BRIEF FOR APPELLEE

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 22-CF-960

TRAVANION WARD-MINOR, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

APPEAL FROM THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

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Cr. No. 2018-CF2-14858

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ISSUES PRESENTED

I. Did the trial court – after crediting the searching officer's testimony and reviewing his body-worn-camera footage – clearly err in finding that Ward-Minor voluntarily consented to a frisk?

II. Did Ward-Minor waive his claim that the trial court improperly denied his 2019 discovery motion when, following the court's denial of his 2022 suppression motion, he pleaded guilty but only reserved the right to have this Court review the adverse determination of the latter?

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COUNTERSTATEMENT OF THE CASE

After police officers recovered a loaded handgun on appellant, Travanion Ward-Minor, a D.C. Superior Court grand jury charged him with: carrying a pistol without a license (CPWL), in violation of D.C. Code § 22-4504(a) (count 1); possession of an unregistered firearm (UF), in violation of D.C. Code § 7-2502.01(a) (count 2); and unlawful possession of ammunition (UA), in violation of D.C. Code § 7-2506.01(a)(3) (count 3) (Appendix (A.) 2-3). Following Ward-Minor's conditional guilty plea to all

three charges, on December 16, 2022, the Honorable Michael O'Keefe sentenced him to six months' incarceration on the CPWL charge, and three months on each of the UF and UA charges, all sentences suspended (A.243-44). Ward-Minor timely appealed on the same date (A.4-5).

The Suppression Hearing

Around 3 p.m. on October 8, 2018, then-Sergeant James Chatmon and his partner (then-Sergeant Carline Modl) of the Metropolitan Police Department's Gun Recovery Unit (GRU) executed a traffic stop of a Chevy Impala with illegally tinted windows (A.79-80).[1] As the two officers (who were both armed) drove past the Impala in the opposite direction on Branch Avenue, SE, Sergeant Modl noticed the car's "extremely dark" windows, executed a U-turn, and stopped the Impala

[1] At the time of Ward-Minor's arrest, the GRU had its "own branch," which was the Narcotics Special Investigation Division (A.139). The GRU was comprised of officers from different districts (A.139). Relying on a variety of intelligence sources, Sergeants Modl's and Chatmon's superiors ("commander, captain, or lieutenant") decided where GRU officers patrolled (A.140). "[V]iolent crime dictate[d]" those patrol areas (A.140). "If there [we]re a number of shootings in a particular area," for example, "that's the area where they would normally assign [the GRU officers] to go" (A.140-41; see also A.144 ("We ride through areas of patrol, . . . those areas that are experiencing high levels of violent crimes[.]")).

(A.80, 91, 107; see also A.90 ("definitely the side windows were too dark")).

After stopping the Impala, Sergeant Modl approached the driver's side while Sergeant Chatmon went to the passenger's side,[2] where Ward-Minor was sitting (see Exh. 1).[3] Sergeant Modl instructed the Impala's driver to put "all" the car's windows down "because the tint was so dark that [the officers] couldn't see into the vehicle to be able to know . . . who was in the vehicle"(A.84; Exh. 1 (18:59:16z)). Sergeant Chatmon thereafter instructed Ward-Minor to put his window down the rest of the way, and thanked him when he did so (A.107-08; see Exh. 1 (18:59:29-34z)). Sergeant Chatmon smelled "burnt marijuana" (A.85). When Sergeant Modl then told the driver to put his hands on the steering

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[2] At the time of Ward-Minor's arrest, Sergeant Chatmon had been with MPD for approximately 14 years, worked with the GRU for nine years, and been involved in at least 1000 arrests (A.78, 118).

[3] The court admitted a clip of Sergeant Chatmon's body-worn camera (A.156), and the government will move to supplement the record with this exhibit. Citations to Exhibit 1 are to its internal "Zulu" time-stamp clock (e.g., "18:59:37z"), which was the identifying time the parties used below. *Cf. Fireman's Fund Ins. v. El Al Israel Airlines, Ltd.*, No. 99 C 3801, 2001 WL 32847, *1 (N.D. Ill. Jan. 12, 2001) ("'Zulu' time refers to a coordinated universal time system which uses the twenty-four hour military clock. Zulu time previously was referred to as 'Greenwich Mean Time.'") (unpublished).

wheel, Ward-Minor similarly placed his hands on the dash in front of him (Exh. 1 (18:59:42z)).

Sergeant Chatmon instructed Ward-Minor ("Do me a favor . . . ") to open his door, take off his seatbelt, and step out of the car (Exh. 1 (19:00:20-30z)). Ward-Minor, however, remained seated, declaring, among other things, he didn't "feel safe" (A.111; see Exh. 1 (19:00:44-45z)). Sergeant Chatmon informed Ward-Minor the "Supreme Court says when [there's a] traffic stop, everybody has to come out of the car, ok, if officers ask" (Exh. 1 (19:00:45-53z); see A.111). Sergeant Chatmon asked Ward-Minor about his reluctance to exit: "[I]s the reason because you have something on you?" (Exh. 1 (19:00:54-55z)). And, when Ward-Minor responded, "I have my weed," Sergeant Chatmon declared, "We ain't trippin' about nothing. Whatever you got, we can work it out, ain't no big deal. 'Cause we ain't trying to hurt nothing, alright?" (Ex.1 (19:00:56-19:01:04z).) Sergeant Chatmon also asked Ward-Minor if he had "something else other than weed" (Exh. 1 (19:01:05-06z)). Ward-Minor denied he had anything else, and Sergeant Chatmon again directed him to step out and, further, to put his hands "straight up" (Exh. 1 (19:01:07-12z); see A.111-12).

When Ward-Minor's left hand disappeared from Sergeant Chatmon's view ("I couldn't see it"), however, he directed Ward-Minor not to move and handcuffed his hands behind his back (A.112-13; see Exh. 1 (19:01:12-43z)). Sergeant Chatmon handcuffed Ward-Minor because Ward-Minor was "extremely, extremely nervous" and, when Sergeant Chatmon asked "him to step out of the vehicle, [Ward-Minor] moved his hands toward his waist area, which again alarmed [Sergeant Chatmon] a little bit" (A85-86; see also A.114 ("It looked like he . . . he moved his hand back towards where his, you know, waistband area is.")). Additionally, Sergeant Chatmon reasoned, Ward-Minor had "already" admitted "he had marijuana," so Sergeant Chatmon "was concerned that [Ward-Minor] could possibly have a weapon" (A.86).

Once Sergeant Chatmon had handcuffed Ward-Minor and Ward-Minor had alighted from the car, Chatmon instructed him to "turn around" but Ward-Minor "was still moving around kind of antsy, which further aroused [Sergeant Chatmon's] suspicion" (A.86; see A.115-16). Sergeant Chatmon thus said, "Hey, stop moving. But you're doing too much moving my man," and again asked Ward-Minor if he had "something on [him]" (Exh. 1 (19:01:53-19:02-01z); see A.86, 115-16).

Ward-Minor replied, "money, that's it" (Exh. 1 (19:02:01-02z)). Sergeant Chatmon then declared, "Look at me. I ain't trying to hurt nothing. I'm not trying to hurt nothing. Do you have anything on you, my man, 'cause you're doing a whole bunch of stuff that makes me think you got something on you[.]" (Exh. 1 (19:02:02-14z); see A.122.) Ward-Minor answered, "We were smoking weed. I know weed is a problem." (Exh. 1 (19:02:15-17z).) Sergeant Chatmon thereafter twice assured Ward-Minor that he was "not trying to hurt" him, adding, "if that's all it is, that's not a problem. I don't have a problem with that." (Exh. 1 (19:02:22-31); A.122.)

Sergeant Chatmon then asked Ward-Minor for permission to frisk him: "I'm just going to check you real quick, ok, make sure you don't have nothing on you. That's cool?" (A.86; Exh. 1 (19:02:32-35z); see also A.122-23.) Ward-Minor indicated his consent by, among other things, nodding his head (Exh. 1 (19:02:35-36z); A.123).[4] Ward-Minor additionally offered

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[4] Sergeant Chatmon explained that Ward-Minor "nodded or affirmed" when he asked Ward-Minor if it was "cool" to "check" him:

> Q. And you said, ["]I'm going to check you real quick if that's cool,["] or something like that?

(continued . . .)

his understanding that he knew he "gotta spread 'em" (Exh. 1 (19:02:36-39z)). Sergeant Chatmon then frisked Ward-Minor's waistband and crotch area (Exh. 1 (19:02:38-19:03:03; see A.124-26). Sergeant Chatmon felt a gun "between [Ward-Minor's] legs" and informed Sergeant Modl of this discovery, using a pre-arranged code word (A.86-87; Exh. 1 (19:03:05-06z)).

A. That's correct.

Q. And he was in handcuffs at that time, right?

A. He was.

Q. And he nodded, right – or nodded or affirmed, right?

A. Correct.

Q. And he nodded and affirmed that that's what you were getting ready to do; isn't that correct? Like, you told him you were getting ready to check him, and he said, yes, you're getting ready to check me.

A. . . . I can't speculate if that's what he was saying yes to.

Q. Okay. So you don't know what he was saying yes to?

A. I asked him to search him, and I assumed that he was saying yes for that particular reason. I didn't have him to [sic] restate it, but I didn't think that he would be saying yes to say that, yeah, that's what you said you were going to do. (A.122-23.)

The trial court's suppression ruling

The court rejected Ward-Minor's claim that Sergeant Chatmon's frisk violated the Fourth Amendment, concluding Ward-Minor had given voluntary "consent to search" (A.207).

As an initial matter, the court found that Sergeant Chatmon "was a very credible witness" (A.197). Given that Ward-Minor's case was almost four years old, Sergeant Chatmon had "pretty good recollection of events" and "seemed to recall [them] independently" of his body-worn-camera footage (A.197). Further, Sergeant Chatmon's "answers were clear" and he wasn't "impeached too much" (A.197). "[S]o," he "made a good" and "credible" witness (A.197).

The court also determined there was no "problem with the vehicle stop" because the officers had a "reasonable basis to pull over the car" (A.197-98). The car was "clearly" in violation of the tint law because it was too "dark, [and] you couldn't see inside" (A.198; see also A.212 ("probable cause that there was a tint violation")). Indeed, Judge O'Keefe emphasized, the violation was apparent from Sergeant Chatmon's body-worn-camera footage: "it certainly looked like the car had illegal tints"

(A.198; see also A.211-12 ("To me it looked like it was absolutely darker than the law allows. . . . It was impossible to see into the car[.]")).

Additionally, Sergeant Chatmon lawfully "direct[ed] [Ward-Minor] to get out of the car even though [he] ha[dn't] necessarily done anything related to the traffic violation" (A.200). Moreover, Sergeant Chatmon's decision to handcuff Ward-Minor did not convert the temporary detention into an arrest (A.200-01). The handcuffing was "okay under the circumstances of [the] officer's safety" (A.201). Ward-Minor "appear[ed] nervous," which made Sergeant Chatmon's "radar [sic: antenna] go up" (A.201). Additionally, Ward-Minor had "initial[ly] resist[ed]" Sergeant Chatmon's request that he get out of the car (A.200). And, finally, even after Ward-Minor agreed to get out, he was "kind of slow in moving out" (A.200). Accordingly, Sergeant Chatmon appropriately decided, "[']let's not take any chances here, let's just be safe[']," and handcuffed Ward-Minor (A.201).

Finally, although the court concluded Sergeant Chatmon had lawfully handcuffed Ward-Minor, it "d[idn't] know" whether there was a "reasonable articula[ble] suspicion" that Ward-Minor was armed and

dangerous, thus justifying a frisk (A.201-02).[5] Accordingly, the "linchpin" for Sergeant Chatmon's frisk was "whether or not there was consent freely given" (A.203). And, the court found, there was. Sergeant Chatmon asked Ward-Minor if it would be "cool" "'to check you,'"[6] and Ward-Minor gave "an affirmative response" (A.203-04). "[E]ven though you can't see Mr. Ward-Minor's head [in the body-worn-camera footage], it appears to be an affirmative response" because Ward-Minor nodded his head

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[5] See also A.201-02 ("I think the officers probably had a hunch he might have a gun, but I don't know whether objectively you could say, [']oh, yeah, look at that, that's something, he might have a gun.[']"); A.204 ("I'm not sure the officer articulated a sufficient basis to search."); A.207 ("It does appear to have some issues with whether there's reasonable, articulable suspicion, to do it without consent.").

[6] During the parties' arguments, defense counsel had previously conceded that the latter half of Sergeant Chatmon's statement was a question:

> MR. McDONALD: . . . Because I think the officer does say after that, "Is that cool?"
>
> THE COURT: Oh, he says, "Is that cool?"
>
> MR. McDONALD: Yeah, he says –
>
> THE COURT: So that's a question.
>
> MR. McDONALD: It's a question, Your Honor[.] (A.176.)

(A.203).[7] Further, consistent with defense counsel's earlier concession that Ward-Minor said "something maybe like 'yeah' or something like that" (A.173), Judge O'Keefe found that Ward-Minor "might even" have made a "verbal response": "I thought I heard, like, 'all right' or something like that, something verbal as well" (A.203). And, "on top of" the physical and verbal affirmative signals, the court found that Ward-Minor "seem[ed] to help or assist in getting ready for the search by saying, 'Yeah, I know I got to spread my legs here,' like he understands the routine" (A.203-04). "So the record in this case is that Mr. Ward-Minor was asked, 'I'm going to check you. Is that cool?' And he said – either nodded or said, [']okay or all right,['] and then actually got in the position and said 'I know I got to spread them.'" (A.206.)

[7] Though the transcript only reflects Judge O'Keefe "(indicating)" something when he announced his "affirmative response" finding (A.203), the context suggests Judge O'Keefe nodded his head. Earlier, the court had questioned defense counsel about Ward-Minor's response to Sergeant Chatmon's "Is that cool" question, and the court declared: "Apparently there was some kind of a nod. That's what the testimony was." (A.173; see also note 4 supra.) Moreover, although the body-worn-camera footage does not focus on Ward-Minor's head, one can see his lengthy dreadlocks briefly bob up and down after Sergeant Chatmon poses his question (see Exh. 1 (19:02:35-36z)).

The court also found Ward-Minor's consent was "'voluntary'" (A.204-05 (quoting *Basnueva v. United States*, 874 A.2d 363 (D.C. 2005)). Ward-Minor was no "shrinking violet," having earlier "challenge[d]" Sergeant Chatmon's authority to order him out of the car (A.206). Specifically, Ward-Minor "knew" what "he thought w[ere] his rights about not having to get out of the car" and he asserted them (A.204).[8] Ward-Minor thus plainly had the "capacity and the intelligence" to question Sergeant Chatmon (A.206). But, when Sergeant Chatmon asked Ward-Minor if it was "'cool'" to frisk him and Ward-Minor had another "opportunity to assert his rights," Ward-Minor "consent[ed] verbally, and it appears physically" (A.204, 206). The voluntariness of Ward-Minor's consent was further evidenced by the fact that, in addition to verbally assenting to the frisk, Ward-Minor "went a little bit further by setting

[8] See also A.209 ("He was reluctant because I think he felt he had a right not to get out of the car, and so he was like, [']well, wait, why am I being asked to get out of the car when I'm just a passenger[']. I think it was a reasonable question for him to ask.").

himself up to be searched by [Sergeant Chatmon]" (A.206). "So the search was . . . consensual" (A.207).[9]

SUMMARY OF ARGUMENT

The record supports the trial court's finding that Ward-Minor voluntarily consented to Sergeant Chatmon's frisk request. Numerous features of their interaction demonstrate that Ward-Minor freely and voluntarily permitted Sergeant Chatmon to search him for weapons, including: Ward-Minor had previously questioned the officer's authority to order him out of the car; the traffic stop took place on a busy thoroughfare during the day; Sergeant Chatmon had only briefly detained Ward-Minor before asking him if it was "cool" to frisk him; the officers neither outnumbered the Impala's occupants nor brandished their guns; and Sergeant Chatmon generally used a polite and conversational tone with Ward-Minor. Because several factors that this

[9] Judge O'Keefe additionally rejected Ward-Minor's claim that Sergeant Chatmon's frisk exceeded the scope of the consent: "I didn't see Mr. Ward-Minor say anything or react in a way that indicated that he was not willing to have the officer do whatever he was doing" (A.206-07; see also A.211 ("Mr. Ward-Minor consented for the officer to check him out.")).

Court has deemed relevant to the voluntariness inquiry support the trial court's factual finding, it cannot be deemed clearly erroneous.

As for Ward-Minor's additional claim that the trial court erroneously denied his motion to compel discovery, he has waived that claim. When Ward-Minor conditionally pleaded guilty, he properly preserved his right to appeal the trial court's denial of his *suppression* motion. But he never "reserv[ed] in writing the right to have an appellate court" review the trial court's denial of his *discovery* motion, D.C. Super. Ct. Crim R. 11(a)(2). Accordingly, his guilty plea waived that nonjurisdictional claim.

ARGUMENT

I. The Trial Court Did Not Clearly Err in Finding – Based on Sergeant Chatmon's Credible Testimony and the Body-Worn-Camera Footage – that Ward-Minor Voluntarily Consented to the Frisk for Weapons.

Ward-Minor claims (at 21-24 & n.5) Sergeant Chatmon's frisk "was not consensual," contending "the fact that [he] was detained [and] handcuffed behind his back rendered any purported consent involuntary." "No reasonable person," he maintains (at n.5), "who has been ordered out of a car and not to move, then handcuffed behind his

back, would believe he was free to decline the search." This claim is meritless.[10]

"The Fourth Amendment test for a valid consent to search is that the consent be voluntary, and '[v]oluntariness is a question of fact to be determined from all the circumstances.'" *Ohio v. Robinette*, 519 U.S. 33, 40 (1996) (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 248-49 (1973)); *see Ford v. United States*, 245 A.3d 977, 984 (D.C. 2021) ("consent is a factual inquiry"). "Relevant factors in making this determination include the age of the person, his or her education, mental and physical condition, whether he or she was under arrest, the length and nature of

[10] Though "the waiver form does not include a written reservation of the suppression issue," the "transcript" of the October 2022 plea colloquy shows "all parties agreed that the plea was conditional" and identifies the "exact issue reserved," *Casey v. United States*, 788 A.2d 155, 158 (D.C. 2002), namely: "the findings of the suppression hearing" (A.220; see Waiver of Trial (attached); D.C. Super. Ct. Crim. R. 11(a)(2)). As explained in Part II.B infra, however, Ward-Minor did not specify – and thus has waived – his challenge to the court's earlier (January 2020) denial of his "Motion To Compel Data Necessary To Establish Selective Enforcement and Officer Bias" (A.6-27, 40-47). Additionally, Ward-Minor made several suppression arguments below that he does not now repeat: the initial traffic stop was unlawful (A.166-69); the handcuffs "converted" his seizure into an arrest (A.169-72); and Sergeant Chatmon "exceed[ed] the scope" of any consent by "reach[ing] in [Ward-Minor's] crotch area" (A.175-78). Ward-Minor has thus abandoned these suppression claims.

the interrogation, and whether he or she was told of the right to refuse to consent." *Welch v. United States*, 466 A.2d 829, 843-44 (D.C. 1983); *see also Basnueva*, 874 A.2d at 369-70 (listing similar factors).

Ward-Minor "has not shown that the trial court's finding of voluntariness was 'plainly wrong or without evidence to support it.'" *Basnueva*, 874 A.2d at 370 (quoting D.C. Code § 17-305(a)).[11] To the contrary, the record amply supports the court's conclusion that Ward-Minor gave "a voluntary consent" (A.204); *see Dorsey v. United States*, 60 A.3d 1171, 1205-06 (D.C. 2013) (en banc) (where "there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous") (cleaned up).

To begin, "the details of the interrogation which gave rise to [Ward-Minor's] consent," *Welch*, 466 A.2d at 843, were not coercive. Sergeants

[11] "[W]here the validity of a search rests on consent, the State has the burden of proving that the necessary consent was obtained *and* that it was freely and voluntarily given[.]" *Florida v. Royer,* 460 U.S. 491, 497 (1983) (emphasis added). Ward-Minor does not challenge the court's consent finding, i.e., that he gave an "affirmative response" to Sergeant Chatmon's "question" (A.203-04). *Cf. Hawkins v. United States*, 248 A.3d 125, 129 (D.C. 2021) ("On this record, we hold that the government failed to prove that Hawkins consented to the search of his satchel."). Instead, Ward-Minor contends (at 24) only that the court's "finding that [his] consent to be searched was voluntary" is "clearly erroneous."

Modl and Chatmon executed their traffic stop during the day on a busy street. *See United States v. Watson*, 423 U.S. 411, 424 (1976) (though defendant had "been arrested," consent to search was voluntary where, inter alia, it was "given while on a public street"); *Basnueva*, 874 A.2d at 370 (consent voluntary where, inter alia, traffic stop "took place during the day and on a public street"). Further, the officers did not outnumber the Impala's two occupants and "[t]here was no overt act or threat of force proved or claimed." *Watson*, 423 U.S. at 424. Additionally, "the officers never drew or displayed their weapons in a threatening manner." *Castellon v. United States*, 864 A.2d 141, 155 (D.C. 2004). Though Sergeants Modl and Chatmon each *possessed* a gun, "where the police officers keep their weapons holstered during the entire encounter" – as the body-worn-camera footage indicates was true here – "th[is] court will have some difficulty finding that there was coercion simply because the officers had them available." *Id.*; *see also Basnueva*, 874 A.2d at 370 (during traffic stop "officers never drew their weapons or spoke in a loud voice").

Additionally, the "length of the detention prior to consent" was short. *Basnueva*, 874 A.2d at 369; *see also Schneckloth*, 412 U.S. at 226

(same). Sergeant Chatmon came abreast of the passenger-side window at 18:59:27z, and asked for Ward-Minor's consent approximately three minutes later, at 19:02:33z (see Exh. 1). Further, during this brief period, Sergeant Chatmon generally "addressed [Ward-Minor] in a polite, conversational tone of voice," *Burton v. United States*, 657 A.2d 741, 745 (D.C. 1994).

Finally, "[t]here is no indication in the record that [Ward-Minor] was a newcomer to the law, mentally deficient, or unable in the face of a [traffic stop] to exercise a free choice." *Watson*, 423 U.S. at 424-25. To the contrary, Ward-Minor's actions during the stop and, indeed, at the suppression hearing itself demonstrate that, as the trial court found, he was "intelligent enough and able to assert his rights" (A.200). When Sergeant Chatmon directed Ward-Minor to get out of the car, for example, the court found that Ward-Minor questioned Chatmon's authority, asking in essence: "'Why do I have to get out of the car? I'm a passenger. I didn't do anything. I'm not doing anything.'" (A.203; see also A.200, 209.) Additionally, Ward-Minor told Sergeant Chatmon, he didn't "feel safe" (Exh. 1 (19:00:44-46z)). In response, Sergeant Chatmon had to explain what the law permits an officer to do during a traffic stop.

Moreover, consistent with Ward-Minor's on-scene boldness, at the suppression hearing he repeatedly interjected facts and commentary. For example, when the prosecutor argued Ward-Minor had been moving suspiciously slow during the stop, defense counsel countered that "he was in the presence of a police officer," which is "not the time to start moving very quickly" (A.191). Ward-Minor then added sua sponte, "I'm black" (A.191). On another occasion – again, without prompting – Ward-Minor offered his interpretation of a portion of the body-worn-camera footage, which caused the court to ask defense counsel if his "client want[ed] to testify" (A.173).[12] Thus, the record supports the trial court's conclusions that Ward-Minor was not a "shrinking violet" and, indeed, had "the capacity and intelligence to challenge the officer" (A.206).

In sum, numerous facts support the trial court's ruling that Ward-Minor voluntarily consented to Sergeant Chatmon's request. Accordingly, it cannot be said that the court clearly erred. "[A] choice

[12] During his counsel's later argument, Ward-Minor also offered that the Impala's driver was now deceased: "He's dead. He's dead now, bro." (A.192.) Further, when his counsel posited an innocent explanation for Ward-Minor's hand movement ("he was just putting his hand on the seat"), Ward-Minor expressed his agreement ("Yes") (A.202).

between two permissible views of the weight of evidence is not 'clearly erroneous.'" *United States v. Yellow Cab Co.*, 338 U.S. 338, 342 (1949); *see generally Henderson v. United States*, 276 A.3d 484, 489 (D.C. 2022) (this Court's "deference to the trial court's factual determinations under th[e voluntariness] standard extends to that court's evaluation of the body-worn camera footage").

Relying on two other aspects of the encounter, however, Ward-Minor contends that the court clearly erred. First, Ward-Minor suggests, the mere fact of his seizure rendered his consent involuntary. Specifically, he asserts (at 22-23), although the "Supreme Court and this Court have identified numerous factors to determine whether consent was given voluntarily," in "the context of a traffic stop . . . these details need not be weighed."[13] But the "fact of custody alone has never been enough in itself to demonstrate a coerced confession or consent to search."

[13] See also Br. at vii ("Could consent to such a search *while still seized* be voluntary?" (emphasis added)); *id.* at 23-24 ("There was *no* indication that the seizure had ended, because it had not ended. It is therefore beyond genuine debate that the point at which Mr. Ward-Minor could have felt free to leave had not yet occurred. *As a result*, the trial court's finding that Mr. Ward-Minor's consent to be searched was voluntary . . . was clearly erroneous." (second emphasis added; citation omitted)).

Watson, 423 U.S. at 424. Here, Sergeant Chatmon hadn't even arrested Ward-Minor. Rather, Ward-Minor had only been temporarily seized at the time he consented to the frisk.

Second, "[i]n any event," Ward-Minor asserts (at 24 n.5), "the fact that [he] was detained, handcuffed behind his back, rendered any purported consent involuntary." But "just because a defendant is handcuffed when he or she gives consent does not make such consent invalid." *United States v. Lee*, 793 F.3d 680, 686 (6th Cir. 2015). "Although relevant to whether consent was voluntary, being in handcuffs, under arrest, or in custody 'does not preclude a finding of voluntariness.'" *United States v. Magallon*, 984 F.3d 1263, 1281 (8th Cir. 2021) (citation omitted). Indeed, in *Castellon*, this Court approvingly cited a Seventh Circuit decision and noted that, "although defendant was in custody, handcuffed, and had a slight language barrier, the presence of such 'subtly coercive' factors was outweighed by the fact that defendant was of sufficient age and intellect and no direct force or intimidation was used." 864 A.2d at 156 (quoting *United States v. Rojas*, 783 F.2d 105, 109-10 (7th Cir. 1986)). In like fashion here, although Sergeant Chatmon had detained and handcuffed Ward-Minor, other features of the encounter

conveyed voluntariness, including that Ward-Minor had not been "subject to a full arrest," the officers "never drew" their firearms, and Ward-Minor had "no barriers to comprehension," *id.* at 155-56; *see also Rojas*, 783 F.2d at 110 ("Even if some police actions in this case were 'subtly coercive,' it was well within the trial court's discretion to weight those factors against the greater number of factors that indicated Rojas's consent was freely and voluntarily given.").[14]

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[14] Though Ward-Minor alternatively contends (at 24-38) Sergeant Chatmon lacked a reasonable basis to believe he possessed a weapon, the government – like the trial court – does not rely on that ground to justify the frisk. And, to the extent that Ward-Minor is suggesting Chatmon unlawfully handcuffed him, he does not explain why that was so much less how any alleged unlawfulness rendered his consent involuntary. Nor would the record support such arguments. First, "[c]ourts have routinely held the use of handcuffs in the *Terry* context to be reasonable in situations where suspects attempted to resist police, made furtive gestures, ignored police commands, attempted to flee, or otherwise frustrated police inquiry." *Womack v. United States*, 673 A.2d 603, 609 (D.C. 1996). As described supra, the trial court permissibly found Ward-Minor engaged in such behavior here. Second, although "[c]onsent obtained after an illegal *seizure* is invalid unless it can be shown that the consent was in fact sufficiently an act of free will to purge the primary taint of the unlawful seizure[,]" *Towles v. United States*, 115 A.3d 1222, 1228 (D.C. 2015) (citation omitted; emphasis added), the use of handcuffs here did not result in any *illegal* seizure: Ward-Minor already was seized by virtue of the traffic stop, which was lawful. And, the trial court having permissibly found that the handcuffing did not itself render Ward-Minor's consent involuntary, its legality vel non would not have affected the outcome. *Cf. Womack*, 673 A.2d at 610 ("We conclude that the

(continued . . .)

II. Ward-Minor's Guilty Plea Waived His Discovery Claim and, In Any Event, the Trial Court's Factual Findings Show He Was Not Prejudiced.

Ward-Minor additionally claims (at 38-44) the trial court abused its discretion in denying his motion to compel so-called "racial-bias data." Ward-Minor maintains (at 18) this data was necessary to "support[ ] his motion to dismiss under the Equal Protection Clause." But Ward-Minor has waived this claim and, at any rate, he was not prejudiced by the denial.

A. Relevant Procedural History

In 2019, Ward-Minor moved to compel the government to "disclose data" that, he claimed, would show "(a) that the officer witnesses against [him] [we]re biased against him; and (b) that the stop of [him] was the product of racially selective enforcement of the law" (A.6-27 (dated:

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handcuffing of Womack did not change the result. The incremental intrusion on Womack's liberty effected by the handcuffs was minimal. Even if Womack had not been placed in handcuffs, he would not have been free to leave until after N.H. had had an opportunity to identify him.").

9/6/19)).[15] Though Ward-Minor had "obtained data from MPD's website describing the demographic breakdown of those arrested by police in the District of Columbia," he sought additional information collected by MPD pursuant to the Neighborhood Engagement Achieves Results Act (NEAR), which, he asserted, "requires MPD officers to collect and record," among other things, the "race or ethnicity" of every person they have stopped (A.8, 10-11). The government opposed this motion (A.26-39), and the court denied it four months later, in January 2020 (A.40-47 (dated: 1/15/2020)).

Citing *United States v. Armstrong*, 517 U.S. 456 (1996), the court determined that "[n]either selective prosecution nor selective enforcement is a 'defense' within the meaning" of D.C. Super. Ct. Crim. R. 16, and thus Ward-Minor's "materiality argument as it applies to Rule 16 fail[ed]" (A.42-43). Additionally, the court concluded, Ward-Minor was not entitled to the NEAR data pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963): "The evidence requested is neither favorable nor material

[15] Later, Ward-Minor filed a separate motion to dismiss, claiming the traffic stop violated his rights under the Equal Protection Clause (A.61-66). The government opposed this motion (A.67-71).

because it does not focus on the individual officers in this case," and there was "no allegation that MPD directed the officers in this case, and other officers to engage in racially discriminatory enforcement of the laws" (A44-45). Finally, the court concluded, Ward-Minor had failed to show he was entitled to the demographic data for "a separate selective enforcement claim" (A.46-47). Pursuant to *Armstrong*, Ward-Minor had to make, among other things, a "'credible showing of different treatment of similarly situated persons,'" which he had not even attempted to show (A.46-47 (quoting *Armstrong*, 517 U.S. at 470)).

Two years later, at the end of the October 2022 pretrial hearing, in addition to denying Ward-Minor's suppression motion the trial court denied his motion to dismiss premised on the Equal Protection Clause (A.196-97; see note 15 supra). The court concluded there was "not sufficient evidence on this record to find that there was selective enforcement going on" (A.196). "To the contrary," the evidence established that Sergeants Modl and Chatmon "couldn't see whoever was inside the car," which was why they executed the traffic stop, *viz.*, "they pulled the car over because it had dark tints" (A.196-97).

Following the court's rulings, Ward-Minor pleaded guilty. In doing so, he reserved his right to appeal only the court's suppression ruling. As Judge O'Keefe explained:

> You will maintain your right to appeal the findings of the Court with regard to the suppression, so after you – after your sentence you can appeal the findings of the suppression hearing, and if the Court of Appeals determines that I got it wrong, they will either send it back to me or vacate it and dismiss the case. You understand? (A.220.)

Ward-Minor affirmed ("Yes") that he understood his right to appeal was restricted to the court's denial of his "suppression" motion (A.220).

B. Ward-Minor Has Waived His Claim that the Trial Court Improperly Denied His Motion To Compel the NEAR Data.

"By voluntarily entering an unconditional guilty plea, a defendant waives non-jurisdictional defects in the proceedings leading up to the plea, including otherwise available constitutional defenses." *Magnus v. United States*, 11 A.3d 237, 240 (D.C. 2011). In contrast, "a conditional guilty plea under Rule 11(a)(2) indicates an agreement of the parties and the court to allow the defendant to preserve a particular issue for appellate review." *Beachum v. United States*, 19 A.3d 311, 316 n.8 (D.C. 2011). But "[f]ailure to specify a particular pretrial issue in the written plea agreement," *Collins v. United States*, 664 A.2d 1241, 1242 (D.C.

1995), or, at a minimum, at the "plea proceeding" itself, *Casey*, 788 A.2d at 157, precludes raising that issue on appeal. *See* Fed. R. Crim. P. 11(a)(2) (Advisory Comm. Notes) (in-writing requirement "will document that a particular plea was in fact conditional and will identify precisely what pretrial issues have been preserved for appellate review").[16]

Because Ward-Minor preserved his right to appeal only the court's 2022 suppression ruling (see note 10 supra), and not its 2020 ruling on his Motion To Compel Data, he has waived his present claim (at 18, 38-44) that "the trial court impermissibly abused its discretion when it denied him the ability to compel the government to disclose information that would have supported his motion to dismiss under the Equal Protection Clause[.]" *See United States v. Fagan*, 71 F.4th 12, 24 (1st Cir. 2023) (defendant "waived" claim that "court erred in denying his motion

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[16] D.C. Super. Ct. Crim. R. 11(a)(2) is "identical" to Fed. R. Crim. P. 11(a)(2), *Collins*, 664 A.2d at 1242, and states as follows: "With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion." *See generally Williams v. United States*, 878 A.2d 477, 482 (D.C. 2005) ("[W]hen a local rule and a federal rule are identical, we may look to federal court decisions in interpreting the federal rule as persuasive authority in interpreting the local rule.") (cleaned up).

for discovery regarding other [traffic] stops [officer] had made" where "conditional plea agreement only identifie[d] the rulings on the motion to suppress as appealable, with no reference to the ruling on [defendant's] discovery motion"); *United States v. Brown*, No. 22-1172, 2023 WL 3171558, *2 n.4 (3d Cir. May 1, 2023) ("Brown also appeals the denial of his motion to compel discovery. We conclude that he waived the right to appeal this claim when he entered his conditional guilty plea. In his written plea agreement, Brown only reserved the right to appeal the denial of his motion to suppress.").[17]

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[17] *See also* *United States v. Anderson*, 374 F.3d 955, 958 (10th Cir. 2004) ("[W]e find that Mr. Anderson did not preserve the improper-patdown issue for appeal. The plea agreement preserves only Mr. Anderson's right to appeal 'the Court's May 2, 2002 Order regarding the denial of . . . his Motion to Suppress Evidence and Statements Obtained on October 12, 2001.' Neither the order nor Mr. Anderson's motion to suppress evidence raised the improper-patdown argument that he advances here."); *United States v. Napier*, 233 F.3d 394, 399 (6th Cir. 2000) ("Napier entered into a plea agreement which reserved his right to appeal the orders of the district court denying his motions to dismiss the indictment. He did not reserve the right to appeal the district court's pretrial evidentiary ruling."); *United States v. Ramos*, 961 F.2d 1003, 1005-06 (1st Cir. 1992) ("A defendant is normally deemed to waive arguments that he does not present to the district court. This is particularly so where, having pled guilty, he conditionally preserves for appellate review only the district court's adverse rulings on specified pretrial motions." (citations omitted)), *overruled on other grds by United States v. Caron*, 77 F.3d 1 (1st Cir. 1996); *United States v. Echegoyen*, 799 F.2d 1271, 1276 (9th Cir. 1986) (continued . . .)

C. In Any Event, Ward-Minor Was Not Prejudiced By the Court's Denial of his Motion To Compel.

Ward-Minor maintains (at 43-44) he was prejudiced by the trial court's denial of his motion to compel because, "[w]ithout the evidence the trial court had denied him, he could not succeed on his motion to dismiss." But to succeed on his substantive motion to dismiss, Ward-Minor would ultimately have had to "provide 'clear evidence' of discriminatory effect and discriminatory intent." *United States v. Washington*, 869 F.3d 193, 214 (3d Cir. 2017); *see also Armstrong*, 517 U.S. at 465-66. At a minimum, however, the trial court's factual findings about the Impala's tints foreclosed the possibility that the officers stopped the car based on race (i.e., with discriminatory intent):

> the first thing is whether or not the car – they had any reasonable basis to pull over the car in the first place, and as

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("Because Echegoyen did not reserve in writing issues arising from the search of the Nipomo Ranch, only the issues surrounding the search of the Idyllwild residence are properly before us."); *United States v. Simmons*, 763 F.2d 529, 533 (2d Cir. 1985) ("We have repeatedly held that the entry of a conditional guilty plea preserves only the specifically mentioned issues and waives all other nonjurisdictional claims. As framed by appellant's counsel, the only issues preserved for appellate review in this case were 'the denial of the motion to suppress, and . . . the speedy trial issue.' No mention of prosecutorial misconduct was made in connection with the guilty plea.").

> we saw on the video, it certainly looked like the car had illegal tints. I mean, you couldn't see in it. . . . And in this particular case it was dark, you couldn't see inside. It was clearly a violation of the tint law. (A.197-98.)

The court's findings are consistent with Sergeant Chatmon's testimony – which the court credited – that "the tints were too dark" and that he and Sergeant Modl "couldn't see inside of the vehicle" (A.156). They are also consistent with Sergeant Chatmon's testimony that he does not "stop people based on their race" (A.159). Thus, as the trial court correctly found based on the body-worn-camera footage and Sergeant Chatmon's testimony, Sergeants Modl and Chatmon "pulled the car over *because* it had dark tints" and "[t]hey actually couldn't see who was in the car for that reason" (A.196 (emphasis added)).

The court's finding that the officers' decision to stop the Impala was premised on the tint violation and not the occupants' races means it is highly unlikely Ward-Minor could ever have met the discriminatory-intent prong of the *Armstrong* standard for obtaining "dismissal on the basis of selective enforcement." *United States v. Alcaraz-Arellano*, 441

F.3d 1252, 1265 (10th Cir. 2006).[18] And, although "[p]erhaps [Ward-Minor] could have convinced the [trial] court otherwise if he were able to obtain the requested discovery," he "does not argue on appeal how the discovery would have helped in that regard, and it is not apparent[.]" *Id.* Ward-Minor alleges (at 44) only that "the demanded information was required for [him] to make out an Equal Protection claim in his motion to dismiss." But he does not explain how, for example, "program-wide statistics" could have possibly undermined the court's factual findings about the tints and the individual officers' motivations, which were based in substantial part on the unimpeachable body-worn-camera footage. *See Conley v. United States*, 5 F.4th 781, 797 (7th Cir. 2021) ("When program-wide statistics are the plaintiff's sole source of evidence, it can be difficult to infer discrimination in a particular case – *especially when there is*

[18] *See also United States v. Borrega*, 66 Fed. App'x 797, 801 (10th Cir. 2003) ("The district court did not abuse its discretion in determining that Martell failed to present a prima facie case of selective enforcement of traffic laws. Although Officer Alexander testified that he did not stop every vehicle for every violation that occurred, there is no evidence that he used race or any other impermissible consideration as a factor to stop a particular vehicle. Officer Alexander testified that he did not know the race of Martell or Borrego when he stopped the tractor-trailer.").

another legitimate explanation for the government's conduct." (emphasis added)).[19]

[19] In alternatively arguing Ward-Minor was not prejudiced by the trial court's denial of his discovery motion, the government is not conceding the court abused its discretion in denying that motion. To the contrary, although Ward-Minor contends (at 41-42) the court relied on an "inapposite" selective-*prosecution* standard in adjudging his selective-*enforcement* discovery request, he omits mention that numerous courts have concluded a "defendant seeking discovery on a selective enforcement claim must meet the *same* 'ordinary equal protection standards' that *Armstrong* outlines for selective prosecution claims." *United States v. Barlow*, 310 F.3d 1007, 1010 (7th Cir. 2002) (emphasis added; citation omitted); *see also Alcaraz-Arellano*, 441 F.3d at 1264-65. He also omits mention that even those courts that have declined to apply "*Armstrong*'s rigorous discovery standard" have thus far done so only in the unique "context of selective enforcement claims involving stash house reverse-sting operations," where "no independent crime is committed; the existence of the 'crime' is entirely dependent on law enforcement approaching potential targets; and any comparative statistics can only be derived by the government and its informants choosing to approach and investigate white individuals." *United States v. Sellers*, 906 F.3d 848, 853-54 (9th Cir. 2018); *see Washington*, 869 F.3d at 219-21; *United States v. Davis*, 793 F.3d 712, 719-21 (7th Cir. 2015) (en banc); *see also United States v. Hare*, 820 F.3d 93, 103-04 (4th Cir. 2016) ("[A] stash house sting entails considerable government involvement – including direct solicitation of the target and total control over the parameters of the robbery, particularly the quantity of the cocaine held in the fictitious stash house – and appears highly susceptible to abuse.").

CONCLUSION

WHEREFORE, the government respectfully submits that the judgment of the Superior Court should be affirmed.

Respectfully submitted,

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District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (amended May 2, 2023), this certificate must be filed in conjunction with all briefs submitted in all criminal cases designated with a "CF" (criminal felony), "CM" (criminal misdemeanor), "CT" (criminal traffic), and "CO" (criminal other) docketing number. Please note that although briefs with above designations must comply with the requirements of this redaction certificate, criminal sub-case types involving child sex abuse, cruelty to children, domestic violence, sexual abuse, and misdemeanor sexual abuse will not be available for viewing online.

If you are incarcerated, are not represented by an attorney (also called being "pro se"), and not able to redact your brief, please initial the box below at "G" to certify you are unable to file a redacted brief. Once Box "G" is checked, you do not need a file a separate motion to request leave to file an unredacted brief.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21, amended May 2, 2023, and Super. Ct. Crim. R. 49.1, and removed the following information from my brief:

A. All information listed in Super. Ct. Crim. R. 49.1(a) has been removed, including:

(1) An individual's social-security number
(2) Taxpayer-identification number
(3) Driver's license or non-driver's' license identification card number
(4) Birth date
(5) The name of an individual known to be a minor as defined under
D.C. Code § 16-2301(3)

(6) Financial account numbers

(7) The party or nonparty making the filing shall include the following:

(a) the acronym "SS#" where the individual's social-security number would have been included;
(b) the acronym "TID#" where the individual's taxpayer identification number would have been included;
(c) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
(d) the year of the individual's birth;
(e) the minor's initials;
(f) the last four digits of the financial-account number; and
(g) the city and state of the home address.

B. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

C. All pre-sentence reports (PSRs); these reports were filed as separate documents and not attached to the brief as an appendix.

D. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

E. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

F. Any other information required by law to be kept confidential or protected from public disclosure.

Initial Here

G. I certify that I am incarcerated, I am not represented by an attorney (also called being "pro se"), and I am not able to redact this brief. This form will be attached to the original filing as record of this notice and the filing will be unavailable for viewing through online public access.

/s/
Signature

22-CF-960
Case Number(s)

David B. Goodhand
Name

1/11/2024
Date

David.Goodhand2@usdoj.gov
Email Address

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused a copy of the foregoing to be served by electronic means, through the Court's EFS system, upon counsel for appellant, Richard P. Goldberg, Esq., richard.goldberg@goldberglawdc.com, on this 11th day of January, 2024.

/s/
DAVID B. GOODHAND
Assistant United States Attorney

ATTACHMENT 1

Superior Court of the District of Columbia

United States of America/
District of Columbia

vs. Case No. 2018 CF2 14858

Travanion Wanel-Minor

Conditional plea

~~PLEA AGREEMENT AND~~ WAIVER OF TRIAL

PLEA AGREEMENT: Defendant and the Government enter into the following plea agreement:

N/A

YOU ARE NOT REQUIRED TO PLEAD GUILTY. If you do plead guilty, you will give up important rights, some of which are stated below.

First, you give up your right to a trial by the court or a jury, comprised of 12 members of the community. At a trial you would be presumed to be innocent, and the Government would be required to present evidence in open court to prove its case beyond a reasonable doubt.

At the trial you have the right to have a lawyer represent you. The lawyer would be able to cross-examine witnesses, file motions to suppress evidence and statements, and make objections and arguments on your behalf. You would have the right to question any witness and you could have witnesses come to court and testify for you. You would also have the right to testify if you wanted to; however, if you chose not to present testimony, that decision could not be used against you. You could not be convicted at trial unless the Court found that the Government had proved your guilt beyond a reasonable doubt.

Second, you give up your right to appeal your conviction to the Court of Appeals. This is a right you would have if you were convicted after trial. The right to appeal includes the right to have the Court of Appeals appoint a lawyer for you and pay for your lawyer's services if you could not afford a lawyer.

Third, if you are not a citizen of the United States, your plea of guilty could result in your deportation, exclusion from admission to the United States, or denial of naturalization.

Your signature on this form means that you wish to plead guilty and give up your right to trial and your right to appeal. If the Court accepts your guilty plea, you will be convicted, and the only matter left in the case will be for the Court to sentence you. No person can guarantee what your sentence will be.

I HAVE REVIEWED THIS FORM WITH MY LAWYER AND HAVE DECIDED TO PLEAD GUILTY IN THIS CASE. I HAVE DECIDED TO GIVE UP MY CONSTITUTIONAL RIGHT TO HAVE A TRIAL ~~AND TO GIVE UP MY RIGHT OF APPEAL~~.

Asst. U.S. Attorney/
Asst. Attorney General

Defendant

Approved this 17 day of October, 2019

Attorney for Defendant

Judge