DISTRICT OF COLUMBIA COURT OF APPEALS

Appeal No. 24-CF-496

Regular Calendar: December 18, 2025

Vorreze Ricardo Thomas,

Appellant

v.

United States of America,

Appellee

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

APPELLANT VORREZE RICARDO THOMAS'S REPLY BRIEF

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* Asterisk indicates authorities upon which Thomas chiefly relies.

ARGUMENT

In his opening brief, Vorreze Thomas argues that the trial court abused its discretion by permitting the government's firearm and toolmark expert to use unreliable and effectively unqualified testimony to link casings and bullets to the rifle recovered in this case. *See* Thomas Br. 31-34. Thomas argues that expert Chris Monturo testified to identifications that implicitly excluded all other possibilities, undermining supposedly qualifying language in multiple ways in contravention of this court's jurisprudence. *See id.* at 31-32. The trial court erroneously concluded otherwise, and its error was not harmless. *See id.* at 31-34. Thomas also argues that three of his convictions for possessing a firearm during a crime of violence (PFCV) must merge. *Id.* at 35-36.

In response, the government concedes that Thomas's PFCV convictions merge, Gov. Br. 49, and it has also moved to vacate Thomas's conviction for carrying a rifle. Appellee's Unopposed Mot. to Vacate Appellant Vorreze Thomas's Conviction for Carrying a Rifle or Shotgun, Sept. 29, 2025. It claims, however, that Monturo qualified his testimony appropriately in compliance with this court's case law, Gov. Br. 25-28, and that "extensive scientific research establish[ed] a foundation for Monturo's conclusion language." Gov. Br. 28. But its arguments fail to overcome the problems with Monturo's testimony linking the rifle to specific bullets and casings, and it additionally mischaracterizes the record and

relies on unfounded assumptions to advance its claims. Viewed properly, the trial court abused its discretion by admitting Monturo's testimony, and that error was not harmless as to Thomas. This court should therefore vacate all of Thomas's convictions and remand for a new trial on all but the charge of carrying a rifle.

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

First of all, the government's arguments on the merits of the toolmark expert issue should fail. In this jurisdiction, a firearm and toolmark expert may not give an opinion linking specific shell casings or bullets to a specific firearm in a manner that "*implicitly* exclud[es] all other possibilities," because "the research does not exist" to support that claim. *Geter v. United States*, 306 A.3d 126, 133, 134 (D.C. 2023) (emphasis in original) (citing *Gardner v. United States*, 140 A.3d 1172, 1184 (D.C. 2016), and *Williams v. United States*, 210 A.3d 734, 739-42 (D.C. 2019)); *see* Thomas Br. 27-29. Contrary to the government's claims, the language that the trial court approved for Monturo to use, that "there is extremely strong support for the proposition that the two toolmarks – i.e., the firearm and bullet/cartridge case – originated from the same source," implicitly excludes all other possibilities, does not adequately qualify Monturo's conclusions, and does not comply with this court's case law. *See* Thomas Br. 31-33; Stevenson R. 530 (PDF Vol. IV) (Order, p.7, Oct. 10, 2023); Stevenson R. 467 (PDF Vol. IV) (Gov. Opp. to Def's Mot. to Preclude or Limit Firearm and Toolmark Identification Testimony, p.6, May 9,

2023). Monturo then compounded the problem by testifying to even greater certainty in the correctness of his conclusions, undermining his supposedly qualifying statements. The trial court abused its discretion by admitting his unreliable testimony without sufficient reservation.

Despite its suggestion to the contrary, the government's approval of "extremely strong support" language for toolmark comparison in the Department of Justice's Uniform Language for Testimony and Reports (ULTR) does not change that. *See* Gov. Br. 16 n.13. The 2023 ULTR guidelines, developed by the agency that is prosecuting Thomas, permit firearms examiners to conclude that two toolmarks originated from the same source when the examiner infers "that the probability that the two toolmarks were made by different sources is so small that it is negligible," as long as they do not say that they are one hundred percent certain, that toolmark examinations are infallible, or that all other sources are excluded. *See* U.S. Dep't of Justice, *Uniform Language for Testimony and Reports for the Forensic Firearms/Toolmarks Discipline Pattern Examination* 2-3 (effective Aug. 16, 2023), https://www.justice.gov/d9/2023-5/firearms_pattern_examination_ultr_5.18.23.pdf. Similarly, the methodology followed by Monturo and other firearms examiners, known as the Association of Firearm and Tool Mark Examiners (AFTE) Theory of Identification, defines "sufficient agreement" between two toolmarks as agreement of characteristics to such an extent that it is a "practical impossibility"

that they came from different sources. Ass'n of Firearms and Tool Mark Examiners, *AFTE Theory of Identification as it Relates to Toolmarks*, https://afte.org/about-afte/afte-theory-of-identification-as-it-relates-to-toolmarks/ (last visited Nov. 30, 2025); *see* 1/17/24 Tr. 156; Stevenson R. 458-59, 504 (PDF Vol. IV) (Gov. Opp., pp. 8-9, 52, May 9, 2023). But a conclusion that two toolmarks are from the same source, with a practical impossibility or negligibly small probability that they are not, is no different than matching a specific bullet to a specific gun while explicitly excluding all other possibilities, and this court's jurisprudence cannot be read to prohibit "only express statements of certainty." *Williams*, 210 A.3d at 741; *see Geter*, 306 A.3d at 134.

The government tries to dodge this conclusion by inviting the court to abandon *Geter* and its predecessors based on hundreds of pages of submissions that were never subjected in this case to adversarial scrutiny in open court. But this case is not the right vehicle to revisit the court's prior conclusions about the reliability of toolmark comparison analysis. Unlike *United States v. Robert Green*, No. 2018 CF1 4356, 2024 D.C. Super. LEXIS 8 (D.C. Super. Ct. Apr. 1, 2024), another post-*Geter* case, the parties here did not probe the meaning or merits of the government's submissions in a *Daubert/Motorola* hearing before the trial court.

Moreover, *Geter* explained that "the core problem [with testimony linking specific shell casings to a specific gun] is not unfounded assertions of certainty, but

rather the absence of data to support the proposition that "every gun produces unique toolmarks such that a gun can be matched to a fired bullet or vice versa." *Geter*, 306 A.3d at 133 (internal quotation marks omitted). Yet the trial court declared the opposite in this case, interpreting the court's case law as being about the question of "how does the expert explain their ultimate conclusions and not about the underlying science." 1/10/24 Tr. 23. As a result of its misunderstanding, the trial court ruled that Monturo's proposed testimony complied with *Geter* without "relying on the evolved science." *Id.* This court should decline the government's invitation to rely now on that "evolved science" and instead should remand to the trial court to correct its errors in the first instance.

Even if the state of the science did justify the extremely strong support/ extremely weak support language promoted by the Department of Justice, Monturo showed the jury that he did not really believe the supposedly qualifying terminology, subverting it in his testimony more than once. For instance, at one point Monturo candidly testified that he concludes that two items "come from the same source" when he observes consistency and sufficient agreement in class and random characteristics. 1/17/24 Tr. 188. He then equated that unreserved conclusion with the government's prescribed language about "extremely strong [support] for the proposition that it was the same source," *id*., thereby communicating to the jury that he did not truly buy into the supposed

"qualification" of his opinion.[1] And while he gave lip service to the idea that he was not one hundred percent certain of his conclusions, he immediately undercut that disclaimer by stating that it was not feasible for him to examine "every single gun ever made." 1/17/24 Tr. 186. In other words, Monturo conveyed to the jury his belief that it was a practical impossibility for the bullets and casings he examined to come from different sources than the ones he identified.[2]

The government characterizes Monturo's testimony differently, claiming that he was emphasizing, not undermining, the limits placed on his testimony. *See* Gov.

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[1] Although the government claims that Monturo "immediately clarified" his omission of qualifying language, Gov. Br. 28, a reasonable jury more likely understood that Monturo initially omitted the "clarification" because he did not actually believe it. Monturo's subsequent agreement with the government that his testimony was "subject to the language we have on the Powerpoint," 1/17/24 Tr. 188, is much like the "just kidding" that follows a hurled insult - the sting remains regardless. *Cf.* Zoe Walker, *Just Kidding? Two Roles for the Concept of Joking in Political Speech*, 74 Phil. Q. 1138 (Oct. 2024), https://doi.org/10.1093/pq/pqad121 (arguing in part that "the disavowal of an utterance as 'only joking' or 'being sarcastic' not only fails to prevent it from influencing hearers, but can in some cases … give the initial utterance greater influence than if it had been uttered sincerely"); *Laing v. Federal Exp. Co*., 703 F.3d 713, 715, 718 (4th Cir. 2013) (listener did not believe speaker was only kidding, even though speaker said, "I'm just kidding").

[2] In *Abruquah v. State*, the Maryland Supreme Court suggested that "unqualified testimony of a match between a particular firearm and a particular crime scene bullet" was not reliable "without the ability to examine other bullets fired from other firearms *in the same production run* as the firearm under examination." *Abruquah v. State*, 296 A.3d 961, 966 (Md. 2023) (emphasis added). By referring to the whole universe of every gun ever made rather than similar guns made at the same time, Monturo communicated an essentially unqualified certainty.

Br. 26-27. But declaring to the jury that the only reason he was not one hundred percent certain of his conclusion is that he had not "looked at every single gun ever made," 1/17/24 Tr. 186, and then pairing that degree of certainty with language about how he concludes two items come from the same source when he observes what he observed in this case is not meaningfully different than expressing an unqualified match conclusion.

Moreover, the state of toolmark comparison analysis is not as clearcut as the government asserts. While not binding, *Green* and *Abruquah v. State*, 296 A.3d 961 (Md. 2023), are instructive here, because the trial courts in those cases did hold extensive hearings on the reliability of firearm/toolmark analysis, with opportunities to hear and probe evidence. After those hearings, neither Judge Okun nor the Maryland Supreme Court approved the language that Monturo used in this case. In *Green*, following an eleven-day hearing in which Judge Okun heard from seven expert witnesses, the judge accepted that Monturo could testify that relevant cartridge casings were *consistent* with particular firearms. *Green*, No. 2018 CF1 4356, 2024 D.C. Super. LEXIS 8, *67.[3] In light of the "tautological," subjective standards and lack of statistical benchmarks in the

[3] In *United States v. Qujuan Thomas*, No. 2018 CF1 12625 at 2-3 (D.C. Super. Ct. Aug. 2, 2022), Judge Okun similarly permitted Monturo to testify that relevant cartridge casings or bullets were consistent with being fired from a particular firearm after the government agreed to limit the expert testimony in that way. *See* Attachment (referencing similar limitations in *United States v. Kaevon Sutton*, No. 2018 CF1 9709 (D.C. Super. Ct. May 9, 2022).

firearms context, however, he refused to allow Monturo to use the "extremely strong support"/ "extremely weak support" verbal scale used by analysts in the DNA context. *Id.* at *62-64, *69. His findings dispute the government's claim here that the language from the DNA context "accurately conveys the probative value of an examiner's opinion" in the firearms context. Gov. Br. 41. Just because the government asserts the language is accurate does not make it so.

Similarly, in *Abruquah*, the Maryland Supreme Court concluded that the firearms examination methodology is generally reliable and helpful for identifying *consistent* or *inconsistent* markings, but it is not reliable for linking specific bullets to specific guns. *See Abruquah*, 296 A.3d at 996. Burying its brief treatment in a footnote, the government tries to discount *Abruquah* because "the only issue before the court was 'whether the AFTE Theory [of Identification] can reliably support an unqualified opinion that a particular firearm is the source of one or more particular bullets." Gov. Br. 41 n.20 (quoting *Abruquah*, 296 A.3d at 987). In characterizing the issue that way, the *Abruquah* court was explaining why its analysis of *Daubert* factors was not tied to the methodology of firearms identification more generally. In its specific analysis, the court concluded that the subjective standard for identifying "sufficient agreement"

> may not undermine the reliability of the methodology to support generalized testimony about the consistency of patterns and marks on ammunition fired from a particular firearm to crime scene bullets. It does not, however,

> support the reliability of the methodology to identify, without qualification, a particular crime scene bullet as having been fired from a particular firearm.

Abruquah, 296 A.3d at 992; *see also id.* at 995-96.

What is significant here is not only that, after looking at the results of two hearings with five expert witnesses testifying, the Maryland Supreme Court rejected expert testimony "linking a particular unknown bullet to a particular known firearm." *Id.* at 997. It is also that the Maryland court limited firearms identification testimony to "whether patterns and markings on 'unknown' bullets or cartridges are consistent or inconsistent with those on bullets or cartridges known to have been fired from a particular firearm." *Id.* However, as discussed above and in Thomas's opening brief, Monturo's testimony went beyond "generalized testimony about the consistency" of markings; it expressed his belief that the bullets and cartridge casings from Stanton Glenn came from particular firearms. *See* Thomas Br. 16-18, 31-32. It therefore ran afoul of *Abruquah's* limits as well as this court's.

Like the trial court, the government relies heavily on *United States v. Harris*, a 2020 decision by the U.S. District Court for the District of Columbia that approved Monturo's expert testimony with limitations. *United States v. Harris*, 502 F. Supp. 3d 28 (D.D.C. 2020); Gov. Br. 30, 31, 34; Stevenson R. 529-32 (PDF Vol. IV) (Order, pp. 6-9, Oct. 10, 2023). That reliance, however, is misplaced. Following the more recent and more in-depth *Daubert* hearing conducted in *Green*,

Judge Okun recognized that as of 2023, the science has *not* "advanced to the point where an examiner can testify that there is 'extremely strong support' for the proposition that the toolmarks at issue originated from the same source." *Green*, No. 2018 CF1 4356, 2024 D.C. Super. LEXIS 8 at *69. The district court in *Harris*, in contrast, heard testimony three years earlier in a single day from only a single government expert witness – and was not bound by case law from this court. *See Harris*, 502 F. Supp. 3d at 32. With this weaker foundation, this court should not rely on *Harris's* assessment of toolmark comparison analysis to upend the court's jurisprudence. Instead, the court should reject the government's and trial court's defense of Monturo's testimony.[4]

II. The improper toolmark comparison testimony was not harmless.

Moreover, the government's brief is replete with flawed factual assumptions unsupported by the record, and it consequently mischaracterizes the strength of the evidence against Thomas at trial. When viewed correctly, the government's case against Thomas was not nearly as strong as it claims, and the court cannot say with

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[4] In addition, the trial court did not analyze or make findings about whether Monturo himself "reliably applied" the AFTE methodology to the facts of this case, which was improper. *Willis v. United States*, No. 23-CF-196, 2025 D.C. App. LEXIS 386, *12 (D.C. Nov. 20, 2025). As this court recently explained in *Willis*, "A general application is not an adequate substitute" for the full analysis required by Fed. R. Evid. 702. *Id.* at *16. Nor is cross examination, *id.* at *14, and, like in *Willis*, the trial court's conclusion in this case "that the issues the Defendant raises are best handled on cross examination" is wrong. Stevenson R. 530 (PDF Vol. IV) (Order, p.7, Oct. 10, 2023).

fair assurance that Monturo's testimony did not substantially sway the jury's verdict. *Gardner*, 140 A.3d at 1183 (quoting *Kotteakos v. United States*, 328 U.S. 750, 765 (1946)).

To begin with, the government misleadingly claims over and over that Thomas engaged in various actions at Stanton Glenn, although neither Troy Williams nor any other witness at trial ever identified Thomas in the Stanton Glenn surveillance videos or testified to seeing Thomas there on Jan. 18, 2021. *See* Gov. Br. 5, 6, 14-15, 44. Nor did any witness at trial ever identify Thomas in the surveillance videos from the Shell gas station, Capital One bank driveway, Safeway parking lot, or Metrobus, yet the government's brief persistently attributes actions in those videos to Thomas or to "appellants." *See* Gov. Br. 5, 6, 8, 9, 44-45.

The government also wrongly states that surveillance video from Stanton Glenn shows Stevenson driving and Thomas in the front-passenger seat of the green Volvo as it drove away. Gov. Br. 6 (citing Gov. Exh. 503, 505). On the contrary, the person getting into the passenger seat appears to be wearing clothing that the government associates with Stevenson, not Thomas. *See* Gov. Br. 5 (describing Stevenson's clothing as a "blue puffer jacket, red-striped pants, and a balaclava"); *compare* Gov. Br. 42 (claiming that "The video shows Stevenson getting into the passenger side of the green Volvo approximately 30 seconds before

the shooting," *with* Gov. Br. 6 (asserting that Thomas entered the passenger seat). The person seen getting into the driver's side of the car was not identified by any witness as Thomas, and Williams – who testified that he saw *Stevenson* at Stanton Glenn that morning – never said that he saw Stevenson's nephew or identified Thomas as having been present before or during the shooting.

The government makes other unsupported and misleading assertions. For example, it misleadingly asserts that Thomas "typically drove" the green Volvo, Gov. Br. 6, yet the transcript testimony to which it cites does not support that characterization. Although Williams testified that he had seen "Tay's" nephew (Thomas) driving the Volvo in October, about three months before the shooting, he did not say that Thomas "typically" drove the vehicle. *See* 1/22/24 Tr. 196. The government also asserts that "Lil V" was a nickname for Thomas, but the sources its cites do not support that assertion. Gov. Br. 5; *see also* Gov. Br. 12 n.12 (assuming "lil v" is Thomas). Contrary to the government's claim, there was no testimony or other direct evidence at trial that Thomas used the nickname "Lil V." The government assumes that Thomas possessed a particular phone in the area of Stanton Glenn, *see* Gov. Br. 14-15, 45, and it mischaracterizes its DNA expert's testimony, claiming that "Thomas's DNA matched DNA from the recovered rifle." Gov. Br. 44. At no point at trial, however, did the DNA expert ever testify to a

"match." *See generally* 1/24/24 Tr. 68-183; 1/25/24 Tr. 24-56 (DNA expert testimony).

Despite the flawed impression left by these mischaracterizations, there were more holes in the government's case than it acknowledges. As noted above, and as the government concedes, Gov. Br. 44, no one at trial identified Thomas as being at the Shell gas station, at Stanton Glenn, or in the Volvo as either the driver or the passenger on Jan. 18, 2021. Unlike Stevenson, Thomas was not identified by name or nickname as being present at Stanton Glenn that day.

In addition, neither person whom Kea Dodson saw exiting the Volvo after it crashed was consistent with Thomas. As the government acknowledges, Dodson described the passenger with a long gun who exited the crashed car as someone with "long dreads," Gov. Br. 8, yet it admitted at trial arrest photos of Thomas showing very short hair with no dreads at all. *See* Gov. Exh. 497-98. Dodson also said that the driver of the crashed car was noticeably taller than the passenger, 1/17/24 Tr. 32-33, which was inconsistent with Special Police Officer Adjawo Sani's estimate that the person who usually drove that Volvo (whom the government claims was Thomas) was about 5'3" or 5'4" tall. 1/16/24 Tr. 125. The government tries to minimize this problem by implying that Dodson's second-floor vantage point and five- to ten-second period of observation impaired the accuracy of her description. *See* Gov. Br. 45. But the government's implication that she

could not from the second floor determine the relative heights of the two men who got out of the crashed car is unfounded, and neither that nor the length of her observation is a valid basis to discredit her identification. *Cf. Towles v. United States*, 428 A.2d 836, 839, 844-45 (D.C. 1984) (rejecting challenge to eyewitness identification where witness "had good view of the assailants for about ten seconds as they passed in front of him").

Furthermore, though the government highlights the cartridge that police found in Aug. 2020 (more than four months before the shooting in this case) near an address where Thomas (or someone using the Instagram account attributed to him) had invited someone to a party, *see* Gov. Br. 10 n.11, that link is so circumstantial that it lacks real probative value of Thomas's involvement. The DNA found on objects in the crashed Volvo similarly lacks much value, as Thomas's DNA could reasonably have transferred when he drove the car in Oct. 2020. *See* 1/24/24 Tr. 82-83 (government DNA expert testifying that DNA does not change but may degrade over years); 1/25/24 Tr. 35 (expert agreeing that "there's no way of really knowing how long a sample would last generally"). The government also implies that Thomas must have been the person seen wearing a black mask at the gas station, because his DNA is consistent with DNA found on a black mask in the crashed Volvo. Gov. Br. 44. In Jan. 2021, however, COVID-19 was still a serious concern in the District, which had an indoor mask mandate at the

time, and it was not unusual to see people wearing black face masks. *See* Julie Zauzmer Weil et al, *D.C. lifts mask mandate Monday for fully vaccinated people*, Wash. Post, May 17, 2021, https://www.washingtonpost.com/local/coronavirus-dc-maryland-virginia/2021/05/17/11c446d0-b719-11eb-a6b1-81296da0339b_story.html. Given all these weaknesses, the court cannot say with fair assurance that without Monturo's improper testimony linking the shooting to the rifle, the jury would have reached the same verdicts.

CONCLUSION

For the foregoing reasons and those set forth in Thomas's opening brief, Thomas respectfully requests that the court vacate his convictions and remand for a new trial on all of his convictions except the one for carrying a rifle. In the alternative, Thomas requests that the court vacate two of his PFCV convictions. Thomas also does not object to the government's motion to vacate his conviction for carrying a rifle and requests that the court grant that motion.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing Brief electronically using the Appellate E-Filing system on Chrisellen R. Kolb, Esq., and Mary Fleming, 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 3rd day of December, 2025.

/s/ Cecily E. Baskir
Cecily E. Baskir

ATTACHMENT

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

UNITED STATES	*	
	*	**Case Nos. 2018 CF1 12625**
v.	*	**2018 CF1 12628**
	*	**2018 CF1 15713**
QUJUAN THOMAS	*	**2019 CF1 7037**
QUENTIN MICHALS	*	**2018 CF1 18130**
GREGORY TAYLOR	*	**2018 CF1 17030**
ISAIAH MURCHISON	*	**2018 CF1 16933**
DARRISE JEFFERS	*	**2019 CF1 7037**
MARQUELL COBBS	*	**Hon. Robert Okun**
MARK PRICE	*	**Trials: 2-6-23 and**
ANTONIO MURCHISON	*	**5-24-23**
	*	
Defendants.	*	

ORDER

Defendant Thomas' Motion to Exclude or, in the Alternative, Limit the Testimony of Firearm and Toolmark Examiner Chris Monturo, which has been joined by Defendants Michals, Taylor and Isaiah Murchison (hereafter "Defendants' Motion to Exclude"), is pending before the Court.[1] For the reasons set forth below, Defendants' Motion to Exclude will be granted in part, so that Mr. Monturo may testify in a manner consistent with his testimony at the trial of co-defendants Saquan Williams and Quincy Garvin.

RELEVANT PROCEDURAL HISTORY

On February 24, 2020, the Government filed an expert notice for its firearms expert, Chris Monturo. In this notice, the Government proffered that Mr. Monturo would testify about eleven separate CCNs, and would opine, without qualification, that particular cartridge casings were fired from particular firearms. On February 17, 2022, the Government filed a supplemental expert notice. In this supplemental notice, the Government proffered that Mr. Monturo would testify

[1] The Court is issuing an order for all eight co-defendants currently scheduled for trial in 2023, because all of these defendants had a June 24, 2022 deadline for filing any motion to exclude or limit an expert's testimony.

about five different CCNs and would opine that particular cartridge casings were consistent with being fired from particular firearms based on the individual characteristics he observed.

Defendant Thomas and his co-defendants objected to the proposed testimony of Mr. Monturo as being inconsistent with the relevant case law from the D.C. Court of Appeals. In response to the defense objections, the Government agreed to limit the proposed testimony of Mr. Monturo in the following manner:

1) Where Mr. Monturo has observed consistency in class characteristics and sufficient agreement in individual characteristics, he would testify that the relevant cartridge casings are consistent with having been fired from the same firearm and/or that the relevant cartridge casings are consistent with having been fired from a particular firearm;
2) Mr. Monturo would make clear that his opinion is based on a determination of class characteristic agreement, and his subjective determination of sufficient agreement in individual characteristics or random imperfections;
3) Mr. Monturo would state that his conclusions are not based on a statistically derived or verified measure and that there currently is not a generally accepted statistical method for conveying the weight of an identification; and
4) Mr. Monturo would not state that his conclusions are to a 100% certainty or based on a comparison to all other firearms or toolmarks.

The Government then indicated that the defense did not agree to these limitations and instead stated that Mr. Monturo should only be allowed to testify about the class characteristics of the ammunition he examined. The Government argued that Defendant's proposed limitations on Mr. Monturo's testimony go beyond the relevant case law from the Court of Appeals, Judge Edelman's opinion in *Tibbs v. United States*, 2016 CF1 19431, Mr. Monturo's testimony in *Tibbs*, and the relevant science.

The Court ultimately agreed with the Government's position and limited Mr. Monturo's testimony at the trial of Co-Defendants Williams and Garvin so that it was offered in a manner consistent with the Government's proposal.

On June 24, 2022, Defendant Thomas filed his Motion to Exclude, arguing that Mr. Monturo should be excluded from testifying because his proposed testimony is not sufficiently reliable to be admissible at trial. In the alternative, Defendant Thomas argued that Mr. Monturo's testimony should be limited to testifying that particular items cannot be excluded from having been fired from a particular firearm. Defendant Thomas requested a hearing on his motion.

On July 20, 2022, the Government filed its Opposition to Defendant Thomas' Motion to Exclude. In its Opposition, the Government argued that Mr. Monturo's proposed testimony was admissible and that the limitations proposed by Defendant Thomas exceeded the limitations imposed by the Court of Appeals. The Government also noted that it would ensure that Mr. Monturo testified in a manner consistent with the Court's May 9, 2022 order in *United States v. Kaevon Sutton*, 2018 CF1 9709, where the Court required the Government's firearms expert to testify in a manner consistent with Mr. Monturo's proposed testimony in these cases.

ANALYSIS

The case law concerning the admission of testimony from a firearm or toolmark expert has evolved over the past several years, but the Court of Appeals' two most recent cases are very informative. In *Gardner v. United States*, 140 A.3d 1172 (D.C. 2016), the Court of Appeals held that a firearm 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." *Id.* at 1177. The Court further noted that its holding was limited "in that it allows toolmark experts to offer an opinion that a bullet or shell casing was fired by a particular firearm, but it does not permit them to do so with absolute certainty," and noted that it had doubts as to whether toolmark experts should be allowed to state their opinions "with a reasonable degree of certainty." *Id.* at 1184, n.19.

In *Williams v. United States*, 210 A.3d 734 (D.C. 2019), the Court of Appeals reiterated that it is error to allow a firearm and toolmark 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." *Id.* at 743. The Court of Appeals did not resolve the Government's argument that *Gardner* only prohibited certainty statements and otherwise continued to authorize opinion testimony identifying a specific bullet as having been fired by a specific gun, because the examiner in that case had given a certainty statement. *Id.* at 741-42. However, the Court noted that the Government's argument was "difficult to square" with the Court's holding in *Gardner* that the trial court had erred by admitting the examiner's unqualified opinion that a specific gun was the murder weapon. *Id.* at 739. The Court also noted that its opinion did "not limit firearms and toolmark examiners from making other observations about the ballistics evidence recovered in a particular case," because those observations were not at issue in the case. *Id.* at 743, n.19.

In addition, two relatively recent trial court decisions are informative. In *Tibbs*, Judge Edelman, after conducting an extensive evidentiary hearing, precluded the government from eliciting testimony identifying the recovered firearm "as the source of the recovered cartridge casing," and instead ruled that the government's expert must 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." 2019 D.C. Super LEXIS 9 at *3.

By contrast, in *United States v. Harris*, 502 F.Supp.3d 28 (D.D.C. 2020), Judge Contreras disagreed with Judge Edelman's analysis, after conducting an evidentiary hearing, and held that the Government's firearms and toolmark expert could testify that casings were fired from the same firearm when all class characteristics were in agreement and "the quality and quantity of

corresponding individual characteristics is such that the examiner would not expect to find that same combination of individual characteristics repeated in another source and has found insufficient disagreement of individual characteristics to conclude that they originated from different sources." *Id.* at 45. Judge Contreras also noted with approval that the Government had agreed that its expert would not use terms such as "match" or state his opinion with any level of statistical or scientific certainty or to the "exclusion of all other firearms." *Id.* at 44.

APPLICATION OF THE RELEVANT LEGAL STANDARDS

Although the issue is not free from doubt, the Court finds that the legal standards set forth above preclude the Government's firearm expert from conclusively stating that the various pieces of ammunition that are at issue in this case were fired from a particular firearm. While the Court acknowledges that the Government's expert will not testify as to any level of scientific certainty or use unqualified terms such as "match," the Court nonetheless believes that opinion testimony that ammunition was fired from a particular firearm, without any qualifications or limitations on that opinion, is inconsistent with *Williams,* where the Court noted that the Government's argument on appeal was "difficult to square" with the Court's holding in *Gardner* that the trial court had erred by admitting the examiner's unqualified opinion that a specific gun was the murder weapon. 210 A.3d at 739. Thus, the Court will preclude the Government's expert from stating without any qualifications or limitations that the ammunition at issue was fired from a particular firearm, and instead will limit the examiner's opinion to a conclusion that the ammunition at issue is consistent with being fired from a particular firearm.

However, the Court does not agree with the other limitations proposed by Defendant – namely, that Mr. Monturo be precluded from testifying entirely, or, in the alternative, that he be limited to testifying that particular ammunition cannot be excluded from having been fired from a

particular firearm. Such limitations go beyond the limitations set forth in *Williams* and *Gardner*, and even beyond the limitations imposed by Judge Edelman in *Tibbs*, because the Government's firearms expert in *Tibbs* was allowed to testify about his observations concerning individual ammunition characteristics such as the similarity in striations.

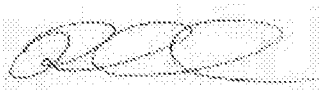
Finally, the Court will resolve Defendant Thomas' Motion without a hearing. Indeed, the Court is not required to conduct a pre-trial hearing on the admissibility of Mr. Monturo's testimony given the recent guidance on the admissibility of such testimony from the Court of Appeals, and because this Court reviewed the transcript of Mr. Monturo's testimony in the *Tibbs* case and personally observed Mr. Monturo's testimony in the trial of Co-Defendants Williams and Garvin. *See, e.g., Lewis v. United States*, 263 A.3d 1049, 1060 (D.C. 2021) (court has the discretion to "avoid unnecessary reliability proceedings. Rule 702 and *Daubert* do not require a pretrial evidentiary hearing as long as the trial court has a sufficient evidentiary basis without it for its decision."); *Id.* at 1061 (court had a sufficient basis to make threshold reliability determination without pre-trial evidentiary hearing where it had reviewed the transcript of the expert's testimony at an earlier trial).

Therefore, it is this 2nd day of August, 2022, hereby

ORDERED that Defendant Thomas' Motion to Exclude or, in the Alternative, Limit the Testimony of Firearm and Toolmark Examiner Chris Monturo is **GRANTED IN PART AND DENIED IN PART**; and it is

ORDERED that the Government may present expert testimony on firearms identification in a manner that is consistent with the limitations set forth at page 2 of this Order.

[copies and signature on the following page]



Judge Robert Okun
(Signed in Chambers)

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