DISTRICT OF COLUMBIA COURT OF APPEALS

Appeal No. 23-CF-560

Delvin T. Neal,

Appellant

v.

United States of America,

Appellee

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

APPELLANT DELVIN T. NEAL'S REPLY BRIEF

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ARGUMENT

I. The trial court improperly limited the scope of its claim of right jury instruction.

In his opening brief, Delvin Neal argues that the trial court incorrectly understood both the law and the evidence supporting his claim of right defense when it refused to instruct the jury that the defense applied to the Sheler robbery charge. Neal argues that a reasonable jury could conclude from the evidence at trial, properly viewed in the light most favorable to him, that Sheler was involved enough in the fake watch transaction that Neal honestly believed both she and Street were responsible for refunding him his money. The trial court, however, improperly narrowed the scope of the claim of right defense and misinterpreted binding caselaw. *See* Neal Br. 21-30. Contrary to its ruling, neither the watch's murky origins, nor Neal's effort to obtain his refund by picking up Sheler's wallet, nor Street's role as sales agent for the watch legally justify limiting the scope of the claim of right defense instruction.

In response, the government defends the trial court's ruling, emphasizing Neal's testimony about Street as seller of the fake watch and arguing that the claim of right defense does not extend to the wallet. Gov. Br. 17-30. But its arguments fall short. Like the trial court, the government fails to view the evidence in the light most favorable to Neal. Instead, it mischaracterizes the record and relies on speculation, unfounded assumptions, flawed logic, and the debunked phantom of

unrestrained vigilante justice to advance its arguments. Viewed properly, the claim of right defense extends to Neal's good-faith belief that he was entitled to take the wallet from Sheler as part of the property owed to him, and this court should therefore reverse his robbery conviction.

First, the trial court was wrong to deny Neal's request for the claim of right instruction on the grounds that Sheler did not sell Neal the watch, and the government's efforts to defend the trial court's ruling on this basis are flawed. To begin with, the government applies the wrong standard of review. *See* Gov. Br. 21. As the government acknowledges, this court reviews de novo legal questions about the propriety of a jury instruction. *See* Gov. Br. 16 (citing *Mack v. United States*, 6 A.3d 1224, 1228 (D.C. 2010)); *see also Wilson-Bey v. United States*, 903 A.2d 818, 827 (D.C. 2006) (en banc). "Whether the trial court applied the correct legal standard is a question of law," *Douglas v. United States*, 97 A.3d 1045, 1049 (D.C. 2014) (citing *Davis v. United States*, 564 A.2d 31, 35 (D.C. 1989) (en banc)), as is the adequacy of the trial court's instruction regarding the scope of the claim of right defense, *Brown v. United States*, 139 A.3d 870, 875 (D.C. 2016).

In this case, the trial court committed legal error by applying an incorrect legal standard to an incorrectly-framed legal issue. The trial court was obliged to view the evidence in the light most favorable to Neal, but it neither acknowledged

that legal standard nor applied it in its analysis. *Richardson v. United States*, 403 F.2d 574, 576 (D.C. Cir. 1968). This court reviews that legal error de novo.

The trial court, like the government, also misstated a key question. To determine if the scope of the claim of right defense extends to Sheler's robbery, the issue is not whether the jury heard enough evidence to believe "Sheler herself sold the watch." Gov. Br. 21; *see* App. 20 (5/1/23 Tr. 81) (trial court stating "she didn't sell him the watch"); App. 32 (*id*. at 93) (trial court finding no good-faith belief "that she was the one that sold him the watch"). The issue the trial court should have considered is whether the jury heard evidence of Neal's good faith belief that Sheler was involved enough in the overall sales enterprise that he was entitled to seek a refund from her for the watch. Because the trial court framed the question incorrectly, a de novo standard of review is appropriate here. And because the answer to the question is yes, this court should reverse.[1]

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[1] The government instead applies an abuse of discretion standard, but the court's standard of review jurisprudence is muddy enough to raise questions about that. *See* Gov. Br. vi, 12, 16, 21 (citing *Brown*, 139 A.3d at 875). At least since the Supreme Court's decision in *Mathews v. United States*, 485 U.S. 58 (1988), this court has analyzed "whether a defense instruction was properly *denied*" by applying the same standard as the trial court: it "review[s] the evidence in the light most favorable to the defendant," recognizing that "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." *Adams v. United States*, 558 A.2d 348, 349 (D.C. 1989) (emphasis added) (citing *Mathews* and *Richardson*, among others).

Although not expressly characterized as de novo, this standard of review is analogous to the standard of review for sufficiency of evidence claims, in which the court views the evidence in the light most favorable to the government to determine whether sufficient evidence exists that a rational juror could find guilt beyond a reasonable doubt. *E.g., Rivas v. United States*, 783 A.2d 125, 134 (D.C. 2001) (en banc); *United States v. Hubbard*, 429 A.2d 1334, 1337-38 (D.C. 1981). This court applies the same standard as the trial court to sufficiency claims, and its review of the evidence is characterized as deferential yet de novo. *E.g., Rivas*, 783 A.2d at 134; *United States v. Bamiduro*, 718 A.2d 547, 550 (D.C. 1998) (citing *Hubbard*).

In contrast, this court has applied the abuse of discretion standard "when an appellant challenges an instruction *given* by the trial court," either initially or in response to a jury note. *Scott v. United States*, 954 A.2d 1037, 1045 (D.C. 2008) (emphasis added); *see, e.g.*, *Lucas v. United States*, 240 A.3d 328, 343 (D.C. 2020) (jury note response); *Wheeler v. United States*, 930 A.2d 232, 238 (D.C. 2007) (improper instruction claim); *Broadie v. United States*, 925 A.2d 605, 621 (D.C. 2007) (improper instruction claim); *Atkinson v. United States*, 322 A.2d 587, 588 (1974) (jury note response). It also reviews the denial of missing evidence or witness instructions for abuse of discretion due to their particular nature. *See, e.g., Washington v. United States*, 111 A.3d 16, 21-22 (D.C. 2015); *[Kenneth] Simmons v. United States*, 444 A.2d 962, 964 (D.C. 1982).

In more recent criminal cases, however, the court has expanded the abuse of discretion label beyond those limited categories of jury instruction challenges – but without explaining how the trial court's review of the record in the light most favorable to the defendant for sufficient evidence is an exercise of discretion. *See Brown*, 139 A.3d at 875; *see also Lewis v. United States*, 263 A.3d 1049, 1067 (D.C. 2021) (citing *Washington*); *Fitzgerald v. United States*, 228 A.3d 429, 437 (D.C. 2020) (citing *Brown*); *Edwards v. United States*, 721 A.2d 938, 944 (D.C. 1998) (finding no abuse of discretion in denial of requested past violence reputation instruction without discussing standard of review). As a result of this confused jurisprudence, "procrustean-like efforts often must be expended to" characterize the jury instruction issue as one of law or discretion. *Davis*, 564 A.2d at 35. Regardless of the label used here, a reasonable jury could find that Neal had a good-faith belief that he was entitled to seek a refund from Sheler as well as Street, when the evidence is viewed in the light most favorable to Neal. The trial court therefore erred, and the court should reverse for the reasons set forth here and in Neal's opening brief.

The government's defense of the trial court's ruling because "Street alone was the seller" relies on a logical fallacy. Gov. Br. 21-22. Just because Street may have been the principal in the sale does not mean that Neal did not have a good faith belief that Sheler was engaged in a joint commercial enterprise with Street and thus also liable for the $1,000 refund. Using the plural "we" pronoun, Sheler reasonably signaled to Neal that she was jointly involved with her son in the sales venture when she said to him over the telephone, "[Y]ou're wrong. You know we don't sell fake things." 5/1/23 Tr. 25.[2] Sheler's past commercial transactions with Neal and Neal's "impression that *they* had consignment shop" further bolstered Neal's reasonable, good faith belief that Sheler was not merely a bystander to her son's business dealings but rather a partner in a shared enterprise – or even the principal/owner of the business with her son acting as her agent in the sale of the watch.[3] 5/1/23 Tr. 24; *see also id*. at 24-25 (Neal using plural pronouns "them" and

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[2] By directing that statement at Neal in response to his complaint about the fake watch, Sheler "participated" in the phone call, contrary to the government's claim. Gov. Br. 21.

[3] The government speculates that it is unlikely that Sheler and Street owned a consignment shop together because Street was living at home to manage Sheler's "critically ill" health. Gov. Br. 30. This theory - depending solely on Street's testimony that was largely rejected by the jury - strains credulity. *See* 4/27/23 Tr. 69. Sheler did not corroborate Street's claim about her poor health, nor did any of the visual evidence of Sheler admitted at trial. *See* App. Vol. II (Gov. Exh. 202 at 2:01-2:12; Gov. Exh. 203 at 2:13-2:16; Gov. Exh. 204 at 2:20-4:40; Gov. Exh. 302 at 0:20-0:40,1:45-2:25, 2:45-3:03). Viewing the evidence in the light most favorable to Neal, as required here, Sheler was caring for Street rather than the

"they" in describing his telephone conversation with Street and Sheler after learning the watch was fake). Contrary to the government's claims, Neal's testimonial focus on Street at trial does not preclude his good faith belief that Sheler was also involved enough in the sales business to entitle Neal to a refund from her, and sufficient evidence exists in the record to support that reasonable belief.

The claim of right defense also extends to the wallet here, because Neal had a good-faith belief he was entitled to take it as a proxy for some of (but not more than) the money owed to him. While this court's jurisprudence precludes a claim of right defense where the value of the property taken exceeds the value of the property to which the defendant believed in good faith that he was entitled, *see* Neal Br. 22-28, the principle underlying the defense reasonably extends, like a lien, to collateral property of a lesser value like a wallet. *See State v. Sawyer*, 110 A. 461, 462-63 (Conn. 1920) (landlady's mistaken belief in right to take tenant's handbag until tenant paid debt defeats intent for larceny). Where, like here, a defendant has a good-faith but mistaken belief that he has a right to take a wallet to

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other way around. *See* 5/1/23 Tr. 19, 38, 61 (Neal testifying that he sometimes had to call Sheler when Street would show up at the barbershop in his underwear, that Street had a mental issue, and that Street was "touched"); *see also* 4/26/23 Tr. 96-97, 113 (Sheler testifying she was in driver's seat and drove the car).

satisfy some of the debt he believes he is owed, he lacks the requisite intent to steal to support a robbery conviction. *See Richardson*, 403 F.2d at 575-76 (no intent to rob where defendant took from complainant's wallet property of less value than total gambling debt owed).

Seeking to avoid this conclusion, the government suggests that *Sawyer* lacks persuasive authority because it was decided over one hundred years ago. Gov. Br. 26-27 n.6. But in a common law system based on stare decisis and precedent, the fact that a case is old does not render it unpersuasive. Despite *Sawyer*'s age, the Connecticut courts have not repudiated it or its principle that "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." *Sawyer*, 110 A. at 463.[4] That same principle underlies *Richardson*, which recognizes that "specific intent

[4] *See State v. Smith*, 118 A.3d 49, 57 n.7 (Conn. 2015) (citing *Sawyer* for the proposition that "one who takes another's goods to compel him, though in an irregular way, to do what the law requires him to do with them – namely pay his debt – is on no legal principle a felon, though doubtless he is a trespasser," in contrast to courts in other jurisdictions that reject the "claim-of-right defense to a robbery charge when the defendant took the property in payment of a debt and did not own the specific property that he took"); *State v. Cales*, 897 A.2d 657, 660 (Conn. App. Ct. 2006) (favorably citing *Sawyer* for the proposition that "A claim that the defendant lacked the requisite intent has been recognized as a defense to larceny"); *State v. Varszegi*, 635 A.2d 816, 819-20 (Conn. App. Ct. 1993) (relying on *Sawyer* despite its age to reverse larceny conviction of landlord who took lessee's computers to pay rent debt without "specific felonious intent to commit larceny"); Conn. Comm'n to Revise the Criminal Statutes, Penal Code Comments, Conn. Gen. Stat. (1969), at 39 (expressly incorporating the common law standards in *Sawyer*) (cited by *Varszegi*, 635 A.2d at 820).

depends on a state of mind, not upon a legal fact…. If the jury finds that the defendant believed himself entitled to the money, it cannot properly find that he had the requisite specific intent for robbery." *Richardson*, 403 F.2d at 576. *Richardson* remains both binding and soundly principled, and this court should resist the government's efforts to undermine it.

Rooted in the element of intent, *Richardson*'s reasoning is not limited to legally-incurred debts, and the claim of right defense does not therefore depend on "a legal right to claim ownership of the actual property taken." 5/1/23 Tr. 159; *see* Gov. Br. 28-29 & nn. 8-9. In *Richardson*, the government unsuccessfully tried to eradicate the claim of right defense "unless the defendant had a legally enforceable right to the property he took." *Richardson*, 403 F.2d at 576. The court explicitly rejected that argument - an argument that would have been unnecessary had "the gambling transaction that precipitated the robbery" in *Richardson* been legal as the government suggests. Gov. Br. 29 n.8; *see also Richardson*, 403 F.2d at 575 (noting that the complainant had recently been convicted of a gambling offense). The government's reliance here on unsound dicta to the contrary from *Townsend v. United States*, 549 A.2d 724, 727 n.6 (D.C. 1988), is thus misplaced, Gov. Br. 29, and the trial court's claim of right instruction narrowing the defense to legal ownership claims is inconsistent with this court's binding jurisprudence. *See* Neal Br. 28 n.8. This court should preclude the trial court on remand from again

erroneously limiting the scope of the claim of right defense to circumstances where the claim of right stems from a legal transaction or where the defendant believes he has a legal claim to ownership.[5]

Also like in *Richardson*, the government here invokes the "troubling outcomes" that would ensue if the court were to rule in Neal's favor, resorting to a specter of wedding rings held for ransom with no consequences. Gov. Br. 26. Yet the D.C. Circuit's response to the same policy concern raised in *Richardson* holds true today. Other crimes besides robbery would apply to the government's wedding ring scenario and "provide[] a deterrent to self-help … without rejecting the principle that specific intent turns on the actor's state of mind and not upon an objective fact." *Richardson*, 403 F.2d at 576. Thus, even with a robust and principled claim of right jurisprudence, a defendant like Neal could still be found guilty of crimes to which a mistaken good faith belief is no defense, such as taking property without a right. *See* D.C. Code § 22-3216; *Schafer v. United States*, 656 A.2d 1185, 1188 (D.C. 1995) (no specific intent required to convict a person of

[5] The government also incorrectly describes the trial court's discussion of the illegality of the watch sale transaction as a tangential "aside," not part of "actually explaining the basis for" the court's decision or the delivery of its ruling. Gov. Br. 29-30 n.9. It was not merely an aside. On the contrary, the trial court discussed the illegality of the watch transaction as part of "amplify[ing its] thinking about the claim of right defense." App. 29 (5/1/23 Tr. 90). The government cites no authority for its suggestion that this court should ignore the trial court's discussion of its thinking about the governing jurisprudence in the middle of a colloquy about its decision to limit the scope of a jury instruction.

taking property without a right). A ruling in favor of Neal here would not be as "dangerous" as the government asserts. Gov. Br. 26.

Moreover, contrary to the government's argument, neither *[Vincent] Simmons v. United States*, 554 A.2d 1167 (D.C. 1989), nor *Wilson v. United States*, 266 A.3d 228 (D.C. 2022), defeat Neal's claim. The language the government quotes from *Simmons* is dicta and does not bind the court here. Gov. Br. 24, 28 (citing *Simmons*, 554 A.2d at 1170 n.8). In *Simmons*, the trial court instructed the jury on the claim of right defense, and the government did "not complain[] of it," nor did the defendant raise any issue about that instruction on appeal. *Simmons*, 554 A.2d at 1169 n.5. The *Simmons* court thus expressly did "not decide whether the [claim of right] instruction was erroneously given." *Id.* Although the court did express the view that the defendant had no actual right to take the complainant's purse and its contents, beyond the money he believed he was owed, *id.* at 1170 n.8, it directed that footnoted comment not at the propriety of the claim of right defense but to support the evidentiary basis for an instruction on the lesser-included offense of taking property without a right. *Id.* at 1170-71.

Wilson also does not preclude Neal's claim. In *Wilson*, the defendant was charged with burglary based on entry with an intent to steal *or* to assault. *Id.* at 239. To defeat the intent to steal element, Wilson sought a claim of right instruction that Zakiya Ahmed believed she had a right to take the property and

that Wilson was assisting her in defense of that right. *Id.* at 237. But because Wilson, Ahmed, and their companions took all the property that belonged to Ahmed *and* additional items that belonged to the complainant, the evidence before the jury was that the total value of the property taken exceeded the value of the property that Wilson believed he had a right to take. *See id*. at 238. More importantly, although the *Wilson* court discussed the claim of right defense, it did not decide that Wilson was not entitled to the claim of right defense instruction. *See id*. at 238-39. Rather, it held that any error in the jury instructions was harmless, because (1) the trial court adequately presented the defense theory that Wilson assisted Ahmed with a bona fide belief the property taken was hers, and (2) the evidence of burglary based on the alternate theory of intent to assault was sufficient to convict Wilson, unrelated to any intent to steal or claim of right. *See id*. at 239. Like in *Simmons*, the *Wilson* court's claim of right explication was thus "unnecessary to the decision in the case and therefore not precedential." *Obiter dictum*, *Black's Law Dictionary* (12th ed. 2024); *accord In re D.P.*, 996 A.2d 1286, 1292 n.17 (D.C. 2010) (Glickman, J., dissenting).

In this case, the wallet represented at least some of the money Neal believed in good faith that Sheler and Street owed him, and the record here, unlike in *Wilson*, does not support a finding that its value exceeded the $1,000 to which Neal believed he was entitled. As the government itself pointed out at trial, "we have no

understanding of what that worth [of the wallet] was." App. 13 (5/1/23 Tr. 74). The jury heard only that it was a black Coach wallet containing identification with an address and Sheler's name. App. Vol. II (Gov. Exh. 301 at 16:16:55); 4/26/23 Tr. 94-95; 4/27/23 Tr. 77. The jury also heard that Sheler drove Street to New York shortly after the incident to seek medical care, undeterred by her lack of wallet and its contents; the jury could reasonably infer from that information that the wallet did not contain items of such value that Sheler would need them for a lengthy journey by car. *See* 4/26/23 Tr. 111. On this record, therefore, the court should not assume that Sheler's wallet contained "items perhaps even more precious than cash," and it should reject the government's speculation that Neal "reached beyond" the watch or refund when he took Sheler's wallet. Gov. Br. 25, 27.

The government also speculates that it would have been unreasonable for Neal to assume a wallet had any cash "in our modern, often cashless society." Gov. Br. 27. In so doing, the government projects assumptions that ignore the reality for millions of unbanked and under-banked households in the United States, households who are more likely to be Black or lower-income. *See* Monica Calvillo-Chou, *Battle for Cash in a Cashless Society: Why Cash Should Remain King*, 51 W. St. L. Rev. 27, 28, 32-33 (Spring 2024) (citing FDIC, *2021 National Survey of Unbanked and Underbanked Households* (Oct. 2022), and identifying cities and states that have banned cashless businesses to "prevent marginalization

and economic discrimination of the unbanked and underbanked"); *see also* D.C. Code § 28-5402 ("Beginning January 1, 2025, a retailer shall not discriminate against cash as a form of payment for goods or services" in the District). Moreover, since Neal paid Street for the watch in cash, it was not unreasonable for him to believe that Street and Sheler's sales enterprise operated on a cash basis and that Sheler's wallet would therefore contain cash. 4/27/23 Tr. 56 (Street testifying that Neal paid him with $50 bills).

In sum, despite the government's insistence to the contrary, the trial court erred in refusing to extend the scope of the claim of right instruction to the wallet robbery charge based on its flawed views of the evidence and the law. This court should therefore reverse Neal's conviction.

II. Because the common law intent element of robbery requires proof of intent to permanently deprive the owner of property, the insufficient evidence of and the incomplete jury instructions on Neal's intent require reversal.

In his opening brief, Neal argues that insufficient evidence exists to sustain his robbery conviction because the common-law definition of the intent-to-steal element requires proof of intent to permanently deprive the rightful owner of the property. *See* Neal Br. 17-21. Despite the government's protestations to the contrary, *see* Gov. Br. 37, 40-42, the proof of Neal's felonious intent at trial fell short, failing to establish beyond a reasonable doubt that Neal intended to permanently deprive Sheler of her wallet. Moreover, because the trial court plainly

erred in failing to instruct the jury properly regarding robbery's essential element of intent, this court should reverse. *See* Neal Br. 30-34.

In its effort to argue otherwise, the government mischaracterizes this court's decision in *Groomes v. United States*, 155 A.2d 73 (D.C. 1959), and its reference to permanent deprivation of property. *See* Gov. Br. 34-35 n.13. Notably, the *Groomes* court did not dispute the appellant's argument that larceny required proof of intent to permanently deprive; it only concluded that whether the appellant had that intent was a question for the jury. *See id.* at 75.

The government also mischaracterizes the record. Contrary to the government's assertion, the evidence did not "show[] that [Neal] would rebuff any effort [Sheler] made to reclaim the property from him." Gov. Br. 40. Sheler testified that Neal raised the wallet up, and after Neal demanded his money back, Sheler drove away. 4/26/23 Tr. 95-96. The surveillance video evidence, although somewhat obscured by glare, does not substantiate Sheler's claim that she tried to snatch the wallet back or that Neal engaged in efforts to keep it away from her; in contrast, the video shows Neal approaching Sheler with the wallet and remaining close to her as she gets into the driver's seat of the car. *See* App. Vol. II (Gov. Exh. 204, timestamp 3:25-3:52). Neither Sheler's words nor the video evidence prove that "he would rebuff any effort she made." Gov. Br. 40.

Further, the government incorrectly paraphrases Neal's testimony. Gov. Br. at 37. Neal did not say that he would *only* give the wallet back if Sheler gave him $1,000, *id.*, and in fact, in his very next breath, Neal testified that he did not intend to keep the wallet. 5/1/23 Tr. 47. Viewing his testimony in context, the offer to return the wallet was not conditional, nor was there "no basis to believe that the condition Neal identified was likely to occur." Gov. Br. 37, 41. In addition, given the evidence in the record that Sheler and Street had recently taken $1,000 from Neal in exchange for what turned out to be a fake watch, the government's characterization of Neal's request for that sum back as "onerous" and a "steep asking price" is unsupported hyperbole. Gov. Br. 37; *see* 4/26/23 Tr. 118-19; 4/27/23 Tr. 56; 5/1/23 Tr. 23. Given the record here, it is highly likely that the jury would have found that Neal lacked the necessary intent for robbery if it had been instructed properly on the meaning of "deprive." Neal Br. 32-33.

CONCLUSION

For the foregoing reasons and those set forth in Neal's opening brief, 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 Reply Brief electronically using the Appellate E-Filing system on Chrisellen Kolb, Esq. and Kevin Birney, U.S. Attorney's Office, 601 D Street, NW, Washington, DC 20579, on this 3rd day of December, 2024.

/s/ Cecily E. Baskir
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