Appeal No. 23-CF-0387

DISTRICT OF COLUMBIA COURT OF APPEALS

BRIAN CARRUTH,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

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

BRIEF OF AMICUS CURIAE PUBLIC DEFENDER SERVICE IN SUPPORT OF APPELLANT

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STATEMENT OF AMICUS CURIAE

This appeal presents two questions of first impression: (1) whether D.C. Code § 22-4504(a-1), which prohibits carrying a rifle outside the home for self-defense, violates the Second Amendment, and (2) whether a rifle must be "convenient of access and within reach" for a person to "carry" it within the meaning of § 22-4504(a-1). These issues are important to clients of the Public Defender Service for the District of Columbia (PDS). PDS files this brief as amicus curiae in support of the appellant, pursuant to this Court's order of January 27, 2025.

BACKGROUND

D.C. Code § 22-4504 severely restricts the right of the people to bear arms in the District of Columbia. Subsection (a) of the statute—originally enacted in 1932, and most recently amended in 2015—makes it unlawful for anyone to "carry within the District of Columbia either openly or concealed on or about their person, a pistol, without a license issued pursuant to District of Columbia law, or any deadly or dangerous weapon." D.C. Code § 22-4504(a). In other words, a license is required to carry a pistol,[1] and no other weapon may be carried at all.[2] To clarify that the District's prohibition on carrying dangerous weapons applies equally to long guns,[3] the D.C. Council amended the statute in 2009 by adding subsection (a-1): "Except

[1] A "pistol" is defined as a firearm "designed to be fired by use of a single hand or with a barrel less than 12 inches in length." D.C. Code § 7-2501.01(12).

[2] D.C. law provides for the issuance of a license to carry a pistol "concealed upon [one's] person," D.C. Code § 22-4506(a), but not a license to carry a pistol openly, and not a license to carry any other weapon.

[3] *See* D.C. Council, Report on Bill 17-593, at 3–4 (Nov. 25, 2008).

as otherwise permitted by law, no person shall carry within the District of Columbia a rifle or shotgun." *Id.* § 22-4504(a-1). Although D.C. law permits the holder of a firearm registration certificate to carry the registered firearm within his own home or place of business, *id.* § 22-4504.01(1), (3), it does not authorize the registrant to carry the firearm in public for "the core lawful purpose of self-defense," *District of Columbia v. Heller*, 554 U.S. 570, 630 (2008). Rather, a registered rifle or shotgun may be carried outside one's home or place of business only while "it is being used for lawful recreational purposes," D.C. Code § 22-4504.01(2), or while "it is being transported" in accordance with District and federal law, *id.* § 22-4504.01(4), which require the firearm to be unloaded and inaccessible during transportation, *id.* § 22-4504.02(b), (c); 18 U.S.C. § 926A. Thus, in the District of Columbia, no ordinary citizen may carry an operable rifle or shotgun outside his home or place of business for the lawful purpose of self-defense.[4]

In this case, appellant Brian Carruth—a 44-year-old resident of Ohio, 2/27/23 Tr. 27–28—was driving his pickup truck in the District of Columbia on December 5, 2021, when he was pulled over by police for a traffic stop, 2/23/23 Tr. 100. After he informed the police that he had a rifle in his truck, officers found an unloaded Remington 783 rifle inside a padlocked rifle case on the floor of the truck behind the driver's seat underneath some personal items, and a box of rifle ammunition behind the front passenger seat. 2/23/23 Tr. 101, 135–36, 140, 167, 183–84. The key to the

[4] Subsections (a) and (a-1) of § 22-4504 do not apply to qualified law enforcement officers, on-duty members of the armed forces, and "employees of the United States when duly authorized to carry a firearm." D.C. Code § 22-4505(b).

padlock was attached to a keychain that also held the key to the truck, which was in the truck's ignition. *Id.* at 140; 2/27/23 Tr. 91, 99. To access the rifle from the driver's seat, Mr. Carruth would have had to pull over, park the truck, turn off the ignition and remove the key, turn around and reach behind the driver's seat, move the items that were on top of the rifle case, pull the rifle case to the front seat, unlock the padlock, and open the rifle case. 2/23/23 Tr. 183–84; 2/27/23 Tr. 97–99.

Mr. Carruth lawfully purchased the rifle in Ohio on April 29, 2021, 2/27/23 Tr. 156, but he did not register it in the District of Columbia, 2/23/23 Tr. 204, 207, 209, which would have required him to appear in person at the Metropolitan Police Department to be fingerprinted and photographed; to complete a firearms training course; to pass a background check and firearms safety exam; and to pay a fee. D.C. Code §§ 7-2502.03(a)(13)(A); -2502.04, -2502.05; D.C. Mun. Reg. §§ 24-2311, -2312, -2313, -2314, -2331. Registering the rifle would not have authorized him to carry it in the District of Columbia for self-defense. *See* D.C. Code § 22-4504.01. Mr. Carruth was charged with one count of carrying a rifle outside the home or place of business, in violation of D.C. Code § 22-4504(a-1); one count of possessing an unregistered firearm, in violation of D.C. Code § 7-2502.01(a); and one count of unlawful possession of ammunition, in violation of D.C. Code § 7-2506.01(a)(3). R. 65–66 (indictment).

The defense moved to dismiss the charges under the Second Amendment. 2/27/23 Tr. 8. Defense counsel argued that Mr. Carruth had a constitutional right to "own, transport, [and] carry a long rifle," and that, under the text-and-history test articulated in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), the

government bore the burden to justify its restriction of that right. 2/27/23 Tr. 8–10. The trial court summarily denied the motion, stating only that firearm registration "remains constitutional" after *Bruen* because the District "has a right to make sure that the people that bring guns here are allowed to do so." *Id.* at 9. Neither the government nor the trial court cited any evidence that the District's prohibition on carrying operable long guns outside the home for self-defense is "consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24.

Pursuant to the standard jury instructions, and without objection from either party, the trial court instructed the jury that the offense of "carrying a rifle" required the government to prove beyond a reasonable doubt that Mr. Carruth "carried a rifle on or about his person," and not just that he possessed a rifle in his truck. 2/27/23 Tr. 168; Criminal Jury Instructions for the District of Columbia § 6.500(B); *see also id.* § 6.500(D) ("A person carries a [pistol] [rifle] [shotgun] [dangerous weapon] on or about his/her person if it was on his/her person or if it was conveniently accessible to him/her and within his/her reach." (brackets in original)); *White v. United States*, 714 A.2d 115, 119 (D.C. 1998) ("the government's evidence must go beyond mere proof of constructive possession and must show that the pistol was 'in such proximity to the person as to be convenient of access and within reach'"). Adopting that understanding of the offense, the government argued in summation that Mr. Carruth "carried a rifle on or about his person" because the "rifle was in a case that was directly behind him," "within his reach," and "readily accessible," as he could have "parked the car to brush some of the belongings off the rifle so he could reach back to the handle of the case and pull it up." 2/27/23 Tr. 177, 181.

The jury convicted Mr. Carruth on all charges. The trial court sentenced him to 18 months in prison and three years of supervised release, suspended execution of that sentence, and imposed 18 months of supervised probation. R. 247.

On appeal, Mr. Carruth contended that: (1) his conviction for carrying a rifle lacked historical justification and thus violated the Second Amendment under *Bruen*, *see* Br. for Appellant at 24–25, and (2) the evidence at trial was insufficient to prove the "carrying" element of the offense, which required the rifle to be "convenient of access and within reach," *id.* at 16 (quoting *White*, 714 A.2d at 119).[5]

In defending the constitutionality of Mr. Carruth's conviction for carrying a rifle, the United States first argued that any Second Amendment challenge "premised on the burden of registering a firearm in D.C. necessarily fails" because Mr. Carruth could have lawfully transported his rifle without first registering it, and registration would not have authorized him to carry the rifle in the passenger compartment of his truck. Br. for Appellee at 38.[6] The United States then went on to "note" that, when viewed "in tandem with D.C.'s other gun laws" permitting lawful transportation and

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[5] Mr. Carruth also contended that the trial court violated the Sixth Amendment when it ordered him not to discuss his testimony with his counsel during a lunch recess. Br. for Appellant at 18–23. This amicus brief does not address that issue.

[6] The government further asserted that "[f]irearm licensing and registration schemes are likewise constitutional," Br. for Appellee at 39 n.6, but the constitutionality of those schemes is not at issue in this case, as licensing and registration are "irrelevant" to Mr. Carruth's conviction for carrying a rifle, *id.* at 38, and Mr. Carruth does not challenge the constitutionality of his conviction for possessing an unregistered firearm, *id.* at 36. Accordingly, this amicus brief does not address those issues, which are fully briefed in another appeal pending in this Court. *See Benson v. United States*, No. 23-CF-514 (argued Dec. 12, 2024).

recreational use of firearms, D.C. Code § 22-4504(a-1) "allows a rifle to be carried so long as it is done in a certain manner," consistent with the Nation's historical tradition of regulating "*the manner* of public carry." *Id.* at 38–39 n.6 (quoting *Bruen*, 597 U.S. at 59); *see also id.* at 9 (arguing that § 22-4504(a-1) does not violate the Second Amendment because it incorporates exceptions that "restrict only the manner in which a person may carry a rifle"). As explained below, that argument fails: the only "manner" in which rifles may be carried in the District of Columbia "makes it impossible for citizens to use them for the core lawful purpose of self-defense and is hence unconstitutional." *Heller*, 554 U.S. at 630.

In defending the sufficiency of the evidence to support appellant's conviction for carrying a rifle, the United States claimed for the first time on appeal, contrary to its position at trial, that it was not required to prove that Mr. Carruth "carried the rifle 'on or about his person,'" and that it was enough that he knowingly possessed and conveyed a rifle in his truck. Br. for Appellee at 7, 17. As explained below, that novel claim is not only waived, but it contravenes the text, purpose, and history of the statute.

On October 28, 2024, after this case was scheduled for oral argument, this Court notified the Office of the Attorney General for the District of Columbia (OAG) pursuant to Rule 44(b) that this appeal challenges the constitutionality of D.C. Code § 22-4504(a-1), and invited PDS to participate as amicus curiae. After the OAG and PDS stated that they intended to participate in this case, the Court removed the case from the oral argument calendar and set a new briefing schedule. PDS respectfully submits this brief pursuant to this Court's order of January 27, 2025.

ARGUMENT

I. Appellant's Conviction for Carrying a Rifle Is Unconstitutional.

A. Legal Framework

The Second Amendment commands that "the right of the people to keep and bear Arms, shall not be infringed." U.S. CONST. amend. II. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held "on the basis of both text and history" that the Second Amendment guarantees an "individual right to possess and carry weapons in case of confrontation." *Id.* at 592, 595. Emphasizing that "the inherent right of self-defense" is "central to the Second Amendment right," *id.* at 628, *Heller* held that the District's prohibition on the possession of handguns, and its requirement that "lawfully owned firearms, such as registered long guns," be kept "unloaded and disassembled or bound by a trigger lock or similar device," were unconstitutional under any standard because they made it impossible for ordinary citizens to keep and use firearms in the home "for the core lawful purpose of self-defense." *Id.* at 574, 628–30, 635.

Fourteen years later, in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), the Supreme Court held that the right to keep and bear arms is not confined to the home, and instead "guarantees a general right to public carry." *Id.* at 32–33. To make "the constitutional standard endorsed in *Heller* more explicit," *id.* at 31, *Bruen* held that "the standard for applying the Second Amendment is as follows:"

> When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that

> the individual's conduct falls outside the Second Amendment's unqualified command.

Id. at 24 (quotation marks omitted). Applying this text-and-history test to a firearm licensing scheme that restricted "public-carry licenses" to those with "a special need for self-defense," *id.* at 10, *Bruen* held that this restriction was unconstitutional because the historical record "does not demonstrate a tradition of broadly prohibiting the public carry of commonly used firearms for self-defense," *id.* at 38.

Two years later, the Supreme Court applied and further clarified its text-and-history test in *United States v. Rahimi*, 602 U.S. 680 (2024). Together, *Bruen* and *Rahimi* set forth several important constitutional principles that courts must apply when adjudicating Second Amendment challenges.

First, in the "text" portion of the text-and-history test, the only question is whether "the Second Amendment's plain text covers an individual's conduct." *Bruen*, 597 U.S. at 24. If the challenged statute "regulates arms-bearing conduct," "the Constitution presumptively protects that conduct," and the government "bears the burden to 'justify its regulation'" "by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 17, 19, 24; *Rahimi*, 602 U.S. at 691 (quoting *Bruen*, 597 U.S. at 24).

Second, in the "history" portion of the text-and-history test, "not all history is created equal." *Bruen*, 597 U.S. at 34. Because "Constitutional rights are enshrined with the scope they were understood to have *when the people adopted them*," *id.* (quoting *Heller*, 554 U.S. at 634–35) (emphasis in *Bruen*), the historical precedent identified by the government must reflect "the public understanding of the right [to

keep and bear arms] when the Bill of Rights was adopted in 1791," *id.* at 37.[7] "Historical evidence that long predates" ratification of the Second Amendment "may not illuminate the scope of the right if linguistic or legal conventions changed in the intervening years." *Id.* at 34. And while "evidence of 'how the Second Amendment was interpreted from immediately after its ratification through the end of the 19th century'" can provide helpful "confirmation" of its original meaning at the time of ratification, such post-ratification evidence is "secondary" and "cannot provide much insight into the meaning of the Second Amendment when it contradicts earlier evidence." *Id.* at 35, 37, 66.

Third, while the challenged statute need not "precisely match its historical precursors" to pass constitutional muster, it must be "'relevantly similar' to those founding era regimes in both *why* and *how* it burdens the Second Amendment right." *Rahimi*, 602 U.S. at 692, 698 (emphases added) (quoting *Bruen*, 597 U.S. at 29); *see Bruen*, 597 U.S. at 29 ("[W]hether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are '*central*' considerations when engaging in an analogical inquiry." (quoting *Heller*, 554 U.S. at 599) (emphasis in *Bruen*) (quotation marks

[7] *Bruen* and *Rahimi* acknowledged but did not resolve an "ongoing scholarly debate" about whether state firearm regulations may be justified by historical evidence from 1868, when ratification of the Fourteenth Amendment made the Bill of Rights applicable to the states. *Bruen*, 597 U.S. at 37–38; *Rahimi*, 602 U.S. at 692 n.1. That debate is irrelevant here, where the Second Amendment applies directly to the laws of the District of Columbia, *see Pernell v. Southall Realty*, 416 U.S. 363, 370 (1974); *Palmore v. United States*, 290 A.2d 573, 580 n.17 (D.C. 1972), and where "the public understanding of the right to keep and bear arms in 1791 and 1868 was, for all relevant purposes, the same with respect to public carry," *Bruen*, 597 U.S. at 38.

omitted)). "For instance, when a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a *distinctly similar* historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment. Likewise, if earlier generations addressed the societal problem, but did so through *materially different means*, that also could be evidence that a modern regulation is unconstitutional." *Bruen*, 597 U.S. at 26–27 (emphases added); *see Rahimi*, 602 U.S. at 692 ("For example, if laws at the founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing *similar restrictions for similar reasons* fall within a permissible category of regulations. Even when a law regulates arms-bearing for a permissible reason, though, it may not be compatible with the right if it does so to an *extent beyond* what was done at the founding." (emphases added)).

Finally, the text-and-history test articulated in *Bruen* is the exclusive test for assessing a Second Amendment claim: "*Only if* a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command." *Bruen*, 597 U.S. at 17 (emphasis added) (quotation marks omitted); *see also Rahimi*, 602 U.S. at 737 (Barrett, J., concurring) ("A regulation is constitutional *only if* the government affirmatively proves that it is 'consistent with the Second Amendment's text and historical understanding.'" (emphasis added) (quoting *Bruen*, 597 U.S. at 26)); *id.* at 744 (Jackson, J., concurring) ("[P]er *Bruen*, courts evaluating a Second Amendment challenge must consider history *to the exclusion of all else*.").

B. The District's Prohibition on Carrying a Rifle Is Unconstitutional.

D.C. law makes it a crime, punishable by up to five years in prison, to "carry within the District of Columbia a rifle or shotgun." D.C. Code § 22-4504(a-1). That broad prohibition applies to all people other than qualified law enforcement officers, on-duty members of the armed forces, and "employees of the United States when duly authorized to carry a firearm." *Id.* § 22-4505(b). It applies to all places outside the "home" or "place of business." *Id.* § 22-4504.01(1), (3). It applies to all purposes other than "lawful recreational purposes." *Id.* § 22-4504.01(2). And it applies to all manners of public carry other than transporting a firearm in accordance with District and federal law, *id.* § 22-4504.01(4), which require the firearm to be "unloaded" and not "readily accessible," *id.* § 22-4504.02(b)(1); 18 U.S.C. § 926A. In other words, D.C. Code § 22-4504(a-1) prohibits all ordinary citizens from carrying operable long guns in public for "the core lawful purpose of self-defense." *Heller*, 554 U.S. at 630.

That prohibition fails the Supreme Court's text-and-history test. As the United States does not and cannot dispute, "the Second Amendment's plain text covers [the] conduct" regulated by § 22-4504(a-1), and "the Constitution presumptively protects that conduct," as rifles and shotguns unquestionably "constitute bearable arms," and "the right to 'bear arms'" "naturally encompasses public carry." *Bruen*, 597 U.S. at 24, 28, 32. The government thus bears the burden to "justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 24. Because the government cannot meet that burden, § 22-4504(a-1) is unconstitutional and cannot be applied to Mr. Carruth.

The government contends that § 22-4504(a-1) is constitutional because it "incorporates myriad exceptions that, taken together, restrict only the manner in which a person may carry a rifle," consistent with the Nation's historical tradition of regulating "*the manner* of public carry." Br. for Appellee at 9, 39 n.6 (quoting *Bruen*, 597 U.S. at 59). But as the Supreme Court made clear in *Bruen*, none of the historical restrictions on public carry "operated to prevent law-abiding citizens with ordinary self-defense needs from carrying arms in public for that purpose," and the historical record "does not demonstrate a tradition of broadly prohibiting the public carry of commonly used firearms for self-defense." *Bruen*, 597 U.S. at 38, 60. For example, although the common law made it a crime to carry a deadly weapon "for the purpose of affray, and in such a manner as to strike terror to the people," it "did not punish the carrying of deadly weapons *per se*." *Id.* at 52. Similarly, although "some States began enacting laws that proscribed the *concealed* carry of pistols and other small weapons" in the 19th century, courts upheld such laws as constitutional "only if they did not similarly prohibit *open* carry." *Id.* at 52–53 (first emphasis added). Indeed, courts widely recognized that "[a] statute which, under the pretence of regulating, amounts to a destruction of the right, or which requires arms to be borne as to render them wholly useless for the purpose of defence, would be clearly unconstitutional." *State v. Reid*, 1 Ala. 612, 616–17 (1840), *quoted in Heller*, 554 U.S. at 629, *and cited in Bruen*, 597 U.S. at 53; *Nunn v. State*, 1 Ga. 243, 249 (1846); *State v. Wilforth*, 74 Mo. 528, 530 (1881); *see Owen v. State*, 31 Ala. 387, 388 (1858) (concealed-carry prohibition did not violate right to bear arms because it did not "require [arms] to be so borne, as to render them useless for the purpose of defense").

To the extent that D.C. Code § 22-4504(a-1) can be characterized as restricting "only the manner in which a person may carry a rifle," Br. for Appellee at 9, that restriction is inconsistent with the Nation's historical tradition of firearm regulation because it "broadly prohibit[s] the public carry of commonly used firearms for self-defense" and "prevent[s] law-abiding citizens with ordinary self-defense needs from carrying arms in public for that purpose." *Bruen*, 597 U.S. at 38, 60. Under § 22-4504(a-1) and the statutory exceptions it incorporates, a rifle may be carried outside one's home or place of business only "[w]hile it is being used for lawful recreational purposes," or "[w]hile it is being transported for a lawful purpose as expressly authorized by District or federal statute and in accordance with the requirements of that statute." D.C. Code § 22-4504.01(2), (4). Neither of these exceptions allows a person to carry a rifle for personal protection: the exception for "lawful *recreational* purposes" plainly "preclude[s]" an "exception for self-defense," *Heller*, 554 U.S. at 630 (emphasis added), and the statutes governing lawful transportation of firearms require them to be "unloaded" and "not readily accessible" during transportation, D.C. Code § 22-4504.02(b)(1); 18 U.S.C. § 926A, "rendering [them] inoperable" "for the purpose of immediate self-defense," *Heller*, 554 U.S. at 628, 635. Like the District's trigger-lock requirement in *Heller*, which required the owner of a lawfully registered firearm to keep it "unloaded and disassembled or bound by a trigger lock or similar device unless such firearm is kept at his place of business, or while being used for lawful recreational purposes within the District of Columbia," the District's supposed restriction on "the manner" in which rifles may be carried in public "makes

it impossible for citizens to use them for the core lawful purpose of self-defense and is hence unconstitutional." *Id.* at 630.

Here, as in *Bruen*, the government has "failed to meet [its] burden to identify an American tradition justifying" its prohibition on carrying a rifle in public for self-defense. *Bruen*, 597 U.S. at 38–39. "Under *Heller*'s text-and-history standard," D.C. Code § 22-4504(a-1) "is therefore unconstitutional." *Id.* at 39.

II. A Rifle Must Be "Convenient of Access and Within Reach" To Be "Carried."

This Court has held for nearly a century that, for a person to "carry" a pistol or other dangerous weapon in violation of D.C. Code § 22-4504 (previously codified at D.C. Code § 22-3204), the weapon must be "in such proximity to the person as to be convenient of access or within reach." *Brown v. United States*, 30 F.2d 474, 475 (D.C. 1929); *Wilson v. United States*, 198 F.2d 299, 300 (D.C. Cir. 1952); *White v. United States*, 714 A.2d 115, 119 (D.C. 1998); *Howerton v. United States*, 964 A.2d 1282, 1289 (D.C. 2009). This longstanding requirement stems from the statute's "policy" of preventing a person from having a weapon "so near him or her that he or she could promptly use it," *White*, 714 A.2d at 120, and applies to all manners of "carrying," whether "openly" or "concealed on or about [the] person," D.C. Code § 22-4504(a); *see* cases cited *infra* note 10. Against this backdrop of what it means to "carry" a weapon in violation of § 22-4504, the D.C. Council amended the statute in 2009 by "clarifying" that, just like pistols and other dangerous weapons, rifles and shotguns may not be "carried" in any manner except as expressly authorized by law, Report on Bill 17-593, *supra* note 3, at 3–4, and by providing penalties for carrying

a long gun "that are equivalent to those for unlawfully carrying a pistol," Inoperable Pistol Amendment Act of 2008, D.C. Law 17-388 (May 20, 2009).[8]

Consistent with the text, purpose, and history of § 22-4504, the standard jury instructions for the offenses of carrying a pistol without a license (CPWL), carrying a rifle or shotgun, and carrying a dangerous weapon (CDW) all define the "carrying" element identically: the government must prove beyond a reasonable doubt that the defendant "carried" a pistol, rifle, shotgun, or other dangerous weapon "on or about his/her person," Criminal Jury Instructions for the District of Columbia § 6.500(A),

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[8] The statute, as most recently amended in 2015, provides in relevant part:

(a) No person shall carry within the District of Columbia either openly or concealed on or about their person, a pistol, without a license issued pursuant to District of Columbia law, or any deadly or dangerous weapon. Whoever violates this section shall be punished as provided in § 22-4515, except that:

(1) A person who violates this section by carrying a pistol, without a license issued pursuant to District of Columbia law, or any deadly or dangerous weapon, in a place other than the person's dwelling place, place of business, or on other land possessed by the person, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both; or

(2) If the violation of this section occurs after a person has been convicted in the District of Columbia of a violation of this section or of a felony, either in the District of Columbia or another jurisdiction, the person shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 10 years, or both.

(a-1) Except as otherwise permitted by law, no person shall carry within the District of Columbia a rifle or shotgun. A person who violates this subsection shall be subject to the criminal penalties set forth in subsection (a)(1) and (2) of this section.

D.C. Code § 22-4504. For this Court's convenience, current and previous versions of the statute are reproduced in the appendix to this brief.

(B), (C), and a "person carries a [pistol] [rifle] [shotgun] [dangerous weapon] on or about his/her person if it was on his/her person or if it was conveniently accessible to him/her and within his/her reach," *id.* § 6.500(D) (brackets in original).

In this case, the trial court, the prosecutor, and defense counsel all agreed that, to convict Mr. Carruth of carrying a rifle in violation of § 22-4504(a-1), the jury was required to find beyond a reasonable doubt that he "carried a rifle on or about his person." 2/27/23 Tr. 168. Adopting this understanding of the offense, the prosecutor argued to the jury that Mr. Carruth "carried the rifle on or about his person" because the "rifle was in a case that was directly behind him," "within his reach," and "readily accessible," as he could have "parked the car to brush some of the belongings off the rifle so he could reach back to the handle of the case and pull it up." *Id.* at 177, 181.

Contrary to its position at trial, the government now contends for the first time on appeal that, unlike a conviction for CPWL or CDW, a conviction for carrying a rifle or shotgun does not require the weapon to be kept "in such proximity as to be 'convenient of access and within reach'" because, unlike subsection (a) of the statute, which prohibits carrying a pistol without a license or a dangerous weapon "either openly or concealed on or about [the] person," D.C. Code § 22-4504(a), subsection (a-1) does not contain the phrase "on or about [the] person" and thus reflects a legislative intent to adopt a broader meaning of "carry" for long guns than for pistols and other dangerous weapons. Br. for Appellee at 11–12. That claim is not only waived, *see United States v. Porter*, 618 A.2d 629, 642 n.24 (D.C. 1992), but it finds no support in the text, purpose, or history of the statute.

The requirement that a weapon be carried "in such proximity to the person as to be convenient of access and within reach" inheres in both the purpose of the statute and the common understanding of what it means to "carry" a weapon. As this Court has repeatedly held in interpreting the CPWL and CDW provision of § 22-4504, the "convenient of access" requirement effectuates the statute's "policy" of preventing a person from having a weapon "so near him or her that he or she could promptly use it, if prompted to do so by any violent motive." *Jones v. United States*, 972 A.2d 821, 827 (D.C. 2009) (quoting *White*, 714 A.2d at 119–20); *Henderson v. United States*, 687 A.2d 918, 922 n.7 (D.C. 1996) (quoting *Brown*, 30 F.2d at 475). And as the Supreme Court emphasized in *Heller* just one year before § 22-4504(a-1) was enacted, "a most familiar meaning" of "carry arms or weapons" is to "wear, bear, or carry upon the person or in the clothing or in a pocket, for the purpose of being armed and ready for offensive or defensive action in a case of conflict with another person." *Heller*, 554 U.S. at 584 (ellipses omitted) (quoting *Carry arms or weapons*, Black's Law Dictionary 214 (6th ed. 1990)). Indeed, that dictionary definition of "carry arms or weapons" existed as early as 1910 and reflected the common legal understanding of what it meant to "carry" a weapon when Congress first enacted the District's CPWL statute in 1932. *Carry arms or weapons*, Black's Law Dictionary 172 (2d ed. 1910) ("To wear, bear, or carry them upon the person or in the clothing or in a pocket, for the purpose of use, or for the purpose of being armed and ready for offensive or defensive action in case of a conflict with another person.") (citing, e.g., *State v. Carter*, 36 Tex. 89, 90 (1871) ("To have upon the person is to carry a weapon in contemplation of the law.")); *see also Clark v. City of Jackson*, 124 So. 807, 808

(Miss. 1929) ("whether appellant was *carrying* the pistol, in the sense of the statute," turned on whether the pistol was "readily accessible, and available for use").[9]

By the time the D.C. Council enacted subsection (a-1) of the statute in 2009, this Court had held for decades that the "carrying" element of CPWL and CDW requires the weapon to be "convenient of access and within reach," whether the weapon is carried "openly" or "concealed on or about [the] person."[10] Although at times the Court has emphasized the "on or about [the] person" language in applying the "convenient of access" requirement to cases where the weapon was concealed near but not on the person, *e.g.*, *White*, 714 A.2d at 119; *Henderson*, 687 A.2d at 920, it has consistently enforced the requirement in all applications of § 22-4504(a),

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[9] Prior to the enactment of the CPWL statute in 1932, a predecessor statute made it unlawful to "have concealed about [the] person any deadly or dangerous weapons" or to "carry openly any such weapons . . . with intent to unlawfully use the same." Act of July 13, 1892, ch. 159, §§ 1–2, 27 Stat. 116. Construing this statute in 1929, this Court held that "carrying" a concealed weapon "'about' the person" does not require the weapon to be "on" the person, but it does require the weapon to be "in such proximity to the person as to be convenient of access and within reach." *Brown*, 30 F.2d at 475. In later applying this requirement to the CPWL statute, this Court reasoned that, although the statutory language has changed, "the principle remains the same," *Wilson*, 198 F.2d at 300, as the requirement continues to serve the policy of preventing a person from having a weapon "so near him or her that he or she 'could promptly use it, if prompted to do so by any violent motive,'" *Henderson*, 687 A.2d at 922 n.7 (quoting *Brown*, 30 F.2d at 475) (emphasis removed).

[10] *See, e.g.*, *Waterstaat v. United States*, 252 A.2d 507, 509 (D.C. 1969); *Porter v. United States*, 282 A.2d 559, 560 (D.C. 1971); *Jones v. United States*, 299 A.2d 538, 539 (D.C. 1973); *Johnson v. United States*, 309 A.2d 497, 499 (D.C. 1973); *Tucker v. United States*, 421 A.2d 32, 35 (D.C. 1980); *Logan v. United States*, 489 A.2d 485, 491 (D.C. 1985); *Brown v. United States*, 546 A.2d 390, 395 (D.C. 1988); *Smith v. United States*, 899 A.2d 119, 121 n.3 (D.C. 2006); *Howerton v. United States*, 964 A.2d 1282, 1289 (D.C. 2009).

even when the weapon is carried openly, and often without reference to the "on or about [the] person" language, *see* cases cited *supra* note 10. Thus, the "convenient of access" requirement has been understood to define what it means to "carry" a weapon, as opposed to the "broader concept of constructive possession," *Smith v. United States*, 899 A.2d 119, 121 n.3 (D.C. 2006), and is not limited to the specific statutory language of "concealed on or about the person." *See, e.g.*, *Howerton*, 964 A.2d at 1289 ("For purposes of the CPWL statute, a defendant may be found to have 'carried' a pistol if the pistol 'was in such proximity [to him] as to be convenient of access and within reach.'"); D.C. Council, Report on Bill 11-153 (Dec. 22, 1995), Attachment 5, at 4 (Testimony of Ramsey Johnson, Chief, Superior Court Division of the United States Attorney's Office for the District of Columbia (Apr. 19, 1995)) ("The term 'carry' [in the CPWL statute] has been interpreted as meaning that the pistol must be 'convenient of access and within reach.' . . . [O]ur office encounters a number of cases where we can prove that a defendant 'possessed' a firearm (that is, the defendant had the intention to exercise dominion and control over it), but we cannot prove that the defendant 'carried' a firearm (that is, that the defendant placed the firearm in a location that was convenient of access and within reach).").

By extending the policy of the CPWL and CDW statute to rifles and shotguns, and by using the term "carry," instead of the broader term "possess," to describe the conduct prohibited in § 22-4504(a-1), the D.C. Council incorporated the background understanding of what it means to "carry" a weapon in violation of § 22-4504(a), including the requirement that the weapon be kept "in such proximity to the person as to be convenient of access and within reach." *See Dobyns v. United States*, 30

A.3d 155, 159–60 (D.C. 2011) ("Where a legislature 'borrows terms of art in which are accumulated the legal tradition and meanings of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken.'" (quoting *Morissette v. United States*, 342 U.S. 246, 263 (1952))); *Burton v. Off. of Emp. Appeals*, 30 A.3d 789, 792 (D.C. 2011) ("The statutory meaning of a term must be derived from a consideration of the entire enactment against the backdrop of its policies and objectives.").

Contrary to the government's contention, the Council's omission of the phrase "on or about the person" from subsection (a-1) does not reflect an intent to eliminate the longstanding requirement that a weapon be "convenient of access and within reach." When the Council enacted subsection (a-1), the CPWL and CDW provision in subsection (a) provided: "No person shall carry within the District of Columbia *either openly or concealed on or about their person*, a pistol, without a license pursuant to District of Columbia law, or any deadly or dangerous weapon *capable of being so concealed*." D.C. Code § 22-4504(a) (2008) (emphases added). The original version of that provision, enacted in 1932, prohibited carrying a pistol without a license or a dangerous weapon "concealed on or about [the] person," and was later amended in 1943 to prohibit carrying such a weapon in any manner, "*either openly or* concealed on or about [the] person."[11] When the Council amended the

[11] Act of July 8, 1932, Pub. L. No. 72-275, § 4, 47 Stat. 650, 651 ("No person shall within the District of Columbia *carry concealed on or about his person*, except in his dwelling house or place of business or on other land possessed by him, a pistol, without a license . . . , or any deadly or dangerous weapon." (emphasis added)); Act

statute in 2009 by "clarifying" in subsection (a-1) that "no person shall carry within the District of Columbia a rifle or shotgun," Report on Bill 17-593, *supra* note 3, at 3–4; Inoperable Pistol Amendment Act of 2008, D.C. Law 17-388 (May 20, 2009), it streamlined the statutory text by leaving out the phrase "either openly or concealed on or about [the] person"—language that merely reflects subsection (a)'s origin as a prohibition on concealed carry and its later amendment to include open carry.

In amending § 22-4504 to include rifles and shotguns, the Council expressed no intent, and identified no reason, to change the well-established understanding of what it means to "carry" a weapon, or to treat long guns any differently than pistols and other dangerous weapons. Indeed, whereas the committee report described other provisions of the same legislation as "revising," "changing," or "repealing" existing law, and provided detailed explanations for these substantive changes, *see* Report on Bill 17-593, at 3–5 (discussing policy reasons for "criminalizing the discharge of firearms," "revising the requirements pertaining to the transportation of firearms," "repealing the provision for issuance of licenses to carry a pistol," and "chang[ing] the waiting period" for purchasing firearms, it repeatedly described subsection (a-1) as merely "clarifying" and "making explicit" that "no person shall carry a rifle or shotgun unless otherwise permitted by law," with no further explanation, *id.* at 1, 3–4, 7. If the Council had intended to regulate long guns more stringently than other

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of Nov. 4, 1943, Pub. L. No. 78-182, 57 Stat. 586, 586 ("No person shall within the District of Columbia *carry either openly or concealed on or about his person*, except in his dwelling house or place of business or on other land possessed by him, a pistol, without a license . . . , or any deadly or dangerous weapon *capable of being so concealed*." (emphases added)).

weapons by adopting a more expansive understanding of "carrying," it would not have characterized subsection (a-1) as merely "clarifying" existing law, and it would have mentioned the reason for the purported change, as it did for other substantive changes it enacted at the time. Rather, by "clarifying" that long guns, just like pistols and other dangerous weapons, may not be carried without express authorization, and by providing penalties for carrying a rifle "that are equivalent to those for unlawfully carrying a pistol," Inoperable Pistol Amendment Act of 2008, D.C. Law 17-388 (May 20, 2009), the Council expressed its intent to treat the two offenses the same.[12]

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[12] The government suggests that, by creating a new offense of carrying a rifle or shotgun in subsection (a-1), the Council must have intended to change the meaning of "carrying" with respect to long guns because, prior to the enactment of subsection (a-1), carrying a rifle or shotgun was already prosecuted as carrying a dangerous weapon under subsection (a). Br. for Appellee at 14. But when the Council enacted subsection (a-1) in 2009, the CDW provision in subsection (a) made it unlawful for anyone to carry "either openly or concealed on or about their person" any "dangerous weapon *capable of being so concealed*," D.C. Code § 22-4504(a) (2008) (emphasis added)—language that arguably did not apply to rifles and shotguns, which could be considered "too large to be 'concealed on or about [one's] person.'" *In re D.R.*, 96 A.3d 45, 48–49 & n.4 (D.C. 2014) (describing uncertainty over "how a weapon's concealability is to be determined," and citing CDW cases that "involved weapons of considerable size," including rifles and shotguns, but noting that none of "those defendants challenged their CDW convictions by claiming that the weapon at issue was too large to be 'concealed on or about their person'"). The Council thus sought to resolve ambiguity regarding the CDW provision's applicability to long guns by "clarifying" and "making explicit" in subsection (a-1) that rifles and shotguns may not be carried except as otherwise permitted by law. Report on Bill 17-593, *supra* note 3, at 1, 3–4. The Council later removed the "capable of being so concealed" language from subsection (a), *see* License To Carry a Pistol Amendment Act of 2014, D.C. Law 20-279 (June 16, 2015), after this Court held in 2014 that, "as an element of CDW, the government must prove beyond a reasonable doubt that a defendant would have been capable of actually concealing her weapon on or about her person while she was carrying the weapon." *D.R.*, 96 A.3d at 50.

In arguing that "carry" means something broader in subsection (a-1) than in subsection (a) of § 22-4504, the government asks this Court to disregard its long line of precedent defining the "carrying" element of CPWL and CDW, and to instead borrow the Supreme Court's interpretation of the term "carry" in a different statute with a different purpose and history. Br. for Appellee at 13. In *Muscarello v. United States*, 524 U.S. 125 (1998), the Supreme Court held that 18 U.S.C. § 924(c)(1), which imposes a five-year mandatory minimum prison term on anyone "who 'uses or carries a firearm' 'during and in relation to' a 'drug trafficking crime,'" 524 U.S. at 126 (quoting 18 U.S.C. § 924(c)(1)), is not "limited to the carrying of firearms on the person," but "also applies to a person who knowingly possesses and conveys firearms in a vehicle, including in the locked glove compartment or trunk of a car, which the person accompanies," *id.* at 126–27. Acknowledging that "the word 'carry' has many different meanings," *id.* at 128, including the legal definition that the Court itself would later endorse in *Heller* as "most familiar," *id.* at 130 (quoting *Carry arms or weapons*, Black's Law Dictionary 214 (6th ed. 1990)); *Heller*, 554 U.S. at 584, the Court held in *Muscarello* that "neither the statute's basic purpose nor its legislative history" supported construing the term "carry" to require that the firearm be "on the person" or "immediately accessible." 524 U.S. at 132, 138. The Court explained that such a requirement would frustrate the statute's policy purpose, which was "to combat the 'dangerous combination' of 'drugs and guns'" by "persuading a criminal 'to leave his gun at home.'" *Id.* at 132; *see id.* at 133 ("How persuasive is a punishment that is without effect until a drug dealer who has brought

his gun to a sale (indeed has it available for use) actually takes it from the trunk (or unlocks the glove compartment) of his car?").

Such reasoning does not apply here, where the purpose of the statute is not to persuade the drug dealer to "leave his gun at home," but to prevent the ordinary citizen from having a gun "so near him or her that he or she could promptly use it, if prompted to do so by any violent motive." *Jones*, 972 A.2d at 827.[13] As the United States itself recognized in *Muscarello*, an "immediate accessibility" requirement is "consistent with a major purpose" of concealed-carry laws, "which is to protect the public by preventing the individual from having on hand a deadly weapon of which the public is unaware, and which may be used in a sudden heat of passion." Br. for United States at 37 n.22, *Muscarello v. United States*, 524 U.S. 125 (1998) (Nos. 96-1654, 96-8837) (quotation marks omitted). Here, the United States does not claim that the policy purpose of subsection (a-1) is any different from that of subsection (a), or that any difference between long guns and other weapons should dictate a different understanding of what it means to "carry" them. The government does not explain, for example, why the legislature would intend for a person driving with a

[13] The District of Columbia's local analogue to 18 U.S.C. § 924(c)(1) imposes a five-year mandatory minimum prison term on anyone who "possess[es]" a firearm "while committing a crime of violence or dangerous crime." D.C. Code § 22-4504(b); *see Stevenson v. United States*, 760 A.2d 1034, 1036 (D.C. 2000) (describing 18 U.S.C. § 924(c)(1) as the "federal counterpart" to D.C. Code § 22-4504(b)). When enacting that provision against the backdrop of this Court's interpretation of the term "carry" in § 22-4504(a), *see* Law Enforcement Amendment Act of 1989, D.C. Law 8-19, § 3(c) (July 28, 1989), the D.C. Council chose to use the broader term "possess" in § 22-4504(b), consistent with that provision's purpose of "persuading a criminal 'to leave his gun at home,'" *Muscarello*, 524 U.S. at 132.

rifle, a pistol, and a knife in the trunk of his car to be guilty of "carrying" the rifle, but not the pistol or the knife. Nor does the government explain why the legislature would intend for such conduct to support a conviction for carrying a rifle under subsection (a-1), but not a conviction for carrying the same rifle as a dangerous weapon under subsection (a). *See* Amended Reply Br. for Appellant at 2–3. Such incoherent results further support the conclusion that, by "clarifying" that rifles and shotguns, just like pistols and other weapons, may not be carried in the District without express authorization, the D.C. Council intended to treat long guns the same as pistols and other weapons.

This Court should hold based on the text, purpose, and history of D.C. Code § 22-4504 that, like a conviction for CPWL and CDW, a conviction for carrying a rifle or shotgun requires the government to prove beyond a reasonable doubt that the weapon was "in such proximity to the person as to be convenient of access and within reach."

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this brief has been served, by this Court's electronic filing system, on David H. Reiter, Esq., Counsel for Appellant; Chrisellen R. Kolb, Esq., and Daniel J. Lenerz, Esq., Counsel for Appellee; and Caroline Van Zile, Esq., and Brian Leitch, Esq., Counsel for District of Columbia, this 3rd day of March, 2025.

/s/ Alice Wang
Alice Wang

STATUTORY APPENDIX

DISTRICT OF COLUMBIA CRIMINAL LAW AND PROCEDURE

July 2021

Reprinted from the District of Columbia Official Code this compilation of selected statutes is current through the laws effective as April 4, 2021.

Defendant was convicted of first-degree burglary, attempted robbery, and unlawfully possessing a firearm after a felony conviction in violation of D.C. Code § 22-4503(a)(2), because he entered the victim's apartment while holding a gun, walked into her bedroom, and demanded money. Fortune v. United States, 59 A.3d 949, 2013 D.C. App. LEXIS 11 (D.C. 2013).

Evidence was sufficient to prove defendant had constructive possession of two rifles that police found in the trunk of his mother's car, because by his response to her angry inquiry as to why he put them in there—to protect his wife—he effectively admitted doing so. Hammond v. United States, 77 A.3d 964, 2013 D.C. App. LEXIS 438 (D.C. 2013).

§ 22-4503.01. Unlawful discharge of a firearm.

Except as otherwise permitted by law, including legitimate self-defense, no firearm shall be discharged or set off in the District of Columbia without a special written permit from the Chief of Police issued pursuant to Section 1 of Article 9 of the Police Regulations of the District of Columbia, effective September 29, 1964 (C.O. 64-1397F; 24 DCMR § 2300.1) [CDCR 24-2300.1].

(July 8, 1932, 47 Stat. 651, ch. 456, § 3a,as added May 20, 2009, D.C. Law 17-388, § 2(b), 56 DCR 1162.)

CASE NOTES

Merger of offenses.

Unlawful possession of ammunition does not merge with unlawful discharge of a firearm, D.C. Code § 22-4503.01, because it is possible to discharge a firearm without possessing the discharged ammunition. Snell v. United States, 68 A.3d 689, 2013 D.C. App. LEXIS 93 (D.C. 2013), limited, Smith Prop. Holdings Five (D.C.) LP v. D.C. Rental Hous. Comm'n, 2016 D.C. App. LEXIS 41 (D.C. Jan. 27, 2016).

§ 22-4503.02. Prohibition of firearms from public or private property.

(a) The District of Columbia may prohibit or restrict the possession of firearms on its property and any property under its control.

(b) Private persons or entities owning property in the District of Columbia may prohibit or restrict the possession of firearms on their property; provided, that this subsection shall not apply to law enforcement personnel when lawfully authorized to enter onto private property.

(July 8, 1932, 47 Stat. 651, ch. 456, § 3b,as added May 20, 2009, D.C. Law 17-388, § 2(b), 56 DCR 1162.)

§ 22-4504. Carrying concealed weapons; possession of weapons during commission of crime of violence; penalty.

(a) No person shall carry within the District of Columbia either openly or concealed on or about their person, a pistol, without a license issued pursuant to District of Columbia law, or any deadly or dangerous weapon. Whoever violates this section shall be punished as provided in § 22-4515, except that:

(1) A person who violates this section by carrying a pistol, without a license issued pursuant to District of Columbia law, or any deadly or dangerous weapon, in a place other than the person's dwelling place, place of business, or on other land possessed by the person, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both; or

(2) If the violation of this section occurs after a person has been convicted in the District of Columbia of a violation of this section or of a felony, either in the District of Columbia or another jurisdiction, the person shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 10 years, or both.

(a-1) Except as otherwise permitted by law, no person shall carry within the District of Columbia a rifle or shotgun. A person who violates this subsection shall be subject to the criminal penalties set forth in subsection (a)(1) and (2) of this section.

(b) No person shall within the District of Columbia possess a pistol, machine gun, shotgun, rifle, or any other firearm or imitation firearm while committing a crime of violence or dangerous crime as defined in § 22-4501. Upon conviction of a violation of this subsection, the person may be sentenced to imprisonment for a term not to exceed 15 years and shall be sentenced to imprisonment for a mandatory-minimum term of not less than 5 years and shall not be released on parole, or granted probation or suspension of sentence, prior to serving the mandatory-minimum sentence.

(c) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(July 8, 1932, 47 Stat. 651, ch. 465, § 4; Nov. 4, 1943, 57 Stat. 586, ch. 296; Aug. 4, 1947, 61 Stat. 743, ch. 469; June 29, 1953, 67 Stat. 94, ch. 159, § 204(c); July 28, 1989, D.C. Law 8-19, § 3(c), 36 DCR 2844; May 8, 1990, D.C. Law 8-120, § 3(c), 37 DCR 24; May 21, 1994, D.C. Law 10-119,§ 15(c), 41 DCR 1639; Aug. 20, 1994, D.C. Law 10-151, § 302, 41 DCR 2608; May 20, 2009, D.C. Law 17-388, § 2(c), 56 DCR 1162; Sept. 29, 2012, D.C. Law 19-170, § 3(d), 59 DCR 5691; June 11, 2013, D.C. Law 19-317, §§ 240(b), 309(a), 60 DCR 2064; June 16, 2015, D.C. Law 20-279, § 3(a), 62 DCR 1944.)

CASE NOTES

ANALYSIS

Constitutionality.
Adequacy of representation.
Admissibility of evidence.
—Declarations by accused, admissibility of evidence.
—Demonstrative or documentary evidence, admissibility of evidence.

DISTRICT OF COLUMBIA CRIMINAL LAW AND PROCEDURE

December 2013

Reprinted from the District of Columbia Official Code
as updated through the October 2013 Advance Service

and at one point glanced down to where the gun was located, and gun was ultimately discovered under the driver's seat of defendant's vehicle, with the handle visible, following defendant's arrest for driving without a license. Jones v. United States, 972 A.2d 821, 2009 D.C. App. LEXIS 183 (2009).

Jury's finding that defendant did indeed own or possess pistol was supported by his admission after questioning that gun was his and by fact that gun was found in box of men's clothing in apartment in which defendant was the sole male occupant. D.C. Code 1981, §§ 6-2311, 6-2361, 22-3203. Reid v. United States, 466 A.2d 433, 1983 D.C. App. LEXIS 479 (1983).

As to the sufficiency of evidence of possession of a narcotic drug, narcotics implements, and a pistol, the instant case was controlled by "Hooker," and this holding applied to the jointly possessed narcotic contraband seized on execution of search warrant, as well as to the joint possession of pistol seized 11 days later. D.C. Code §§ 22-3203, 22-3601, 33-402. Haltiwanger v. United States, 377 A.2d 1142, 1977 D.C. App. LEXIS 385 (1977).

Evidence was sufficient to prove that defendant had constructive possession of a firearm and boxes of ammunition, all of which were found in a backpack next to her bed, because defendant was the sole occupant of the bedroom during the week prior to the execution of the search warrant, with ample ability to control the backpack and its contents; because the backpack was conspicuously located in her bedroom next to defendant's bed, a juror could reasonably infer that she had the requisite intent to exercise control over the backpack. Smith v. United States, 55 A.3d 884, 2012 D.C. App. LEXIS 521 (2012).

Defendant was convicted of first-degree burglary, attempted robbery, and unlawfully possessing a firearm after a felony conviction in violation of D.C. Code § 22-4503(a)(2), because he entered the victim's apartment while holding a gun, walked into her bedroom, and demanded money. Fortune v. United States, 59 A.3d 949, 2013 D.C. App. LEXIS 11 (2013).

§ 22-4503.01. Unlawful discharge of a firearm.

Except as otherwise permitted by law, including legitimate self-defense, no firearm shall be discharged or set off in the District of Columbia without a special written permit from the Chief of Police issued pursuant to Section 1 of Article 9 of the Police Regulations of the District of Columbia, effective September 29, 1964 (C.O. 64-1397F; 24 DCMR § 2300.1) [CDCR 24-2300.1].

(July 8, 1932, 47 Stat. 651, ch. 456, § 3a, as added May 20, 2009, D.C. Law 17-388, § 2(b), 56 DCR 1162.)

§ 22-4503.02. Prohibition of firearms from public or private property.

(a) The District of Columbia may prohibit or restrict the possession of firearms on its property and any property under its control.

(b) Private persons or entities owning property in the District of Columbia may prohibit or restrict the possession of firearms on their property; provided, that this subsection shall not apply to law enforcement personnel when lawfully authorized to enter onto private property.

(July 8, 1932, 47 Stat. 651, ch. 456, § 3b, as added May 20, 2009, D.C. Law 17-388, § 2(b), 56 DCR 1162.)

§ 22-4504. Carrying concealed weapons; possession of weapons during commission of crime of violence; penalty.

(a) No person shall carry within the District of Columbia either openly or concealed on or about their person, a pistol, or any deadly or dangerous weapon capable of being so concealed. Whoever violates this section shall be punished as provided in § 22-4515, except that:

(1) A person who violates this section by carrying a pistol, or any deadly or dangerous weapon, in a place other than the person's dwelling place, place of business, or on other land possessed by the person, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both; or

(2) If the violation of this section occurs after a person has been convicted in the District of Columbia of a violation of this section or of a felony, either in the District of Columbia or another jurisdiction, the person shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 10 years, or both.

(a-1) Except as otherwise permitted by law, no person shall carry within the District of Columbia a rifle or shotgun. A person who violates this subsection shall be subject to the criminal penalties set forth in subsection (a)(1) and (2) of this section.

(b) No person shall within the District of Columbia possess a pistol, machine gun, shotgun, rifle, or any other firearm or imitation firearm while committing a crime of violence or dangerous crime as defined in § 22-4501. Upon conviction of a violation of this subsection, the person may be sentenced to imprisonment for a term not to exceed 15 years and shall be sentenced to imprisonment for a mandatory-minimum term of not less than 5 years and shall not be released on parole, or granted probation or suspension of sentence, prior to serving the mandatory-minimum sentence.

(c) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(July 8, 1932, 47 Stat. 651, ch. 465, § 4; Nov. 4, 1943, 57 Stat. 586, ch. 296; Aug. 4, 1947, 61 Stat. 743, ch. 469; June 29, 1953, 67 Stat. 94, ch. 159, § 204(c); July 28, 1989, D.C. Law 8-19, § 3(c), 36 DCR 2844; May 8, 1990, D.C. Law 8-120, § 3(c), 37 DCR 24; May 21, 1994, D.C. Law 10-119, § 15(c), 41 DCR 1639; Aug. 20, 1994, D.C. Law 10-151, § 302, 41 DCR 2608; May 20, 2009, D.C. Law 17-388, § 2(c), 56 DCR 1162; Sept. 29, 2012, D.C. Law 19-170,

DISTRICT OF COLUMBIA CRIMINAL LAW AND PROCEDURE ANNOTATED

JULY 2009

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as updated through the June 2009 Advance Service

by LexisNexis. If the act section is codified by the Codification Counsel, it may be placed elsewhere in the D.C. Code.

§ 22-4503.02. Prohibition of firearms from public or private property.

(a) The District of Columbia may prohibit or restrict the possession of firearms on its property and any property under its control.

(b) Private persons or entities owning property in the District of Columbia may prohibit or restrict the possession of firearms on their property; provided, that this subsection shall not apply to law enforcement personnel when lawfully authorized to enter onto private property. (Act of July 8, 1932, ch. 465, § 3b, as added _____, 2009, D.C. Law 17- (Act 17-690), § 2(b), 56 DCR 1162.)

Effect of amendments. — The 2009 amendment by D.C. Law 17- (Act 17-690) added this section.

Emergency legislation. — For temporary addition of section, see § 2(b) of the Inoperable Pistol Emergency Amendment Act of 2008 (D.C. Act 17-652, January 6, 2009, 56 DCR 927). Section 3 of the act provided that nothing in § 2 of the act shall affect any action, proceeding, or prosecution commenced before September 16, 2008 and that any such action, proceeding, or prosecution shall continue, or may be enforced, in the same manner and to the same extent as if the amendment made by that section had not been made.

For temporary addition of section, see § 2(b) of the Inoperable Pistol Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-24, March 16, 2009, 56 DCR 2309).

Legislative history of Law 17- (Act 17-690). — See note to § 22-4501.

Editor's notes. — Section 3 of D.C. Law 17- (Act 17-690) provided that nothing in section 2 of D.C. Law 17- (Act 17-690) shall affect any action, proceeding, or prosecution commenced before September 16, 2008. Any such action, proceeding, or prosecution shall continue, or may be enforced, in the same manner and to the same extent as if the amendments made by that section had not been made.

Section 3b of the Act of July 8, 1932, ch. 465, as added by D.C. Law 17- (Act 17-690), § 2, was codified as this section by LexisNexis. If the act section is codified by the Codification Counsel, it may be placed elsewhere in the D.C. Code.

§ 22-4504. Carrying concealed weapons; possession of weapons during commission of crime of violence; penalty [Formerly § 22-3204].

(a) No person shall carry within the District of Columbia either openly or concealed on or about their person, a pistol, without a license issued pursuant to District of Columbia law, or any deadly or dangerous weapon capable of being so concealed. Whoever violates this section shall be punished as provided in § 22-4515, except that:

(1) A person who violates this section by carrying a pistol, without a license issued pursuant to District of Columbia law, or any deadly or dangerous weapon, in a place other than the person's dwelling place, place of business, or on other land possessed by the person, shall be fined not more than $5,000 or imprisoned for not more than 5 years, or both; or

(2) If the violation of this section occurs after a person has been convicted in the District of Columbia of a violation of this section or of a felony, either in the District of Columbia or another jurisdiction, the person shall be fined not more than $10,000 or imprisoned for not more than 10 years, or both.

(a-1) Except as otherwise permitted by law, no person shall carry within the District of Columbia a rifle or shotgun. A person who violates this subsection shall be subject to the criminal penalties set forth in subsection (a)(1) and (2) of this section.

(b) No person shall within the District of Columbia possess a pistol, machine gun, shotgun, rifle, or any other firearm or imitation firearm while committing a crime of violence or dangerous crime as defined in § 22-4501. Upon conviction of a violation of this subsection, the person may be sentenced to imprisonment for a term not to exceed 15 years and shall be sentenced to imprisonment for a mandatory-minimum term of not less than 5 years and shall not be released on parole, or granted probation or suspension of sentence, prior to serving the mandatory-minimum sentence. (July 8, 1932, 47 Stat. 651, ch. 465, § 4; Nov. 4, 1943, 57 Stat. 586, ch. 296; Aug. 4, 1947, 61 Stat. 743, ch. 469; June 29, 1953, 67 Stat. 94, ch. 159, § 204(c); 1973 Ed., § 22-3204; 1981 Ed., § 22-3204; July 28, 1989, D.C. Law 8-19, § 3(c), 36 DCR 2844; May 8, 1990, D.C. Law 8-120, § 3(c), 37 DCR 24; May 21, 1994, D.C. Law 10-119, § 15(c), 41 DCR 1639; Aug. 20, 1994, D.C. Law 10-151, § 302, 41 DCR 2608; _____, 2009, D.C. Law 17- (Act 17-690), § 2(c), 56 DCR 1162.)

Section references. — This section is referenced in § 7-2507.06a, § 22-4505, § 24-221.06, § 24-261.02, and § 24-467.

Effect of amendments. — The 2009 amendment by D.C. Law 17- (Act 17-690) added (a-1).

Temporary legislation. — Section 3(b) of D.C. Law 17- (Act 17-536) added (a-1) to read as follows:

"(a-1) Except as otherwise permitted by law, no person shall carry within the District of Columbia a rifle or shotgun."

Section 6(b) of D.C. Law 17- (Act 17-536) provides that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary addition of (a-1), see § 3(b) of the Second Firearms Control Emergency Amendment Act of 2008 (D.C. Act 17-502, September 16, 2008, 55 DCR 9904).

For temporary addition of (a-1), see § 3(b) of the Second Firearms Control Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-601, December 12, 2008, 56 DCR 9).

For temporary repeal of the Second Firearms Control Congressional Review Emergency Amendment Act of 2008, effective December 12, 2008 (D.C. Act 17-601; 56 DCR 9), see § 6 of the Firearms Registration Emergency Amendment Act of 2008 (D.C. Act 17-651, January 6, 2009, 56 DCR 911).

DISTRICT OF COLUMBIA CRIMINAL LAW AND PROCEDURE ANNOTATED

JULY 2008

Reprinted from the LEXIS District of Columbia Code
as updated through the June 2008 Advance Service

of violence, and carrying a pistol [now "firearm"] without a license. Beaner v. United States, 845 A.2d 525, 2004 D.C. App. LEXIS 75 (2004).

Probable cause.

Defendant's conviction for unlawful possession of a pistol [now "firearm"] under subdivision (a)(2) of this section was held to be reasonable, where a police officer discovered three guns and a ski mask in a rental car, giving officer a reasonable suspicion to believe that the occupants of the car either were planning an armed robbery or had recently committed one; this discovery led to the search of the trunk and seizure of the pistol which was supported by probable cause. Thomas v. United States, App. D.C., 553 A.2d 1206, 1989 D.C. App. LEXIS 12 (1989).

Reasonable suspicion.

Police officer's prior experience, the fact that defendant was stopped in a high crime area, and the fact that defendant made a furtive gesture after he saw the officer were all relevant to the question of whether the officer had reasonable suspicion that defendant concealed a weapon under the seat of his car; under the circumstances, the officer acted reasonably when he looked for a weapon. James v. United States, 829 A.2d 963, 2003 D.C. App. LEXIS 529 (2003).

§ 22-4504. Carrying concealed weapons; possession of weapons during commission of crime of violence; penalty [Formerly § 22-3204].

(a) No person shall carry within the District of Columbia either openly or concealed on or about their person, a pistol, without a license issued pursuant to District of Columbia law, or any deadly or dangerous weapon capable of being so concealed. Whoever violates this section shall be punished as provided in § 22-4515, except that:

(1) A person who violates this section by carrying a pistol, without a license issued pursuant to District of Columbia law, or any deadly or dangerous weapon, in a place other than the person's dwelling place, place of business, or on other land possessed by the person, shall be fined not more than $5,000 or imprisoned for not more than 5 years, or both; or

(2) If the violation of this section occurs after a person has been convicted in the District of Columbia of a violation of this section or of a felony, either in the District of Columbia or another jurisdiction, the person shall be fined not more than $10,000 or imprisoned for not more than 10 years, or both.

(b) No person shall within the District of Columbia possess a pistol, machine gun, shotgun, rifle, or any other firearm or imitation firearm while committing a crime of violence or dangerous crime as defined in § 22-4501. Upon conviction of a violation of this subsection, the person may be sentenced to imprisonment for a term not to exceed 15 years and shall be sentenced to imprisonment for a mandatory-minimum term of not less than 5 years and shall not be released on parole, or granted probation or suspension of sentence, prior to serving the mandatory-minimum sentence. (July 8, 1932, 47 Stat. 651, ch. 465, § 4; Nov. 4, 1943, 57 Stat. 586, ch. 296; Aug. 4, 1947, 61 Stat. 743, ch. 469; June 29, 1953, 67 Stat. 94, ch. 159, § 204(c); 1973 Ed., § 22-3204; 1981 Ed., § 22-3204; July 28, 1989, D.C. Law 8-19, § 3(c), 36 DCR 2844; May 8, 1990, D.C. Law 8-120, § 3(c), 37 DCR 24; May 21, 1994, D.C. Law 10-119, § 15(c), 41 DCR 1639; Aug. 20, 1994, D.C. Law 10-151, § 302, 41 DCR 2608.)

Section references. — This section is referenced in § 7-2507.06a, § 22-4505, § 24-221.06, § 24-261.02, and § 24-467.

Legislative history of Law 8-19. — See note to § 22-4501.

Legislative history of Law 8-120. — See note to § 22-4501.

Legislative history of Law 10-119. — See note to § 22-4502.

Legislative history of Law 10-151. — See note to § 22-4501.

CASE NOTES

DISTRICT OF COLUMBIA CRIMINAL LAW AND PROCEDURE

1993 EDITION

Reprinted from District of Columbia Code
and 1993 Cumulative Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1993

usual presumption of sanity exists at the time of trial. Williams v. United States, App. D.C., 104 A.2d 828 (1954).

Introduction of the pistol in evidence is not necessary to prove unlawful possession of a pistol. Coleman v. United States, App. D.C., 219 A.2d 496, rev'd on other grounds, 397 F.2d 621 (D.C. Cir. 1966).

Effective assistance of counsel. — Counsel who is a defense attorney with many years of experience and who presents all substantial defenses, makes appropriate motions and objections, attempts to suppress the evidence on a charge of unlawful possession of a pistol, and is able to obtain an acquittal on a charge of threats to do bodily harm and a directed verdict on a charge of assault by threatening in a menacing manner is not ineffective. Gressette v. United States, App. D.C., 256 A.2d 418 (1969).

Felony penalty not invoked where no previous conviction. — Where there is no proof that the defendant had ever been convicted previously under this section, the felony penalty cannot be invoked. Burrell v. United States, App. D.C., 223 A.2d 377 (1966).

Where judge notified of unauthorized sentence, case remanded for correction. — Where the United States Attorney writes to the Chief Judge of the Superior Court and to the defendant's counsel, pointing out that the length of the sentence imposed on the appellant for unlawful possession of a pistol was unauthorized because the defendant had not previously been convicted under this section, this requires remanding the case to the trial court for further proceedings to correct the sentence, despite the absence of a motion to correct an illegal sentence pursuant to § 23-110. Smith v. United States, App. D.C., 414 A.2d 1189 (1980).

Cited in Williams v. United States, App. D.C., 133 A.2d 112 (1957); Haltiwanger v. United States, App. D.C., 377 A.2d 1142 (1977); Givens v. United States, App. D.C., 385 A.2d 24 (1978); Jackson v. United States, App. D.C., 385 A.2d 786 (1978); Metts v. United States, App. D.C., 388 A.2d 47 (1978); Clark v. United States, App. D.C., 396 A.2d 997 (1979); Smothers v. United States, App. D.C., 403 A.2d 306 (1979); Sampson v. United States, App. D.C., 407 A.2d 574 (1979); Dobson v. United States, App. D.C., 426 A.2d 361 (1981); Jefferson v. United States, App. D.C., 463 A.2d 681 (1983); Fitzgerald v. United States, App. D.C., 472 A.2d 52 (1984); Waller v. United States, App. D.C., 531 A.2d 994 (1987); United States v. Duncan, 115 WLR 2517 (Super. Ct.); Thomas v. United States, App., D.C., 553 A.2d 1206 (1989); Gomez v. United States, App. D.C., 597 A.2d 884 (1991).

§ 22-3204. Carrying concealed weapons; possession of weapons during commission of crime of violence; penalty.

(a) No person shall within the District of Columbia carry either openly or concealed on or about his person, except in his dwelling house or place of business or on other land possessed by him, a pistol, without a license therefor issued as hereinafter provided, or any deadly or dangerous weapon capable of being so concealed. Whoever violates this section shall be punished as provided in § 22-3215, unless the violation occurs after he has been convicted in the District of Columbia of a violation of this section or of a felony, either in the District of Columbia or in another jurisdiction, in which case he shall be sentenced to imprisonment for not more than 10 years.

(b) No person shall within the District of Columbia possess a pistol, machine gun, shotgun, rifle, or any other firearm or imitation firearm while committing a crime of violence or dangerous crime as defined in § 22-3201. Upon conviction of a violation of this subsection, the person may be sentenced to imprisonment for a term not to exceed 15 years and shall be sentenced to imprisonment for a mandatory-minimum term of not less than 5 years and shall not be released on parole, or granted probation or suspension of sentence, prior to serving the mandatory-minimum sentence. (July 8, 1932, 47 Stat. 651, ch. 465, § 4; Nov. 4, 1943, 57 Stat. 586, ch. 296; Aug. 4, 1947, 61 Stat. 743, ch. 469; June 29, 1953, 67 Stat. 94, ch. 159, § 204(c); 1973 Ed.,

DISTRICT OF COLUMBIA CODE

1951 EDITION

SUPPLEMENT VI

LAWS—January 3, 1951 to January 6, 1958

NOTES TO DECISIONS—January 3, 1951 to July 31, 1957

Prepared and Published Under Authority of Sections 202, 203 of Title 1, United States Code,
by the Committee on the Judiciary of the House of Representatives

VOLUME ONE

Part I.—Government of the District
Part II.—Civil Procedure
Part III.—Probate Law and Procedure
Part IV.—Criminal Law and Procedure

TITLES 1—24

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1958

NOTES TO DECISIONS

ADDITIONAL PENALTY

One convicted of attempted robbery could not be given additional punishment under statute authorizing such where crime of violence is committed with pistol or firearms where indictment did not charge such aggravating facts, even though he did not dispute testimony and defended on issues of identity and insanity. *George T. Jordan v. United States District Court for the District of Columbia* (1956, 98 U. S. App. D. C. 160, 233 F. 2d 362).

Charge in indictment that offense was committed "with force and arms" was insufficient to charge that defendant had been "armed with pistol or other firearm", to bring him within purview of statute imposing additional penalty for aggravated offense. *Id.*

INDICTMENT

Under statute imposing additional penalty upon one who commits crime of violence when armed with firearm, facts in aggravation must be charged in indictment and found to be true by jury before additional penalty may be imposed. *George T. Jordan v. United States District Court for the District of Columbia* (1956, 98 U. S. App. D. C. 160, 233 F. 2d 362).

§ 22-3203 [6: 116c]. Unlawful possession of a pistol.

No person shall own or keep a pistol, or have a pistol in his possession or under his control, within the District of Columbia, if—

(1) he is a drug addict;

(2) he has been convicted in the District of Columbia or elsewhere of a felony;

(3) he has been convicted of violating section 22-2701, section 22-2722, or sections 22-3302 to 22-3306; or

(4) he is not licensed under section 22-3210 to sell weapons, and he has been convicted of violating sections 22-3201 to 22-3216.

No person shall keep a pistol for, or intentionally make a pistol available to, such a person, knowing that he has been so convicted or that he is a drug addict. Whoever violates this section shall be punished as provided in section 22-3215, unless the violation occurs after he has been convicted of a violation of this section, in which case he shall be imprisoned for not more than ten years. (July 8, 1932, 47 Stat. 651, ch. 465, § 3; June 29, 1953, 67 Stat. 93, 159, § 204.)

AMENDMENT

1953—Act of June 29, 1953 amended section by expanding the application of the section which previously provided that no one who had been convicted of a crime of violence should own or possess a pistol in the District of Columbia.

CHANGE OF SECTION HEADING

Section was formerly entitled "Persons convicted of crime forbidden to possess a pistol."

DEFINITION

Section 204 (a) of the act of June 29, 1953, 67 Stat. 93, ch. 159, provided: "For the purposes of this section, the term 'Dangerous Weapons Act' means the Act of July 8, 1932, as amended, providing for the control of dangerous weapons in the District."

NOTES TO DECISIONS

CONSECUTIVE SENTENCES

Municipal court could impose a sentence to commence at termination of that imposed for another distinct offense, irrespective of whether initial sentence was imposed by the municipal court or by the district court. *Williams v. United States* (D. C. Mun. App. 1957, 133 A. 2d 112).

DEFENSES

Even though defendant, who was charged with making threats in a menacing manner and with unlawfully possessing an automatic pistol, had been discharged from hospital as having recovered from a mental disorder less than two months before date of alleged crimes, usual presumption of defendant's sanity, under District of Columbia law, existed at the time of trial. *Williams v. United States* (D. C. Mun. App. 1954, 104 A. 2d 828).

§ 22-3204 [6: 116d]. Carrying concealed weapons.

No person shall within the District of Columbia carry either openly or concealed on or about his person, except in his dwelling house or place of business or on other land possessed by him, a pistol, without a license therefor issued as hereinafter provided, or any deadly or dangerous weapon capable of being so concealed. Whoever violates this section shall be punished as provided in section 22-3215, unless the violation occurs after he has been convicted in the District of Columbia of a violation of this section or of a felony, either in the District of Columbia or in another jurisdiction, in which case he shall be sentenced to imprisonment for not more than ten years. (July 8, 1932, 47 Stat. 651, ch. 465, § 4; Nov. 4, 1943, 57 Stat. 586, ch. 296; Aug. 4, 1947, 61 Stat. 743, ch. 469; June 29, 1953, 67 Stat. 94, ch. 159, § 204.)

AMENDMENT

1953—Act of June 29, 1953 amended section by striking out a proviso authorizing arrests without a warrant and searches and seizures pursuant thereto for violation of the section. Similar provisions are now found in section 23-306. The section was also amended to provide for a maximum penalty of ten years for a conviction of violating the section after having previously been convicted of such offense, or of a felony.

DEFINITION

Section 204 (a) of the act of June 29, 1953, 67 Stat. 93, ch. 159, provided: "For the purposes of this section, the term 'Dangerous Weapons Act' means the act of July 8, 1932, as amended, providing for the control of dangerous weapons in the District."

NOTES TO DECISIONS

BURDEN OF PROOF

In prosecution for carrying gun without license, prosecution was required only to prove that accused carried gun and had no license to carry it, and was not required to prove all contents of original record of all licenses for carrying guns issued by superintendent of police. *Bussie v. United States* (D. C. Mun. App. 1951, 81 A. 2d 247).

CONSTITUTIONALITY

District of Columbia Code provision denouncing offense of carrying a pistol without a license to do so is not unconstitutional in permitting imposition of greater penalty when accused has been previously convicted of that offense in District or of felony in District or anywhere. *Kendrick v. United States* (1956, 99 U. S. App. D. C. 173, 238 F. 2d 34).

DISCRETION OF COURT

In prosecution for robbery, conspiracy to commit robbery, and for carrying a deadly weapon without a license, requiring counsel for one defendant to ask a more precise question than question counsel asked a witness for prosecution as to whether such witness was convicted several times of prostitution during specified years was within discretion of trial court. *Bundy v. United States* (1951, 90 U. S. App. D. C. 12, 193 F. 2d 694).

DOUBLE JEOPARDY

Defendant, who allegedly carried concealed unlicensed pistol on his person and produced it and shot victim,

DISTRICT OF COLUMBIA CODE

1940 EDITION

CONTAINING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE, RELATING TO OR IN FORCE IN THE DISTRICT OF COLUMBIA (EXCEPT SUCH LAWS AS ARE OF APPLICATION IN THE DISTRICT OF COLUMBIA BY REASON OF BEING GENERAL AND PERMANENT LAWS OF THE UNITED STATES), IN FORCE ON JANUARY 3, 1941

VOLUME ONE

Part I.—Government of the District
Part II.—Civil Procedure
Part III.—Probate Law and Procedure
Part IV.—Criminal Law and Procedure

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1941

rape, or robbery, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment in the penitentiary. (July 8, 1932, 47 Stat. 650, ch. 465, § 1.)

COMPILER'S NOTE

Section 17 of the act of July 8, 1932, 47 Stat. 654, ch. 465 repealed §§ 855 to 857 of the "Code of Law for the District of Columbia, 1919." This is obviously an error and was meant to repeal §§ 855 to 857 of the Code of 1901. These sections were compiled in the 1929 edition of the Code as title 6, §§ 114 to 116.

CROSS REFERENCE

Other provisions concerning regulations of firearms, § 1–227 and notes.

§ 22–3202 [6: 116b]. Committing crime when armed—Added punishment.

If any person shall commit a crime of violence in the District of Columbia when armed with or having readily available any pistol or other firearm, he may, in addition to the punishment provided for the crime, be punished by imprisonment for a term of not more than five years; upon a second conviction for a crime of violence so committed he may, in addition to the punishment provided for the crime, be punished by imprisonment for a term of not more than ten years; upon a third conviction for a crime of violence so committed he may, in addition to the punishment provided for the crime, be punished by imprisonment for a term of not more than fifteen years; upon a fourth or subsequent conviction for a crime of violence so committed he may, in addition to the punishment provided for the crime, be punished by imprisonment for an additional period of not more than thirty years. (July 8, 1932, 47 Stat. 650, ch. 465, § 2.)

NOTES TO DECISIONS

INDICTMENT

The words "said defendants being then and there armed with a certain pistol" were considered as mere surplusage to an indictment for robbery and not to charge a separate offense for the purpose of increasing the punishment. *Tomlinson* v. *United States* (68 App. D. C. 106, 93 Fed. (2d) 652, 114 A. L. R. 1315).

§ 22–3203 [6: 116c]. Persons convicted of crime forbidden to possess a pistol.

No person who has been convicted in the District of Columbia or elsewhere of a crime of violence shall own or have in his possession a pistol, within the District of Columbia. (July 8, 1932, 47 Stat. 651, ch. 465, § 3.)

§ 22–3204 [6: 116d]. Carrying concealed weapons.

No person shall within the District of Columbia carry concealed on or about his person, except in his dwelling house or place of business or on other land possessed by him, a pistol, without a license therefor issued as hereinafter provided, or any deadly or dangerous weapon. (July 8, 1932, 47 Stat. 651, ch. 465, § 4.)

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

"The defendant had a right to carry the revolver, loaded or unloaded, from the place of purchase to his home; and whether he had it on his person at the time of his arrest, for that purpose only, or for some unlawful purpose as well, was a question of fact, which should have been submitted to the jury." *Bell* v. *United States* (49 App. D. C. 367, 265 Fed. 1007).

D. C. 1929, title 6, § 114, permitted the carrying of a dangerous or deadly weapon from the place of purchase to the purchaser's dwelling or place of business, especially when person was conducting himself in a quiet, peaceable, and orderly manner. *Bolt* v. *United States* (55 App. D. C. 120, 2 Fed. (2d) 922).

CONCEALED ABOUT HIS PERSON

"The words 'concealed about his person,' as used in the statute, were intended to mean and do mean concealed in such proximity to the person as to be convenient of access and within reach." *Brown* v. *United States* (58 App. D. C. 311, 30 Fed. (2d) 474).

§ 22–3205 [6: 116e]. Exceptions to section 22–3204.

The provisions of section 22–3204 shall not apply to marshals, sheriffs, prison or jail wardens, or their deputies, policemen or other duly appointed law-enforcement officers, or to members of the Army, Navy, or Marine Corps of the United States or of the National Guard or Organized Reserves when on duty, or to the regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States, provided such members are at or are going to or from their places of assembly or target practice, or to officers or employees of the United States duly authorized to carry a concealed pistol, or to any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person having in his possession, using, or carrying a pistol in the usual or ordinary course of such business or to any person while carrying a pistol unloaded and in a secure wrapper from the place of purchase to his home or place of business or to a place of repair or back to his home or place of business or in moving goods from one place of abode or business to another. (July 8, 1932, 47 Stat. 651, ch. 465, § 5.)

§ 22–3206 [6: 116f]. Issue of licenses to carry pistol.

The superintendent of police of the District of Columbia may, upon the application of any person having a bona fide residence or place of business within the District of Columbia or of any person having a bona fide residence or place of business within the United States and a license to carry a pistol concealed upon his person issued by the lawful authorities of any State or subdivision of the United States, issue a license to such person to carry a pistol within the District of Columbia for not more than one year from date of issue, if it appears that the applicant has good reason to fear injury to his person or property or has any other proper reason for carrying a pistol and that he is a suitable person to be so licensed. The license shall be in duplicate, in form to be prescribed by the commissioners of the District of Columbia and shall bear the name, address, description, photograph, and signature of the licensee and the reason given for desiring a license. The original thereof shall be delivered to the licensee, and the duplicate shall be retained by the superintendent of police of the District of Columbia and preserved in his office for six years. (July 8, 1932, 47 Stat. 651, ch. 465, § 6.)