IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

No. 23 CF 387

BRIAN CARRUTH Appellant, vs. UNITED STATES, Appellee	2021 CF2 006934

APPEAL FROM THE SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA – CRIMINAL DIVISION
FELONY BRANCH

APPELLANT'S REPLY TO THE APPELLEE UNITED STATES BRIEF, PDS AMICUS CURIAE BRIEF, INTERVENOR-APPELLEE THE DISTRICT OF COLUMBIA'S BRIEF AND THE UNITED STATES' SUPPLEMENTAL BRIEF

David H. Reiter, Esq.
Bar # 412012
6412 Brandon Avenue, Suite 144
Springfield, VA 22150
202-495-1294
Counsel for Appellant

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REPLY ARGUMENT

I. MR. CARRUTH AGREES WITH AND JOINS WITH HIS BRIEF THE ARGUMENT THE PUBLIC DEFENDER SERVICE MAKES IN ITS AMICUS BRIEF THAT D.C. CODE § 22-4504 (a-1) AND ITS SELF-DEFENSE RESTRICTIONS INFRINGE ON MR. CARRUTH'S SECOND AMENDMENT RIGHT TO BEAR ARMS

Mr. Carruth, under D.C. App. R. 28(j), in response to the Amicus Curiae brief of the Public Defender Service, joins and/or adopts by reference the following points and arguments made by the Public Defender Service in their Amicus brief.

Mr. Carruth both agrees and joins in the argument made by the Public Defender Service that due to the Supreme Court's decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), whereby the Court made clear that "central to the Second Amendment" there is an "inherent right of self-defense," a statutes' infringement on that right (in this case D.C. Code § 22-4504(a-1) which prohibits carrying a rifle outside the home for self-defense) is inherently unconstitutional. The reason is that a right to self-defense cannot be confined solely to the home as the present D.C. statute restricts. (PDS Amicus Brief p.7-8, *citing*, *Heller* at 574, 628-630, 635, and *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S 1, 32-33 (2022)). This argument is just an extension of the Appellant's argument he makes

in his brief where he asserted that statutes, such as D.C. Code § 22-4504, cannot be permitted to contain broad prohibitions on all forms of public carry of firearms.

Mr. Carruth both agrees and joins as well the argument made by the Public Defender Service in their Amicus brief that the District of Columbia's prohibition on carrying a rifle under D.C. Code § 22-4504 is unconstitutional. Specifically, the statute, as written, "broadly" prohibits rifles (unquestionably a bearable firearm under the Second amendment) from being used by law abiding citizens for self-defense. This is contrary to constitutional guarantees granted to all citizens. (PDS Amicus Brief p.11-12, *citing*, *Bruen* at 24, 38, and 60). The statute under D.C. Code § 22-4504, requires all rifles carried outside the home for "non-recreational purposes," to be both "unloaded" and "not readily accessible." This specific requirement categorically prevents such holder from any right of self-defense. This is inconsistent with the Supreme Court's decision in *Heller*, 554 U.S. at 628, 635. (PDS Amicus Brief p.13-14). The exercise of an individual's Second Amendment right of self-defense with a rifle cannot, and will not, occur unless that firearm is both conveniently accessible and within reach of the individual exercising that right. Because of this, Mr. Carruth agrees with the premise that is made in the Public Defender Service's Amicus brief whereby both the present statute, and this court's prior precedent, supports the position that under D.C. Code § 22-4504, the "convenient access" prohibition requirement (e.g. the rifle by itself cannot be of

any use to the carrier) 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." (PDS Amicus Brief p.17, *citing*, *Jones v. United States*, 972 A.2d 821, 827 (D.C. 2009) and *Henderson v. United States,* 687 A.2d 918, 922 n.7 (D.C. 1996)). In addition, 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). This would logically include the law's requirement that the weapon (in this case Mr. Carruth's rifle) not 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) (PDS Amicus Brief p.19-20). What this means is that a broader interpretation of carry, as the government has attempted to assert, is not within the law's original intent. Consequently, Mr. Carruth agrees with the Public Defender Service's premise that the text, purpose, and history of D.C. Code § 22-4504, similar to a conviction for CPWL and CDW, in making it a crime for "carrying" a rifle or shotgun for non-recreational purposes, requires the government to prove beyond a reasonable doubt that the rifle was in such proximity to the person as to be convenient of access and within reach. This effectively shuts off any right to self-defense and therefore

makes it inherently impermissible under the Second Amendment. (PDS Amicus Brief p.25). And, while the District of Columbia argues otherwise, Mr. Carruth notes that the United States, in their Supplemental Brief to this court dated November 3, 2025, now agrees with both the Public Defender Service and Mr. Carruth that D.C. Code § 22-4504(a-1) violates the Second Amendment and the specific statute "effectively banned all non-recreational public carry of long guns." (*See*, U.S. Atty's Supp. Brief dated 11/3/25 p. 8-9).

II. THE DISTRICT OF COLUMBIA'S ARGUMENT THAT MR. CARRUTH WAIVED HIS SECOND AMENDMENT CHALLENGE IS INCORRECT

Mr. Carruth would respectfully disagree with the District of Columbia that Mr. Carruth's Second Amendment argument is procedurally barred. The District of Columbia cites as authority for this proposition Super. Ct. Crim. R. 12(b)(3)(B)(v) which states any "defect in the indictment," including "failure to state an offense," "must be raised by pretrial motion" if it is "reasonably available" and "can be determined without a trial on the merits." The failure to do so, again according to the District of Columbia, renders "the motion untimely," and a court cannot consider the defense unless the party shows "good cause." (District's Brief p.11 *citing*, Super. Ct. Crim. R. 12(c)(3) and *Conley v. United States*, 79 A.3d 270, 276 (D.C. 2013). On this point Mr. Carruth would respectfully disagree.

During the government's case-in-chief, and during a break in the trial, counsel for the defense raised the following with the trial court:

> MR. DUNHAM: Well, and it would be this, Your Honor, that my client has a constitutional right after -- particularly after *Bruin*, to own, transport, carry a long rifle, irrespective of any particular license requirements in any given state. And we would put that on the record, a motion to dismiss the complaint on that basis.

(02/27/23 Tr. 8)

Although the trial court may have appeared to be slightly taken aback by stating, "Well, I mean, that's typically something that would be briefed and put in writing, not just sort of like, you know ..." (02/27/23 Tr. 8), it still went on to rule on the motion by the defense. It specifically stated:

> THE COURT: So the District of Columbia merely has a right to make sure that the people that bring guns here are allowed to do so and are fit and people have possession of a gun are trained or whatnot.
>
> So like any other jurisdiction, we have our rules, and Ohio has its rules. And as long as he's in compliance with Ohio, he's great in Ohio. He comes to D.C., you've got to stay in compliance with D.C. laws. And D.C. laws have been challenged, and parts of them have been struck down as unconstitutional. But the registration part is constitutional and remains constitutional.

Due to the fact that the trial court ruled on the defense's Second Amendment constitutionality claim during the trial, irrespective of the order of the argument,

and did so without any objection by the government, the District of Columbia's claim of an untimely Rule 12 motion is not applicable. The United States, by remaining silent, and letting the trial court rule, waived any future claim of a procedural bar to the defense's Rule 12 oral Second Amendment challenge. The circumstances that occurred in Mr. Carruth's trial where not those that this court recently faced in *Chew v. United States*, 314 A.3d 80 (D.C. 2024). In *Chew*, the appellant failed to make their Second Amendment argument during the trial proceedings. This left only the option of a "plain error" review which this court ultimately decided the appellant did not qualify for. Here, Mr. Carruth did make his Second Amendment argument and the trial court did address it. A *de novo* review is therefore appropriate and not a "plain error" review as the District of Columbia requests. Although Rule 12(b)(2) generally requires that objections based on defects in the indictment are waived unless raised prior to trial, there are exceptions for objections that claim the indictment "fails to show jurisdiction in the Court or to charge an offense." Those types of objections, as Rule 12 goes on to state, "shall be noticed by the Court at any time during the pendency of the proceedings." *Conley*, 79 A.3d at 276. As this court in *Conley* went on to further note, Federal courts, in their examination of a substantially identical provision in the Federal Rules of Criminal Procedure, have held that "[t]he defense of failure of an indictment to charge an offense includes the claim that the statute apparently

creating the offense is unconstitutional" and that such a claim therefore is not waived by failing to raise it before trial. This court in *Conley* agreed with that conclusion. An indictment, such as Mr. Carruth's, will clearly fail to charge an offense if the Constitution precludes the prosecution. *Id. citing*, *United States v. Seuss*, 474 F.2d 385, 387 n. 2 (1st Cir.1973).

III. MR. CARRUTH'S D.C. CODE § 22-4504(a-1) CONVICTION IS NOT CONSTITUTIONALLY SOUND BECAUSE THE STATUTE DOES NOT PROVIDE AN EXCEPTION FOR SELF DEFENSE WITHIN ITS REQUIREMENTS

Contrary to the District of Columbia assertions, Mr. Carruth's § 22-4504(a-1) conviction is not constitutionally sound because the statute does not provide an exception for self-defense. While the District of Columbia correctly cites that "D.C. Code § 22-4504(a-1) allows gun owners to "carry" a "rifle" in the District when "otherwise permitted by law." And although nonresidents are permitted by law to carry an unregistered rifle through the District when, among other requirements, the rifle is "transported in accordance with § 22-4504.02." D.C. Code § 7-2502.01(b)(3)" (District's Brief p.18), the law does not allow an exception for self-defense. Both the law's requirements, and transportation requirements, do not, in any way, allow for instances of self-defense or the opportunity to do so. The District of Columbia ignores this specific argument and

it is the argument that both Mr. Carruth and the Public Defender's Service make to this court. The bottom line, contrary to the District of Columbia's argument, D.C. Code § 22-4504(a-1) does not constitutionally comport with the Second Amendment as applied to Mr. Carruth.

IV. FOR THE PURPOSES OF D.C. CODE § 22-4504(a-1) A PERSON "CARRIES" A RIFLE IN VIOLATION OF THE STATUTE IF THEY HAVE THE FIREARM WITHIN CONVENIENT ACCESS AND WITHIN REACH

In its Supplemental Brief, the United States argues that both PDS and Mr. Carruth would be "incorrect" to argue that "Section 22-4504(a-1) should be interpreted to contain the same "convenient of access and within reach" possession standard as Section 22-4504(a)." Consequently, the United States disagrees with the premise that although the two sections of the same statute use different language, they should still should be interpreted to contain the same requirement because the "'convenient of access' requirement has been understood to define what it means to 'carry' a weapon." (U.S. Atty's Supp. Brief dated 11/3/25 p. 13-14). As support, the United States mainly argues that in this case the exact wording of the statute's should be the bellwether here. Mr. Carruth would respectfully disagree with the position the United States posits. In addition to those arguments that Mr. Carruth has made in his original brief on this issue, he

would note that the United States in their argument fails to acknowledge a related statute that should give guidance to this court. If the United States' position here were to be correct, the Appellant would ask why would the D.C. Council state in D.C. Code § 22–4504.02(b)(1) "Transportation of Firearms" [A defense to a conviction under D.C. Code§ 22-4504(a-1)] "If the transportation of the firearm is by a vehicle, the firearm shall be unloaded, and neither the firearm nor any ammunition being transported *shall be readily accessible or directly accessible* (emphasis added) from the passenger compartment of the transporting vehicle." Mr. Carruth would submit that the "readily accessible or directly accessible" requirement is no different than the "convenient of access and within reach" requirement. Thus, Mr. Carruth's case should be reversed.

CONCLUSION

For all these reasons, and any others that may appear to this Court, Mr. Carruth would respectfully reaffirm his request to this court that it reverse his verdict of guilt and remand the case back for further proceedings as directed.

Respectfully submitted,

David Reiter

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David H. Reiter, Esq.
Bar # 412012
6412 Brandon Avenue, Suite 144
Springfield, VA 22150
202-495-1294

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Amended Reply Brief for Appellant was served by electronic means, through the Court's EFS system, upon counsel for Appellee, this 7th day of November 2025 to:

DANIEL J. LENERZ
DC Bar #888283905
Assistant United States Attorney
601 D Street, NW, Room 6.232
Washington, D.C. 20530
Daniel.Lenerz@usdoj.go

BRYAN J. LEITCH
Assistant Attorney General
Bar Number 1016484
Office of the Solicitor General
Office of the Attorney General
400 6th Street, NW, Suite 8100
Washington, D.C. 20001
bryan.leitch@dc.gov

ALICE WANG
Bar No. 495098
D.C. Public Defender Service
633 Third Street, NW
Washington, DC 20001
awang@pdsdc.org

David Reiter
_____

David H. Reiter, Esq.
Bar # 412012
6412 Brandon Avenue, Suite 144
Springfield, VA 22150
202-495-1294