No. 23-CF-0229

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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

REPLY BRIEF OF APPELLANT DEREK BRIAN TURNER

TOBIAS S. LOSS-EATON
MADELEINE JOSEPH*
ABIGAIL SCHEPER
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
Tel: (202) 736-8000
Fax: (202) 736-8711
tlosseaton@sidley.com

* *Arguing Attorney*

Counsel for Appellant Derek Brian Turner

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INTRODUCTION

The government's brief confirms that multiple constitutional errors infected Mr. Turner's trial, requiring that his convictions be reversed.

First, those convictions are based on evidence obtained in violation of the Fourth Amendment. The search warrants for Mr. Turner's cell phones authorized police to review their entire contents, based on little more than boilerplate speculation about how criminals in the District supposedly use their phones. Under this Court's precedent, those warrants were facially overbroad, lacked the requisite nexus to the alleged crimes, and cannot be salvaged by the good-faith exception. Separately, police recovered a 10-millimeter handgun from Mr. Turner's Lexus, by seizing the vehicle unconstitutionally without a warrant—again in violation of the Fourth Amendment. Neither the cell phone nor the gun evidence should have been admitted at trial.

Second, the government presented insufficient evidence to convict Mr. Turner for the charges relating to the incidents in January, February, and March 2017. No eyewitness or forensic evidence tied Mr. Turner to these shootings, and the jury's guilty verdicts not a reasonable inference of guilt but on mere speculation.

The government's attempts to save Mr. Turner's convictions fall short. The government defends its overbroad warrants and its warrantless seizure of Mr. Turner's property by arguing that Mr. Turner was in the wrong place at the wrong time, or that he was associated with a feud between two Anacostia neighborhoods. But this is not enough, either for a search or seizure under the Fourth Amendment—or to obtain a conviction.

All of Mr. Turner's convictions should be reversed. At a minimum, the government agrees that the Court should vacate Mr. Turner's conviction for conspiracy to obstruct justice. *See* Gov't Br. 44 n.7.

ARGUMENT

I. Admission of Evidence from the Search of Mr. Turner's Cell Phones and the Seizure of His Car Violated the Fourth Amendment.

A. Searches of the Cell Phones.

Decades before the invention of cell phones, the Supreme Court held that when evaluating a search under the Fourth Amendment, the need for a robust particularity requirement is especially great where a case "involves an intrusion on privacy that is broad in scope." *Berger v. New York*, 388 U.S. 41, 56 (1967); *see also Carpenter v. United States*, 585 U.S. 296, 320 (2018) (reasoning that the remarkable ability of the modern digital age to permit "official intrusion" into an individual's "private sphere" requires "special solitude" for this information). Like the eavesdropping in *Berger*, the search of a cell phone has significant privacy implications, "typically expos[ing] to the government far *more* than the most exhaustive search of a house." *Riley v. California*, 573 U.S. 373, 396 (2014) (emphasis in original). But here, the police searched Mr. Turner's phones based on warrants that the authoring officer himself admitted are not limited by "date, time, or data type." Gov't Br. at 28. These warrants did not meet the requirements of the Warrants Clause under this Court's decision in *Burns v. United States*, 235 A.3d 758 (D.C. 2020). They were also facially deficient and not subject to the good faith exception. Because the evidence from these warrants was relied on heavily by the government on both conspiracy charges, both murders, the assaults, and the weapons-related charges, these convictions must be overturned.

1. The Warrants Were Deficient Under *Burns*

As Mr. Turner's opening brief explained, Br. 24–28, the cell phone warrants here were constitutionally deficient under *Burns*, because they endorsed the "broadest possible search" covering "virtually all of the different types of data found on modern cell phones." 235 A.3d at 775. While the warrants laid out evidence allegedly connecting Mr. Turner with criminal conduct, they failed to demonstrate a "nexus between" the many "item[s] to be seized and the criminal behavior" under investigation. *Id*. at 771.

The government first attempts to distinguish *Burns* by emphasizing that, unlike Mr. Burns, Mr. Turner was a suspect and charged with a crime at the time Detective Weber applied for the warrants. Gov't Br. at 36. While the *Burns* court discussed Mr. Burns's status as a non-suspect, that status was not dispositive. Nor is Mr. Turner's status dispositive here: While Detective Weber may have had probable cause to believe that Mr. Turner committed certain offenses, Gov't Br. at 36–37, Detective Weber was still required to explain why evidence of those offenses would be on Mr. Turner's cell phones and where that evidence would be. *Burns*, 235 A.3d at 771. He did not adequately do so.

Attempting to show otherwise, the government cites *United States v. Griffith*, 867 F.3d 1265, 1274 (D.C. Cir. 2017), for the idea that the presence of "evidence of recent criminal activity" on "a suspect's phone" "might" be "infer[red]," "perhaps especially when . . . multiple perpetrators may have coordinated the crime." Gov't Br. at 37. But in the very next breath *Griffith* refused to credit that inference, because "the freshness of the supporting evidence is critical" and "by the time police sought the warrant in this case, more than a year had elapsed since the shooting." 867 F.3d at 1274. The September 2017 warrant has the same problem. It was sought nearly a year after the criminal activity at issue.

The government falls back on the warrants' boilerplate language about Detective Weber's "training and experience" about how "people who commit crimes in Washington D.C.[] often use their cell phones." Gov't Br. at 37 (internal quotation marks omitted); *see Burns*, 235 A.3d at 775 (discussing the use of "templates" as warrants). Yet "[i]t would be a particularly inexperienced or unimaginative law enforcement officer who could not come up with several reasons to suppose evidence of just about any crime could be found on a cell phone." *Riley*, 573 U.S. at

399. As a result, while an officer's training and experience can form part of the basis of a cell phone search warrant, courts across the country agree that "[a] detective's conclusory statement [] based on [] training and experience" is entitled to "little if any weight" in the probable cause analysis. *United States v. Underwood*, 725 F.3d 1076, 1081, 1084 (9th Cir. 2013); *see also Commonwealth v. Broom*, 52 N.E.3d 81, 90 (Mass. 2016) (finding an officer's conclusory statement that a cell phone would contain information pertinent to the investigation based on their training and experience "add[ed] nothing to the probable cause calculus"); *see also State v. Keodara*, 364 P.3d 777 , 782 (Wash. Ct. App. 2015) (finding that "blanket statements about what certain groups of offenders tend to do and what information they tend to store in particularly places" are insufficient under the Fourth Amendment). The government points to specific references in the warrants to Instagram posts and certain media websites, Gov't Br. at 38, but the warrants were not limited to these applications. Thus, even if "the affidavits made proper factual showings" as to those "categories of data," those references cannot cure the "classic 'bare bones' statements as to everything" else. *Burns*, 235 A.3d at 774.

On the issue of particularity, the government fares even worse. The government suggests the warrants contained a "temporal guide" in specifying records related to the neighborhood feud and shootings that were "believed" to have started on May 10, 2016, Gov't Br. at 38, but maintains in a footnote that any actual temporal limitation was "impracticable," *id.* at 39 n.6. Detective Weber himself testified at the suppression hearing that the warrants were not limited by "date, time, or data type, and that ultimately the entire contents of the phones was extracted." *Id.* at 28. This Court was clear in *Burns* that a warrant "[must be] strictly limited to the time period and information or other data for which probable cause has been properly established through the facts and circumstances set forth under oath in the warrant's supporting affidavit." *Burns*, 235 A.3d at 773; *see also Commonwealth v. Snow*, 160 N.E.3d 277, 288 (Mass. 2021) ("[T]o be sufficiently particular, a warrant for a cell phone search presumptively must contain some temporal limit."). Other than claiming "impracticability," the government makes no argument that the warrants' references to the time period of the alleged feud was an actual limitation on the search of Mr. Turner's cell phones. If the government had probable cause only to search for data dated between "May 2016 to March 2017," Gov't Br. 38 n.6, the warrants should have been so limited—they were not.

The warrants' limitation to evidence "pertaining to the feud-related" violence is also insufficiently particularized. The government cites Detective Weber's affidavit and case law suggesting that such a limitation can be appropriate in certain circumstances. Gov't Br. at 39–40 (citing *United States v. Bass*, 785 F.3d 1043, 1050 (6th Cir. 2015)). But *Burns* declined to adopt the standard from *Bass*. *Burns*, 235 A.3d at 776–77. And even applying the *Bass* standard here in the alternative, as the

Burns Court did, the warrants "could have provided a more specific description of the items subject to seizure . . . consistent with the narrow showings of probable cause in the supporting affidavit." 235 A.3d at 777. For similar reasons, the Supreme Court of Michigan recently deemed a search warrant "insufficiently particular" where the warrant "allowed officers to comb through every conceivable type of information on the cell phone limited only, at best, to evidence 'pertaining'" to a particular investigation. *People v. Carson*, No. 166923, 2025 WL 2177501, at *11 (Mich. July 31, 2025).

Allowing officers to justify searches of entire cell phones because "criminals can . . . hide information" using the "vast array of apps now available," Gov't Br. at 39, would gut *Burns*—and the Fourth Amendment. *Cf. In re Nextel Cellular Tel.*, No. 14-MJ-8005-DJW, 2014 WL 2898262, at *13 (D. Kan. June 26, 2014) ("Probable cause to believe drug trafficking communication may be found in [a] phone's mail application will not support the search of the phone's Angry Birds application."). "Modern cell phones"—"[w]ith all they contain and all they may reveal" about "the privacies of life"—deserve greater protection from government intrusion. *Riley*, 573 U.S. at 403; *cf. United States v. Jones*, 565 U.S. 400, 416 (2012) (Sotomayor, J., concurring) ("Awareness that the government may be watching chills associational and expressive freedoms.").

2. The Good Faith Exception Does Not Apply

The trial court erred in finding that the good-faith exception meant suppression was unwarranted. The government argues this case is "on all fours" with *Abney v. United States*, 273 A.3d 852 (D.C. 2022), and *In re J.F.S.*, 300 A.3d 748 (D.C. 2023), but Mr. Turner has already demonstrated why the warrants here are more like the warrant in *Burns*. Br. at 29–30. By allowing the police to search the entirety of his phones while only providing "examples" of potentially relevant records, officers could not have reasonably presumed them to be valid. *United States v. Leon*, 468 U.S. 897, 923 (1984).

Other courts have refused to apply the good-faith exception in cases like this one. In the *Carson* case just discussed, the Michigan Court of Appeals rejected application of that exception to a similar warrant, for three reasons, all of which are present with the September 2017 warrant. *People v. Carson*, No. 355925, 2024 WL 647964 (Mich. Ct. App. Feb. 15, 2024), *aff'd in part & rev'd in part on unrelated grounds*, 2025 WL 2177501 (Mich. July 31, 2025).[1] First, that case, like this one, involved a warrant "authorizing a search of the phone's entire contents for any incriminating evidence." *Id.* at *11. Second, in *Carson*, as here, Gov't Br. 28, "the

[1] Because the warrant issue in *Carson* arose in the context of an ultimately unsuccessful ineffective-assistance claim, the Michigan Supreme Court found "it unnecessary to address" the good-faith exception when it held that the warrant was deficient under the Fourth Amendment. *Carson*, 2025 WL 2177501, at *14 n.27.

police ultimately seized . . . all of [the phone's] contents." *Carson*, 2024 WL 647964, at *11. Third, the officer seeking the warrant in *Carson* "essentially admitted knowledge of the breadth of personal information available on modern cell phones . . . and stated his intent to comb through all of it." *Id*. And here too, Detective Weber's affidavit specifically mentioned wanting to "conduct more extensive searches, such as scanning storage areas not obviously related to the evidence described in this warrant application or perusing all stored information briefly to determine whether it falls within the scope of the warrant." *Gov't* Br. at 39–40. This Court, too, should reject the good-faith exception where police aim "to engage in a fishing expedition."[2] *Carson*, 2024 WL 647964, at *11. The trial court's failure to do so was prejudicial, for the reasons discussed *infra*, at Part I.C.

B. Seizure of the Car

It was also prejudicial error for the trial court to admit evidence of the gun that police found in Mr. Turner's Lexus after their unconstitutional seizure of that vehicle. Contrary to the government, the police lacked probable cause seize

[2] Beyond *Carson*, see *State v. Wilson*, 884 S.E2d 298, 300 (Ga. 2023) (warrant authorizing search of any and all data found on a cell phone was invalid); *see also State v. Bock*, 485 P.3d 931, 936 (Or. Ct. App. 2021) (warrant authorizing the search of a cell phone for evidence about the owner and any evidence related to suspected criminal offenses, including unlawful firearm possession, was not sufficiently specific); *Taylor v. State*, 260 A.3d 602, 609, 616 (Del. 2021) (warrant permitting search and seizure of "any/all data stored by whatever means" on defendant's smartphones failed particularity requirements).

Mr. Turner's property simply because he had been the victim of a crime. And the gun found inside the glove box as the result of a subsequent search is clearly fruit of the poisonous tree. The government's contrary view finds no real support in the case law it cites, and the rule the government advances would permit law enforcement to broad a power to seize and dig through innocent victims' property.

1. The Police Did Not Have Probable Cause to Seize Mr. Turner's Lexus.

The government maintains that, because Mr. Turner was a victim of the drive-by shooting outside the CSOSA building on March 8, 2017, the police had probable cause to seize his Lexus. *See* Br. at 8; Gov't Br. at 48–51. But the government has not pointed to a single case—in this jurisdiction or any other—supporting the proposition that probable cause exists for the warrantless seizure of a vehicle exists because the vehicle belongs to the *victim* of a crime. To the contrary, the cases the government cites involved the property of suspects. In *Holston v. United States*, 633 A.2d 378, 385 (D.C. 1993), and *Maryland v. Dyson*, 527 U.S. 465, 467 (1999) (per curiam), the police conducted warrantless searches and seizures of vehicles after receiving tips from informants indicating that the drivers were trafficking controlled substances. And as explained in Mr. Turner's opening brief, *see* Br. at 32–33, two of the government's other cases *Chambers v. Maroney*, 399 U.S. 42 (1970), and *Carroll v. United States*, 267 U.S. 132, 160 (1925), involved warrantless vehicle seizures based on extensive evidence that the drivers were actively involved in perpetrating crimes. These cases do not hold that there is probable cause to warrantlessly seize a car belonging to any individual who has fallen victim to a crime.

Citing *Tuckson v. United States*, 77 A.3d 357, 366 (D.C. 2013), the government observes that the automobile exception is often phrased in terms of "evidence"—that is, police may warrantlessly seize a car based on probable cause "to believe that [it] will contain either contraband or evidence of a crime." *See* Gov't Br. at 50. But *Tuckson* does not help the government. Police stopped Tuckson because they believed that his car was outfitted to falsely imitate a police cruiser. *Id.* at 358–59. Officers then performed a "window tint check" and discovered illegal firearms. *Id.* at 359. So unlike Mr. Turner, Tuckson was the suspected perpetrator. And in any event, the *Tuckson* Court ultimately determined that the warrantless search of the car violated the Fourth Amendment because police lacked probable cause to believe that Tuckson was committing a crime by modifying his car. *Id* at 366–67. In so holding, this Court opined that "the probable cause determination is . . . an individualized judgment, based on objective, observable 'facts and circumstances' *indicating commission of a crime by a particular person*." *Id.* at 367 (quoting *Ybarra v. Illinois,* 444 U.S. 85, 91 (1979)) (emphasis added). In attempting to justify the warrantless seizure of Mr. Turner's car, the government points to no circumstances indicating "commission of a crime by" him, *id.*—resting instead on circumstances, like "visible bullet damage" to the car, which only show that Mr. Turner and his Lexus were the victims (and maybe the targets) of a violent shooting, *see* Gov't Br. at 49–50.

Nor can the woman "who attempted to retrieve items from the car" justify the vehicle's warrantless seizure. *Id.* at 50. According to the government, "the mystery woman['s]" appearance "heightened suspicion that the car contained items of evidentiary value." *Id.* But the government offers no reason why the act of retrieving something from the car could relate to the shooting. *Cf. United States v. Scott*, 987 A.2d 1180, 1197 (D.C. 2010) (finding no probable cause to warrantlessly search a vehicle where there was an insufficient "nexus between the [Lexus] and the [criminal] activity" (first alteration in original)). Just as or more likely, the woman appeared because the car—like anyone's—"contained items of [*private*] value" to her or Mr. Turner. Gov't Br. at 50 (alteration and emphasis added).

And that is exactly the problem with the government's rule. It would permit the government to warrantlessly seize (and then search) any person's vehicle if law enforcement have reason to believe that the vehicle may—by no fault of its owner—contain "items of evidentiary value" to the police. *Id*. A rule like that flouts the "basic purpose[s]" of the Fourth Amendment, and its warrant requirement: "to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials," *Camara v. Mun. Ct.,* 387 U.S. 523, 528 (1967), and "to place obstacles in the way of a too permeating police surveillance," *United States v. Di Re,* 332 U.S. 581, 595 (1948). The Court should decline the government's invitation to so broaden its powers of warrantless seizure, and should deem the seizure of Mr. Turner's car unconstitutional.

2. The Gun Discovered in the Subsequent Search of Mr. Turner's Car was Tainted and Inadmissible.

Because the initial seizure of Mr. Turner's car violated the Fourth Amendment, the gun that the police ultimately collected from the car is fruit of the poisonous tree that the trial court should have excluded. The fact that the police acquired a warrant to search the car after the initial seizure and another warrant to search for firearms after spotting the firearm cannot cure the constitutional defect.

"[F]ruit of the poisonous tree"— evidence collected as a result of a violation of the defendant's constitutional rights—should generally not be admitted at trial. *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)). Such evidence may nonetheless be admitted if it was *also* discovered via a legal means that was "sufficiently distinguishable to be purged of the primary taint." *Wong Sun v. United States*, 371 U.S. 471, 488 (1963). An alternative source of discovery is "sufficiently distinguishable" only if one of three exceptions applies: (1) the inevitable discovery doctrine; (2) the independent source doctrine; or (3) attenuation doctrine. *See Utah v. Strieff*, 579 U.S. 232, 238 (2016). Mr. Turner has explained why the inevitability doctrine does not work here. *See* Br. at 34. The government's cited cases demonstrate why the independent source and attenuation doctrine are also inapplicable.

Start with the independent source doctrine, which allows the admission of evidence obtained unlawfully if that evidence was also independently acquired from a separate, legal source—such as a warrant. Invoking this exception, the government cites *Murray v. United States*, 487 U.S. 533 (1998), where federal agents received information that defendants were storing marijuana in a warehouse and then warrantlessly forced their way in, observed "burlap-wrapped bales," and left without further action. 487 U.S at 533. The same agents then obtained a search warrant, reentered, and seized 270 bales of marijuana from the warehouse. *Id.* The Supreme Court explained that the Fourth Amendment would allow the admission of the bales evidence *only if* "the search pursuant to warrant was in fact a genuinely independent source." *Id.* at 542. But the Court declined to itself apply the independence-source doctrine, vacating and remanding the case because the trial court had not "explicitly [found] that the agents would have sought a warrant if they had not earlier entered the warehouse." *Id.* at 543.

Apparently recognizing that the Supreme Court's decision in *Murray* would require the same sort of finding here, the government insists that "[t]he seizure of the car in no way influenced the decision to obtain a warrant." Gov't Br. 52. But the trial court made no such finding here either. *See* Tr. 9/6/22, 101–05. And the government is wrong that "[t]he evidence established that the police decided to seek a warrant once Turner withdrew his consent," and then, "[h]aving decided to seek a warrant, . . . seized the car and had it towed." Gov't Br. at 51–52 (citing Tr. 7/5/22, 47, 60). But Detective Weber's testimony is ambiguous at best. At times, he suggests that police obtained the warrant *because* they "[were] able to" seize the vehicle and "take the vehicle to a secure facility." Tr. 7/5/22, 60. For example, when asked why officers did not search Mr. Turner's vehicle without a warrant, Detective Weber testified: "I am aware there are exceptions where we can conduct warrantless searches of vehicles. However, when we are able to take the vehicle to a secure facility. He had already withdrawn his consent. And so, typically, those situations we—the police department, seeks search warrants that are authorized by a judge of this court." *Id.*[3] Such ambiguous testimony cannot establish that officers would have obtained a warrant even if they had not unconstitutionally seized Mr. Turner's car.

The attenuation doctrine also does not apply. Under that doctrine, "[e]vidence is admissible when the connection between unconstitutional police conduct and the

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[3] *See also* Tr. 7/5/22, 23:21-25–24:1-4 (explaining that officers did not process Mr. Turner's car on the scene because "[g]iven the time of day and the amount of time it took for the evidence technicians to come out and then Mr. Turner's initial willingness to allow a search of the vehicle and then a withdrawal. This all occurs in the afternoon. The police department has the means to take the vehicle to a secure facility. This wouldn't necessarily qualify as an exigent reason or emergency reason to obtain a search warrant after the normal hours of the court. So that is why the warrant was sought the following day.").

evidence is remote or has been interrupted by some intervening circumstance." *Utah v. Strieff*, 579 U.S. 232, 238 (2016). In *Strieff*—the case the government relies on (at 51)—the police illegally stopped a suspected drug dealer, but, during the stop, discovered there was an independent pre-existing warrant for his arrest and proceeded to perform a search of his person that yielded methamphetamines. *Id.* at 232. The Supreme Court determined that evidence of the methamphetamines was properly admitted at trial because the independent warrant that predated the stop rendered the search "a ministerial act that was independently compelled by the pre-existing warrant." *Id.* at 240. And the two events—the stop and the warrant—were "wholly unconnected." *Id*.

This is not *Strieff*. The outstanding arrest warrant there bore absolutely no relationship to the illegal stop performed by the officer, and thus served as "a critical intervening circumstance" that broke any causal connection between the search of the defendant and the constitutional violation. *Id* at 242. But here, the government cannot credibly claim that the seizure and the later warrants were unconnected: both arose from the exact same set of events—the shooting in which Mr. Turner was a victim. The gun that police happened to discover in Mr. Turner's car after they unlawfully seized it is fruit of the poisonous tree and should have been suppressed.

C. The Trial Court's Errors in Admitting the Cellphone and Gun Evidence Were Not Harmless.

"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." *Burns*, 235 A.3d at 791 (citing *Chapman v. California*, 386 U.S. 18, 24 (1967). While the government cites additional evidence presented at the trial that allegedly renders Mr. Turner's cell phone data "cumulative," Gov't Br. at 44, the government does not meet its burden that the verdicts were "'surely unattributable' to the erroneous admission of his cell phone data . . . considered in combination" with the likewise erroneous admission of evidence from his car, *Burns*, 235 A.3d at 791 (quoting *Jenkins v. United States*, 75 A.3d 174, 192 (D.C. 2013)); *see also id.* ("Where multiple errors have occurred, their impact must be viewed cumulatively in determining whether the government has met its burden.").

The evidence of the gun was plainly harmful. Multiple of Mr. Turner's convictions—for the murders of Andrew McPhatter and DeVin Hall, unlawful possession of a firearm by a person previously convicted of a crime punishable by imprisonment for a term exceeding one year, possession of a firearm during the commission of a crime of violence, and intent to kill while armed—depended heavily on evidence that the those crimes involved the same type of gun found in his car. *See* Br. at 36–38. Without that evidence, it is highly likely that the government would not have been able to make its case against Mr. Turner. Indeed, the government does not contest that admission of the firearm evidence was prejudicial.

As a result, if this Court finds that suppression of the cell phone and gun evidence was warranted, Mr. Turner's convictions must be vacated. *See James v. United States*, 319 A.3d 384, 392 (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.

"[A]ppellate review of the sufficiency of the evidence is [not] toothless," and this court "ha[s] an obligation to take seriously the requirement that the evidence in a criminal prosecution must be strong enough that a jury behaving rationally really could find . . .[guilt] beyond a reasonable doubt." *Rivas v. United States*, 783 A.2d 125, 134 (D.C. 2001) (en banc). The government here asks the court to do something less, to reduce the inconsistencies in its theory of identity to "minor variations in description," Gov't Br. 82, and to overlook other issues because "[t]he evidence . . . need not negate every possible inference of innocence." *Fitzgerald v. United States*, 228 A.3d 429, 437 (D.C. 2020) (internal citation omitted). A rational jury would not have overlooked these flaws.

The government freely admits to numerous inconsistencies and contradictions at the heart of its case against Mr. Turner. The government admits that the vehicle identified by eye-witness testimony was a "white, tan-ish looking vehicle" on January 7 and a "white Honda-style vehicle" on February 17—which was later clarified to be a "two-door Honda Accord"—while Mr. Turner drives an unmistakably white Lexus. Gov't Br. 78–79 (citing Tr. 10/19/22 25–26; Tr. 11/3/22 179–180). The government further admits that the gun they recovered was in the *passenger*-side glove compartment of Mr. Turner's vehicle, though that vehicle was "*driven* by Mr. Turner on the day it was seized," and multiple individuals were seen taking part in each of the alleged incidents. *Id.* at 78–81, 83 (emphasis added). And the government also admits that the GPS in Mr. Turner's state-issued ankle monitor places him at home on January 7 at the time that Devin Hall was allegedly murdered, rather than at the scene of that incident. *Id.* at 83.

These inconsistencies are not "minor variations in description" that "do not undermine the sufficiency of the evidence" as the government urges, *id.* at 82, but rather serious discrepancies on the question of identity. Without additional uncontroverted evidence placing Mr. Turner at the scene of any of these three incidents, no reasonable jury could have concluded beyond a reasonable doubt that Mr. Turner was, in fact, present for and involved in the crimes alleged.

Instead of providing "evidence showing that [its] identification is reliable," *Beatty v. United States*, 544 A.2d 699, 701 (D.C. 1988), the government attempts to construe otherwise innocent facts—and, in some cases, point to the absence of facts to the contrary—in order to prove that its case is well supported. The government rests secondarily on a description of a common hairstyle, dreadlocks; evidence relating to Mr. Turner's telephone and texting exchanges with close friends of his; the fact that Mr. Turner was the victim of multiple acts of violence; and "the lack of any evidence of another shooting in the area at around the same time" in the case of Joseph Tyler as proving their case that Mr. Turner is guilty of the crimes alleged. Gov't Br. 82–86. As previously noted, none of these facts in and of themselves establish Mr. Turner's guilt, and all of them can be explained in a way that readily supports Mr. Turner's innocence. Although the government "need not negate *every* possible inference of innocence" to have made its case, it must at least address those innocent explanations that predominate in reason over the contrary interpretation. *Fitzgerald*, 228 A.3d at 437 (emphasis added).

At bottom, the government has not presented sufficient targeted evidence to meet its burden to prove its case by more than mere speculation. *Lewis v. United States*, 767 A.2d 219, 222 (D.C. 2001) (citation omitted); *see also Brocksmith v. United States*, 99 A.3d 690, 697 (D.C. 2014) (noting that a case is speculative when it relies on "[t]he act or practice of theorizing about matters over which there is no certain knowledge"). Mr. Turner's convictions relating to the events of January 7, February 17, and March 1, 2017 must therefore be overturned.

CONCLUSION

Mr. Turner's convictions should be reversed.

Date: August 4, 2025

Respectfully submitted,

/s/ *Tobias S. Loss Eaton*
TOBIAS S. LOSS-EATON
MADELINE JOSEPH*
ABIGAIL SCHEPER
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
Tel: (202) 736-8000
Fax: (202) 736-8711
tlosseaton@sidley.com

**Arguing Attorney*

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of August, 2025, a copy of the foregoing Reply Brief of Appellant was served electronically on the following counsel of record:

Chrisellen R. Kolb
Chief, Appellate Division, District of Columbia
United States Attorney's Office
601 D Street, NW
Washington, D.C. 20004

/s/ *Tobias S. Loss-Eaton*
Tobias S. Loss-Eaton
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005