24-CF-428

(Sup. Ct. No. 2021-CF1-000968)

IN THE
DISTRICT OF COLUMBIA
COURT OF APPEALS

DELONTA STEVENSON
APPELLANT
v.
UNITED STATES,
APPELLEE

Appeal from the Superior Court of the District of Columbia Criminal Division
(Hon. Marisa J. Demeo, Associate Judge)

BRIEF FOR APPELLANT

Brian D. Shefferman
D.C. Bar No. 432416
Shefferman Law
10325 Kensington Pkwy., #2
Kensington, MD 20895
301-637-0223
bshefferman@sheffermanlaw.com
Counsel for Appellant
Appointed by the Court

STATEMENT OF INTERESTED PARTIES

Appellant Delonta Stevenson and the United States are the only parties to this appeal. Elizabeth Weller and Stephen Logerfo, Esq. represented Mr. Stevenson in the Superior Court. Assistant United States Attorneys Miles Janssen and Zach Horton, Esq. represented the United States. The Court of Appeals subsequently appointed the undersigned as appellate counsel. Co-appellant Vorreze Thomas (24-CF-496) is represented by separate counsel.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

I. STATEMENT OF CASE AND JURISDICTION

On June 1, 2022, the government filed a 10-count indictment against Delonta Stevenson charging him with First Degree Murder While Armed, conspiracy to commit the same, two counts of Assault With Intent to Kill While Armed, and related firearm offenses. R. 1186.[1] After a trial held on January 9, 2024 to February 1, 2024, a jury found Mr. Stevenson guilty on nine counts. R. 2792. On May 2, 2024, the court imposed an aggregate sentence of 1,024 months incarceration and five years of supervised release. R. 2812. Mr. Stevenson filed a timely appeal. R. 2814. This court has jurisdiction under D.C. Code § 11-721(a)(1).

II. ISSUES PRESENTED FOR REVIEW

1. **Did the trial court err by allowing testimony that exceeded the permissible scope of expert opinion in the field of firearm and toolmark examination?**

2. **Did the trial court err by limiting Mr. Stevenson's closing argument?**

3. **Did the trial court err by sentencing Mr. Stevenson on multiple counts of Possession of a Firearm During a Crime of Violence?**

[1] In this brief, R. refers to the PDF page number in the 2,186-page record supplied by the Superior Court.

III. STATEMENT OF FACTS

Mr. Stevenson is accused of meeting his co-defendant Vorreze Thomas at the Stanton Glenn apartment complex in southeast on January 18, 2021 for the purpose of killing Troy Williams. On that date, Mr. Williams was shot while riding in a car as it was attempting to leave the apartment complex. Mr. Williams survived, but the driver of the car, Terrance Allen, was killed and a second passenger, James Fye, was shot as well.

Metropolitan Police Department (MPD) officer Jeremy Verdon responded to a radio call at about 11:15 a.m. on January 18, 2021 for a shooting at Stanton Glenn apartments. 1/11/2024 Tr. 29-30. When Ofc. Verdon arrived, he saw a white Ford Crown Vic had collided with a parking pylon. 1/11/2024 Tr. 35. Troy Williams and James Fye were being detained outside of the car. 1/11/2024 Tr. 38. Terrance Allen was "slumped over on the ground right outside the passenger seat" and had no signs of life. *Id*. at 39, 49-50. The officer noticed multiple bullet holes in the car. 1/11/2024 Tr. 39. A forensic pathologist with the D.C. Office of the Chief Medical Examiner performed an autopsy on Terrance Allen the next day. 1/29/2024 Tr. 59, 64. She determined that the cause of death was multiple gunshot wounds and that the manner of death was homicide. 1/29/2024 Tr. 79. A crime scene analyst with the D.C. Department of Forensic Sciences attended the autopsy

and collected projectiles and bullet fragments taken from Terrance Allen's body (exhibits 91-96). 1/16/2024 Tr. 189-92.

Troy Williams testified under a plea agreement whereby he would plead guilty to the charge of carrying a pistol without a license and the government would inform the sentencing judge of his cooperation in this case. 1/22/2024 Tr. 53-56, 59-60. Mr. Williams testified that he met Delonta Stevenson, who he knew as "Tay," when they both resided at Stanton Glenn. 1/22/2024 Tr. 69-72. Mr. Williams identified co-defendant Thomas as Stevenson's nephew, who he also knew from Stanton Glenn. 1/22/2024 Tr. 72-73. Mr. Williams met Mr. Stevenson in 2018. 1/22/2024 Tr. 74. Mr. Stevenson lived across the street from his mother in Stanton Glenn and they became friends. *Id*. at Tr. 74-75. In November 2020, Williams was with Mr. Stevenson and others at a house for a birthday celebration. 1/22/2024 Tr. 119. Mr. Stevenson left the gathering and a short time later, Mr. Williams received a phone call indicating that Mr. Stevenson had been shot. 1/22/2024 Tr. 121. After the shooting, people in his circle of friends started treating Mr. Williams differently. *Id*. Mr. Stevenson's girlfriend, Brianca Phillips, accused Williams of "snaking," or betraying, Mr. Stevenson. 1/22/2024 Tr. 153.

The evening before he was shot, Mr. Williams spoke to his mother on the phone who was crying and told him that "somebody put their hands on her or something." 1/22/2024 Tr. 165. His mother lived in Stanton Glenn apartments, so

Mr. Williams asked Terrance Allen to give him a ride to the apartments to check on his mother. 1/22/2024 Tr. 166. He asked Mr. Allen to bring a gun "[b]ecause I felt like it was tension around there." 1/22/2024 Tr. 166-67. Terrance Allen picked him up on the morning of January 18, 2021 and then picked up a friend who Mr. Stevenson did not know. 1/22/2024 Tr. 168-69. After driving to a nearby ATM with his mother, Mr. Williams saw Mr. Stevenson when he got back to his mother's house. 1/22/2024 Tr. 175-76. Mr. Stevenson "was right across the street from me." 1/22/2024 Tr. 184. Williams testified that no one was with Mr. Stevenson, but in testimony before the grand jury, he said that "Bree" (Stevenson's girlfriend) was present. 1/22/2024 Tr. 184-85. When Mr. Williams tried to speak to Stevenson, "he told me hold on, and then he—I guess he was going in the building like he was going to get a cigarette…At this point, I just got, like, bad vibes. So I rushed my mother inside and I got back in the car and we pulled off." 1/22/2024 Tr. 185. Terrance Allen was driving; Mr. Williams was in the back seat and the other individual was in the passenger seat. 1/22/2024 Tr. 185-86. Mr. Williams identified Mr. Stevenson as wearing dark clothes and a black face mask in a screenshot from Stanton Glenn surveillance video taken the morning of the shooting. 1/22/2024 Tr. 186-90.

As Terrance Allen was driving out of the apartment complex, Mr. Williams saw "an SUV driving towards us real fast…So I told Terrance, I told him to speed

up, drive faster. And as soon as he hit the gas, we started getting shot at." 1/22/2024 Tr. 191. Mr. Williams heard more than 10 shots and tried to shoot back, "but the gun misfired or something. It just stopped shooting after a while." 1/22/2024 Tr. 192. He was shot in the foot, hip, and leg. 1/22/2024 Tr. 67. The shots came from the passenger side of the SUV, but Mr. Williams could not see who was inside the vehicle or who was doing the shooting. 1/22/2024 Tr. 193-94. He did note that one of the individuals in the vehicle was wearing dark clothing. *Id*. Tr. 194. The SUV from which shots were fired was "like a lime green color." *Id*. Mr. Williams had seen the SUV around Stanton Glenn being driven by Mr. Stevenson's nephew. 1/22/2024 Tr. 195-96. The suspect car was a Volvo. 1/22/2024 Tr. 200. Mr. Williams had also seen a black or gray Volvo SUV around Stanton Glenn being driven by Mr. Stevenson's nephew's girlfriend. 1/22/2024 Tr. 201-02.

After the shooting, Terrance Allen was slumped over the steering wheel and special police officers on the scene aimed guns toward Williams and ordered him and the other individual to stop moving. 1/22/2024 Tr. 204. Officers then noticed "the pistol was on the seat…so they placed me under arrest." 1/22/2024 Tr. 205. MPD officers took Williams to the hospital and then took him to a police station and questioned him. 1/22/2024 Tr. 206-07. At the station, Mr. Williams showed the police messages on his cell phone between him and Mr. Stevenson. 1/22/2024

Tr. 210. The government paid for Mr. Williams to relocate to Texas and helped him pay rent because he was the victim of a shooting. 1/22/2024 Tr. 210-13.

On cross-examination, Mr. Williams acknowledged that on New Years Eve, less than three weeks before the homicide, he sent a picture of himself holding a gun to Mr. Stevenson via social media. 1/22/2024 Tr. 235; defense exhibit 137. During his interview with the police after the incident, police repeatedly asked who was at the scent of the shooting. Mr. Williams initially told police that he did not know who was at the scene, but about two hours into his interview said Mr. Stevenson and his girlfriend were there. 1/23/2024 Tr. 48-49. On redirect examination, Mr. Williams said that he did not initially provide Mr. Stevenson's name "Because I wasn't trying to cooperate with them at first." 1/23/2024 Tr. 155. Mr. Williams agreed that the government directly gave him and his girlfriend $4,640 to relocate to Texas as well as paying for other expenses such as lodging. 1/23/2024 Tr. 109-110.

James Fye testified that Terrance Allen was his best friend and that they worked together for ten years. 1/11/2024 Tr. 136-37. On January 18, 2021, Terrance picked Mr. Fye up in a car in which a "little youngin" was riding and they drove to Mr. Allen's mother's house in the Stanton Glenn apartment complex. 1/11/2024 Tr. 141-43. Terrance picked up his mother and they drove to the Safeway and "took his mother right back to the house." 1/11/2024 Tr. 144. As they

attempted to drive off, "Bullets start hitting the car." 1/11/2024 Tr. 145. Mr. Fye was hit with three bullets in his shoulder. 1/11/2024 Tr. 146-47. Mr. Fye was seated next to Terrance and saw that he was shot. *Id*. at 147.

Special Police Officer Adjawo Sani was working at the Stanton Glenn apartments on the date of the shooting. 1/16/2024 Tr. 65-66. He was armed with a Smith & Wesson M&P firearm. 1/16/2024 Tr. 68. While seated in his car on the premises near the guard booth, Mr. Sani heard what sounded like fireworks. 1/16/2024 Tr. 73, 77. He then saw a white Crown Victoria crash into a pole. *Id*. at 77. As he went to assist the people in the white car, he saw a person in the front passenger seat of a gold Volvo shooting at the car that had been in the accident. 1/16/2024 Tr. 78. SPO Sani took cover behind a pillar and the person in the Volvo "happened to shoot at me as well," so he fired three shots back. 1/16/2024 Tr. 93, 116. SPO Sani saw the shooter holding a firearm with two grips and saw him reload the firearm with another magazine and continued to shoot at the white Crown Victoria. 1/16/2024 Tr. 113.

SPO Sani could not identify the shooter because he had a hood completely covering his face, but saw that the shooter was wearing black gloves; between the gloves and his shirt sleeve, he could see that he was "light-skinned…Not White, but light skin." 1/16/2024 Tr. 118. Sani had seen the Volvo many times before that day. 1/16/2024 Tr. 119. The person who drove the Volvo had a parking pass issued

by the premises management and had dark skin and was skinny. 1/16/2024 Tr. 125, 138. Mr. Sani testified that a second Volvo often seen in Stanton Glen was owned by Andrea Waldo who is the girlfriend of the person whose Volvo was involved in the shooting. 1/16/2024 Tr. 149-50.

Danielle Yandura, of the Department of Forensic Sciences, went to the scene of the shooting on January 18, 2021. 1/16/2024 Tr. 30-33. She recovered two firearms there and took photographs of each. 1/16/2024 Tr. 35. The first was a Taurus brand pistol 1/16/2024 Tr. 45, exhibit 378. The second firearm was turned over to her by SPO Sani (1/16/2024 Tr. 49) and is a Smith & Wesson M&P. 1/16/2024 Tr. 53, exhibit 380.

MPD Sergeant Michael Millsaps testified that on January 18, 2021 at about 11:10 a.m., he was driving an unmarked police car. 1/17/2024 Tr. 37, 39-40. While at the intersection of Stanton Road and Suitland Parkway, he heard gunshots. 1/17/2024 Tr. 41. Sgt. Millsaps saw a crossover-type car coming out of the Stanton Glenn apartments coming towards him. 1/17/2024 Tr. 43. He then saw a uniformed security officer shoot a round in the direction of the car that was fleeing the apartment complex. *Id*. The officer chased the Volvo and when the car got stuck in traffic, Sgt. Millsaps got out of his car and approached the Volvo with his gun drawn. 1/17/2024 Tr. 51-52. He could see two people in the car; the passenger had

a black glove on. *Id*. at 52-53. The Volvo jumped a curb and got away.1/17/2024 Tr. 55. Sgt. Millsaps saw the Volvo again a few blocks away. *Id*. at 56.

Kea Dodson testified that she was working from her home located at 2901 Erie Street in southeast on January 18, 2021 when she heard a crash. 1/16/2024 Tr. 195, 198. She looked out her window and saw two men exiting the car involved in the crash. 1/16/2021 Tr. 200. Ms. Dodson recalled one man got out of the driver's side and one on the passenger side and ran toward a wooded area. 1/17/2024 Tr. 21, 25. "It looked like they had guns." *Id*. The person who got out of the passenger side appeared to have "a long gun, like it would have been a rifle." 1/17/2024 Tr. 22. The person who got out of the passenger side was a black male with blondish long dreads. *Id*. at 24. His "roots were black, but the majority of his hair was blond." 1/17/2024 Tr. 32. In her grand jury testimony, Ms. Dodson did not say that the man had blond dreadlocks. 1/17/2024 Tr. 36.

Police came to the crash scene near Ms. Dodson's home and a K9 located a short-barreled rifle in the wooded area described by Ms. Dodson. 1/17/2024 Tr. 69. This firearm, an American Tactical rifle, was later swabbed for DNA by a forensic evidence analyst. 1/11/2024 Tr. 62-74. Crime scene search investigator James Fields searched the Volvo involved in the crash. He swabbed various parts of the car for DNA as well as collecting a cellphone from the passenger seat. 1/17/2024 Tr. 75-76, 90. DNA analysis of the swab from the American Tactical rifle revealed

a mixture of DNA from four people and that obtaining this DNA profile was about one quintillion times more likely if the DNA originated from Mr. Stevenson and three unknown, unrelated individuals, than if the DNA originated from four unknown, unrelated individuals. 1/24/2024 Tr. 157. DNA analysis of swabs of the interior front passenger door of the Volvo showed that it was about 3.6 billion times more likely if the DNA had originated from Mr. Stevenson and three unknown, unrelated individuals, than if the DNA originated from four unknown, unrelated individuals. 1/24/2024 Tr. 179.

A crime scene analyst with the D.C. Department of Forensic Sciences collected numerous firearm shell casings on January 18, 2021 at the scene of the shooting. 1/18/2024 Tr. 76-108. Several firearms, shell casings from the scene of the shooting, and the evidence collected at the autopsy were analyzed by forensic firearm examiner Chris Monturo. Mr. Stevenson filed a pretrial motion to preclude or limit the testimony of Mr. Monturo. R. 1272. The government filed an opposition (R. 2254) and attached exhibits (R. 1346). The trial court issued an order on October 10, 2023 denying the defendant's motion. R. 2326. On January 3, 2024, the court issued a "Modification to Previous Order" requiring the government to comply with the dictates of *Geter v. United States*, 306 A.3d 126 (D.C. 2023), a case decided after the October 10th order. R. 2398. The government filed a supplemental motion in light of *Geter* on January 8, 2024. R. 2400. The

court heard further argument on the issue before the jury was empaneled. 1/10/2024 Tr. 9-28. Mr. Stevenson renewed his objection to Mr. Monturo's testimony at trial, which the court overruled. 1/17/2024 Tr. 161-62, 183.

The court recognized Mr. Monturo as an expert in the field of firearms and toolmark examination and analysis. 1/17/2024 Tr. 163. The government displayed a PowerPoint presentation during Mr. Monturo's testimony (marked as exhibit 804), but the exhibit was not provided to the jury for their use during deliberations. Mr. Monturo explained that there are four possible conclusions when attempting to identify the source of firearm toolmarks. 1/17/2023 Tr. 183-85; exhibit 804, slide 11. The first possible conclusion is "there's extremely strong support for the proposition that the toolmark came from the same source." *Id*. at 183. This is also referred to as "sufficient agreement." Exhibit 804, slide 11. "Sufficient agreement" is further defined as an "opinion that the observed class characteristics and corresponding random characteristics provide extremely strong support for the proposition that the two toolmarks originated from the same source (firearm and bullet/cartridge case) and extremely weak support for the proposition that the two toolmarks originated from different sources. Exhibit 804, slide 13. The second possible conclusion is "elimination," also known as "sufficient disagreement." *Id*. The third possible conclusion is "inconclusive" or "not sufficient agreement." *Id*. The final possible conclusion is "not suitable for microscopic comparison." *Id*. Mr.

Monturo agreed that his conclusions "are not based on a statistically derived or verified measure," that he cannot state "any conclusion here with 100 percent certainty," that "there's no generally accepted statistical way to measure or convey the weight of the evidence in… firearms and toolmarks forensics," and that he cannot state that two toolmarks originated from the same source to the exclusion of all other sources because "That would be implying that I've looked at every single gun ever made, and that simply is not feasible." 1/17/2024 Tr. 185-86.

Mr. Monturo test fired the American Tactical rifle which allowed him to make comparisons to casings, bullets, and fragments. 1/18/2024 Tr. 13. He examined 34 casings from the scene of the shooting all of which were the same caliber and could not have been fired from the 9mm guns he received in this case. *Id*. 13-14. Using a comparison microscope, Mr. Monturo was able to compare the "markings on the evidence cartridge cases to the test fires that I produced." 1/18/2024 Tr. 14. Mr. Monturo "observed characteristics of random imperfections on the cartridge cases that were placed when coming in contact with the firearm to determine that they were – they showed extremely good source marks, that they came from the same source as the test fires…." *Id*. Mr. Monturo compared test-fired bullets from the American Tactical rifle to a bullet recovered at the autopsy (exhibit 94) and concluded that "there was extremely strong observations that the bullets were fired—came from the same source." 1/18/2024 Tr. 19. Mr. Monturo

compared casings test-fired from SPO Sani's Smith & Wesson M&P to casings at the crime scene and testified that "there's extremely strong support to support the proposition that the cartridge cases were fired from the—had the same source marks as the test fires that I made." 1/18/2024 Tr. 20-21.

Akil Muhangi, an employee of the D.C. Department of Forensic Science, extracted data from and analyzed the contents of a cellphone with the Apple ID breesworld@icloud and breeworld@icloud. 1/23/2024 Tr. 204, 214. At 10:53 a.m. on January 18, 2021, the phone placed a call to the contact listed as "Little V." 1/23/2024 Tr. 215-16. The phone also had two instant messages and an audio recording stating that "Rah Rah" is here. 1/23/3024 Tr. 217-222. (Rah Rah is Troy Williams's nickname. 1/22/2024 Tr. 62.) Through Mr. Muhangi, the government also introduced photos and a video from a phone apparently showing Mr. Stevenson wearing a dark blue puffy jacket like what the suspect was wearing in video surveillance images from the crime scene. 1/23/2024 Tr. 224-227 (government exhibits 1006, 1008, 1010).

FBI special agent Michael Fowler testified as an expert in the field of historical cell site analysis and cellular technology. 1/25/2024 Tr. 116, 121. Special Agent Fowler's analysis of a phone associated with the suspects in the Volvo showed that the phone was in the vicinity of Stanton Glenn apartments around the time of the shooting on January 18, 2021. 1/25/2024 Tr. 136-41.

IV. ARGUMENT

1. The trial court erred by allowing testimony that exceeded the permissible scope of expert opinion in the field of firearm and toolmark examination.

In *Motorola Inc. v. Murray*, 147 A.3d 751, 756 (D.C. 2016) (*en banc*), this court held that the admissibility of expert testimony is governed by Rule 702 of the Federal Rules of Evidence and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 587 (1993), and its progeny. Before admitting expert scientific testimony, *Daubert* requires that the trial court make "a preliminary assessment of whether the reasoning or methodology is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue." 509 U.S. at 592-93. "The inquiry envisioned by Rule 702 is, we emphasize, a flexible one. Its overarching subject is the scientific validity -- and thus the evidentiary relevance and reliability -- of the principles that underlie a proposed submission. The focus, of course, must be solely on principles and methodology, not on the conclusions that they generate." *Daubert*, 509 U.S. at 594-595. A trial court's decision on the admissibility of expert testimony is reviewed for abuse of discretion. *Parker v. United States*, 249 A.3d 388, 401 (D.C. 2021).

This court has placed significant limits on the scope of testimony from a firearm/toolmark expert. In *Gardner v. United States*, 140 A.3d 1172, 1184 (D.C. 2016), the court held that "a firearms and toolmark expert may not give an

unqualified opinion, or testify with absolute or 100% certainty, that based on ballistics pattern comparison matching a fatal shot was fired from one firearm, to the exclusion of all other firearms." Three years later in *Williams v. United States*, 210 A.3d. 734, 743 (D.C. 2019), the Court of Appeals reiterated that it is "error for an examiner to provide unqualified opinion testimony that purports to identify a specific bullet as having been fired by a specific gun via toolmark pattern matching." Most recently, in *Geter v. United States*, 306 A.3d 126 (D.C. 2023), the court held that it was plain error for the firearms examiner to testify that "he could tell both that all five of the cartridges were 'fired from the same gun, and they all matched the[ ] test-fires' conducted on the gun recovered from the scene" and that "these five cartridge casings came from [that] firearm." 306 A.3d at 131-32. In so holding, the court rejected the government's argument that the expert's opinion was admissible because the expert did not say the casing markings were unique to one and only one gun, that he had no doubt about the match, or that his opinion was rendered with absolute or 100 percent certainty. 306 A.3d at 132.

(a) Monturo gave an unqualified opinion identifying specific cartridge casings as having been fired by a specific gun.

Although Mr. Monturo agreed in the abstract that he cannot state that two toolmarks originated from the same source to the exclusion of all other sources, he gave an unqualified opinion about the evidence in this case. He testified that the

casings from the scene of the shooting "came from the same source" as the cartridges he test-fired from the American Tactical rifle. 1/18/2024 Tr. 13-14. Such an opinion violates the holdings in *Gardner*, *Williams*, and *Geter*. This testimony was critical to the government's case because the government claimed that Mr. Stevenson used the American Tactical rifle recovered by the K9 to kill Mr. Allen and wound Williams and Fye.

(b) Monturo's opinion that there is "extremely strong support" for the proposition that two toolmarks originated from the same source is inadmissible.

In a footnote in *Geter*, this court acknowledged:

> We have yet to resolve how explicitly a firearms and toolmark examiner's testimony must be qualified when providing testimony that purports to link specific shell casings to a specific gun, but our recent opinion in *Gordon v. United States*, 285 A.3d 199, 219-20 (D.C. 2022), provides some guidance. In *Gordon*, this court determined that "the trial court did not err—let alone plainly err—by failing to sua sponte strike" a firearms and toolmark examiner's testimony where the examiner testified only that the six casings found at the crime scene "most likely were fired from some type of Glock semiautomatic pistol" and "that the two bullets [recovered from victim's body] were 'consistent' with a Glock," but that "he could not exclude another type of gun, or say conclusively that they were fired from the same gun." *Id.*

306 A.3d at 134, n. 7. Unlike the instant case, no firearm was recovered in *Gordon*. Rather, there was "testimony that appellant carried a Glock-like gun; and testimony from a firearms expert that the six cartridge casings found on the scene were likely fired from the same type of Glock semiautomatic pistol." *Gordon*, 285 A.3d at 205. Therefore, the expert in *Gordon* did not compare test-fired casings

from a firearm believed to be associated with the defendant to casings found at the scene of a shooting as occurred here. To the extent that *Gordon* provides guidance, it shows that Mr. Monturo's opinion went too far.

To say that a cartridge casing "most likely" was fired from a type of pistol is akin to applying the preponderance of evidence standard. "Extremely strong support," however, goes well beyond preponderance and leaves very little doubt as to the asserted conclusion. Although Mr. Monturo did not affirmatively say that he had no doubt that the casings at the scene were fired from the American Tactical rifle, a typical lay-juror would perceive that that is exactly what he was saying. To testify that there is "extremely strong support" for the proposition that two toolmarks originated from the same source is nearly indistinguishable from opining that a specific casing was fired from a specific gun, an opinion disallowed in *Geter*.

This court should align itself with the decision in *Abruquah v. State*, 483 Md. 637 (2023). In that case, based on an extensive record, the Supreme Court of Maryland held that the firearms expert was not permitted to "opine without qualification that the crime scene bullets were fired from [the defendant's] firearm." 483 Md. at 698. The expert, however, "could testify about firearms identification generally, his examination of the bullets and bullet fragments found at the crime scene, his comparison of that evidence to bullets known to have been

fired from [the defendant's firearm], and whether the patterns and markings on the crime scene bullets are *consistent or inconsistent* with the patterns and markings on the known bullets." *Id*. (emphasis supplied). Reyling in part on *Abruquah*, a D.C. Superior Court judge, in a recent well-reasoned decision, limited a firearms expert to testifying that cartridge casings are "consistent with having been fired from a particular firearm." *United States v. Green*, 2024 D.C. Super. LEXIS 8 at *2 (April 1, 2024) (Case No. 2018 CF1 004356).[2]

2. The trial court erred by limiting Mr. Stevenson's closing argument.

No one could identify the shooter in the Volvo. The government relied heavily on surveillance camera video in and near the Stanton Glenn apartments to argue that Mr. Stevenson was at and near the scene of the crime before and after the shooting. The government introduced several images from a cell phone showing Mr. Stevenson wearing a blue puffy jacket like the one worn by a person depicted in the surveillance video. (Exhibits 1006, 1008, 1010, 1021e). The government repeatedly asserted in closing argument and rebuttal that the blue puffy jacket proved Mr. Stevenson's identity. 1/30/2024 Tr. 64, 69, 71-72, 88; 1/31/2024 Tr. 56, 59, 79. For example, the government said in rebuttal argument:

[2] Mr. Stevenson adopts by reference the argument made by co-appellant Vorreze Thomas (24-CF-496) regarding the admissibility of Mr. Monturo's testimony. See D.C. App. R. 28(j).

"Another photo from the phone. Again, same coat. Government argues same coat in all of the pictures. It goes to prove identification." 1/31/2024 Tr. 79.

The defense argued that the government failed prove the identity of the shooter. In response to the government's reference to the blue puffy coat, Mr. Stevenson's counsel argued: "This was January 2021. To put you back in perspective, we weren't even a year into Covid. If you left your house in winter you didn't see anybody outside. How many dark, puffy coats did you see, how many dark puffy coats." 1/30/2024 Tr. 126. The government objected, claiming that defense counsel was "violating the golden rule asking the jurors to place themselves in positions. So we believe that she should not be able to ask the juror about how many people did you see, asking the jury rhetorical questions of that nature." *Id*. Defense counsel said that she "was just asking about a jacket, not asking them to put themselves in issues [sic] of anybody." *Id*. (Presumably, counsel said "in the shoes," rather than "issues"). The court sustained the government's objection on the basis that it was not proper for counsel to ask the jurors "how many puffy jackets did they personally see." 1/30/2024 Tr. 127. In open court, the court struck counsel's argument. *Id*.

"A golden rule argument—which asks jurors to place themselves in the position of a party, is universally condemned because it encourages the jury to depart from neutrality and to decide the case on the basis of personal interest and

bias rather than on evidence." *Caudle v. District of Columbia*, 707 F.3d 354, 359 (D.C. Cir. 2013) (citations and internal quotations omitted). The D.C. Court of Appeals "has repeatedly cautioned that it is improper for the prosecutor to seek to place the jurors in the position of the victim. This admonition is a subset of the general rule that the prosecutor should not appeal to the jury's emotions and sympathy for the victim of a crime." *Tyree v. U.S.*, 942 A.2d 629, 643 (D.C. 2008) (citations omitted). Counsel in the instant case did not ask the jurors to put themselves in the position of any party; nor did she make any appeal to emotions and sympathy. Counsel merely asked the jury to apply their common experience to the facts at issue. "Jurors do not leave their knowledge of the world behind when they enter a courtroom...." *Dawson v. Delaware*, 503 U.S. 159, 171 (1992). "Jurors are permitted and expected to bring to their deliberations common knowledge drawn from their life experiences." *United States v. Tin Yat Chin*, 275 F. Supp.2d 382, 384 (E.D.N.Y. 2003). Counsel's argument regarding the puffy coat was therefore entirely appropriate and should not have been struck.

The accused has a "right, under the Constitution and under the Superior Court's rules [Rule 29.1], to present a closing argument through counsel." *Kearney v. United States*, 708 A.2d 262, 264 (D.C. 1998). In *Herring v. New York*, 422 U.S. 853, 862 (1975), the Supreme Court explained the importance of closing argument:

> It can hardly be questioned that closing argument serves to sharpen and clarify the issues for resolution by the trier of fact

> in a criminal case. For it is only after all the evidence is in that counsel for the parties are in a position to present their respective versions of the case as a whole. Only then can they argue the inferences to be drawn from all the testimony, and point out the weaknesses of their adversaries' positions. And for the defense, closing argument is the last clear chance to persuade the trier of fact that there may be reasonable doubt of the defendant's guilt.

A trial court's decision to restrict closing argument is reviewed for abuse of discretion. *See Bouknight v. United States*, 641 A.2d 857, 861 (D.C. 1994). "Discretion is abused, however, if the court prevents defense counsel from making a point essential to the defense." *Haley v. United States*, 799 A.2d 1201, 1207 (D.C. 2002) (citations omitted). The central issue before the jury was the identity of the driver and passenger of the Volvo. The trial court's instruction to the jury to strike defense counsel's argument prevented her from making a point essential to the defense and gave the jury the impression that they could not use their common knowledge in their deliberations.

3. The trial court erred by sentencing Mr. Stevenson on multiple counts of Possession of a Firearm During a Crime of Violence (PFCV).

The court imposed sentence on three separate counts of PFCV. R. 2812-13 (Sentence of the Court: counts 3, 5, and 7). Count 3 relates to the murder of Mr. Allen; count 5 relates to assault with intent to kill Mr. Fye; and count 7 relates to assault with intent to kill Mr. Williams. R. 2792-96 (Verdict Form). This court should vacate two of the PFCV convictions under the reasoning of *Nixon v. United*

States, 730 A.2d 145, 152-53 (D.C. 1999). This court explained in *Geter*, 306 A.3d at 141: "In that case, we held that 'multiple PFCV convictions will merge . . . if they arise out of a defendant's uninterrupted possession of a single weapon during a single act of violence.' *Matthews v. United States*, 892 A.2d 1100, 1106 (D.C. 2006) (citing *Nixon*, 730 A.2d at 153); *see also West v. United States*, 866 A.2d 74, 84 (D.C. 2005) ("We have held that multiple counts of PFCV merge when only one gun was used and the incidents were not separated by time and location.")."[3]

V. CONCLUSION

For all the reasons set forth above, Mr. Stevenson respectfully submits that the convictions in this case should be reversed.

Respectfully Submitted,

/s/Brian D. Shefferman
Brian D. Shefferman
D.C. Bar No. 432416
Shefferman Law
10325 Kensington Pkwy., #2
Kensington, MD 20895
301-637-0223
bshefferman@sheffermanlaw.com
Counsel for Appellant

Dated: May 26, 2025

[3] Mr. Stevenson adopts by reference the argument made by co-appellant Vorreze Thomas (24-CF-496) regarding merger of the PFCV convictions. See D.C. App. R. 28(j).

CERTIFICATE OF SERVICE

I hereby certify that a copy of Appellant's Brief was filed on the date indicated below in the manner authorized and mandated by this court's procedures for electronic filing on Chrisellen R. Kolb, Appellate Division, United States Attorney's Office, 601 D St. NW, Washington, D.C. 20530.

Dated: May 26, 2025

/s/ Brian D. Shefferman
Brian D. Shefferman