No. 22-CF-116

DISTRICT OF COLUMBIA
COURT OF APPEALS

MASON BINION,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

On Appeal From The Superior Court for the District of Columbia,
Criminal Division, Case No. 2018-CF1-001370
The Hon. Ronna Beck

BRIEF OF APPELLANT MASON BINION

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Whether the trial court violated Mr. Binion's due process rights by failing to hold a competency hearing notwithstanding two undisputed competency reports prepared by the Department of Behavior Health concluding that Mr. Binion suffered from "grandiose delusions" and was "incompetent to proceed with his cases."

II. Whether the trial court erred when it denied Mr. Binion's request for a self-defense instruction given the evidence in the record that the decedent was armed with a gun and multiple rounds of ammunition recovered from the scene suggested that there could have been an exchange of gunfire between two different firearms.

III. Whether the trial court abused its discretion in instructing the jury on aiding and abetting and co-conspirator liability when the prosecution's entire theory of the case was that Mr. Binion was the principal offender and the prosecution did not introduce any evidence that someone else was the shooter.

INTRODUCTION

In 2018, the government indicted Mason Binion on murder charges related to the death of Michael Taylor more than a decade earlier. Less than a year before trial, the Department of Behavioral Health ("DBH") filed two competency reports opining that Mr. Binion was *not competent* to proceed with his case. Rather than hold a competency hearing, however, the trial court conducted "a very limited competency

voir dire" with Mr. Binion as part of a "mental observation hearing." No experts testified at this hearing, which lasted less than twenty minutes, and neither party was given an opportunity to present any evidence or witnesses. Following this abbreviated hearing and notwithstanding the trial court's observation that Mr. Binion "didn't really have a firm grasp on . . . how the trial is going to work," the court found Mr. Binion competent to stand trial. The trial court's decision to find Mr. Binion competent without a competency hearing violated his due process rights.

Following a jury trial, Mr. Binion was convicted of first-degree murder and sentenced to 45 years in prison. The jury reached its verdict in the absence of a self-defense instruction, which the trial court declined to issue citing what it perceived to be a lack of evidence supporting such an instruction. That ruling failed to view the evidence in the light most favorable to Mr. Binion as the law requires. The evidence in the record showed that the decedent, Mr. Taylor, had been seen firing his gun into the air earlier in the day; that he brought a firearm with him to his meeting with Mr. Binion; that witnesses heard three shots but Mr. Taylor received only two bullet-related injuries; and that multiple rounds of ammunition, including ammunition of a caliber compatible with Mr. Taylor's firearm, were recovered from the scene. Properly viewed, the evidence at trial was sufficient to put before the jury whether—to the extent they believed Mr. Binion was the shooter—he had acted in self-defense.

At the same time that it declined to give the jury Mr. Binion's requested instruction on self-defense, the trial court decided to instruct the jury on aiding and abetting and co-conspirator liability notwithstanding a dearth of evidence to support this instruction. Throughout trial, as even the trial court acknowledged, App320, the prosecution's theory of liability was that Mr. Binion was the *principal offender*. The prosecution did not present evidence that anyone else could have fired the fatal shot—evidence that the law requires to instruct the jury on non-principal liability. Indeed, during closing arguments, the prosecution represented to the jury that "*all the evidence shows that it was Mason Binion* who shot [Mr. Taylor]." App327 (emphasis added).

Because there was no evidence that there was a different principal offender with whom Mr. Binion could have conspired or otherwise abetted, the trial court abused its discretion in so instructing the jury. Moreover, the error was not harmless. Two days into deliberations, the jury submitted a note to the trial court seeking clarification on whether they could nonetheless convict Mr. Binion if they did not believe he was the shooter or principal offender. In response, the trial court directed the jury to its erroneously given instructions on aiding and abetting and co-conspirator liability. Mr. Binion therefore respectfully requests that this Court reverse his conviction for first-degree murder.

STATEMENT OF THE CASE

A grand jury charged Mr. Binion with one count of First Degree Murder While Armed (Premeditated), in violation of 22 D.C. Code, Sections 2101 and 4502. On February 12, 2020, a jury found Mr. Binion guilty of the charge. On February 25, 2022, the court sentenced Mr. Binion to 45 years in prison. That same day, counsel for Mr. Binion timely filed a notice of appeal. On March 3, 2022, this Court appointed counsel to represent Mr. Binion pro bono in his appeal. On March 28, 2023, this Court granted prior appellate counsel's motion to withdraw and appointed undersigned counsel to represent Mr. Binion.

STATEMENT OF FACTS

A. Initial Investigation and Indictment

On the morning of June 22, 2008, police found Mr. Michael Taylor lying face down in an alleyway behind 600 Farragut Street, N.W. in the District of Columbia. App138, 282. Mr. Taylor was deceased and his body bore visible signs of injury. App282, 169. An autopsy revealed that he had suffered a fatal gunshot wound to the left side of the back of his head as well as a graze gunshot wound to his left pointer finger. App169, 171. There was no soot or stippling visible around either gunshot wound, which would have indicated that the shooting took place at close-range. App172-173.

Police recovered several gun cartridges and casings from the alleyway. These included: (1) a fired 9-millimeter Luger cartridge casing; (2) a .22-caliber REM

cartridge containing an unfired round that lay on top of Mr. Taylor's body; (3) a .22 caliber REM cartridge containing an unfired round that lay to the left of Mr. Taylor's body; (4) two fired .22-caliber cartridge casings found next to Mr. Taylor's body; and (5) a .22-caliber REM cartridge containing an unfired round, which was recovered adjacent to Mr. Taylor's body. App143-150, 164-165). Officers conducted a months-long investigation and interviewed more than a dozen witnesses but did not arrest anyone in connection with Mr. Taylor's death. App283-285.

Seven years later, on August 22, 2015, the Metropolitan Police Department received an email from a man named Joshua Massaquoi, who claimed to "have information that can help the closure of the murder of Michael Taylor that occurred on June 22, 2008." App245. Mr. Massaquoi had a history of significant mental illness, including schizophrenia, and suffered from hallucinations, which he testified at trial made him "believe[] some things to be true that weren't actually true." App247, 251, 268. He eventually pled guilty to crime of violence, accessory to murder, and possession of a handgun for participating in the murder of Mr. Taylor. App189, 257-258. On October 24, 2018, following testimony from Mr. Massaquoi and others, a grand jury indicted Mr. Binion on one count of first-degree murder. App1.

B. Competency Proceedings

On March 22, 2019, less than a year before trial, the prosecution expressed concern that Mr. Binion's mental health was "declin[ing]." App6. The prosecution informed the trial court that they and others had seen Mr. Binion talk to himself "out loud" "a lot," and requested that the court "address[]" Mr. Binion's mental health issues. App7. The trial court agreed that Mr. Binion's behavior in court was concerning and ordered a competency evaluation completed. App8-9.

DBH subsequently conducted a 55-minute competency screening evaluation of Mr. Binion and opined in a report filed with the court that Mr. Binion was not competent. App16. Dr. Lia Rohlehr, who conducted the evaluation, noted that Mr. Binion's speech was "pressured and tangential, his behavior was animated, and he expressed what appear to be grandiose delusions." App16. She observed that he struggled to "provide direct answers to several questions." App15. Her opinion was that these symptoms "affect[ed] Mr. Binion's rational understanding of the proceedings against him, as well as his ability to consult with counsel with a reasonable degree of rational understanding," App16, and she recommended that Mr. Binion undergo a full competency evaluation. App16. On April 1, 2019, the trial court held a mental observation hearing and ordered that Mr. Binion undergo a full competency evaluation. App27.

Dr. Rohlehr conducted a full evaluation of Mr. Binion on May 2, 2019, and concluded in a report filed with the trial court four days later that Mr. Binion was

not competent to stand trial. App30. The report noted that Mr. Binion "exhibited pressured, tangential speech, increased energy levels, grandiose speech, labile mood, and animated mannerisms." App32. The report also described several of Mr. Binion's "paranoid beliefs regarding the government" and his former and current attorneys. App33. The report concluded that although Mr. Binion had a "factual understanding of the proceedings against him," his rational understanding of the proceedings and ability to consult with counsel were impaired. App33.

On May 7, 2019, one day after Dr. Rohlehr filed her report, the trial court held a second mental observation hearing and solicited both parties' views of the report, explaining that "[u]nder the *Duskie* [sic] . . . standard[], especially on matters of ability to consult with counsel, counsel's view is to be given as much weight as professionals[']' view anyway." App37. The prosecution expressed some concern with Dr. Rohlehr's conclusion that Mr. Binion was not competent and suggested that it might retain an independent expert to examine Mr. Binion. App36. Defense counsel responded that Mr. Binion did not think he had "mental health concerns" but she acknowledged that there were "[c]ertainly" "idiosyncrasies." App38. She also stated that she was "comfortable . . . challenging the report" and requested "leave to hire our own expert." App36, 38.

The trial court did not think Dr. Rohlehr's report "makes out the strongest case that [Mr. Binion was] not competent," App37, and observed that it was difficult to

match the report's descriptions of Mr. Binion's mannerisms with the report's conclusion that Mr. Binion was not competent. App37. In light of this uncertainty, the court conducted what it characterized as "a very limited competency voir dire," App38, to probe Mr. Binion's competency. The voir dire occupied less than three pages of the hearing transcript and consisted of factual questions that asked Mr. Binion to describe the charge against him, the penalty for that charge, the role of defense counsel and the prosecution, and the standard for conviction. App39-41. On several occasions during this brief colloquy, Mr. Binion expressed confusion, leading the trial court to wonder whether there were "issues with the way [the court was] asking questions about the conduct of the trial." App42.

At the conclusion of the mental observation hearing, the trial court found that Mr. Binion "didn't really have a firm grasp on . . . how the trial is going to work." App44. Nevertheless, the trial court held that Mr. Binion was competent to stand trial. Dr. Rohlehr was not present for the mental observation hearing and did not have an opportunity to explain her conclusions to the court. Neither the prosecution nor the defense were provided an opportunity to retain independent experts or solicit testimony during the hearing. The trial court did not revisit Mr. Binion's competency before trial.

C. Trial and Conviction

Mr. Binion's criminal trial began on January 23, 2020. The prosecution's theory was that Mr. Binion and a group of acquaintances had murdered Mr. Taylor over a botched drug deal involving marijuana. Among the witnesses called by the prosecution was Calvin Tillman, who testified that on June 21, 2008, the day before Mr. Taylor's body was found, Mr. Taylor had approached him about doing a potential drug deal with some of Mr. Taylor's acquaintances. App51-52, 56). Mr. Taylor, in his capacity as a middleman, provided Mr. Tillman with almost $2,000 collected from Mr. Taylor's acquaintances. App71-72. In exchange, Mr. Tillman agreed that he would provide Mr. Taylor's acquaintances with several pounds of marijuana. App56-57. Mr. Tillman reneged on that promise; he testified at trial that although he took the money, he never provided Mr. Taylor or Mr. Taylor's acquaintances with any drugs. App77-78. Mr. Tillman did not identify Mr. Taylor's acquaintances, with whom he was unfamiliar. App61, 63-64.

The prosecution also called Kavaughn Jones, one of Mr. Taylor's best friends. Mr. Jones testified that the night before he died, Mr. Taylor told Mr. Jones that he had received a significant sum of money from Mr. Binion as part of a drug deal that Mr. Taylor was facilitating, but the deal had gone south. App94-95. Mr. Jones testified that he saw Mr. Taylor get into a vehicle with multiple people, including Mr. Binion (whom Mr. Jones had only seen twice before), a few hours before Mr.

Taylor was likely killed, close to midnight. App96, 112, 119-120, 122). On cross-examination, Mr. Jones admitted that he had initially told officers a few days after the shooting that he could not see anyone in the car that picked up Mr. Taylor because the headlights were directly in his face. App128, 133. Mr. Jones also testified that he had initially told officers he would not have recognized Mr. Binion even if they had been standing next to each other. App127.

Three witnesses testified that Mr. Taylor was armed with a gun on June 21. Mr. Tillman testified that he saw Mr. Taylor fire a gun into the air earlier in the afternoon. App53-54. Mr. Jones testified that he saw Mr. Taylor bring his .380 semiautomatic Glock to the local recreation center, right before the prosecution argued Mr. Taylor met up with Mr. Binion. App99-101. And a third witness, who was also close with Mr. Taylor, testified that Mr. Taylor "showed me a silver gun" after he dropped Mr. Taylor off at the recreation center that evening. App134-135. Police never recovered Mr. Taylor's gun or the gun that was used to kill him.

Only two witnesses who testified at trial were present either in the alleyway itself or in its vicinity when Mr. Taylor was killed. The first witness was a woman who testified that she heard three gunshots at approximately 12:30am coming from the alley where police later discovered Mr. Taylor's body. App80, 82-84, 89). She testified that she heard a "pop," which sounded like a gunshot, followed by a man saying "ow," followed by two gunshots in short succession. App83.

The prosecution's star witness, and the only person who claimed to have seen Mr. Binion commit the murder, was Mr. Massaquoi. Mr. Massaquoi admitted on the stand that he had a history of significant mental illness, including schizophrenia, and suffered from hallucinations, which he testified at trial made him "believe[] some things to be true that weren't actually true." App247, 251, 268. Mr. Massaquoi initially testified that he committed the murder by himself. App190. He later testified that he could not remember what, if anything, Mr. Binion did on June 21. App201, 211, 212-213. Among other statements, Mr. Massaquoi testified that he picked up Mr. Taylor from the recreation center on the night Mr. Taylor died, but he could not remember whether Mr. Binion was in the car that night. App219-220. Mr. Massaquoi also testified that he did not remember Mr. Binion saying anything to him that evening. App215.

At the lunch recess, Mr. Massaquoi's lawyer pressured him to change his testimony.[1] When his testimony resumed, Mr. Massaquoi now claimed that his prior testimony had been false. Mr. Massaquoi now said that he and Mr. Binion had picked up Mr. Massaquoi's gun on the night of June 21.[2] Mr. Massaquoi now

[1] Mr. Massaquoi testified that he met with his attorney during the lunch break and that his attorney had told him if he continued testifying he could not remember what Mr. Binion did on June 21, then his plea agreement with the government "might be in jeopardy." App263-264.

[2] Mr. Massaquoi testified at trial that he had "perjured" himself during the grand jury proceedings by testifying that he retrieved the gun at Mr. Binion's request. App203.

testified that he independently decided to "[w]ipe[] the gun down and clean[] the bullets" after retrieving the gun because his fingerprints were on them and that around this time, Mr. Binion asked, "Who's gonna do it?" App223-225; App270-271. Mr. Massquoi now said that Mr. Binion and two other people had been in the car with him when he picked up Mr. Taylor from the recreation center. Mr. Massaquoi now said that he sat in the car while the other men, including Mr. Taylor and Mr. Binion, exited into the alleyway. App231. Mr. Massaquoi testified that both Mr. Taylor and Mr. Binion had their backs turned to the car and that he saw Mr. Taylor "get hit" and that both Mr. Binion and another friend were standing "over the top of" Mr. Taylor afterwards. App231-233; App274-278. All of this testimony squarely contradicted Mr. Massaquoi's testimony from earlier in the day.

After the prosecution rested its case, defense counsel requested a self-defense instruction based on (1) testimony that Mr. Taylor had armed himself with a gun prior to his meeting with Mr. Binion; (2) cartridges recovered from the scene, which could have come from two different guns; and (3) testimony that there were three gunshots, with a pause following the first gunshot. App311. The trial court declined to give the jury a self-defense instruction because "at most," the evidence was that Mr. Taylor "was armed" and that "[t]here's a possibility that there was more than one firearm." App311. The trial court concluded that this evidence was insufficient to justify a self-defense instruction because there was no evidence that Mr. Taylor

had "display[ed]" the weapon in his possession prior to being shot. App311, 313-314. The trial court also concluded that a reasonable juror could not find that the cartridges were fired from two different guns because (1) the 9-mm cartridge was "rusty" and (2) the firing pin impressions associated with two separate .22 cartridges were not sufficiently different from one another to justify a finding that they were fired from two different guns.[3] App322-323.

Defense counsel also objected to the government's request to give the jury instructions on aiding and abetting and conspiracy liability given the lack of evidence presented by the prosecution that anyone other than Mr. Binion could have fired the gun. App320-321. The trial court overruled the objection, explaining that "even though that isn't the government's theory, . . . the jury could conclude that somebody else was the one who actually fired the weapon" and that Mr. Binion had participated in the killing. App320.

The jury deliberated for almost four days. On the second day of deliberations, the jury submitted a note to the trial court asking whether it needed to find that Mr. Binion had fired the gun "in order to determine that the Defendant caused the death of Michael Taylor." App337. The trial court responded to the note by directing the

[3] Firing pin impressions are marks left behind on cartridge casings when they are fired from a firearm. App177. Because these marks are specific to the manufacture of a firearm, dissimilar markings tend to indicate that the cartridges were fired from different guns. App178.

jury "to the aiding and abetting and co-conspirator liability instructions I've given you." App338-339. On February 12, 2020, the jury convicted Mr. Binion of first-degree murder. App343. Mr. Binion was sentenced to forty-five years' imprisonment. App414.

SUMMARY OF ARGUMENT

Mr. Binion's conviction should be reversed for three reasons.

First, the trial court violated Mr. Binion's due process rights when it found him competent without conducting a competency hearing. This Court has held that when, as here, there exists "substantial reason" to doubt the defendant's competency, a trial court *must* conduct a competency hearing *sua sponte*. Such competency hearing must provide the defendant with a fair and adequate opportunity to show he is incompetent and provide the parties with an opportunity to introduce evidence on the subject. The trial court did not comply with these requirements. Although the trial court possessed significant evidence questioning Mr. Binion's competency—including two competency evaluation reports finding him incompetent and statements from the prosecution that Mr. Binion engaged in erratic behavior both inside and outside the courtroom—the trial court did not hold a competency hearing. Instead, the court held a cursory "mental observation hearing" just one day after receiving Dr. Rohlehr's full competency evaluation report. That hearing was procedurally deficient. The court did not solicit testimony from any expert witnesses

and did not provide either party with an opportunity to introduce evidence regarding Mr. Binion's competency. On this sparse record, and despite concluding that Mr. Binion "did not really have a firm grasp" on "how the trial is going to work," the trial court found Mr. Binion competent. That finding violated Mr. Binion's due process rights.

Second, the trial court erred when it denied Mr. Binion's request for a self-defense instruction. This Court has held that a defendant is entitled to an instruction on self-defense if there is *any evidence*, however minimal, supporting such an instruction. The evidence at trial, viewed in the light most favorable to Mr. Binion, easily cleared that low bar. Multiple witnesses testified that Mr. Taylor had armed himself with a gun prior to meeting up with Mr. Binion and his friends. The undisputed evidence in the record was that Mr. Binion and his friends possessed only one gun between the four of them on the night in question—a gun that belonged to Mr. Massaquoi. The trial court recognized that spent cartridges recovered from the alleyway suggested there was "a possibility" that multiple firearms may have been involved the night Mr. Taylor died. And a witness who overheard the altercation testified that she heard *three* gunshots coming from the alleyway where Mr. Taylor died, although Mr. Taylor was struck only twice. Because a reasonable juror could conclude from this evidence that Mr. Taylor fired his gun first and that Mr. Binion

responded in self-defense, the trial court was required to give the jury a self-defense instruction.

Third, the trial court abused its discretion when it instructed the jury on aiding and abetting and co-conspirator liability. Both forms of accomplice liability require proof that someone other than the defendant committed the principal offense. However, as even the prosecution admitted during closing arguments, the government did not introduce evidence that anyone other than Mr. Binion could have been the principal offender. Accordingly, there was no evidence to support either instruction, and the trial court erred in concluding otherwise. The trial court's error was not harmless. Two days into deliberations, the jury sent a note to the court asking whether it needed to find that Mr. Binion had fired the gun to determine that he caused Mr. Taylor's death App331—a line of inquiry that suggests the jury had reservations about whether Mr. Binion was in fact the principal offender. Because it is highly likely that the jury relied on the trial court's erroneous instructions on accomplice liability to convict Mr. Binion, his conviction should be reversed.

ARGUMENT

I. THE TRIAL COURT VIOLATED MR. BINION'S DUE PROCESS RIGHTS WHEN IT FOUND HIM COMPETENT WITHOUT CONDUCTING A COMPETENCY HEARING.

"[It] is incompatible with due process of law to prosecute a criminal defendant who is incompetent to stand trial." *Blakeney v. United States*, 77 A.3d 328, 341

(D.C. 2013). That is why the law requires trial courts to hold a competency hearing after "the written report of the full competence examination is received." *Hargraves v. United States*, 62 A.3d 107, 111 (D.C. 2013); *see also* D.C. Code § 24-531.04(a)(1) ("A hearing to determine competence of a defendant *shall* be set" in the enumerated circumstances (emphasis added)). A competency hearing must provide the defendant with a fair and adequate opportunity to show he is incompetent and provide the parties with an opportunity to introduce evidence on the subject. *See Blunt v. United States*, 389 F.2d 545, 549 (D.C. Cir. 1967).[4]

This Court reviews "[a] court's decision whether to hold a competency hearing in the absence of a request for one . . . for abuse of discretion." *Phenis v. United States*, 909 A.2d 138, 152 (D.C. 2006). A court "by definition abuses its discretion when it makes an error of law." *Koon v. United States*, 518 U.S. 81, 100 (1996). Here, both the facts and the law make clear that the trial court abused its discretion by conducting what it characterized as "a very limited competency voir dire," App38—rather than a full competency hearing—before finding Mr. Binion competent. Because the trial court's decision not to hold a competency hearing violated Mr. Binion's due process rights, the Court should vacate Mr. Binion's

[4] Decisions issued by the D.C. Circuit before February 1, 1971, when Congress established this Court, "constitute the case law of the District of Columbia" and are binding precedent. *M.A.P. v. Ryan*, 285 A.2d 310, 312 (D.C. 1971).

conviction or, alternatively, remand Mr. Binion's case for a retrospective competency hearing.

A. Under the Factual Circumstances, the Trial Court Was Required To Hold a Competency Hearing.

This Court has long held that "where there is evidence raising a substantial doubt as to a defendant's competency to stand trial, the trial judge is under a constitutional duty to order a hearing sua sponte." *Holmes v. United States*, 407 A.2d 705, 706 (D.C. 1979); *see also Blakeney*, 77 A.3d at 342; *Gorbey v. United States*, 54 A.3d 668, 678 (D.C. 2012). That is so even when, as here, defense counsel does not request any such hearing because "it is contradictory to argue that a defendant may be incompetent, and yet knowingly or intelligently 'waive' his right to have the court determine his capacity to stand trial." *Pate v. Robinson*, 383 U.S. 375, 384 (1966); *see also Medina v. California*, 505 U.S. 437, 450 (1992) ("[I]t is impossible to say whether a defendant whose competence is in doubt has made a knowing and intelligent waiver of his right to a competency hearing."); *Blakeney*, 77 A.3d at 345 ("[T]he due process violation inherent in and presumed from the trial of an incompetent defendant cannot be waived, if for no other reason than the incompetence itself.").[5]

[5] In *Blakeney*, this Court acknowledged the reality that defense counsel may be tempted not "to raise the issue of [the defendant's] competency" (and in fact fail to do so) when that is the client's desire and directive. 77 A.3d at 345. Clients who

There was more than enough evidence to raise "a substantial doubt" as to Mr. Binion's competency to justify a hearing on the subject. *First*, both the prosecution and the trial court observed early on that Mr. Binion's mental health appeared to be in obvious decline. The prosecution specifically noted that "Mr. Binion talks a lot out loud," and the trial court echoed that even during court proceedings, Mr. Binion would "talk[] at inappropriate times in inappropriate ways."[6] App6-7. *Second*, the trial court received not one but *two* competency evaluations opining that Mr. Binion was incompetent to stand trial and that his "grandiose delusions" would affect his "rational understanding of the proceedings against him, as well as his ability to consult with counsel with a reasonable degree of rational understanding." App16. *Third*, even during the limited voir dire that took place the day after the court

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may be incompetent but who insist that their attorneys advocate for a finding of competency put defense counsel in a difficult ethical position. On the one hand, D.C. Rule of Professional Conduct 1.2 requires lawyers to "abide by a client's decisions concerning the objectives of representation." On the other, the American Bar Association's Criminal Justice Standards on Mental Health recommends that defense counsel "move for evaluation of the defendant's competence to proceed . . . even if the motion is over the defendant's objection." Standard 7-4.3(c) (2016). The record suggests that defense counsel's responses to the competency report may have been a product of this dilemma. During the May 7, 2019 mental observation hearing, defense counsel noted that *Mr. Binion* "doesn't think" he has "mental health concerns" and asked for leave to hire an expert to challenge DBH's conclusion that Mr. Binion was incompetent. App36, 38, 5).

[6] This behavior manifested itself during trial as well. *See, e.g.*, App317 (admonition from the court to Mr. Binion that "you're making it difficult for [defense counsel] to be able to make her arguments to me by interrupting her").

received DBH's full competency evaluation report, the trial court noted that Mr. Binion "didn't really have a firm grasp on . . . how the trial is going to work." App44.

Whatever the bar may be for evidence sufficient to raise "a substantial doubt" as to the defendant's competency, that bar was met. In *Blakeney*, a closely analogous case that addressed when defense counsel is required to raise competency as an issue with the court over their client's objections, this Court observed that "*almost always*, a qualified mental health expert's uncontroverted opinion will be *quite enough* to trigger a duty on the part of counsel to raise the issue of competency with the court." 77 A.3d at 346 (emphasis added).[7] Here, not only was Dr. Rohlehr's opinion that Mr. Binion was incompetent uncontroverted, both the prosecution and trial court had seen firsthand behavior that called into question Mr. Binion's competency—indeed, these concerns were what prompted the competency evaluations to begin with.

The facts of this case thus set it apart from numerous other appeals that have unsuccessfully challenged a trial court's decision not to order a competency hearing. In almost all of those other appeals, the trial court declined to move forward with a competency hearing after receiving reports finding the defendant *competent*. *See,*

[7] This Court has held that "criminal defense counsel must raise the issue of the defendant's competency with the court if" there is objective "reason to doubt the defendant's competency." 77 A.3d at 345. To the extent "reasonable doubt" is a lower standard than the "substantial doubt" required to trigger a court's *sua sponte* obligation to hold a competency hearing, the presence of additional evidence in this case meets that higher standard.

e.g., *Phenis*, 909 A.2d at 152-53 (concluding trial court did not abuse discretion in declining to hold a competency hearing where it "received two competency evaluations finding appellant competent to stand trial and heard defense counsel say appellant was cooperative"); *Bennett v. United States*, 400 A.2d 322, 325 (1979) (decision not to reopen competency proceeding was "fully justified" given hospital report finding competence); *Lopez v. United States*, 373 A.2d 882, 884 (D.C. 1977) (concluding trial court was not required to hold competency hearing where competency evaluation found the defendant competent and the trial judge "engaged in several long, detailed conversations with appellant before he determined that appellant was competent to stand trial").

Here, the opposite was true: The trial court received two separate evaluations deeming Mr. Binion incompetent to stand trial. Both the prosecution and the trial court had observed Mr. Binion behave erratically and inappropriately both inside and outside the courtroom. And during the trial court's limited voir dire, *see infra* p. 8, Mr. Binion repeatedly expressed confusion over the prosecution's role at trial and "the conduct of the trial," which prompted the trial court to conclude that Mr. Binion "didn't really have a firm grasp on . . . how the trial is going to work." App40-41, 44. All of these events created "substantial doubt" that Mr. Binion was competent and triggered the trial court's constitutional obligation to hold a full competency hearing.

B. The Trial Court's "Mental Observation Hearing" Did Not Satisfy the Procedural Requirements for a Competency Hearing

The trial court did not hold a full competency hearing. Instead, the trial court held a cursory mental observation hearing just a day after Dr. Rohlehr filed her full competency evaluation with the court and for less than twenty minutes. This hearing was procedurally deficient and did not satisfy the requirements of the Due Process Clause.

In *Hansford v. United States*, 365 F.2d 920 (D.C. Cir. 1966), the D.C. Circuit concluded that "as a minimum," a competency hearing "must be of record and both parties must be given the opportunity to examine all witnesses who testify or report on the accused's competence." *Id.* at 923 n.8; *see also* 22A, Corpus Juris Secundum, Criminal Procedure and Rights of Accused § 525 (2023) ("A competency hearing must include an opportunity for the defendant to show incompetence to stand trial in a reasonable, fair, and meaningful way, including notice, representation by counsel, the opportunity to introduce evidence, the right to testify, the opportunity to confront witnesses and cross-examine witnesses, [and] the opportunity to address the court." (internal citations omitted)). In all circumstances, the competency hearing must provide the court with the opportunity to make "an informed judicial determination." *Holloway v. United States*, 343 F.2d 265, 268 (D.C. Cir. 1964). In making that determination, the trial judge must "inquire of the examining doctors the basis for their conclusions." *Id.* A competency hearing is procedurally adequate

only when "full and scrupulous attention is given to evidence concerning competency." *Blunt*, 389 F.2d at 547.

The trial court's May 7 mental observation hearing complied with none of these requirements. No witnesses testified at the hearing. The only evidence adduced at the hearing was a short voir dire of Mr. Binion that occupies less than three pages of the hearing transcript. Indeed, the mental observation hearing was held just one day after the Court received the evaluation report finding Mr. Binion incompetent, giving the parties no opportunity to prepare another expert, or call the author of the report, or gather any other evidence, notwithstanding the requests from both parties to be given an opportunity to retain their own competency experts. The lack of witness testimony during the May 7 hearing is especially troubling in light of the fact that the trial court had trouble understanding how Dr. Rohlehr's observations of Mr. Binion corresponded with her conclusion that he was incompetent. App37. Given the court's confusion and the uniquely "persuasive" value of "a medical opinion on the mental competency of an accused," *Blakeney*, 77 A.3d at 346 (citation omitted), the trial court should have held a competency hearing at which Dr. Rohlehr could have testified about her conclusions.

Instead, the trial court disregarded Dr. Rohlehr's competency finding based on nothing more than a "very limited voir dire" of Mr. Binion. That was not proper for two reasons. First, in *Hooker v. United States*, 70 A.3d 1197 (D.C. 2013), this

Court expressly warned that a trial court may not "arbitrarily disregard, disbelieve, or reject" a preliminary expert opinion regarding the defendant's competency. *Id.* at 1205 (alterations omitted). That is because "a medical opinion on the mental competency of an accused is usually persuasive evidence" of competency. *Blakeney*, 77 A.3d at 346 & n.52. By rejecting Dr. Rohlehr's expert opinion without even questioning her and in the complete absence of any contrary expert opinions, the trial court failed to heed this Court's admonition.

Second, the trial court's voir dire consisted entirely of a short series of factual questions about the various roles that the prosecution, defense counsel, and court play at trial. App39-42. Those questions could not have reasonably provided the trial court with information about Mr. Binion's competency. As this Court cautioned in *Blakeney*, "[a]pparent facility can be misleading: That the defendant can recite the charges . . ., list witnesses, and use legal terminology *is not enough to show competence*, for proper assistance in the defense requires an understanding that is rational as well as factual." 77 A.3d at 348 (internal quotation marks and citation omitted) (emphasis added). A "fair and adequate" competency proceeding requires more than a handful of factual questions directed at the defendant when the court has received a professional competency evaluation determining that the defendant is not competent. *Blunt*, 389 F.2d at 549. That is especially so here, where Mr. Binion expressed confusion about several of the questions, leading the trial court to doubt

whether it was "asking these questions in the right way," and where Mr. Binion's answers suggested that he "didn't really have a firm grasp on . . . how the trial is going to work." App41, 44.

The trial court justified this procedurally-deficient, bare-bones hearing on the ground that "counsel's view" of a defendant's competency to stand trial gets "as much weight as a professional's view, anyway" under *Dusky v. United States*, 362 U.S. 402 (1960). *Dusky* says no such thing. In *Dusky*, the Court held simply that the test for competency must be whether a defendant "has a rational as well as factual understanding of the proceedings against him." *Id.* at 402. Neither *Dusky* nor any other Supreme Court case holds that an *attorney's* view on competency should be given as much weight as a *professional medical expert's opinion*. App36. On the contrary, "[a]ttorneys are not trained to identify and evaluate the extent of mental impairments," and so they "may misjudge a defendant's capabilities and miss or misapprehend clinically significant signs that a defendant is not genuinely competent." 77 A.3d at 347-48. For this reason, "a credible medical opinion of incompetency" should not be "lightly disregard[ed]." *Id.* at 348. Yet the trial court's abbreviated mental observation hearing did just that.

Consistent with the traditional deference accorded to expert medical opinions, both the prosecution and defense counsel sought leave from the trial court to retain their own experts to make an independent determination as to competency rather

than push for a competency finding from the court during the abbreviated mental observation hearing. App36, 38. That the trial court declined to provide either party with an opportunity to develop additional competency evidence only highlights the procedurally deficient nature of the mental observation hearing. *See Pate*, 383 U.S. at 385 & n.7 (trial judge's failure to provide the defendant "an opportunity to introduce expert testimony on the question of his sanity" "deprived [the defendant] of his constitutional right to a fair trial").

Consistent with the principles articulated above, courts of appeals that have confronted similar or near-identical facts (an uncontroverted expert opinion that the defendant is incompetent, followed by an abbreviated colloquy and a finding of competency) have typically concluded that such colloquies do not comport with "fundamental procedural due process," and reversed and remanded for new trials. *State v. Johnson*, 551 N.W.2d 742, 753 (Neb. Ct. App. 1996) (limited hearing did not satisfy due process requirements where trial court rejected uncontroverted expert report deeming the defendant incompetent on the basis of a colloquy with the defendant and defense counsel's "conclusory and unexplored opinion that his client was competent"); *see also Hull v. Kyler*, 190 F.3d 88, 108-12 (3d Cir. 1999) (abbreviated hearing during which the witness was asked two questions was procedurally deficient given numerous evaluations finding the defendant incompetent). This Court should do the same. The trial court determined that Mr.

Binion was competent without providing either party an opportunity to submit evidence, develop independent expert testimony, or even question Dr. Rohlehr, and without asking defense counsel whether her view of Mr. Binion's competency was her own or simply the view that Mr. Binion asked her to advocate, *see supra* p. 16. That proceeding was neither fair nor adequate, and failed to protect Mr. Binion's due process rights.

C. This Court Should Reverse Mr. Binion's Conviction Or, Alternatively, Remand for a Retrospective Competency Hearing.

Because the trial court failed to hold a procedurally-adequate competency hearing, this Court should vacate Mr. Binion's conviction and remand for a new trial, rather than remand for a retrospective competency hearing. *See, e.g.*, *Blunt*, 389 F.2d at 549. More than three years have passed since Mr. Binion was tried; the only expert who examined Mr. Binion before trial was Dr. Rohlehr; and the record contains few mental health records from before 2019. *See Hooker*, 70 A.3d at 1203 (suggesting that a retrospective examination would not be appropriate if too much time had passed since the trial); *see also United States v. Klat*, 156 F.3d 1258, 1264 (D.C. Cir. 1998) ("The Supreme Court has expressed reluctance to permit retrospective hearings on questions of mental competency."); *compare with Blakeney*, 77 A.3d at 350 (concluding retrospective competency hearing was adequate where "the reasons for Blakeney's alleged incompetency were not transient ones, . . . Blakeney's mental health history was well-documented and Jail records

shed light on his mental condition and treatment in the months leading up to his trial."). Under these circumstances, the "difficulties of retrospectively determining the petitioner's competency," require a new trial.[8] *Dusky*, 362 U.S. at 403; *see also Pate*, 383 U.S. at 386-87.

II. THE TRIAL COURT ERRED WHEN IT DENIED MR. BINION'S REQUEST FOR A SELF-DEFENSE INSTRUCTION

"As a general proposition a defendant is entitled to an instruction as to any recognized defense[s] for which there exists evidence sufficient for a reasonable jury to find in his favor." *Adams v. United States*, 558 A.2d 348, 349 (1989) (quoting *Mathews v. United States*, 485 U.S. 58, 63 (1988)). "Although the trial judge may properly refuse to give a defendant's requested instruction where no factual or legal basis for it exists, . . . the failure to give such an instruction where some evidence supports it is reversible error." *Hernandez v. United States*, 853 A.2d 202, 205 (D.C. 2004) (internal quotation marks omitted). "[T]he test for some evidence is a minimal one: a defendant is entitled to a jury instruction on a theory of the case that negates his guilt if the instruction is supported by any evidence, however weak." *Kittle v. United States*, 65 A.3d 1144, 1157 (D.C. 2013) (citation omitted). "In determining

[8] To the extent this Court concludes otherwise, the proper course of action would be to remand this case for a retrospective competency hearing with instructions that the trial court must vacate Mr. Binion's conviction if it determines that he was not competent at the time of trial. *See, e.g.*, *Pouncey v. United States*, 349 F.2d 699, 701 (D.C. Cir. 1965).

whether a defense instruction was properly denied," this Court "review[s] the evidence in the light most favorable to the defendant." *Adams*, 558 A.2d at 349.

The trial court erred when it denied Mr. Binion's request for a self-defense instruction. The jury heard testimony from three different witnesses, including two of Mr. Taylor's friends, that Mr. Taylor was aware of the dispute over the botched drug deal and had armed himself with a .380 semiautomatic Glock prior to when the government argued he met up with Mr. Binion on the evening of June 21. App53-54; App99-101, 134-135). Mr. Tillman testified that he had seen Mr. Taylor fire his gun into the air *earlier that day* during an "altercation." App53. From this, a jury could reasonably conclude that Mr. Taylor was armed at the time of his death and capable of using deadly force.

A reasonable jury could likewise infer from the evidence and testimony in the record that, to the extent Mr. Binion was the shooter, he acted in self-defense. A witness who overheard the shooting testified that she heard a single gunshot, followed by an exclamation of pain, followed by two gunshots in short succession. App83. The witness was adamant that in between the two bursts of gunfire, she very clearly heard a male voice exclaim "ow."[9] App83-84. She testified that she was

[9] Although Mr. Massaquoi testified that Mr. Taylor exclaimed "no, Mason" prior to being shot, App232, the most that can be said is that his testimony introduces conflicting evidence in the record. Because the trial court was required to view the evidence in the light most favorable to Mr. Binion when considering his request for

able to hear the altercation in the alleyway because it was "fairly quiet" that night and the voice was "pretty loud." App84, 92. She also testified that the "ow" comment stood out to her in the moment because she thought it was "strange" for someone to say that after being shot. App90-91. As defense counsel explained to the trial court, that evidence suggests there was "an exchange of gunfire." App310-311. Because Mr. Taylor's body bore signs of injury in only two places (a gunshot wound to the head and a graze wound to the finger), App169, 171, a juror could reasonably infer that Mr. Taylor was the target of the second two shots and that Mr. Binion was the target of the first shot.

Cartridges recovered from the scene similarly suggested the presence of at least two different firearms. As the prosecution's firearms expert testified, the fired 9-millimeter cartridge retrieved from the scene could not have been fired from a .22-caliber handgun (such as Mr. Massaquoi's handgun) because it is too large and would not fit inside a .22-caliber gun. App182-183. However, a 9-millimeter cartridge, which measures approximately .357 inches in diameter, could have been fired from Mr. Taylor's larger .380 semiautomatic Glock. App181-184. The firearms expert also testified that the firing impressions left on the two fired .22-caliber cartridges exhibited some slight differences—with one impression appearing

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a self-defense instruction, the court should have credited the neutral ear-witness's testimony for purposes of this inquiry.

"longer" and "a little bit wider" than the other. App188. This difference suggests that the bullets could have been fired from two different weapons, because "dissimilar markings" between fired cartridges may be evidence "that they were fired from two different firearms." App178-179. Indeed, the trial court acknowledged that the evidence suggested "[t]here's a possibility that there was more than one firearm." App310. And the firearms expert testified that it is possible to "fire the wrong caliber ammunition out of a gun," App181-182, although as discussed above, not if the ammunition caliber is larger than the caliber of the gun, which the .22-caliber cartridges are not.

All of this evidence, when viewed in the light most favorable to Mr. Binion, "fairly raises the issue" of self-defense and supported a jury instruction on self-defense. *Hernandez*, 853 A.2d at 205 (citation omitted). No "bizarre reconstruction of the evidence," *id.* at 206 (citation omitted and alteration accepted), is necessary for a jury to reasonably infer from the above that (1) Mr. Taylor anticipated getting into an altercation related to the botched drug deal; (2) Mr. Taylor brought a loaded firearm, which he had fired earlier in the day, with him to potentially use during the altercation; and (3) Mr. Taylor fired his gun first, which caused Mr. Binion to return fire. That sequence of events is textbook self-defense. *See, e.g.*, *Hernandez*, 853 A.2d at 205 (explaining that self-defense requires proof that there was an actual or apparent threat that was "unlawful and immediate," which caused the defendant to

"honestly and reasonably believe[] that he was in imminent danger of death or serious bodily harm" and respond with force "necessary to save himself from the danger" (citation omitted)).

The trial court's decision to the contrary cannot be squared with this Court's decision in *Reid v. United States*, 581 A.2d 359 (D.C. 1990), which concluded (on substantially weaker facts) that the trial court erred in denying the defendant's request for a self-defense instruction. In *Reid*, the evidence showed that the defendant was engaged in an argument with several others and had a knife in his hand. *Id.* at 367. The only evidence that the other individuals may have been armed was a "radio run to the effect that two men and a woman were fighting with knives." *Id.* at 361. This Court nonetheless concluded that because this evidence "provide[d] circumstantial evidence that self-defense could have been involved in the altercation" and that the defendant was "outnumbered and was in the process of warding off an attack by the group," "there was some basis in the evidence . . . that supported [the defendant's] claim to a self-defense instruction." *Id.* at 367. Subsequent decisions from this Court have reaffirmed *Reid*'s holding, observing that even though the circumstantial evidence of self-defense in that case was "weak," a self-defense instruction was nonetheless warranted because however weak, the evidence "could have indicated" that the defendant was trying to defend himself. *Hernandez*, 853 A.2d at 206 (quoting *Reid*, 581 A.2d at 367); *cf. Henry v. United*

States, 94 A.3d 752, 759 (D.C. 2014) (affirming trial court's decision not to give a self defense instruction where there was "no evidence that [the decedent] was armed"). .

The trial court's determination that the evidence at trial was insufficient to support a self-defense instruction—because there was no evidence "of any display of a weapon" by Mr. Taylor, App311, and because it did not think a juror would reasonably find that either the 9mm cartridge or one of the .22 cartridges had been fired by a different gun during the altercation, App322-323,—reflects a concern about "the *weight* of the evidence supporting the instruction" rather than the *existence* of even a modicum of evidence supporting the same. *Hernandez*, 853 A.2d at 206 (citation omitted). As this Court repeatedly has explained, only the latter is relevant when deciding whether a self-defense instruction is warranted. *Id.* Questions of weight and persuasive value are reserved for the jury. *See Shuler v. United States*, 677 A.2d 1014, 1017 (D.C. 1996) ("In general, . . . it is not the judge's function to assess the quality of [the] evidence, which the jury may choose to credit."). Given the presence of this ammunition and testimony from the prosecution's firearms expert that there were, in fact, differences between the recovered .22-caliber cartridges, the responsibility of weighing this evidence and the likelihood that self-defense was involved should have gone to the jury.

Because the trial court erroneously denied Mr. Binion's request for a self-

defense instruction, this Court should reverse Mr. Binion's conviction and remand for a new trial. *See Murphey-Bey v. United States*, 982 A.2d 682, 690 (D.C. 2009) ("Failure to give an instruction embodying a defense theory that negates guilt of the crime charged, when properly requested and supported by evidence, is necessarily reversible error.").

III. THE EVIDENCE WAS INSUFFICIENT TO SUPPORT THE TRIAL COURT'S AIDING AND ABETTING AND CO-CONSPIRATOR INSTRUCTIONS

In addition to improperly refusing to give Mr. Binion's requested self-defense instruction, the trial court further erred in agreeing to give the government's requested aiding and abetting and co-conspirator instructions, despite the absence of any evidence to support them. A jury note delivered shortly before the verdict leaves no doubt that this error prejudiced Mr. Binion.

This Court reviews "the trial court's decision to issue a jury instruction for abuse of discretion," *Collins v. United States*, 73 A.3d 974, 981 (D.C. 2013), and considers "the record in the light most favorable to the requesting party," *Dickens v. United States*, 163 A.3d 804, 810 (D.C. 2017) (internal quotation marks omitted and alteration adopted).

A. The Prosecution Did Not Introduce Any Evidence That Someone Other Than Mr. Binion Was the Principal Offender.

The prosecution's evidence fell substantially short of supporting either of the trial court's instructions regarding non-principal liability. One of the requirements

of aiding and abetting liability is that someone who was not the aider and abettor must have committed the crime. *Dickens*, 163 A.3d at 810. This requirement flows from the principle that "[o]ne cannot aid or abet himself." *Id.* (internal quotation marks omitted). Similarly, one of the requirements for co-conspirator liability is that a fellow co-conspirator—*i.e.*, someone who is not the defendant—must have committed the substantive offense for which the defendant is charged. *Wilson-Bey v. United States*, 903 A.2d 818, 840 (D.C. 2006) (en banc). The trial court erred in giving these instructions because the prosecution failed to introduce any evidence suggesting that someone other than Mr. Binion shot and killed Mr. Taylor.

From the first day of trial, the prosecution made clear to the jury that its theory of the case was that Mr. Binion shot and killed Mr. Taylor over a botched drug deal. In its opening statement, the prosecution argued to the jury that Mr. Taylor "made the biggest mistake of his life, because he entered into a drug deal with this man right behind me, the man who is charged with shooting him in the back of the head, the defendant, Mason Binion." App49. Throughout the prosecution's case-in-chief, the government presented testimony and evidence aimed at convincing the jury that Mr. Binion, and no one else, shot and killed Mr. Taylor. In its closing remarks, the prosecution suggested that Mr. Binion's attitude towards the shooting was "if you guys won't do it, well, then I'll do it." App324. The prosecution repeatedly emphasized that Mr. Binion "called Michael Taylor to meet him at the Coffield Rec

Center, and he shot him in the back of the head. Mason Binion shot Michael Taylor in the back of the head." App325. And the prosecution represented to the jury that "*all the evidence shows that it was Mason Binion* who shot [Mr. Taylor]." App327 (emphasis added). At no point during trial did the prosecution identify any evidence suggesting that someone other than Mr. Binion shot and killed Mr. Taylor. That is because the government presented none.

As even the trial court acknowledged, the notion that someone else could have been the shooter "isn't the government's theory." App320. Nevertheless, the trial court concluded that the government was entitled to this instruction because defense counsel challenged what Mr. Massaquoi "could see" at the time of the shooting. App320. In the trial court's view, that was sufficient for a jury to conclude "that somebody else was the one who actually fired the weapon." App320.

The trial court's analysis was flawed on multiple levels. As an initial matter, defense counsel's questions about Mr. Massaquoi's credibility do not constitute evidence that a different person committed the shooting. Moreover, the theory of accomplice liability that the trial court hypothesized (but that the government never actually argued to the jury) makes no sense. For the jury to find that Mr. Binion aided and abetted or conspired with another person who committed the shooting, the jury would have had to simultaneously *disbelieve* Mr. Massaquoi's testimony that Mr. Binion committed the shooting, while at the same time *credit* Mr. Massaquoi's

testimony that Mr. Binion participated at every stage leading up to the shooting except for the shooting itself.

In other words, a jury "would have to engage in an irrational or bizarre reconstruction of the facts of the case," *Anderson v. United States*, 490 A.2d 1127, 1130 (D.C. 1985), to find that (1) Mr. Massaquoi lied when he said Mr. Binion shot and killed Mr. Taylor, and that some other individual must have killed Mr. Taylor; but that (2) Mr. Massaquoi was *not* lying when he said Mr. Binion orchestrated the entire scheme to kill Mr. Taylor because Mr. Binion was angry about losing his money. Because this type of illogical reasoning is "precisely" the sort that "trial judges should refrain from encouraging jurors to undertake," *id*. (citation omitted), the trial court abused its discretion when it instructed the jury on aiding and abetting and co-conspirator liability notwithstanding the complete absence of evidence suggesting an alternative principal offender. *See, e.g.*, *Brooks v. United States*, 599 A.2d 1094, 1100 (D.C. 1991) (concluding that it is reversible error to give an aiding and abetting instruction when "[t]here is no evidentiary predicate for finding that [the defendant] was an aider or abettor" as opposed to the principal offender).

B. The Trial Court's Error Was Not Harmless.

The trial court's erroneous decision to instruct the jury on non-principal

liability was not harmless.[10]

On the contrary, the record shows that the jury likely convicted Mr. Binion based on the trial court's erroneous aiding and abetting and conspiracy instructions. On the second full day of deliberations, the jury submitted a note to the trial court asking, "[D]o we need to determine that Mason Binion fired the gun, in order to determine that the Defendant caused the death of Michael Taylor?" App337. That note strongly suggests that at least some members of the jury were not sure that Mr. Binion was the principal offender. In response to the note, the trial court instructed the jury to "refer" to its wrongly-given "aiding and abetting and co-conspirator liability instructions." App337. The court reiterated that the jury could convict Mr. Binion of first-degree murder if they determined beyond a reasonable doubt that he either assisted "someone else who fired the gun" or was a member of a conspiracy to murder Mr. Taylor and a co-conspirator committed the offense, even though the evidence did not support either theory. App338-339. After two more days of

[10] In *Inyameh v. United States*, 956 A.2d 58 (D.C. 2008), this Court concluded that even if there is insufficient evidence to support an instruction on aiding and abetting, reversal of a defendant's conviction is not warranted if the jury would have "disregard[ed] a factually unsupported theory of liability—here accomplice liability—in favor of one [principal liability] clearly supported by the evidence." *Id.* at 63 & n.11 (citation omitted). This rule, which this Court has referred to as the *Griffin* presumption—so named for the Supreme Court's decision in *Griffin v. United States*, 502 U.S. 46 (1991)—does not apply here because the jury's question to the court strongly indicates that it relied on the factually unsupported theory of liability (accomplice liability) to convict Mr. Binion.

deliberation, the jury convicted Mr. Binion of first-degree murder. There is every reason to believe from this exchange between the jury and the court that Mr. Binion's conviction was secured on a theory of accomplice liability that the government never made and that the evidence did not support.

As the prosecution succinctly summarized its sole theory, "all the evidence shows that it was Mason Binion who shot [Mr. Taylor]." App327. Because there was no evidence that anyone other than Mr. Binion was the principal offender and because the record shows that the jury likely convicted Mr. Binion on a theory of accomplice liability based on instructions the trial court could not have given under the law, this Court should reverse Mr. Binion's conviction.

CONCLUSION

For the foregoing reasons, this Court should reverse Mr. Binion's conviction for first-degree murder and remand for a new trial. Alternatively, the case should be remanded to the trial court for a retrospective competency hearing with instructions that if the trial court determines Mr. Binion was incompetent at the time of trial, his conviction should be vacated and a new trial ordered. Appellant Mason Binion respectfully requests oral argument for this matter.

DATED: July 28, 2023 MUNGER, TOLLES & OLSON LLP

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CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2023, a copy of the foregoing Brief of Appellant was served electronically on all counsel of record.

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