

**DISTRICT OF COLUMBIA COURT OF APPEALS**

**NO. 24-CM-387**

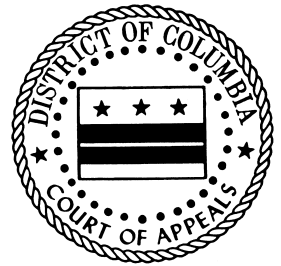
**JAMES A. CARTER**

**Appellant**

**V.**

**UNITED STATES**

**Appellee**



Clerk of the Court  
Received 01/28/2025 10:57 AM

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

**Criminal Division, Misdemeanor Branch**

**APPELLANT'S REPLY TO APPELLEE'S BRIEF**

Case Below: 2023-CMD-007556

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### **Appellant Did Not Forfeit His Fourth Amendment Claim**

The Government argues in its brief that Mr. Carter is not entitled to pursue his claim that he was illegally seized by police officers, v and that therefore any evidence – physical or otherwise – recovered as a result of the seizure must be excluded from evidence. The Government bases this argument on the fact that defense Counsel’s written motion to suppress (hereinafter “the motion”) focused primarily on the Fifth Amendment issue and thus the Fourth Amendment claim was not properly raised at the suppression hearing. The Government now asks this Court to treat Mr. Carter’s Fourth Amendment claim as not preserved for appeal, and review it only for plain error. The Court should reject this attempt to deprive Mr. Carter of his right to challenge the use of illegally seized evidence against him.

The Government’s position that Mr. Carter failed to assert his Fourth Amendment rights is undercut by both the language of the motion itself and the course of the in-court argument. Regarding the written motion filed with the Court, the initial sentence of that filing stated that Mr. Carter was moving pursuant to both the Fourth **and** Fifth Amendments to suppress both his statement and all tangible evidence recovered from his person. The first three factual proffers in the motion all relate to his seizure by the officers and the resulting discovery of

evidence. They state that even before the officers questioned Mr. Carter, they had called him over to them, ordered him to remain, searched his person and recovered suspected PCP cigarettes. The motion also states that at the time the officers stopped Mr. Carter, he was not engaged in any illegal activity.

Although the remainder of the motion focuses on the case law regarding *Miranda* violations, the totality of the motion clearly included constitutional challenges to use of both the statements and the recovered suspected PCP, all of which ultimately flowed from the illegal stop mentioned at the beginning of the motion. The motion ends with a request to suppress both the tangible evidence and the statements; there is no suggestion that the statements themselves led to the recovery of the PCP. A viewing of the video evidence introduced during the suppression hearing amply demonstrates that the police officers had already stopped Mr. Carter and ordered him to show them what was in his hand before they elicited any statements from him.

The motion was fully argued before the trial Judge, following admission of an officer's testimony and video evidence. During the hearing the arguments of both Defense and Government counsels focused on whether Mr. Carter had been seized by the police in violation of his Fourth Amendment rights. Defense counsel in particular cited case law holding that an individual is seized for Fourth Amendment purposes when he reasonably believes that he is not free to leave. The

Government responded by citing a case that described the factors that a Court could consider in determining whether a reasonable person would feel she was not free to leave. Government counsel based his argument against the motion to suppress by arguing that Mr. Carter had not been seized by the officers. In sum, both parties argued the Fourth Amendment seizure issue, because both realized that if Mr. Carter had been illegally seized as the police approached him, everything that followed, including the recovery of the suspected PCP and his incriminating statement, would have to be excluded from evidence.

In it's brief, the Government argues that although defense Counsel argued that Mr. Carter had been seized by the police, she did so only because she equated "seizure" with "custody" for purposes of arguing a *Miranda* violation. This claim is difficult to square with the fact that Government counsel also argued the Fourth Amendment issue, asking the Court to find that Mr. Carter had not been seized when the officers approached him and demanded to see what was in his hands.

Finally, the Government focuses on Defense Counsel's failure to correct the trial Judge when the Judge delivered a ruling that he found that there was no custodial interrogation and was denying the motion. Although the parties might have benefitted from a more complete description of the trial Judge's reasoning in denying the motion, the fact that the Judge did not describe his reasoning in detail does not change the fact that the Fourth Amendment basis for the motion was

sufficiently and clearly presented during the hearing. There was no reason for the parties to assume that the Court was unable to understand the Fourth Amendment arguments they had presented. However inelegant defense Counsel's presentation may have been, the trial Court could not have missed the point that both parties considered the question of whether Mr. Carter had been illegally seized to be one of the central issues in deciding the motion.

### CONCLUSION

Based on the foregoing, Appellant asks this honorable Court to find that Mr. Carter did not fail to raise a Fourth Amendment argument in his motion to suppress his statements and physical evidence in this matter. Mr. Carter therefore asks this Court to find that the trial Judge erred in denying his motion, and to vacate his conviction, or in the alternative to remand the matter to the trial Court with instructions to grant Appellant's motion to suppress, or 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 28

Day of January 2025

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