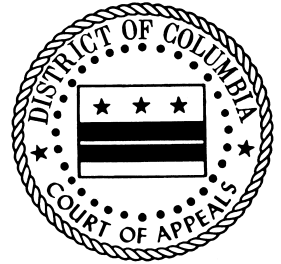


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**IN THE DISTRICT OF COLUMBIA  
COURT OF APPEALS**

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RONALD MAZIARZ

*Appellant,*

v.

UNITED STATES,

*Appellee.*

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On Appeal From The Superior Court  
Of The District Of Columbia  
Criminal Division

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**OPENING BRIEF FOR APPELLANT  
RONALD MAZIARZ**

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## **DISCLOSURE STATEMENT**

Appellee in this Court is the United States. Counsel who appeared for the United States before the Superior Court were Assistant U.S. Attorneys Travis C. Wolf, Katie Sessa, Marianne Judah, Erika Suhr, L'Shauntee Robertson, Samuel Haack, John Davie, and Michael Bacharach.

Defendant in the Superior Court and Appellant in this Court is Ronald Maziarz. Counsel who appeared for Mr. Maziarz before the Superior Court was Jose Molina. Appellate counsel now appearing before this Court is Jason Clark.

## **RULE 28(A)(5) STATEMENT**

This appeal is from a final order or judgment that disposes of all of the parties' claims at issue.

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## ISSUE PRESENTED

1. Given Mr. Maziarz's bizarre behavior as captured in the pretrial record, and the evidence at trial, did the trial court abuse its discretion in failing to *sua sponte* conduct an inquiry into whether Mr. Maziarz had voluntarily and intelligently waived an insanity defense, as required by *Freundak v. United States*, 408 A.2d 364 (D.C. 1979)?

2. Where the defendant is charged with Possession of a Prohibited Weapon in violation of D.C. Code § 22-4514(b), does the absence of an explicit waiver concerning the defendant's right to a jury trial as required by D.C. Super. Ct. Crim. R. 23(a) before conducting a bench trial constitute structural error requiring reversal?

## STATEMENT OF THE CASE

Ronald Maziarz was charged by Information with one count of Assault in violation of D.C. Code § 22-404; and one count of Possession of a Prohibited Weapon in violation of . D.C. Code § 22-4514(b). A.1<sup>1</sup>

Count	Offense	Statute	Finding
1	Simple Assault	D.C. Code § 22-404	Guilty
2	Possession of a Prohibited Weapon (Hammer)	D.C. Code § 22-4514(b)	Guilty

During pretrial proceedings, serious issues concerning Mr. Maziarz's mental health and competency were raised. Mr. Maziarz underwent a total of three mental competency examinations before his trial.

Both misdemeanor offenses were tried before a judge. At trial the government presented the testimony of three witnesses: the complainant, a civilian witness, and a police officer. The defense presented the testimony of one witness, the defendant, Mr. Maziarz. Mr. Maziarz did not deny that he was present and holding the hammer that struck the complaining witness, Mulushewa Alemu, but claimed that a demon possessed him and took control of his body at the time of the assault.

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<sup>1</sup> Citations to the appendix are in the form, "A.[page number]"; citation to the trial transcript are in the form "Tr. [page number]."



At the close of a one-day bench trial, following an unsuccessful motion for judgment of acquittal, the trial court found Mr. Maziarz guilty on both charges in the Information. Tr. 78. Mr. Maziarz was sentenced the same day. Tr. 88. On Count I, the court imposed 180 days incarceration with execution of the sentence being suspended in its entirety. On Count II, the court imposed 180 days incarceration with execution of the sentence being suspended in its entirety. The sentence for each count was to run concurrently. Tr. 88, 4-5. The trial court imposed an 18-month period of supervised probation, which included mental health treatment. Tr. 88. No *Frendak* inquiry was ever conducted, nor is there any record of a waiver of Mr. Maziarz's right to a jury trial.

Having filed a timely notice of appeal, A.39, Mr. Maziarz now appeals his conviction.

### **STATEMENT OF THE FACTS**

The case against Mr. Maziarz was tried before a judge. Three witnesses appeared on behalf of the government: Mr. Mulushewa Alemu, who testified that Mr. Maziarz struck him with a hammer; Mr. Ian Hoffman, a passerby who witnessed some of the events; and Officer Alphonzo Martinez, who responded to the scene and interacted with both Mr. Maziarz and Mr. Alemu. Following the denial of the defense motion for judgment of acquittal, the defense presented the testimony of Mr. Maziarz who did not deny wielding the hammer which struck Mr.

Alemu but claimed that the actions of the hammer were controlled by a demon, and not the result of his own volition.

**A. Pretrial Proceedings Raise Concerns About Mr. Maziarz’s Mental Health**

Pretrial proceedings raised serious concerns about Mr. Maziarz’s mental health. On August 9, 2021, Mr. Maziarz appeared in Courtroom C-10 for his initial presentment hearing before Magistrate Judge Judith Pipe. Initial Presentment Tr. 1, Aug. 9, 2021. At the hearing, Mr. Maziarz made bizarre and often unresponsive statements. *See e.g.*, Initial Presentment Tr. 5:16 (in response to being told to return to the courthouse the following day, Mr. Maziarz said “My resistance is low, Miss.”); *see also* Tr. 8:7-8 (“I don’t know if I am going to be alive tomorrow.”). Magistrate Judge Pipe advised Mr. Maziarz to return to the courthouse the following day so that he could speak to the doctors at the Urgent Care Clinic located in the courthouse. Initial Presentment Tr. 5:19-25.

**1) The trial court is informed that Mr. Maziarz was involuntarily committed**

Early in the case, Mr. Maziarz was involuntarily committed due to his mental health. At the initial status hearing on November 15, 2021, Mr. Maziarz’s trial counsel, Jose Molina, informed the court that Mr. Maziarz could not be present because Mr. Maziarz had been involuntarily committed to the mental health wing of the Washington Hospital Center. Status Hearing Tr. 2:13-21, Nov. 15, 2021; *see also* Status Hearing Tr. 2:15-18, Feb. 7, 2022. Mr. Maziarz was

subsequently discharged from the hospital on January 4, 2022. Status Hearing Tr. 2:15-18, Feb. 7, 2022.

**2) The preliminary competency screening finds Mr. Maziarz is incompetent to proceed**

On Feb. 25, 2022, the trial court issued an Order for Preliminary Screening to Determine Defendant's Competency to proceed in the case. A.3. On March 10, 2022, Dr. Elizabeth Teegarden, Ph.D., of the Department of Behavioral Health issued a report opining that "Mr. Maziarz is incompetent to proceed with his case at this time." A.5. Dr. Teegarden informed that trial court that Mr. Maziarz had been diagnosed with "Unspecified Psychosis" and had been receiving outpatient mental health treatment. Dr. Teegarden also informed the court that mental health records indicated that in December of 2020, Mr. Maziarz began experiencing paranoid ideation, abandoned his apartment, and began to reside at a homeless shelter.

Consistent with Dr. Teegarden's initial findings, the trial court found Mr. Maziarz incompetent and ordered a full competency examination. A.7; Status Hearing Tr. 3:19-24, Mar. 18, 2022.

**3) Mr. Maziarz condition improves and a subsequent competency evaluation finds him competent to proceed**

On April 18, 2022, Dr. Lia N. Rohlehr, Ph. D., ABPP, of the Department of Behavioral Health issued a report following the full competency evaluation of Mr. Maziarz conducted on April 4, 2022. A.8. In the report, Dr. Rohlehr opined that

“Mr. Maziarz was competent to proceed at this time.” A.11. Dr. Rohlehr informed the trial court that Mr. Maziarz appeared to have made significant improvement in his physical and mental health in the past three months. A.9. Mr. Maziarz had received an injection of antipsychotic medication and his community support worker reported a “great improvement” in his physical and mental health. A.9. Dr. Rohlehr ended her report stating:

Of note, Mr. Maziarz continues to have significant medical and mental health needs. He has in-home care 4 days per week and meets with meets regularly with a nurse and psychiatrist. This level care should be continued to ensure that Mr. Maziarz’s medical and mental health needs are being monitored and managed appropriately.

Report of Dr. Rohlehr, April 18, 2022, at A.9. Consistent with the latest findings, the trial court found Mr. Maziarz competent to proceed on April 29, 2022. Status Hearing Tr. 3:16-18, April 29, 2022.

**4) Mr. Maziarz tells Judge Iscoe that he had been possessed by a demon**

Mr. Maziarz’s case was transferred to the Mental Health Community Court on August 4, 2022, for disposition. On that day, Mr. Maziarz’s counsel informed Judge Iscoe that Mr. Maziarz was prepared to enter a Deferred Sentencing Agreement and plead guilty to one count of Simple Assault.<sup>2</sup> Status Hearing Tr.

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<sup>2</sup> The transcript of the August 4, 2022, Mental Health Court Status Hearing is included in the limited appendix. See A.12-31.

6:3-7, Aug. 4, 2022; A.17. During the plea colloquy, Mr. Maziarz stated that he wanted to plead guilty. However, when Judge Iscoe asked Mr. Maziarz whether he agreed with the government's proffer that he had hit the complainant with a hammer, Mr. Maziarz explained that he had been possessed by a demon at the time. A.22. Mr. Maziarz stated that he could not have stopped the complainant from being hit because there was some kind of force outside of his control causing him to hit the complainant. A.23.

[PAGE: 11, Aug. 4, 2022; A.22]

[1-2 ] THE COURT: Okay. And is that what happened, sir? Is that what happened? Did you hit him with that hammer?

[3-3 ] MR. MAZIARZ: I let the hammer hit him.

[4-5 ] THE COURT: I'm sorry, you had a hammer and you hit him? Is that what you said?

[6-6 ] MR. MAZIARZ: I let it hit him.

[7-7 ] THE COURT: I couldn't understand you.

[8-8 ] MR. MAZIARZ: I let the hammer hit him.

[9-9 ] THE COURT: You let the hammer hit him?

[10-10] MR. MAZIARZ: Yeah.

[11-11] THE COURT: But the hammer was in your hand?

[12-12] MR. MAZIARZ: Yeah. And I was holding it --

[13-13] THE COURT: And you put --

[14-14] MR. MAZIARZ: -- I was holding it behind me.

[15-16] THE COURT: -- so you knew that the hammer would hit him and you let it do it; is that right?

[17-17] MR. MAZIARZ: That's right.

[18-19] THE COURT: Okay. And you weren't defending yourself at that time, were you?

[20-20] MR. MAZIARZ: No.

[21-22] THE COURT: Okay. And you knew -- and you intentionally let the hammer hit him, is that correct?

[23-23] MR. MAZIARZ: I was possessed.

[24-25] THE COURT: You were possessed? Something made you let the hammer hit him?

[PAGE: 12, Aug. 4, 2022; A.23]

[1-1 ] MR. MAZIARZ: Yeah.

[2-3 ] THE COURT: Okay. But you could have stopped it but you let it happen, is that right?

[4-5 ] MR. MAZIARZ: I couldn't stop it; it was some kind of force.

Status Hearing Tr. 11-12, A.22-23, Aug. 4, 2022. The case was passed and recalled. Upon the case being recalled, defense counsel explained the situation as follows:

[PAGE: 14, Aug. 4, 2022; A.25]

[23-5 ] MR. MOLINA: Yes, Your Honor. Upon further investigation to the question of was the demon involved in the assault, the answer was yes. Were you involved along with the demon with the assault? Yes. Did you and the demon hit the cab driver with the hammer? Yes. Did you and the demon hit the cab driver out of self-defense, in defense of yourself? Answer was no. Upon

asking to identify the demon, Mr. Maziarz described the demon as a virus.

[6-7 ] Your Honor, I do believe that we can proceed with these last questions and the Rule 11 as towards whether --

[8-8 ] THE COURT: And I'm not sure --

[9-10 ] Mr. Maziarz, are you telling me you and the demon hit the cab driver with the hammer?

[11-11] MR. MAZIARZ: Yes.

Status Hearing Tr. 14, A.25, Aug. 4, 2022. Judge Iscoe then concluded that Mr. Maziarz's responses raised a potential insanity defense and that as a result, the trial court could not accept Mr. Maziarz's plea.

[PAGE: 16, Aug. 4, 2022; A.27]

[25-1 ] THE COURT: Okay. And you said there a demon involved.

[2-2 ] MR. MAZIARZ: It was a virus.

[3-5 ] THE COURT: Oh, a virus. Could you have stopped hitting the cab driver with the hammer if you wanted to stop?

[6-6 ] MR. MAZIARZ: Yes.

[7-7 ] THE COURT: Did you want to stop at that time?

[8-8 ] MR. MAZIARZ: Yes.

[9-10 ] THE COURT: You wanted to stop? Did the virus -- is the virus what made you hit him?

[11-11] MR. MAZIARZ: Yes.

[12-13] THE COURT: Okay. I believe there's a valid insanity defense. I'm not saying it would prevail.

[14-15] But, Mr. Molina, under these facts I don't think I can accept the plea. You agree based on these answers?

Status Hearing Tr. 14, A.27, Aug. 4, 2022.

**5) A third competency screening is ordered and the court finds Mr. Maziarz is competent to proceed**

Given the breakdown of the plea colloquy, the case was removed from the Mental Health Community Court calendar and transferred back to the regular trial calendar. Back before the regular trial court, Judge Wellner stated that after listening to the aborted plea colloquy, he was concerned that Mr. Maziarz was no longer competent and ordered a third competency examination. Status Hearing Tr. 3-4, 6, Aug. 24, 2022.

On August 29, 2022, Mr. Maziarz was again examined by Dr. Rohlehr. A.33. Again, Dr. Rohlehr opined that despite significant mental health issues, she believed Mr. Maziarz was presently competent to proceed with his case. A.36. Again, the trial court adopted Dr. Rohlehr's conclusion and found Mr. Maziarz competent to proceed. Status Hearing Tr. 3:10-14, Sep. 7, 2022.

**B. The Trial**

Mr. Maziarz's trial commenced on November 15, 2022. Tr. 1. On the day of trial, the case was put on the cert list and transferred to Judge Okun who presided over the actual trial. Tr. 4:18-22.



Prior to the start of trial, Judge Okun asked the parties if there were any preliminary matters that needed to be addressed. Tr. 5:4-5. At that point, government counsel alerted the trial court that it was their understanding that the defense intended to raise what amounted to an insanity defense or diminished capacity claim. Tr. 5. Government counsel also noted, “we haven’t received any kind of notice of a not guilty by reason of insanity plea.” Tr. 5:12-13. Defense counsel responded, “It’s not necessarily diminished capacity per se. It goes to intent.” Tr. 5:20-21. Defense counsel also explained that, “[i]t’s an unconventional defense, but two judges before you have agreed that it is a defense.” Tr. 6:11-13. Defense counsel appears likely to be referring to previous statements made by Judge Iscoe and Judge Wellner. *See* Status Hearing Tr. 16, A.27, Aug. 4, 2022 (J. Iscoe: “I believe there’s a valid insanity defense.”); Status Hearing Tr. 4:1-10, Sep. 7, 2022 (J. Wellner stating, “Right,” in apparent acquiescence that a valid insanity defense prevented him from accepting Mr. Maziarz’s plea).

Defense counsel also explained to Judge Okun that Mr. Maziarz had mental health concerns but had ultimately been found competent on September 5, 2022. Tr. 7:21-22; *see also* A.33. Defense counsel also asked the trial court to “take judicial notice of the November 10<sup>th</sup> status report” to “confirm to the Court that he

is undergoing psychiatric care.” Tr. 8:1-4. The trial court agreed. Tr. 8:7-8 (“Okay, I will take judicial notice of that.”).

**1) The Government’s Case**

***i. Testimony of Mulushewa Alemu***

Mr. Mulushewa Alemu testified at trial that on August 8, 2021, he was working as a cab driver in the District of Columbia. Tr. 12:21-25. Mr. Alemu explained that he had just dropped off a passenger when Mr. Maziarz approached his cab and asked to be driven to 1845 Harvard Street. Tr. 13:10-21. Mr. Alemu agreed and took Mr. Maziarz to 1845 Harvard Street.

Once at 1845 Harvard Street, Mr. Maziarz asked Mr. Alemu to wait while he went inside. Tr. 13:24-14:2. Mr. Maziarz exited the cab, went inside the apartment building, and then returned seven or eight minutes later. *Id.* When Mr. Maziarz returned, he was carrying one or two big bags. Tr. 14:1-2. Mr. Maziarz explained to Mr. Alemu that he had been kicked out of his apartment and asked Mr. Alemu to take him to the shelter on New York Avenue. Tr. 14:4-7. Mr. Maziarz put the bags in the car, and Mr. Alemu proceeded to drive towards the shelter on New York Avenue. Tr. 14:11-13.

When Mr. Alemu got to 16<sup>th</sup> Street and Columbia Road, Mr. Maziarz asked Mr. Alemu to turn around and take him back to 1845 Harvard Street. Tr. 14:13-16. Mr. Maziarz told Mr. Alemu that he may be able to stay with someone else. Tr.

14:15-16 (“He say he can – may say [sic] with somebody else.”). “So I brought him back to the apartment.” Tr. 14:16.

Back at 1845 Harvard Street, Mr. Alemu parked and ended the taxi’s meter. Tr. 14:19 (ended meter); Tr. 16:4-5 (car parked, engine running). Mr. Maziarz then opened one of his bags. Tr. 14:20. Mr. Alemu thought that Mr. Maziarz was taking money out from inside the bag. Tr. 14:19-22. After waiting a little while, Mr. Alemu looked back over his right shoulder, and was immediately struck with a hammer. Tr. 14:19-15:8. Mr. Alemu explained, “When I turned to my right, hammer here. Boom, boom, boom. So I just – I was unconscious.” Tr. 15:2-4.

Mr. Alemu described being hit in the jaw. Tr. 15:7. Mr. Alemu believed he had been hit with the hammer three times, but also stated he had lost consciousness. Tr. 15:12-17. Mr. Alemu stated he did not know how many seconds he may have been unconscious. Tr. 15:13-14. When Mr. Alemu regained consciousness, he struggled with Mr. Maziarz and took a hammer from Mr. Maziarz’s hand. Tr. 15:15-16.

Mr. Alemu described struggling with Mr. Maziarz in the car for “more than five, six minute for a long time.” Tr. 16:25-17:1. Mr. Alemu began to shout for someone to call 911. Tr. 17:3-6. Mr. Alemu exited the car and saw someone walking on the street. Tr. 17:11. Mr. Alemu asked the person to call 911. Tr. 17:11-12. Mr. Alemu then, with the hammer in his hand, attempted to detain Mr.

Maziarz in the car, telling him to “Stay in the car. Don’t come out. Stay in the car. Don’t come out.” Tr. 17:12-15. Mr. Alemu then described using the hammer to hit his taxicab, while Mr. Maziarz remained detained in the vehicle. Tr. 18:8-12. “And I was just standing outstand [sic]. I was hitting the car with -- I don't know what I am doing. I was hitting the car with the hammer, ‘Don’t come out. Stay in the car.’ So people just come out from everywhere and they call the police.” *Id.*

Mr. Alemu said that the police then arrived. Tr. 18:5-6. Mr. Alemu described his injuries and said that he went to the hospital for treatment. Tr. 18.

***ii. Testimony of Ian Hoffman***

Ian Hoffman testified that he had just finished his morning run when he heard a scream. Tr. 34. The scream was coming from the direction of the Harvard Tower Apartment building. Tr. 34:15-19. Mr. Hoffman saw a taxicab parked in the driveway of the Harvard Towers Apartment building. Tr. 35. Mr. Hoffman described seeing the taxicab door fly open and the driver bolt out of the cab. Tr. 35:19-21. Mr. Hoffman heard the taxicab driver frantically exclaim, “He hit me in the head with a hammer.” Tr. 37:18-19. Mr. Hoffman testified that he did not have his phone with him but asked another passerby to call police. Tr. 39.

Once the passerby called police, Mr. Hoffman spoke to Mr. Maziarz, who had exited the taxicab, and told him, “The police are coming.” Tr. 39. Mr. Hoffman stated he could hear sirens in the background. Tr. 39. It was at that

point, with the sirens audible, that Mr. Maziarz put a backpack on the ground and sat down on the backpack. Tr. 40.

***iii. Testimony of Officer Alphonso Lopez Martinez***

Officer Alphonso Lopez Martinez testified that he received a dispatch for a man being attacked with a hammer. Tr. 44. Officer Martinez responded to the scene and saw Mr. Maziarz sitting on top of several luggage bags. Tr. 44:6-7; Tr. 45:15. Officer Martinez spoke with Mr. Maziarz, at which point Mr. Maziarz told the officer he was depressed. Tr. 44:8.

**2) The Defense Case**

The defense called one witness, the defendant, Mr. Maziarz. Mr. Maziarz testified that he remembered the encounter with Mr. Alemu. Tr. 54:4-6. Mr. Maziarz explained that while he was seated in the back of Mr. Alemu's taxicab, he looked at Mr. Alemu and saw two demons. Tr. 54:17-23. Mr. Maziarz described seeing the demons and then being possessed and controlled by something. Tr. 54:21-23 ("I seen it like two demons. Two (indiscernible) and they was like possessing me. Something was possessing me."). Mr. Maziarz gave further details of the demonic possession explaining that the images of the demons had full control of his body:

[PAGE: 55, Nov. 15, 2022]

[8-9 ] THE COURT: Did you say you kept getting possessed by the images?

[10-10] MR. MAZIARZ: Yes.

[11-11] THE COURT: Okay.

[12-12] BY MR. MOLINA:

[13-14] [Q] Mr. Maziarz, what do you mean by you kept getting possessed?

[15-16] [A] What I was seeing, it was moving up and down in front of me. It had full control of me.

[17-17] [Q] What do you mean it had full control of you?

[18-18] [A] I kept reaching down and pulling up a hammer.

[19-20] [Q] Mr. Maziarz, did you want to hit the cab driver with the hammer?

[21-22] [A] No, I had no intentions. I had no reason to hit him.

[23-24] [Q] Did you intentionally hit the cab driver with the hammer?

[25-25] [A] I was possessed.

[PAGE: 56]

[1-1 ] [Q] But Mr. Maziarz, I'm sure --

[2-3 ] [A] It seemed like it was intentional because it happened. I didn't mean for it to happen.

[4-4 ] [Q] -- you didn't mean for it to happen?

[5-5 ] [A] That's correct.

[6-7 ] [Q] Mr. Maziarz, explain to the Court how the demon made you hit the cab driver with the hammer?

[8-12 ] [A] It kept moving up and down. My attention kept moving up and down in front of me. And I had the hammer -- I set it -- I set it on the back of the car seat where his head was. And I let it go down on him. I never held a hammer and hit him.

[13-14] [Q] Mr. Maziarz, did you -- were you able to fight the demon?

[15-15] [A] No. It had me possessed.

[16-16] [Q] But did you try to fight the demon?

[17-19] [A] No. I couldn't fight it. Because it had changed the scenery. The front of the building windows changed. And it kept on moving up and down, moving up and down.

[20-21] [Q] When you say it kept moving up and down, tell the Court what you mean by that.

[22-24] [A] It was raising itself up and coming back -- falling back down. It was raising itself up and then bring it back down.

[PAGE: 57]

[25-1 ] [Q] Mr. Maziarz, were you strong enough to fight the demon?

[2-3 ] [A] No. I had no food in my body that morning. I wasn't strong enough.

Tr. 55-57.

Mr. Maziarz described seeing two demons who looked alike, except that one was bigger than the other. Tr. 57:16-24.

[16-17] [Q] Mr. Maziarz, have you ever had -- do you know this demon?

[18-18] [A] No.

[19-19] [Q] You said there were two demons.

[20-20] [A] Yeah.

[21-21] [Q] Do you know the other demon?

[22-22] [A] No. They both look alike.

[23-23] [Q] They're both what?

[24-24] [A] Both look alike. One was bigger than the other.

Tr. 57:16-24.

On cross examination, government counsel inquired of Mr. Maziarz if he was the one who swung the hammer that hit Mr. Alemu. Tr. 59:15-16. Mr. Maziarz denied swinging the hammer of his own volition. Tr. 59. Mr. Maziarz also denied telling the police that he swung the hammer. Tr. 60:12-14. Mr. Maziarz was confronted with video where he told the police that he hit the cab driver. Tr. 63:3-5. Mr. Maziarz explained that while it was physically his body which was used to hit the cab driver, he was possessed by a demon at the time, and he was not in control of his actions. Tr. 63:1-11.

[PAGE: 63, Nov. 15, 2022]

[1-1 ] [Q] Mr. Maziarz, that's you in the video, is it not?

[2-2 ] [A] No, that's me.

[3-4 ] [Q] So you said to the police at that time that you had hit the cab driver.

[5-5 ] [A] Yeah.

[6-6 ] [Q] So you did hit the cab driver.



[7-7 ] [A] Yeah, but it wasn't my intention to hit him.

[8-8 ] [Q] I'm sorry. I didn't hear what you said.

[9-9 ] [A] It wasn't my intentions to hit him.

[10-10] [Q] You said it's a demon.

[11-11] [A] Yeah.

Tr. 63:1-11.

### **3) The Court's Findings**

The trial court found Mr. Maziarz guilty of both simple assault and possession of a prohibited weapon. Tr. 78:6-8.

The trial court identified “the real issue” as whether the government had proved beyond a reasonable doubt that Mr. Maziarz “did these acts, voluntarily and intentionally . . . .” Tr. 80:2-7. The trial court noted that the defense case was largely an impermissible diminished capacity defense. Tr. 81. The trial court also noted that it did not credit Mr. Maziarz claim that he was possessed at the time, because Mr. Maziarz did not mention to the police on scene anything about demonic possession, but instead only told the police he was depressed. Tr. 82.

The trial court also rejected any consideration of an insanity defense because it had not been properly noticed. Tr. 80:14-20. The trial court stated: “With respect to the insanity defense, there's no doubt that there's nothing in the record that the Defendant gave notice that he was raising an insanity defense so that is not a defense that could have been raise at this trial.” Tr. 80:16-20.

**C. Mr. Maziarz Never Participated in a *Freundak* Inquiry**

At no point was a *Freundak* inquiry performed. Mr. Maziarz was never fully advised by the trial court of the availability of an insanity defense, or the possible outcomes of a successful insanity defense. Nor did the trial court make a specific finding regarding to whether Mr. Maziarz had made an intelligent and voluntary decision on whether to raise or waive the defense.

**D. There is No Record That Mr. Maziarz Knowingly Waived His Right to A Jury Trial**

Nor does the record appear to contain any waiver concerning Mr. Maziarz's right to a jury trial. Counsel can find neither a written waiver of Mr. Maziarz's right to trial by jury nor a transcript of an oral waiver at any hearing.

**STANDARD OF REVIEW**

This Court reviews a failure to *sua sponte* conduct a *Freundak* inquiry for an abuse of discretion. *See Briggs v. United States*, 525 A.2d 583, 593 (D.C. 1987) (trial court abused its discretion in failing to conduct *Freundak* inquiry); *see also Phenix v. United States*, 909 A.2d 138, 159 (D.C. 2006) (“[T]he trial court abused its discretion in not conducting a *Freundak* inquiry to assure itself that appellant's rights were adequately protected.”); *Patton v. United States*, 782 A.2d 305, 312 (D.C. 2001) (“The trial judge's decision whether to conduct a *Freundak* inquiry is reviewed for abuse of discretion.”).

The failure to obtain a valid waiver of the right to be tried by a jury is structural error reviewed under the plain error standard. *See, Fortune v. United States*, 59 A.3d 949, 957 (D.C. 2013) (trial court committed plain error in failing to obtain a valid waiver of appellant's jury trial rights).

### **ARGUMENT SUMMARY**

Due to Mr. Maziarz's bizarre pretrial behavior, the record of his significant mental health issues, and the evidence of his conduct at the time of the offense, the trial court had ample evidence suggesting a substantial question of Mr. Maziarz's sanity at the time of the charged offense. The trial court therefore abused its discretion when it failed to conduct an inquiry of Mr. Maziarz pursuant to *Frendak v. United States*, 408 A.2d 364, 380 (D.C. 1979).

Additionally, because Count II (Possession of a Prohibited Weapon) of the Information charged Mr. Maziarz with an offense whose maximum authorized penalty was more than six months, Mr. Maziarz was entitled to a trial by jury. Because the trial court failed to obtain a valid written and oral waiver of Mr. Maziarz's right to a jury trial, the court committed plain error requiring reversal of Mr. Maziarz's conviction.

## ARGUMENT

### I. The Trial Court Was Required to Conduct A *Frendak* Inquiry.

In *Frendak v. United States*, this Court held that “whenever the evidence suggests a substantial question of the defendant's sanity at the time of the crime, the trial judge must conduct an inquiry designed to assure that the defendant has been fully informed of the alternatives available, comprehends the consequences of failing to assert the [insanity] defense, and freely chooses to raise or waive the defense.” *Frendak*, 408 A.2d at 380; *see also Phenix*, 909 A.2d at 155 (noting that *Frendak* is concerned with whether the defendant recognizes “the availability of the defense and whatever advantages — as well as disadvantages — it may offer to defendant's case.”).

The rule that stemmed from *Frendak* is that when the evidence suggests a substantial question about the defendant's mental condition at the time of the crime, the trial court must make three separate determinations, in the following order: 1) whether the defendant is competent to stand trial; 2) if so, whether he or she, based on present mental capacity, can intelligently and voluntarily waive the insanity defense and has done so; 3) if not, whether the court should *sua sponte* impose the insanity defense based on evidence of the defendant's mental condition at the time of the alleged crime. *See Anderson v. Sorrell*, 481 A.2d 766, 769 (D.C. 1984).

“Although *Frendak* precludes the trial court from interposing an insanity defense when a defendant has the capacity to waive it and does so, *Frendak* also

reaffirms the trial court's responsibility to assert such a defense ‘whenever the evidence suggests a substantial question of the defendant's sanity at the time of the crime,’ and the defendant not only fails to assert the defense but also is incapable of making a voluntary and intelligent decision to waive it.” *Phenis*, 909 A.2d at 155 (D.C. 2006) (quoting *Briggs*, 525 A.2d at 592). In this sense, *Frendak* is concerned not only with appellant's sanity at the time of the crime, but also with appellant's capacity at the time of trial to recognize the availability of the defense and whatever advantages—as well as disadvantages—it may offer to the defendant's case. *See Briggs*, 525 A.2d at 592.

The *Frendak* inquiry seeks to ensure that a defendant knowingly and intelligently waives his right to assert an available insanity defense. *See Frendak*, 408 A.2d at 379. The trial court’s obligation is to ensure that the decision to assert or waive an insanity defense is made by the defendant and not defense counsel. *See Phenis*, 909 A.2d at 159. “Because this is a decision to be made by the defendant, the trial judge must be satisfied that the defendant has not been dissuaded from asserting (or waiving) the defense by counsel, the court, or any other person, when it is a viable option with potential benefits.” *Id.*

**A. The Record Suggests a Substantial Question of Mr. Maziarz’s Sanity at the Time of the Charged Offenses**

“The quantum and nature of evidence that will trigger the obligation to conduct a *Frendak* inquiry is necessarily highly fact-bound and varies from case to

case.” *Phenis*, 909 A.2d at 155. Both evidence of the offense itself and the pretrial record of the defendant’s behavior and mental condition should be considered to determine whether there exists a substantial question of the defendant’s sanity at the time of the offense. *See, e.g., Briggs*, 525 A.2d at 593 (*Frendak* inquiry required where defendant’s bizarre behavior during pretrial proceeding raised a substantial question of his sanity at the time of the offense). Additionally, even post-trial evidence of the defendant’s mental health can trigger the trial court’s obligation to conduct a *Frendak* inquiry. *See Patton*, 782 A.2d at 311 (holding that even though pre-trial competency reports indicated the defendant was competent to stand trial, once the issue of the defendant’s mental health was called into question during sentencing the trial court should have, at that time, conducted a *Frendak* inquiry). Where the record demonstrates a substantial question of the defendant’s sanity, a *Frendak* inquiry is required. *Briggs*, 525 A.2d at 593.

Here, the pretrial record, Dr. Teegarden’s initial finding of incompetence, and the evidence admitted at trial, raise substantial questions concerning Mr. Maziarz’s sanity at the time of the assault.

**1. The early pretrial record raises a substantial question.**

The early pretrial record alone raised a substantial question of Mr. Maziarz’s sanity. In *Briggs*, this Court noted the defendant’s bizarre pretrial behavior, particularly where competency examinations indicated classic, long-term mental

illness, raised a substantial question about the sanity of the defendant at the time of the offense. *See Briggs*, 525 A.2d at 592-3. The *Briggs* court found the defendant's flood of bizarre letters and *pro se* pleadings, the pretrial psychiatric evaluations questioning his competency, and the defendant's refusal to cooperate, together raised a substantial question of Brigg's sanity at the time of the offense and necessitated a *Frendak* inquiry. *Briggs*, 525 A.2d at 592-3.

At Mr. Maziarz's initial presentment on August 9, 2021—just one day after the offense—Mr. Maziarz appeared in court exhibiting bizarre behavior. Initial Presentment Tr. 1, Aug. 9, 2021. When the magistrate told Mr. Maziarz to return to court the following day, he responded, "My resistance is low, Miss." Initial Presentment Tr. 5:16, Aug. 9, 2021. When later, the magistrate again told him to return the following day, Mr. Maziarz said, "I don't know if I am going to be alive tomorrow." Initial Presentment Tr. 8:7-8, Aug. 9, 2021. The magistrate was concerned enough to refer Mr. Maziarz to the doctors at the Urgent Care clinic located in the courthouse. Initial Presentment Tr. 5:19-25.

At the initial status hearing on November 15, 2021, Mr. Maziarz did not appear. Mr. Maziarz's trial counsel informed the court that Mr. Maziarz could not be present because Mr. Maziarz had been involuntarily committed to the mental health wing of the Washington Hospital Center. Status Hearing Tr. 2:13-21, Nov. 15, 2021; *see also* Status Hearing Tr. 2:15-18, Feb. 7, 2022. Mr. Maziarz was

subsequently discharged from the hospital on January 4, 2022. Status Hearing Tr. 2:15-18, Feb. 7, 2022.

When Mr. Maziarz returned to court for his next status hearing, the trial court recognized Mr. Maziarz's questionable mental health and ordered a competency screening. A.3. As a result of that screening, Dr. Teegarden, of the Department of Behavioral Health issued a report opining that "Mr. Maziarz is incompetent to proceed with his case at this time." A.5. Dr. Teegarden informed that trial court that Mr. Maziarz had a history of mental health issues and had been diagnosed with "Unspecified Psychosis" and had been receiving outpatient mental health treatment. A.4. Dr. Teegarden also informed the court that, at least a year prior to the incident, mental health records indicated Mr. Maziarz began experiencing paranoid ideation and exhibiting bizarre behaviors. A.4. ("In December of 2020, he began experiencing paranoid ideation, abandoned his apartment, and went to stay at the Salvation Army shelter."). As a result of Dr. Teegarden's report, the trial court made an initial finding that Mr. Maziarz was not competent to proceed with his case. Status Hearing Tr. 3:19-24, Mar. 18, 2022.

Thus, the early pretrial record, immediately following the incident, alone raised a substantial question about Mr. Maziarz's sanity at the time of the incident. From his bizarre behavior in court the day after the incident to his involuntary commitment and the extended history of mental health concerns predating the



August 8, 2021, incident, the court had an ample record from which to question Mr. Maziarz's sanity at the time of the incident.

**2. The abandoned plea raises a substantial question of Mr. Maziarz's sanity**

If the trial court did not have sufficient reason from the record of the early pretrial proceedings to question the defendant's sanity at the time of the offense, the abandoned plea on August 4, 2022, provided more than ample reason to conduct a *Frendak* inquiry.

On August 4, 2022, Mr. Maziarz attempted to plead guilty pursuant to a deferred sentencing agreement, only to have the plea break down when he described hitting Mr. Alemu only because he was possessed by demons who took control of his body, forcing him to hit Mr. Alemu against his will. A.22-23. As a result of Mr. Maziarz's statement, Judge Iscoe rejected Mr. Maziarz's plea. Judge Iscoe stated, "I believe there's a valid insanity defense. I'm not saying it would prevail. But, Mr. Molina, under these facts I don't think I can accept the plea." A.27. Thus, Judge Iscoe explicitly acknowledged the substantial question of Mr. Maziarz's sanity at the time of the offense and the existence of a potential insanity defense. Despite this recognition, a *Frendak* inquiry was never conducted. *Cf. Briggs*, 525 A.2d at 593 (trial court abused its discretion in failing to pursue the issue of insanity "without making a *Frendak* inquiry and taking whatever [further]

steps became necessary as a consequence" where "the trial court itself expressed concerns about productivity based on bizarre pretrial behavior . . .").

### **3. The trial evidence raises a substantial question of Mr. Maziarz's sanity**

The trial evidence itself squarely raised a substantial question of Mr. Maziarz's sanity at the time of the offense. The evidence at trial established no possible motive for Mr. Maziarz's behavior. Mr. Alemu and Mr. Maziarz had never met before. Mr. Maziarz had no reason to complain of Mr. Alemu's conduct. By all accounts, Mr. Alemu had done everything Mr. Maziarz had requested. There simply was no sane motivation for the assault upon Mr. Alemu. Moreover, Mr. Maziarz's behavior, as described by Mr. Alemu, was strange. Mr. Maziarz asked to be taken to his apartment, to retrieve all of his belongings because he was being kicked out. Tr. 14:4-7. When Mr. Maziarz placed his belongings in the taxicab and the two set off for the shelter, Mr. Maziarz quickly changed his mind and asked to be returned to the apartment, Tr. 14:11-22, apparently believing, without any discernable reason, that he could now stay with someone else in the building. Tr. 14:13-16. Mr. Alemu did as he was asked and returned to the apartment. Tr. 14.

The assault described by Mr. Alemu came completely without warning. Tr. 14-15. Mr. Maziarz made no demands, no threats, nor any complaints. Mr. Alemu described simply sitting in his cab with Mr. Maziarz in the back, only to turn his

head and be struck in the jaw. There is no discernable or rational reason for Mr. Maziarz to have assaulted Mr. Alemu. And when the police arrived, Mr. Maziarz was just sitting upon a pile of his luggage.

Mr. Maziarz's own testimony squarely raised the question of his sanity at the time of the offense. Mr. Maziarz testified that two demons possessed him and took control of his body to manipulate him like a puppet and strike Mr. Alemu. Despite these clear red flags suggesting mental illness or defect, the trial court never inquired of Mr. Maziarz whether he was making a knowing and intelligent waiver of a possible insanity defense.

\* \* \*

In view of the entirety of the record, it is evident that there were a number of factors that called into question Mr. Maziarz's sanity at the time of the offense. A substantial question of Mr. Maziarz's sanity was clearly raised.

**B. The Trial Court Abused Its Discretion When It Failed to Inquire of Mr. Maziarz**

Despite the substantial question of Mr. Maziarz's sanity at the time of the offense, the record does not indicate Mr. Maziarz made a knowing and intelligent waiver of a possible insanity defense because a *Frendak* inquiry was never made.

Rather, the trial court considered the defense to be forfeit stating: "With respect to the insanity defense, there's no doubt that there's nothing in the record that the Defendant gave notice that he was raising an insanity defense *so that is not*

*a defense that could have been raised at this trial.*” Tr. 80:14-20 (emphasis added). There is no record of what Mr. Maziarz understood concerning the insanity defense and the trial court never inquired of Mr. Maziarz concerning the issue.

The trial court, thus, abused its discretion because it failed to recognize that even post-trial, the court had the responsibility to ensure not only Mr. Maziarz’s sanity at the time of the crime, but also his capacity at the time of trial to recognize the availability of the defense and whatever advantages—as well as disadvantages—it may offer. *See Briggs*, 525 A.2d at 592; *see also Patton*, 782 A.2d at 311 (holding that the trial court should have conducted a post-trial *Freundak* inquiry when the defendant’s mental health was called into question during the sentencing); *Gorbey v. United States*, 54 A.3d 668, 697 (D.C. 2012) (same).

Moreover, this Court has stated that “the trial court [should not] . . . permit the defendant to accomplish waiver . . . through inaction . . . .” *Patton*, 782 A.2d at 312 (D.C. 2001). Nor should defense counsel’s ambivalence about utilizing an insanity defense prevent the defendant from asserting the defense; or the court from making the requisite *Freundak* inquiry. *See generally, Patton*, 782 A.2d at 312; *see also Briggs*, 525 A.2d at 592. Thus, counsel’s failure to timely notice an insanity defense does not obviate the necessity of a *Freundak* inquiry.

Where there is a substantial question of the defendant's sanity raised in the record, the insanity defense cannot be forfeited, it must be waived. *See generally, United States v. Olano*, 507 U.S. 725, 733 (1993) (explaining that “[w]hereas forfeiture is the failure to make the timely assertion of a right, waiver is the ‘intentional relinquishment or abandonment of a known right.’” (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938))). “Whether a particular right is waivable; whether the defendant must participate personally in the waiver; whether certain procedures are required for waiver; and whether the defendant's choice must be particularly informed or voluntary, all depend on the right at stake.” *Olano*, 507 U.S. at 733. Pursuant to *Freundak*, the decision to pursue an insanity defense is allocated to the defendant where they are sufficiently competent to decide the issue knowingly and intelligently. Waiver of the insanity defense must be a knowing and intelligent decision of the defendant himself. *See, e.g., Phenis*, 909 A.2d at 159. Under these circumstances, the insanity defense cannot be forfeited by defense counsel's failure to provide written notice, it must be waived pursuant to *Freundak*.

The *Freundak* inquiry seeks to ensure that a defendant knowingly and intelligently waives his right to assert an available insanity defense. *See Freundak*, 408 A.2d at 379. Because no inquiry was made here, the record does not reveal whether Mr. Maziarz's understood the insanity defense or whether he made a

knowing and intelligent decision to forego it. The trial court was obligated to inquire to ensure that Mr. Maziarz was well informed of the insanity defense and that it was his decision to waive it. *See, e.g., Phenix*, 909 A.2d at 159. Without any inquiry, it is impossible to tell whether Mr. Maziarz was well informed or whether the decision was his or his trial counsel's. *Id.* (“[I]t can be difficult to ascertain, without inquiry, whether there is merely a disagreement after the defendant has been fully advised, whether defendant is ill-informed, or whether counsel is conflicted between loyalty to her client's objective and counsel's own, contrary advice.”).

## **II. The Trial Court’s Failure to Obtain a Valid Written And Oral Waiver Of Mr. Maziarz’s Right to a Jury Trial Is Structural Error Requiring Reversal**

In count two of the Information, Mr. Maziarz was charged with Possession of a Prohibited Weapon pursuant to D.C. Code § 22-4514(b).<sup>3</sup> A.1. The offense carries a maximum penalty of not more than 1 year in jail.<sup>4</sup> *See* D.C. Code § 22-

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<sup>3</sup> DC Code § 22-4514(b) states: “No person shall within the District of Columbia possess, with intent to use unlawfully against another, an imitation pistol, or a dagger, dirk, razor, stiletto, or knife with a blade longer than 3 inches, or other dangerous weapon.”

<sup>4</sup> The penalty for a violation of D.C. Code 22-4514(b) is set forth in subsection (c), which states: “Whoever violates this section shall be punished as provided in § 22-4515 . . . .” D.C. Code § 22-4515 states: “Any violation of any provision of this chapter for which no penalty is specifically provided shall be punished by a fine of not more than the amount set forth in § 22-3571.01 or imprisonment for not more than 1 year, or both.”

4515. As the violation of D.C. Code § 22-4514(b) carries a penalty greater than six months, Mr. Maziarz was entitled to a jury trial. *See, e.g., Blanton v. N. Las Vegas, Nev.*, 489 U.S. 538, 542 (1989) (a defendant is constitutionally entitled to a jury trial whenever the offense charged carries a maximum authorized prison term of greater than six months).

D.C. Code § 16-705(a) states:

In a criminal case tried in the Superior Court in which, according to the Constitution of the United States, the defendant is entitled to a jury trial, the trial shall be by jury, unless the defendant in open court expressly waives trial by jury and requests trial by the court, and the court and the prosecuting officer consent thereto.

Therefore, D.C. Code § 16-705 requires trial by jury, unless the defendant expressly waives the right. *Id.* Moreover, D.C. Superior Court Rule of Criminal Procedure 23(a) requires the waiver to be both written and oral. Super. Ct. Crim. R. 23(a). “If the defendant is entitled to a jury trial, the trial must be by jury unless: (1) the defendant waives a jury trial in writing and orally in open court; (2) the government consents; and (3) the court approves.” Super. Ct. Crim. R. 23(a).

There does not appear in the record any waiver—written or oral—by Mr. Maziarz of his right to be tried by a jury. Nor did defense counsel appear to object to Judge Okun trying the matter without jury. Thus, the matter is subject to plain error review.

“Under the test for plain error, an appellant must show (1) error, (2) that is plain, and (3) that affected [the appellant’s] substantial rights.” *Miller v. United States*, 209 A.3d 75, 78 (D.C. 2019) (quoting *Fortune*, 59 A.3d at 954). "Even if all three of these conditions are met, this court will not reverse unless (4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.*

The trial court’s error in failing to seek a waiver, both written and oral, is plain and obvious. *See Fortune v. United States*, 59 A.3d 949, 955 (D.C. 2013) (trial court’s error in failing to seek a waiver of the jury trial was plain and obvious at the time of appellant’s trial). “The trial court is responsible for conducting ‘an oral inquiry of the defendant himself in open court, his replies to which indicate that he understands the nature of his right to a jury trial and that he chooses to waive that right.’” *Id.* (quoting *Hawkins v. United States*, 385 A.2d 744, 746-47 (D.C. 1978). “The trial judge must also assure that such waiver is contained in the record as it occurred . . . .” *Banks v. United States*, 262 A.2d 110, 111 (D.C. 1970).

Under the third part of the plain-error test, Mr. Maziarz would generally need to show that the erroneous denial of his Sixth Amendment right to a jury trial affected his substantial rights. *Fortune*, 59 A.3d at 954. However, denial of the Sixth Amendment right to a jury trial is a structural error “that obviates the need for further inquiry into whether [Mr. Maziarz’s] substantial rights were affected by



the error.” *Fortune*, 59 A.3d at 957 (holding that the failure to make the prescribed determination of waiver is a structural error). Mr. Maziarz’s substantial rights are therefore “deemed to have been affected, without need for further analysis in the context of the particular trial.” *Fortune*, 59 A.3d at 956.

Under the fourth and final part of the plain-error test, Mr. Maziarz must show that the error “seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *See Miller*, 209 A.3d at 80; *see also Olano*, 507 U.S. at 732. In making this final determination, this Court has recognized “that any error that is ‘structural’ is likely to have an effect on the fairness, integrity or public reputation of judicial proceedings.” *Barrows v. United States*, 15 A.3d 673, 679 (D.C. 2011) (internal citations omitted) (“A number of federal appellate courts have reasoned that because a structural error . . . ‘necessarily render[s] a trial fundamentally unfair,’ it is ‘difficult to imagine a case where structural error will not satisfy *Olano’s* fourth requirement’ . . .”). Barring unusual circumstances, “the erroneous denial of the Sixth Amendment right to a jury trial . . .” will be considered to have “seriously affect[ed] the fairness, integrity, or public reputation of judicial proceedings.” *Miller*, 209 A.3d at 81.

Here, Mr. Maziarz was entitled to a jury trial. The denial of Mr. Maziarz’s fundamental right calls into question the fairness and integrity of the judicial

proceedings. There are no unusual circumstances which mitigate the error's effects. This structural error is plain and demands reversal.

### **CONCLUSION**

This Court should reverse Mr. Maziarz's convictions for Possession of a Prohibited Weapon because there was no valid jury waiver. This Court should then vacate Mr. Maziarz's remaining convictions and remand to the trial court for further proceedings to determine if Mr. Maziarz would intelligently and voluntarily reject an insanity defense as to any remaining count.

July 10, 2023

Respectfully submitted,

s/ Jason K. Clark

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## **CERTIFICATE OF SERVICE**

I hereby certify that on July 10, 2023, I caused the foregoing to be served via the Court's electronic filing and service system, upon all counsel of record.

s/ Jason K. Clark

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# District of Columbia Court of Appeals

## REDACTION CERTIFICATE DISCLOSURE FORM

**Pursuant to Administrative Order No. M-274-21 (amended May 2, 2023), this certificate must be filed in conjunction with all briefs submitted in all criminal cases designated with a “CF” (criminal felony), “CM” (criminal misdemeanor), “CT” (criminal traffic), and “CO” (criminal other) docketing number. Please note that although briefs with above designations must comply with the requirements of this redaction certificate, criminal sub-case types involving child sex abuse, cruelty to children, domestic violence, sexual abuse, and misdemeanor sexual abuse will not be available for viewing online.**

If you are incarcerated, are not represented by an attorney (also called being “pro se”), and not able to redact your brief, please initial the box below at “G” to certify you are unable to file a redacted brief. Once Box “G” is checked, you do not need to file a separate motion to request leave to file an unredacted brief.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21, amended May 2, 2023, and Super. Ct. Crim. R. 49.1, and removed the following information from my brief:

A. All information listed in Super. Ct. Crim. R. 49.1(a) has been removed, including:

- (1) An individual’s social-security number
- (2) Taxpayer-identification number
- (3) Driver’s license or non-driver’s’ license identification card number
- (4) Birth date
- (5) The name of an individual known to be a minor as defined under D.C. Code § 16-2301(3)
- (6) Financial account numbers

(7) The party or nonparty making the filing shall include the following:

- (a) the acronym “SS#” where the individual’s social-security number would have been included;
- (b) the acronym “TID#” where the individual’s taxpayer-identification number would have been included;
- (c) the acronym “DL#” or “NDL#” where the individual’s driver’s license or non-driver’s license identification card number would have been included;
- (d) the year of the individual’s birth;
- (e) the minor’s initials;
- (f) the last four digits of the financial-account number; and
- (g) the city and state of the home address.

- B. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.
- C. All pre-sentence reports (PSRs); these reports were filed as separate documents and not attached to the brief as an appendix.
- D. Information about protection orders, restraining orders, and injunctions that “would be likely to publicly reveal the identity or location of the protected party,” 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining “protection order” to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).
- E. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.
- F. Any other information required by law to be kept confidential or protected from public disclosure.

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**G. I certify that I am incarcerated, I am not represented by an attorney (also called being “pro se”), and I am not able to redact this brief. This form will be attached to the original filing as record of this notice and the filing will be unavailable for viewing through online public access.**

/s/ Jason K. Clark

Signature

Jason K. Clark

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Email Address

22-CM-898

Case Number(s)

7/10/2023

Date