 141:1-21.

C. Motion for Judgement of Acquittal

Mr. Armstead argued under *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S._,_-_, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022), the regulatory statutes he was charged with as well as the exception under the transportation statute, D.C. Code § 22-4504.02(b)(1), is unconstitutional because Mr. Armstead had a valid license to possess a firearm in Maryland and Virginia. Tr. 175:10-21. The statute allows for transportation between jurisdiction, but for the traffic stop, he

would not have been present in the District of Columbia to implicate the possession of unregistered firearm or unlawful possession of ammunition crimes and be in violation of either of those crimes as it was only his intention to pass through the District. Tr. 175:22-25, 176:1-6. Though the statute allows for firearms to be in the trunk of a vehicle during transport, Mr. Armstead attempted to abide by the law as he understood it at the time. Tr. 176:7-16.

The trial court denied the motion finding that the regulatory statutes about how an individual can carry a disassembled firearm through the District of Columbia without stopping anywhere is not unconstitutional as written because it gives a manner of how to do it. Tr. 178:8-14. Specifically, the trial court found the fact that the statute requires the firearm to be in the trunk rather than the back seat is not of constitutional importance. Tr. 178:15-22.

D. Trial Court Findings

In ruling on the motion to suppress statements and tangible evidence, the trial court found that Mr. Armstead was in police custody at the time as it was clear he did not believe he was free to leave. Tr. 172:1-13. The trial court further found when Officer Tipps questioned Mr. Armstead about the firearm it was intended to elicit an incriminating response. 172:14-19. The trial court found but for Mr. Armstead's statement the officers would not have found the disassembled firearm in his vehicle. Tr. 173:4-11. The trial court suppressed Mr. Armstead's statement. However, because it found that Mr. Armstead was not coerced into providing the statements and that they were voluntarily, the tangible evidence found as a result of that statement could not be suppressed. Tr. 172:20-22, 174:6-10. Based on the remaining record, the trial court found Mr. Armstead guilty of all three charges.

ARGUMENT

I. A *DE NOVO* REVIEW OF THE TRIAL COURT'S DENIAL OF THE MOTION TO SUPPRESS TANGIBLE EVIDENCE REQUIRES REVERSAL BECAUSE THE EVIDENCE WAS OBTAINED AS A RESULT OF UNLAWFUL INTERROGATION AND THE STATEMENT WAS NOT VOLUNTARY IN VIOLATION OF THE FIFTH AMENDMENT.

In reviewing the trial court's denial of a motion to suppress, the Court of Appeal's scope is limited. Deference must be given to the trial court's factual findings. *Lawrence v. United States*, 566 A.2d 57, 60 (D.C. 1989). The facts and all reasonable inferences therefrom must be viewed in favor or sustaining the trial court's ruling. *Peay v. United States*, 597 A.2d 1318, 1320 (D.C. 1991) (en banc). However, the review of the trial court's legal conclusions is *de novo*. *Lewis v. United States*, 632 A.2d 383, 385 (D.C. 1993).

Evidence obtained in violation of the Constitution is inadmissible at trial. *Wong Sun v. United States*, 371 U.S. 471, 484 (1963). The "fruits" of an illegal search can include physical evidence, police observations, identifications, and statements. *Robinson v. United States*, 76 A.3d 329, 342 (D.C. 2013); *Oliver v. United States*, 656 A.2d 1159, 1172 (D.C. 1995). Only if the evidence was obtained through means sufficiently distinguishable to be purged of the primary taint is it admissible. *New York v. Harris*, 495 U.S. 14 (1990); *Wong Sun*, 371 U.S. at 488. The burden of showing that the discovery of the at-issue evidence was sufficiently attenuated from the illegal action rests with the government. *Dunaway v. New York*, 442 U.S. 200, 218 (1979).

In this case, the trial correctly found that Mr. Armstead's statements were made in violation of his *Miranda* rights under the Fifth Amendment. Though *United States v. Patane*, 542 U.S. 630, 642 (2004) held the "fruit of poisonous tree doctrine" does not apply to *Miranda* violations, the instant case is distinguishable. The only reason why the police knew that a disassembled firearm was in Mr. Armstead's vehicle was because of the result of their unlawful interrogation. Unlike in

Patane, prior to the officers asking Mr. Armstead questions, they had no suspicion that a firearm could be in the vehicle. The only crime that they were aware Mr. Armstead may have committed was no permit and he was not under arrest at that time. In *Patane*, the officers already had information that the defendant was in possession of a firearm and were in the process of arresting him. While giving *Miranda*, the defendant interrupted the officers and then proceeded to tell them where the firearm was in the house.

A *Miranda* violation raises a presumption of coercion, *Oregon v. Elstad*, 470 U.S. 298, 306-307, and n. 1, 84 L. Ed. 2d 222, 105 S. Ct. 1285 (1985). The Fifth Amendment privilege against compelled self-incrimination extends to the exclusion of derivative evidence, *see United States v. Hubbell*, 530 U.S. 27, 37-38, 147 L. Ed. 2d 24, 120 S. Ct. 2037 (2000) (recognizing "the Fifth Amendment's protection against the prosecutor's use of incriminating information derived directly or indirectly from … [actually] compelled testimony"); *Kastigar v. United States*, 406 U.S. 441, 453, 32 L. Ed. 2d 212, 92 S. Ct. 1653 (1972).

Therefore, because a *Miranda* violation occurred in this case and the only reason the officers found the tangible evidence – firearm and ammunition – was because of Mr. Armstead's statements, it is clear his statements were not voluntary. He was surrounded by armed officers in tactical gear that were part of the rebranded Gun Recovery Unit. If the officers would have properly given *Miranda* without compelling Mr. Armstead's statements first, he would have been given the opportunity to knowingly, intelligently, and voluntarily waive *Miranda* or remain silent. If he would have remained silent and never given the statement about the firearm, then the officers would have never known about the disassembled firearm in the vehicle and there would be no tangible evidence. For those reasons, it is clear Mr. Armstead's statements were not voluntarily

and coerced by the officers. The trial court erred in not applying *Wong Sun* and the tangible evidence should have been suppressed.

II. A *DE NOVO* REVIEW OF THE TRIAL COURT'S DENIAL OF THE MJOA REQUIRES REVERSAL OF THE CONVICTION BECAUSE THE REGULATORY STATUTES OF FIREARM POSSESSION AND TRANSPORT ARE UNCONSTITUTIONAL UNDER *BRUEN* WHEN AN INDIVIDUAL MAY LAWFULLY POSSESS A FIREARM IN ANOTHER JURISDICTION TO WHICH HE IS TRAVELING AND HAS NO INTENTION TO STOP IN THE DISTRICT OF COLUMBIA BUT FOR A TRAFFIC VIOLATION.

The Second Amendment of the Constitution guarantees the right of Americans to bear arms. U.S. Const. amend. II. In *Bruen*, the United States Supreme Court expanded this constitutional right and restricted the state's ability to restrict citizens' rights to carry firearms publicly for their self-defense. The Court in *Bruen* determined the standard for applying the Second Amendment is:

> "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command." *Konigsberg*, 366 U.S., at 50, n. 10, 81 S. Ct. 997, 6 L.Ed. 2d 105.

Bruen, 142 S. Ct. at 2130.

This Court reviews a challenge to the constitutionality of a statute *de novo*. *See Beeton v. District of Columbia*, 779 A.2d 918, 921 (D.C. 2001) (quoting *Jemison v. National Baptist Convention*, 720 A.2d 275, 281 (D.C. 1998) (internal quotation and other citations omitted)).

In this case, Mr. Armstead challenges the constitutionality of the regulatory firearm statutes, D.C. Code § 7-2502.01(a) and D.C. Code § 7-2506.01, under the new *Bruen* standard. Specifically, when Mr. Armstead had the lawful ability to possess a firearm in the jurisdictions he was traveling to and from and the only reason for the violation of the District of Columbia regulation was because of a traffic stop. Additionally, Mr. Armstead attempted to abide by the law

by disassembling the firearm but because he misinterpreted the transport statute, D.C. Code § 22-4504.02, he was in violation of a law that regulated his constitutionally protected conduct.

Like in *Bruen*, it is clear the plain text of the Second Amendment protects Mr. Armstead's conduct – traveling with a lawfully possessed, disassembled firearm to another place where he can lawfully possess it. Therefore, it is the government's burden to show that the transporting regulation and possession regulations are consistent with the Nation's historical tradition of firearm regulation. Though the transporting regulation allows for transport if an individual follows specific rules, i.e. unloading the firearm, storing it in the trunk or locked container, etc., it still places an undue burden on individuals that are legally able to possess firearms in different jurisdictions that only plan to travel through the District of Columbia without stopping. As in Mr. Armstead's case, the only reason why he was in violation of the statute and implicated for the crimes was because he was stopped for a minor traffic violation. Therefore, the appellant's conviction for the firearm offenses must be reversed as a matter of law as Mr. Armstead should not be convicted of violations of statutes that are unconstitutional and infringe on his Second Amendment rights.

CONCLUSION

The trial court erred in failing to suppress the tangible evidence – firearm and ammunition – when it was obtained by the unlawful interrogation of Mr. Armstead in violation of his Fifth Amendment rights, and his convictions for the firearm offenses must be reversed as the statutes for which he violated are unconstitutional under *Bruen* and the Second Amendment.

RELIEF SOUGHT

Appellant Gibram Armstead's conviction for attempted possession of unregistered firearm and unlawful possession of ammunition must be reversed with instructions to enter a judgment of acquittal.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on July 25, 2023, a copy of the forgoing Appellant's Brief, was e-filed attention Caroline Van Zile, Solicitor General for DC, via D.C. Court of Appeals E-Filing System.

/s/ Sweta Patel /s/
Sweta Patel

APPENDIX

Judgment and Commitment Order

Cited Transcript Pages

District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

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 or under evaluation for substance-use-disorder services.

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/ Sweta Patel
Signature

2023-CT-2
Case Number(s)

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Date

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