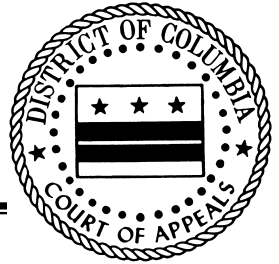


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**DISTRICT OF COLUMBIA
COURT OF APPEALS**

DEREK BRIAN TURNER,

Appellant,

v.

UNITED STATES,

Appellee.

On Appeal from the United States Superior Court for the District of Columbia
Criminal Division, No. 2017 CF1 015352
Honorable Marisa Demeo

BRIEF OF APPELLANT DEREK BRIAN TURNER

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February 25, 2025

RULE 28(a)(2)(A) STATEMENT

The parties to this appeal are Derek Turner and the United States. Mr. Turner was represented at trial by Michael Madden and Stephen Logerfo and is currently represented on appeal by appointed counsel Tobias Loss-Eaton, along with Madeleine Joseph, Scott Lowder, Abigail Scheper, and Susan Whaley of Sidley Austin LLP. The United States was represented at trial by Michael Truscott and Kevin Flynn. There were no intervenors or amici curiae at trial, and there are none expected on appeal.

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STATEMENT OF JURISDICTION

Mr. Turner, by and through undersigned counsel, appeals from the final judgments of conviction and sentences in 2017-CF1-015352.

REQUEST FOR ORAL ARGUMENT

This case raises legal questions about the improper admission of evidence obtained through searches and seizures that violate the Fourth Amendment. It also involves an extensive record, which has generated nearly 7,500 pages of transcripts. In light of this, Appellant Derek Turner believes that oral argument would substantially aid the Court, and he respectfully requests oral argument.

ISSUES PRESENTED

I. Whether Mr. Turner's Fourth Amendment rights were violated when (a) the trial court admitted evidence collected from a search of Mr. Turner's cell phones premised on non-particular and overbroad warrants and (b) the admission of the evidence prejudiced Mr. Turner.

II. Whether Mr. Turner's Fourth Amendment rights were violated when (a) the trial court admitted evidence collected as a result of a warrantless seizure of Mr. Turner's car and (b) the admission of the evidence prejudiced Mr. Turner.

III. Whether the government presented sufficient evidence to sustain the convictions against Mr. Turner for the murder of DeVin Hall on January 7, 2017; the assaults of Andrew McPhatter, Raheem Osborne, and Joseph Tyler on February

17, 2017; the murder of Andrew McPhatter on March 1, 2017; and the conspiracy and weapons charges associated with each.

IV. Whether a conviction for obstruction of “the due administration of justice in any official proceeding,” in violation of D.C. Code § 22-722(a)(6), may be based on a proceeding in the U.S. District Court for the District of Columbia when the statute defines “official proceeding” to cover only cases in the D.C. Superior Court and this Court.

INTRODUCTION

The government brought 39 charges against Derek Turner relating to a spate of shootings in Southeast in late 2016 and early 2017. Over the course of the three-month trial, prosecutors told the jury that a feud between two Anacostia neighborhoods—Wahler Place and Trenton Park—had prompted the wave of violence. The trial judge, along with prosecutors themselves, repeatedly cautioned the jury that there was no evidence that Mr. Turner was involved in much of the violence described in detail by the government’s 80 trial witnesses. Prosecutors theorized that Mr. Turner was associated with the Wahler Place crew, that he was embroiled in its dispute with Trenton Park, and that the violence motivated Mr. Turner to participate in multiple shootings targeting Trenton Park in early 2017. Three incidents that year gave rise to the charges against Mr. Turner for two counts

of first degree murder, several charges for assault with intent to kill while armed, and multiple weapons charges.

After deliberating for over two weeks, the jury ultimately convicted Mr. Turner on only 22 counts. Those convictions should be reversed, for overlapping reasons.

Mr. Turner's convictions were based on evidence collected in violation of the Fourth Amendment. The 10 millimeter gun was recovered through an unconstitutional warrantless seizure of Mr. Turner's Lexus, and evidence relating to the gun should not have been admitted at trial. Nor should the trial court have admitted evidence collected from two cell phones belonging to Mr. Turner. Those phones were searched based on sweeping warrants—seeking access to essentially all of Mr. Turner's phone data—that lacked the particularity that the Fourth Amendment's Warrants Clause requires. Admitting the firearm and the cell phone data prejudiced Mr. Turner, who would not otherwise have been linked to Wahler Place or to the violence in early 2017.

Alternatively, the evidence was insufficient to convict Mr. Turner for the charges relating to the incidents in January, February, and March 2017. Neither eyewitness identifications nor forensic evidence tied Mr. Turner to these shootings. So prosecutors attempted to link Mr. Turner to the incidents based largely on sightings of a white Lexus and casings from a 10 millimeter handgun at the crime

scenes. But trial testimony established that members of the Wahler Place crew other than Mr. Turner had access to his Lexus, including one Wahler Place associate caught on video entering the car's passenger side shortly before the police seized the Lexus (without a warrant) and recovered a 10 millimeter gun in that glove compartment. On this evidence, the jury's guilty verdicts rested on mere speculation, rather than a reasonable inference of guilt.

Finally, Mr. Turner's charges for obstructing an "official proceeding" and for conspiring with Ronnika Jennings and Duan Hill to obstruct an "official proceeding" must be reversed because the charged conduct does not violate the charged statute. *See* D.C. Code § 22-722(a)(6). Mr. Turner and his co-defendants were charged with "corruptly . . . imped[ing] . . . the due administration of justice" in a case in federal district court. But a federal case is not an "official proceeding" within the meaning of the charged statute, which expressly defines that phrase to cover only cases in the Superior Court and this Court. *See id.* § 22-721(1), (4). Mr. Turner's obstruction-related convictions cannot stand.

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

On March 11, 2017, police arrested Derek Turner on a charge of firearm possession. R.84 at 5.¹ But soon after, the government would bring a myriad of charges against Mr. Turner and several co-defendants for various crimes relating to an alleged feud between two crews in Anacostia—one associated with Wahler Place and the other with Trenton Park. The government went to great lengths at trial to detail the crews' beef. But ultimately, Mr. Turner's convictions, and the operative facts of his case, relate to three discrete periods in early 2017: January 7, February 17, and the week spanning March 1 through 8.

A. January 7, 2017: The Murder of DeVin Hall

DeVin Hall was shot on January 7, 2017. Tr. 9/28/22, 195:25–196:4; Tr. 11/17/22, 68:6–9. At trial, the government presented evidence that there were casings from a 10 millimeter gun found at the scene. Tr. 9/29/22, 80:11–20, 81:15 18; Tr. 11/17/22, 68:7–9. Forensic examination of the scene also revealed casings from another gun. Tr. 9/29/22, 81:19–22; Tr. 11/17/22, 68:20–22.

There were two witnesses—Vernicka Banks and Sharon Mouton—who observed the incident through windows. Tr. 10/11/22, 140:6–141:3; Tr. 10/19/22,

¹ Citations to R. [Index Number] at [Page Number], are to the Record on Appeal. Trial court transcripts are cited by Tr. month/date/year, page: line number(s).

25:3–28:8; Tr. 11/17/22, 68:11–13. Their testimony differed in key ways: Ms. Banks testified that there was one shooter; Ms. Mouton, on the other hand, testified that there were two. Tr. 10/11/22, 150:19–21; Tr. 10/19/22, 28:1–8; Tr. 11/17/22, 68:18–20. Ms. Mouton also testified that shooters were positioned by the driver’s side of the car, and that one was shooting into the back of Mr. Hall’s car. Tr. 10/19/22, 32:6–10; Tr. 11/17/22, 69:5–16. However, pictures from the crime scene showed no gunshots in the back of Mr. Hall’s car. Tr. 11/17/22, 69:5–16. The witnesses never identified Mr. Turner as the perpetrator and provided varying descriptions of the shooter or shooters. Tr. 10/11/22, 148:16–149:17; Tr. 10/19/22, 28:25–29:17; Tr. 11/17/22, 68:11–15. Ms. Banks told the 911 dispatcher and investigating officer that she saw a white Lexus at the scene. Tr. 10/12/22, 152:1–4; Tr. 11/17/22, 68:15–17.

At the time of the shooting, a GPS device that Mr. Turner was required to wear, as a term of probation placed him at home—not at the scene of the Hall shooting. Tr. 10/12/22, 118:10–15; Tr. 11/17/22, 71:2–7. There is no DNA evidence, no fingerprint evidence, and no video footage connecting Mr. Turner to this incident. Tr. 11/17/22, 70:22–25.

B. February 17, 2017: The Assaults of Andrew McPhatter, Raheem Osborne, and Joseph Tyler

On February 17, 2017, Andrew McPhatter was the victim of a shooting that occurred in a parking lot on 6th Street Southeast. Tr. 11/3/22, 43:7–19, Tr. 11/16/22, 33:8–10; Tr. 11/17/22, 75:21–76:6. After Mr. McPhatter got out of his car, two

people began shooting at him. Tr. 11/3/22, 124:14–17; Tr. 11/16/22, 33:10–16. Mr. McPhatter was not injured, but prosecutors claimed that two other individuals were: Raheem Osborne and Joseph Tyler. Tr. 11/3/22, 118:23–119:17; 11/08/22, 13:19–14:7; Tr. 11/16/22, 33:20–23. Mr. Tyler was unable to provide an identification of the shooter. Tr. 10/25/22, 181:7–12; Tr. 11/16/22, 34:25–35:1. Mr. Osborne was unable to name the shooter, but described him as having long dreadlocks and wearing a mask and dark colored shoes. Tr. 11/03/22, 133:5–134:19, 179:11–21; Tr. 11/16/22, 35:22–23.

Casings from four types of bullets were found at the scene: 9 millimeter; 10 millimeter; 40-caliber; and 45-caliber. Tr. 10/24/22, 188:15–25; Tr. 11/17/22, 76:6–11. Mr. Osborne stated that the shooter got out of a “Honda-style” “joint” “with paper tags,” and that, prior to the shooting, he believed he and Mr. McPhatter were being followed by a Honda Accord. Tr. 11/3/22, 124:14–20, 179:18–21, 180:13–17; Tr. 11/16/22, 35:25–36:1; Tr. 11/17/22, 76:16–21.

C. March 1, 2017 through March 8, 2017: The Murder of Andrew McPhatter and Assault of Derek Turner

Mr. McPhatter was shot a second time on March 1, 2017 near the intersection of Wheeler Road and Upsal Street in Southeast. Tr. 10/25/22, 23:2–14; Tr. 11/16/22, 41:10. Security footage captured a “whi[t]e car speeding from the scene,” which the government argued belonged to Mr. Turner. Tr. 11/2/22, 207:3–6; Tr. 11/3/22, 34:5–36:21; Tr. 11/16/22, 42:1–3. Casings from a 10 millimeter gun were found at the

scene. Tr. 9/29/22, 100:5–15; Tr. 11/17/22, 25:1–4. Mr. McPhatter would die that same week due to the injuries he sustained. Tr. 10/26/22, 20:5–9.

Also that week, Mr. Turner was the victim of a drive-by shooting on the 4400 block of South Capitol Street in Southwest, where the Court Services and Offender Supervision Agency (CSOSA) has an office. R.37 at 2; Tr. 7/5/22, 9:12-20, 10:25–11:3. Just before 3:00 pm on March 8, two people in a Ford Explorer drove down the block and began shooting in the direction “of Mr. Turner, his vehicle and the CSOSA building.” Tr. 7/5/22, 11:13–15. At the time of the shooting, Mr. Turner was walking from the CSOSA, where he had met with his probation officer, to his Lexus. Tr. 7/5/22, 11:10–13. Mr. Turner was accompanied to his probation appointment by Arman Johnson, who was sitting in the Lexus at the time of the shooting. Tr. 9/27/22, 32:17–23; 11/17/22, 38:25–39:5. In total, four cars and a nearby building were struck by gunfire. Tr. 7/5/22, 12:6–7.

When detectives arrived at the scene, they sought consent from the victims to search their vehicles to obtain ballistic evidence. Tr. 7/5/22, 12:7–10. Initially, all victims, including Mr. Turner, consented to the search. Tr. 7/5/22, 12:10–13. However, before a search of his vehicle occurred, Mr. Turner withdrew his consent and asked to speak to an attorney. Tr. 7/5/22, 12:13–15; 13:8–11. He also communicated to detectives that “he didn’t know what happened at the time of the shooting.” Tr. 7/5/22, 12:14–15. After Mr. Turner withdrew his consent to a search,

the police towed his Lexus to the Department of Forensic Science's (DFS) garage—without first obtaining a warrant. Tr. 7/5/22, 13:25–14:2. There is also no indication that Mr. Turner was able to speak with an attorney.

Police testified that the purpose of towing the vehicle was “twofold”: first, “to collect the physical evidence, the ballistic evidence from the vehicle”; second, to search for “evidence inside his vehicle to assist in identifying a motive for the shooting.” Tr. 7/5/22, 23:1–11. They also hoped to identify a woman who had come to the car to retrieve items from it following the shooting. Tr. 7/5/22, 23:12–15. Police did not seize the other three vehicles involved in the shooting, which were searched at the scene for ballistic evidence. Tr. 7/5/22, 41:17–22.

Police waited until the following day to obtain a search warrant for the Lexus. Tr. 7/15/22, 24:3–4. According to trial testimony, the police did not obtain a warrant to search the car at the scene of the crime because the incident “wouldn’t necessarily qualify as an exigent reason or emergency reason to obtain a search warrant after the normal hours of the court.” Tr. 7/5/22, 24:1–3. After obtaining warrants to search Mr. Turner’s car, a DFS agent discovered a 10 millimeter handgun in the car’s glove box. Tr. 11/3/22, 37:18–24; Tr. 11/16/22, 38:19–22; Tr. 11/17/22, 25:12–15.

A subsequent forensic analysis looking for DNA and fingerprints on the gun was inconclusive. Tr. 11/2/22, 43:9–22; Tr. 11/17/22, 40:3–8. That is, technicians were not able to definitively link Mr. Turner’s DNA or fingerprints to the gun.

D. The Subsequent Arrest of Mr. Turner

Police arrested Mr. Turner on firearm possession charges on March 11, 2017 in a hotel room. R.61 at 2. Incident to the arrest, police searched the hotel room and seized two cell phones. *See* R.84 at 5.

On September 14, 2017, a Metropolitan Police Department Detective, Jeffrey Weber, submitted two search warrant requests to search the contents of the phones.² *Id.* at 7. The September 2017 warrants sought access to everything on both phones “relat[ing] to the suspected feud between Wahler/Wheeler and [the] Trenton Park neighborhoods.” R.79, Attachment B at 2. The information sought included: subscriber information, call logs, text messages, emails, search history, social media accounts, photographs, GPS location data, information relating to Mr. Turner and his associates’ whereabouts, communications relating to the offenses, communications with suspected associates, and the identity of Turner’s associates. *Id.*, Attachment A at 9–14, Attachment B at 2–3. As support for these warrant applications, Detective Weber cited his “training and experience” and longstanding knowledge that people who commit crimes often use their cell phones. *Id.*, Attachment A at 11.

² Detective Weber initially obtained warrants for the devices on March 11, 2017, but no data from the phones themselves was obtained as a result of the searches based on these warrants. *See* R.84 at 6.

These warrants to search Mr. Turner's phones were approved, and the government relied on the cell phone evidence heavily at trial. *See, e.g.*, Tr. 11/16/22, 18:22–23; 19:11–16, 38:9–12, 47:25–48:4, 56:19–20, 66:10–12, 70:16–20.

E. The Obstruction-Related Charges

After his arrest, Mr. Turner was charged in the U.S. District Court for the District of Columbia with the federal crime of unlawful possession of a firearm while being a convicted felon. *See United States v. Turner*, No. 17-cr-055 (D.D.C. dismissed Sept. 11 2017). The government's superseding indictment in this case charged Mr. Turner and three other individuals, Ronnika Jennings, Duan Hill, and Marshay Hazelwood, with obstructing that federal case and with conspiracy to do the same.³ The theory laid out in the indictment and at trial was that these defendants entered a conspiracy to obstruct the federal case by having Ms. Hazelwood claim ownership of the firearm at issue—the 10 millimeter weapon found in the Lexus and allegedly involved in the shootings.

II. PROCEDURAL BACKGROUND

A. Mr. Turner Pleads Not Guilty

Mr. Turner entered pleas of not guilty to all 39 charges against him. *See* Tr. 7/18/18, 3:24–5:21; Tr. 4/5/19, 12:1–2. On February 21, 2020, the parties

³ Ms. Hazelwood later died, and the government ultimately proceeded to trial only against Mr. Turner, Ms. Jennings, and Mr. Hill.

participated in a trial readiness hearing. Then, due to the COVID-19 pandemic, proceedings ground to a halt for almost two years. Proceedings reconvened on November 22, 2021.

B. Motion to Suppress Cell Phone Evidence

Before trial, Mr. Turner moved to suppress the evidence extracted from his cell phones under the Fourth Amendment. Mr. Turner's motion invoked *Burns v. United States*, 235 A.3d 758 (D.C. 2020), in which this Court held that the Amendment's Warrant Clause requires a cellphone warrant to "specify the particular items of evidence to be searched for and seized from the phone and be strictly limited to the time period and information or other data for which probable cause has been properly established . . . in the warrant's supporting affidavit." *Id.* at 773. Based on this ruling, Mr. Turner argued that the search warrants for his cell phones were overbroad, lacked sufficient particularity, and were unsupported by probable cause. R.61; R.77. Mr. Turner also argued that the good faith exception to the exclusionary rule should not apply. *Id.*

The trial court denied Mr. Turner's motion and upheld the validity of the warrants. The court distinguished *Burns* on the ground that here, unlike in that case, there was a body of circumstantial evidence suggesting that Mr. Turner was involved in the crimes at the time the September 2017 search warrants were issued for his

phones.⁴ R.84 at 9. In addition, the court rejected Mr. Turner’s argument that Detective Weber’s blanket reliance on his “training and experience” for assertions about what would be found on the phones was insufficient to show probable cause.

The court further held that the warrants were sufficiently particular. The September 2017 warrants described “a wide-ranging set of events, spanning months,” which, the court concluded, justified their breadth. *Id.* at 13–14. The court acknowledged that the warrants did not specify the type of data to be collected or a specific date range, but nevertheless held that their focus on records related to the “feud between Wahler/Wheeler and [the] Trenton Park neighborhoods” satisfied the requirements of *Burns* and the Fourth Amendment. *Id.* at 14.

Finally, the court also held that even if the warrants violated the Fourth Amendment, the good faith exception to the exclusionary rule should apply. *Id.* at 15. At the time the warrants were issued in 2017, *Burns* had not yet been decided and “a number of other courts had . . . upheld cellphone search warrants issued in analogous circumstances.” *Id.* at 16 (citing *Abney v. United States*, 273 A.3d 852, 863–64 (D.C. 2022)). Finding Mr. Turner’s case similar to *Abney*, where this Court applied the good faith exception to a pre-*Burns* warrant, the court determined that it

⁴ The trial court denied Mr. Turner’s motion to suppress evidence from the March 2017 warrant extractions as moot because no device data was obtained from those searches. *See* R.84 at 6.

was “reasonable for [the] officers to believe they had probable cause” in executing the September 2017 warrants. *Id.*

C. Motion to Suppress Evidence Found as a Result of the Seizure of Mr. Turner’s Vehicle

Mr. Turner also moved to suppress all tangible evidence, including the firearm, recovered as the result of the seizure of his Lexus. Tr. 7/5/22, 5:24–25; R.37 at 2. He argued that his vehicle was seized “without a warrant, without probable cause, without a legitimate exception to probable cause, and . . . in violation of his Fourth Amendment rights” because, at the time of the seizure, “[he] was not participating in any illegal or suspicious conduct.” R.37 at 2. Indeed, Mr. Turner emphasized, at the time of the seizure, he was not a suspect, but a victim. *Id.* at 3.

In response, the government argued that the police had probable cause to seize the vehicle because they had reason to believe that the Lexus contained evidence of a crime. In the government’s view, the fact that “the police took steps to secure [Mr. Turner’s] vehicle” by seizing it after he refused consent to a search “does not change the conclusion that the police did not violate [his] rights.” *Id.* at 7.

The trial court denied Mr. Turner’s motion to suppress and ruled that the police had probable cause to seize the Lexus “to mitigate the risk of any interference with the recovery of evidence involved in a criminal investigation.” Tr. 9/6/22, 104:12–17. In so holding, the court opined that “[t]he usual test holds that probable cause exists where facts and circumstances within the police officer’s knowledge

and of which they had reasonable, trustworthy information sufficient to warrant a man of reasonable caution to believe that an offense has been or is being committed.” *Id.*, 101:22–102:2. It added that there was also “probable cause to believe further evidence regarding the crime would be found in the vehicle.” *Id.*, 102:17–19. The court also highlighted how, following the seizure, the police obtained a search warrant to search for evidence of the shooting and then obtained a further warrant to search the vehicle for evidence relating to the firearm. *Id.*, 104:18–22.

D. The Jury Trial

The trial in this case spanned 11 weeks, and the jury then deliberated for two weeks and two days.

Prosecutors told the jury that the charged crimes arose out of a feud between the Wahler Place and Trenton Park neighborhoods in Anacostia that began in May of 2016 with the murder of Jaquan Haney. Tr. 11/16/22, 17:15–18:10. As prosecutors acknowledged, there was no evidence to suggest that Mr. Turner was involved in that murder. *Id.*, 15:12–15. But the government put on extensive evidence about Mr. Haney’s death, and then traced the arc of the feud through another murder that “again, Mr. Turner [was] not accused of committing.”⁵ *Id.*, 16:25–17:3.

⁵ The trial court denied Mr. Turner’s motion to exclude this other crimes evidence. R. 40; *see* Tr. 9/8/22, 36:7–39:7.

Mr. Turner was the victim of two shootings around the time of these murders, which the government argued evinced a connection between Mr. Turner, these events, and the events for which Mr. Turner was charged. *Id.*, 14:17–18:10. But Mr. Turner knew nothing of who had made these attacks on him, which he told police when he was interviewed at the hospital after one of the shootings. *Id.*, 16:7–11.

Finally, the government presented a video from August 2016, retrieved from Mr. Turner’s seized cell phone, that the government argued was a response to a music video produced by members of the Trenton Park crew. *Id.*, 18:11–19:16. Still, though, the government hedged that “there [was] no evidence that Mr. Turner created this Instagram post or that Mr. Turner created the video that was recorded from his phone where they mocked the [Trenton Park] video.” *Id.*, 19:18–21.

Outside of its neighborhood-dispute theory, the government put on a barrage of witnesses in an attempt to establish Mr. Turner’s connection to the crimes. Predominantly, the government relied on several evidentiary focal points: the testimony of witnesses placing a white Lexus at each of the major assault or murder scenes; ballistics evidence suggesting that the same weapon, a gun recovered from Mr. Turner’s vehicle, was used in each of the assaults or murders; and records of phone calls between Mr. Turner and Ms. Jennings that were proximate in time to the crimes alleged. *See* Tr. 11/17/22, 16:15–17:4. The government presented 80

witnesses establishing this evidence as to the crimes they charged. At no point, however, did the government offer any witness who placed Mr. Turner directly at the scene of any incident. Nor did it offer any physical or DNA evidence tying Mr. Turner to the scenes or the alleged weapon. Instead, the government opted to submit a case to the jury where, as the trial court saw it, only “some [of the evidence] [was] direct and quite a bit [was] circumstantial” as to Mr. Turner’s guilt. Tr. 11/15/22, 68:8.

Following the presentation of evidence, Mr. Turner moved for a judgment of acquittal, Tr. 11/15/22, 26:8–36:11, 38:15–19, and his motion was denied, Tr. 11/15/22, 68:4–15.

The jury deliberated for two weeks and two days. When they eventually reached a unanimous verdict as to all charges, the jury found Mr. Turner guilty on only 22 of the 39 counts against him, pertaining mainly to the events that took place on January 7, February 17, and from March 1 through 8, 2017.⁶

⁶ Specifically, Mr. Turner was convicted of: one count of first degree murder while armed, one count of possession of a firearm during crime of violence or dangerous offense, and one count of unlawful possession of a firearm while having a prior felony conviction relating to January 7, 2017; three counts of assault with intent to kill while armed, two counts of possession of a firearm during crime of violence or dangerous offense, and one count of unlawful possession of a firearm while having a prior felony conviction relating to February 17, 2027; one count of first degree murder, one count of possession of a firearm during crime of violence or dangerous offense, and two counts of unlawful possession of a firearm while having a prior felony conviction relating to the first week of March, 2017; and one count of

E. Sentencing

The court sentenced Mr. Turner to a total of 1,616 months, or 134 and two-thirds years, in prison. *See* Amended Judgment and Commitment Order, *United States v. Turner*, 2017 CF1 015352 (D.C. Sup. Ct. March 24, 2023); Tr. 3/10/23, 109:12–113:24.⁷ As recognized by the court, this sentence would not afford Mr. Turner the opportunity to be released from prison during his lifetime. *Id.*, 98:15–17.

SUMMARY OF ARGUMENT

I. The government’s case against Mr. Turner rested heavily on evidence obtained as a result of an unconstitutional search and an unconstitutional seizure. The trial court’s decision to admit that evidence violated Mr. Turner’s constitutional rights and is reversible error.

conspiracy to commit acts of violence, one count of conspiracy to obstruct justice, and seven individual counts of obstruction of justice pertaining more broadly to the scheme alleged by the government. Tr. 12/14/22, 11:21; R.123.

⁷ Of note, the amended judgment issued by the court sentences Mr. Turner as to count numbers 1, 3, 4, 5, 9, 10, 11, 12, 13, 14, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, and 35. *See* Amended Judgment and Commitment Order, *United States v. Turner*, 2017 CF1 015352 (D.C. Sup. Ct. March 24, 2023). However, the jury returned a verdict of guilty as to counts 1, 4, 6, 7, 14, 16, 17, 19, 20, 22, 35, 37, 38, 40, 42, 43, 44, 45, 46, 49, 50, and 51, Tr. 12/14/22, 11:14–26:11, and the trial court announced sentences orally as to those same counts. Tr. 3/10/23, 109:6–113:25. As a result, the amended judgment in this case reflects an error by the Superior Court as to the counts of conviction. To the extent practicable, Mr. Turner respectfully asks that this Court provide relief as to that error in addition to any relief the court grants as to the merits issues presented.

First, the trial court should not have admitted evidence government investigators extracted from Mr. Turner's cell phones. The warrant applications that formed the basis of these extractions lacked the probable cause and particularity required by the Warrants Clause. *See Burns*, 235 A.3d at 771–78. These warrants sought to obtain all of the information on these devices related to the alleged “neighborhood feud” but made no effort to establish a nexus between the information sought and Mr. Turner's alleged crimes. The good faith exception to the exclusionary rule also does not apply because the applications' lack of particularity made them facially deficient, so they would not have been relied on by an objectively reasonable officer. This evidence formed a significant part of the government's case against Mr. Turner for both conspiracies (Counts 1 & 42), both murders (Counts 4 & 35), all three assaults (Counts 14, 17, & 20), and all eight weapons-related charges (Counts 6, 7, 16, 19, 22, 37, 38, & 40). These convictions must be overturned.

Second, the trial court similarly erred by admitting evidence of a firearm found as the result of the police's warrantless seizure of Mr. Turner's Lexus. The police seized Mr. Turner's Lexus after he was the victim of a drive-by shooting when it was abundantly clear that there was no ongoing risk of violence from the shooting. Because there was no indication that Mr. Turner was involved in perpetrating the crime, and because there were no exigent circumstances at the time police seized the vehicle, the seizure violated the Fourth Amendment. *See Coolidge v. New*

Hampshire, 403 U.S. 443, 454–55 (1971). Accordingly, evidence discovered as a result of that seizure—including the gun found in the glove box during a later search—constitutes fruit of the poisonous tree that should not have been admitted at trial. Since that evidence was admitted, Mr. Turner suffered a harmful error meriting reversal of his convictions on counts relating to the illegally obtained evidence of the firearm.⁸

To remedy both Fourth Amendment violations, Mr. Turner’s convictions for conspiracy, murder, assault, and firearms-related offenses must be reversed.

II. Reversal of many of Mr. Turner’s convictions is warranted for a second, independent reason. The evidence presented at trial was insufficient to prove beyond a reasonable doubt that Mr. Turner was the perpetrator of any of the crimes alleged pertaining to the events of January 7, February 17, and early March. The prosecution’s case rested on a collection of underdeveloped circumstantial evidence that does not create a convincing picture of Mr. Turner’s identity by more than mere speculation, even when considered all together.

III. Finally, Mr. Turner’s obstruction-related convictions must be reversed. Mr. Turner was convicted of multiple counts of “[c]orruptly] . . . imped[ing] . . . the due administration of justice in any official proceeding,” in violation of D.C. Code

⁸ Specifically, to remedy this error, Mr. Turner seeks reversal of Counts 4, 6, 7, 16, 19, 20, 22, 35, 37, 38, and 40.

§ 22-722(a)(6). The “official proceeding” charged in the indictment and described at trial was a criminal case against Mr. Turner pending in U.S. District Court. R.21 at 3, 10–11; R.103 at 95–96; Tr. 11/16/22, 53:1-3. But the D.C. Code expressly defines “official proceeding” to cover only a “trial, hearing, investigation, or other proceeding” in “the Superior Court of the District of Columbia or the District of Columbia Court of Appeals.” D.C. Code § 22-721(1), (4). Because cases pending in federal court do not count as “official proceeding[s]” for purposes of the obstruction statute under which Mr. Turner was charged and convicted, those convictions cannot stand.

ARGUMENT

I. Mr. Turner Was Denied a Fair Trial by the Admission of Evidence Obtained as a Result of Violations of Mr. Turner’s Fourth Amendment Rights.

The trial court erred in denying Mr. Turner’s motions to suppress evidence collected from both his cell phones and his car. Because this evidence was a significant part of the case against Mr. Turner and the admission of the evidence therefore prejudiced him, all convictions relating to these charges must be overturned.

A. Admission of the Evidence from the Cell Phone Searches Violated Mr. Turner’s Constitutional Rights.

The MPD’s warrant applications for Mr. Turner’s cell phones in this case were overbroad, non-specific, and unsupported by probable cause. They did not meet

the requirements of the Fourth Amendment’s Warrant Clause as expounded by this Court in *Burns*, nor did they qualify for the good faith exception to the exclusionary rule. The government relied heavily on the evidence seized from Mr. Turner’s phones—such as location data, text messages, phone logs, and photographs—in reaching convictions at trial on both conspiracy charges, both murders, the assaults, and the weapons-related charges. Those convictions should be overturned.

1. The Warrant Clause and *Burns*

Police must generally obtain a search warrant before examining the contents of a cell phone. *Riley v. California*, 573 U.S. 373 (2014). This Court addressed the question of what information cell phone search warrants must contain in *Burns*. 235 A.3d at 772–73.

As a case of first impression involving “the validity of a cell phone search warrant under the Warrant Clause,” *id.* at 767, *Burns* conducted a careful analysis of the unique challenges involved in cell phone warrants. Because of the massive volume and scope of data on modern phones, this Court saw a risk that these warrants would not “be carefully tailored to [their] justifications, and [that they] will . . . take on the character of the wide-ranging exploratory searches the Framers intended to prohibit.” *Id.* at 772 (quoting *Maryland v. Garrison*, 480 U.S. 79, 84 (1987)). *Burns* thus held that “[a] search warrant for data on a modern smart phone . . . must fully comply with the requirements of the Warrant Clause.” *Id.* at 773.

Accordingly, this Court mandated that “the warrant must specify the particular items of evidence to be searched for and seized from the phone and be strictly limited to the time period and information or other data for which probable cause has been properly established . . . in the warrant’s supporting affidavit.” *Id.* Cellphone warrants must be properly particularized so that “the issuing judge . . . decides ‘what is to be taken,’ and ‘nothing is left to the discretion of the officer executing [the warrant],’ making ‘general searches . . . impossible.’” *Id.* at 772 (quoting *Marron v. United States*, 275 U.S. 192, 196 (1927)). Without such clear specification of the phone’s contents that may be searched, the government would have free reign to explore data that represents the entire sum of a person’s life. *See id.* at 773.

Applying these principles to the facts of *Burns*, this Court found that, while the warrants established probable cause for “three narrow items of evidence,” the warrants did not support a search of the entire contents of the defendant’s phones. *Id.* at 774–78. The good faith exception to the exclusionary rule also did not apply because the warrants were “bare bones,” used “boilerplate language of a template [with] no effort to tailor [the] scope [of the warrants] to the facts of the case,” and Mr. Burns was not even a suspect when the warrant applications were submitted. *Id.* at 779. Because “any reasonably well-trained police officer with a reasonable knowledge of what the Fourth Amendment prohibits” would have found the

warrants deficient, this Court found that all of the data collected from Mr. Burns' phones should have been suppressed. *Id.* at 779, 781.

2. The trial court erroneously denied Mr. Turner's motion to suppress the fruits of the cell phone searches, which violated his Fourth Amendment rights.

a. Under *Burns*, the September 2017 warrants violated the Fourth Amendment. When it comes to searches of cell phones, there must be "meaningful limitations" on the content searched. *Burns*, 235 A.3d at 775. But there were none here. Like the affidavits in *Burns*, the warrant applications here sought access to and seizure of the entire contents of Mr. Turner's phones and were not tailored to specific evidence for which there was a demonstration of probable cause. Although the September 2017 warrant applications listed some specific facts about Mr. Turner's charges, they still "endorsed the broadest possible search," contained "generic categories," and covered "virtually all of the different types of data found on modern cell phones." *Id.* Such a warrant cannot satisfy the Fourth Amendment.

Further, the Fourth Amendment and *Burns* require the police to show a nexus to establish probable cause, not simply state what they hope to find, as the warrants here did. Detective Weber failed to demonstrate *why* certain information sought to be discovered from the phones was tied to Mr. Turner's role in a crime rather than to what the detective believed criminals typically do on their phones, per his "training and experience."

The trial court, in finding probable cause for the wholesale search of Mr. Turner's cell phones, focused on factual differences between this case and the *Burns* case—specifically, the amount of circumstantial evidence that supposedly tied Mr. Turner to the crimes before his phones were searched. This evidence included Mr. Turner's existing charge for possession of a specific firearm, which was allegedly associated with five other crimes being investigated, and Mr. Turner's previous arrest and charge for homicide. R.84 at 9. The court also relied on the fact that Mr. Turner was allegedly an “integral part” of the Wahler Place neighborhood crew and that this crew had been involved in a back-and-forth “street war” with the Trenton Park neighborhood dating back years, with “numerous shootings” connected to the two crews. *Id.* at 10, 14. In addition, the trial judge cited evidence that Mr. Turner traveled with associates who used their phones and social media accounts when spending time with Mr. Turner, months after the shootings. *Id.* at 10–11. Finally, the court emphasized the police's assertions that Mr. Turner had used a Google account to search for information related to shootings on Wheeler Road and South Capitol Street, as well as a locational video showing that a vehicle similar to Mr. Turner's was near the alleged shooting scenes. *Id.* at 11.

But none of these facts connect the circumstantial evidence surrounding Mr. Turner, as well as his gun charge, to specific content on his cell phones. The mere fact that Mr. Turner was affiliated with the Wahler Place crew and was a

suspect in a shooting does not justify a limitless search of his cell phones. Neither does the fact that Mr. Turner’s alleged associates—not even Mr. Turner himself—had posted photos at locations where Mr. Turner was believed to be, and long after the crimes were committed. The general and vague affidavits submitted by the police did not demonstrate “cause to believe” that there is a “nexus between the item to be seized and the criminal behavior” under investigation. *Burns*, 235 A.3d at 771 (cleaned up); *see also United States v. Griffith*, 867 F.3d 1265, 1271 (D.C. Cir. 2017).

Numerous of the police’s requests did not even attempt to show a nexus among the phone, the data, and why that data would show a connection to the alleged crimes. R.77, Attachment B at 2–3. Even farther afield, some requests, such as for “information related to his motive” and “information related to [his] efforts to avoid detection by law enforcement,” do not specifically implicate Mr. Turner’s cell phones in any way. *Id.*, Attachment B at 3. They merely seek general evidence of criminal activity that the police were somehow hoping would show up on his phones if they got access to them.

The trial court also determined that the particularity prong of the Fourth Amendment was satisfied because the records to be obtained were limited to the Wahler/Wheeler and Trenton Park neighborhood feud and there was “specific information tied to those events.” R.84 at 14. But Detective Weber’s affidavits were

significantly based on his “training and experience” with how “people who commit crimes” operate, making little mention of specific circumstances related to Mr. Turner. R.77 at 11. The affidavits’ entire evidence on this point was that MPD had identified Instagram accounts for associates of Mr. Turner (rather than Mr. Turner himself), that these associates post from their social media (allegedly including one time from a shooting range), and that a Google account allegedly belonging to Mr. Turner searched for information related to the Wheeler Road shootings. *Id.* at 9–14. Putting aside whether these assertions are sufficient to support a warrant for Mr. Turner’s social media or search history, they cannot possibly justify a search of the entirety of Mr. Turner’s cell phones, including location data, text messages, and any other “records” allegedly relating to the neighborhood feud. R.77 at 2–3. This Court rejected the government’s invitation in *Burns* to hold that merely limiting a cell phone warrant to search for evidence of a particular crime is sufficient under the Warrants Clause. *Burns*, 235 A.3d at 776. The absence of any meaningful particularity in the September 2017 warrants likewise demands suppression of evidence from Mr. Turner’s cell phones.

Finally, the September 2017 warrants were deficient for the independent reason that they did not contain any temporal limitation, other than a “belief” the records would begin at the date of the first alleged shooting. R.77, Attachment B at 2. The trial court did not meaningfully engage with this failure other than noting that

the warrant judge was presented with “a wide-ranging set of events, spanning months.” R.84 at 13. The fact that a warrant seeks information related to multiple events over a long period of time is not a free pass to ignore the Warrants Clause. *See Burns*, 235 A.3d at 777 (“A law enforcement officer’s interest in . . . furthering his investigation . . . is never an acceptable substitute for the constitutionally required showing of probable cause.”). Evidence found pursuant to the September 2017 warrants should have been suppressed on this basis alone.

b. The trial court also erred in finding that the good faith exception to the exclusionary rule applied even if the September 2017 warrants were deficient. The Supreme Court has held that, where “officers have acted in an objectively reasonable manner, exclusion of the evidence does not deter unlawful police conduct and any legitimate benefit of the exclusionary rule’s application is outweighed by the substantial cost to society of suppressing reliable evidence.” *Id.* at 778 (citing *United States v. Leon*, 468 U.S. 897, 915–22 (1984)). However, this exception does not apply where “the warrant was so facially deficient—i.e., in failing to particularize the place to be searched or the things to be seized—that the executing officers [could not] reasonably presume it to be valid.” *Id.* at 779 (cleaned up). “In each of these circumstances, suppression of any evidence seized pursuant to the invalid warrant is an appropriate remedy because the officer executing the warrant ‘will have no

reasonable grounds for believing that the warrant was properly issued.”” *Id.* (quoting *Leon*, 468 U.S. at 923).

The trial court misapplied this standard in finding the September 2017 warrants were in good faith. In holding that the warrants would not have been facially deficient in the eyes of a reasonable officer, the court merely recited the same conclusory statements based on Detective Weber’s training and evidence from individuals other than Mr. Turner. *See* R.84 at 15. As just discussed, that plainly could not justify the sweeping searches authorized by the warrants.

The trial court then cited to *Abney*, where this Court found that the good faith exception applied to a cell phone warrant executed pre-*Burns*. *Id.* at 16. In *Abney*, this Court distinguished *Burns*—which declined to apply the good faith exception—based on three facts: “(1) Mr. Burns was not a suspect at the time the warrants were obtained and executed; (2) the affidavits made a ‘slender’ showing of probable cause, only as to three narrow categories of information; and (3) the warrants were extremely overbroad, authorizing a search of everything on both cell phones.” *Abney*, 273 A.3d at 867.

On these facts, however, this case is more like *Burns* than it is like *Abney*. While Mr. Turner was a suspect at the time of the September 2017 warrants, Detective Weber’s affidavits, as discussed above, only demonstrated a “slender” justification to search Mr. Turner’s social media and search history and contained

no particularized justification whatsoever as to the rest of Mr. Turner’s cell phone contents. These warrants also effectively allowed for the search of everything on both of Mr. Turner’s cell phones because they permitted a search of “[a]ll records on the” phones that “relat[ed] to the suspected feud.” R.77, Attachment B at 2. While the warrants did list specific categories of information, they were not limited to these categories; those were only examples of what may have been “include[ed]” within “all records” on the phones. *Id.* Given these deficiencies, the September 2017 warrants so plainly “fail[ed] to particularize the place[s] to be searched” that there were “no reasonable grounds for believing that the warrant[s were] properly issued.” *Burns*, 235 A.3d at 779 (quoting *Leon*, 468 U.S. at 923).

Accordingly, the search warrants here did not satisfy the Fourth Amendment’s probable cause and particularity requirements, and the good faith exception to the exclusionary rule should not apply.⁹

⁹ For similar reasons, this Court should not apply the severance doctrine in this case. See *United States v. Ketterman*, 276 A.2d 243, 246–47 (D.C. 1971). Even if the September 2017 warrants described certain categories of evidence with sufficient particularity, the vast majority of these categories were not supported by probable cause and do not “make up the greater part of the warrant[s].” *United States v. Sells*, 463 F.3d 1148, 1151 (10th Cir. 2006); see also *Burns*, 235 A.3d at 780.

B. Admission of the Evidence Stemming from the Seizure of Mr. Turner's Car Violated Mr. Turner's Constitutional Rights.

1. The warrantless seizure of Mr. Turner's car violated the Fourth Amendment.

a. Because the police seized Mr. Turner's car without a warrant and without his consent, Tr. 7/5/22, 23:1-8, the seizure is presumed to violate the Fourth Amendment unless the government can prove that the seizure was supported by probable cause. *See, e.g., Coolidge*, 403 U.S. at 454–55; *Harris v. United States*, 260 A.3d 663, 683 (D.C. 2021).¹⁰ The government cannot so prove.

Probable cause to seize a vehicle generally exists where there is clear indication that the vehicle was used to commit a crime or that the vehicle contains contraband or evidence of criminal activity. There was no such indication here: As the government admitted and the trial court found, police seized the Lexus (after Mr. Turner refused consent for the search) because he had been the *victim* of a drive-by shooting. Even if Mr. Turner was already a person of interest in the McPhatter investigation, Tr. 7/5/22 10:2-5, the police did not and could not suspect that

¹⁰ Some of this court's cases have also required the government to show that exigent circumstances require search and seizure of the car before the automobile exception may apply. *See, e.g., Holston v. United States*, 633 A.2d 378, 385 (D.C. 1993). No such circumstances existed here, as the government admitted to the trial court. *See* Tr. 7/5/22 (acknowledging that the incident "wouldn't necessarily qualify as an exigent reason or emergency reason to obtain a search warrant after the normal hours of the court").

Mr. Turner or his Lexus had been used to perpetrate or assist in the attempted drive-by of *himself*, which was the proximate trigger for the vehicle's seizure.

In the proceedings below, the government and the trial court were unable to marshal any case law that actually supported the court's ultimate determination that probable cause existed to seize Mr. Turner's car because he was the *victim* of a crime. The government relied on two cases that are inapposite in that they dealt with suspects' vehicles rather than those of victims. In *Chambers v. Maroney*, the Court found that probable cause to seize a blue compact station wagon existed where the police knew that "robbers, carrying guns and the fruits of the crime, had fled the scene in a light blue compact station wagon" *Chambers v. Maroney*, 399 U.S. 42, 47 (1970) (emphasis added). In *United States v. Pleasant*, the police had probable cause to perform a warrantless seizure of a vehicle that matched the widely broadcast description of a vehicle involved in a bank robbery. *United States v. Pleasant*, No. 2:17-cr-62, 2017 WL 5010370, at *1 (E.D. Pa. Nov. 1, 2017).

In its ruling on the admissibility of the evidence from the Lexus, the trial court also cited case law that is particularly inapposite. *Price v. United States*, see Tr. 9/6/22, 102:1-3, involved the seizure of a manila coin envelope from *within* a defendants' car—not the car itself—that the officer had reason to believe contained drugs based on his law enforcement experience and the illegal narcotics activity in the surrounding neighborhood. 429 A.2d 514, 515 (D.C. 1981). Similarly, the

prohibition-era case *Carroll v. United States*, found that probable cause existed for a warrantless search and seizure of a vehicle that was: 1) driven by known “bootleggers”; 2) through “one of the most active centers for introducing illegally into this country spirituous liquors for distribution”; and 3) that was, at the time of its apprehension, “coming from the direction of the great source of supply for their stock.” 267 U.S. 132, 160 (1925). It is unclear how the court divined, from this set of cases, the notion that it is constitutionally permissible to warrantlessly seize a car when there is no evidence it was involved in perpetrating a crime.

The trial court thus erred when it ruled that the seizure of Mr. Turner’s car passed constitutional muster. The Fourth Amendment protects the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. And, according to the Supreme Court, “constitutional provisions for the security of person and property should be liberally construed.” *Boyd v. United States*, 116 U.S. 616, 635 (1886). The trial court should not have concluded that probable cause existed to seize Mr. Turner’s Lexus based on the police’s belief that Mr. Turner was a target of the shooting, Tr. 9/6/22, 102:17-23, when none of the precedent supports finding probable cause to perform a warrantless seizure of a *victim’s* vehicle.

b. Evidence collected in violation of the Fourth Amendment is considered “fruit of the poisonous tree” and generally may not be used by the government to

prove a defendant's guilt. *Hooks v. United States*, 208 A.3d 741, 750 (D.C. 2019) (quoting *Wong Sun v. United States*, 371 U.S. 471, 484, 488 (1963)). Because no exception to the fruit of the poisonous tree doctrine applies here, the court violated Mr. Turner's constitutional rights when it admitted evidence of the gun found in his Lexus.

This Court has said that fruit of the poisonous tree may only be admitted if its discovery would have been "truly inevitable" without the initial unconstitutional police action. *United States v. Allen*, 436 A.2d 1303, 1310 (D.C. 1981). True inevitability exists only where the "court is persuaded 'with certainty' that the evidence would have been discovered lawfully." *Id.* (quoting *Crews v. United States*, 389 A.2d 277, 295 (1978)). In *Allen*, the Court determined that a gun found in a taxicab as the result of an illegal search should be excluded even though the government argued that the same evidence would have been discovered during a legal and routine investigative search of the car. Because the police did *not* find the gun in the car the first time they searched it, the government could not prove that the legal routine search would have inevitably discovered the gun.

The same is true here. Although the police acquired warrants for the ultimate search of Mr. Turner's car, they would not have acquired *these* warrants to search the car under *these* circumstances but-for the initial unconstitutional seizure of the Lexus. The police acquired the first warrant to search Mr. Turner's Lexus the day

after police impounded the car; they acquired the second warrant for evidence related to the firearm as a result of the search conducted pursuant to the first warrant. Tr. 9/6/22, 100:8-16. There is a direct causal relationship between the seizure of the Lexus and the discovery of the gun.

Thus, discovery of the gun was not inevitable: Had the police returned the Lexus to Mr. Turner's possession and acquired a warrant to seize and search it on another date, they may not have discovered the gun. As in *Allen*, the government cannot prove that police would have found the gun without the original unconstitutional seizure; evidence of the gun should not have been admitted at trial.

C. The Admission of Evidence Relating to the Seizure of the Lexus and the Search of the Cell Phones Is Reversible Error.

This Court should reverse Mr. Turner's convictions on counts 4, 6, 7, 16, 19, 20, 22, 35, 37, 38, and 40. The unconstitutionally acquired evidence of the gun and his cell phones "contribute[d] to the verdict" on all of these counts; thus, that evidence's admission at trial was clearly harmful. *James v. United States*, 319 A.3d 384, 392 (D.C. 2024) (quoting *Chapman v. California*, 386 U.S. 18, 24 (1967)) ("We will therefore reverse [defendant's] convictions unless the government 'prove[s] beyond a reasonable doubt that the error . . . did not contribute to the verdict.'").

An error of constitutional magnitude in the trial court requires reversal of a criminal conviction on appeal unless the government establishes that the error was harmless beyond a reasonable doubt. *Chapman*, 386 U.S. at 24. The harmless error

standard is exacting: When evidence admitted in violation of a defendant's Fourth Amendment rights leads to a conviction, its admission may only be deemed harmless if the "harmlessness is *obvious*." *James*, 319 A.3d at 392 (emphasis added) (quoting *Randolph v. United States*, 882 A.2d 210, 223 (D.C. 2005)). Mr. Turner's convictions must therefore be reversed unless they were "surely *unattributable*" to the erroneous admission of his cell phone data. *See Jenkins v. United States*, 75 A.3d 174, 192 (D.C. 2013) (emphasis added).

This Court should reverse the trial court's decision to allow evidence from Mr. Turner's cell phones due to extended and prejudicial use of the evidence at trial. After the September 2017 search warrants were approved for Mr. Turner's cell phones, the government's investigator extracted copious amounts of data, including calendars, call logs, chats, locations, GPS data, user accounts, Google search history, and more. *See* R.84 at 7. All of this data was relied on by the government in tying Mr. Turner to Ms. Jennings and to certain Wahler Place associates connected to the shootings. *See, e.g.*, Tr. 11/16/22, 18:22-25, 70:2-7 ("And you've heard over and over again . . . evidence that the Government has been able to present to you that came from [Mr. Turner's] phone, communications he was having with people he shouldn't have had, calls he was making he shouldn't have been making.").

The recovery of the gun was clearly harmful as well, and substantially contributed to Mr. Turner's above convictions. To start, Counts 7, 22, 38, and 40 are

all for “unlawful possession of a firearm by a person previously convicted of a crime punishable by imprisonment for a term exceeding one year” for the days January 7, February 17, March 1, and March 8, respectively. Tr. 11/22/22, 13:17-20, 35:21-24, 64:13-16, 65:22-25. These convictions rest solely on the theory that the same 10 millimeter gun—that is not registered to Mr. Turner—was possessed by Mr. Turner on the above dates. The evidence of possession is based either on the presence of 10 millimeter cartridge casings at various crime scenes or the discovery of the gun in the Lexus. *See* Tr. 9/29/22. Without the discovery of the gun in Mr. Turner’s Lexus, these charges could not have been brought. *See Atkins v. United States*, 290 A.3d 474, 480 (D.C. 2023) (stating that “[t]he elements of the offense of unlawful possession of a firearm by a person previously convicted of a crime punishable by imprisonment for a term exceeding one year” include that “[the defendant] possessed a firearm”).

The convictions for first degree murder of Andrew McPhatter (count 4) and DeVin Hall (count 35), for possession of a firearm during the commission of a crime of violence (counts 6, 16, 19, and 37), and for intent to kill while armed (count 20), Tr. 12/14/22, 12:9-11, 17-20, 14:13-17, 15:11-22, 18:24-25, also rested largely on the evidence obtained from the car search. Without the ability to tie the 10 millimeter casings found at the crime scenes to Mr. Turner by virtue of having discovered the gun in his unconstitutionally seized vehicle, the prosecution likely would not have

been able to make its case. Accordingly, the admission of the gun was clearly not harmless, and certainly not harmless beyond a reasonable doubt.

Without the Fourth Amendment violations leading to the search of the Lexus and the overbroad warrant applications justifying the search of Mr. Turner’s cell phone data, the firearm (and Mr. Turner’s association with it via social media data and communications with associates) would never have been discovered and he likely would not have been convicted of these charges. Because this error was a fundamental constitutional violation, and because the resulting evidence from Mr. Turner’s car and cell phones had a substantial influence on the jury’s decision to convict him—not just a “slight effect”—the trial court’s decision to allow this evidence must be overturned and Mr. Turner’s convictions dismissed. *See Smallwood v. United States*, 312 A.3d 219, 227 (D.C. 2024).

II. The Evidence Was Insufficient to Prove Mr. Turner’s Guilt on the Charges Relating to the Events of January 17, February 7, and March 1.

This Court reviews the sufficiency of the evidence supporting a conviction *de novo*. *See Bailey v. United States*, 257 A.3d 486, 492 (D.C. 2021). Reversal is warranted when the evidence “is such that a reasonable juror must have a reasonable doubt as to the existence of any of the essential elements of the crime.” *Williams v. United States*, 113 A.3d 554, 560 (D.C. 2015) (cleaned up). If the evidence presented at trial was insufficient to support the defendant’s conviction, the defendant is

entitled to entry of a judgment of acquittal and no retrial is permitted. *See Burks v. United States*, 437 U.S. 1, 18 (1978).

Mr. Turner's convictions that relate to the events occurring on January 7, February 17, and March 1, 2017, must be overturned. The prosecution cobbled together the case against Mr. Turner out of tenuous bits of circumstantial evidence and lengthy inferential chains of reasoning that boil down to a claim of "guilt-by-habitation." *Atchison v. United States*, 257 A.3d 524, 531–32 (D.C. 2021). And in the end, the prosecution did not prove beyond a reasonable doubt that Mr. Turner was involved in any of the violent incidents that took place on those dates.

A. The Prosecution Did Not Prove Mr. Turner's Identity Beyond a Reasonable Doubt.

1. Testimony at trial did not establish that Mr. Turner was present at any scene where the incidents occurred.

Establishing Mr. Turner's identity as a perpetrator of the crimes requires a basic showing that Mr. Turner was present at the scenes where they took place. The evidence on this critical point was inadequate. No eyewitness identified Mr. Turner as being present at any of the three incidents. No witness even described seeing an individual that fit Mr. Turner's appearance during any of these incidents.

The primary evidentiary link between Mr. Turner and the sites of these events was testimony from various witnesses identifying a white Lexus allegedly belonging to Mr. Turner. However, that witness testimony is riddled with inconsistencies that

undermine its trustworthiness. One witness identified the vehicle as a white Lexus, Tr. 10/12/22, 152:1-4; Tr. 11/17/22, 68:15-17, but others identified the vehicle as a grey car, Tr. 10/3/22, 86:4-11, a gold car, Tr. 10/17/22, 217:15-18, 225:20-226:4; Tr. 11/17/22, 74:20-24, a beige car, Tr. 10/17/22, 217:15-18, 225:20-226:4; Tr. 11/17/22, 74:20-24, and a “tanish” car, Tr. 10/19/22, 25:20-24. In one instance, the eyewitness identified the vehicle they saw at the scene as “a Honda Accord” rather than a Lexus. Tr. 11/3/22, 179:18-21, 180:13-17; Tr. 11/16/22, 35:25-36:1; Tr. 11/17/22, 76:16-21. These conflicting witness accounts are insufficient to establish Turner’s presence at the crime scenes. *See Beatty v. United States*, 544 A.2d 699, 701–03 (D.C. 1988) (overturning a conviction after finding insufficient evidence on the issue of identity where ample other trial testimony contradicted a single eyewitness identification of the defendant).

And even assuming that the prosecution could place Mr. Turner’s vehicle at the scenes beyond a reasonable doubt, that evidence alone cannot carry the government’s burden of showing Mr. Turner’s identity as an assailant. It is true that some additional evidence from the car’s GPS system and some traffic footage corroborate the witness testimony. But trial testimony established that, at least on the date of the January 7 incident, Mr. Turner was located at home during the time his car was alleged to be somewhere else. Tr. 11/17/22, 71:2-7. In light of this, the prosecution was required to present at least enough additional, credible evidence to

support the inference that Mr. Turner was in the vehicle at the scene of events on January 7, February 17, and March 1. No reasonable jury could have inferred Mr. Turner's presence in the vehicle at these critical moments, when his ankle monitor placed him at home and the prosecution did not present additional direct evidence tying Mr. Turner to the scene. *See Tornero v. United States*, 161 A.3d 675, 685–86 (D.C. 2017) (overturning a conviction for insufficient evidence of identity on the grounds that no reasonable jury could find a conviction beyond a reasonable doubt where there was no direct identification of the defendant as the perpetrator and no other direct evidence linked him to the crime alleged).

2. The evidence presented did not sufficiently link Mr. Turner to the weapon allegedly involved in any of these incidents.

The prosecution's effort to prove Mr. Turner's identity by tying him to the weapon allegedly used in the three incidents suffers from similar flaws. Unable to tie Mr. Turner to the scene directly, the prosecution relies on ballistic evidence suggesting that the shell casings found at each of the scenes were fired from a 10 millimeter gun recovered from the passenger side glove compartment of Mr. Turner's vehicle to prove Mr. Turner was present and perpetrated the alleged crimes. Tr. 11/16/22, 19:24–20:2, 21:9-18, 26:8-11, 33:2-4, 34:12-15, 42:25–46:1. However, the weapon's presence in Mr. Turner's vehicle is its only meaningful connection to him. The gun is not registered to Mr. Turner, nor is there evidence that

he purchased the weapon. And the prosecution presented no physical evidence or DNA tying Mr. Turner specifically to the gun.

Further, multiple parties had access to Mr. Turner's vehicle, including immediately before the vehicle was seized, and could have placed the weapon there. Indeed, video evidence showed that another individual was in the passenger side of the vehicle just before the car was seized. Tr. 9/28/17, 40:24–42:5; 9/27/22, 32:17–23, 48:4–16, 49:21–50:2; 11/17/22, 25:21–26:13; *see Rivas v. United States*, 783 A.2d 125, 129–30 (D.C. 2001) (holding that evidence of mere proximity to contraband was not enough to establish possession and reversing convictions that relied upon a finding of possession).

3. The prosecution's "consciousness of guilt" evidence does not resolve the issues with its case for identity.

At trial, the prosecution relied on evidence of actions taken by Mr. Turner to bolster its case for identity, arguing that Mr. Turner furthered criminal conspiracies, and, in the process, showed consciousness of guilt that helps to identify him as the perpetrator of the crimes alleged. Tr. 11/15/22, 49:15–25–50:1–6. But the prosecution's reliance on its conspiracy evidence opens its case to more issues than it solves. That Mr. Turner was convicted of the conspiracy to commit acts of violence while his other charged co-conspirator, Ronnika Jennings, was acquitted of

the same exacerbates doubts about the strength of the prosecution’s evidence and the existence of any agreement.¹¹

Even taking the evidence at face value, though, it does not sufficiently bridge the evidentiary gap on the issue of identification. The actions cited by the prosecution as indicating Mr. Turner’s involvement with the alleged criminal incidents were innocent acts in and of themselves: a series of phone calls with a known good friend from Mr. Turner’s neighborhood, engagement with social media posts involving his neighborhood, and texting with friends about media coverage of violent events that had just occurred in their area. Mr. Turner’s actions can be construed in any number of ways that do not indicate any criminal wrongdoing. This evidence does not sufficiently plug the holes in the prosecution’s case for identity.

B. The Evidence is Insufficient Even When Considered Cumulatively.

These deficiencies with the case against Mr. Turner were evident at trial, even prompting the presiding judge to remark that “quite a bit” of the prosecution’s case was “circumstantial.” Tr. 11/15/22, 68:8. The prosecution’s argument, however, was

¹¹ The fact that Mr. Turner’s alleged co-conspirator was acquitted of this conspiracy while he was convicted would have been grounds to vacate his conviction under the traditional common law rule of consistency. 26 MOORE’S FEDERAL PRACTICE – CRIMINAL PROCEDURE § 631.12 (2024). The underlying rationale for that rule was “the acquittal of all but one potential conspirator negates the possibility of an agreement between the sole remaining defendant and one of those acquitted of the conspiracy and thereby denies, by definition, the existence of any conspiracy at all.” *United States v. Espinosa-Cerpa*, 630 F.2d 328, 331 (5th Cir. 1980).

that the case was salvageable when viewing the evidence as having a “cumulative sort of ongoing nature.” *Id.*, 49:19. Though the prosecution may be entitled to a charitable view of their evidence as a whole, “[t]he evidence must support an inference, rather than mere speculation, as to each element of an offense.” *Lewis v. United States*, 767 A.2d 219, 222 (D.C. 2001) (citation omitted). That standard is not met here.

The tenuous nature of the evidence is readily apparent in the prosecution’s case against Mr. Turner for the assault on Joseph Tyler. In addition to being unable to identify Mr. Turner as described previously, the prosecution’s evidence was insufficient across another dimension: It did not show beyond a reasonable doubt that the alleged victim, Mr. Tyler, was injured in the events that took place on February 17. Mr. Tyler was not identified as a victim at the scene. He was later found in his house suffering from a gunshot wound, but where that wound came from and what had caused it was never connected back to the charged events. The prosecution’s primary eyewitness to the February 17 incident, Raheem Osborne, did not tell police that day, nor did he testify at trial, that Mr. Tyler was even present at the scene. Mr. Tyler likewise never indicated that he was there. No evidence in the record ties Mr. Tyler and his injuries to the events, other than a trail of blood that originates near the scene and leads to Mr. Tyler’s apartment. Tr. 10/25/22, 171:17–175:4.

Bolstered only by theories of tense neighborhood dynamics and descriptions of other crimes that in no way involved Mr. Turner, the prosecution used the drops of blood as the key link in a chain of inferences. But in the end, no reasonable juror could conclude beyond a reasonable doubt that Mr. Turner assaulted Mr. Tyler without doing so on the basis of mere speculation and a “guilt-by-habitation” theory. *See Atchison*, 257 A.3d at 532. The same is true for the other charges related to the events of January 7, February 17, and March 1. The court must overturn Mr. Turner’s convictions for all charges associated with those incidents.

III. Mr. Turner’s Obstruction Convictions Cannot Be Sustained.

Mr. Turner’s convictions for obstruction of an “official proceeding” under D.C. Code § 22-722(a)(6) and for conspiracy to obstruct an “official proceeding” must be reversed because the charged conduct could not as a matter of law violate the charged statute. *See Wynn v. United States*, 48 A.3d 181, 188 (D.C. 2012) (explaining that such an argument is reviewed *de novo*).

The charged statute covers only obstruction of court proceedings in D.C. Superior Court and this Court. Section 22-722(a)(6) criminalizes “[c]orruptly, or by threats of force, any way obstruct[ing] or imped[ing] or endeavor[ing] to obstruct or impede the due administration of justice in any official proceeding.” D.C. Code § 22-722(a)(6). The statute defines “official proceeding” for purposes of Section 22-722 to include “any trial, hearing, investigation, or other proceeding in a court of the

District of Columbia.” *Id.* § 22-721(4). And the statute, in turn, defines “Court of the District of Columbia” to “mean[] the Superior Court of the District of Columbia or the District of Columbia Court of Appeals.” *Id.* § 22-721(1). Thus, the statute criminalizes obstruction of court proceedings in the Superior Court or this Court.

But Mr. Turner was charged with, and convicted of, obstructing a proceeding in the U.S. District Court for the District of Columbia. The indictment stated that “[t]he object of the conspiracy was to corruptly impede[] the due administration of justice in the case of *U.S. v. Derek Turner*, 1:17-cr-055 (CRC) (D.D.C.), in which Derek B. Turner, was charged with a federal firearms offense, and in the process corruptly impede[d] investigation into” the shootings that took place between November 2016 and March 2017. R.103 at 95–96. Leading up to and during the trial, the prosecution’s theory was that Mr. Turner and his co-conspirators obstructed that federal case.¹² And the jury was instructed that the obstruction charges pertained to a “proceeding in a court of the District of Columbia.” *Id.* at 112–113, 115–117, 119–120, 122–123, 125. Accordingly, the government failed to prove the “official

¹² See, e.g., Tr. 11/16/22, 53:1–53:6 (“The obstruction the justice conspiracy, the official proceeding being the United States versus Derek Turner, U.S. District Court, federal firearms charge. Now, that is the legal charge that is pending as to these defendants for obstruction of justice and pertaining to conspiracy to obstruct justice.”); 11/22/21, 98:24–99:5 (“THE COURT: So in the obstruction counts, . . . when the Government is referring to the due administration of justice in an official proceeding, what is the official proceeding that’s being referred to? The pending – the case that was pending in District Court against Mr. Turner for [being a felon in possession of a firearm]? [Counsel for the United States]: Yes, Your Honor.”)

proceeding” element of the obstruction offenses, and those convictions must be reversed.

CONCLUSION

Mr. Turner’s convictions should be reversed.

Date: February 25, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of February, 2025, a copy of the foregoing Brief of Appellant was served electronically on the following counsel of record:

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