

BRIEF FOR APPELLEE

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 23-CF-389

DAIQUON GREER,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

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

MATTHEW M. GRAVES
United States Attorney

CHRISELLEN R. KOLB
NICHOLAS P. COLEMAN
CALLIE HYDE

ERICA RUDOLF

* MICHAEL C. LEE

CT Bar # 436272

Assistant United States Attorneys

* Counsel for Oral Argument

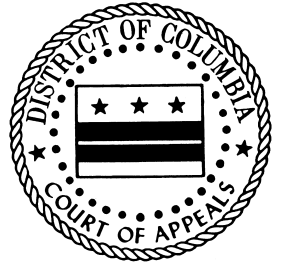
601 D Street, NW, Room 6.232

Washington, D.C. 20530

Michael.Lee4@usdoj.gov

(202) 252-6829

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ISSUE PRESENTED

Whether the trial court properly denied Greer's motion to suppress tangible evidence, where officers had reasonable articulable suspicion to stop and frisk Greer based on, among other things, an L-shaped bulge in his front waist band, his furtive body and hand movements, and his presence in a high crime area, and where officers handcuffed Greer after he grabbed towards the front of his waistband.

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COUNTERSTATEMENT OF THE CASE

On September 7, 2022, a grand jury returned an indictment charging Daiquon Greer with four counts: (1) carrying a pistol without a license (D.C. Code § 22-4504(a)(1)); (2) possession of a large capacity ammunition feeding device (D.C. Code § 7-2506.01(b)); (3) possession of an unregistered firearm (D.C. Code § 7-2502.01(a)); and (4) unlawful possession of ammunition (D.C. Code § 7-2506.01(a)(3)) (Record on Appeal (R.) 8).

On November 16, 2022, Greer filed a motion to suppress tangible evidence (R. 9). On December 2, 2022, the government filed an opposition to Greer's motion (R. 10). On December 6, 2022, Greer filed a reply to the government's opposition (R. 11). On February 6, 2023, a suppression hearing was held before the Honorable Heidi Pasichow (R. A at 9). At the conclusion of the hearing, Judge Pasichow denied Greer's motion (2/6/2023 Transcript (Tr.) 111).

On February 14, 2023, Judge Pasichow found Carter guilty of all four counts following a stipulated trial (2/14/23 Tr. 11-12). On April 13, 2023, the court sentenced Carter to an aggregate term of 15 months of incarceration, execution suspended as to all, followed by 12 months of supervised probation (4/13/23 Tr. 20-22). On May 5, 2023, Greer filed a timely notice of appeal (R. 18).

The Suppression Hearing

The Government's Evidence

On June 29, 2022, at approximately 4:30 p.m., Metropolitan Police Department (MPD) Officer Donald Green responded to the 3700 block of Georgia Avenue, NW, to investigate a drive-by shooting that had just

occurred (2/6/23 Tr. 4-5).¹ Officer Green was on foot and in uniform (*id.* at 5). The 3700 block of Georgia Avenue was a high crime area known for shootings and drug activity (*id.* at 5, 45).

That afternoon, Officer Ishakwue also responded to the 3700 block of Georgia Avenue (2/6/23 Tr. 7-9). At approximately 5:07 p.m., Greer crossed Georgia Avenue in front of Officer Ishakwue (Ishakwue body-worn camera (BWC) (Government Exhibit (Gov. Exh.) 1 at 17:07:40-46).² Greer wore a blue short-sleeve shirt, black tight-fitting pants, and had a grey sweatshirt tied around his upper body (*id.*). Greer walked at a normal pace (2/6/23 Tr. 12; Gov. Exh. 1 at 17:07:40-46).

Greer stepped onto the sidewalk, turned right, and walked up Georgia Avenue (Gov. Exh. 1 at 17:07:46-08:07). Officer Ishakwue walked behind Greer at a slow pace and approached Officer Green (2/6/23 Tr. 15;

¹ At the time, Officer Green was a nine-year MPD veteran (2/6/23 Tr. 5). During his time at the MPD, Officer Green received training regarding the characteristics of an armed gunman (*id.* at 5, 20-21). Further, from 2018 to 2020, Officer Green was assigned to the Gun Recovery Unit (*id.* at 20-21). During the two years before the date of the suppression hearing, Officer Green had recovered over 60 firearms from individuals exhibiting characteristics that they were armed (*id.* at 21).

² The government will move to supplement the record with BWC footage.

Gov. Exh. 1 at 17:07:46-08:07). Officer Ishakwue signaled to Officer Green that Greer might be in possession of a firearm (2/6/23 Tr. 16, 50).³

Officer Green then walked towards Greer (2/6/23 Tr. 18; Gov. Exh. 1 at 17:08:20-45). Officer Ishakwue caught up to Officer Green and the two approached Greer (Gov. Exh. 1 at 17:08:30-44). The officers did not draw their firearms (*id.*). Officer Green was carrying a roll of crime scene tape in his right hand (*id.* at 17:08:40-59). Officer Green said to Greer, “Sir” (2/6/23 Tr. 62). Officer Green then calmly said to Greer, “One second” (2/6/23 Tr. 62; Green BWC (Gov. Exh. 2) at 17:08:44). Greer did not stop walking but “bladed” his body (i.e., by turning first to his left and then to his right, as if to conceal part of his waistband) while looking back at Officer Green (2/6/23 Tr. 62; Gov. Exh. 2 at 17:08:43-50).

Officer Green asked, “How are you doing, man?” (2/6/23 Tr. 63; Gov. Exh. 2 at 17:08:46-47). Greer responded, “Alright” (Gov. Exh. 2 at 17:08:47). Officer Green then spoke to Greer again (2/6/23 Tr. 63-64; Gov. Exh. 2 at 17:08:48),⁴ and Greer responded, “What? I’m good.” (2/6/23 Tr.

³ Officer Ishakwue did so by adjusting and shaking his waistband and pointing towards Greer (2/6/23 Tr. 16, 50).

⁴ Officer Green believed he stated, “Would you” (2/6/23 Tr. 63-64).

64; Gov. Exh. 2 at 17:08:50-51). Greer stopped walking but continued to blade his body to his right and covered the front of his pants with his left hand (Gov. Exh. 2 at 17:08:46-51).⁵

The officers then walked to Greer's right and stopped in front of him at an intersection (Gov. Exh. 1 at 17:08:51-56; Gov. Exh. 2 at 17:08:51-56).⁶ While in front of Greer, Officer Green saw an upside-down L-shaped bulge in Greer's waistband (2/6/23 Tr. 23, 75). The bulge appeared to be from a hard object (*id.* at 23). Officer Green believed the bulge was "the outline clearly of the firearm" (*id.* at 27, 70).

Officer Green looked at and pointed to the front of Greer's pants with his left hand and asked, "Sir. You have anything in front of you? You have anything on you?" (2/6/23 Tr. 64; Gov. Exh. 2 at 17:08:53-55). Greer responded, "Nah. I'm good." (2/6/23 Tr. 64; Gov. Exh. 2 at 17:08:53-55). Officer Green asked, "Would you mind lifting up your shirt?" (2/6/23 Tr. 64; Gov. Exh. 2 at 17:08:55-56). Greer responded, "No. I'm alright."

⁵ Greer appeared to be using his cell phone the entire time (2/6/23 Tr. 18; Gov. Exh. 1 at 17:07:40-08:59; Gov. Exh. 2 at 17:08:35-59).

⁶ Officer Green walked to Greer's front to investigate because Officer Green believed that, by blading his body, Greer may have been trying to conceal an object in his waistband (2/6/23 Tr. 20-21, 75).

(2/6/23 Tr. 64; Gov. Exh. 2 at 17:08:56-57). Greer continued to cover the front of his pants with his left hand (Gov. Exh. 2 at 17:08:52-58). Officer Green then asked, “You sure?” (2/6/23 Tr. 65; Gov. Exh. 2 at 17:08:58) Greer then took a small step to his left (Gov. Exh. 1 at 17:08:58-59; Gov. Exh. 2 at 17:08:58-59). At this point, Officer Green thought that Greer was going to run (2/6/23 Tr. 29-30). Officer Ishakwue then grabbed Greer as he responded, “I’m positive.” (2/6/23 Tr. 65; Gov. Exh. 2 at 17:08:59). The officers then brought Greer to the ground because they believed he was a flight risk and armed (2/6/23 Tr. 28-29; Gov. Exh. 2 at 17:08:59-09:09).⁷

While on the ground, Greer grabbed towards the front of his pants (2/6/23 Tr. 66; Gov. Exh. 2 at 17:09:09-15). Officer Green believed that Greer was reaching for the firearm and thus cautioned that he could respond with lethal force (2/6/23 Tr. 66). The officers handcuffed Greer for safety (2/6/23 Tr. 30; Gov. Exh. 2 at 17:09:16-24). Officer Green frisked

⁷ Prior to the takedown, the officers passed several people on the sidewalk while following Greer (Gov. Exh. 1 at 17:08:30-44). Further, at least six adult pedestrians, two of whom were escorting young children, were in the direct area during the exchange between the officers and Greer (Gov. Exh. 1 at 17:08:44-59; Gov. Exh. 2 at 17:08:44-59).

Greer and confirmed that he had a firearm in his front waistband, the same area where Officer Ishakwue gestured and Officer Green saw the upside-down L-shaped bulge (2/6/23 Tr. 31; Gov. Exh. 2 at 17:09:25-26). The firearm's handle was above Greer's belt buckle, and its barrel was pointed down behind the buckle (*id.* at 72). Officer Green then stood Greer up and photographed the front of Greer's waistband before and during the recovery of the firearm (*id.* at 32, 35, 37).⁸

The Trial Court's Ruling on the Motion to Suppress

In denying Greer's motion to suppress the firearm, the trial court found that Greer was seized when the officers actually grabbed him (2/6/23 Tr. at 110). The court further found that the officers had reasonable suspicion to seize Greer (2/6/23 Tr. at 110-11). The court generally credited Officer Green's testimony, and specifically found that

⁸ Officer Green reviewed six images at the hearing and testified that the images depicted the location of the firearm as well as creases and the bulge the firearm created (2/6/23 Tr. 32-42). The government will move to supplement the record with these images. The government notes that one of images was incorrectly marked and moved into evidence as Government Exhibit 2 (*id.* at 39). Prior to the introduction of this image, a segment of Officer Ishakwue's BWC footage was also marked and moved into evidence as Government Exhibit 2 (*id.* at 25). In any event, the exhibits are easily distinguishable and will be differentiated in the government's motion to supplement.

the officer saw a bulge in Greer's front waistband, which was clearly the outline of a firearm (*id.* at 108, 111).⁹

The court also found that the 3700 block of Georgia Avenue was a high crime area (2/6/23 Tr. 107-8); Officer Green noticed Greer after Officer Ishakwue signaled that Greer was potentially armed (*id.* at 106); and when Officer Green initiated contact with Greer, Greer partially turned to respond to the officer, did not fully show the front of his body, and moved his arm over his waistband (*id.*). The court found that by doing so, Greer drew attention to himself, especially from an officer who has been trained to identify, and had experience encountering, armed individuals (*id.*). Finally, the court agreed with Officer Green that Greer turned to his left as if to move away from the officer or possibly flee (*id.*). Based on these circumstances, the court found that Officer Green had reasonable articulable suspicion that Greer possessed a firearm, and thus denied Greer's motion to suppress (2/6/23 Tr. at 110-111).

⁹ The court emphasized that it was basing this finding primarily on Officer Green's credible testimony, not the photographs that the officer took of Greer's waistband (2/6/23 Tr. 110). The court, however, found that several of the photographs portrayed creases and one photograph depicted a bulge (*id.* at 109-10).

SUMMARY OF ARGUMENT

The trial court properly denied Greer's motion to suppress tangible evidence. Greer was seized when Officers Green and Ishakwue grabbed him, and the officers had reasonable suspicion to do so based upon the totality of the circumstances – including, among other things, the L-shaped bulge observed in Greer's front waist band, his furtive body and hand movements, and his presence in a high crime area. Greer's contention that he was seized when officers asked if "he had a gun" or stood facing him is meritless, as the officers' encounter with Greer at both points was consensual, the officers issued no commands, and Greer did not submit to any show of authority. Further, Officer Green properly handcuffed Greer prior to frisking him for safety reasons because the officer reasonably believed that Greer possessed a firearm at the front of his waistband and Greer immediately grabbed at that location after officers seized him. This Court should thus affirm the trial court's ruling.

ARGUMENT

The Trial Court Properly Denied Greer’s Motion to Suppress Tangible Evidence.

Greer claims that his Fourth Amendment rights were violated because the officers did not have reasonable suspicion that Greer was involved in criminal activity or armed and dangerous prior to seizing him (Appellant’s Brief (Br.) 9, 11). Greer’s claim is meritless. The officers properly seized Greer when they grabbed him and had reasonable suspicion to do so based upon the totality of the circumstances. Further, Officer Green reasonably believed that Greer was armed and dangerous prior to seizing him and, in light of Greer’s apparent attempt to reach toward his waistband, was justified in handcuffing Greer before frisking him.

A. Standard of Review and Applicable Legal Principles

This Court’s “review of a trial court’s denial of a motion to suppress is limited.” *Jones v. United States*, 972 A.2d 821, 824 (D.C. 2009). “In reviewing a trial court’s denial of a motion to suppress evidence on Fourth Amendment grounds,” this Court “defer[s] to the trial court’s findings of evidentiary fact unless clearly erroneous[.]” *Sharp v. United States*, 132

A.3d 161, 166 (D.C. 2016). Evidence presented at a suppression hearing is viewed in the light most favorable to the prevailing party, and all reasonable inferences are drawn in favor of upholding the trial court’s ruling. *United States v. Lewis*, 147 A.3d 236, 239 (D.C. 2016). However, the trial court’s conclusions on Fourth Amendment issues, including whether a seizure has occurred, are legal questions “subject to de novo review.” *Bennett v. United States*, 26 A.3d 745, 751 (D.C. 2011).

“The Fourth Amendment of the Constitution protects individuals from unreasonable seizures by governmental authorities.” *Jackson v. United States*, 805 A.2d 979, 983 (D.C. 2002) (citing *Terry v. Ohio*, 392 U.S. 1, 9 (1968)). “A Fourth Amendment ‘seizure’ occurs ‘[o]nly when [an] officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen[.]’” *Kelly v. United States*, 580 A.2d 1282, 1285 (D.C. 1990) (citing *Terry*, 392 U.S. at 19 n. 16). “If police behavior amounts to a show of authority without a physical touching, a seizure will be found if the person to whom the show is directed submits; ‘there is no seizure without actual submission.’” *Golden v. United States*, 248 A.3d 925, 935 (D.C. 2021) (citing *Brendlin v. California*, 551 U.S. 249, 254 (2007)).

A seizure occurs when, under the totality of the circumstances, “a reasonable person would have believed that he was not free to leave[.]” *Kelly*, 580 A.2d at 1285 (quoting *United States v. Mendenhall*, 446 U.S. 544, 554 (1980)). Among the factors that may indicate whether a consensual encounter has risen to the level of a seizure are “the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.” *T.W. v. United States*, 292 A.3d 790, 795 (D.C. 2023) (quoting *Mendenhall*, 446 U.S. at 554). Other factors include whether:

(1) [T]he individual “is by himself” in the area so that the police presence was apparently focused exclusively on him; (2) the encounter is in a place “that is secluded or out of public sight; (3) the officers are uniformed or have their weapons visible; (4) the officers have blocked the individual’s potential exit paths or “means of egress; (5) the officers’ questions are “accusatory”; and (6) the officers repeat accusatory questions in the face of an initial denial, signaling that they have “refused to accept” the answer given. Conversely, an encounter's “brevity” and the officers’ “cordiality” during it are factors that often weigh against finding a seizure. *Id.* at 795-96 (internal citations omitted).

“The Supreme Court has repeatedly held that police do not manifest a show of authority ‘merely [by] approaching an individual on the street

or in another public place . . . [and] putting some questions to him if the person is willing to listen,' provided the officers do not imply that answers are obligatory." *Golden*, 248 A.3d at 935 (quoting *United States v. Castle*, 825 F.3d 625, 633 (D.C. Cir. 2016)). However, "repeated or insistent (and implicitly accusatory) questions or requests designed to ferret out whether someone stopped on the street is in possession of weapons or contraband, particularly in conjunction with other intimidating or coercive circumstances" are indicative of a seizure. *Golden*, 248 A.3d at 935-36.

Nevertheless, an officer may "stop an individual for investigatory purposes so long as the officer possesses a reasonable suspicion supported by 'specific and articulable facts' that the individual is involved in criminal activity." *Milline v. United States*, 856 A.2d 616, 619 (D.C. 2004) (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). "Various factors are considered in determining whether a . . . stop is justified, including the time of day, flight, the high crime nature of the location, furtive hand movements, an informant's tip, a person's reaction to questioning, a report of criminal activity or gunshots, and viewing of an object or bulge indicating a weapon." *Singleton v. United States*, 998 A.2d 295, 300 (D.C.

2010) (internal quotation marks and citation omitted). If, during the stop, an officer has reasonable articulable suspicion that the person detained is armed and dangerous, the officer may also conduct a protective frisk for weapons. *Pridgen v. United States*, 134 A.3d 297, 301 (D.C. 2016)

B. Discussion

The trial court correctly found that Greer was lawfully seized when Officers Ishakwue and Green grabbed him. At that point (and likely even beforehand), officers had reasonable articulable suspicion that Greer was both involved in criminal activity and armed based on several factors. *Singleton*, 998 A.2d at 300. First, as the trial court found based on Officer Green's testimony, the 3700 block of Georgia Avenue was a high crime area known for shootings and drug activity; indeed, the police responded to the area to investigate a drive-by shooting that just occurred. Second, Officer Green began to approach Greer after Officer Ishakwue unambiguously signaled that Greer was potentially armed, by adjusting and shaking his waistband and pointing toward Greer. That signal indicated that Officer Ishakwue had observed an apparent weapon in

Greer's waistband.¹⁰ Third, when Officer Green initially approached Greer, Greer responded with furtive movements. Specifically, when Officer Green first attempted to get Greer's attention, Greer "bladed" his body, first to his left and then to his right. Officer Green testified that, based on his experience and training, armed individuals typically blade their bodies to hide objects in their waistbands. Further, Greer used his left hand to cover the front area of his pants, the area where Officer Green believed the gun to be. Fifth, and most importantly, when Officer Green moved to face Greer, he saw an L-shaped bulge in the front of Greer's waistband, which the officer recognized as the outline of a firearm. Finally, during the interaction, Greer took a step to his left, which led Officer Green to believe that Greer was going to flee. Based on the circumstances, Officer Green, viewing the situation in light of his professional experience, reasonably suspected that Greer illegally possessed a firearm. *See, e.g., Brown v. United States*, 97 A.3d 92, 96

¹⁰ During cross-examination, Officer Green confirmed that – as he had explained in his *Gerstein* affidavit submitted in this case – Officer Ishakwue also saw the large L-shaped bulge in the front of Greer's waistband (although the precise moment that Officer Ishakwue saw the L-shaped, as opposed to a large bulge, was not specified in Officer Green's testimony) (2/6/23 Tr. 56, 58).

(D.C. 2014) (“Various factors are considered in determining whether a *Terry* stop is justified, including the time of day, flight, the high crime nature of the location, furtive hand movements, an informant’s tip, a person’s reaction to questioning, a report of criminal activity or gunshots, and viewing of an object or bulge indicating a weapon.”) (quoting *Jackson v. United States*, 805 A.2d 979, 985 (D.C. 2002)) (cleaned up). For these reasons, the trial court did not err in concluding that Greer’s seizure was lawful.

Greer asserts on appeal that he was seized when Officer Green “called out to him to stop and asked if he had a gun on him” (Br. 9). Greer’s assertion is meritless. As a factual matter, Officer Green did not tell Greer to “stop” or even ask him if he had a “gun” – Officer Green first interacted with Greer by stating in a conversational tone, “Sir. One second.” Officer Green’s words were simply an invitation to talk and not an order to stop. Even if they could be interpreted as an order, Greer did not submit and continued to walk down the sidewalk. Officer Green then greeted Greer by asking, “How are you doing, man?” Greer responded, “Alright,” and took it upon himself to slow his pace. Officer Green continued the conversation, and stated something to the effect of, “Would

you.” Although vague, these words clearly were not a command. Afterwards, Officer Green walked to Greer’s right side and asked, “Sir. You have anything in front of you? You have anything on you?” Greer willingly responded, “Nah. I’m good.” (2/6/23 Tr. 64; Gov. Exh. 2 at 17:08:53-55). At this point, Officers Green and Ishakwue’s encounter with Greer was consensual, and Greer was not seized. No physical force was used to restrain Greer, *Kelly*, 580 A.2d at 1285, Officer Green issued no commands to stop, and Greer did not submit to any show of police authority – he continued to keep walking. *Golden*, 248 A.3d at 935. Ultimately, this interaction was a consensual encounter that the “Supreme Court has repeatedly held . . . [did] not manifest [to] a show of authority.” *Id.*

Greer further suggests that he was seized when “Officer Green [stood] in front of him blocking his path down the street” (Br. 10). Greer’s position is unavailing. Indeed, although Officer Green walked so as to face Greer, neither Officer Green nor Officer Ishakwue blocked Greer’s movements. Further, other than the officers being dressed in uniform, the circumstances were not sufficiently intimidating or coercive to indicate to Greer that he was not free to leave. *T.W.*, 292 A.3d at 795. The

interaction occurred in broad daylight on a busy public street. The officers approached Greer calmly, did not draw firearms, and acted casually. In fact, Officer Green held a roll of crime scene tape in his right hand (clearly connecting him to the nearby drive-by shooting investigation) the entire time. Moreover, Greer was not surrounded. Only Officers Green and Ishakwue were present, and they did not approach Greer in a pincer formation. Both officers walked to Greer's right and stopped in front of him at an intersection. Thus, Greer's egress was not blocked – he could have turned left on the sidewalk or crossed the street on the right. *See Kelly*, 580 A.2d at 1284-85 (holding that two law enforcement officers, who positioned themselves directly in front of and behind a defendant at Union Station did not block or obstruct the defendant's egress because the defendant could have exited through a door located to his left). Most importantly, at no point during the encounter did Greer submit to the officers.¹¹

¹¹ The officers' continued interactions with Greer did not amount to a seizure until they grabbed him. Officer Green's next question to Greer was a request for Greer to lift his shirt. Greer explicitly responded, "No," and did not comply. Even when Officer Green followed up by asking, "You sure[?]", the officer's tone was calm and polite. During this interaction, none of the pedestrians in the area seemed alarmed. Greer also did not
(continued . . .)

Greer also argues that Officer Green did not “make any [suspicious] observations” prior to “unlawfully seizing” him (Br. 10). As explained supra, because Officer Green saw the L-shaped bulge before grabbing Greer, Greer is incorrect. But his argument would fare no better even assuming arguendo that Officer Green “seized” Greer when he faced him and Greer stopped walking; Officer Green was positioned in front of Greer and thus would have observed the L-shaped bulge that was “*clearly* of the firearm” (2/6/23 Tr. 27, 70). Here, even without the factor of potential flight, Officer Green gained the requisite reasonable suspicion to seize Greer based upon the totality of the circumstances – i.e., the L-shaped bulge and the other factors discussed above.

Greer also contests the trial court’s factual findings and specifically asserts that:

The trial court heavily relied on Officer Green’s conclusory observations rather than independently analyzing the totality of the circumstances . . . However, it is clear the bodyworn camera evidence contradicts the officer’s conclusory opinions and the trial court’s reasoning. (Br. 10-11).

seem particularly alarmed and was comfortable enough to continue using his cellular phone. Moreover, the entire encounter – from Officer Green saying, “One second,” to the officers grabbing Greer – was brief and lasted approximately 15 seconds.

Greer, however, provides little, if any, explanation with regards to how the trial court's factual findings are "clearly erroneous." *Sharp*, 132 A.3d at 166. The trial court was within its right to credit Officer Green's testimony, which was not contradicted by the responding officer's BWC footage, or the photographs taken by Officer Green. In fact, most of the incident was captured on the responding officers' BWC footage, which, contrary to Greer's assertion, corroborates Officer Green's testimony. Thus, there is no basis for this Court to reverse the trial court's factual findings. *See Bean v. United States*, 17 A.3d 635, 638-39 (D.C. 2011) ("We have declared on many occasions that any factual findings anchored in credibility assessments derived from personal observations of the witnesses is beyond appellate reversal unless those factual findings are clearly erroneous.").

Finally, Greer claims that, by handcuffing him, officers "effectively arrested him" for "no justifiable reason" prior to frisking him and discovering the firearm (Br. 11-13). As an initial matter, Greer raises this claim for the first time on appeal. Greer only focused on two issues in his pre-trial filings and at the suppression hearing: (1) the moment Greer was seized, and (2) whether the seizure was supported by reasonable

articulable suspicion (R. 9 at 7-10; R. 11 at 1-3; 2/6/23 Tr. 89). Therefore, at this juncture, Greer would be entitled to plain error review for this claim at best.¹²

Even if he had properly preserved it, Greer’s argument would fail on its merits. “[T]he right to make an . . . investigatory stop necessarily

¹² Arguments not raised in the trial court are reviewable only for plain error. *Walker v. United States*, 201 A.3d 586, 593-94 (D.C. 2019). Error is not plain absent binding authority from this Court or the Supreme Court. *Id.* at 594. “Under the test for plain error, appellant first must show (1) error, (2) that is plain, and (3) that affected appellant’s substantial rights.” *Id.* (internal citation and quotation omitted). “Even if all three of these conditions are met, this Court will not reverse unless (4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Id.* The appellant bears the burden on each of the four prongs. *Id.* Here, Greer can neither establish plain error, nor can he establish that his substantial rights have been affected. As explained in text *infra*, Officer Green handcuffed Greer for safety purposes because, after officers tackled Greer, Greer grabbed at the front of his waistband, where Officer Green believed Greer was concealing a firearm. Further, nothing in the record indicates (and Greer never actually argued) that there was any causal link between Officer’s Green decision to frisk Greer and Greer being handcuffed. To the contrary, Officer Green explained at the hearing that he “normally” would have frisked Greer before handcuffing him, but that this situation was different because Greer appeared to be trying to run away (2/6/23 Tr. 27-28). Thus, it was clear, from the moment the officer saw the L-shaped bulge in Greer’s front waistband, that the officer intended to frisk Greer. Greer thus cannot establish that the firearm was a “fruit” of what he alleges to be an “unlawful handcuffing” – and cannot show substantial prejudice or a miscarriage of justice so as to be entitled to reversal.

carries with it the right to use some degree of physical coercion or threat thereof[.]” *Graham v. O’Connor*, 490 U.S. 386, 396 (1989). “The measure of the scope of permissible police action in any investigative stop depends on whether the police conduct was reasonable under the circumstances.” *In re M.E.B.*, 638 A.2d 1123, 1126 (D.C. 1993). When the “police action” is handcuffing, the “critical question is whether a reasonably prudent officer would have been justified in using handcuffs to neutralize potential threats to his or her safety[.]” *Womack v. United States*, 673 A.2d 603, 609 (D.C. 1996); *see Pridgen*, 143 A.3d at 302-5 (D.C. 2016) (finding that officers, who pointed guns at the appellant, directed him to stop, and tackled and handcuffed the appellant prior to frisking him, appropriately seized the appellant, where the appellant positioned his hand at his waistband, the area where officers suspected the appellant was carrying a firearm).

Here, the officers justifiably handcuffed Greer during a proper seizure as Greer posed a significant threat to their safety. At the outset, prior to tackling and handcuffing Greer, Officer Green already reasonably suspected that Greer possessed a firearm in his front waistband. Following the officers’ determination that Greer was armed,

Officer Green initiated a take-down of Greer because the officer thought that Greer was going to flee and possessed a firearm. Not only did Greer struggle and resist officers, but when he was on the ground, he immediately grabbed towards the front of his pants. Accordingly, Officer Green reasonably believed that Greer was reaching for his firearm, and properly restrained Greer for safety reasons.¹³ *Womack*, 673 A.2d at 609.

¹³ Despite Greer's contention that "officers continued to unreasonably detain" him (Br. 12), the entire situation – from the officers' initial grabbing of Greer to when he was handcuffed – only lasted approximately 26 seconds.

CONCLUSION

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

Respectfully submitted,

MATTHEW M. GRAVES
United States Attorney

CHRISELLEN R. KOLB
NICHOLAS P. COLEMAN
CALLIE HYDE
ERICA RUDOLF
Assistant United States Attorneys

/s/

MICHAEL C. LEE
CT Bar # 436272
Assistant United States Attorney
601 D Street, NW, Room 6.232
Washington, D.C. 20530
Michael.Lee4@usdoj.gov
(202) 252-6829

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
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- (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;
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- (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.

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Signature

Michael C. Lee
Name

Michael.Lee4@usdoj.gov
Email Address

23-CF-389
Case Number(s)

January 25, 2024
Date

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, Sweta Patel, Esq., patel@brucklaw.com, on this 25th day of January, 2024.

/s/

MICHAEL C. LEE
Assistant United States Attorney