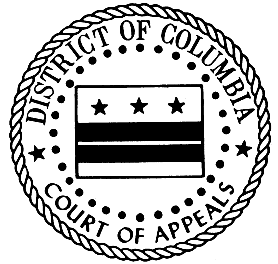

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BRIEF FOR APPELLEE

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 23-CF-560

DELVIN NEAL, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

APPEAL FROM THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

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Cr. No. 2022-CF3-6466

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ISSUES PRESENTED

I. Whether the trial court abused its discretion when declining to instruct the jury on the claim-of-right defense with respect to one of the robbery counts, where there was insufficient evidence that the complainant was involved in the sale of a fake watch to appellant Delvin Neal and thus that she owed him anything, and where Neal stole the complainant's wallet, rather than the genuine watch or cash refund that he thought he was owed.

II. Whether the trial court plainly erred by not elaborating on the intent necessary for robbery to instruct that the defendant had to intend to deprive the owner permanently of the property or to make use of the property in a way inconsistent with the owner's rights, where there is no authority for the proposition that the jury must be instructed on those concepts in a robbery case, and the failure to include this language neither affected the verdict nor affected the fairness, integrity, or public reputation of judicial proceedings.

III. Whether sufficient evidence supported Neal's robbery conviction where Neal took the complainant's wallet after a heated altercation with the complainant's son, prevented the complainant from

getting her wallet back, refused to return it unless she paid him $1,000, and only returned the wallet to the police when it became obvious that they were investigating his wrongdoing.

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 23-CF-560

DELVIN NEAL, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

APPEAL FROM THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

On January 19, 2023, appellant Delvin Neal was charged by indictment with two counts of robbery (D.C. Code § 22-2801) (against Andrew Street and Sillette Sheler) and one count of assault with significant bodily injury (D.C. Code § 22-404(a)(2)) (against Street) (Record on Appeal (R.) 13). Trial by jury before the Honorable Lynn Leibovitz began on April 25, 2023 (R. A at 21). At the close of the government's evidence, the trial court granted a motion for judgment of

acquittal as to the "significant bodily injury" element of the assault charge (R. A at 23). On May 2, 2023, the jury acquitted Neal on the assault count and the robbery count as to Street but convicted him of the robbery count as to Sheler (R. 31). On June 30, 2023, the trial court sentenced Neal to 68 months' incarceration and three years of supervised release (R. 41). Neal timely appealed (R. 42).

The Trial

The Government's Evidence

A few days before October 29, 2022, Neal bought an apparent Hublot Big Bang watch from Andrew Street for $1,000 (4/26/23 Transcript (Tr.) 118-19, 175; 4/27/23 Tr. 30-31). Although that type of watch typically retails for about $13,000 to $35,000, Street claimed that he and Neal verified that the watch was authentic through a website (4/27/23 Tr. 31, 53-57). Neal knew Street because Neal cut Street's hair at Changing Faces Barbershop, which is in a shopping-center complex at 333 Hawaii Avenue, Northeast (4/26/23 Tr. 25, 78-79, 174). Street's mother, Sillette Sheler, was with Street when he sold the watch to Neal (*id.* at 76-77, 118).

Neal later contacted Street and asked to buy a second watch (4/26/23 Tr. 119, 175-76). On October 29, 2022, Street and Sheler went to the barbershop so that Street could sell Neal the watch (*id.* at 80, 176; 4/27/23 Tr. 34). Sheler regularly drove Street to the barbershop because Street did not own a car (4/26/23 Tr. 112-13; 4/27/23 Tr. 35). Sheler went to get a cup of coffee while Street talked with Neal in the barbershop (4/26/23 Tr. 121). Street showed Neal the new watch (*id.* at 178-79). When Sheler returned, Neal told Street to go to a car in the parking lot so that Neal could give him the money for the new watch (*id.* at 122-23; 4/27/23 Tr. 36).

The men left the barbershop and walked to Neal's truck (4/26/23 Tr. 85-86, 122-23, 179-81; Government Exhibit (Gov. Ex.) 201 at 0:26; Gov. Ex. 202 at 0:05 to 0:15; Gov. Ex. 203 at 00:16 to 00:30).[1] Neal got in his

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[1] Neal has submitted the video exhibits as part of his appendix. Although the witnesses testified mainly about Government Exhibits 202, 203, and 204, the Court may find it helpful also to watch Government Exhibit 205, which was admitted at trial (3/27/23 Tr. 79-80, 82). Exhibit 205 is a compilation exhibit that shows the footage from Exhibits 202 to 204 side-by-side and allows the viewer to see the full sequence of events in a more straightforward manner. Neal is the one in the light-grey sweatshirt, light-colored pants, and apron; Street is all in black; and Sheler is in a light-grey coat, wearing glasses and protective face mask, and carrying a coffee cup.

car as if to get the money, but he suddenly shut the door and pinned Street against the car with his forearm (4/26/23 Tr. 182). Neal told Street to give him his money back for the first watch, but Street refused (*id.* at 182-83). Neal hit Street multiple times in the face (*id.* at 183).

Neal held and pushed Street forward into a different area of the parking lot while an individual followed them (Gov. Ex. 202 at 1:40 to 1:45; 4/26/23 Tr. 35, 61, 65, 82-83, 186-88). Another individual approached the group so that three people were surrounding Street—Neal and two unidentified individuals (Gov. Ex. 202 at 1:45; 4/26/23 Tr. 65). One of the individuals took the watch and Street's chain (4/26/23 Tr. 187-88). Neal held Street while the other two individuals beat and kick Street and Street struggled to get away (Gov. Ex. 202 at 1:45 to 1:54; 4/26/23 Tr. 66, 68, 84, 86). The group ultimately beat Street so badly that he fell to the ground (Gov. Ex. 202 at 1:54; 4/26/23 Tr. 189). One of the individuals took his earrings (4/26/23 Tr. 189). Once the men stopped hitting Street, Street got up and walked away with Sheler, who had left the barbershop and intervened when she realized what was happening (*id.* at 2:00 to 2:12; 4/26/23 Tr. 83, 123-24, 192). Neal continued to talk to both Street and Sheler and followed them to Sheler's car (Gov. Ex. 202 at

2:10 to 2:12; Gov. Ex. 203 at 2:12 to 2:20; Gov. Ex. 204 at 2:17 to 2:28; 4/26/23 Tr. 87-89, 91).

Once they got to Sheler's car, Neal started to snatch Sheler's car keys from her, but Street took the car keys before he could do so (4/26/23 Tr. 92-93, 196). Neal went to the car's trunk and opened it, but Street slammed it down (*id.* at 92-93). Neal entered the car and took Sheler's black Coach wallet (*id.* at 91-95, 197; 4/27/23 Tr. 59). Sheler tried to take it back, but Neal raised it up and told her that she could not have the wallet back until she gave him $1,000 (4/26/23 Tr. 95-96, 197; Gov. Ex. 204 at 3:40 to 3:49; 4/27/23 Tr. 37). He walked away (Gov. Ex. 204 at 3:50). Sheler got into the driver's seat of the car and drove away with Street (*id.* at 3:45 to 4:18; 4/26/23 Tr. 96-97).

Street and Sheler went to Metropolitan Police Department's Fourth District station, where Sheler reported the incident to an officer (4/26/23 Tr. 6-7, 10; Gov. Ex. 302 at 14:49:59 to 14:50:11). Sheler had blood on her right hand and her skirt (4/26/23 Tr. 16; 4/27/23 Tr. 72). One of Street's eyes was bleeding, and he had a blood trail running down his face from that eye (4/26/23 Tr. 7; Gov. Ex. 302 at 14:52:43; 4/27/23 Tr. 72). After

they gave their report, Street and Sheler went to the hospital (4/26/23 Tr. 98; 4/27/23 Tr. 17-18).

Two detectives responded to the parking lot, where they saw Neal walking from the barbershop to his car (4/26/23 Tr. 23, 26-27; 4/27/23 Tr. 74). Neal told the detectives that he was trying to get Street back to the barbershop when the other individuals came to beat Street up (Gov. Ex. 301 at 16:16:32 to 16:16:50). Neal was holding Sheler's wallet while talking to the detectives (Gov. Ex. 301 at 16:16:53; 4/27/23 Tr. 77). He claimed that he was going to take the wallet to the address listed on the materials inside (Gov. Ex. 301 at 16:16:55). Neal placed the wallet on the hood of a car when the detectives asked him to do so (4/26/23 Tr. 71-72; Gov. Ex. 301 at 16:17:00). He also placed the watch that he had bought from Street on the hood of the car (Gov. Ex. 301 at 16:17:10 to 16:17:38; 5/1/23 Tr. 44).[2] The detectives opened the wallet and confirmed that it was Sheler's (4/27/23 Tr. 77).

[2] That watch was the Hublot Big Bang watch that Neal had bought earlier that week, not the second watch that Neal had expressed interest in buying that day (5/1/23 Tr. 44).

The government played recordings of calls that Neal made to third parties while incarcerated at the D.C. Jail (4/27/23 Tr. 136-37). In the calls, Neal said, among other things, that the watch was fake, that he called Street and demanded his money back, that Street denied that the watch was fake and hung up on him, that Street would not return Neal's text messages, that Neal had wanted to "knock [Street's] ass out" because Street was "duck[ing]" him, and that Street would not give him his money back (Gov. Ex. 401 at 00:04, 00:18-00:34; Gov. Ex. 402 at 00:00 to 00:40; Gov. Ex. 403 at 00:00 to 00:14, 00:30 to 00:39). Neal also claimed that Sheler had left her wallet in the barbershop (Gov. Ex. 404 at 00:00 to 00:09). He stated that when he told Street and Sheler at her car that he wanted his money back, she said she would get his money but then got in the car and came back with the police (*id.* at 00:09 to 00:32). He warned that he would never let anyone take advantage of him (Gov. Ex. 406 at 00:00 to 00:10), and he complained that Street "didn't stand up on his end of the bargain" (*id.* at 00:26 to 00:30). When recounting Street's purported refusal to refund Neal's money, Neal emphasized, "You gonna give me my money back. You ain't taking nothing from me." (*Id.* at 01:45 to 01:55.)

The Defense Evidence

Neal testified that he would sometimes buy various objects from Street and Sheler (5/1/23 Tr. 21-22). He confirmed that he bought the Hublot Big Bang watch from Street for $1,000 (*id.* at 22-23). Neal believed it was authentic at the time because of Street's verification process using the website and/or phone application (*id.* at 23). Neal claimed, however, that he had an agreement with Street that he could get a refund if the watch was fake (*id.*).

After the sale, Neal saw that the seconds hand was not working (5/1/23 Tr. 23-24). When he went to a mall to get the watch repaired, the employees at the store told him that the watch was fake (*id.* at 24). Neal called Street and asked for a refund, but Street hung up on him (*id.* at 24-25). Before he did so, Neal heard Sheler in the background saying he was "wrong" and "You know we don't sell fake things" (*id.* at 25). Neal continued to try to contact Street but did not get a response (*id.* at 25-26).

On October 29, 2022, one of Neal's clients asked him about Street's watches (5/1/23 Tr. 26-27). Neal texted Street, who arrived at the barbershop with Sheler (*id.*). Neal showed the new watch to the client, who said that the watch was fake (*id.* at 27-28). Neal told Street to come

to Neal's car so that Neal could give the Hublot Big Bang back to him (*id.* at 30). Neal claimed that when they got to the truck, he tried to give the watch back to Street but that Street knocked it out of his hand and told him he would kill him (*id.* at 31-32). Street made a lunging motion, so Neal hit him to defend himself (*id.* at 31-37). Neal thought that the two other individuals were coming to help Street (*id.* at 37-38). He claimed that when they assaulted Street instead, he stayed to help Street and to try to guide him to the barbershop (*id.* at 38-40).

Neal further claimed that he was trying to help Sheler to her car so she would not get assaulted (5/1/23 Tr. 45-46). Contrary to his claims in his jail call, he stated that Sheler dropped her wallet on the ground while next to the car, and he picked it up (*id.* at 46, 57). He disclaimed any intention to take it from her or keep it (*id.* at 46-47). He admitted, however, that he told her that he would give it back when she gave him $1,000 (*id.* at 47). Neal denied that he ever went to the trunk of the car or tried to take Sheler's keys (*id.* at 53-54).

The Jury Instructions

Neal requested an instruction related to the claim-of-right defense (R. 28). *See* Criminal Jury Instructions for the District of Columbia, No.

9.521 (2024).[3] When it denied Neal's motion for judgment of acquittal at the close of the government's case, the trial court noted:

> [T]he claim of right does not apply as a defense, in all likelihood, to the mom. In other words, if he is taking mom's wallet and demanding $1,000 in return, a claim of right is not a defense to that. And at this sta[g]e, the Government certainly has overcome that defense beyond a reasonable doubt, even if it did apply. (5/1/23 Tr. 13.)

In its draft instructions, the trial court included a claim-of-right instruction as to the robbery count against Street but not the robbery count against Sheler (5/1/23 Tr. 69). The government opposed including the instruction at all (*id.* at 71-72). The trial court decided to give the

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[3] That instruction states:

> An element of the offense of robbery is that the defendant had the specific intent to steal. You have heard evidence that [name of defendant] believed that s/he had a right to take the property. If a person takes the property of another in the good faith belief that s/he has a right to take it, the specific intent element of robbery is lacking. It does not matter whether the defendant actually had a right to the property. It is only necessary that s/he believed in good faith that s/he was entitled to or could legally take the property.
>
> The government must prove beyond a reasonable doubt that [name of defendant] did not believe in good faith that s/he had a right to take the property. If it does not do so, you must find him/her not guilty.

Instruction No. 9.521.

instruction as to the robbery of Street, however, because at least one of the individuals in the parking lot had taken Street's watch, which would align with Neal's apparent belief that he was owed a real Hublot watch (*id.* at 79-81).

The court continued to doubt that the instruction applied to the robbery of Sheler because her wallet was not a watch and because Sheler did not sell Neal the watch (5/1/23 Tr. 81). Neal's counsel argued that the instruction applied to Sheler as well because she was involved in the transaction (*id.* at 87-88). The trial court noted, however, that the applicable case law and the comments to the jury instructions indicated that the claim-of-right defense had to be particularized to the property taken (*id.* at 88). Thus, Neal might have a right to a watch or to $1,000 in cash, but not the wallet, which he was essentially holding "as ransom" (*id.* at 88-89). In other words, the wallet was not "the property originally taken" or the property "for which [Neal was] owed money," nor was it "the money [Neal was] owed" (*id.* at 93).

Further, the trial court found that Neal did not have a good-faith belief that Sheler engaged in the transaction for the watch (5/1/23 Tr. 93). Sheler may have been present at times because she was Street's mother,

but Neal could not "reasonably and honestly conclude that she was the one that sold him the watch" (*id.*). Thus, Neal did not have an "honest or good-faith belief that [Sheler] owed him money or property" (*id.* at 93-94). Accordingly, the trial court gave the claim-of-right instruction as to the robbery of Street but not the robbery of Sheler (*id.* at 92-94, 158-59; R. 30 at 7).

Defense counsel did not have further objections to the instruction (5/1/23 Tr. 94, 97, 169). He did not explicitly reference the claim-of-right defense in his closing argument, and he only briefly referenced its general theory when discussing the robbery of Sheler (5/1/23 Tr. 140 ("He had not robbed Ms. Sheler because he didn't want that wallet. He just wanted his money back."); see also *id.* at 131-32 (making general comments along the same lines)).

Summary of Argument

The trial court did not abuse its discretion when declining to give a claim-of-right instruction with regard to the robbery of Sheler's wallet. There was insufficient evidence that Sheler was involved in selling the Hublot Big Bang watch to Neal and thus insufficient evidence to support a good-faith belief that she owed Neal anything. Further, Neal had no

claim of right as to Sheler's wallet, which was not the genuine watch or the cash amount that Neal believed he was owed.

The trial court did not plainly err by not elaborating on the intent element of robbery. Neither an intent to permanently deprive nor an intent to make use of the property in a way inconsistent with the rights of the owner is an essential element of robbery. Further, Neal cites no authority, and we are aware of none, for the proposition that the jury must be instructed on those concepts in a robbery case. Moreover, Neal cannot show that any error affected his substantial rights or the fairness, integrity, or public reputation of judicial proceedings where the jury could clearly infer that Neal intended to permanently deprive Sheler of her wallet and did so against her rights.

Sufficient evidence supported the jury's verdict that Neal robbed Sheler of her wallet. After a heated altercation with Sheler's son, Neal followed Sheler to her car, tried to snatch her car keys, tried to open her trunk, entered her car, and took her wallet. When Sheler attempted to take the wallet back, Neal lifted it away from her and walked away. Although he offered to give the wallet back if Sheler paid him $1,000, this conditional offer did not undermine his intent to keep the wallet. Notably,

Neal returned the wallet to the police only when it became obvious that they were investigating his wrongdoing. Under those circumstances, the jury could reasonably infer that Neal intended to steal Sheler's wallet.

ARGUMENT

I. The Trial Court Correctly Instructed the Jury.

Neal argues (at 21, 31-33) that the trial court erred by (1) refusing to give a claim-of-right instruction with respect to the robbery of Sheler, and (2) not further defining the intent element so as to make clear that the jury had to find that Neal "intended to deprive Sheler of the wallet permanently or to make use of it in a way inconsistent with her rights." These arguments should be rejected. The trial court correctly found that the claim-of-right instruction did not apply to Sheler's wallet, and it did not plainly err in failing to elaborate on the intent element.

A. Applicable Legal Principles and Standard of Review

A defendant is typically entitled to have the court instruct the jury on any cognizable defense to his charges, so long as "there is evidence from either the prosecution or defense that fairly raises the defense." *McCrae v. United States*, 980 A.2d 1082, 1086 (D.C. 2009). This Court has

sometimes formulated the test as whether there is "any evidence, however weak," to support the instruction. *E.g., Higgenbottom v. United States*, 923 A.2d 891, 899 (D.C. 2007); *Frost v. United States*, 618 A.2d 653, 662 n.18 (D.C. 1992). As the Court has explained, however, "[t]he words 'however weak' may be misleading," *Holloway v. United States*, 25 A.3d 898, 902 n.6 (D.C. 2011), and "[i]t is not correct that any evidence, however weak, entitles the defendant to an instruction," *McCrae*, 980 A.2d at 1087 n.4. Rather, the standard is appropriately articulated as whether, viewing the evidence in the defendant's favor, "'there exists evidence sufficient for a reasonable jury to find in his favor.'" *Holloway*, 25 A.3d at 902 n.6 (quoting *Mathews v. United States*, 485 U.S. 58, 63 (1988)); *accord Mack v. United States*, 6 A.3d 1224, 1227 n.3, 1229 (D.C. 2010) ("'In reviewing claims of instructional error, we view the evidence in the light most favorable to the defendant in order to ascertain whether there exist[ed] evidence sufficient for a reasonable jury to find in his favor.'") (quoting *Muschette v. United States*, 936 A.2d 791, 798 (D.C. 2007)) (further internal quotation and citation omitted); *McCrae*, 980 A.2d at 1087 n.4 ("[T]here must exist evidence sufficient to find in the defendant's favor.") (citations omitted). Put another way, "the evidence,

however weak, must be sufficient to create a prima facie defense[.]" *McCrae*, 980 A.2d at 1087 n.4; *accord Lihlakha v. United States*, 123 A.3d 167, 169 n.14 (D.C. 2015). Apart from this evidentiary threshold, "[a] requested instruction is not appropriate if, as a matter of law, the defendant would not be entitled to the defense." *Mack*, 6 A.3d at 1229 (citation and internal quotation marks omitted).

This Court reviews for abuse of discretion a trial court's assessment of whether a jury instruction was supported by the evidence, *see Brown v. United States*, 139 A.3d 870, 875 (D.C. 2016), but reviews any legal issues surrounding the denial of a requested jury instruction de novo. *Mack*, 6 A.3d at 1228. With respect to Neal's claim that the trial court should have explained further the requisite intent, he did not object to the instructions given or request any additional language (5/1/23 Tr. 94, 97, 169). Accordingly, this Court reviews his argument regarding the need to supplement the intent instruction for plain error. *See, e.g.*, *Williamson v. United States*, 993 A.2d 599, 603 (D.C. 2010); see also Appellant Br. at 31 (conceding plain-error review). "Under the test for plain error, appellant first must show (1) error, (2) that is plain, and (3) that affected appellant's substantial rights. Even if all three of these

conditions are met, this court will not reverse unless (4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Lowery v. United States*, 3 A.3d 1169, 1173 (D.C. 2010).

B. The Trial Court Did Not Err in Declining to Give a Claim-of-Right Instruction for the Robbery Charge Involving Sheler.

One element of the offense of robbery is that the defendant had the specific intent to take the property of another. *E.g. Fitzgerald v. United States*, 228 A.3d 429, 439 (D.C. 2020); *Pixley v. United States*, 692 A.2d 438, 439 (D.C. 1997). The claim-of-right defense recognizes that if the defendant "believed in good faith that he was entitled to" the property, "he did not have that specific intent." *Richardson v. United States*, 403 F.2d 574, 575 (D.C. Cir. 1968); *accord Fitzgerald*, 228 A.3d at 439. "Therefore, a defendant is entitled to a claim of right defense if s/he has a good faith belief that s/he is legally entitled to the property s/he is charged with taking." *(Steven) Wilson v. United* States, 266 A.3d 228, 238 (D.C. 2022) (citing *Richardson*, 403 F.2d at 575).

The trial court did not err when declining to give the claim-of-right instruction as to Neal's taking of Sheler's wallet. As the court found, the claim-of-right defense foundered for two independent reasons: (1) there

was insufficient evidence that Sheler was involved in the transaction for the Hublot Big Bang, and thus Neal had no basis to think she owed him money; and (2) even if Neal had a good-faith belief he was entitled to a watch or money, he did not possess a claim of right as to Sheler's wallet (5/1/23 Tr. 81, 88-89, 93-94).

First, there was insufficient evidence to support a good-faith belief that Neal was entitled to anything from Sheler. Although Neal claims that Sheler was involved in the sale of the fake watch, the evidence showed otherwise. Street, Neal, and Sheler all repeatedly made clear that Neal bought the watch from Street (e.g., 4/26/23 Tr. 175, 4/27/23 Tr. 30-31 (Street confirms that he sold the watch to Neal); 5/1/23 Tr. 22-23 (Neal describes buying the watch from Street and never mentions Sheler); 4/26/23 Tr. 118 (Sheler affirms that Neal bought the watch from Street)). According to Neal, he had arranged for a refund from Street, not Sheler, should the watch turn out to be fake (5/1/23 Tr. 23 ("I told him we made an agreement if it wasn't real, I could get my money back."); Gov. Ex. 401 at 00:10 (Neal states that he told "him" that he wanted his money back if the watch was fake)). Thus, when Neal became dissatisfied with the transaction, he repeatedly tried to contact Street, not Sheler (5/1/23 Tr.

24-26; Gov. Ex. 401 at 00:19-00:40; Gov. Ex. 403 at 00:00-00:13). The evidence also showed that Neal was angry at Street because he thought that Street, not Sheler, had duped him (e.g. Gov. Ex. 401 at 00:44 (Neal angry because "playboy" was "playing" him); Gov. Ex. 402 at 00:04 (Neal recounts that he told someone that if he saw Street[4] he was "going to knock his ass out"); id. at 00:14 (Neal says that Street "cold-blooded ducked [him]"); Gov. Ex. 406 at 00:11-00:30 (Neal warns he's "never, ever going to let nobody take advantage of me" and that Street "didn't stand up on his end of the bargain")).

Neal therefore lured Street back to the barbershop with the promise of another transaction, and when he did so he spoke only to Street (4/26/23 Tr. 120, 175-76; 5/1/23 Tr. 26-27; Gov. Ex. 403 at 00:12). There is no evidence that Neal cared whether Sheler came back to the barbershop. Instead, the evidence indicates that Sheler was there merely because she gave Street a ride (4/26/23 Tr. 112-13; 4/27/23 Tr. 35). And when both Street and Sheler arrived at the barbershop, Neal essentially ignored Sheler and had only Street accompany him to his car where, by

[4] Neal referred to Street by his nickname, "Clicquot" (4/26/23 Tr. 174).

his account, he confronted Street and not Sheler about the watch (5/1/23 Tr. 30-32; Gov. Ex. 402 at 00:40; Gov. Ex. 403 at 00:25-00:37; Gov. Ex. 405 at 00:30 to 00:37; Gov. Ex. 406 at 01:35-02:00). Likewise, while Neal and the other individuals assaulted Street, Neal showed no interest in Sheler's contemporaneous presence in the barbershop (Gov. Ex. 202 at 1:40 to 2:01; 4/26/23 Tr. 123-24). The evidence thus showed that Neal was focused solely on Street because it was Street, not Sheler, who had sold Neal the watch.

Neal may therefore have had a good-faith belief that Street owed him a real Hublot Big Bang or a cash refund because Street had apparently sold him a fake watch. But given the insufficient evidence that Sheler had anything to do with the transaction, Neal did not have a good-faith belief that she owed him redress. Accordingly, he was not entitled to the instruction as to Sheler. *See (Curtis) Smith v. United States*, 330 A.2d 519, 521 (D.C. 1974) (claim-of-right instruction inappropriate where defendant took property from others and not just debtor); *see also Robertson v. United States*, 429 A.2d 192, 195-96 (D.C. 1981) (trial court properly excluded evidence of debt allegedly owed to

third parties because it was irrelevant to defendant's claim-of-right defense).

In nonetheless claiming that Sheler was involved in the sale of the watch, Neal argues (at 23) that the evidence showed she was present while the watch was sold, she "participated" in the later phone call between Street and Neal, and she knew that Street was selling Neal a second watch. These arguments do not show an abuse of discretion by the trial court. Sheler's presence at the time of the sale showed only that she was a bystander to the transaction; it did not indicate she played any role in the sale. Sheler also exaggerates the record in stating that Sheler "participated" in the call from Neal. Neal testified only that he heard Sheler say something in "the background" (5/1/23 Tr. 25). It was clear from the context that Neal and Street were the only participants in the call itself (*id.* at 24-25). In any event, Sheler's purported statements that Street was "wrong" and "You know we don't sell fake things" (*id.* at 25) were insufficient to show that she also sold Neal the watch. Although those statements indicated that Sheler was aware of the sale and took pride in the business, the jury would have had to speculate that Sheler herself sold the watch. Particularly given all the evidence that Street

alone was the seller, Sheler's remarks in the background of the call were insufficient to support a prima facie defense. And finally, Sheler's mere knowledge that Street was about to sell a second watch says nothing about her involvement in the sale of the first watch.

Neal also points (at 23) to past transactions with Sheler and his belief that Sheler and Street may have owned a consignment shop. But those past transactions, even if they did occur, did not relate to the sale of the Hublot Big Bang, and Neal did not state that he knew that Sheler and Street owned a consignment shop together—only that he was "under the impression" that that was the case (5/1/23 Tr. 21). Nor was it established that Sheler and Street did own a consignment shop together, which in any event was unlikely given that Street sold items out of a barbershop—as Neal was aware—and that Street had to live at home to manage Sheler's health because she was "critically ill" (4/27/23 Tr. 34-3569; 5/1/23 Tr. 22, 61). Put simply, there was no evidence that Sheler was an actual participant in the sale of the fake watch. Neal thus had no good-faith belief that she owed him anything.

Second, even if Neal had a right to an authentic watch or money, he did not have a right to Sheler's wallet. As the trial court noted (5/1/23

Tr. 81, 88-89, 92-93), this Court has previously upheld the claim-of-right defense when the defendant attempted to recover the specific property to which he believed he was entitled. *See Richardson*, 403 F.2d at 575-76 (instruction appropriate where defendant took money when he thought he was owed money); *see also Townsend v. United States*, 549 A.2d 724, 727 n.6 (D.C. 1988) ("[T]o successfully invoke the claim there would have to be evidence that appellant wanted neither money nor other drugs from [the victim]—only his own drugs."); *Fitzgerald*, 228 A.3d at 439 n.10 ("The question is therefore whether appellant had a good faith belief that she had a right to take *the property that was actually taken* . . ." (emphasis added)).[5]

But the wallet was not the specific property to which Neal thought he was entitled. The wallet was not a watch. It was not money. It was a totally separate piece of property belonging to another person that, as the trial court noted, Neal was essentially holding as "ransom" (5/1/23 Tr. 89). Neal cites no authority, and we are aware of none, where this Court

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[5] The model jury instructions also reflect this principle. *See* Criminal Jury Instructions for the District of Columbia, No. 9.521 cmt. ("A defense of claim of right must relate to the items taken . . . .").

has held that such activity falls within the claim-of-right defense. To the contrary, this Court has previously disapproved of the defense in a similar situation. *See Simmons v. United States*, 554 A.2d 1167, 1170 n.8 (D.C. 1989) ("[E]ven if [appellant] had a right to take the $30, as he asserted, he had no right to take the purse and the rest of its contents.").

This Court's recent decision in *(Steven) Wilson* is illustrative. In that case, the defendant and others took several items from the victim's house. 266 A.3d at 234. The defendant claimed that he was entitled to a claim-of-right instruction because he and others were trying to recover one of his co-defendant's property. *Id.* at 237-38. This Court doubted that such an instruction would be warranted, however, because the defendants took more than just their co-defendant's property. *Id.* at 238. They also took several of the victim's personal belongings, including a chain, a ring, and money. *Id.* This Court noted that "[b]ecause [the defendants] took items that they did not in good faith believe belonged to them or [their co-defendant], there was no evidence to support appellant's claim that he only intended to help [his co-defendant] recover her own property." *Id.*

The same is true here. Even if Neal believed he was entitled to an authentic watch or his money back, he reached beyond those items when he stole Sheler's wallet. Because Neal did not have "a good faith belief that he [was] legally entitled to the property he [was] charged with taking," a claim-of-right instruction was inappropriate. *(Steven) Wilson*, 266 A.3d at 238 (citing *Richardson*, 403 F.2d at 575).

Neal's challenge to this particularity requirement (at 24-29) is without merit. In the only case in which this Court or its predecessor appears to have held that the defense was warranted, the defendant took money to repay a debt of money. *See Richardson*, 403 F.2d at 575-76. The other cases that Neal cites, meanwhile, do not support the more expansive doctrine that he espouses. In all his cases, this Court either doubted that an instruction would be warranted, *see (Steven) Wilson*, 266 A.3d at 238; *Robertson*, 492 A.2d at 195, or held that the defense was inappropriate, *see (Curtis) Smith*, 330 A.2d at 521; *Rhodes v. United States*, 354 A.2d 863, 864 (D.C. 1976). None of these cases purported to establish that a defendant could take an object that was separate from the property to which he believed he had a right.

Indeed, such a rule would run contrary to this jurisdiction's requirement that the defendant must have "a good faith belief that [he] had a right to take the property that was actually taken[.]" *Fitzgerald*, 228 A.2d at 439 n.10; *see also (Steven) Wilson*, 266 A.3d at 238 ("[A] defendant cannot assert the claim of right defense when he takes property that he did not in good faith believe belonged to him."). It would also lead to troubling outcomes. For example, a defendant who thinks that the victim owes him a substantial amount of money—even if that belief is wrong—could take the victim's wedding ring and hold it as ransom for as long as the defendant wants, with no consequences. Accordingly, many jurisdictions reject the claim-of-right defense entirely. *See State v. (Tremaine) Smith*, 118 A.3d 49, 57 n.7 (Conn. 2015) (collecting cases). Even in this jurisdiction, where the defense is recognized, Neal cites no case condoning the taking of totally separate property in an attempt to redress some perceived wrong. This Court should not expand the claim-of-right defense in the dangerous way that Neal suggests.[6]

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[6] This Court should decline to give any persuasive authority to *State v. Sawyer*, 100 A. 461, 462-63 (Conn. 1920) (recognizing the potential (continued . . .)

Neal's point (at 26) that a wallet is "commonly used to store money" does not change the analysis. Even assuming that Neal had a right to take money, a wallet is not coterminous with currency. In our modern, often cashless society, it is not reasonable to assume that a wallet contains any cash at all, let alone any set amount that one believes one is owed.[7] It is fair to assume, however, that a wallet contains items perhaps even more precious than cash, such as a driver's license, credit cards, and other important and private materials. *See, e.g.*, *Williams v. United States*, 113 A.3d 554, 556 (D.C. 2015) (wallet did not contain money but did contain a driver's license, Metro card, bank cards, union cards, and business cards). Thus, even if Neal did believe he was entitled to $1,000, he did not have a good-faith belief that he was entitled to the

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defense when a lodging-house owner took the lodger's handbag because he believed she owed him $5), *cited in* Appellant Br. at 26-27. *Sawyer* is an out-of-jurisdiction case that was decided over 100 years ago, and therefore provides a poor guide for how this Court should shape its jurisprudence.

[7] Thus, Neal's citations (at 26) to cases which do not even explicitly equate a wallet with cash are inapt. *See Richardson*, 403 F.2d at 575 (defendant took the money and not the wallet); *Rhodes*, 354 A.2d at 864 & n.4 (no reasoning equating money with wallets). Indeed, Neal's citation (at 26) to *Williams* proves the point that a wallet and cash do *not* equate—the victim in that case was not carrying any money in his wallet. 113 A.3d at 556.

wallet. *See, e.g.*, *Simmons*, 554 A.2d at 1170 n.8 ("We note that appellant was charged in the indictment with robbing Stewart of 'a pocketbook and its contents,' not just the $30 which he said Stewart owed him. Thus, even if he had a right to take the $30, as he asserted, he had no right to take the purse and the rest of its contents."); *(Steven) Wilson*, 266 A.3d at 238 (doubtful that claim-of-right instruction would have been appropriate where defendants took victim's personal items in addition to defendant's belongings); *Robertson*, 429 A.2d at 195 (doubtful that claim-of-right instruction would be warranted where defendant took more than what he claimed he was owed); *(Curtis) Smith*, 330 A.2d at 521 (claim-of-right defense unsupported where defendant took more than what he claimed he was owed).

Finally, Neal's suggestion (at 29) that the trial court erred when denying the instruction because it believed that Neal may have engaged in an illegal transaction is incorrect both legally and factually. Legally, this Court has never held that one can avail himself of the claim-of-right defense after he engages in an illegal transaction. *See, e.g.*, *Simmons*, 554 A.2d at 1169 n.5 ("This [C]ourt has never held that one may use 'forcible self-help' to recover what is essentially an illegal debt."). It has, however,

suggested that one cannot raise the defense in such circumstances. *See, e.g. Townsend*, 549 A.2d at n.7 ("We have never held that a person can use forcible self-help to retake illegal drugs from another. Nor do we now . . . for to do so would be to give our imprimatur to an act the completion of which is itself a criminal offense.").[8]

But in any event, the trial court did not deny Neal's request on that basis. The trial court found that Neal was not entitled to the instruction as to the wallet because (1) Sheler did not sell him the watch, and (2) the wallet was not a watch or money (5/1/23 Tr. 81, 88-89, 91-94). Neither of those reasons relied on any illegality in the transaction.[9] Indeed, the trial

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[8] *(Curtis) Smith*, *Rhodes*, and *Richardson* do not hold otherwise. See Appellant Br. at 29 (citing all three cases). *(Curtis) Smith* and *Rhodes* held that a claim-of-right defense was inappropriate. *See (Curtis) Smith*, 330 A.2d at 521; *Rhodes*, 354 A.2d at 864. And in *Richardson*, although the victim had been convicted of a gambling offense, it is not clear from the court's opinion that the gambling transaction that precipitated the robbery was illegal. *See* 403 F.2d at 575 (making no mention of any illegality when discussing the transaction). Nor did the court analyze the specific question as to what effect any illegality would have on the appropriateness of the defense. *See id.* at 575-76.

[9] The trial court did briefly mention the illegality issue, but it did so in a tangential discussion about the defense in general (5/1/23 Tr. 90-91). It did not purport to rely on any illegality when actually explaining the basis for its decision (5/1/23 Tr. 81, 88-89, 91-94; see also 5/1/23 Tr. 90-91 (trial court notes prior precedent but recognizes that "the rationale in

(continued . . .)

court, at sentencing, essentially disavowed any reliance on the illegality of the transaction because it noted that the government had failed to provide a sufficient basis to believe that the transaction was illegal (6/30/23 Tr. 8 (noting that the theory that Neal "knew he was receiving stolen property" was "not an argument that was developed in the evidence to address [Neal's] claim of right, and that is why he got his claim of right [instruction]")). This Court therefore need not reach the question of whether a defendant can have a claim-of-right defense when he engages in an illegal transaction.

In sum, Neal was not entitled to a claim-of-right instruction as to Sheler's wallet. Sheler did not sell him the watch, and, even if she had,

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that case was not that the illegality of the services was the problem. It was that he took more than [he] was entitled to.")).

Neal also speculates (at 24 n.6) that the trial court may "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" (citing 5/1/23 Tr. 91). The trial court made those comments as an aside, however. When it actually delivered its ruling, the court relied on the facts that Sheler had not sold Neal the watch, and her wallet was not a watch or cash (5/1/23 Tr. 81, 88-89, 93-94). Rather than disavow the defense, then, the trial court properly applied it. Indeed, the trial court gave the claim-of-right instruction as to the robbery count against Street (*id.* at 79-81; R. 30 at 7).

Neal did not have a good-faith belief that he could take a totally unrelated object as ransom.

C. The Trial Court Did Not Plainly Err by Not Further Defining the Intent Element of Robbery.

The trial court instructed the jury that one of the elements of robbery that the government must prove was that the defendant took the property "intending to steal it" (5/1/23 Tr. 156; see also *id.* at 158 ("An element of the offense of robbery is that the defendant had the specific intent to steal.")). Neal argues (at 30-34) that the trial court plainly erred when it did not elaborate on this intent-to-steal element by instructing that the jury had to find that Neal intended to deprive Sheler of the wallet permanently or to make use of it in a way inconsistent with her rights. Neal cannot meet the exacting requirements of plain-error review.

First, Neal cannot show any error at all, let alone plain error. Robbery is criminalized by D.C. Code § 22-2801, which provides: "Whoever by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, shall take from the person or immediate actual possession of another anything of value, is guilty of robbery." In this jurisdiction, robbery "retains its common law

elements[.]" *Williams*, 113 A.3d at 560 (internal quotation omitted). The common-law offense of robbery thus "requires proof of the elements of theft plus several aggravating circumstances." *Gray v. United States*, 155 A.3d 377, 382 (D.C. 2017). Specifically, robbery requires the government to prove that the defendant "(1) took property of some value, (2) from [the complainant's] person or immediate actual possession, (3) against her will, (4) by force or violence,[10] (5) and carried the property away, (6) without right and with the intent to steal it." *Bailey v. United States*, 257 A.3d 486, 499 (D.C. 2021); *see also Lattimore v. United States*, 684 A.2d 357, 359-60 (D.C. 1996) (defining elements as: "(1) a felonious taking, (2) accompanied by an asportation [or carrying away], of (3) personal property of value, (4) from the person of another or in his presence, (5) against his will, (6) by violence or by putting him in fear, [and] (7) *animo furandi* [the intention to steal]") (internal quotation omitted; brackets in original).

In instructing that the government was required to prove that Neal had "the specific intent to steal" (5/1/23 Tr. 158), the trial court correctly

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[10] The force or violence can be satisfied by a sudden seizure or snatching. *Bailey*, 257 A.3d at 499.

followed the case law defining the offense of robbery. Neither intent to deprive the owner of the property permanently or intent to use the property in a way inconsistent with the owner's rights is among the elements this Court has stated the government must prove. *See, e.g.*, *Lattimore*, 684 A.2d at 359-60.[11] Neal fails to show that the trial court was obliged sua sponte to elaborate on the elements of the offense. *See Guishard v. United States*, 669 A.2d 1306, 1315 (D.C. 1995) ("A trial court is under no obligation to define particular terms in its jury instructions, nor does it have a general duty to instruct the jury *sua sponte*."), *abrogated on other grounds by Robinson v. United States*, 100 A.3d 95, 105-08 (D.C. 2014); *accord Allen v. United States*, 495 A.2d 1145, 1150 (D.C. 1985) (en banc) ("The trial court has no general duty to instruct the jury *sua sponte*."); *see also Curington v. United States*, 621 A.2d 819, 823 (D.C. 1993) ("The statutory definition of the term 'pistol,' however, is just that—a *definition* of a term included in one of the elements. It is *not an*

[11] Nor does the standard jury instruction for robbery include such language. *See* Criminal Jury Instructions for the District of Columbia, No. 4.300 (2024).

element of the statutory offense that the trial court was required to specifically include as part of the jury instructions.").

We recognize that *Lattimore* indicated that an intent to permanently deprive is a requirement for larceny. *See* 684 A.2d at 360. That statement contradicts prior binding precedent, however. *See Mitchell v. United States*, 394 F.2d 767, 771 (D.C. Cir. 1968) ("[W]e therefore reject appellants' contention that larceny requires an intent to appropriate property permanently.");[12] *see also In re Gil*, 656 A.2d 303, 305 n.7 (D.C. 1995) ("[T]heft under District law 'does not require an intent to appropriate property permanently.'") (quoting *Fredericks v. United States*, 306 A.2d 268, 270 (D.C. 1973)). Neal therefore errs (at 32) when he claims that an intent to permanently deprive is a requirement for larceny, and by extension, robbery.[13]

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[12] *Lattimore* cited *Durphy v. United States*, 235 A.2d 326 (D.C. 1967), but at the time that *Durphy* was issued, the D.C. Circuit was the highest court in this jurisdiction. *See M.A.P. v. Ryan*, 285 A.2d 310, 311-12 (D.C. 1971). The D.C. Court of Appeals operated as an intermediate appellate court that was reviewable by the D.C. Circuit. *Id.* Accordingly, this Court is bound by Circuit cases decided before February 1, 1971, and *Mitchell* prevails over *Durphy*. *See M.A.P.*, 285 A.2d at 312.

[13] Neither *Groomes v. United States*, 155 A.2d 73 (D.C. 1959), nor *Morissette v. United States*, 342 U.S. 246 (1952), holds otherwise. See

(continued . . .)

But in any event, given the conflicting authority over whether the intended deprivation must be permanent, any error cannot have been plain. An error is "plain" for purposes of plain-error review if it is "clear" or "obvious." *Wheeler v. United States*, 930 A.2d 232, 245 (D.C. 2007) (internal quotation omitted). In other words, the claimed error must be "clearly at odds with established and settled law." *Id.* Because there is no "established and settled law" that robbery requires an intent to deprive the owner permanently of the property, Neal cannot show that the failure to instruct on that point was plainly erroneous.

Similarly, Neal cannot show any obvious error with respect to the failure to instruct the jury that it had to find that a defendant intended

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Appellant Br. at 18-19, 32. *Groomes* did not decide that an intent to permanently deprive was an element of larceny or robbery; it merely mentioned the concept while reciting (and summarily rejecting) the appellant's argument. 155 A.2d at 75-76. *Morissette* concerned whether the defendant thought that property was abandoned when he was charged with the taking of government property (not larceny or robbery). 342 U.S. at 248-49, 276. Moreover, *Morissette* did not purport to establish permanent deprivation as a common-law requirement of larceny. Instead, it merely referenced "the criminal intent to steal or knowingly convert, that is, wrongfully to deprive another of possession of property," without specifying that that deprivation had to be permanent. *Id.* at 276; *see also id.* at 271 (briefly noting that "[t]o steal means to take away from one in lawful possession without right with the intention to keep wrongfully" without specifying that the defendant must permanently deprive the owner of the property).

to make use of the property in a way inconsistent with the owner's rights. Neal cites no authority, and we are aware of none, for the proposition that a trial court in a robbery case must include such an instruction. Thus, any error cannot be plain. *See Wheeler*, 930 A.2d at 245.

Finally, even if Neal could show error that was plain, he cannot show that the error affected his substantial rights or that it seriously affected the fairness, integrity, or public reputation of judicial proceedings. Given the instructions as a whole, which required the jury to find that Neal took the property "against the will of the complainant" and that he did so "without right to it and intending to steal it" (R. 30 at 6), an ordinary juror would assume the need to find more than a temporary deprivation or one that would allow the owner still to use the property. *See, e.g.*, *United States v. Owens*, 332 A.2d 752, 754 & n.4 (D.C. 1975) (stressing the ordinary meaning of "steal" as "[t]o take, and carry away feloniously and, usually, unobserved; to take or appropriate without right or leave, and with intent to keep or make use of wrongfully; as, to steal money or another's goods"); *see also id.* at 754 (reiterating that the word "steal" inherently encapsulates "a taking or property" with "intent to deprive the possessor of its use").

Moreover, given the evidence, Neal cannot show that the jury, if given the additional instructions, would have found that Neal took the wallet but that he did not intend to keep it or to deprive Sheler of her use of it. Neal did not dispute that he took Sheler's wallet and said he would return it only if she gave him $1,000 (5/1/23 Tr. 47). In other words, if she did not pay him that amount, he would keep the wallet. There was no guarantee that Sheler would or could pay Neal his steep asking price of $1,000. Given the conditional nature of Neal's offer to return the wallet and his lack of control over whether the onerous condition would be satisfied, Neal cannot satisfy his burden to show that the additional language he requests would have made any difference at trial or was necessary to ensure the fairness, integrity, or public reputation of judicial proceedings. *See, e.g.*, *(Wesley) Wilson v. United States*, 785 A.2d 321, 328-29 (D.C. 2001) (no reversible plain error in failing to further define "serious bodily injury" because the evidence was sufficient that the defendant had inflicted serious bodily injury); *Curington*, 621 A.2d at 821-22 (no reversible plain error in not defining "pistol" because "there is no question that appellant shot and killed the decedent while armed with a pistol, and the procedures at trial were essentially fair").

II. The Evidence Was Sufficient to Support Neal's Conviction.

Finally, Neal argues (at 17-21) that the evidence was insufficient to support his conviction. This argument is without merit.

A. Standard of Review and Applicable Legal Principles

"When reviewing an insufficiency-of-the-evidence claim, [this Court] view[s] the evidence in the light most favorable to the government, drawing all reasonable inferences in the government's favor, and giving deference to the jury's right to determine credibility and weight." *Dorsey v. United States*, 154 A.3d 106, 112 (D.C. 2017). The evidence will be deemed "sufficient if, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the charged offense beyond a reasonable doubt." *Bassil v. United States*, 147 A.3d 303, 307 (D.C. 2016) (citation omitted) (cleaned up). Furthermore, "the evidence need not negate every possible inference of innocence." *Young v. United States*, 305 A.3d 402, 415 (D.C. 2023) (quoting *Walker v. United States*, 167 A.3d 1191, 1201 (D.C. 2017)). Therefore, "[a]n appellant making a claim of evidentiary insufficiency bears the heavy burden of showing that the prosecution offered no

evidence upon which a reasonable mind could find guilt beyond a reasonable doubt." *Dorsey*, 154 A.3d at 112. "It is the factfinder's prerogative to determine credibility and to make reasonable inferences from the facts which have been proven." *(Christopher) Smith v. United States*, 809 A.2d 1216, 1222 (D.C. 2002). "In considering the sufficiency of the evidence, [this Court] make[s] no distinction between direct and circumstantial evidence, and circumstantial evidence is not intrinsically inferior to direct evidence." *Id.* (internal quotation marks omitted).

As noted earlier, to prove a robbery, the government had to prove beyond a reasonable doubt that Neal "(1) took property of some value, (2) from [the complainant's] person or immediate actual possession, (3) against her will, (4) by force or violence, (5) and carried the property away, (6) without right and with the intent to steal it." *Bailey*, 257 A.3d at 499.

B. Discussion

Neal reiterates (at 17-21) his instructional claims when arguing that the evidence was insufficient to support his conviction.[14] He claims

[14] Neal does not raise any other challenges to the sufficiency of the evidence.

(at 17) that because there was insufficient evidence of his intent to permanently deprive Sheler of her property or make use of it in a way inconsistent with her rights, "the evidence at trial was insufficient to prove that he had the necessary intent." But as discussed supra, neither permanent deprivation nor the intent to take the property in a way inconsistent with the complainant's rights is an element of robbery. Rather, the relevant inquiry regarding Neal's intent is whether he took the property "with the intent to steal it." *Bailey*, 257 A.3d at 499.

Even assuming that permanent deprivation and inconsistency-with-the-rights-of-the-owner can be subsumed into "steal," a jury could reasonably infer Neal's intent as to both. The evidence showed that Neal tried to snatch Sheler's car keys and open her trunk, evidencing a pressing desire to take some of her property because Neal would not "stand" for being "tak[en] advantage of" (4/26/23 Tr. 92-93, 196; Gov. Ex. 406 at 01:49 to 02:01). When those efforts failed, he reached into her car and took her wallet (4/26/23 Tr. 91-95, 197; 4/27/23 Tr. 59). He also held the wallet away from Sheler when she tried to take it back, which showed that he would rebuff any effort she made to reclaim the property from him (4/26/23 Tr. 95-96).

The jury could reasonably disregard Neal's claim that he would give the wallet back if he received $1,000 (4/26/23 Tr. 95, 153, 197; 4/27/23 Tr. 37; 5/1/23 Tr. 47). As discussed supra, his conditional offer does not undermine proof of his intent to permanently deprive Sheler of the property. On the contrary, because there was no basis to believe that the condition that Neal identified was likely to occur, a jury could reasonably find that Neal intended to keep the property permanently. *See, e.g.*, *Corbin v. United States*, 120 A.3d 588, 591 n.3 (D.C. 2015) (jury could reasonably infer that the defendant intended to permanently deprive the victim of all keys, including those next to the ignition key, because a jury is "entitled to infer that appellant intended the natural and probable consequences of his acts knowingly done" (internal quotation marks and alterations omitted)).

Similarly, a reasonable jury could infer that Neal intended to take the wallet in a way inconsistent with Sheler's rights. He took the wallet from her car without her permission after a physical and verbal altercation with her son. Sheler clearly did not want Neal to take the wallet, as evidenced by her attempt to take it back (4/26/23 Tr. 95-96). She immediately reported the incident to the police, and there is no

evidence that she consented to the taking (4/26/23 Tr. 6-7, 10, 97; Gov. Ex. 302 at 14:49:59 to 14:50:11). Moreover, as long as Neal had her wallet, she did not have access to its contents, which often include valuable materials such as a driver's license or credit cards. *See Williams*, 113 A.3d at 556; see also Gov. Ex. 301 at 16:16:55 (Neal claims that the wallet contains materials that identify Sheler's address).

At bottom, Neal stole Sheler's wallet by removing it from her car, refusing to give it back, and taking it away from her against her will (4/26/23 Tr. 91-96; 4/27/23 Tr. 59; Gov. Ex. 204 at 3:40 to 3:55). He relinquished the wallet only when police asked him to do so during a discussion in which it would have been obvious to him that they were investigating his wrongdoing (Gov. Ex. 301 at 16:15:11 to 16:17:05). A jury could reasonably conclude from these circumstances that Neal robbed Sheler.

CONCLUSION

WHEREFORE, the government respectfully submits that the judgment of the Superior Court should be affirmed.

Respectfully submitted,

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Certificate of Service

I HEREBY CERTIFY that I have caused a copy of the foregoing to be served by electronic means, through the Court's EFS system, upon counsel for appellant, Cecily E. Baskir, Esq., baskir@baskirlaw.com, on this 22nd day of May, 2024.

/s/

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