No. 23-CT-2

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

GIBRAM WILLIAM ARMSTEAD,
APPELLANT,

V.

DISTRICT OF COLUMBIA,
APPELLEE.

ON APPEAL FROM A JUDGMENT OF THE
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE THE DISTRICT OF COLUMBIA

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STATEMENT OF THE ISSUES

During a traffic stop in July 2022, a police officer asked Gibram Armstead whether he had a gun, and before being advised of his right to remain silent, Armstead admitted that he did. Police subsequently found an unregistered, unserialized firearm and ammunition in Armstead's car. At trial, the Superior Court suppressed Armstead's statements under *Miranda v. Arizona*, 384 U.S. 436 (1966), but held that the gun and ammunition were admissible under *United States v. Patane*, 542 U.S. 630 (2004). The trial court also rejected Armstead's passing Second Amendment challenge to the District's firearms laws under *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022). Armstead was ultimately convicted of, among other offenses, attempted possession of an unregistered firearm and attempted possession of unlawful ammunition. The questions presented are:

1. Whether the Superior Court properly declined to suppress Armstead's gun and ammunition when physical evidence derived from voluntary statements is admissible without *Miranda* warnings.

2. Whether the Superior Court correctly rejected Armstead's Second Amendment claim when he lacks standing to challenge the District's transportation regulation, D.C. Code § 22-4504.02, and when his remaining challenges are waived, reviewable only for plain error, and lack merit under any standard of review.

STATEMENT OF THE CASE

Armstead was arrested on July 16, 2022. Supplemental Appendix ("SA") 6. On July 18, 2022, he was charged with possession of a firearm without a registration certificate in violation of D.C. Code § 7-2502.01(a); possession of unlawful ammunition without being the holder of a valid registration certificate for a firearm of the same gauge or caliber in violation of D.C. Code § 7-2506.01; and driving in the District without a permit in violation of D.C. Code § 50-1401.01(d). SA 6. On September 20, 2022, the District amended the first two charges to attempted possession of an unregistered firearm and ammunition. SA 2-3.

Before trial, Armstead moved to suppress his statements during the traffic stop as well as the firearm and ammunition found in his car. SA 3, 7-12. The District opposed Armstead's motion. SA 4, 13-24. The Superior Court suppressed Armstead's statements, but not the gun and ammunition. SA 196-198.

Following a bench trial on December 7, 2022, Armstead was convicted of attempted possession of an unregistered firearm; attempted possession of unlawful ammunition; and driving without a permit. SA 203. The Superior Court sentenced Armstead to 30 days of suspended sentence for each offense, to run concurrently, as well as six months of unsupervised probation. SA 211-212; Appendix ("App.") 34. The court also fined Armstead $150 and imposed $150 in costs. SA 213; App. 34. Armstead filed a timely notice of appeal on January 3, 2023. SA 5.

STATEMENT OF FACTS

1. Legal Background.

A. The District's firearm and ammunition regulations.

Under District law, individuals may carry a firearm, and ammunition for that firearm, with "a valid registration certificate." D.C. Code §§ 7-2502.01(a), 7-2506.01(a)(3). Registration certificates can be obtained by any "person who complies with, and meets the requirements of, this unit," *id.* § 7-2502.01(a)(5), including nonresidents, *see id.* § 7-2502.02(a)(4)(C)(ii) (allowing nonresidents to register pistols "[a]s part of the application process for a license to carry a concealed pistol"). Among other things, applicants must be law-abiding adults who are physically capable of handling firearms responsibly with sufficient knowledge of gun-safety laws. *See id.* § 7-2502.03(a). Applicants must also provide certain information, including their name, address, and date of birth, as well as their firearm's caliber, make, model, and serial number. *See id.* § 7-2502.03(b).

As a general matter, possessing a firearm and ammunition in the District without a valid D.C. registration certificate is a misdemeanor. *See Bruce v. United States*, 305 A.3d 381, 393-94 (D.C. 2023). Under D.C. Code § 7-2502.01(a), individuals are liable if they "knowingly possessed a firearm" that "had not been registered as required by law." *Bruce*, 305 A.3d at 393 (internal quotation marks omitted). Under D.C. Code § 7-2506.01, individuals are liable if they "possessed ammunition without having the necessary registration for a firearm." *Bruce*, 305

A.3d at 393 (internal quotation marks omitted). The same elements establish attempted possession of an unregistered firearm and ammunition. *See, e.g.*, *Diggs v. United States*, 966 A.2d 857, 861 (D.C. 2009) ("[T]he charge of attempt to possess a prohibited weapon is subsumed within the proof of the completed offense.").

But District law sometimes allows for possession of firearms and ammunition without a registration certificate. *See* D.C. Code §§ 7-2502.01(b)(4) to (5), 7-2506.01(a)(5). For instance, a nonresident may possess an unregistered firearm when "participating in any lawful recreational firearm-related activity in the District," or if the nonresident is "on his way to or from such activity in another jurisdiction." *Id.* § 7-2502.01(b)(3). To invoke this rule, the nonresident must (1) "exhibit proof" to law enforcement that "he is on his way to or from such activity" and "that his possession or control of such firearm is lawful in the jurisdiction in which he resides," and (2) "transport[]" the firearm "in accordance with § 22-4504.02," *id.*, which requires, in relevant part, that the firearm be "unloaded" and that "neither the firearm nor any ammunition" be "readily accessible or directly accessible from the passenger compartment," *id.* § 22-4504.02(b)(1).

B. The admissibility of physical evidence under *Miranda*.

The Fifth Amendment's Self-Incrimination Clause provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Supreme

Court created a prophylactic rule to protect this right by requiring police to issue certain warnings before custodial interrogation, and by holding that statements obtained without such warnings are inadmissible in the government's case-in-chief. *Dickerson v. United States*, 530 U.S. 428, 443-44 (2000). But "*Miranda* does not require the suppression of the fruits of a[n] un-*Mirandized* statement." *Vega v. Tekoh*, 597 U.S. 134, 146 n.3 (2022). Rather, physical evidence derived from a voluntary but unwarned statement is admissible because *Miranda* "is a prophylactic employed to protect against violations of the Self-Incrimination Clause," which "is not implicated by the admission into evidence of the physical fruit of a voluntary statement." *United States v. Patane*, 542 U.S. 630, 636-38 (2004) (plurality op.).

C. The Second Amendment under *Bruen*.

The Second Amendment states: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. This provision codified the right of "ordinary, law-abiding" citizens to carry common, bearable arms for self-defense and other lawful purposes. *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 8-11, 26-27, 31-32, 70 (2022). Yet "the right secured by the Second Amendment is not unlimited," *District of Columbia v. Heller* (*Heller I*), 554 U.S. 570, 626 (2008), and "does not imperil every law regulating firearms," *McDonald v. City of Chicago*, 561

U.S. 742, 786 (2010) (plurality op.); *see United States v. Rahimi*, 144 S. Ct. 1889, 1897 (2024) ("[T]he right was never thought to sweep indiscriminately.").

Before the Supreme Court's *Bruen* decision, courts analyzed Second Amendment claims under a two-step framework. The first step asked whether a challenged law regulated conduct outside the Amendment's scope, as defined by its "text" and "historical limitations." *Heller v. District of Columbia* (*Heller II*), 670 F.3d 1244, 1252-53 (D.C. Cir. 2011). Many claims failed at this threshold step, either because the challengers were not "'law-abiding and responsible' citizens," *Medina v. Whitaker*, 913 F.3d 152, 157-60 (D.C. Cir. 2019) (convicted felons), or because the regulations were "self-evidently de minimis," *Heller II*, 670 F.3d at 1254-55 (registration requirements for handguns); *see Heller v. District of Columbia* (*Heller III*), 801 F.3d 264, 274 (D.C. Cir. 2015) (same, long guns). When claims survived step one, courts typically applied some form of means-end scrutiny at step two. *Wrenn v. District of Columbia*, 864 F.3d 650, 664-68 (D.C. Cir. 2017).

Bruen altered this framework in part. While eschewing means-end scrutiny, *Bruen* embraced step one as "rooted in the Second Amendment's text" and "history." 597 U.S. at 19. Even after *Bruen*, then, Second Amendment claims fail at the threshold unless challengers show that their conduct fits within the "Amendment's plain text," *id.* at 17, 24, which does not confer "a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose," *id.* at 21 (quoting

Heller I, 554 U.S. at 626). Rather, the Second Amendment has "from time immemorial been subject to certain well-recognized exceptions," "which continued to be recognized as if they had been formally expressed." *Robertson v. Baldwin*, 165 U.S. 275, 281 (1897). This includes restrictions on the intent with which one can carry arms (i.e., lawful purposes, such as self-defense), the manner in which one can carry arms (i.e., concealed versus open), and the type of arms one can carry (i.e., common bearable arms). *Bruen*, 597 U.S. at 21-22, 38; *see Rahimi*, 144 S. Ct. at 1897 (discussing similar gun restrictions "[a]t the founding").

When conduct falls within the Amendment's text, a law regulating that conduct is constitutional if "consistent with the principles that underpin our regulatory tradition." *Rahimi*, 144 S. Ct. at 1898. The government need not show that its law is "a dead ringer for historical precursors." *Bruen*, 597 U.S. at 30. *Bruen* and its progeny instead require only "a well-established and representative historical *analogue*, not a historical *twin*," and thus modern gun laws are facially valid when—in at least some applications—they resemble historical precursors in terms of "how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Id.* at 29-30; *see Rahimi*, 144 S. Ct. at 1898-1903.

2. Factual Background.

A. Armstead is pulled over for driving without wearing a seatbelt, and he admits that he has a firearm in his car.

On the afternoon of July 16, 2022, Detective Kirk Delpo was working seatbelt enforcement on Bladensburg Road in the District. SA 36-37. A 38-year veteran of the Metropolitan Police Department ("MPD"), Detective Delpo often works overtime with the traffic-safety division, as he was that day. SA 36-37. When doing so, Detective Delpo wears a standard MPD uniform with his name tag, a bulletproof vest, and a radio. SA 41-42.

During his patrol, Detective Delpo noticed that the driver of a white Mercedes was not wearing a seatbelt, in violation of D.C. Code § 50-1802. SA 37-38. Detective Delpo pulled the Mercedes over, approached the car, and asked to see the driver's information. SA 39-42, 79-80, 161-163. The driver told Detective Delpo that he had a D.C. driver's license but could produce only a Maryland ID card identifying him as Gibram Armstead. SA 45-46, 54-55.

Roughly two minutes into the traffic stop, three other MPD officers arrived. SA 43-44, 78-79. Those officers—Investigators Marsh, Turner, and Tipps—happened to be driving by when they saw Detective Delpo conducting a traffic stop by himself. SA 43-44, 97. Wearing plainclothes uniforms with name tags, badges, and bulletproof vests, Investigators Marsh, Tipps, and Turner stood near the passenger door of Armstead's car but did not interact with him. SA 44-45, 55-56.

Meanwhile, Detective Delpo spent a few minutes checking Armstead's information. SA 45-47. He found no driver's license for Armstead other than a D.C. learner's permit that had expired in August 2017. SA 56-57; *see* SA 147. He also found that the registration for Armstead's car had expired in June 2021. SA 46.

Investigator Tipps then asked Armstead to come around to the back of the car, and he asked Armstead, "do you have a firearm on you?" SA 123-24; *see* SA 164-65. Armstead admitted that he had a gun in his car and claimed that it was licensed or registered in Maryland. SA 104, 125-26, 128, 165. Investigator Tipps then handcuffed Armstead to secure the scene, SA 104, 125-26, which is consistent with MPD protocol for traffic stops involving firearms, SA 61.

B. The passenger compartment of Armstead's car contains a firearm and multiple rounds of ammunition.

Based on Armstead's admission, the officers searched his car. SA 83. In the driver-side door, they found a loaded magazine with seven rounds of 9-millimeter ammunition. SA 63, 134. They also found a loose round of 9-millimeter ammunition near the radio and center console, SA 65-66, and another one near the driver's seat on the floorboard, SA 72, 107-08.

The officers also found Armstead's firearm, which had no serial number and was accessible inside the car's passenger compartment. SA 64, 84-85, 134. The firearm's receiver was located near the driver's seat, and the slide and barrel were in an unlocked bag on the rear passenger seat. SA 64, 66, 87-89, 105-07, 109-10, 180-

81. Though it appeared to have been "hastily" disassembled, the firearm could be made operational in seconds by locking the slide into place and inserting the magazine, SA 68, 72, 85-86, which Armstead had done many times, SA 176-78.

Armstead had no D.C. registration certificate for his firearm and he was not licensed to possess or carry it in the District. SA 152-58. While handcuffed, Armstead argued with Investigator Tipps about whether his unserialized firearm was registerable under Maryland law. SA 108-09, 113. Investigator Tipps did not believe that the gun could be registered in Maryland, but Armstead disagreed based on recent revisions to Maryland firearms law. SA 108-09.

Armstead was later interviewed at the MPD stationhouse by Investigators Tipps and Marsh. SA 112. Before that interview took place, Armstead was given *Miranda* warnings and he waived his rights. *See* SA 114-15.

2. Procedural Background.

A. Armstead is charged with attempted possession of an unregistered firearm and ammunition, and he moves to suppress certain evidence but does not move to dismiss.

The District charged Armstead by information with attempted possession of an unregistered firearm under D.C. Code § 7-2502.01(a), and attempted possession of unlawful ammunition under D.C. Code § 7-2506.01. SA 3.[1] The Superior Court

[1] Armstead did not contest his remaining charge for driving in the District without a permit in violation of D.C. Code § 50-1401.01(d). SA 183, 199.

ordered pretrial motions to be filed by October 28, 2022. SA 3. Armstead timely filed a motion to suppress certain evidence, but did not move to dismiss or otherwise challenge the constitutionality of the District's firearm laws. SA 7-12. Instead, Armstead argued that, because he did not receive *Miranda* warnings during the traffic stop, his statement about the gun in his car was inadmissible, and that any physical evidence obtained as a result of that statement, including the gun and ammunition, was also inadmissible. SA 8-12. The District opposed Armstead's motion, arguing, among other things, that the gun and ammunition were admissible under *Patane*, 542 U.S. 630. SA 20-23.

The Superior Court heard evidence and argument on the suppression motion at trial. SA 184-198. Detective Delpo and Investigator Tipps testified for the District, and Armstead testified for himself. Armstead's counsel acknowledged that the officers "testified truthfully" and that Armstead was "not challenging sort of their interpretation of events." SA 190. According to the testimony, the traffic stop occurred in public around 4:00 p.m. SA 37. The officers spoke with Armstead in a calm, conversational tone, while never threatening him, drawing their weapons, or striking him. SA 42, 75-76, 101, 114, 122. Armstead himself appeared composed and coherent during the stop, and he was not handcuffed or under arrest when he told Investigator Tipps about the firearm in his car. SA 43, 76, 101, 104-105, 108-

109, 113-114, 122. Additionally, even while handcuffed, Armstead argued at length with Investigator Tipps about Maryland's firearm laws. SA 108-109, 113.

B. The Superior Court grants Armstead's motion to suppress his statements under *Miranda*, but denies the motion as to Armstead's firearm and ammunition under *Patane*.

The court granted Armstead's motion in part and denied it in part, suppressing his statements while admitting the gun and ammunition. SA 195-198. The court did not "see anything coercive about" this traffic stop in part because "Armstead's own very composed behavior" showed that "his will was not overborn[e]" and that "his statements were voluntary." SA 196-197. As the court explained, even if Armstead "thought he was under arrest," he was not "exactly intimidated" by the situation, given that "he was composed and coherent the whole time" and even "stood up for himself" by "having a legal argument with a detective while he's in handcuffs." SA 197. The court reasoned that it did not matter whether the gun and ammunition would have been found without Armstead's statements because the Supreme Court's decision in *Patane* "tells me that . . . the evidence is not suppressed." SA 198.

The District offered this physical evidence at trial. In particular, the District presented Armstead's unserialized firearm, his magazine containing seven rounds of 9-millimeter ammunition, and his two loose rounds of 9-millimeter ammunition. SA 116-122, 138-142. In addition, the District's witnesses testified that Armstead's gun and ammunition were accessible inside the passenger compartment of his car.

SA 134; *see* SA 67-69, 85-86. And the District further showed that Armstead had no D.C. registration certificate for his firearm. SA152-158.

Armstead admitted that the gun and ammunition were his and that he knew they were in his car when Detective Delpo pulled him over. SA 165-166, 177-178. Armstead offered a copy of his Utah concealed-carry permit, which he believed gave him the right to carry firearms in many states, including Virginia. SA 170, 175. Yet Armstead knew that he could not transport a firearm in the District unless it was unloaded and "stored like in a trunk or something," and he knew his firearm "was not stored in the trunk," SA 172, because his "trunk is like extremely junky," SA 181-182. Armstead also could not explain why he had "two bullets hanging around" inside his car: "Honestly, I couldn't give you an answer for that." SA 174.

C. The Superior Court finds Armstead guilty after rejecting his passing Second Amendment challenge.

Despite filing no pretrial motion to dismiss, Armstead tried to raise an admittedly "convoluted" Second Amendment claim after the close of evidence at trial. SA 199-200. With a brief reference to D.C. Code § 22-4504.02, Armstead asserted that the Supreme Court's *Bruen* decision "sort of opens the door to challenging" D.C. Code §§ 7-2502.01(a) and 7-2506.01 because he can carry his "firearm in another jurisdiction," he was "just passing through the District," and "but for this traffic stop," he "would not have been present in the District of Columbia in any manner to implicate" those laws. SA 199-200.

The Superior Court denied Armstead's motion to dismiss. SA 202. The court held that the District's laws simply regulate the "manner" of possession and are therefore "not unconstitutional" as "written," and that nothing in the Second Amendment entitled Armstead to carry his firearm "through the District of Columbia" without abiding by District law. SA 202. The Superior Court subsequently found Armstead guilty of the charged offenses. SA 203.

STANDARD OF REVIEW

The denial of a motion to suppress is reviewed for abuse of discretion, with factual findings reviewed deferentially for clear error. *Lawrence v. United States*, 566 A.2d 57, 60 (D.C. 1989). Challenges to the constitutionality of a statute are reviewed de novo if adequately preserved at trial, *Gamble v. United States*, 30 A.3d 161, 164 n.6 (D.C. 2011), but reviewed only for plain error, if at all, when not sufficiently preserved, *Riddick v. United States*, 995 A.2d 212, 221-22 (D.C. 2010).

SUMMARY OF ARGUMENT

This Court should affirm the judgment of conviction.

1. Armstead's motion to suppress the gun and ammunition was properly denied. It is blackletter law that physical evidence derived from voluntary un-Mirandized statements is admissible at trial, and that confessions are voluntary absent actual police coercion. Here, the trial court correctly found nothing involuntary about Armstead's statement that he had a gun in his car. Armstead

cannot distinguish controlling precedent on this issue, and he offers no reason to second-guess the trial court's finding that his statements were voluntary.

2. The trial court correctly rejected Armstead's Second Amendment claim. To start, Armstead lacks standing to challenge D.C. Code § 22-4504.02, as he was not charged or convicted under that provision, and he waived his remaining challenges by failing to raise them in a pretrial motion to dismiss under Rule 12. Moreover, even if not waived, Armstead's *Bruen* claim is reviewable only for plain error because he did not sufficiently raise it at trial, and it lacks merit because Armstead has not shown plain error. Finally, Armstead's claim fails under any standard for several reasons, not the least of which is that the District's laws are deeply rooted in the Nation's history and tradition of firearm regulations.

ARGUMENT

I. The Superior Court Properly Denied Armstead's Motion To Suppress The Gun And Ammunition He Voluntarily Admitted Were In His Car.

A. Tangible evidence obtained as a result of voluntary unwarned statements is admissible.

1. The fruit-of-the-poisonous-tree doctrine does not apply in the *Miranda* context.

Physical evidence derived from voluntary but unwarned statements is admissible at trial. *Vega*, 597 U.S. at 146 n.3. This is because the Fourth Amendment's fruit-of-the-poisonous-tree doctrine does not apply to *Miranda*. *Patane*, 542 U.S. at 633-38 (plurality op.); *id.* at 644-45 (Kennedy, J., concurring in

the judgment). So, unless an unwarned statement was actually coerced, courts do not suppress tangible evidence derived from that statement. *See Gore v. United States*, 145 A.3d 540, 545 n.11 (D.C. 2016) (recognizing that "the Fifth Amendment d[oes] not require the suppression of the physical fruits of a *Miranda* violation where the statement was voluntary" (citing *Patane*, 542 U.S. at 634 (plurality op.))).

The facts of *Patane* illustrate this rule. There, police arrested a convicted felon (Patane) for violating a restraining order after receiving information that he might be carrying a Glock pistol. 542 U.S. at 634-35. With Patane arrested and handcuffed, the officers failed to issue *Miranda* warnings before asking Patane whether he had a Glock pistol in his house. *Id.* When Patane admitted that the pistol was in his bedroom, the officers entered his home and seized the weapon, and Patane was ultimately indicted under 18 U.S.C. § 922(g)(1) for being a felon in possession of a firearm. 542 U.S. at 635. The district court granted Patane's motion to suppress the pistol and the Tenth Circuit affirmed, holding that any "physical evidence that was the fruit of the *Miranda* violation in this case must be suppressed." *United States v. Patane*, 304 F.3d 1013, 1019 (10th Cir. 2002).

The Supreme Court reversed. The plurality opinion held that a failure to issue *Miranda* warnings does not require "suppression of the physical fruits of the suspect's unwarned but voluntary statements." 542 U.S. at 633-34. The plurality reasoned that *Miranda* is a trial right tethered to the Fifth Amendment's Self-

Incrimination Clause, which is "not concerned with nontestimonial evidence." *Id.* at 637-38 (quoting *Oregon v. Elstad*, 470 U.S. 298, 304 (1985)). As such, introducing "the nontestimonial fruit of a voluntary statement, such as respondent's Glock, does not implicate the Self-Incrimination Clause." *Id.* at 643. Concurring in the judgment, Justice Kennedy emphasized "the important probative value of reliable physical evidence" and agreed with the plurality that the "[a]dmission of nontestimonial physical fruits" at trial "does not run the risk of admitting into trial an accused's coerced incriminating statements against himself." *Id.* at 644-45.

2. Absent actual coercion, unwarned statements made during custodial interrogation are voluntary.

Unwarned statements are voluntary as a matter of law absent actual coercion. *Colorado v. Connelly*, 479 U.S. 157, 167 (1986) ("[C]oercive police activity is a necessary predicate to the finding that a confession is not 'voluntary.'"). Voluntariness turns on the totality of the circumstances, including "the characteristics of the accused," such as his "age, education, prior experience with the law, and physical and mental condition," as well as "the details of the interrogation," such as its "duration and intensity" and "the use of physical punishment, threats or trickery." *Graham v. United States*, 950 A.2d 717, 735-36 (D.C. 2008) (internal quotation marks omitted); *see Davis v. United States*, 724 A.2d 1163, 1168 (D.C. 1998) (evaluating suspect's behavior and demeanor). A mere

failure to give *Miranda* warnings, however, is "insufficient by itself to establish involuntariness." *United States v. Murdock*, 667 F.3d 1302, 1306 (D.C. Cir. 2012).

Indeed, "egregious facts" are "necessary to" find statements "involuntary." *United States v. Mohammed*, 693 F.3d 192, 198 (D.C. Cir. 2012). In *Mohammed*, the suspect was blindfolded, handcuffed, taken to an unknown location, and held in a detention cell before being questioned for two hours by federal agents, one of whom wore a visible gun. *Id.* at 196. The agents spoke in a non-threatening tone but lied to Mohammed about his drug-test results. *Id.* After Mohammed was indicted, the district court declined to suppress his interrogation statements. *Id.* at 197. The D.C. Circuit affirmed, holding that Mohammed "certainly has not shown the egregious facts necessary to establish that the statements he made during questioning were involuntary." *Id.* at 198. The court explained that Mohammed was not threatened, he was "comfortable enough to ask questions," and even if he was "handcuffed" and "lied to," it was not clear error for the district court to find his statements voluntary in "the full context of the interrogation." *Id.*

Similar examples abound. In *Berghuis v. Thompkins*, 560 U.S. 370 (2010), for instance, the Supreme Court found "no evidence" that statements made during a three-hour interrogation were "coerced" where the suspect was not "threatened or injured" and the "interrogation was conducted in a standard-sized room in the middle of the afternoon." *Id.* at 386-87. Likewise, in *Davis v. United States*, this Court held

that a defendant's initial statement was "uncoerced" as he was an adult who "was not under the influence of alcohol or drugs and in no pain," and who was not subjected to "coercive tactics," even though one "detective told him a deliberate falsehood about his role in the offense." 724 A.2d at 1168. In *Green v. United States*, 974 A.2d 248 (D.C. 2009), this Court held that a "statement revealing the presence of a gun" was not "involuntary" where "adult" suspect "was not under formal arrest nor in handcuffs at the time he made the statement," "no guns were pointed at him," and the interaction occurred "on a public street." *Id.* at 261-62.

In contrast, cases finding coercion involve far more extreme circumstances. For instance, in *Little v. United States*, 125 A.3d 1119 (D.C. 2015), the police undertook a two-hour interrogation of "a teenage suspect who was chained to the floor in a small stationhouse interrogation room," "instilled in him a fear of being raped in jail," and fabricated "false reports that several witnesses had identified him." *Id.* at 1121, 1133; *see Mincey v. Arizona*, 437 U.S. 385, 396, 398-401 (1978) (four-hour "virtually continuous" interrogation of suspect suffering "unbearable" gunshot wound who could not breathe on his own and was "confused and unable to think clearly"); *Blackburn v. Alabama*, 361 U.S. 199, 200-02, 204-11 (1960) (eight-hour interrogation of "insane and incompetent" suspect in "a tiny room" "filled with police officers"). Absent that sort of "egregious treatment" and "coercive police practices," however, "an otherwise voluntary confession" will not be treated as

"involuntary." *Graham*, 950 A.2d at 736-37 (finding confession voluntary despite nineteen-year-old suspect being sleep deprived after thirteen-hour interrogation).

B. Armstead's firearm and ammunition were admissible because his statements were voluntary as a matter of law.

In this case, Armstead's gun and ammunition were properly admitted because the trial court correctly found no coercion in the July 2022 traffic stop and thus nothing involuntary about Armstead's statements. SA 196 ("I don't see anything coercive about this situation."). The undisputed facts permit no other conclusion, and the trial court's well-reasoned decision should be affirmed. *See Peay v. United States*, 597 A.2d 1318, 1320 (D.C. 1991) (en banc) ("In reviewing a trial court order denying a motion to suppress, the facts and all reasonable inferences therefrom must be viewed in favor of sustaining the trial court ruling.").

1. Armstead voluntarily disclosed the gun and ammunition.

Viewed as a whole, the circumstances surrounding the July 2022 traffic stop confirm that Armstead's statement about the gun and ammunition was voluntary and made without improper police coercion. Armstead is a competent adult with no obvious mental or physical impairments who had been pulled over by police before, and who was not handcuffed at the time of his statement. SA 59, 76, 105, 114, 163. Nor was Armstead ever yelled at, struck, threatened, tricked, lied to, or otherwise subjected to improper mental or physical pressure. SA 42, 75-76, 101, 114, 122; *see* SA 187-188. Rather, the single-question colloquy that produced Armstead's

statement occurred in public during daylight hours in a conversational tone and lasted only a few seconds. SA 37, 42-43, 75-76, 165; *see Green*, 974 A.2d at 250, 261-62 (holding that "statements revealing the presence of a gun" were "not coerced" in part because questioning occurred "on a public street").

Armstead's own behavior, moreover, underscores the absence of coercion. As the trial court found, Armstead "was composed and coherent the whole time" and was not the least bit "intimidated" by the situation. SA 197; *see* SA 43, 76, 114, 122. Far from it. Armstead "stood up for himself," the court noted, and engaged in "a legal argument with a detective." SA 197; *see* SA 108-09, 113. The trial court thus correctly found that Armstead's "statements were voluntary" and that "his will was not overborn[e]." SA 197; *see Turner v. United States*, 116 A.3d 894, 936-37 (D.C. 2015) (finding statements voluntary where suspect was "not handcuffed" and "his demeanor [w]as relaxed, spontaneous, and evincing no sign of distress or discomfort"), *aff'd on other grounds*, 582 U.S. 313 (2017).

2. Armstead cannot distinguish *Patane*, and he offers no sound reason to second-guess the trial court's factual findings.

Armstead resists this straightforward conclusion on what appear to be two grounds. Br. 6-8. Both of his contentions lack merit.

First, Armstead admits (Br. 6-7) that the "fruit of the poisonous tree" doctrine does not apply to voluntary unwarned statements under *Patane*, so he tries to distinguish *Patane* on its facts. According to Armstead (Br. 6-7), the police in

Patane already knew about the defendant's gun and were in the process of arresting him when he interrupted his *Miranda* rights to confess about the pistol. But here, Armstead insists, Investigator Tipps had no suspicion about a firearm in Armstead's car before asking whether he had a gun; the officers knew only that he had no driver's license and was not yet under arrest. Br. 6-7.

Armstead's purported distinction is constitutionally irrelevant. *Patane* did not turn on what the police knew before the interrogation; it turned on the nature of the evidence they discovered *after* the interrogation—namely, physical evidence that is not protected by the Fifth Amendment's Self-Incrimination Clause or *Miranda*'s prophylactic rule. *See* 542 U.S. at 633-38. The same conclusion follows here. Armstead identifies nothing in *Patane* to suggest that it would have been decided differently had the police not known about Patane's gun before questioning him, and he offers no sound reason to impose such an artificial limit on *Patane*.

Second, Armstead appears to contend (Br. 7-8) in the alternative that, even if *Patane* applies here, his firearm and ammunition should still be suppressed because his statements were involuntary. In Armstead's view, his response to Investigator Tipps's question was not voluntary because "a *Miranda* violation occurred," he was "surrounded by armed officers in tactical gear," and his statements were the "only reason" the officers found his firearm and ammunition. Br. 7.

But none of these (alleged) circumstances—individually or collectively—suggest that Armstead's will was overborne. To start, the failure to give *Miranda* warnings "does not constitute coercion[.]" *Elstad*, 470 U.S. at 306 n.1 (emphasis omitted); *see United States v. Turner*, 761 A.2d 845, 854-55 (D.C. 2000) ("[C]ustodial interrogation is insufficient to make a statement involuntary."). The Supreme Court has long distinguished "the voluntariness inquiry" from the absence of "*Miranda* warnings," *Dickerson*, 530 U.S. at 444, and it has made clear that "there is no warrant for presuming coercive effect where the suspect's initial inculpatory statement, though technically in violation of *Miranda*, was voluntary." *Elstad*, 470 U.S. at 318. That rule applies here with particular force, as Armstead had been in "custody" for only a "millisecond" before he admitted, in response to a single question, that he had a gun in his car. SA 193, 197-98.

As to Armstead's second point, the facts do not support his contention that he was "surrounded" by officers at the time of his admission, at least not in any sense that would convey coercion. Rather, the record indicates that Armstead was speaking with Investigator Tipps in a more one-on-one fashion when he admitted to having a firearm, as Investigators Marsh and Turner were standing on the other side of Armstead's vehicle. *See* SA 123-126. Because "the facts and all reasonable inferences" must be construed "in favor of sustaining the trial court ruling," *Peay*,

597 A.2d at 1320, Armstead cannot portray himself as having been closely encircled by multiple officers pressuring him to confess. *See* SA 197-198.

Besides, answering a simple, nonthreatening question while "surrounded" by "armed" officers in "tactical gear" is not the sort of egregious scenario indicating coercion. *See Mohammed*, 693 F.3d at 198. By definition, every police interrogation takes place in the presence of "officers," many of whom will be "armed." *See Murdock*, 667 F.3d at 1306 (holding that factors "inherent in any custodial interrogation" do not establish actual coercion). And the donning of "tactical gear" by itself cannot render a statement involuntary, particularly where, as here, the record shows that the only "tactical gear" was the officers' bulletproof vests, radios, and badges. SA 41-42, 44; *see* Armstead Br. 3. Armstead offers no reason to think that he was coerced by the sight of such garden-variety police attire and protective equipment. *See Green*, 974 A.2d at 250, 252, 261-62 (deeming statement voluntary even though officers approached suspect with "their guns drawn").

Finally, the importance of Armstead's statement to the discovery of his gun and ammunition has no bearing on whether the statement itself was voluntary under the Fifth Amendment. Voluntariness turns on the totality of the circumstances surrounding an interrogation, *Graham*, 950 A.2d at 735-36, not the likelihood of discovering evidence through other means. Armstead cannot manufacture coercion in this case by speculating that officers may not have found his gun and ammunition

without his statement. *See United States v. DeSumma*, 272 F.3d 176, 178-80 (3d Cir. 2001) (upholding admission of firearm that defendant stated was in his car before receiving *Miranda* warnings, even though "no evidence" indicated FBI agents "knew defendant was carrying a weapon" before questioning him).

C. Even if erroneous, the admission of Armstead's firearm and ammunition was harmless.

Any error in admitting Armstead's gun and ammunition was harmless given his admission that he knowingly possessed those illicit items. As this Court has held, convictions should be affirmed when a purported constitutional error is "harmless beyond a reasonable doubt." *Brown v. United States*, 139 A.3d 870, 878 (D.C. 2016). Here, Armstead freely admitted on direct examination that he had a gun and ammunition in his car: "I had the magazine on the door, I had the lower receiver, I believe, in the console, and I had the slide in the bag." SA 165; SA 172 (admitting he had "loose ammunition" in his car); SA 180-183 (same on cross-examination). Even if that physical evidence had been excluded, then, Armstead's own testimony independently established his guilt under D.C. Code §§ 7-2502.01(a) and 7-2506.01. The Court can reject Armstead's *Miranda* arguments on this basis alone.

II. Armstead's Second Amendment Claim Is Unreviewable And Meritless.

A. Armstead's arguments are barred due to lack of standing and unreviewable due to waiver.

1. Armstead lacks standing to challenge the District's transportation regulation, D.C. Code § 22-4504.02.

Armstead's claim is unclear, but to the extent he challenges D.C. Code § 22-4504.02, he lacks standing to do so as he was not prosecuted under that law, which regulates transportation of both registered and unregistered guns, *see supra* pp. 3-4. Defendants "may not challenge a statute" under the Second Amendment "by arguing that it could not be constitutionally applied to other defendants," because courts must "confine [their] analysis to the legislative prohibition underlying appellant's conviction." *Gamble*, 30 A.3d at 166, 168; *see Chew v. United States*, 314 A.3d 80, 84 (D.C. 2024). Here, Armstead was charged and convicted under D.C. Code §§ 7-2502.01(a) and 7-2506.01 for attempting to possess an unregistered firearm and ammunition, SA 203—not D.C. Code § 22-4504.02, as Armstead's counsel repeatedly acknowledged, SA 171, 199, 200. Armstead thus lacks standing to challenge Section 22-4504.02. *See Gamble*, 30 A.3d at 166-68.

The structure of the District's statutory regime underscores the point. The provisions Armstead violated—Sections 7-2502.01(a) and 7-2506.01—require a valid registration certificate to possess a handgun and ammunition in the District, while another provision—Section 7-2502.01*(b)(3)*—allows nonresidents to transport unregistered firearms under certain conditions, including compliance with

the requirements of Section 22-4504.02 (e.g., firearm must be unloaded and stored in trunk). *See supra* pp. 3-4. Section 22-4504.02, in other words, merely prescribes the manner in which nonresidents must transport unregistered guns to fit within Section 7-2502.01(b)(3)'s affirmative defense to the general prohibitions in Sections 7-2502.01(a) and 7-2506.01. *See supra* p. 4; *see also Thorne v. United States*, 55 A.3d 873, 877, 880-81 (D.C. 2012) (noting that the "statutory exemptions" in D.C. Code §§ 7-2502.01 and 7-2506.01 are affirmative defenses).

But Armstead has never invoked Section 7-2502.01(b)(3)—and he cannot. For one, Armstead appears to have admitted at trial that he knew in July 2022 that a firearm "has to be stored like in a trunk or something" under Section 22-4504.02, and yet he intentionally put his gun and ammunition in the passenger compartment of his car. *See* SA 172, 181-182. Also, even aside from Section 22-4504.02, it is undisputed that Armstead was not "participating in any lawful recreational firearm-related activity in the District" when he was arrested, or "on his way to or from such activity in another jurisdiction," which are separate requirements under Section 7-2502.01(b)(3). *See* SA 160-161. So, even if Section 22-4504.02 were constitutionally suspect—and it is not—Armstead's challenge to that provision would still provide no basis to disturb his convictions under Sections 7-2502.01(a) and 7-2506.01. This is all the more reason not to consider Armstead's claim against

Section 22-4504.02. *See Gamble*, 30 A.3d at 167 n.11 (following the "long judicial tradition" of avoiding "constitutional questions" when possible).

2. Armstead waived his remaining challenges by not raising them in a pretrial motion to dismiss.

Armstead's constitutional challenge to the statutes that actually underlie his conviction—D.C. Code §§ 7-2502.01(a) and 7-2506.01(a)—is also unreviewable because he raised no such claims in his pretrial motion. Under Rule 12, any "defect in the indictment or information," including "failure to state an offense," "*must* be raised by pretrial motion" if it is "reasonably available" and "can be determined without a trial on the merits." Super. Ct. Crim. R. 12(b)(3)(B)(v) (emphasis added). Failure to do so renders "the motion untimely," and the court cannot consider the defense unless the party shows "good cause." Super. Ct. Crim. R. 12(c)(3). Constitutional challenges to the offense-creating statute that were available and decidable before trial, and not excused for good cause, are thus "procedurally barred" on appeal unless raised in a pretrial motion. *Fadero v. United States*, 180 A.3d 1068, 1072-73 (D.C. 2018) (deeming constitutional claim "untimely" and "waived" as defendant "did not raise" it "before trial" and "has not attempted to excuse his delay by showing 'good cause'").[2]

[2] An earlier version of Rule 12 allowed defendants to argue that an indictment or information fails "to charge an offense" at "any time during the pendency of the proceedings." Super. Ct. Crim. R. 12(b)(2) (2013); *see Conley v. United States*, 79

These principles foreclose review of Armstead's Second Amendment claim. The trial court set a pretrial motions deadline for October 28, 2022—more than a month before trial and a full four months after *Bruen* was decided. SA 3. Armstead filed a timely pretrial motion to suppress, but he raised no Second Amendment claim in that motion or at any other time before trial. SA 7-12. Armstead's counsel, in fact, did not even mention the Second Amendment or *Bruen* until Armstead testified near the end of trial, SA 171, and she waited until the close of evidence "to try to preserve" Armstead's "*Bruen* argument," SA 199-200. This eleventh-hour gambit forced the trial court to decide Armstead's admittedly "convoluted" *Bruen* claim without the benefit of briefing, and it deprived the District of any meaningful opportunity to dispute Armstead's assertions. *See* SA 199-203.

That is exactly what Rule 12 forbids. As this Court has explained, Rule 12's requirements are essential to "the sound administration of justice" because "it is not fair to the trial judge" for a defendant "to seek reversal of the judgment on a ground that was fully available to him, but never presented, prior to trial." *Moghalu v. United States*, 122 A.3d 923, 926 (D.C. 2015). This admonition applies with even

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A.3d 270, 275-76 (D.C. 2013). But Rule 12 was amended in 2017 to mirror Fed. R. Crim. P. 12, *see* D.C. Super. Ct. Crim. R. P. 12 cmt. (2017), under which, challenges to the constitutionality of an offense-creating statute are waived and unreviewable unless asserted in a pretrial motion to dismiss, *United States v. Cardona*, 88 F.4th 69, 75-78 (1st Cir. 2023), *cert. denied*, 144 S. Ct. 1082 (2024). *But see Chew*, 314 A.3d at 89-100 (Easterly, J., concurring).

greater force to Second Amendment claims under *Bruen*, which focus so heavily on the written historical record, *see* 597 U.S. at 33-71. Trial judges (or the government for that matter) cannot fairly be asked to address such issues for the first time at trial based only on defense counsel's oral assertions without pretrial notice and briefing. *See, e.g.*, *People v. Cabrera*, 230 N.E.3d 1082, 1093 (N.Y. 2023) (emphasizing that *Bruen*'s historical "inquiry only underscores the importance of preservation" of "Second Amendment challenges in the court of first instance").

So too here. Armstead's claim could have been raised and resolved before trial because *Bruen* was decided nearly a month before his arrest, SA 1, and because he appeared to assert a facial challenge to D.C. Code §§ 7-2502.01(a) and 7-2506.01(a), *see* SA 199-203, and he lacked standing to assert a more fact-intensive claim against D.C. Code § 22-4504.02, *supra* pp. 25-27. Armstead, moreover, has never tried to show good cause for his delay. *See* Br. 8-9. This is, accordingly, a clear-cut case of waiver, *Fadero*, 180 A.3d at 1072-73, regardless of whether the trial court or the District addressed Armstead's claim on the merits. After all, a trial court decision does not "preclude an appellate court from ruling that the motion should have been denied on a procedural ground," *United States v. Walker-Couvertier*, 860 F.3d 1, 9 (1st Cir. 2017), and the District had virtually no chance to contest Armstead's claim precisely because he raised it in a last-minute oral motion,

see United States v. Herrera, 51 F.4th 1226, 1284-85 (10th Cir. 2022) ("Without a chance to address the issue, the government couldn't have 'waived the waiver.'").

This Court, therefore, need not review Armstead's belated Second Amendment claim at all. While Armstead suggests that he preserved his argument in a verbal Rule 29 "motion for judgment of acquittal," Br. 1, 4-5, arguments that must be raised in a pretrial Rule 12 motion cannot be asserted for the first time in a Rule 29 motion. *See United States v. Ramirez*, 324 F.3d 1225, 1227-28 (11th Cir. 2003) (deeming "statute of limitation defense" waived when raised "in a Rule 29 motion and not a Rule 12(b) motion"); *United States v. Colon-Munoz*, 192 F.3d 210, 216-17 (1st Cir. 1999) (same, "constitutional objection"). This is because Rule 29 motions challenge the sufficiency of the evidence; they are not vehicles for raising claims or defenses for the first time. *See Ramirez*, 324 F.3d at 1227-28. Armstead's Second Amendment challenge is thus unreviewable.

B. The Superior Court did not plainly err in rejecting Armstead's Second Amendment claim.

1. Armstead's *Bruen* claim is at the very least forfeited and reviewable only for plain error.

Even if not waived, Armstead's Second Amendment claim is still forfeited and reviewable only for plain error. *See Walker v. United States*, 201 A.3d 586, 593-94 (D.C. 2019) (holding that, even if "waiver defense" was "waived," arguments not raised in a pretrial motion are "forfeited" and reviewed for "plain error"). As this

Court has held, defendants must raise challenges with "reasonable specificity," *Baxter v. United States*, 640 A.2d 714, 717 (D.C. 1994), so that the prosecution can "respond to any contentions" and the trial judge can "correct the situation without jettisoning the trial," *Perkins v. United States*, 760 A.2d 604, 609 (D.C. 2000) (internal quotation marks omitted). A "bare citation to a decision," however, does not raise a "claim with the distinctness necessary to preserve it." *Nesbeth v. United States*, 870 A.2d 1193, 1197 (D.C. 2005); *see United States v. Dowdell*, 70 F.4th 134, 141 (3d Cir. 2023) ("Simply citing a case in the District Court is not sufficient to raise all arguments that might flow from it." (cleaned up)).

Just so here. Armstead's counsel mentioned *Bruen* after the close of evidence "mostly for the record," but never explained what *Bruen* held or why it "opens the door to challenging" the District's "unregistered firearm" and "ammunition statutes." SA 199-203. Armstead never claimed, for example, that his conduct fell within the Second Amendment's text, as *Bruen* requires, 597 U.S. at 17, 24, and he never challenged the historical pedigree of the District's laws, as *Bruen* also requires, *id.* at 17, 19, 24. His counsel instead simply cited *Bruen* and asserted that the District's laws should "be looked at again." SA 199-200. That does not preserve any claim for appeal, *see Nesbeth*, 870 A.2d at 1197, much less the sweeping facial challenge that Armstead now appears to mount. Indeed, his meager argument below principally focused on Section 22-4504.02's transportation requirements, while

barely gesturing at the District's registration scheme as a whole. This Court should accordingly not treat as preserved a massive constitutional challenge to the District's registration laws that was undeveloped below.

2. Armstead has not shown that the trial court erred, let alone plainly so, in rejecting his *Bruen* claim.

Plain-error review "is a formidable hurdle." *Williams v. United States*, 858 A.2d 984, 992 (D.C. 2004). Under that standard, convictions will be affirmed unless appellants show (1) error, (2) that is plain, (3) that affected their substantial rights, and (4) that seriously affected the fairness, integrity, or public reputation of the judicial proceeding. *Chew*, 314 A.3d at 83 n.1. A "plain" error is one that is obvious under existing law, and an issue that "has not been decided in this jurisdiction" cannot be plain error. *Baxter*, 640 A.2d at 717; *see Riddick*, 995 A.2d at 221-22 (affirming where alleged Second Amendment violation was not "obvious").

Here, Armstead has not shown any error, much less plain error. Before *Bruen*, this Court repeatedly upheld D.C. Code §§ 7-2502.01(a) and 7-2506.01 against Second Amendment challenges. *See, e.g.*, *Newman v. United States*, 258 A.3d 162, 166 (D.C. 2021); *Dubose v. United States*, 213 A.3d 599, 603 (D.C. 2019); *Smith v. United States*, 20 A.3d 759, 764 (D.C. 2011); *Plummer v. United States*, 983 A.2d 323, 334-39 (D.C. 2009). With respect to handguns in particular, this Court held that "[b]asic registration" laws and "qualifications for firearms registration" are "deeply enough rooted in our history to support the presumption that a registration

requirement is constitutional." *Dubose*, 213 A.3d at 603 (quoting *Heller II*, 670 F.3d at 1253). The Second Amendment, after all, does not mandate "a free for all out there when it comes to firearms." *Gamble*, 30 A.3d at 165 (internal quotation marks omitted) (upholding District's concealed-carry law, D.C. Code § 22-4504(a)). Those historically grounded holdings remain good law.

Tellingly, Armstead pinpoints nothing in *Bruen* squarely overruling such precedents or otherwise making his Second Amendment claim obvious. For good reason. *Bruen* held that a New York law violated the Second Amendment by requiring law-abiding citizens to show a "special need" for firearms licenses. 597 U.S. at 9-17. But *Bruen* made clear that "licensing regimes" in general remain valid, particularly when they "do not require applicants to show an atypical need for armed self-defense," and "ensure only that those bearing arms in the jurisdiction are, in fact, 'law-abiding, responsible citizens.'" *Id.* at 38 n.9 (quoting *Heller I*, 554 U.S. at 635); *see Rahimi*, 144 S. Ct. at 1902 (emphasizing "just how severely" New York's "special-need regime" in *Bruen* burdened "the rights of its citizens"); *Abed v. United States*, 278 A.3d 114, 129 n.27 (D.C. 2022) (observing that "*Bruen* 'does not prohibit States from imposing licensing requirements'" (quoting *Bruen*, 597 U.S. at 79 (Kavanaugh, J., concurring))).

Bruen, therefore, does not render licensing and registration laws obviously unconstitutional. *See, e.g.*, *Bevis v. City of Naperville*, 85 F.4th 1175, 1202 (7th Cir.

2023) (suggesting *Bruen* did not invalidate "registration requirement" for assault weapons), *cert. denied* 144 S. Ct. 2491 (2024). To the contrary, *Bruen* clarified and applied the *Heller* and *McDonald* test, *see* 597 U.S. at 22-23, 26, 31—and neither *Heller* nor *McDonald* "foreclosed reasonable gun regulations," such as "registration and permit requirements," *Bevis*, 85 F.4th at 1195 n.6 (internal quotation marks omitted). In short, "no controlling authority" or "Supreme Court precedent" rendered D.C. Code §§ 7-2502.01(a) and 7-2506.01 unconstitutional before *Bruen*, *see Dubose*, 213 A.3d at 603, and no controlling authority or Supreme Court precedent does so after *Bruen*, *see* 597 U.S. at 80 (Kavanaugh, J., concurring) (indicating states can require gun owners "to undergo fingerprinting, a background check, a mental health records check, and training in firearms handling and in laws regarding the use of force, among other possible requirements").[3]

Contrary to Armstead's suggestions (Br. 8), then, *Bruen* did not fundamentally alter the District's ability to regulate firearms. As courts have

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[3] *See also Antonyuk v. Chiumento*, 89 F.4th 271, 311-31 (2d Cir. 2023) (upholding licensing scheme), *cert. granted, vacated, remanded*, 2024 WL 3259671 (U.S. July 2, 2024); *Vincent v. Garland*, 80 F.4th 1197, 1201 (10th Cir. 2023) ("Bruen apparently approved the constitutionality of regulations requiring criminal background checks."), *cert. granted, vacated, remanded*, 2024 WL 3259668 (U.S. July 2, 2024). Despite being remanded in light of *Rahimi*, 144 S. Ct. 1889, *Antonyuk* and *Vincent* remain "persuasive precedent" because the Supreme Court "did not reject" their "underlying reasoning," *Action All. of Senior Citizens of Greater Phil. v. Sullivan*, 930 F.2d 77, 83 (D.C. Cir. 1991); *see Tyler v. Cain*, 533 U.S. 656, 666 n.6 (2001) (explaining that grant-vacate-remand orders do not decide the merits).

recognized both before and after *Bruen*, "when the fledgling republic adopted the Second Amendment, an expectation of sensible gun safety regulation was woven into the tapestry of the guarantee," including laws that, like registration requirements, "keep[] track of who in the community had guns" and prevent guns from falling into the hands of those who "posed a potential danger" to "public safety." *Nat'l Rifle Ass'n of Am., Inc. v. ATF*, 700 F.3d 185, 200 (5th Cir. 2012), *abrogated in part on other grounds by Bruen*, 597 U.S. 1; *see Rahimi*, 144 S. Ct. at 1897, 1899-1901 (discussing similar history); *Bevis*, 85 F.4th at 1181-82, 1201-03 (same). Nothing in *Bruen* calls that history into question. *See Bruen*, 597 U.S. at 80 (Kavanaugh, J., concurring) ("Properly interpreted, the Second Amendment allows a 'variety' of gun regulations." (quoting *Heller I*, 554 U.S. at 636)).

Indeed, *Bruen* reached much the same result as the D.C. Circuit's 2017 *Wrenn* decision, which held that conditioning registration on a showing of "good reason" to carry a firearm violates the Second Amendment, 864 F.3d at 664-68. Yet this Court has already recognized, correctly, that "[n]othing in *Wrenn*" had "invalidated" the District's overall legal framework "requiring registration of a firearm." *Dubose*, 213 A.3d at 603 (noting that *Wrenn* "did not disturb the separate requirement to register a firearm"); *see Wrenn*, 864 F.3d at 662, 666-67 (reaffirming "longstanding restrictions" and "traditional limits" on carrying guns, and describing the District's registration requirements "upheld in *Heller II* and *Heller III*" as "reasonable"). The

same is true after *Bruen*, and the trial court in this case thus did not plainly err in rejecting Armstead's skeletal Second Amendment claim.

C. Armstead's admittedly "convoluted" Second Amendment claim fails under any standard of review.

Regardless, Armstead's Second Amendment claim fails even if reviewed de novo. Armstead was caught transporting a concealed, untraceable firearm for unknown purposes with an out-of-state license that the Second Amendment does not require the District to accept. This Court should affirm. *See Rahimi*, 144 S. Ct. 1898, 1903 (explaining that facial Second Amendment challenges fail where the challenged regulation "is constitutional in some of its applications").

1. Armstead has not shown that his conduct fits within the Second Amendment's plain text.

At *Bruen*'s "first step," challengers have the "burden of showing that" their conduct "implicates the text of the Second Amendment." *Frey v. Nigrelli*, 661 F. Supp. 3d 176, 200 (S.D.N.Y. 2023). As construed by the Supreme Court, the Second Amendment's text covers the keeping and bearing of common arms for self-defense and other lawful purposes. *Bruen*, 597 U.S. at 17-22, 31-33; *see Rahimi*, 144 S. Ct. 1897 ("[T]he right secures for Americans a means of self-defense."). But it "was never thought to sweep indiscriminately," *id.*, or to confer a right to carry "any weapon whatsoever in any manner whatsoever for whatever purpose," or to "protect those weapons not typically possessed by law-abiding citizens for lawful purposes,"

Heller I, 554 U.S. at 625-26. Also absent from the Second Amendment's text is any requirement of multi-state reciprocity or a right to carry guns in any jurisdiction one wishes simply because another state might allow it. *See McDonald*, 561 U.S. at 785 (plurality op.) (noting that the Second Amendment "by no means eliminates" local government's ability to address "local needs and values").

Here, Armstead has never hinted that he was carrying his gun and ammunition for self-defense or other lawful purposes. He said nothing about the issue at trial, SA 160-183, and he makes no mention of it in his opening brief. Armstead testified that he was driving in the District that day to a dinner date in Virginia, SA 160-161, but he has never articulated a lawful purpose for carrying an unserialized, untraceable firearm in his car while doing so. Nor could he. Carrying "untraceable" firearms is "not covered by the plain text of the second amendment because they are not typically used by law-abiding citizens for lawful purposes." *People v. Ramirez*, 220 N.E.3d 1060, 1066-67 (Ill. 2023) (explaining that "defaced firearms" with no serial numbers "are uniquely suited for use in the commission of crimes"); *see United States v. Price*, --- F.4th ---, No. 22-4609, 2024 WL 3665400, at *1-11 (4th Cir. Aug. 6, 2024) (en banc) (holding that a firearm with an obliterated "serial number is not a weapon in common use for lawful purposes"); *United States v. Holton*, 639 F. Supp. 3d 704, 708-09, 710-11 (N.D. Tex. 2022) (same). Armstead's *Bruen* claim fails for this reason alone.

Armstead elsewhere suggests (Br. 8-9) that the Second Amendment covers his conduct because "the only reason" he violated D.C. Code §§ 7-2502.01(a) and 7-2506.01 was that "he was stopped for a minor traffic violation." That is both legally incorrect and irrelevant. Armstead violated Sections 7-2502.01(a) and 7-2506.01 the moment he entered the District with an unregistered gun and ammunition, since attempting to possess such items in the District is unlawful whether one is standing on a sidewalk or driving on a street. *See Smith*, 20 A.3d at 761, 764 (upholding conviction of former-MPD officer caught driving with an unregistered pistol and ammunition after "failing to stop at a stop sign"). The fact that Armstead's violations were *discovered* during a traffic stop, moreover, cannot change the analysis or expand the Second Amendment's text to cover his conduct—which, again, involved driving with an unserialized firearm and loose ammunition for unspecified reasons. *See id.* (indicating the Second Amendment "does not cover" driving with guns and ammunition in public for reasons unrelated to self-defense).

Nor can Armstead describe his conduct as "traveling with a lawfully possessed, disassembled firearm to another place where he can lawfully possess it." Br. 9. Even assuming his unserialized firearm was lawful in Virginia—which is unclear, Va. Code § 18.2-308.5 (banning certain undetectable firearms)—Armstead was not automatically "a valid firearm license holder in both Maryland and Virginia through his Utah firearm license," Br. 4. Maryland does not accept out-of-state

permits and licenses at all, *see* Stephen P. Halbrook, *Firearms Law Deskbook*, app. A, State Firearms Laws (Oct. 2023),[4] and Virginia does so only under certain conditions, none of which Armstead has addressed, *see* Va. Code § 18.2-308.014.A.[5] Because Armstead has not shown that he "had the lawful ability to possess a firearm in the jurisdictions he was traveling to and from," Br. 8, this Court need not address his novel, atextual Second Amendment theory.

In any event, even if Maryland and Virginia accepted Armstead's Utah license, the Second Amendment's text does not compel the District to do so. As this Court has indicated, "registration by any government anywhere" does not constitutionally entitle individuals to carry firearms in the District. *See Hargrove v. United States*, 55 A.3d 852, 856 & n.7 (D.C. 2012). The "historic practice" has always been that "'[r]egistration typically required that a person provide to the *local* government a modicum of information about the registrant and his firearm.'" *Id.* (quoting *Heller II*, 670 F.3d at 1254 (emphasis in original)). Otherwise, a lone state

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[4] *See* News Release, Md. State Police, *Maryland State Police Licensing Division Portal Update* (July 22, 2022) ("Maryland law does not recognize handgun carry permits issued by any other state."), http://tinyurl.com/5bnp44tb. At trial, Armstead presented a copy of a Maryland "handgun qualification license," SA 169, but he does not mention that document on appeal and instead appears to claim that his Utah license authorized him to carry firearms in Maryland, *see* Br. 4-5, 8-9.

[5] For instance, Virginia accepts out-of-state permits and licenses only if, among other things, "the issuing authority provides the means for instantaneous verification of the validity of all such permits or licenses issued within that state, accessible 24 hours a day, if available." Va. Code § 18.2-308.014.A.

could nullify the criminal laws of its co-equal sovereigns simply by relaxing its gun-registration rules or eliminating them altogether. Nothing in the Second Amendment's text compels that untenable result, and nothing in the text required the District to treat Armstead's out-of-state license as if it were a valid D.C. registration certificate. *See id.* at 856 & n.7 (rejecting under plain-error review a similar defense asserted by off-duty police officers seeking to carry guns in the District based on the "registration of a pistol anywhere, by whatever licensing authority").

2. The District's laws are consistent with this Nation's history and tradition of gun regulation.

Even if Armstead's conduct fits within the Second Amendment's text, his claim still fails. Armstead's Second Amendment challenge targets the District's registration laws because he was convicted, not simply for attempting to possess a gun and ammunition in the District, but for attempting to do so without a D.C. registration certificate. SA 203. Properly framed, then, Armstead's theory is foreclosed by this Court's pre-*Bruen* decisions upholding the District's registration laws, *see supra* pp. 33-37, as well as by *Bruen* itself because analogous regulations trace back to the earliest days of this Nation, *see, e.g.*, *Nat'l Rifle Ass'n*, 700 F.3d at 200 (recognizing that "laws keeping track of who in the community had guns" were "commonplace" at "the founding").

The Second Amendment is not "a regulatory straightjacket," *Bruen*, 597 U.S. at 30, or "a law trapped in amber," *Rahimi*, 144 S. Ct. at 1897. It requires regulations

to be supported by "a well-established and representative historical *analogue*, not a historical *twin*." *Bruen*, 597 U.S. at 30; *see Rahimi*, 144 S. Ct. at 1897-98 ("[T]he Second Amendment permits more than just those regulations identical to ones that could be found in 1791."). In analyzing this issue, courts consider historical evidence "from before, during, and even after the founding," *Bruen*, 597 U.S. at 27, to determine whether "the challenged regulation is consistent with the principles that underpin our regulatory tradition," *Rahimi*, 144 S. Ct. at 1898. To "pass constitutional muster" for purposes of a facial challenge, then, gun laws need only be "relevantly similar" in some instances to "a historical regulation" in terms of "how and why" they impact the "right to armed self-defense"—they need not be "a dead ringer for historical precursors" from 1791. *Bruen*, 597 U.S. at 29-30; *see id.* at 66 & n.28 (suggesting that post-ratification history may "provide insight into the meaning of the Second Amendment" when consistent with "earlier evidence").

Here, the how and the why are strikingly similar. The District's registration requirements and their historical analogues are relevantly similar in terms of *how* they operate because they all involve the collection of certain basic information, including the names and ages of gun owners and the number and type of firearms they possess, as well as information on whether the owner might be dangerous. Also, the District's regulations and their historical analogues are relevantly similar in terms of *why* they exist—namely, tracking firearms and ensuring that they are kept

and borne only by law-abiding, responsible people, which is precisely the type of commonsense regime that survives *Bruen*, 597 U.S. at 38 n.9; *see Rahimi*, 144 S. Ct. at 1901 (recognizing that "common sense" is not irrelevant in the Second Amendment analysis); *id.* at 1926 (Barrett, J., concurring) (same). In fact, the historical analogues described below were, if anything, far more burdensome than the District's registration laws, which have long been viewed as "self-evidently de minimis," *Heller II*, 670 F.3d at 1253-54; *see Heller III*, 801 F.3d at 274.

Muster regulations. One of the principal ways that colonies and states in the Founding era required registration of guns was through "muster" laws. *See* Adam Winkler, *Gunfight: The Battle Over the Right to Bear Arms in America* 112 (2011) (noting that "musters" were "an early version of gun registration"). As early as 1631, for example, Virginia required residents to make a "yearly" account of their "arms and munition" to the "commanders of all the several plantations." 1631 Va. Acts LVI, *reprinted in* 1 William Waller Hening, The Statutes at Large of Virginia 174-75 (1823), http://tinyurl.com/2874c36x. Likewise, Massachusetts required militia clerks to record an "exact" biannual "List of his Company, and of each Man's Equipments." 1775 Mass. Acts 15, ch. 1, § 9 (1775), http://tinyurl.com/ynrtn325. And New York mandatorily "examined" and "noted" the "arms, ammunition and accoutrements of each man" during regimental parades. Act of Apr. 3, 1778, ch. 33, *reprinted in* 1 Laws of the State of New York, 62, 65 (1886),

http://tinyurl.com/8ete6zds. Similar sorts of regulations continued throughout the Nineteenth Century, too. *See, e.g.*, Public Acts of the State of Connecticut, ch. LXXXII, § 7, at 62 (1859) (subjecting "armories and gun houses" to regular inspection), http://tinyurl.com/25yuxdny.

Loyalty oaths. States in the early Republic also registered firearms through laws requiring service-eligible individuals to take loyalty oaths and disclose their identifying information on pain of disarmament. Virginia directed officials to record the names and information of oath takers, and to "disarm[]" any "recusants." Act of May 5, 1777, ch. III, *reprinted in* 9 William Waller Hening, The Statutes at Large of Virginia 281-82 (1821), http://tinyurl.com/murje9jt. Massachusetts also called for the disarming of any "Male Person above sixteen Years of Age" who "neglect[ed] or refuse[d] to" swear a loyalty oath, and it authorized officials to search a non-compliant man's home and to seize his weapons. Act of Mar. 14, 1776, ch. VII, 1776 Mass. Acts 31, 32-33, http://tinyurl.com/54dp98jn. Pennsylvania likewise required service-eligible adults to pledge their loyalty and register their names, or else "be disarmed." Act of June 13, 1777, ch. 21, §§ 2, 4, *reprinted in* 9 The Statutes at Large of Pennsylvania from 1652-1801, at 110-13 (Wm. Stanley Ray ed., 1903), http://tinyurl.com/3nf3sbfc. And Maryland, too, empowered officials "to disarm all such persons who have not taken the oath of fidelity to this state[.]" Laws of

Maryland, Made and Passed at a Session of Assembly, Act of Mar. 17, 1778, ch. VIII, § V, at 446 (1778), http://tinyurl.com/3cu97z5f.

Taxation. Taxes were yet another way states required gun owners to disclose and identify, and thus register, their firearms. *See Holton*, 639 F. Supp. 3d at 711. North Carolina, for example, imposed a $1.25 tax on "every pistol, except such as are used exclusively for mustering," if "used, worn or carried" "at some point within the year." Public Laws of the State of North Carolina, ch. 34, § 23(4), at 34 (1857), http://tinyurl.com/4t5uuzd2. Georgia likewise enacted a one-dollar tax "on every gun or pistol, musket or rifle over the number of three kept or owned on any plantation," with the plantation owner "required to render, upon oath, a full return" of any "gun, pistol, musket, or rifle." Acts of the General Assembly of the State of Georgia, Tit. VI, No. 41, §§ I-II, at 27-28 (1867), http://tinyurl.com/4nmnmdp3. Alabama followed suit, levying "a tax of two dollars each" on "all pistols or revolvers in the possession of private persons," for which taxpayers would get "a special receipt." Rev. Code of Ala., ch. 3, art. 2, § 434.10, at 169 (1867), http://tinyurl.com/j7fsx6xr. Mississippi also imposed a tax of between $5 and $15 "upon every gun and pistol which may be in the possession of any person," and ordered that the failure to pay such taxes "at any time on demand" required "the Sheriff to forthwith distrain and seize such gun or pistol[.]" 1867 Miss. Laws 327-28, ch. 249, § 1 (Feb. 7, 1867), http://tinyurl.com/nhhz7a5h.

Recordation and permitting. States and localities continued to impose registration requirements via recordation and permitting rules. *See, e.g.*, Act of July 13, 1892, ch. 159, 27 Stat. 116 (requiring a permit to carry concealed firearms in the District), http://tinyurl.com/y8nj7zwy; Lincoln Rev. Ord. ch. XIV, art. XVI, § 6, at 210 (Neb. 1895) (similar), http://tinyurl.com/4bmv975c. Illinois required retailers "dealing in deadly weapons" to "keep a register of all such weapons" and to record "the name and age of the person to whom the weapon is sold" and "the purpose for which it is purchased." Annotated Statutes of the State of Illinois in Force January 1, 1885, Criminal Code Ch. 38, at 771 ¶ 90 (Merritt Starr & Russell H. Curtis eds. 1885), http://tinyurl.com/575a7yc3. Florida made it "unlawful to carry or own a Winchester or repeating rifle" "without first taking out a license." Acts and Resolutions Adopted by the Legislature of Florida, No. 33, ch. 4147, §§ 1, 3, at 71-72 (1893), http://tinyurl.com/msuf8xvp. And Montana required "every person" "who owns or has in his possession any fire arms" to register them with the sheriff through a "verified report" of "all fire arms" that "are owned or possessed by him or her or are in his or her control." Laws, Resolutions, and Memorials of the State of Montana, ch. 2, §§ 1, 3, 8, at 6-7, 9 (1918), http://tinyurl.com/2dcmpshv.[6]

[6] Some jurisdictions allowed "travelers" to store firearms in their baggage during "journeys" into distant, unknown frontiers. *See, e.g.*, *Woodward v. State*, 5 Tex. App. 296, 296-97 (1878). But these were legislative policy choices, not constitutional commands, and at any rate, District law provides reasonable ways to

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These historical analogues confirm the constitutionality of the District's registration laws. As noted, individuals can obtain a D.C. registration certificate by providing certain basic information and by demonstrating certain qualities and skills. For example, applicants must provide their name, address, and date of birth, as well as their firearm's caliber, make, model, and serial number, D.C. Code § 7-2502.03(b)—just as gun owners in early American history had to identify themselves and disclose details about their firearms in order to pay taxes and comply with muster rules, *see supra* pp. 43-45. Similarly, applicants for a D.C. registration certificate must show that they are law-abiding adults who are physically capable of handling firearms responsibly, D.C. Code § 7-2502.03(a)—just as gun owners in early American history had to show that they could be trusted with firearms to serve in the militia or obtain a concealed-carry permit, *see supra* pp. 43-46.

The District's registration regime is thus amply supported by history and tradition, and if anything, is far more accommodating of gun-owners' rights than its historical analogues. *See Rahimi*, 144 S. Ct. at 1901 (upholding disarmament law "by no means identical to" any "founding era regimes"). Indeed, unlike muster rules,

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lawfully transport unregistered firearms in the District, as the trial court correctly held. SA 202; *see supra* pp. 3-4. Armstead's refusal to follow those rules cannot create a new, ahistorical Second Amendment right to transport unregistered firearms and ammunition in the District in any manner or for whatever purpose he chooses.

the District's registration laws do not require burdensome inspections or accountings, *see supra* p. 43. Also, unlike Founding-era loyalty oaths, the District's registration laws do not require applicants to pledge their fealty to the District on pain of disarmament, *see supra* p. 44. Armstead thus cannot plausibly claim that the District's registration laws burden the right to armed self-defense in any sort of unique or unprecedented way, and as a result, his *Bruen* claim fails.

CONCLUSION

The judgment of conviction should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 7, 2024, this brief was served through this Court's electronic filing system to:

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