

**DISTRICT OF COLUMBIA COURT OF APPEALS**

**NO. 25-CF-0045**

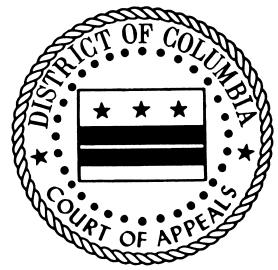
**DELONTE CLEMONS**

**Appellant**

**v.**

**UNITED STATES**

**Appellee**



Clerk of the Court

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**Appeal from the Superior Court of the District of Columbia,**

**Criminal Division, Misdemeanor Branch**

**BRIEF OF APPELLANT**

Case Below: 2024-CF2-000033

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## **TABLE OF CONTENTS**

Table of Authorities – p. 2

Issue Presented - p. 2

Statement of the Case - p. 3

Statement of the Facts – p. 4

Argument - p. 7

Conclusion - p. 11

## **TABLE OF AUTHORITIES**

<i>Brown v. United States</i> , 313 A.3d 555 (D.C. 2024)	P. 10
<i>Campbell v. United States</i> , 15-CF-25 (2017)	P. 9
<i>Campbell v. United States</i> , 18-CO-894 (2019)	P. 9
<i>Freeman v. United States</i> , 273A.3d 879 (D.C. 2022)	P. 10
<i>Robinson v. District of Columbia</i> , 234 F.Supp.3d 14 (D.D.C. 2017)	P. 8
<i>Wong Sun v. United States</i> , 371 U.S. 471, 9 L.Ed.2d 441 (1963)	P. 10
D.C. Code § 25-1001	p. 8

## **ISSUE PRESENTED**

Whether the trial Court erred in denying Appellant's motion to suppress the tangible evidence that was recovered from him during a police seizure of his person on the grounds of a privately owned apartment complex, after Appellant alleged that the police illegally seized him for carrying an open container of

alcohol while he was on private property.

### **STATEMENT OF THE CASE**

This case came before the Superior Court as the result of an incident that occurred during the early morning hours of New Years Day 2024 in the 2300 block of Good Hope Road (now Marion Barry Avenue) SE. Police officers on a routine patrol vehicle encountered Appellant, approached him, and seized a suspected open container of alcohol that was in his possession. Pursuant to this stop officers also recovered a loaded pistol from his person. Appellant was subsequently charged with one count of carrying a pistol without a license in violation of 22 DC Code Section 4504, possession of unregistered firearm in violation of 7 DC Code Section 2506, unlawful possession of ammunition in violation of 7 DC Code Section 2502, and possession of an open container of alcohol in violation of 25 D.C. Code Section 1001.

The defense moved to suppress the firearm, ammunition and alcohol that were recovered during the encounter with police as the fruits of an illegal seizure that violated Mr. Clemons' Fourth Amendment rights. After an evidentiary hearing the trial Court denied this motion, and the items seized from Appellant were admitted into evidence in a stipulated trial. At the conclusion of the trial Mister Clemons was found guilty of all four counts. On the single felony count Mr. Clemons was sentenced to twelve months of incarceration, with all suspended,

followed by six months of supervised release also suspended, and eighteen months of probation. The misdemeanor sentences were all suspended and were to run concurrently with his felony sentence. This appeal followed.

### **STATEMENT OF THE FACTS**

The defense filed a motion to suppress the evidence recovered from Mr. Clemons, arguing that the police officers had stopped him for possession of an open container of alcohol (hereinafter: “POCA”) in an area of his apartment complex where possessing alcohol was permitted under the statute. The defense argued that because the initial stop of Mr. Clemons was based on a mistaken understanding of the statute, the other items that were recovered as a result of the stop should be suppressed. At the pretrial conference, the parties and the trial Judge decided to have an evidentiary hearing on the motion, with the primary issue being whether the police officers had authority to stop and arrest Mr. Clemons for POCA at that location (10/11 tr. 5).

The Government and the Defense each called a single witness at the suppression hearing. The Government called Investigator Brandon Joseph of the Metropolitan Police. He testified that he was on duty at roughly one a.m. on January 1, 2024. He further noted that he responded to the 2300 block of Good Hope Court SE, that time and location and encountered Mr. Clemons (10/23 tr. 11). The witness noted that he had patrolled that block in the past, but had never

had to ask permission, and that the gate to the property was always open (10/23 tr. 12). He also stated that when officers entered that block that night no residents or security guards asked them to leave the property.

Officer Joseph testified that on the night of the incident he first saw Mr. Clemons walking past his vehicle onto a sidewalk area. The officer noticed that Mr. Clemons was carrying an alcoholic beverage, so he and another officer exited the vehicle in order to stop Mr. Clemons (10/23 tr. 18). The officers then approached Mr. Clemons and asked him if he was drinking alcohol. After the officers stopped Mr. Clemons, Officer Joseph noted he was clutching the right side of his body and preventing the officers from seeing his groin area. He testified that the officers then discovered that Mr. Clemons was in possession of a firearm in his groin area (10/23/tr. 19). The Government then introduced its Exhibits #s 4 and #5 into evidence. These were portions of the body worn camera footage from Officer Joseph and another police officer, Investigator Scharf, which Officer Joseph testified were accurate and authentic. After the Court viewed these two video clips, in the period from the date of the incident to the hearing date, he had not had any problems going on to the property where the incident took place.

On cross examination, the witness noted that at the time of the incident he was in an unmarked vehicle, and that he was not responding to any call for assistance regarding the property where Mr. Clemons was encountered (10/23 tr.

30). Officer Joseph acknowledged that when he entered the property that night he didn't see any emergency situation taking place. The officer admitted that there were signs in the complex indicating that it was private property (10/23 tr. 33). He admitted that at the point where Mr. Clemons walked to the sidewalk, all that he could see of Mr. Clemons was his back (10/23 tr. 41). Defense counsel then showed the witness a copy of Defense Exhibit 2, which was admitted into evidence, and had him mark his location and Mr. Clemons' location at the time he first saw Mr. Clemons. Officer Joseph acknowledged that the stop and arrest of Mr. Clemons took place within the apartment complex on private property (10/23 tr. 44)

Following a brief redirect examination, the witness was excused and the Defense counsel called her investigator James McCaskill as a witness. He testified that he had visited the apartment complex where the incident occurred several times since Mr. Clemons was arrested, and that Defense Exhibit 1 was a fair and accurate picture of the entry gate at the apartment complex (10/23 tr. 60). Mr. McCaskill testified that each time he visited the complex there was a sign saying "private property" at the entrance gate to the complex (10/23 tr. 62).

Following the testimony of Mr. McCaskill the defense rested, and the Government declined to present any rebuttal testimony. The Court then heard closing arguments from the parties on the motion to suppress. The trial Judge

delivered his findings on the motion, holding that the street and sidewalk where the police officers saw Mr. Clemons holding an open container of alcohol fit the definitions of “sidewalk” and “street” as used in 25 D.C. Code Section 1001. Based on that conclusion, the trial Judge held that the officers therefore had probable cause to stop Mr. Clemons on suspicion of possession of an open container of alcohol pursuant to that code section (10/23 tr. 75). The Judge therefore denied the Defense motion to suppress tangible evidence and the case was set for trial. On the trial date the parties informed the trial Court that they had agreed to ask for a stipulated trial to preserve Mr. Clemons’ right to appeal the denial of his motion to suppress (10/24 tr. 7). Mr. Clemons agreed to the stipulated trial and to the facts in the stipulation. The Court found that the agreed facts in the stipulation provided a factual basis to convict Mr. Clemons of the four counts in the indictment, and found him guilty on all four counts (10/29 tr. 9).

## **ARGUMENT**

The trial Judge erred in finding that the police had the authority to stop Mr. Clemons after they saw him carrying an open container of alcohol on private property that was part of the apartment complex where he was the guest of a resident. The sole question pending in the suppression hearing was whether the police had reasonable articulable suspicion to stop Mr. Clemons and then probable cause to arrest him; the stop and arrest led directly to the recovery of the weapon

and ammunition from his person. There was no claim that Mr. Clemons did not have an open container of alcohol, or that the police officers could not see the container before they stopped him. The defense rested its motion on the argument that Mr. Clemons was not violating any law by carrying an open can of alcohol on private property where he was a guest of one of the residents.

The Defense acknowledged that 25 DC Code Section 1001 prohibits possession of an open container of alcohol in or upon a street, alley, park, sidewalk or parking area, and a person violating that prohibition can be charged with a misdemeanor offense. Subsection (b)(1) of that section creates a carve-out from the general prohibition, if the possession of alcohol occurs in or on a structure that projects upon the parking and which is an integral structural part of a private residence.

In *Robinson v. Government of the District of Columbia*, 234 F.Supp.3d 14 (D.D.C. 2017) the District Court noted that under the POCA law three questions of fact must be answered to determine if a person committed an offense: whether the person possesses a container with an alcoholic beverage, whether the container is opened or unsealed, and whether the person is in a prohibited public space. Mr. Clemons argued that he did not meet third of these three requirements for a POCA conviction because he was on private property owned by the apartment complex where he was a guest, and not in a “public” space. The Defense theory held that

the police officers' belief that Mr. Clemons was violating the POCA statute was therefore unreasonable, and thus the resulting stop that led to the discovery of the gun and ammunition violated his Fourth Amendment rights.

The Government and subsequently the trial Judge relied on *Campbell v. United States*, 15-CF-25 (2017) where this Court vacated the conviction for POCA where the defendant was found parked on a grassy strip between two parking lots. The trial Judge reasoned that because this Court's opinion relied on the definition of "parking" as used in the statute to vacate the POCA conviction, the decision implicitly determined that being on private property was no defense to a POCA charge. This Court's further discussion of that decision in *Campbell v. United States*, 18-CO-894 (2019) suggests that the trial Judge's reliance on the earlier decision was misplaced. In this related opinion regarding an ineffective assistance of counsel claim, the Court pointed out that Campbell's attorney had failed to argue that an open container of alcohol *on private property* did not create probable cause to believe that Campbell had committed a POCA violation.

In Mr. Clemons' case there was uncontroverted evidence that all of the relevant events took place on private property owned by the apartment complex where he was a guest of a resident. The Government provided no clear rationale as to why the paved areas of a residential development should be treated any differently than a back yard of a single-family residence; and produced no case law

suggesting that the statute should be construed to distinguish the two. Because Mr. Clemon's possession of an open container of alcohol occurred on the grounds of his friend's privately owned apartment complex it did not violate the POCA statute. Stopping, searching and arresting him for non-criminal activity violated his Fourth Amendment rights.

Whether police officers violated a defendant's Fourth Amendment rights during a seizure and search is a legal question that this Court reviews *de novo*, *Brown v. United States*, 313 A.3d 555 (D.C. 2024). This Court's review of a trial Judge's denial of a motion to suppress is focused on ensuring that the trial Judge had a substantial basis for concluding that no constitutional violation occurred, *Freeman v. United States*, 273A.3d 879 (D.C. 2022). Because the police lacked a reasonably articulable suspicion to stop Mr. Clemons for activity that violated no law, his arrest and the subsequent discovery of a firearm were in violation of his Fourth Amendment right to be free of unreasonable search and seizure. The evidence collected as a result of that seizure is therefore the fruit of a poisonous tree and cannot be used by the Government to prove his guilt, *Wong Sun v. United States*, 371 U.S. 471, 9 L.Ed.2d 441 (1963). Accordingly, the trial Judge's denial of the motion to suppress was in error, and the conviction cannot stand.

## **CONCLUSION**

Based on the foregoing, Appellant Delonte Clemons asks this honorable Court to reverse the decision of the trial Judge, vacate his conviction for carrying a pistol without a license and all other charges stemming from this matter, and to provide whatever other relief may be appropriate.

Respectfully submitted,

\_\_\_\_\_/S/\_\_\_\_\_

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the above was electronically served on the Office of the United States Attorney for the District of Columbia this 18 Day of June, 2025.

\_\_\_\_\_/S/\_\_\_\_\_

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