Appeal No. 23-CF-859

Regular Calendar: May 13, 2025

DISTRICT OF COLUMBIA COURT OF APPEALS

DAVON C. JOHNSON,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

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

REPLY BRIEF FOR APPELLANT

JACLYN S. FRANKFURT

*SARAH MCDONALD

PUBLIC DEFENDER SERVICE
633 3rd Street, NW
Washington, DC 20001
Telephone: (202) 628-1200

*Counsel for Oral Argument

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

* An asterisk denotes an authority on which Mr. Johnson chiefly relies.

Other Authorities

ARGUMENT

When the Secret Service officers in this case found three guns in an SUV, they arrested all five of the men who had been approaching the SUV before the officers intervened. Mr. Johnson challenged the legality of his arrest, contending that it rested on proximity and association rather than any reasonable basis to believe that he, in particular, possessed a gun found in a car he might never have been in. The trial court denied the motion to suppress on the ground that officers could reasonably believe that Mr. Johnson "possessed the firearm" in the map pocket near the car door Mr. Johnson was about to enter before he was detained. 6/9/23 at 86-87.

In his opening brief, Mr. Johnson first challenged the trial court's conclusion that officers could reasonably believe that Mr. Johnson was aware of the map-pocket firearm based on how "obvious" it was from outside the car. Johnson Br. at 20-27; *see also* 6/9/23 at 81, 86-87.[1] In the course of that argument, he challenged the trial court's finding that Officer Whitehair saw the top of the firearm, 6/9/23 at 86, as clearly erroneous. Johnson Br. at 20-24. Mr. Johnson then argued (at 27-30) that because he was not in the car with the guns when he was arrested, this was not a case like *Perkins v. United States*, where "a passenger's evident *willingness to remain* in

[1] When defense counsel argued that it was not reasonable to infer that Mr. Johnson knew about the firearm based on the fact that he "should have been able to see it" from outside the SUV, as the government had suggested, the trial court countered, "An officer walking by the car can see it." 6/9/23 at 81. The trial court then went on to credit the testimony that Officer Whitehair saw the top of the gun in ruling on the legality of the arrest. 6/9/23 at 86. The trial court concluded from that testimony that "it was obvious to just a passerby of this car that there was a firearm in the back map pocket," which mattered to the court because "that was the exact seat [Mr. Johnson] was entering into when he got into the car." 6/9/23 at 86.

a vehicle next to known contraband" may, "depend[ing] on the type of contraband involved," support an inference of dominion and control sufficient to establish probable cause to arrest. 936 A.2d 303, 309 (D.C. 2007) (emphasis added). Finally, Mr. Johnson contended that there was no basis to infer a common enterprise involving the firearms. Johnson Br. at 31-33.

The government defends the arrest solely on the "common enterprise" theory. The five pages that the government devotes to "plain view" are contained in a section of its brief devoted to justifying the search of the SUV, Gov't Br. at 11-16, and thus are not responsive to any argument raised by Mr. Johnson's appeal, which is focused entirely on the legality of the arrest. When it comes to the arrest, the government does not maintain on appeal that it was reasonable to connect Mr. Johnson to the map-pocket gun based on how "obvious" it was from outside the car, as the trial court had said.[2] Nor does the government dispute that a *Perkins* inference—that a car occupant's decision to remain in a car with known, obvious contraband may establish probable cause that he constructively possessed the contraband, 936 A.2d

[2] Therefore, this Court does not need to resolve the issue Mr. Johnson raised in his opening brief (at 20-24) about whether the trial court's finding that Officer Whitehair saw the top of the gun from outside the SUV was clearly erroneous. In any event, the government is wrong that plain-error review would apply to this argument. Contrary to the government's suggestion (at 14 & n.9), Mr. Johnson's opening brief did not argue that Officer Capasso's testimony was improperly admitted hearsay. Instead, it argued that the trial court's finding that Officer Whitehair saw the top of the firearm was clearly erroneous because it was not "plausible in light of the record viewed in its entirety." *Anderson v. City of Bessemer City*, 470 U.S. 564, 573-74 (1985). The plain-error standard does not apply to arguments that a factual finding was clearly erroneous, because parties have no obligation to raise contemporaneous objections to a judge's factual findings.

at 309—is inapplicable here given that police had no indication that Mr. Johnson had ever been in the SUV with the guns. This leaves the government defending Mr. Johnson's arrest on one ground: that it was reasonable to believe he was part of a "common enterprise to possess illegal handguns." Gov't Br. at 9.

Accepting the government's "common enterprise" argument would require an expansion of *Maryland v. Pringle*, 540 U.S. 366 (2003), to facts that do not actually indicate jointly conducted criminal activity. In *Pringle*, the Supreme Court upheld the arrest of all three occupants of a car stopped for speeding, in which officers found a large amount of cash and drugs. *Id.* at 367-68. The Court held that because the "quantity of drugs and cash in the car indicated the likelihood of *drug dealing*, an enterprise to which a dealer would be unlikely to admit an innocent person with the potential to furnish evidence against him," it was "reasonable for the officer to infer a common enterprise among the three men." *Id.* at 373 (emphasis added).

The government tries to apply *Pringle*'s logic here, contending that officers could reasonably believe that the driver of the SUV would not have let Mr. Johnson and the other men into the car unless they all were exercising dominion and control over the handguns—that is, were part of a "common enterprise to possess illegal handguns." Gov't Br. at 9. But "illegal gun possession" does not lead to a natural inference of a "common enterprise" in the way that drug dealing does. The government's "common enterprise" argument overreads *Pringle* and is inconsistent with this Court's post-*Pringle* decisions.

This Court has already rejected the government's attempt to expand *Pringle*'s "common enterprise" logic to any situation in which people are in cars with access

to obvious contraband. In both *In re T.H.*, 898 A.2d 908, 914 & n.6 (D.C. 2006), and *Perkins*, 936 A.2d at 308-09, this Court declined to apply *Pringle*'s "common enterprise" reasoning to uphold the arrest of passengers apprehended in cars containing contraband—in *T.H.*, illegal fireworks, and in *Perkins*, a 24-ounce open container of malt liquor.[3] In *T.H.*, this Court held that "[t]he inference the [Supreme] Court found in *Pringle*—that bags of cocaine in a car (even concealed from view) bespeak 'drug dealing, an enterprise to which a dealer would be unlikely to admit an innocent person with the potential to furnish evidence against him'—is not one fairly drawn in the case of fireworks, at least without testimony of an active, illicit market in their distribution." 898 A.2d at 914 n.6 (quoting *Pringle*, 540 U.S. at 373). In *Perkins*, this Court again rejected the *Pringle* common-enterprise theory on which the government had relied,[4] "declin[ing] to infer that a driver with an open can of beer would be loath to admit an innocent passenger for fear that the passenger would turn state's evidence against him." 936 A.2d at 308-09. The government fails to show why a common-enterprise inference is fairly drawn in the case of guns (which are commonly possessed individually, for personal self-defense), but not fireworks

[3] In *T.H.* and *Perkins*, unlike this case, the appellant-passengers were actually in the vehicles, and it was clear that they were aware of the fireworks and the alcohol, respectively. *T.H.*, 898 A.2d at 912; *Perkins*, 936 A.2d at 305.

[4] In *Perkins*, the government argued that the officers could logically infer that "a driver would be unlikely to operate a vehicle while drinking an open container of alcohol unless he was sharing it with the passenger," and thus urged this Court to uphold the legality of the passenger's arrest under *Pringle*. Brief for Appellee at 13, 18, *Perkins*, No. 06-CF-198 (D.C. Dec. 7, 2006).

(which are, common sense would seem to suggest, typically used as a group activity) or alcohol.

As courts and commentators have recognized, it mattered to *Pringle*'s "common enterprise" holding that the facts suggested "pending 'drug dealing,'" rather than simple possession.[5] 2 Wayne R. LaFave, *Search and Seizure* § 3.6(c) (6th ed. 2020) (cautioning courts against construing *Pringle* "broadly as meaning that whenever several people are found in the proximity of drugs or drug paraphernalia they may all be arrested"); *see also, e.g.*, *Muhammad v. Commonwealth*, No. 1897-09-1, 2010 WL 5149798, at *3 n.4 (Va. Ct. App. Dec. 21, 2010) (noting that the distinction between "drug dealing" and "simple possession" is "critical" to the

[5] Indeed, many of the "common enterprise" cases the government cites involve facts supporting an inference of an enterprise related to drug dealing. *See United States v. Myers*, 986 F.3d 453, 454-55 (4th Cir. 2021) (finding probable cause that car passenger was engaged in common enterprise with driver involving a "distributable amount" of fentanyl found in the car); *People v. Ortiz*, 823 N.E.2d 1171, 1180-82 (Ill. App. Ct. 2005) (finding it reasonable for officers to infer that car passenger was "engaged in countersurveillance for [a] drug deal"); *United States v. Reed*, 443 F.3d 600, 603-05 (7th Cir. 2006) (finding probable cause that passenger was "involved in a common enterprise to conceal the proceeds of illegal activity" where three car occupants "had traveled from outside the state, but were evasive and contradictory as to the nature of their trip"; officers found large bundles of cash "concealed in a manner that is typical for currency related to illegal drug transactions"; and "officers knew that two of the travelers in the vehicle had prior drug arrests, which further support[ed] the reasonableness of the belief that the currency was the proceeds of illegal activity"); *United States v. Jimenez*, 421 F. Supp. 2d 1008, 1010-14 (W.D. Tex. 2006) (finding reasonable inference of common enterprise among car occupants traveling across U.S. border to Mexico with hundreds of thousands of dollars in cash in a hidden compartment where a drug dog alerted); *United States v. Gary*, 790 F.3d 704, 707 (7th Cir. 2015) (finding probable cause to arrest "a passenger sitting right next to the driver when the driver sold [a] detective heroin without any attempt to conceal the transaction").

probable-cause analysis for constructive possession (citing *Whitehead v. Commonwealth*, 683 S.E.2d 299, 314 (Va. 2009))); *Belote v. State*, 20 A.3d 143, 149 n.9 (Md. Ct. Spec. App. 2011) ("[C]ommon enterprise implies a joint *commerce* in contraband." (citing *Pringle*, 540 U.S. at 373)).

The indicia of pending drug dealing in *Pringle* mattered because of the nature of drug dealing as a jointly conducted enterprise. *See, e.g.*, *Washington v. United States*, 122 A.3d 927, 931 (D.C. 2015) (discussing narcotics expert's testimony about how multiple people are involved in the typical street drug transaction). When there is reason to believe that a car is actively being used to carry out illicit drug deals, there is reason to think that all car occupants have a possessory interest in drugs or money found in the car. *See Ray v. State*, 76 A.3d 1143, 1158 (Md. 2013) (Adkins, J., dissenting[6]) (discussing the "*modus operandi* of a typical drug dealer" and noting that "[i]t is the highly unusual case that one person would engage in dealing a large quantity of drugs without the involvement of those close by"). Absent facts suggesting communal use, such an inference does not hold up when the "enterprise" is possession of the contraband. *See id.* at 1157-58 (distinguishing *Pringle* from case involving "possession of fake credit cards," which "does not qualify as a crime that justifies the presumption that [someone] would be unlikely to admit an innocent party to her enterprise" and does not "require[] a network of people"); *cf. Commonwealth v. Brown*, 737 N.E.2d 1, 4 n.5 (Mass. App. Ct. 2000) ("[I]t is hard to conceive that there could be many circumstances which could

[6] In *Ray*, the majority affirmed on waiver grounds and did not reach the merits of the Fourth Amendment argument. 76 A.3d at 1144-56.

support an inference of a joint venture where the highest element of the offense charged is simple possession, and where the element of possession is not the predicate for further criminal activity, e.g., possession with intent to distribute.").

The government's reliance on the Maryland Court of Special Appeals decision in *Cerrato-Molina v. State*, 115 A.3d 785 (Md. Ct. Spec. App. 2015), as an example of a "common enterprise" not involving illicit dealing only underscores why a "common enterprise" inference makes little sense on the facts here. In *Cerrato-Molina*, two people were drinking beer together in a parked Jeep on a summer evening, with "relatively modest amounts of marijuana and cocaine . . . close at hand." *Id.* at 792. The court deemed it "highly unlikely that [the driver] would have had the intent and purpose of partaking in the drugs alone," and thus found probable cause to arrest the passenger because the circumstances indicated a "mutual recreational agenda." *Id.* Gun possession, by contrast, does not indicate a mutual recreational agenda. The government does not cite a single case finding a common enterprise to possess illegal firearms.[7] And the government does not even

[7] The government relies on only two cases in which courts found common enterprises that do not relate to drug dealing, *see supra* note 5 (discussing *Myers*, 986 F.3d at 454-55; *Ortiz*, 823 N.E.2d at 1180-82; *Reed*, 443 F.3d at 603-05; *Jimenez*, 421 F. Supp. 2d at 1010-14; and *Gary*, 790 F.3d at 707), or communal drug use, *see Cerrato-Molina*, 115 A.3d at 792; *State v. Ortega*, 770 N.W.2d 145, 151 (Minn. 2009). Neither case is similar in kind. *United States v. Brooks*, 982 F.3d 1177, 1180 (8th Cir. 2020), involved a challenge to a passenger's arrest due to presence in a stolen car; as discussed *infra* note 11, the Eighth Circuit found it reasonable to think Mr. Brooks knew the car was stolen because he was armed with a round in the chamber while in the car. In *People v. Hatcher*, 241 N.E.3d 497, 508-09 (Ill. App. Ct. 2024), the passenger-appellant was present in a car that was being used to drive between banks to commit bank fraud; the Appellate Court of Illinois found it

attempt to argue—and the officers never testified—that there was reason to think the guns would be "mutual[ly] use[d] and enjoy[ed]." *Cerrato-Molina*, 115 A.3d at 792 (quoting *Folk v. State*, 275 A.2d 184, 189 (Md. Ct. Spec. App. 1971)).[8]

Instead, the government relies heavily on the "obviously criminal" quality of the guns as a reason the driver would not have let Mr. Johnson in the car unless he were part of a common scheme to possess the guns, but this argument fails to withstand scrutiny. Gov't Br. at 19-20. First, this Court has already rejected the notion that the presence of "obviously criminal" contraband warrants an inference of a common enterprise among everyone in the car with the contraband. In *Perkins*, this Court held that it was unreasonable to "infer that a driver with an open can of beer would be loath to admit an innocent passenger," even though the open container was "obviously criminal" and "clearly illegal." 936 A.2d at 309. While the government deems having an open container of alcohol in a moving car "relatively

---

"unlikely that an innocent, uninvolved person would be invited to ride along . . . as [another passenger] committed suspected bank fraud," *id.* at 509.

In *Santopietro v. Howell*, 73 F.4th 1016, 1027 (9th Cir. 2023) (cited in Gov't Br. at 16), the Ninth Circuit found that reliance on a common-enterprise inference to uphold an arrest would not be reasonable based "on the violation at issue [in that case]—doing business without a license." And in *Callahan v. Unified Government of Wyandotte County*, 806 F.3d 1022, 1027-30 (10th Cir. 2015) (cited in Gov't Br. at 22), the Tenth Circuit did not decide whether a common-enterprise inference was reasonable given the qualified-immunity standards applicable to the arrestees' claims.

[8] Another panel of the court that decided *Cerrato-Molina* distinguished between "mutual use and enjoyment" cases like *Cerrato-Molina*, which involve "joint consumption," and "common enterprise" cases like *Pringle*, which involve "joint commerce." *Belote*, 20 A.3d at 149 n.9 (emphases omitted). This case involves neither.

innocuous," Gov't Br. at 19, this characterization contradicts *Perkins* itself, *see* 936 A.2d at 309 ("*Per contra*, it is clearly illegal."). *Perkins* demonstrates that contraband can be "obviously criminal" but not suggest the existence of an "enterprise" to which a driver would be "loath to admit an innocent passenger." *Id.*

Moreover, the government's arguments about the "obviously criminal" nature of the guns fail on their own terms. The "long tradition of widespread lawful gun ownership by private individuals in this country" and the "definitive recognition of a Second Amendment right to possess guns for self-protection" mean that people "who do not happen to be well-versed in the intricacies of the District's firearms laws may not see anything wrong in the presence of a gun [in a car] or realize that the local law may proscribe its possession or transportation." *Conley v. United States*, 79 A.3d 270, 285 (D.C. 2013) (quoting *Staples v. United States*, 511 U.S. 600, 610 (1994)). Accordingly, this Court has already squarely rejected the assumption that "anyone who knowingly enters or stays in a car after learning it contains a gun must be embarked on a criminal venture of some sort." *Id.* Likewise, though common sense would suggest that "pending 'drug dealing' . . . would not likely be undertaken in the presence" of "onlookers" or "potential talebearers," LaFave, *supra*, § 3.6(c), guns are routinely possessed in the presence, and with the knowledge, of uninvolved people having no possessory interest in the guns.[9]

[9] The government suggests in a footnote that officers would know that guns are "often used to protect other contraband." Gov't Br. at 20 n.12. But no other contraband was found in the SUV before Mr. Johnson's arrest, and the government does not actually contend that the guns here reasonably indicated some *other* criminal enterprise.

Though it is true that the men approaching the car could not lawfully possess *these* guns, *see* Gov't Br. at 20 n.12 (noting that the "would-be occupants' possession of the three guns violated as many as five different laws" and citing the CPWL statute and the prohibitions on possessing unregistered firearms, unregistered ammunition, extended-capacity magazines, and ghost guns), the same was true of the fireworks in *T.H. See* 898 A.2d at 910, 914. The government's focus on the fact that one of the guns in the SUV was a "ghost gun" and one had an extended magazine echoes the dissent's refrain in *T.H. See id.* at 915-16 (Farrell, J., dissenting) (pointing out that D.C. law prohibits possession of any fireworks that "explode" and that an open box of fireworks in the car contained contraband roman candles and was labeled "25 shots"). The binding majority opinion, however, noted that "some fireworks are legal and some are not" and rejected the dissent's reliance on "the presumption that persons know the law" in the constructive-possession context. *See id.* at 914 & n.5 (majority opinion); *see also Conley*, 79 A.3d at 286 (noting that people who do not themselves own or possess firearms, but find themselves "in the vicinity of a firearm," have "no reason to be familiar with the firearms laws"). Moreover, there is no evidentiary basis to think that the extended magazine or the absence of a serial number—the features that the government contends made the firearms "obviously criminal"—would have been apparent to passengers in the car even if they were familiar with "the intricacies of the District's firearms laws," *Conley*, 79 A.3d at 285.

The government also suggests that the "presence of items that exceed the capacity of one person to possess" warrants a common-enterprise inference. Gov't

Br. at 25 (quoting *Belote*, 20 A.3d at 149). For multiple reasons, this Court should reject this line of reasoning on these facts. First, the government does not actually contend that three guns "exceed the capacity of one person to possess,"[10] and there was no expert or officer testimony (or other record evidence) about patterns of gun ownership that could shed light on this point. Second, the government takes the "exceed the capacity of one person to possess" language out of context from dicta in a Maryland Court of Special Appeals decision. *Belote*, 20 A.3d at 149. *Belote*, which reversed a trial court's probable-cause finding and rejected the government's "common enterprise" argument, used that language only in describing *Pringle*'s "common enterprise" holding that the quantity of drugs and cash indicated dealing. *See id.* Meaningfully, the *Belote* court also understood a "common enterprise" to require "participation in a joint *commerce* in contraband." *Id.* at 149 n.9 (emphasis in original) (citing *Pringle*, 540 U.S. at 373). Finally, even assuming that one person would not possess more than one gun, it would not follow that the presence of three guns warrants a joint-possession inference among *five* people.

Simply put, nothing about the nature of the contraband here suggested a common enterprise. Nor could the nature of the premises—that is, the fact that the guns were in a car, *see* Gov't Br. at 18-19, 24-25—generate a "common enterprise" inference out of facts that would not otherwise suggest joint conduct. Although the government cites (at 18) language from *Pringle* observing that "a car passenger . . .

[10] To the contrary, a 2017 study found that "[t]wo-thirds of gun owners say they own more than one gun." Kim Parker et al., *America's Complex Relationship with Guns*, Pew Research Center (June 22, 2017), http://pewrsr.ch/2tSWqel.

will often be engaged in a common enterprise with the driver," 540 U.S. at 373 (quoting *Wyoming v. Houghton*, 526 U.S. 295, 304 (1999)), *Pringle* relied on that language in distinguishing *Ybarra v. Illinois*, 444 U.S. 85 (1979), which was also a case involving drug dealing. *Pringle*, 540 U.S at 373. In the context of that kind of criminal activity, *Pringle* found the difference between being in car engaged in drug dealing and being a patron in a bar where a bartender was engaged in drug dealing significant to the common-enterprise analysis. *Id. Pringle*'s language about car passengers must be understood in that factual context, and cannot be used to undermine the Supreme Court's earlier admonition in *United States v. Di Re*, 332 U.S. 581, 593 (1948), that "[p]resumptions of guilt are not lightly to be indulged from mere meetings," even when, as in *Di Re*, those meetings happen in cars. As this Court has held, "[a] suspect's mere presence in a vehicle containing contraband does not constitute probable cause for his arrest." *T.H.*, 898 A.2d at 913; *cf. Rivas v. United States*, 783 A.2d 125, 127-28 (D.C. 2001) (en banc) (declining to adopt "special 'automobile' rule[s]" for constructive possession); *Conley*, 79 A.3d at 287 (noting that one would hardly expect that someone who has been accompanying a friend carrying an illegal firearm would suddenly violate the law by getting into a car with the friend).

Finally, nothing about the men's conduct gave rise to a common-enterprise inference sufficient to provide probable cause of constructive possession. The government agrees that Mr. Johnson's (and the others') silence in response to police questioning about the owner of the firearms is not "affirmative proof of a common enterprise." Gov't Br. at 22 n.14; *see* Johnson Br. at 32-34. Mr. Johnson's failure to

identify the owner of guns he might not have known about is not a valid reason to infer a conspiracy. And aside from the fact that the men apparently "knew one another," Gov't Br. at 17, the officers had no information about the nature of their relationship or their purpose in getting into the SUV. The officers uncovered no information suggesting that Mr. Johnson had been in the SUV before. And nothing about Mr. Johnson's own behavior was suggestive of his participation in an illegal enterprise[11] or knowledge of a firearm.[12]

With no evidence of a gun-distribution enterprise and no direct evidence that Mr. Johnson was in the car with the guns at any point, the government's probable-cause argument turns entirely on inferences about what it meant that the driver was willing to let Mr. Johnson into the SUV. The government asks this Court to decide that the officers had probable cause to believe that Mr. Johnson was engaged in criminal activity based on a purportedly reasonable belief that the driver would not

---

[11] This fact sets this case apart from a number of the cases on which the government relies, such as *Brooks*, 982 F.3d at 1180, in which the fact that the appellant himself was "armed with a round in the chamber reasonably suggested to officers that he knew the vehicle [in which he was a passenger] was stolen." *See also, e.g.*, *Reed*, 443 F.3d at 603-05 (emphasizing that Mr. Reed's "own conduct furthered th[e] inference of a common enterprise, in that his response to the purpose of the trip was also contradictory," and that his prior drug arrests bolstered the "suspicion that he was involved in a common enterprise to conceal the proceeds of illegal activity"); *Ortiz*, 823 N.E.2d at 1180 (relying on appellant's backward glance toward drug transaction in finding probable cause that he was involved in countersurveillance for drug deal).

[12] As Mr. Johnson argued in his opening brief at (at 26-27), his behavior suggested, if anything, that he did not know about the guns, given that he walked up and opened the car door, exposing the map pocket containing a gun, while Secret Service officers were surrounding the car.

let someone in the car unless that person was part of a "common enterprise to possess illegal handguns." Gov't Br. at 9. It asks the Court to make that determination without any information to contextualize the driver's willingness to let Mr. Johnson in the car, such as the nature of their relationship or the reason Mr. Johnson was getting in the car. Further, it asks the Court to make that determination without any testimony from the officers that might provide a basis to reject the common-sense notion that people ordinarily possess guns personally rather than as part of common gun-possession enterprises. Without such additional facts, the driver's willingness to admit Mr. Johnson to an SUV containing illegal handguns is simply too thin a reed to establish probable cause for his arrest. *See Brown v. United States*, 590 A.2d 1008, 1013-14 (D.C. 1991) ("An arrest constitutes a substantial intrusion upon an individual's liberty, and may not be lawfully effected unless police can meet the comparatively exacting standard of probable cause.").[13]

[13] Although the government suggests (at 18 n.11) that the implication of Mr. Johnson's argument is that police had to let the men get into the car with the guns four blocks from the White House, that is not the case. Mr. Johnson has not challenged the investigative detention of the five men or the seizure of the guns. The officers could have seized the guns and tested for DNA and fingerprints, which could have been the basis for an arrest warrant had they pointed to Mr. Johnson (though it appears they would not have, as Mr. Johnson was never charged with anything related to these guns). It was not reasonable, however, to arrest Mr. Johnson without a warrant after the weapons were secured and the investigation turned up no connection between Mr. Johnson and any gun (or the car), no reason to suspect illicit dealing, and no information shedding light on the men's relationship.

CONCLUSION

For the reasons stated above, this Court should reverse the trial court's ruling denying Mr. Johnson's motion to suppress and reverse his conviction.

Respectfully submitted,

/s/ Jaclyn S. Frankfurt
Jaclyn S. Frankfurt
Bar No. 415252

/s/ Sarah McDonald
*Sarah McDonald
Bar No. 90001349

PUBLIC DEFENDER SERVICE
633 3rd Street, NW
Washington, DC 20001
(202) 628-1200
Fax: (202) 824-2784

*Counsel for Oral Argument

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing reply brief has been served electronically via the Appellate E-Filing System upon Chrisellen Kolb, Chief, Appellate Division, Office of the United States Attorney, on this 24th day of April, 2025.

/s/ Sarah McDonald
Sarah McDonald