DISTRICT OF COLUMBIA COURT OF APPEALS

Appeal No. 24-CF-496

Vorreze Ricardo Thomas,
[Delonta Stevenson,]

Appellants

v.

United States of America,

Appellee

Appeal from the Superior Court of the District of Columbia
Criminal Division

APPELLANT VORREZE RICARDO THOMAS'S OPENING BRIEF

REDACTED VERSION

Cecily E. Baskir (D.C. Bar 485923)
Law Office of Cecily E. Baskir, LLC
4800 Hampden Lane, Suite 200
Bethesda, MD 20814
(202) 540-0314
baskir@baskirlaw.com

DISCLOSURE STATEMENT

Appellant-Defendant is Mr. Vorreze Ricardo Thomas. Mr. Thomas was represented in Superior Court proceedings by attorneys Howard McEachern and Charles Murdter. He is represented on appeal by attorney Cecily E. Baskir. Coappellant Delonta Stevenson was represented in Superior Court by attorneys Elizabeth Weller and Stephen LoGerfo, and he is represented on appeal by attorney Brian Shefferman. The government was represented during trial by Assistant U.S. Attorneys Miles Janssen and Zach Horton and is represented on appeal by Chrisellen Kolb, Chief of the Appellate Division of the Office of the United States Attorney.

TABLE OF CONTENTS

DISCLOSURE STATEMENT i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

ISSUES PRESENTED 1

STATEMENT OF THE CASE AND JURISDICTION 1

STATEMENT OF FACTS 2

- The Shooting 3
- The Crash 5
- Troy Williams's Version of Events 6
- Firearm Evidence 12
- Pretrial Toolmark Litigation 13
- Monturo's Trial Testimony 15
- Additional Trial Evidence 19
- Verdict 24

SUMMARY OF ARGUMENT 24

ARGUMENT 25

I. The trial court abused its discretion by admitting unreliable and insufficiently qualified toolmark comparison testimony. 25

II. Three of Thomas's convictions must merge to avoid violating the Double Jeopardy Clause. 35

CONCLUSION 36

CERTIFICATE OF SERVICE 37

TABLE OF AUTHORITIES

Cases

Abruquah v. State, 296 A.3d 961 (Md. 2023) 29

Campos-Alvarez v. United States, 16 A.3d 954 (D.C. 2011) 35

Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) 26

**Gardner v. United States*, 140 A.3d 1172 (D.C. 2016) 13-14, 27, 28, 33

**Geter v. United States*, 306 A.3d 126 (D.C. 2023) 14, 27, 28, 29, 35

Gordon v. United States, 285 A.3d 199 (D.C. 2022) 29

In re Ty.B., 878 A.2d 1255 (D.C. 2005) 33

Jones v. United States, 27 A.3d 1130, 1140 (D.C. 2011) 27

Kotteakos v. United States, 328 U.S. 750 (1946) 27, 33

Machado v. United States, 325 A.3d 352 (D.C. 2024) 27

Matthews v. United States, 892 A.2d 1100 (D.C. 2006) 35

McCoy v. United States, 890 A.2d 204 (D.C. 2006) 35

Morten v. United States, 856 A.2d 595 (D.C. 2004) 33

Motorola Inc. v. Murray, 147 A.3d 751, 752 (D.C. 2016) (en banc) 26, 27

Nero v. United States, 73 A.3d 153 (D.C. 2013) 35

Nixon v. United States, 730 A.2d 145 (D.C. 1999) 35

United States v. Marquette Tibbs, No. 2016 CF1 19431, 2019 WL 4359486 (D.C. Super. Ct. Sept. 5, 2019) 29-30

* Asterisk indicates authorities upon which Thomas chiefly relies.

**United States v. Robert Green*, No. 2018 CF1 4356, 2024 D.C. Super. LEXIS 8 (D.C. Super. Ct. Apr. 1, 2024) 30

West v. United States, 866 A.2d 74 (D.C. 2005) 35

**Williams v. United States*, 210 A.3d 734, 742 (D.C. 2019) 26, 27, 28

Other Authorities

U.S. Constitution amendment V 35

Federal Rule of Evidence 702 (eff. Dec. 1, 2023) 26

ISSUES PRESENTED

1. Whether the trial court abused its discretion when it permitted the government's firearms and toolmark expert to provide insufficiently qualified and unreliable testimony linking bullets and casings to specific guns.

2. Whether Thomas's convictions for possession of a firearm during a crime of violence merge and must be vacated.

STATEMENT OF THE CASE AND JURISDICTION

On Jun. 6, 2022, a grand jury indicted appellant Vorreze Ricardo Thomas, coappellant Delonta Stevenson, and Brianca Phillips on several charges related to a Jan. 18, 2021 shooting at the Stanton Glenn apartment complex in Southeast. Mr. Thomas was indicted on eight counts, including (1) premeditated first-degree murder while armed of Terrence Allen; (2) assault with intent to kill Troy Williams while armed; (3) assault with intent to kill James Fye while armed; (4) conspiracy to shoot and kill Troy Williams; (5) three counts of possession of a firearm during a crime of violence; and (6) carrying a rifle or shotgun outside the home. Thomas R. 1235-1239 (PDF) (Indictment).[1]

[1] Thomas cites to the single PDF document of the Record on Appeal in his appeal, No. 24-CF-496, as "Thomas R. [page number] (PDF)." The Record on Appeal in coappellant Stevenson's case, No. 24-CF-428, was provided to Thomas divided into five PDF files, which Thomas refers to herein as Volumes I-V. Thomas cites to that Record on Appeal as "Stevenson R. [page number] (PDF Vol. __)."

After granting Phillips's motion to sever, 5/19/23 Tr. 20, the Honorable Marisa Demeo presided over Thomas's and Stevenson's jury trial from Jan. 9 to Feb. 1, 2024. The jury convicted Thomas and Stevenson on all counts, 2/1/24 Tr. 6-10, and on May 2, 2024, Judge Demeo sentenced Thomas to 636 months incarceration, with a mandatory minimum of 40 years, followed by five years of supervised release. Thomas R. 1466-67, 1470 (PDF) (Sentence & Amended Sentence). Thomas timely appealed, and this appeal is from a final order that disposes of all parties' claims. Thomas R. 1471 (PDF) (Notice of Appeal).

STATEMENT OF FACTS

Shortly after 11:00am on Jan. 18, 2021, a shooting near the entrance to the Stanton Glenn apartment complex left Terrence Allen dead of multiple gunshot wounds and James Fye and Troy Williams both injured. Over three weeks, the government set forth a theory that Delonta Stevenson, his girlfriend Brianca Phillips, and his nephew Vorreze Thomas conspired to kill Stevenson's friend Troy Williams. According to the government's theory, Stevenson, in a Volvo SUV driven by Thomas, fired a rifle at Williams and the other two occupants of a Ford Crown Victoria and then fled with Thomas. Thomas's defense theory was that he – never identified by any witness as present on Jan. 18, 2021 - was not in the Volvo or the area of Stanton Glenn that morning and did not conspire to kil anyone at Stanton Glenn. *See* Thomas R. 1429 (Jury Instructions).

The Shooting

James Fye explained that his best friend, Terrence Allen, had picked him up in a white Ford on Martin Luther King Jr. Day in 2021. 1/11/24 Tr. 136, 139. Allen had a younger person in the car, Troy Williams, whom Fye did not know, and they picked up Williams's mother at Stanton Glenn, took her to the store, and then brought her back home to Stanton Glenn. *Id.* at 141-44; 1/22/24 Tr. 169-70, 175-76 (Williams). As they pulled out to leave the property again with Fye in the passenger seat and Williams in the back, bullets hit Allen's car and its passengers. 1/11/24 Tr. 145-47 (Fye); *see* 1/22/24 Tr. 67, 186 (Williams); *see also* 1/16/24 Tr. 24 (Walter Collier testifying that Shotspotter sensor near 3000 block of Stanton Road picked up sounds at 11:10:53, 11:11:01, and 11:11:09); Gov. Exh. 801-803.

Special Police Officer Adjawo Sani was on duty at the Stanton Glenn security booth that morning and saw the shooting. 1/16/24 Tr. 66, 80. He testified that a resident in a burgundy car had pulled up to the exit to tell him something when Sani heard a fast sound like fireworks and then turned to see a white Crown Victoria car pull into a pole. *Id.* at 77-79; *see also* Gov. Exh. 501, 507, 508 at 11:15:50-11:16:06 (surveillance video showing a white car approaching the exit of Stanton Glenn, crashing into a yellow bollard dividing the entrance and exit lanes, and then being hit by apparent gunfire). As Sani went to help, he saw the person in the front passenger seat of a gold Volvo shooting at the white car with a firearm

that had two grips. 1/16/24 Tr. 78, 93, 113. According to Sani, the shooter was light-skinned and wearing black gloves on his hands; his face was covered by a hood, and he had a mask on. *Id.* at 118, 162. Sani could not see the driver of the Volvo and did not identify anyone at trial as the driver. *Id.* at 152, 162.

Sani took cover behind a pillar and yelled, "Police. Drop your weapon," but the shooter did not stop. *Id.* at 93, 112. Sani saw him reload the firearm with a magazine and keep shooting. *Id.* at 113. Thinking the shooter was aiming at him, Sani responded by firing his Smith & Wesson service pistol three times toward the shooter in the gold Volvo.[2] *Id.* at 68, 112-14, 116, 162; *see* Gov. Exh. 74. The whole episode lasted less than one minute. 1/16/24 Tr. 80; *see also* Gov. Exh. 501, 508 at 11:15:57-11:16:15 (surveillance video showing a light-colored SUV pull up behind the white car for about ten seconds then back up, pull around to the left of the white car, and turn right on to the street).

Metropolitan Police Department (MPD) Sergeant Michael Millsaps heard gunshots from the direction of Stanton Glenn Apartments at about 11:10am and saw a uniformed special police officer shoot a gun at a gray crossover-type vehicle

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[2] Sani testified that he had seen the Volvo, which did not have D.C. license plates, almost daily in the three months since he had started working at Stanton Glenn. 1/16/24 Tr. 68, 118-19, 125. The person who usually drove it was not the shooter on Jan. 18, 2021; it was someone skinny and short (like 5'3" or 5'4") with dark skin, but Sani did not know his name. *Id.* at 125, 138. He had also seen another Volvo, owned by the girlfriend of the person whose Volvo was involved in the Jan. 18, 2021 shooting. *Id.* at 149-50.

leaving the apartment complex. 1/17/24 Tr. 41, 43, 62; *see also* Gov. Exh. 526 (Millsaps body-worn camera video). Suspecting the gray vehicle was involved in the shooting, Millsaps pursued the car. 1/17/24 Tr. 44. Before losing sight of it, Millsaps saw two people in the car. *Id.* at 52, 56. The male passenger was wearing a face mask and had a black glove on one hand; Millsaps did not describe the driver. *Id.* at 52-53.

After the Volvo left, Sani approached the white car. 1/16/24 Tr. 176-77. The back seat passenger of the car had a gun between his legs that Sani recovered, *id.* at 172, 176-77, 182, and both passengers were placed in handcuffs. *See* 1/11/24 Tr. 150 (Fye); 1/10/24 Tr. 60 (Jeremy Verdon); Gov. Exh. 509 at 11:20. Williams was arrested for illegally possessing a gun, and he and Fye were then taken to the hospital for their injuries. 1/11/24 Tr. 151 (Fye); 1/11/24 Tr. 38, 53 (Verdon); 1/22/24 Tr. 53, 68, 205-06 (Williams). The driver Allen appeared to be suffering from gunshot wounds and showed no signs of life; efforts to save his life were unsuccessful. 1/11/24 Tr. 49-50 (Verdon); 1/16/24 Tr. 177 (Sani); *see also* 1/29/24 Tr. 79 (Deputy Medical Examiner Kristinza Giese testifying that Allen died of multiple gunshot wounds in a homicide).

The Crash

On Jan. 18, 2021, Kea Dodson heard tires screeching and a crash from her apartment at 2901 Erie Street, SE. 1/16/24 Tr. 195, 198-200. Dodson saw a black

car swerve and crash into a parked burgundy Volvo on 29th Street by the intersection with Erie. 1/17/24 Tr. 17, 19, 21, 31; *but see* 1/16/24 Tr. 200 (first testifying at trial that she did not see the crash). Dodson saw two men get out of the black car wearing all black. 1/16/24 Tr. 200; 1/17/24 Tr. 21, 25, 32. She could not see their faces, but the black man who exited from the passenger side was holding a rifle-like long gun with two hands; he had blond dreads that were black at the root. 1/17/24 Tr. 21-22, 24, 31-32. The driver did not have dreads and was taller than the passenger. *Id.* at 32. Dodson saw them run for about five to ten seconds to a wooded area behind an apartment complex. *Id.* at 25, 27, 35.

As the first police officer to arrive at that crash scene, MPD Officer Dena Hubbard found a light-colored Volvo XC-90 with a Missouri dealer license plate D40-BL that was still running. 1/18/24 Tr. 184, 187; Gov. Exh. 527 at 11:17:03 (Hubbard's body-worn camera video). She turned the car off and searched it for safety reasons. 1/18/24 Tr. 185-86, 188. Later, a cell phone in a black protective case with a charger plugged into it, an Ocean Spray juice bottle, a black face mask, and a Christmas postcard were recovered from the Volvo. 1/17/24 Tr. 90-91, 97-98, 102, 111 (James Fields).

Troy Williams's Version of Events

The government also presented testimony from Troy Williams, known as "Rah Rah." 1/22/24 Tr. 62. Williams, arrested for illegally possessing a gun that

day, admitted that his criminal history included convictions for robbery, theft, and unauthorized use of a motor vehicle. *Id.* at 50-51; 1/23/24 Tr. 61. Facing a three-year minimum sentence for the Jan. 18, 2021 gun possession charge and afraid to go back to jail, Williams decided to cooperate with the government to make things better for himself.[3] 1/23/24 Tr. 62, 64-65, 68 (also, while in police interview room, telling his girlfriend he just wanted to get out of this). As a result of his cooperation, the government offered Williams a good deal to plead guilty to a lesser charge, and he avoided spending any time in jail on his Jan. 18, 2021 gun case. *Id.* at 65, 68-69, 71-72, 76; *see* 1/22/24 Tr. 52-53. At the time of Thomas's trial, Williams had not yet been sentenced on his D.C. gun conviction, and he understood that if he provided substantial cooperation in this case, his lawyer could ask for a lower sentence. 1/22/24 Tr. 60; 1/23/24 Tr. 73, 75.

In addition to that benefit, the government helped Williams and his girlfriend relocate to Texas, providing thousands of dollars directly to them, paying for travel, and helping with rent until Williams was locked up in Texas on new state and federal charges. 1/22/24 Tr. 50, 213; 1/23/24 Tr. 76, 80, 109-12, 201-02. At the time of Thomas's trial, Williams had already been sentenced to thirty-seven months incarceration in his new federal case, and he faced a pending state charge

[3] Although Williams claimed at trial that he did not think it might help him out if he talked to the police, he was impeached by his own interview with police shortly after the shooting. 1/23/24 Tr. 63, 65.

of aggravated assault with deadly weapon. 1/22/24 Tr. 50-52; 1/23/24 Tr. 97-98, 102.

Williams's story shifted once he decided to make things better for himself by cooperating with the government. When police first interviewed Williams about the shooting, they asked him several times who was at Stanton Glenn on Jan. 18, 2021. 1/23/24 Tr. 49. Williams never said that he saw Thomas that day. Williams told the detectives that Damu and She Boy were there but did not say Stevenson (whom he called Tay at trial) was present until almost two hours into the interview. 1/23/24 Tr. 48-49, 52-54; *see* 1/22/24 Tr. 72. At that point, he told the detectives that Stevenson went into a building at Stanton Glenn where someone sold cigarettes. 1/23/24 Tr. 54-55.

At trial, Williams recounted that he had met Stevenson/Tay in 2018, and they were friends, in contact daily until Nov. 3, 2020. 1/22/24 Tr. 74-75, 219. On the evening of Nov. 2, 2020, Williams was drinking and smoking with his girlfriend Melanie Weldon, his friend Alizae, and Tay. *Id.* at 84-85. Williams and Weldon stayed behind when Alizae and Tay left early the next morning, and Tay was shot and ended up in a coma. *Id.* at 120-21, 219-220. Williams did not visit him in the hospital, and there were no phone records of him trying to call Tay, although Williams claimed at trial that he had. *Id.* at 221. He later said that he did

not visit Tay in the hospital because Tay's friends and family and girlfriend Brianca Phillips would not tell Williams which hospital Tay was in.[4] 1/23/24 Tr. 171, 174.

Instead, around the end of December 2020, Tay reached out to Williams over Instagram, and they talked on a video chat. 1/22/24 Tr. 154-55, 220-21. During that first call, Williams did not notice any change in their relationship, and their typed conversations at the end of December were not hostile. *Id.* at 156, 228; *see* 1/23/24 Tr. 175. Williams had some of Tay's property and told Tay where to pick it up, but Tay never came. 1/22/24 Tr. 156-57. The next week or so, they spoke on another video call. *Id.* at 157. Williams told the grand jury that during this second call, Tay "was talking real proper and he was, like, joking with me and shit, right. But he wasn't talking about nothing negative for real." *Id.* at 231, 233. Williams further testified to the grand jury that just four days before the Jan. 18, 2021 shooting, he had a call with Tay that was "Cool. Like, regular." *Id.* at 230.

At trial, however, Williams changed his description of their interaction. He testified that during the second call, Williams inquired why Tay had not come to pick up his property, and Tay started asking questions about what happened the night he was shot. *Id.* at 157. Williams claimed to have heard people whispering in the background of that call, and he said that afterwards, he noticed a little

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[4] Williams first testified that he only knew Tay's girlfriend as Bree, not her full name, 1/22/24 Tr. 112, but he later agreed when the government asked if he was referring to Brianca Phillips as the person who would not tell him which hospital Tay was in. 1/23/24 Tr. 174.

tension and got the feeling that he should not go around to Stanton Glenn. *Id.* at 151, 157, 164, 167. He said people starting treating him differently then offered inconsistent details: first, Williams testified that no one ever confronted him about what happened the night Tay was shot in November. *Id.* at 121. Then, in an answer stricken by the trial court, he said that one person, an associate named Zoe, asked him what happened. *Id.* at 124-26. Then he claimed that, when he was talking to Tay on the phone, Bree accused him of betraying Tay, and she also texted him questions about Nov. 3, 2020 and where Williams had been. *Id.* at 153; 1/23/24 Tr. 34-35.

On Jan. 18, 2021, Williams overcame his reluctance to go to Stanton Glenn, after becoming worried about his mother.[5] *See* 1/22/24 Tr. 165-66. Weldon's uncle Allen agreed to take Williams to see his mother, and at Williams's request, Allen brought a Taurus G2 firearm.[6] *Id.* at 66, 166-67; 1/23/24 Tr. 128. After taking his mother to the store in Allen's car, Williams claimed that he saw Tay across the parking lot at Stanton Glenn and tried to speak to him. 1/22/24 Tr. 176, 183-84; 1/23/24 Tr. 35. But Williams got bad vibes, and then, as they left, an SUV drove up and started shooting at them. 1/22/24 Tr. 185, 191-92, 201. From Williams's

[5] Williams also admitted that his mother had previously taken out a protective order against him. 1/22/24 Tr. 239.

[6] During a break in his interview with police shortly after the shooting, Williams called Weldon and told her he would say the gun he tried to fire was Allen's, because Allen was now dead. 1/23/24 Tr. 59.

viewpoint, the shooting came from the passenger side. *See id.* at 193. He could not see the driver of that vehicle, and on the passenger side, he only saw someone in a mask with dark clothing. 1/22/24 Tr. 194; 1/23/24 Tr. 56. Williams tried to shoot back with the Taurus, but it misfired and stopped shooting. 1/22/24 Tr. 192; 1/23/24 Tr. 57.

Williams told the police three times on Jan. 18, 2021 that he did not recognize the car that shot at him. 1/23/24 Tr. 114-15, 117. But, after deciding to cooperate with the government, he described the car as a lime green Volvo SUV that he had last seen in October 2020, when Williams said he saw Tay's nephew driving it. 1/22/24 Tr. 194, 196, 200; 1/23/24 Tr. 113, 116-17, 160. Williams identified Thomas in court as Tay's nephew, whom he had met a couple of times before in Stanton Glenn. 1/22/24 Tr. 73. Williams also said he had seen a similar Volvo but in a different color, like black or grey, at Stanton Glenn before Nov. 2020. *Id.* at 201-02. Although Williams had testified that he did not know Tay's nephew's girlfriend or partner, *id.* at 200, he said he had seen a female operating the other Volvo, speculating that it was "Tay's nephew's girlfriend or something. I don't know." *Id.* at 202.

Williams further testified that he did not know if Tay's nephew had an Instagram account. *Id.* at 77. The government then impeached him with his grand

jury testimony, where Williams had identified a photo of a screen as "the nephew on Instagram."[7] *Id.* at 81; *see* Gov. Exh. 752.

Firearm Evidence

On Jan. 18, 2021 crime scene forensic scientists from the D.C. Department of Forensic Sciences (DFS) collected Sani's Smith & Wesson service pistol and a Taurus 9mm firearm at the scene at Stanton Glenn, along with three cartridge casings with the headstamp Speer 9mm and thirty-four casings with the headstamp PSD 17. 1/11/24 Tr. 36, 52-53, 57, 60 (Danielle Yandura); 1/18/24 Tr. 95-97 (Raquel Assayag). They later recovered an unfired RP 9mm Luger bullet and eight projectile fragments from inside the white Ford Crown Victoria and six fragments from the autopsy of Allen's body. 1/18/24 Tr. 129, 136-38, 142, 144-48, 153 (Myeshia Roberts); 1/16/24 Tr. 191-92 (Jamal Hinkle).

When Stevenson was arrested on Feb. 17, 2021, police collected a tan and black gun, a magazine, and cartridges from a back bedroom. 1/18/24 Tr. 109, 113 (Assayag); 1/29/24 Tr. 57 (Sidney Catlett); Gov. Exh. 145. In addition, MPD K-9 dog Nico located a rifle under ivy and brush in a wooded area near 29th and Erie Streets. 1/17/24 Tr. 68-69 (Ryan Anselmo); Gov. Exh. 79 (rifle); *see also* Gov. Exh. 528 (Anselmo's body-worn camera). MPD Officer Eric Abreu also testified that he recovered a rifle-caliber cartridge casing with a PSD 17 headstamp from the

[7] The blurred image in Gov. Exh. 752 says, "heart_of_daa_stre…" at the top, and then below it says "Mr. Marlow." Gov. Exh. 752.

area outside 2420 15th Place, SE in August 2020, although he admitted he did not know how long it had been there. 1/17/24 Tr. 143, 145-46, 148-49; Gov. Exh. 100.

Pretrial Toolmark Litigation

Before trial, in a motion orally joined by Thomas, 5/12/23 Tr. 34, Stevenson challenged the government's proposed firearm and toolmark expert testimony as insufficiently reliable and sought to preclude or limit it. Stevenson R. 71-95 (PDF Vol. III) (Mot. to Preclude, Apr. 16, 2023). In part, the defendants challenged expert Chris Monturo's proposed "extremely strong support" conclusion language, arguing that it exceeded what this court had authorized. 5/12/23 Tr. 7, 30-32.

The trial court denied the defense motion in a written order issued on Oct. 10, 2023, concluding that the "proposed firearm and toolmark identification testimony meets the parameters laid out in *Daubert*." Stevenson R. 530 (PDF Vol. IV) (Order, p.7, Oct. 10, 2023). Although the "lack of objective criteria for examiners to use in determining a 'match' …. weighs against admissibility," the trial court decided "it does not bar it." *Id.* at 532 (Order, p.9). In an attempt to "comport with current case law in this jurisdiction," however, the trial court precluded the government expert from giving "an unqualified opinion, or testify[ing] 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." *Id.* at 533 (Order, p.10) (quoting *Gardner v. United States*, 140

A.3d 1172, 1184 (D.C. 2016)). The trial court did not preclude Monturo from using the contested extremely strong support/extremely weak support language. *See id*. Following this court's Dec. 21, 2023 decision in *Geter v. United States*, 306 A.3d 126 (D.C. 2023), the trial court amended its order to require that the government "ensure that Toolmark Examiner Chris Monturo's testimony is consistent with the *Geter* ruling." Stevenson R. 596 (PDF Vol. VI) (Order, Jan. 3, 2024).

Shortly before trial, the government sought permission for Monturo to testify "that the observed class and corresponding random characteristics provide extremely strong support for the proposition that the two toolmarks – *i.e.*, the bullets/cartridges cases – originated from the same source and extremely weak support for the proposition that the two toolmarks originated from different sources." Stevenson R. 598-99 (PDF Vol. VI) (Supp. Mot., pp. 1-2, Jan. 8, 2024). According to the government, Monturo might also state that based on his examination and research, "the most reasonable explanation is that the Omni Hybrid semiautomatic firearm (recovered from the defendants' flight path) fired the casings recovered from the scene." *Id.* at 599. In addition, the expert would inform the jury that (1) "there is no generally accepted statistical way to measure/convey the weight of evidence in firearms and toolmarks," and (2) "he cannot state that the two toolmarks originated from the same source to the

exclusion of all other sources or with 100% certainty." *Id.* The government further argued that Monturo's proposed "extremely strong support" language was not "unqualified" because "it is a modified downward-shift from the term 'identification' or phrase 'this firearm fired these casings/bullets.'" Stevenson R. 6 (PDF Vol. V) (Supp. Mot.). It promised that he would not make the statement "conclusively" or "provide a numerical degree of probability." *Id.*

On Jan. 10, 2024, the trial court ruled orally, without relying on the government's proffered evidence of evolved toolmark science,[8] that the extremely strong/extremely weak language Monturo would use and the qualifying statements offered by the government were sufficient to comply with this court's case law. 1/10/24 Tr. 22-23. The parties declined to delay the trial in order to have an evidentiary hearing.

Monturo's Trial Testimony

At trial, Monturo testified over defense objection as an expert in the field of firearms and toolmark examination, analysis, and identification. 1/17/24 Tr. 161-62. With the help of a Powerpoint presentation, Gov. Exh. 804, Monturo described a range of four conclusions he can come to when comparing the class characteristics and random imperfections in two different items. *Id.* at 183-84.

[8] The government had attached over 1,160 pages of exhibits to its toolmark-related filings. *See* Stevenson R. 178-601 (PDF Vol. III); Stevenson R. 1-451 (PDF Vol. IV); Stevenson R. 13-300 (PDF Vol. V).

According to Monturo, the first conclusion is "extremely strong support, and that's where there's extremely strong support for the proposition that the toolmark came from the same source; likewise, there is extremely weak support that they … came from different tools. That means I had the presence of those random imperfections." *Id.* at 183. Monturo agreed with the government's suggestion that he would also refer to this first type of conclusion as "sufficient agreement." *Id.* at 184-85.[9] A few moments later, Monturo shifted from that language, displayed in the Powerpoint exhibit, and explained that when he observes both class characteristics and random imperfections in agreement, he concludes that "they have the source conclusion of having come from the same source." *Id.* at 187-88. Prompted by the government, he added, "That is extremely strong for the proposition that it was the same source." *Id.* at 188.

The other types of possible conclusions Monturo identified were (2) "elimination," where he can eliminate bullets as having come from the same source; (3) "inconclusive because of the quality of the evidence"; and (4) "not suitable" because there is nothing to compare. *Id.* at 183-84.

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[9] At least three times during Monturo's testimony, the government showed a slide that defined "Sufficient Agreement" as Monturo's "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." Gov. Exh. 804 at 11, 15; *see* 1/17/24 Tr. 185, 199; 1/18/24 Tr. 19-20.

In response to leading questions from the government, Monturo agreed that he was not "stating any conclusion here with 100 percent certainty" and that he cannot "state that two toolmarks originated from the same source to the exclusion of all other sources." *Id.* at 185-86. Deviating from the preapproved script, he explained that doing so "would be implying that I've looked at every single gun ever made, and that simply is not feasible." *Id.* at 186. He also agreed that it is "fair to say that [his] conclusions are not based on a statistically derived or verified measure[…. and] that, at present, there's no generally accepted statistical way to measure or convey the weight of the evidence in firearms and toolmarks that is used in the United States in firearms and toolmarks forensics." *Id.* at 185.

In cross examination, Monturo further admitted that his method of examining markings through a microscope is a subjective opinion, based on his education, training, and experience. 1/18/24 Tr. 45-46. He uses no software or database, and he does not physically measure distances or depths. *Id.* at 46-48.

In this case, Monturo received and tested four firearms and the magazines that came with them. *Id.* at 12. Based on his analysis, he concluded that thirty-four casings that were found at the scene of the shooting "showed extremely good source marks, that they came from the same source as the test fires and the cartridge case" from the American Tactical Omni Hybrid rifle. *Id.* at 13-14; 1/17/24 Tr. 197; *see* Gov. Exhs. 31-35, 38-66, 79; *see also* 1/18/24 Tr. 97

(Assayag). All of those casings had the same caliber and headstamp and could not have been fired by any of the other three guns Monturo received in this case. 1/18/24 Tr. 13-14.

Comparing the bullet fragment collected from Allen's autopsy and a test-fire from the rifle, Monturo also concluded "[t]hat there was extremely strong observations that the bullets were fired – came from the same source." 1/18/24 Tr. 19; *accord* 1/17/24 Tr. 198; *see* Gov. Exh. 94; 1/16/24 Tr. 191-92 (Hinkle). Monturo reached the same conclusion for the casing found in August 2020 near 2420 15th Place, SE, and for six fragments collected inside the white Ford vehicle. 1/17/24 Tr. 198-99; 1/18/24 Tr. 18-19; *see* Gov. Exhs. 67, 100, 106-108, 114, 116; *see also* 1/17/24 Tr. 143, 145-46 (Abreu); 1/18/24 Tr. 144-48 (Roberts).

Monturo further concluded "[t]hat 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 [he] made" for three casings found at the scene of the shooting and Sani's Smith & Wesson pistol. 1/18/24 Tr. 20; *see* Gov. Exh. 74. Similarly, he found sufficient agreement between one cartridge found in the white Ford and the Taurus 9mm pistol recovered at the scene. 1/18/24 Tr. 21; *see* Gov. Exh. 70, 109.

Monturo's comparisons were inconclusive on bullet fragments found in the Crown Victoria as to whether they came from the rifle in Exh. 79 or another of the

same type. 1/18/24 Tr. 22. Other bullets and fragments retrieved from Allen's autopsy and the white Ford were consistent with the kind of bullets that can be fired by the rifle but not the other three guns. *Id.* at 24. Monturo concluded that two of the bullet fragments he was given to analyze were not suitable for comparison purposes. *Id.*

Additional Trial Evidence

In addition to this firearm/toolmark evidence, the government also introduced at trial surveillance and body-camera video, DNA evidence, cell phone records and location information, and birth certificates for Thomas, Stevenson, Dyshana Stevenson, and VT. 1/24/24 Tr. 65-66; 1/29/24 Tr. 90; *see* Gov. Exh. 902, 903, 904, 905.

Evidence included footage from several cameras at Stanton Glenn Apartments on the morning of Jan. 18, 2021, including the entrance/exit area, a camera called "3082 Front" that captured parking areas and buildings in the west area of Stanton Glenn, and another camera called "3078" that showed a building "on the top of the outside triangle" at Stanton Glenn and the parking area in front of it. 1/25/24 Tr. 185-86, 194-96; 1/29/24 Tr. 38-39, 40-41, 48-51; *see* Gov. Exhs. 501, 501-Z, 502, 502-Z, 503, 505, 505-Z, 507, 507-Z, 508, 509.

It also included footage from a Shell gas station in the 4700 block of South Capitol Street on Jan. 18, 2021, that showed a person wearing red shoes and a blue

coat with a fur hood getting out of a Volvo with license tag D40-BL and going inside the convenience store. *See* Gov. Exh. 516B at 1:51-4:11; 1/25/24 Tr. 64-65, 71-74 (John Streets). Inside, the person appeared to use a phone and then, after exiting the store, drove the Volvo to another location at the gas station for a few minutes before leaving. Gov. Exh. 516A; Gov. Exh. 516C at 1:45-2:23; Gov. Exh. 516D at 0:38-2:53.

Additional surveillance video shows two men walking past ATMs at the 2831 Alabama Avenue branch of Capital One Bank at about 11:16am on Jan. 18, 2021. Gov. Exh. 512A-E at 11:16:41-11:17; *see* 1/18/24 Tr. 162-68 (Jake Mustian). The first man appeared to be wearing red shoes and a blue coat with a hood, followed closely by a man in a blue puffy jacket and black and red striped pants who appeared to remove a balaclava-type mask to reveal dreads. Gov. Exh. 512A-E at 11:16:41-11:17. A few moments later, two people crossed the Safeway parking lot to a bus stop in the 2800 block of Alabama Avenue. Gov. Exh. 514 at 11:17:20-11:18:12; *see* 1/18/24 Tr. 121 (Raphael Villanes). Metrobus video shows two men board a bus at approximately 11:23am at Alabama Avenue and Good Hope Road, SE; they put on masks as they boarded and then exited the bus at about 11:39am. Gov. Exhs. 515A-E at 11:23:14-11:39:50; *see* 1/25/24 Tr. 103-07, 111-13 (Wanda Robinson).

Beyond the video evidence, DFS employees swabbed several items for possible DNA analysis (including the rifle, its magazine, the interior of the crashed Volvo, and items found inside the Volvo) and sent the swabs to Signature Science for DNA testing and analysis. *See* 1/11/24 Tr. 73-75, 83 (Laurel Hassberger); 1/17/24 Tr. 92, 105-07 (Fields). On Feb. 17, 2021, DFS forensic scientist Samantha Bischof collected buccal swabs from Thomas and Stevenson that were sent to Signature Science as well. 1/18/24 Tr. 199, 202-03; 1/22/24 Tr. 46 (Bischof); 1/24/24 Tr. 118 (Ruben Ramos). That day she also took a photograph of Thomas that shows a tattoo above his left eye that says "Vadah." 1/18/24 Tr. 217, 219 (Bischof); Gov. Exh. 498.

Ruben Ramos, the government's DNA expert, testified that mixtures of DNA from four contributors were found on the rifle and the Volvo interior passenger door swabs. 1/24/24 Tr. 157-59, 179. Initial analysis of those mixtures raised red flags and concerns that the software-generated likelihood ratios for both Thomas and Stevenson as possible contributors were overestimated, because the software produced non-intuitive results that both Stevenson and Thomas were Contributor Number 1. 1/24/24 Tr. 158-59, 160-61, 180-81. Ramos explained that an overestimation can result when two contributors to a DNA mixture are related. *Id.* at 162, 166. After being informed by the government that Stevenson and Thomas were related, Ramos then reanalyzed the data for those two mixtures. *Id.* at 166-

67, 181. Assuming that both mixtures included Stevenson, the likelihood of Thomas being one of the other contributors went up, although red flags and the possibility of overestimation remained for the door mixture. *Id.* at 168-69, 181-82. The results for the rifle and the interior door also showed at least one other male contributor to the mixtures besides Thomas and Stevenson, although Ramos said that data could also be attributed to "stutter" resulting from the testing process. 1/25/24 Tr. 33-34, 52.

In addition, Ramos testified that there were two contributors to other DNA mixtures found in the Volvo, and the likelihood that the mixtures contained Thomas rather than an unknown person were 2.599 million times (face mask), 855 sextillion times (Ocean Spray bottle), and 2.89 million times (steering wheel). 1/24/24 Tr. 176-78; 1/25/24 Tr. 25. He confirmed that his analysis did not provide any information about when or how the DNA mixtures came to be on the objects. 1/25/24 Tr. 41.

The trial court also admitted photos of Brianca Phillips showing her clothing during Phillips's police interview on Jan. 18, 2021, as well as data extracted from a cell phone seized from her that day. *See* Gov. Exh. 97, 532, 533, 534, 1002; 1/25/24 Tr. 172-73, 175, 182 (James Wilson); 1/23/24 Tr. 207-08, 211 (Akil Kasumba Muhangi). The phone data included instant messages received by the phone on Jan. 18, 2021 at 10:48am, saying "Rara outhere" and "Dat nigga ruh ruh

right here" plus an audiofile with a male voice saying, "Hey bruh, get up, bruh. Rah Rah out here, bruh. Hurry up." Gov. Exh. 1002 at 5-6; Gov. Exh. 1003; 1/23/24 Tr. 217-28, 221. In addition, the records showed a 27-second outgoing call at 10:53am to 202-847-9018, a number saved in the phone contacts as "Lil V." Gov. Exh. 1002 at 4, 9; 1/23/24 Tr. 215-16, 223-24. The evidence also included images and video found on the phone seized from Phillips. *See* Gov. Exhs. 1006, 1008, 1010; 1/23/24 Tr. 224-26.

The government introduced additional evidence of data extracted from Williams's Motorola cell phone, *see* 1/22/24 Tr. 209 (Williams); 1/24/24 Tr. 40 (Muhangi); Gov. Exh. 98, 1012, and from the iPhone 7 found in the Volvo, *see* 1/23/24 Tr. 228-29; 1/24/24 Tr. 36-37, 39 (Muhangi); Gov. Exh. 99, 1014, 1015, 1016, as well as the AT&T phone records for the number 202-847-9018. *See* 1/25/24 Tr. 115; Gov. Exh. 1202. The iPhone 7 data indicated that it was associated with the Apple ID "vadahdad@icloud.com" and with the phone number 202-847-9018. Gov. Exh. 1014 at 2; 1/24/24 Tr. 35-36 (Muhangi). Comparing data from the iPhone 7 and the AT&T records, FBI Special Agent Michael Fowler testified that it appeared that the phone number from the iPhone 7 was put into a new phone with a new SIM card after Jan. 11, 2021. 1/25/24 Tr. 124.

Using the AT&T records from Jan. 18, 2021, Fowler analyzed the cell towers used by phone number 202-847-9018 from 10:00:55 am to noon that day to

identify the general geographic area in which the device using that number would have been. *Id.* at 127-28, 136-141, 143. The analysis showed an incoming call received at 10:53am, *id.* at 138, plus movement of the device using that phone number in a northeasterly direction from around 11:00am to 11:31am. *Id.* at 139-141. Fowler confirmed that his analysis did not reveal information about who was using the cell phone. *Id.* at 144.

Over objection, the government also introduced Instagram records from the account "heart_of_daa_streetz." 1/29/24 Tr. 93-94, 105; *see* Gov. Exh. 1021, 1021A-E. The records showed several names that had been associated in the past with the account, including "Vadah Father." Gov. Exh. 1021 at 1. The Instagram records in evidence also included instant messages referring to a party at 2420 15th Place SE and five photos. *See* Gov. Exh. 1021, 1021A-D.

Verdict

After receiving instructions that included aiding and abetting liability, transferred intent, and concurrent intent, the jury found Thomas guilty of all eight charges. *See* Thomas R. 1406-08, 1410-11, 1413-19, 1421-22, 1424-26, 1442-45 (Jury Instructions, Verdict Form).

SUMMARY OF ARGUMENT

Firearms and toolmark examiners testifying as experts in this jurisdiction may not link specific bullets or shell casings to a specific gun with certainty. The

expert's testimony in this case ran afoul of that prohibition: his extremely strong certainty that casings and bullets came from the rifle police had found under brush effectively excluded other possibilities without adequate empirical foundation to support it. Moreover, the expert expressed no real reservations about his conclusions linking the casings to the rifle, undermining any supposedly qualifying statements by attributing them to the impossibility of examining every gun ever gun. Admitting this unreliable expert testimony without sufficient reservation was an abuse of discretion, and, given the weaknesses of the government's circumstantial case against Thomas, that error was not harmless. The court should therefore reverse all of Thomas's convictions and remand for a new trial.

Alternatively, the court should vacate two of Thomas's three convictions for possessing a firearm during a crime of violence (PFCV) due to merger. Evidence indicates that Thomas's PFCV convictions arose from the Volvo passenger's uninterrupted possession of a weapon during a single shooting incident. As a result, the Double Jeopardy Clause of the Fifth Amendment requires merger.

ARGUMENT

I. The trial court abused its discretion by admitting unreliable and insufficiently qualified toolmark comparison testimony.

The trial court abused its discretion by permitting the government's firearms and toolmark expert, Chris Monturo, to link casings and bullets from the shooting to the recovered rifle by using language that was functionally equivalent to the

kind of unqualified, unreliable testimony this court has disapproved. Because the trial court's error was not harmless, this court should reverse Thomas's convictions.

In *Motorola Inc. v. Murray*, this court adopted the federal standards for the admissibility of expert testimony. *Motorola Inc. v. Murray*, 147 A.3d 751, 752 (D.C. 2016) (en banc). According to Federal Rule of Evidence 702, as amended in 2023,

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:
>
> (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
>
> (b) the testimony is based on sufficient facts or data;
>
> (c) the testimony is the product of reliable principles and methods; and
>
> (d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.

Fed. R. Evid. 702 (eff. Dec. 1, 2023). The court's focus in applying this standard is "whether the reasoning or methodology underlying the testimony is scientifically valid and . . . whether that reasoning or methodology properly can be applied to the facts in issue." *Williams v. United States*, 210 A.3d 734, 742 (D.C. 2019) (quoting *Motorola*, 147 A.3d at 754, and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 592-93 (1993)).

This court reviews the trial court's ruling on the admissibility of expert testimony for abuse of discretion. *Machado v. United States*, 325 A.3d 352, 355 (D.C. 2024); *see Motorola*, 147 A.3d at 755; *Gardner v. United States*, 140 A.3d 1172, 1183 (D.C. 2016). Where the court finds error, it must reverse unless it is "able to say with fair assurance… that the verdict was not substantially swayed by the error." *Gardner*, 140 A.3d at 1186 (quoting *Jones v. United States*, 27 A.3d 1130, 1140 (D.C. 2011); *accord, Kotteakos v. United States*, 328 U.S. 750, 765 (1946).

In this jurisdiction, it is error for a trial court to admit a firearm and toolmark examiner's unqualified opinion that, based on toolmark pattern comparison, a bullet or casing was fired by a specific firearm. *Geter*, 306 A.3d at 132; *Williams*, 210 A.3d at 743; *Gardner*, 140 A.3d at 1184. As the court recently recognized in *Geter*, because "'the empirical foundation does not currently exist to permit [firearms and toolmark] examiners to opine with certainty that a specific bullet can be matched to a specific gun,'…'these conclusions are simply unreliable.'" *Geter*, 306 A.3d at 132 (quoting *Williams*, 210 A.3d at 742). As a result, "a firearms and toolmark expert may not give an unqualified opinion, or testify with absolute or 100% certainty, that … a fatal shot was fired from one firearm, to the exclusion of all other firearms." *Id.* (quoting *Gardner*, 140 A.3d at 1177). Any opinions linking specific shell casings or bullets to a specific firearm may not "*implicitly* exclud[e]

all other possibilities;" they must be modified or restricted by reservations. *Id.* at 133-34 (emphasis in original).

These limitations are not about using or avoiding certain magic words, like "unique" or "match." *See id.* at 132. Rather, the court looks at whether the expert's statements "assert a basis for linking specific shell casings to a specific gun." *Id.* Thus, in *Gardner*, the court found error where the government's ballistics expert testified with unqualified certainty that the fatal bullet was fired by the silver gun. *Gardner*, 140 A.3d at 1182, 1184. A few years later, in *Williams*, the court found plain error where the firearms and toolmark examiner had no doubt about his conclusion, based on unique identification marks, that three bullets had been fired from a specific gun. *Williams*, 210 A.3d at 738, 742. And again in *Geter*, the court found plain error where the firearms and toolmark examiner concluded, based on unique markings, that five cartridges came from the recovered gun. *Geter*, 306 A.3d at 131-32. Even though the expert in *Geter* did not use precisely the same language that this court had earlier found problematic and did acknowledge that pattern matching could be inconclusive, the court recognized that the statements were "effectively the same" as saying that markings were unique to only one gun. *Id.* at 132-33.

In contrast, this court found no plain error where the firearms expert testified that several casings were "most likely" fired from a particular type of pistol, that

two bullets were "consistent" with that type of pistol without excluding another type of gun, and that all six casings were fired from the same unspecified gun, without matching them to a specific gun. *Gordon v. United States*, 285 A.3d 199, 219-220 (D.C. 2022).

After an exhaustive analysis of evidence on the reliability of firearms identification evidence, the Supreme Court of Maryland also reached similar conclusions: it held that a firearm examiner could testify about "whether the patterns and markings on the crime scene bullets are *consistent or inconsistent* with the patterns and markings on the known bullets" but should not have been permitted "to opine without qualification that the crime scene bullets were fired from [the defendant's] firearm." *Abruquah v. State*, 296 A.3d 961, 998 (Md. 2023) (emphasis added).

While this court has not yet resolved "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," *Geter*, 306 A.3d at 134 n.17, other Superior Court judges – like the Supreme Court of Maryland – have stopped short of admitting the kind of testimony expert Chris Monturo gave in this case. Following an extensive evidentiary hearing on the reliability of firearms and toolmark examination in *United States v. Marquette Tibbs*, for instance, Judge Edelman required the government's firearms and toolmark examiner to "limit his

testimony to a conclusion that, based on his examination of the evidence and the consistency of the class characteristics and microscopic toolmarks, the firearm cannot be excluded as the source of the casing." *United States v. Tibbs*, 2019 WL 4359486, *1 (D.C. Super. Ct. Sept. 5, 2019).

Even more recently, after analyzing extensive empirical data from an evidentiary hearing that lasted eleven days across five months, Judge Okun refused to let Monturo testify "that there is extremely strong support for the proposition that the casings were fired from the firearm at issue," despite changes in the "scientific landscape of firearm examination and identification testimony" since the studies underlying this court's decisions in *Gardner*, *Williams*, and *Geter*. *United States v. Robert Green*, No. 2018 CF1 4356, 2024 D.C. Super. LEXIS 8, *67-68 (D.C. Super. Ct. Apr. 1, 2024). Judge Okun recognized that the government's proposed "extremely strong support" language arose first in the DNA context, where a strong statistical basis exists for it. *Id.* at *62-63. In the firearms context, in contrast, "[t]here are no equivalent statistical benchmarks," and firearms studies have not yet produced likelihood ratios comparable to the DNA ones that justify such strong language. *Id.* at *63 & n.17. Instead, to ensure consistency with this court's holdings, Monturo would "have to qualify his opinion by testifying that the relevant cartridge casings are 'consistent with' having been fired from the firearm at issue." *Id.* at *67.

Here, likewise, the trial court should have precluded Monturo from adopting the extremely strong/extremely weak support language from the DNA context, because it conveyed a level of unqualified confidence that lacks sufficient reliability, and it should not have admitted Monturo's additional testimony that expressed even greater certainty about the firearm source of crime scene evidence.

For instance, Monturo initially omitted even the pretense of qualifying language when he explained to the jury that he concludes that two items have "come from the same source" when he observes consistency and sufficient agreement in class and random characteristics, 1/17/24 Tr. 188, before equating that conclusion (at the government's prompting) to "extremely strong support for the proposition that it was the same source." *Id.* Monturo then applied that conclusion to over forty crime scene casings, bullets, and bullet fragments. *See* 1/17/24 Tr. 184-85, 197; 1/18/24 Tr. 13-15, 18-19; Gov. Exh. 804. Yet Monturo struggled to stick to the prearranged script. Instead, he demonstrated further conviction in his conclusions by testifying that thirty-four of the casings "showed extremely good source marks, that they came from the same source as the test fires and the cartridge case," 1/18/24 Tr. 14, and that "there was extremely strong observations that [eight bullets or fragments] were fired – came from the same source." 1/18 Tr. 19. These "extremely strong" conclusions effectively and improperly linked bullets, casings, and fragments to specific guns while implicitly

excluding other possibilities, thereby exceeding the limitations set forth in this court's case law.

Moreover, the supposedly qualifying language that the government also elicited did not mitigate the problem, because Monturo immediately undermined it. After agreeing with the government's leading questions that he was "not stating any conclusion here with 100 percent certainty" and could not "state that two toolmarks originated from the same source to the exclusion of other sources," 1/17/24 Tr. 185-86, Monturo nullified those concessions by explaining, "That would be implying that I've looked at every single gun ever made, and that simply is not feasible." *Id.* at 186. In so doing, he further conveyed to the jury a level of certainty in his source conclusions limited only by the fact that he had not and could not look "at every single gun ever made." *Id.* This additional testimony left the jury with the clear understanding that Monturo thought the casings, bullets, and fragments from the crime scene matched those test-fired from the rifle based on what he believed were unique toolmark characteristics he observed in the bullets, casings, and fragments.

In sum, despite offering supposedly qualifying lip service to the uncertainties about toolmark comparison analysis, Monturo's expert testimony expressed a certainty that extended beyond what is permissible under this court's

precedents and the state of firearm/toolmark identification science, and the trial court therefore erred by admitting it.

The court must reverse Thomas's convictions unless the court can say "with fair assurance" that Monturo's effectively unqualified opinion testimony "did not substantially sway the judgment" or that "it is highly probable that the error… did not contribute to the verdict." *Gardner*, 140 A.3d at 1183, 1186 (quoting *Kotteakos*, 328 U.S. at 765, and *In re Ty.B.*, 878 A.2d 1255, 1266-67 (D.C. 2005)). The court cannot do so here. Monturo's testimony was a significant part of the government's case, tying the bullets and casings from the shooting to the specific rifle found in the brush, which it argued contained mixtures of Thomas's and Stevenson's DNA. In its closing, for instance, the prosecution highlighted Monturo's level of "extremely strong support" confidence that the specific rifle was linked to the specific casings. 1/30/24 Tr. 73-74, 98-99; *see Morten v. United States*, 856 A.2d 595, 602 (D.C. 2004) ("A prosecutor's 'stress[] [upon] the centrality' of particular evidence in closing argument tells a good deal about whether the admission of the evidence was meant to be, and was, prejudicial.")

Moreover, the circumstantial evidence of Thomas's involvement in the Jan. 18, 2021 shooting was not overwhelming. No witnesses identified him by name or even by nickname as being present at Stanton Glenn on Jan. 18, 2021. Williams – whose credibility was called into substantial question at trial as he cast blame on

Stevenson to try to improve his own situation – never even tried to implicate Thomas by claiming to see him that day. Even if Thomas had previously driven the Volvo and potentially left behind DNA in it, no one identified him at trial as the driver on Jan. 18, 2021, and no one saw or could describe the person who drove the Volvo that day. Dodson's description of the driver's height conflicted with Sani's description of the person whom he usually saw driving the Volvo at Stanton Glenn, casting further reasonable doubt about Thomas's involvement. Thomas was also not identified at trial as a person shown in any of the video footage or in images found on social media, and there was no evidence that any of the supposedly distinctive clothing or shoes captured in those images was ever recovered from Thomas or his home. Furthermore, the evidence that a phone possibly associated with Thomas was in the general area of the shooting on Jan. 18, 2021 does not prove beyond a reasonable doubt that *Thomas himself* was the person using that phone that day.

Given all these questions and evidentiary holes, the court cannot say with fair assurance that the government's merely circumstantial case against Thomas would have persuaded the jury to reach the same verdicts absent Monturo's improperly unqualified expert testimony linking to the rifle that likely had Thomas's and Stevenson's DNA on it. This court should therefore vacate all of Thomas's convictions and remand for a new trial.

II. Three of Thomas's convictions must merge to avoid violating the Double Jeopardy Clause.

Pursuant to the Fifth Amendment to the U.S. Constitution, no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. amend. V. Thus, the "Double Jeopardy Clause compels merger of duplicative convictions for the same offense, so as to leave only a single sentence for that offense." *Nero v. United States*, 73 A.3d 153, 159 (D.C. 2013) (quoting *McCoy v. United States*, 890 A.2d 204, 216 (D.C. 2006)). This court reviews merger issues *de novo*. *Id*.; *Campos-Alvarez v. United States*, 16 A.3d 954, 962 (D.C. 2011).

In this case, Thomas's three convictions for possessing a firearm during a crime of violence (PFCV) must merge into one, because "they arise out of a defendant's uninterrupted possession of a single weapon during a single act of violence." *Geter*, 306 A.3d at 141 (quoting *Matthews v. United States*, 892 A.2d 1100, 1106 (D.C. 2006)); *West v. United States*, 866 A.2d 74, 84 (D.C. 2005) (merging counts of possession of a firearm during a crime of violence based on predicate convictions for first-degree murder and assault with intent to kill "when only one gun was used and the incidents were not separated by time and location"); *Nixon v. United States*, 730 A.2d 145, 152-53 (D.C. 1999). The entire shooting episode on Jan. 18, 2021 lasted less than twenty seconds and took place in one location. *See* Gov. Exh. 501-Z. Even if the shooter paused to reload during that

short time, *see* 1/16/24 Tr. 113 (Sani), there was no evidence at trial that Williams, Fye, and Allen were shot by separate guns, separate people, or in separate episodes of shooting. The court should therefore vacate two of Thomas's three PFCV convictions due to merger.[10]

CONCLUSION

For the foregoing reasons, Thomas respectfully requests that the court vacate his convictions and remand for a new trial.

Respectfully Submitted,

___/s/ Cecily E. Baskir_____
Cecily E. Baskir (D.C. Bar # 485923)
Law Office of Cecily E. Baskir, LLC
4800 Hampden Lane, Suite 200
Bethesda, MD 20814
(202) 540-0314
baskir@baskirlaw.com
Counsel to Appellant Vorreze R. Thomas

[10] Pursuant to D.C. App. R. 28(j), Thomas also respectfully adopts by reference the arguments made by coappellant Stevenson.

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing Redacted Brief electronically using the Appellate E-Filing system on Chrisellen Kolb, Esq., U.S. Attorney's Office, 601 D Street, NW, Washington, DC 20579, and on Brian Shefferman, Esq., 10325 Kensington Pkwy., #2, Kensington, MD 20895, on this 27th day of May, 2025.

/s/ Cecily E. Baskir
Cecily E. Baskir