BRIEF FOR APPELLEE

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 19-CF-143

D.W., Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

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

Cr. No. 2017-CF2-14804

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SUPPLEMENTAL BRIEF FOR APPELLEE

INTRODUCTION

This appeal—which was fully briefed and argued in January 2022—was held in abeyance pending the en banc Court's decision in *Mayo v. United States*, 315 A.3d 606 (D.C. 2024) (en banc), which ultimately found that police lacked reasonable articulable suspicion to stop a person who fled after officers followed and "focused their attention on" him, "ask[ing] if he had a gun." *Id.* at 611. The panel granted the parties' joint motion to file supplemental briefs addressing the impact of *Mayo* on D.W.'s appeal.

In its petition for rehearing en banc in *Mayo*, the government had argued that the panel decision "conflicted with the Supreme Court's decision in *Illinois v. Wardlow*, [528 U.S. 119 (2000)]," which upheld an investigatory stop where a defendant in a "high-crime area" fled at the mere sight of police. 315 A.3d at 611. *Mayo* recognized that *Wardlow* remains good law and this Court is "bound by" its holding. *Id.* at 637. But *Mayo* distinguished *Wardlow* on its facts, reasoning that "this case is nothing like *Wardlow*." *Id.* at 627. Whereas Wardlow "took one look at police officers and ran," Mayo fled "only" after officers actively "singled [him] out" and "communicate[d]" to him "that they planned to stop him." *Id.* at 628.

D.W.'s case, by contrast, is "nothing like" *Mayo* and everything like *Wardlow*. As the trial court found, "the police did nothing to provoke [D.W.'s] flight; they simply appeared at" an apartment complex; D.W. spotted the officers at a distance and took "immediate and headlong" flight (10/16/18 Transcript (Tr.) 239). Police reasonably could infer consciousness of guilt from D.W.'s flight. That inference was buttressed by "general locational crime evidence," *Mayo*, 315 A.3d at 632, including the testimony of two officers, credited by the trial court, about the complex's reputation for gun violence and narcotics trafficking within the Metropolitan Police Department (MPD) and the officers' own experiences investigating gun and drug crimes there. That evidence provided "context" for why a person might run at the mere sight of police, *id.* at 634: because—as in *Wardlow*—

they were carrying an illegal gun or drugs. Under the circumstances, police reasonably could suspect that D.W. had such contraband on his person, justifying an investigatory stop.

ARGUMENT

I. Under *Mayo*'s "Totality of the Circumstances" Approach, Police Had Reasonable Articulable Suspicion to Stop D.W.

A. *Mayo v. United States*

In *Mayo*, the defendant and several others were "just hanging out" in an alley in "the Kenilworth area" when officers pulled up and "focused their attention on" Mayo, although his entire group had "moved away from the police." 315 A.3d at 611, 613. Three officers "followed Mr. Mayo and told him they just wanted to talk—but then asked if he had a gun." *Id.* at 611. After the officers "got closer," Mayo "began to run from them." *Id.* at 613. Almost immediately, however, one of the officers "reached out" and seized Mayo in a "dive-tackle-grab." *Id.*[1]

The en banc Court held that police lacked reasonable articulable suspicion for a stop. *Mayo*, 315 A.3d at 612. The Court disagreed with an interpretation of

[1] Although Mayo recovered and kept running, the Court held that he was seized when the officer made physical contact with him in the alley with the intent to restrain him. *Mayo*, 315 A.3d at 618-19. Therefore, *Mayo* addressed whether there was reasonable articulable suspicion for a stop at that moment. *Id.*

Wardlow that would "authoriz[e] police to make *Terry* stops[2] whenever they perceive anyone seeking to evade them in an area labeled 'high crime.'" *Id. Mayo* held, rather, "in keeping with [the Court's] understanding of *Wardlow*, that (1) in assessing reasonable articulable suspicion, flight must be examined in the context of the totality of the circumstances and (2) general locational crime evidence, if relevant and nonconclusory, may provide context for police observations of ambiguous conduct, but its appropriate weight will turn on its quality and specificity." *Id.*

As to the flight factor, *Mayo* focused on "the degree to which flight reasonably gives rise to an inference of consciousness of guilt," which "depends on context." 315 A.3d at 626. On one end of the spectrum were Supreme Court cases like *Wardlow*, where the defendant "took one look at police officers and ran," *id.* at 627-28 (citing *Wardlow*, 528 U.S. at 121-22, 124-25), and *District of Columbia v. Wesby,* 583 U.S. 48 (2018), where trespassers "scattered at the sight of uniformed officers." *Mayo*, 315 A.3d at 628 (quoting *Wesby*, 583 U.S. at 59).

Mayo itself stood on the other end of the spectrum; the defendant "took flight only after GRU officers took a series of actions that they should have reasonably understood to communicate to a person in [his] position that they planned to stop

[2] *Terry v. Ohio*, 392 U.S. 1 (1968).

him," including "singl[ing] [him] out from [his] already-dispersed group," "follow[ing] him as he walked down a pathway toward the location of another car of GRU officers," and "call[ing] out as they closed in on him, 'hey, we just want to talk. We just want to talk to you. Do you have any guns?'" *Mayo*, 315 A.3d at 628. Mayo's experience "'would be startling and possibly frightening to many reasonable people,'" thus "demonstrating 'a reason other than consciousness of guilt'" for flight. *Id.* (quoting *Miles v. United States*, 181 A.3d 633, 644 & n.18 (D.C. 2018)).

As to the location factor, *Mayo* "disavow[ed] the unhelpful 'high-crime area' label," but reaffirmed that "locational evidence about criminal activity presented by the government can be a relevant consideration in a *Terry* analysis." 315 A.3d at 632. The Court explained that "the exclusive focus in assessing general locational crime information should be on the particular details that make an individual's actions more or less suspicious when viewed in context." *Id.* at 634. And it cautioned that, "[t]o provide a meaningful context for potentially suspicious behavior, any general evidence about crime in a location must be relevant to the conduct at issue." *Id.* In *Wardlow*, for example, the Supreme Court "reli[ed] on location as context for Mr. Wardlow's flight—specifically his presence at a particular location where active drug activity was anticipated" based on the area's reputation. *Mayo*, 315 A.3d at 633. The *Wardlow* area was "'known for heavy narcotics trafficking'" by Chicago police, and officers therefore "'anticipated encountering a large number of people in the

area, including drug customers and individuals serving as lookouts.'" *Mayo*, 315 A.3d at 633 (quoting *Wardlow*, 528 U.S. at 121-22).[3]

In *Mayo*, by contrast, an officer identified "the Kenilworth area"—a neighborhood of "unknown boundaries"—as a high-crime area, but his testimony that his unit had recovered more than ten guns in a three-year period in that "undefined geographic area" was "weak tea at best." 315 A.3d at 636. The Court "[could not] say that the general locational crime information that the government presented was sufficiently specific or well-grounded to . . . make [Mayo's] flight more indicative of consciousness of guilt." *Id.* Indeed, even the *Mayo* trial court had "declined to find" that "the Kenilworth area" was high in gun crime, or that the officer's "testimony about crime in the location of Mr. Mayo's arrest provided objectively useful context for [his] actions." *Id.* at 635.

In sum, *Mayo* acknowledged that it was "bound by *Wardlow*," but distinguished that precedent on the facts and held, based on the "totality of the circumstances," that police lacked reasonable articulable suspicion to stop the defendant. 315 A.3d at 637-38.

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[3] Wardlow was also spotted "holding an opaque bag," but *Mayo* ascribed minimal significance to this aspect of the "totality of the circumstances" in *Wardlow*. 315 A.3d at 626 n.12 ("Even if we disregard the opaque bag referenced in *Wardlow*, however, our analysis of that case and the guidance in provides us here would not change.").

B. D.W.'s unprovoked headlong flight at the sight of officers arriving at an apartment complex known for gun violence and drug trafficking supported a reasonable inference of consciousness of guilt and justified an investigatory stop.

1. The Trial Court's Factual Findings

The factual record and the trial court's careful findings are described in detail in the government's original brief (Government Brief (G.Br.) 4-12, 14-18). Because D.W.'s supplemental brief repeatedly mischaracterizes the record, however, the government summarizes the court's key factual findings here. This Court must defer to those findings "unless they are clearly erroneous," *Mayo*, 315 A.3d at 616, and must also "give due weight to [the] inferences drawn from facts" by the trial court. *Ornelas v. United States*, 515 U.S. 690, 699 (1996).

Here, the trial court inferred that "the circumstances" of D.W.'s flight from police "permit[ted] a conclusion of consciousness of guilt" (10/16/18 Tr. 239). Based on officer testimony and body-worn camera video, the court found that D.W. "immediately ran" when he saw an officer exiting his vehicle outside the Geraldine Apartment Complex, where D.W. had been standing in a distant group (*id.* 228).[4] Even defense counsel acknowledged that D.W. was "actually pretty far away" from the officer when he began running (10/15/18 Tr. 34). *See Mayo*, 315 A.3d at 617

[4] A body-worn camera screenshot in the government's original brief shows the long distance between the officer and D.W. when D.W. began running (G.Br.7, Fig.1).

(considering "undisputed facts" from suppression hearing). "No words were exchanged between [D.W. and any officer] before" D.W. "took off in a full sprint"(10/16/18 Tr. 228-29). As another officer chased D.W., D.W. "jumped at least one fence and tried to jump another when he was caught by the police" (*id.*). The court found that "police did nothing to provoke the flight; they simply appeared at the complex," and that D.W.'s flight "was immediate and headlong," "upon the mere sight of police" (*id.* 239). By contrast, "most people" at the complex "reacted to the sight of the police" by "simply [going] about their business" (*id.* 231-32).

Moreover, the trial court recognized another "factor that did not exist at the outset of the chase but developed during the flight, and certainly was a factor before the actual seizure took place": D.W.'s flight was "sustained over a distance," and he "was jumping fences along the way in an apparent desperation to escape" (10/16/18 Tr. 239; G.Br.9 Fig.2). Based on the totality of circumstances surrounding D.W.'s flight, the trial court found that officers reasonably could infer consciousness of guilt (*id.*).

The trial court also credited the testimony of two officers about high levels of gun and drug crime at the apartment complex, including that the officers had "personally recovered numerous firearms and narcotics from that location," were "aware that multiple shootings and stabbings had occurred there," and knew that

"the complex had a reputation [in] MPD for drug trafficking and gun violence" (10/16/18 Tr. 228, 234).

2. Analysis

Under the "totality of circumstances," *Mayo*, 315 A.3d at 612, the police had reasonable articulable suspicion to stop D.W. As summarized above, the trial court made factual findings regarding three key factors supporting the stop. Under *Mayo*, each factor contributes to reasonable articulable suspicion, and together they more than satisfy that standard, which "'requires considerably less than proof of wrongdoing by a preponderance of evidence, and obviously less than is necessary for probable cause.'" 315 A.3d at 620 (quoting *Kansas v. Glover*, 589 U.S. 376, 380 (2020)).

First, unlike in *Mayo*, D.W.'s immediate and headlong flight at the mere sight of police, without any prior interaction or singling out from the numerous other people who were out and about at the apartment complex that day, "reasonably gives rise to an inference of consciousness of guilt." *Mayo*, 315 A.3d at 626. There was none of the "targeting" or accusatory questions directed at D.W. that *Mayo* found so troubling, nor was there evidence that the officers "did not intend to allow [D.W.] to leave without engaging with them." *Id.* at 628, 632. As the trial court found, police had no contact with D.W. at all and "did nothing to provoke the flight; they simply appeared at the complex" (10/16/18 Tr. 239). As even defense counsel admitted,

D.W. was "actually pretty far away from" police (10/15/18 Tr. 34; G.Br.7 Fig.1), but he nevertheless "took one look at [them] and ran." *Mayo*, 315 A.3d at 628 (distinguishing actions of *Wardlow* defendant). D.W.'s "flight, considered in context," surely "could have been reasonably interpreted by the officers as consciousness of guilt." *Id.* at 627.

Second, unlike Mayo, who was seized immediately after he started running, D.W.'s flight was "sustained over a distance" and demonstrated "apparent desperation," including climbing one tall fence and attempting to scale another before an officer managed to grab his leg (10/16/18 Tr. 239; G.Br.9, Fig.2). "'[T]he character of [D.W.'s] flight'" was "'particularly incriminating,'" and that is a valid consideration in assessing consciousness of guilt under the totality of the circumstances. *Mayo*, 315 A.3d at 628 (quoting *Miles*, 181 A.3d at 644). That D.W. "went to such lengths" to escape police—leading them on a sustained footrace around the complex and jumping tall fences—reasonably "suggested that [D.W.] was not fleeing due to a mere fear of the police or an ordinary desire to avoid police contact but was instead fleeing because he was guilty of a crime." *Miles*, 181 A.3d at 644 (citing *Dalton v. United States*, 58 A.3d 1005 (D.C. 2013)).

Third, to the extent that D.W.'s flight could still be considered "ambiguous conduct" despite its particularly incriminating character, "general locational crime evidence" about the specific apartment complex "provide[d] context for police

observations of" D.W.'s immediate and headlong flight. *Mayo*, 315 A.3d at 612. Officers reasonably could anticipate that they would encounter people carrying concealed contraband such as illegal guns and drugs at a complex where gun violence and drug trafficking were known to be prevalent, and where they had previously recovered numerous firearms and narcotics. *Cf. Peay v. United States*, 597 A.2d 1318, 1321 (D.C. 1991) (en banc) ("[A]s has often been observed, drugs and weapons go together."). The officers also knew, based on their experience investigating gun crime, that people carrying illegal guns often hid them inside their clothing, including "common[ly]" in the waistband and "crotch area" (10/15/18 Tr. 112). Viewed in "context"—as *Mayo* requires, 315 A.3d at 612—D.W.'s unprovoked flight from police in a location with a high concentration of gun violence and drug trafficking reasonably suggested that D.W. was carrying contraband—a gun, drugs, or both—concealed on his person, feared discovery if police approached him, and thus panicked and fled.[5] Indeed, the fact that police were still "pretty far away" from D.W. when he began running meant he had a head start and better odds

[5] The *Mayo* dissent noted "the well-settled principle that *Terry* stops can permissibly be based on police observations of actions that might have an innocent explanation, as long as those actions, considered as a whole, are sufficiently suspicious." *Mayo*, 315 A.3d at 644-45 (McLeese, J., dissenting). Even if there could be "an innocent explanation" for D.W.'s actions here, the totality of the circumstances observed by the police were "sufficiently suspicious" to warrant further investigation.

of making good on his escape, or at least ditching the contraband undetected, if officers had not worked effectively as a team.

In D.W.'s supplemental brief, he first claims that *Mayo*'s facts are "remarkably similar" to those here (Supplemental Brief (S.Br.) 3), then is forced to backtrack—admitting, for example, that police did not "singl[e] out any particular member" of his group before he ran (*id.* 14). That is a significant concession, because the fact that officers "singled Mr. Mayo out" and "specifically . . . targeted him for investigation or worse" was a critical factor in the Court's holding that, when Mayo subsequently ran, "the officers could not reasonably perceive [his] flight as clearly reflecting consciousness of guilt." *Mayo*, 315 A.3d at 628, 632. There is no evidence here that officers intended to interact with D.W. specifically before D.W. attracted their attention when he started running. And the trial court's factual findings do not support D.W.'s mischaracterization of the officers' "tactics" as "equally startling and frightening" as in *Mayo* (S.Br.12). As the trial court found, the officers "did nothing to provoke [D.W.'s] flight; they simply appeared at the complex," and D.W. "immediately ran" when he saw them (10/16/18 Tr. 228, 239). D.W. has not demonstrated that this factual finding—amply supported by body-worn camera video and testimony—was clearly erroneous. *Cf. Mayo*, 315 A.3d at 616 (explaining that this Court is "generally bound by the trial court's express findings of fact and determinations of credibility" unless they are "clearly erroneous").

Thus, in seeking to explain why police could not reasonably infer consciousness of guilt from his unprovoked flight, D.W. emphasizes the officers' testimony about their past experiences policing the apartment complex and the reactions of "other men" (S.Br.13). As *Mayo* clarified, however, although such "general locational" crime and policing evidence—"i.e., evidence that has no link to a particular defendant"—"may provide context for a defendant's actions," it "must be relevant to the conduct at issue," and "the weight to be given such information will turn on its quality and specificity." 315 A.3d at 632, 635. *Cf. id.* at 649 (McLeese, J., dissenting) (discussing "general locational criminal-enforcement evidence"). Here, the relevant "context" for D.W.'s "conduct" on the day in question is the trial court's factual finding that "[m]ost people simply went about their business" in "react[ion] to the sight of the police" (10/16/18 Tr. 231-32). Far from evidence of "over-aggressive police conduct" (S.Br.13), the crowd's nonchalant response to the officers' arrival suggests that, at least in this instance, police presence was not viewed as a cause for alarm and fear among ordinary residents of the complex who were not breaking the law. In context, D.W.'s unprovoked flight sharply distinguished him from the crowd. "Flight, by its very nature, is not 'going about one's business'; in fact, it is just the opposite." *Wardlow*, 528 U.S. at 125.

D.W. also seeks to rely on even more attenuated evidence: officers' perceptions of their past encounters with other people at the apartment complex

(S.Br.13-14). He asserts that the officers "knew that innocent individuals often submitted promptly to the officers' authority in an attempt to avoid confrontation" (*id.*13), but even if true, such "general evidence" was not "relevant to the conduct at issue." *Mayo*, 315 A.3d at 634. Officers made no show of authority to D.W. before he began running, and he certainly did not "submit[] promptly." D.W. also continues to mischaracterize the evidence by claiming that an officer testified that "running away" was a "typical" reaction to police arriving at the complex (S.Br.13). As the government explained in its original brief (G.Br.33-34), the officer never testified that D.W.'s unprovoked flight was typical (10/15/18 Tr. 79), let alone that it was a typical reaction by innocent people.[6] D.W. elicited testimony from the other officer on cross-examination that he had "chased people" at the apartment complex "more

[6] On cross-examination, defense counsel pointed to body-worn camera video of a man lifting his shirt and exposing his waistband as the officer ran past (ignoring the man), and specifically asked the officer whether it was "typical" for men at the complex to "lift[] up [their] shirt[s]" as this man had (10/15/18 Tr. 79). Then, without asking whether it was typical, defense counsel asked whether "another reaction is, like, one, that the man in the blue shirt and [D.W.] did, which is to get out of the area" and "[t]o run" (*id.*79-80). In his reply brief, D.W. acknowledged that his counsel did not ask the officer whether flight was a "typical" reaction, but argued that it was implied in the question and answer (Reply Brief (R.Br.) 7 n.3). It was not, and D.W. may not put words in the witness's mouth on appeal. Whether artfully or inartfully by defense counsel, the only testimony elicited on this point was that flight was "another reaction" the officer had witnessed, by D.W. and "the man in the blue shirt" specifically. The trial court never found that flight was a typical reaction, much less that it was typical among innocent people; and, as the non-prevailing party at the suppression hearing, D.W. is not entitled to have "[]disputed" inferences from testimony drawn in his favor on appeal. *Mayo*, 315 A.3d at 617.

than once," but could not recall how many times or whether he had ever caught somebody "and found no guns or ammunition on them" (*id.*135-36). That is the sort of "vague testimony" about an officer's "general locational" experience that this Court has derided as "weak tea at best" that cannot "provide context for a defendant's actions and inform (in either direction) the presence of reasonable articulable suspicion." *Mayo*, 315 A.3d at 632, 634-35.

Here, there is record evidence of only two specific people at the apartment complex running at the distant sight of police: D.W. and the man in the blue shirt, who was standing with D.W. and began running at the same time, although most of their group stayed put (10/15/18 Tr. 48). This odd and apparently coordinated activity could itself be considered a factor supporting reasonable articulable suspicion, and certainly did not detract from it. *See, e.g., United States v. Jenkins*, 984 F.3d 1038, 1042 (D.C. Cir. 2021) ("particularly timed behavior" by two vehicles supported probable cause); *United States v. Slone*, 636 F.3d 845, 849 (7th Cir. 2011) (same for evidence of "coordinated activity"). D.W. argues that police ultimately concluded that the man in the blue shirt was unarmed after stopping him, patting him down, and checking his flight path, and claims that this "contemporaneous evidence provides a useful comparison" to D.W. (S.Br.14). But whether the police had reasonable articulable suspicion to stop D.W., or the man in the blue shirt, depends on the information available "at the time of the seizure," not what they learned later.

Mayo, 315 A.3d at 618. Just as the government cannot rely on the gun ultimately recovered from D.W. to support the stop, D.W. cannot undermine the stop based on what police later concluded about the man in the blue shirt.

D.W. also claims that "general locational crime evidence" presented by the government did not support reasonable articulable suspicion under *Mayo* (S.Br.8-11). Several factors distinguish this case from *Mayo* and suggest that, as in *Wardlow*, officers could "anticipate[] encountering" people carrying concealed guns and drugs at the apartment complex. 528 U.S. at 124. First, unlike the neighborhood of "unknown boundaries" in *Mayo*, 315 A.3d at 636, the location here could not have been more specific: police identified the Geraldine Apartments, a "residential apartment complex" that is "three levels high" and located at 4305 Wheeler Road, S.E., as a locus of gun violence and drug trafficking (10/15/18 Tr. 11, 120). Second, in addition to testifying about their personal experiences policing the complex, including "recovering numerous firearms and narcotics" there, "two different officers" gave "consistent testimony" that the complex had the "reputation . . . within" MPD "for drug trafficking and gun violence" (10/16/18 Tr. 228, 234). *See United States v. Edmonds*, 240 F.3d 55, 60 (D.C. Cir. 2001) (the "probative value of a neighborhood's reputation"—specifically, "evidence that the neighborhood is particularly known for its prevalence of narcotics trafficking and violent crime"—"is firmly established"). By contrast, *Mayo* involved a single

officer's testimony about his personal experiences in an undefined area, without any evidence that other MPD officers shared his perception. 315 A.3d at 636.

Third, and again unlike in *Mayo*, 315 A.3d at 635 & n.21, the trial court specifically credited the officers' testimony that the complex was plagued by high levels of gun and drug crimes (10/16/18 Tr. 234). Although the weight of "general locational crime information" in a *Terry* analysis is a legal question reviewed de novo, *Mayo*, 315 A.3d at 618, 621, the predicate question of whether a specific location actually suffers from a high rate of a specific type of crime is plainly a factual one. *See, e.g., United States v. Weaver*, 9 F.4th 129, 150-51 n.83 (2d Cir. 2021) (en banc) ("[T]he question at hand is whether the area *was in fact* afflicted by a high rate of crime . . . . On this question of fact, the district court did not clearly err in relying on uncontradicted evidence that the [neighborhood] was indeed plagued by a high level of violent crime."). D.W. criticizes the trial court's lexicon (S.Br.9), but the court cannot be blamed for using the "high-crime area" shorthand given the state of the law at the time, particularly where it is supported by more detailed, credited testimony. *See Mayo*, 315 A.3d at 632 (acknowledging that "[i]n past cases, this [C]ourt has considered whether a defendant was in a 'high-crime area'"). D.W. has not shown that the trial court clearly erred in crediting the officers' testimony that the complex had high levels of gun and drug crime. And "it is

objectively reasonable for an officer to be especially attuned to the possibility of guns in a [location] known for gun crime." *Weaver*, 9 F.4th at 151.

Finally, D.W. has never even addressed—let alone negated—the third "factor" supporting reasonable articulable suspicion found by the trial court: the character of his flight, "sustained over a distance" and leaping tall fences in "apparent desperation to escape" (10/16/18 Tr. 239). The government discussed this factor in its original brief (G.Br.38), but D.W. did not respond to it in his reply brief, and he again overlooks it in his supplemental brief.

II. *Mayo* Acknowledged that *Wardlow* Is Binding, but D.W. Still Fails to Distinguish *Wardlow*.

In his opening brief, D.W. essentially urged this Court to disregard *Wardlow* as the product of "a divided [Supreme] Court" lacking the benefit of "all we've since learned about police tactics and the public's perceptions" (Brief (Br.) 16). But *Mayo* reaffirmed that this Court is "bound by *Wardlow*." 315 A.3d at 637. D.W.'s failure to distinguish *Wardlow* is fatal to his claim.

As a matter of "vertical stare decisis," *Mayo*—which is also binding on this panel—must be interpreted in a manner consistent with *Wardlow*. *Cf. Winslow v. FERC*, 587 F.3d 1133, 1135 (D.C. Cir. 2009) ("Vertical stare decisis—both in letter and in spirit—is a critical aspect of our hierarchical [j]udiciary headed by 'one Supreme court.' U.S. Const. art. III, § 1."). Put another way, if *Wardlow* were

decided today, its facts would necessarily pass muster under the *Mayo* rubric. Evidence that a location is "known for heavy narcotics trafficking, and the officers anticipate[] encountering a large number of people in the area, including drug customers and individuals serving as lookouts," *Wardlow*, 528 U.S. at 124, is necessarily "general locational crime evidence" that meaningfully contributes to reasonable articulable suspicion—at least where the "conduct at issue" is unprovoked flight from police. *Mayo*, 315 A.3d at 634. Moreover, if a person in such a location flees at the mere sight of police, *Wardlow*, 528 U.S. at 124, it must be "reasonabl[e]" for police to "perceive [his] flight as clearly reflecting consciousness of guilt" rather than mere "apprehensiveness." *Mayo*, 315 A.3d at 632.

That is this case; in fact, the evidence here surpasses *Wardlow*. General locational crime evidence demonstrated that the complex was known for heavy drug trafficking and gun violence, and it was reasonable for officers to anticipate that they would encounter people carrying concealed guns and drugs. D.W. "immediately" ran when he saw police, although they were still "far away" and had not shown any interest in him. His flight was plainly unprovoked and permitted a reasonable inference of consciousness of guilt; under both *Wardlow* and *Mayo*, police had reasonable articulable suspicion to stop him for investigation.[7]

[7] D.W. also argues that "the exclusionary rule applies" (S.Br.15-18). But the en banc decision in *Mayo* explicitly "d[id] not address . . . exclusionary-rule issues." 315 (continued . . .)

CONCLUSION

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

Respectfully submitted,

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A.3d at 639. Rather than addressing *Mayo*, therefore, D.W. now appears to regret his perfunctory treatment of the exclusionary rule in a footnote in his reply brief (R.Br.20 n.9), and seeks to augment it (S.Br.15 (responding to argument raised by the government "in its answering brief"). But D.W. already had one "bite at the apple" (S.Br.18) to file a reply brief, and he is not entitled to a second. The new arguments replying to the government's discussion of the exclusionary rule in its opposition brief are untimely and the Court should disregard them. Super. Ct. App. R. 31(a)(1).

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, Victoria Hall-Palerm, Esq., on this 17th day of September, 2024.

/s/
MARK HOBEL
Assistant United States Attorney