DISTRICT OF COLUMBIA COURT OF APPEALS

NO. 25-CF-0045

DELONTE CLEMONS

Appellant

V.

UNITED STATES

Appellee

Appeal from the Superior Court of the District of Columbia,

Criminal Division, Felony Branch

APPELLANT'S REPLY TO GOVERNMENT'S BRIEF

Case Below: 2024-CF2-000033

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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 not open to the public.

ARGUMENT

1. The Government Seeks an Overbroad Reading of the Statute

The Government asks this Court to take an expansive view of the language in D.C. Code § 25-1001 (hereinafter "POCA"), which prohibits the possession of an open container of alcohol in public places. As this Court has already noted in *Alvarez v. United States*, 576 A.2d 713 (D.C. 1990) however, the POCA ordinance is a penal statute that must be strictly construed. In such cases the rule of lenity can tip the balance in favor of defendants if the statute's language, structure purpose and legislative history leave its meaning genuinely in doubt.

This Court applied a narrow interpretation of the statute in *Campbell v. United States*, 163 A.3d 790 (2017), (hereinafter "*Campbell-I*) and *Campbell v. United States*, 224 A.3d 205 (2020), (hereinafter "*Campbell-II*). In *Campbell-I* this Court reviewed the legislative history of the POCA statute and reversed a conviction because the defendant was found on private property – a church parking lot - in a location not specifically enumerated in the statutory language.

The Government argues that the statute prohibits carrying a can of liquor on a sidewalk (where Mr. Clemons was observed) regardless of whether that sidewalk is on public or private property **and** whether or not the public is invited onto the property. Section (a) (4) of the statute makes it clear that the prohibition on open containers applies to private property "to which the public is invited," which would

include privately owned drives, sidewalks, and parking areas. A privately owned place is open to the public when the indefinite public, rather than a predetermined group of individuals, is invited by the owner, either expressly or by implication, to enter the property for any reason.

The Government asks this Court to adopt an interpretation of the POCA statute that is "contrary to both the natural import of its title and the evident legislative purpose for its enactment," *Alvarez* at 717. In any urban area there are both roadways and sidewalks that are not open to the public, even though they are shared by numerous individuals. To accept the Government's interpretation that the POCA statute's prohibitions apply to any "sidewalk," even one on private property not open to the general public, would be to ignore the statute's clear purpose - to prevent drinking of alcohol in a "public place."

The Government cites cases from other jurisdictions to support the argument that the signs at the entrance to Woodmont Crossing were insufficient to indicate that the grounds of the apartment complex were not public space. Those cases are readily distinguishable from this case, in that none of those cases involved a situation where the signage not only specifically identified the area as private property, but also noted that a permit was required to park there and referred to the operation of a security gate (either absent or non-functioning at the time of Mr. Clemons' arrest) that would prevent more than one car at a time from driving onto

the property. There was also testimony that a secured gate may have blocked egress from the far end of the drive, so there was no evidence that at the time of the incident Good Hope Court was a thoroughfare for use by anyone other than Woodmont Crossing guests, visitors or employees. Taken together, the evidence was not sufficient to demonstrate that Mr. Clemons was in a public space at the time he was stopped, and thus the POCA statute did not justify his seizure by the officers.

2. The Facts Don't Support the Government's "Reasonable Mistake" Argument

As an alternative to its claim that the Mr. Clemons violated the law by carrying an open container of alcohol in the apartment complex where he was a guest, the Government asks this Court to affirm the trial Judge's decision even if it finds that the POCA statute does not apply to the grounds of the Woodmont Crossing apartment property. The Government argues that the officers could have reasonably believed that the statute did apply in this situation, and therefore their stop of Mr. Clemons did not violate the Fourth Amendment. This "reasonable mistake" claim fails for two reasons.

First, the question of whether the officers mistakenly believed that they were on public property, or that they were authorized to stop Appellant even on private property, is a factual question. Because the Government had ample opportunity to

raise this issue and argue it during the suppression hearing and failed to do so, it should not be permitted to argue it before this Court. For the Court to entertain this argument would create an unfair procedural disadvantage for the defense, which had no reason to establish a record on the issue during the suppression hearing. In similar circumstances this Court has refused to allow the Government to raise an issue on remand, *Brown v. United States*, 313 A.3d 555 (D.C. 2024). In *Evans v. United States*, 122 A.3d 876 (D.C. 2015), this Court declined to consider the Government's alternative rationale to deny a suppression motion where that argument had not been raised at the suppression hearing, and also refused to remand the issue to the trial judge.

Second, the "reasonable mistake of law" exception that the Government relies on by citing *Hein v. North Carolina*, 574 U.S. 54 (2014) does not apply in this instance because the issue had been addressed in this Court's two *Campbell* decisions, the second of which had been issued over three years before Mr. Clemons was arrested. In *Campbell-II*, this Court acknowledged "the reasonableness of Officer Poor's pre-*Campbell-I* belief that appellant's possession of an open bottle of vodka in a vehicle parked in a grassy median in a church parking lot violated the POCA statute," 224 A.3d at 212. In a post-*Campbell-I & II* world, the officers were on notice that this statute did not apply to individuals in privately owned areas such as parking lots, and any mistake of law on their part

would therefore not have been reasonable.

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 20 Day of January, 2026.

_____/S/_____

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