DISTRICT OF COLUMBIA COURT OF APPEALS

24-CF-184

TIAQUANA CHANDLER,

Appellant

v.

UNITED STATES OF AMERICA,

Appellee

Appeal from the Superior Court of the
District of Columbia – Criminal Division
2023 CF3 1910

BRIEF FOR APPELLANT

Adrian E. Madsen, Esq.
Bar No. 1032987
8705 Colesville Road, Suite 334
Silver Spring, MD 20910
Tel: (202) 738-2051
Fax: (202) 688-7260
madsen.adrian.eric@gmail.com

D.C. App. R. 28(a)(2)(A) Statement

Appellant Tiaquana Chandler and appellee the United States were the parties in the trial court. Adrian E. Madsen, Esq., and Thomas Healy, Esq., represented Ms. Chandler in the Superior Court. Assistant United States Attorneys Ronald Chester, Esq., Saman Danai, Esq., Nathaniel Brower, Esq., represented the United States in the Superior Court. Adrian E. Madsen, Esq. represents Ms. Chandler before this court. Assistant United States Attorney Chrisellen Kolb, Esq., represents the United States before this court. There are no interveners or amici curiae. No other provisions of D.C. App. R. 28(a)(2)(A) apply.

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ISSUES PRESENTED

1. Whether the trial court's refusal to permit a voir dire of eyewitness Hanaa Joher, whom the defense learned for the first time during trial is diagnosed with mosaic Down syndrome and an intellectual disability, refusal to authorize issuance of a subpoena for Ms. Joher's records, and failure to take any steps to learn about the potential impact of the conditions on Ms. Joher's competency and credibility violated Ms. Joher's Sixth Amendment right to confront Ms. Joher.
2. Assuming, *arguendo*, that the trial court's failures did not violate Ms. Joher's rights under the Confrontation Clause of the Sixth Amendment, whether the trial court abused its discretion by failing to "inquir[e]… into the facts and circumstances relevant" to Ms. Joher's competency and credibility once "confronted by" the aforementioned "red flag[s]."
3. Whether the trial court erred by failing to order complainant Shawn Watts to submit to a drug screening where long pauses frequently preceded Mr. Watts' answers, some of which suggested difficulty understanding basic questions, where Mr. Watts slurred his words while testifying, and where Mr. Watts had a recent history of substance abuse, including PCP.
4. Whether the trial court erred by failing to grant Ms. Chandler's motion for judgment of acquittal ("MJOA") on Count Five, possession of a firearm during a crime of violence ("PFCV"), where the government conceded that Ms. Chandler

did not possess the firearm and where there was no evidence that Ms. Chandler assisted an armed assailant in maintaining his possession of a firearm.

5. Whether the trial court incorrectly stated the law regarding the actus reus required for PFCV as an aider and an abettor by failing to instruct the jury that it must, in order to convict Ms. Chandler of PFCV, find that she helped the armed assailant maintain his possession of a firearm.

6. Whether the trial court erred by failing to grant Ms. Chandler's MJOA as to the while armed enhancement on Count Four, aggravated assault while armed ("AAWA"), where the evidence was insufficient to prove beyond a reasonable doubt that Ms. Chandler "knew in advance that [her] associate was armed with a gun," a point reinforced by the jury acquitting Ms. Chandler of solicitation of a assault with a dangerous weapon ("ADW").

STATEMENT OF THE CASE

On or about March 30, 2023, Ms. Chandler was presented on a two-count complaint charging her with AAWA in violation of D.C. Code §§ 22-404.01,[1] -4502 and first-degree burglary in violation of D.C. Code § 22-801(a), both relating to

[1] The United States did not allege that Ms. Chandler personally possessed a firearm but rather than a person alleged to be her son did so. 11/6 Tr. 104. "Tr." refers to transcript by date of proceeding, all in 2023 unless otherwise indicated. "R [page number] (PDF)" refers to the record on appeal, with citations to the page number of the specific document as appropriate. "S.R. [page number] (PDF)" refers to the sealed, supplemental record on appeal.

events alleged to have occurred in the early morning hours of March 28, 2023, at [redacted]. R. 34-47. After Ms. Chandler rejected a plea offer extended by the United States,[2] and a grand jury returned an eight-count indictment,[3] the case proceeded to trial on October 31, 2023.[4]

The government called eight witnesses: 1) Metropolitan Police Department ("MPD") Officer Colleen O'Brien, who observed complainant Shawn Watts shortly after the shooting at issue in this case,[5] 2) Hanaa Joher, a purported eyewitness who testified that she had been staying for about a week in an apartment outside of which the government alleged that Mr. Tucker shot the complainant,[6] 3) Shawn Watts, the

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[2] 5/22 Tr. 7-9.

[3] R. 138-141. The grand jury charged Ms. Chandler with one count of conspiracy (along with Donnell Tucker, whose case, as discussed, *infra*, was ultimately severed from Ms. Chandler's) to commit ADW in violation of D.C. Code §§ 22-405, -1805a, first-degree burglary while armed in violation of D.C. Code §§ 22-801(a), -4502, PFCV in violation of D.C. Code § 22-4504(b) (with regard to the burglary), AAWA in violation of D.C. Code § 22-404.01, -4502, a second count of PFCV regarding Count Four, AAWA, assault with significant bodily injury while armed ("ASBIWA") in violation of D.C. Code §§ 22-404(a)(2), -4502, and soliciting a crime of violence (ADW) in violation of D.C. Code § 22-2107(b). *Id.* An eighth count charged erstwhile co-defendant Donnell Tucker alone with threats to kidnap or injure a person in violation of D.C. Code § 22-1810. *Id.* at 141.

[4] The court denied Ms. Chandler's motion to dismiss Count One of the indictment (conspiracy), 10/27 Tr. 12, denied Ms. Chandler's Fifth Amendment motion to suppress statements, 10/30 Tr. 31-33, granted in part and denied in part the United States' motion *in limine* to admit certain recorded jail calls, 10/30 Tr. 36-115, and granted erstwhile co-defendant Donnell Tucker's (2023 CF3 4300) motion to sever his case from Mrs. Chandler's case based on Mr. Tucker's intent to present exculpatory testimony from Ms. Chandler. 10/30 Tr. 141-44.

[5] 10/31 Tr. 223-32.

[6] 11/1 Tr. 20-67.

complainant regarding the assault-related offenses,[7] 4) Antoinette Walker, a Department of Corrections custodian of records,[8] 5) Tara Gross, a custodian of records for surveillance video footage from the apartment complex where the alleged offenses occurred,[9] 6) MPD Detective Rodney Anderson, to whom Ms. Chandler made statements during a custodial interrogation,[10] 7) Dr. James Debritz, the complainant's treating physician after the shooting,[11] and 8) MPD Detective Allison Binger, the lead detective for the case. 11/2 Tr. 14-60.

After the government rested and the court denied Ms. Chandler's motion for a judgment of acquittal ("MJOA"), the defense rested. 11/2 Tr. 66-74. Following a series of jury notes,[12] the jury found Ms. Chandler guilty of Counts One (conspiracy to commit ADW), Four (AAWA), and Five (PFCV regarding Count Four), and not guilty of Counts Two (first-degree burglary), Three (PFCV regarding Count Two), Six (ASBIWA), and Seven (soliciting a crime of violence). R. 293-95 (PDF). On February 28, 2024, the court sentenced Ms. Chandler to an aggregate 72 months' incarceration. R. 320-24 (PDF). This timely appeal followed. R. 325-29.

[7] 11/1 Tr. 70-106.
[8] 11/1 Tr. 106-22.
[9] 11/1 Tr. 122-30.
[10] 11/1 Tr. 138-47.
[11] 11/2 Tr. 4-12.
[12] R. 286-92 (PDF).

STATEMENT OF FACTS

On March 30, 2023, Ms. Chandler was presented on a two-count complaint alleging first-degree burglary and AAWA based on alleged events in the early morning hours of March 28, 2023. R. 37 (PDF). More specifically, the government alleged that after complainant Shawn Watts choked Ms. Chandler and later forced her out of an apartment rented by Darlene Green, Ms. Chandler returned to the apartment with her son, Donnell Tucker, where the two assaulted Mr. Watts, Ms. Chandler using her ringed finger and Mr. Tucker ultimately a firearm. R. 38-47.

Following preventive detention[13] and Ms. Chandler's rejection of a plea offer,[14] the case was set for trial, ultimately slightly beyond the 100-day window permitted by D.C. Code § 23-1322(h)(1). 5/30 Tr. 2-4. Shortly before the scheduled trial date, Ms. Chandler was released to home confinement due to the United States' desire to try Ms. Chandler with her son and alleged co-conspirator, Donnell Tucker, whose identity was known to the United States but for whom the United States did not seek an arrest warrant until after securing an indictment. 7/5 Tr. 15-18.

Pretrial Motions

After execution of the warrant for Mr. Tucker's arrest and joinder of Ms.

[13] R. 48, 94-98 (PDF).
[14] 5/22 Tr. 7-9.

Chandler's and Mr. Tucker's cases, trial was reset for October 30, 2023. Prior to trial, Ms. Chandler moved to suppress statements made to MPD detectives on the night of her arrest,[15] moved to sever her case from Mr. Tucker's case,[16] a motion later joined by Mr. Tucker,[17] and moved to dismiss Count One of the indictment for failure of proof. R. 185-92 (PDF). The United States opposed the motions[18] and additionally moved in limine to admit certain jail calls made during Ms. Chandler's earlier detention. R. 249-77. [19]

On October 30, 2023, the court took testimony and heard argument regarding Ms. Chandler's motion to suppress statements (ultimately denied), both motions to sever (ultimately granted), and the United States' motion to admit certain jail calls (granted in part and denied in part).[20]

Officer Colleen O'Brien

After severing cases,[21] the parties proceeded to trial.[22] The government first

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[15] R. 157-69 (PDF).
[16] R. 170-84 (PDF).
[17] 10/27 Tr. 9-10.
[18] R. 193-248 (PDF).
[19] Ms. Chandler earlier moved for the government to timely disclose and specify the jail calls it intended to admit at trial. R. 149-56 (PDF).
[20] Where nearly all the calls were placed by Ms. Chandler, rather than Mr. Tucker, and where the primary barrier to admissibility lay in the Confrontation Clause, severance rendered many of the trial court's ruling unnecessary.
[21] Because the trial court's rulings on the motions are not implicated by this appeal, Ms. Chandler does not discuss them in greater detail.
[22] Ms. Chandler does not raise any claims of error related to jury selection or composition in this appeal.

called MPD Officer Colleen O'Brien, who went to [redacted] late on the evening of March 27, 2023, in response to a report of a shooting. 10/31 Tr. 222-24. Upon arrival, Officer O'Brien observed the complainant, Shawn Watts, "covered in blood, in a very awkward, unnatural-looking position, about halfway down the stairs in the hallway of the apartment building," with injuries to his head and leg, face, and head. 10/31 Tr. 225-26. Mr. Watts appeared to be "significantly" in pain because he was "screaming a lot." 10/31 Tr. 226-27.[23] Emergency medical technicians arrived and transported Mr. Watts to an unspecified medical facility. 10/31 Tr. 230. Officer O'Brien did not observe the shooter or shooters or see a weapon while at the scene. 10/31 Tr. 231.

Hanaa Joher

The next day, prior to receiving any testimony, the government disclosed the following about its next intended witness, Hanaa Joher:

> So this morning, I spoke with Hanaa Joher. This is Witness 2. She has been at a facility in Virginia for some time before today. And I actually did get clarity on exactly how long, but I spoke with staff at the facility as well.
>
> They informed me of -- that Ms. Joher has been diagnosed with three things that I've disclosed to defense counsel: A form of Down syndrome, PTSD, and what was described as, I think, a borderline intellectual disability. I don't have any other information beyond that.

[23] Without objection, video footage from the body-worn camera of an officer accompanying Officer O'Brien and depicting these events was admitted and shown to the jury. 10/31 Tr. 227-28.

> She is able to respond to my questions and understand them. Sometimes there's points of confusion, but I think we generally have been able to clear them up and present a coherent discussion. I've disclosed this to the defense out of an abundance of caution. They've asked me to get some follow-up information about how long she's going to be at the facility because there was also a mention of some sort of substance abuse -- substance issue in the past. But apparently she's been clean at least since she's been in the facility.
>
> I'm happy to get that information for the defense.

11/1 Tr. 5-6.

Concerned about Ms. Joher's ability to competently testify based on the government's statements regarding her intellectual disabilities, Ms. Chandler requested the opportunity to voir dire Ms. Joher outside the presence of the jury, a request with which the trial court initially agreed. 11/1 Tr. 6-8.

After a pause in the proceedings to allow the United States to obtain additional information relevant to her diagnoses, for reasons unclear, the trial court indicated that it was "not sure that [its] initial instincts were correct." 11/1 Tr. 9. The government elaborated regarding the nature of the "facility," describing it as "a crisis facility," that "attempt[ed] to assist with her just being able to deal with the difficulties that she's been having with her life." 11/1 Tr. 9-10. Regarding Ms. Joher's diagnoses and intellectual functioning, the United States indicated that those "include[d] PTSD, mosaic Down syndrome," and "slight[] intellectual[] disab[ility]." 11/1 Tr. 10. The government averred that Ms. Joher was "high-

functioning," had "lived on her own," gave "intelligible" answers when testifying before the grand jury in this case, and "had memory loss before." 11/1 Tr. 11. Ms. Chandler reiterated her request to voir dire the witness to assess competency to testify based on her diagnoses of Down's syndrome and intellectual disability. 11/1 Tr. 12-13. Reversing its earlier ruling, the trial court denied Ms. Chandler's request to voir dire the witness and her alternative request to sign a subpoena for records from the "crisis rehabilitation facility." 11/1 Tr. 16-17.

When asked on direct examination whether she "ha[d]… lived in the DMV, Washington/Virginia/Maryland, area for some time," Ms. Joher responded, "no, I'm not living in DC," and when immediately asked to clarify whether she had lived "in this general area for some time," Ms. Joher responded, "[p]robably one week, two weeks." 11/1 Tr. 20. Seemingly sensing the confusing nature of Ms. Joher's responses, the United States then inquired regarding Ms. Joher's first language (Arabic), and asked that "if there [was] any sort of disconnects," or Ms. Joher "ha[d] any trouble understanding the questions that [the prosecutor] ask[ed] or something – f[ound] something confusing in the phrasing of the questions," that she "just let [the prosecutor] know." 11/1 Tr. 21.

Ms. Joher testified that she had known Mr. Watts for "three years" prior to trial and that she "kind of" had been in a "romantic relationship" with Mr. Watts at some point during the three years. Ms. Joher also knew "Darlene," whom Ms. Joher

described as "daughter of Uncle Jaime and Momma Lisa." 11/1 Tr. 21-22. When asked whether she knew if Mr. Watts knew Darlene, Ms. Joher responded, "I didn't know. But then when I come to her house, then I just, like -- I got shocked, you know." 11/1 Tr. 23 (11-14). Ms. Joher testified that she first went to Darlene's apartment, doing so with Mr. Watts, on March 22, 2023, which she recalled because she "just want[ed] to be in her house, like, for some time, because [she] didn't have a place." 11/1 Tr. 23-24. When Ms. Joher then indicated that her "family took her" to Darlene's apartment, the government clarified that Ms. Joher went to Darlene's apartment with Mr. Watts. 11/1 Tr. 24. Ms. Joher testified that she knew Ms. Chandler, whom she knew as Tiaquana, whom she met through her "friend Darlene." 11/1 Tr. 25-26.

When asked who was present when she returned to Darlene's apartment on March 27, 2023, the night of the alleged offenses, Ms. Joher said that Tiaquana was present, leading to the following exchange between Ms. Joher and the prosecutor, given Ms. Joher's earlier contrary testimony:

> Now, I just want to be clear. The question I asked you specifically, about when you first got to Darlene's house at 8:30 at night. I think you said just now that Tiaquana was there at that time. Do you recall saying earlier that Tiaquana was not at the apartment at that point in time?
> A No. She was at the apartment in Darlene house.
> Q Okay. Was -- I want to know, to the best of your recollection, was Tiaquana already at the house as soon as you got home, or did she --
> A Yes.

Q -- she come to the house later?
A Uh-huh.
Q Okay.
A As soon as I got home, I saw her.
Q Okay. And when we were speaking immediately before, do you recall telling me that she didn't – Tiaquana didn't come to the apartment until some time later?
A Yes.
Q Okay. So you recall telling me that.
A Uh-huh.
Q But your testimony now is that she was already at the house?
A Yes.
Q Do you understand the difference between those two things?
A Yes.
Q Okay. And so to the best of your memory right now, just for the clarity of the record, your memory is that Tiaquana was already at the house?
A Yes.

11/1 Tr. 27-28.

According to Ms. Joher, "everybody" in the apartment on March 27, 2023, "was drinking beers and chilling and, you know, doing drugs and stuff," with Ms. Joher only consuming alcohol, Mr. Watts using "PCP, Molly, Tina[,] [and] marijuana," and Ms. Chandler using "PCP, Molly, and the liquid for the PCP." 11/1 Tr. 29-30. Ms. Chandler and Mr. Watts had an argument in which Ms. Joher indicated both struck one another and Mr. Watts "throw the cup of the ice to the wall, and he just take off her wig, basically, yes[,]… then he got her out of the apartment." 11/1 Tr. 30-31. After the argument, only Ms. Joher, "Shawn [Watts], Darlene, and the kids" remained in the apartment, with Darlene asleep in a bedroom. 11/1 Tr. 32-33. When

asked what part of the apartment she was in at that time, Ms. Joher answered "In Darlene apartment" before answering "in the living room" after asked the same question again. 11/1 Tr. 34.

Shortly thereafter, Ms. Chandler and her son, whom Ms. Joher knew as Donnell,[24] knocked at the door. 11/1 Tr. 34-35. When later asked about the positioning of the two outside the apartment door, Ms. Joher indicated that Ms. Chandler, who was not wearing a mask, "was standing in front of her son," who was wearing a mask and had a gun in his hand. 11/1 Tr. 37-38, 67. According to Ms. Joher, Donnell "twisted the [apartment] door[,]… slammed it on [her] on the wall," before both Ms. Chandler and Donnell entered the apartment, where Ms. Chandler threatened to kill Mr. Watts. 11/1 Tr. 37-38. The government then impeached Ms. Joher with a prior inconsistent statement that Ms. Chandler had threatened to "beat up" Mr. Watts, not kill him. 11/1 Tr. 38. Ms. Joher testified that Donnell "grabbed [Mr. Watts] from his feet all the way outside in the hallway" and was "hitting" Mr. Watts and "punching him in the leg." 11/1 Tr. 39. After "com[ing] out from the apartment," Ms. Chandler was "hitting [Mr. Watts] on the head and the shoulders, his whole body"—" giving him a fist." 11/1 Tr. 40. Donnell then threatened to kill Mr. Watts, "[a]nd then [Donnell] said, 'Bam, bam,' you know," and shot [Mr. Watts]

[24] Ms. Joher testified that she met Donnell "next to the trash can" when Mr. Watts "was naked outside." 11/1 Tr. 35. Mr. Watts was naked outside because "basically, he had PCP whole day. Like, six or seven… dips, you know." 11/1 Tr. 36-37.

five times in the leg," before Donnell and Ms. Chandler "r[a]n away." 11/1 Tr. 41.

Ms. Joher's testimony that she spoke with police at the station on the night of the incident, contrary to objective evidence known to the government, again prompted the prosecutor to repeatedly ask questions aimed at causing Ms. Joher to realize that she was remembering incorrectly. 11/1 Tr. 41-42. Prior to offering a statement of prior identification, identifying Ms. Chandler and Donnell as having participated in the assault of Mr. Watts, Ms. Joher again provided responses suggesting she misunderstood questions asked by the prosecutor:

> Now, during your conversation with the detective with -- who you refer to as Allison, did you identify anybody who was involved in the assault?
> A Yes.
> Q Who did you identify?
> A I identify her kids and Aiesha, when she come home from the apartment.

11/1 Tr. 43.

On cross-examination, Ms. Joher denied purchasing or using PCP on March 27, 2023, and her giving internally inconsistent testimony and seeming misapprehension of questions or inability to answer them continued:

> Q And you went out to a car with Ms. Chandler?
> A No, I never went with her in the car.

11/1 Tr. 52 (8-9).

> Q And they went out to Ms. Chandler's car with the daiquiris, didn't they?
> A I'm sorry?

Q They went outside to Ms. -- do you remember Ms. Chandler and Darlene taking --
A Yeah.
Q -- daiquiris?
A The -- she went to her car, yes.
Q With Darlene?
A Uh-huh.
Q And they smoked PCP --
A Yes.
Q -- while they drank daiquiris --
A Yes.
Q -- in her car?
A Uh-huh.
Q Right.
And you saw that?
A I did.
Q Right. Because you were there?
A Okay. Yes.
Q Okay. And from the window of the car, you saw Mr. Watts naked?
A Yes.

11/1 Tr. 60-61.

Q Yeah. Have you ever done PCP, ma'am?
A No.
Q So you don't know how that affects people's time -- relationship to time and space, do you?
A I don't smoke that, sir. I'm sorry. I don't know what you got this from.
…
Q So you don't know how PCP affects people's ability to remember time when they're on PCP, do you?
A I don't smoke that. I don't know what you got there from, sir.

11/2 Tr. 54-55.

Q I'm touching the top of my head now. Would you consider this to be face?

A Yes.
Q Up here?
A Uh-huh.
Q Where my hair is?
A Yep.
Q That would be part of my face?
A And, plus, you have ring too.
Q I do?
A So you can hit your head with it, you know.
Q All right. You would consider the top of my head to be my face?
A No. Your hand is in top of your head.

11/2 Tr. 57 (9-22).

And after you got the $100 from Wells Fargo and did not use that $100 to buy a bottle of liquid PCP --
A I did not buy nothing, sir.
Q I said you didn't buy $100 of liquid PCP.

11/2 Tr. 58 (20-23).

Later in the evening, you were drinking beer when people were doing drugs and other things; correct?
A Yes.
Q Okay. Earlier in the day --
A There is no earlier in the day. I was whole day outside. I was looking for a job. And I went to my bank, yes. And there is -- nobody can stop me using my bank.
Q I agree. No one should ever stop you from using your bank.

11/1 Tr. 59-60.

The same continued on redirect examination.

Q Now, this incident at the car, is that the same point in time with the incident at the trash -- or that -- the trash that we were talking about with Shawn?
A Yeah.

Q Okay. So that was the same time frame?
A Yes.
Q Now, sitting here today, do you remember – that incident at the trash and the car, was that the same day as the assault that you were talking about, or was it some other day?
A It was different day.
Q It was a different day?
A Yes.
Q What makes you think that it was a different day?
A Because all I remember, that incident happened Sunday, that trash thing. And -- I mean, Shawn was naked, yes.

11/1 Tr. 64.[25]

Q Did [Tiaquana] come back with anybody or by herself?
A By herself.
Q Okay. And she came back one time or more than once?
A It's -- it was more that than once.
Q Did she eventually come back with somebody else?
A No.
Q Well, I'm specifically now referring to when you heard the knocking at the door.
A Yes.

11/1 Tr. 66.

Shawn Watts

The government next called complainant Shawn Watts, whom Ms. Joher

[25] Ms. Joher recounted on cross-examination an incident in which Mr. Watts, high on PCP, was naked near an outdoor dumpster in the apartment complex where the alleged offenses occurred, unresponsive to a point that children were pouring milk on him. 11/1 Tr. 52. When Ms. Chandler attempted to assist Mr. Watts and help him put on clothes, Mr. Watts choked Ms. Chandler to the point she lost control of basic bodily functions. 11/1 Tr. 52-53.

testified used illegal drugs, including PCP, [26] and whose testimony was marked by slurring his words,[27] at times "difficulty recalling,"[28] some non-responsive answers,[29] and what the trial court characterized as speaking "rather slowly and deliberately,"[30] which the trial court wondered might be evidence of a brain injury, before acknowledging there was no evidence of that. 11/1 Tr. 98.

Mr. Watts testified that as of March 27, 2023, he was staying in his friend Darlene's apartment, along with Hanaa Joher, whom he had known for about two months, and with whom he was in "kind of" a "romantic relationship." 11/1 Tr. 71-73. As of March 2023, Mr. Watts had known Ms. Chandler, whom he identified in court without objection as Tiaquana Chandler, for not "very long." 11/1 Tr. 73-75.

After he could not recall who was present in Darlene's apartment on the evening of March 27, Mr. Watts was impeached with his grand jury testimony,

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[26] The United States also acknowledged Mr. Watts' history of using unlawful controlled substances. 11/1 Tr. 97 (16-17) ("I've known in testimony associated with this case is that Mr. Watts had used previously…").
[27] The United States acknowledged the same. 11/1 Tr. 98 ("And the slurring of the words is exactly the demeanor that he's always had with me.")
[28] 11/1 Tr. 98.
[29] *See, e.g.*, 11/1 Tr. 75 (19-22) ("Q Do you remember what the friends' names were? A Yeah. Q Take your time. A Okay. What was the question again?"); 11/1 Tr. 84-85 ("Q Okay. As far as mentally goes, what type of mental – what's happened to you mentally as a result of this incident? A Well, I mean, it's a lot of difficulties. Q How so? A It's a lot of difficulties, you know, moving around, you know—"); 11/1 Tr. 102 (8-12) ("Q So when -- when he appeared at your door, you didn't know why he was there? A I seen her in the peep -- I seen Ms. Chandler -- her in the peephole. And that's when I answered the door, when I seen her, you know.").
[30] 11/1 Tr. 96 (6-7).

where he testified that those present were "Mel[,]… Demia [phonetic], Darlene's sister or Darlene's daughter, and me, and Hanaa." 11/1 Tr. 75-78. Ms. Chandler, also present, left Darlene's apartment after an argument, and later returned with "her son." 11/1 Tr. 79-80. Mr. Watts testified that, after he opened the apartment door, Ms. Chandler and her son "attacked" him, but could not "really recall" whether both "struck [him] in the head"; both "were just hitting" him. 11/1 Tr. 80. At an unspecified time in relation to the "striking," Ms. Chandler's son shot Mr. Watts in the leg. 11/1 Tr. 80. Mr. Watts was not asked to and did not offer any testimony regarding when or if he saw a gun, where Ms. Chandler was at that time, or where Ms. Chandler was when her son shot Mr. Watts. Mr. Watts did not testify that he or anyone else made any effort to dispossess Mr. Tucker of the gun or that he would have done so but for any alleged actions by Ms. Chandler.[31]

Prior to cross-examining Mr. Watts, Ms. Chandler, citing Mr. Watts' behaviors suggestive of impairment, requested that the trial court order Mr. Watts to submit to a drug screening, a request the government opposed. 11/1 Tr. 95-97. The trial court recognized it had the authority to do so, stated that Mr. Watts was speaking "rather slowly and deliberately," acknowledged Mr. Watts at times having "difficulty recalling," and did not dispute both parties' characterization that Mr.

[31] Mr. Watts also described the extent of injuries to his head, face, and leg, 11/1 Tr. 81-85, and confirmed an earlier statement identifying Ms. Chandler as having participated in the assault. 11/1 Tr. 85-93.

Watts was slurring his words, but declined to do so, stating, "I don't think there's anything about his demeanor on the stand which would compel me to order him to drug test." 11/1 Tr. 95-99.

On cross-examination, Mr. Watts, contrary to the testimony of Ms. Joher, denied having a physical altercation with or touching Ms. Chandler prior to the alleged assault on March 27, 2023, denied using PCP on March 27 or 28, 2023, and denied being "on any substance" at the time of his testimony. 11/1 Tr. 102-04. Mr. Watts did not "know the series of the first blows" as between Mr. Chandler and her son, but "just know that [he]… sustained head injuries when I answered the door." 11/1 Tr. 105. Aside from saying that Ms. Chandler's son shot him, Mr. Watts again offered no testimony regarding when or if he saw a gun, where Ms. Chandler was at that time, where Ms. Chandler was when he was shot, that he or anyone else made any effort to dispossess Mr. Tucker of the gun or that he would have done so but for any alleged actions by Ms. Chandler.[32]

Antoinette Walker

The government next called Antoinette Walker, a custodian of records for the District of Columbia Department of Corrections, through whom it moved into evidence several jail calls made by Ms. Chandler.[33]

[32] There was no redirect examination. 11/1 Tr. 105.
[33] The parties had already extensively litigated the admissibility of the calls, along with others ultimately ruled inadmissible. 10/30 Tr.

Tara Gross

The government next called Tara Gross as a custodian for the Congress Park Apartments, the complex within which the alleged offenses occurred, through whom it moved into evidence surveillance video from March 27, 2023, depicting the exterior of the building in which Mr. Watts was shot. 11/1 Tr. 123-30.

Detective Rodney Anderson

The government next called MPD Detective Rodney Anderson, through whom it introduced portions of Ms. Chandler's custodial interview. 11/1 Tr. 138-47.

Dr. James Debritz, MD

The government next called Dr. James Debritz, Mr. Watts' treating physician and an orthopedic trauma surgeon at George Washington University Hospital, and permitted to offer specialized opinion testimony regarding orthopedic trauma and "critical care medicine." Dr. Debritz testified about the details of Mr. Watts' (femoral) surgery, the nature and extent of his leg injuries, and briefly some facial lacerations with which Dr. Debritz was not very familiar. 11/2 Tr. 6-12.

MPD Detective Allison Bingner

Finally, the government called MPD Detective Allison Bingner, the lead detective in the case. Through Detective Bingner and without objection, the United States moved into evidence several photographs depicting the exterior and interior of the building in which Mr. Watts was shot, including several depicting suspected

blood. 11/2 Tr. 16-28. As relevant here, Detective Binger testified that neither she nor any other officer were able to make contact with anyone in apartment 201, Darlene Green's apartment, during the initial police response, and that she did not speak with Ms. Joher until the following morning, who identified Ms. Chandler as being involved in "the incident." 11/2 Tr. 28-36. More specifically, Detective Bingner testified that Ms. Joher told her that Ms. Chandler "assaulted and beat" Mr. Watts. 11/2 Tr. 36. During an identification procedure, Mr. Watts told Detective Bingner that Ms. Chandler "attacked him in the hallway." 11/2 Tr. 39.

The government then published the jail calls (containing certain statements by Ms. Chandler) already admitted through DOC custodian Antoinette Walker[34] and oriented the jury to [redacted], a location to which Detective Bingner had been, in footage previously admitted through Ms. Gross as government exhibit 10. Over objection, Detective Bingner was permitted to testify that a sound heard in GX 10 "sound[ed] like… a gunshot." 11/2 Tr. 55-56.

Jury Notes

After the government rested, the trial court denied Ms. Chandler's MJOA and conducting a *Boyd* inquiry,[35] the defense rested, and closing arguments, the jury sent five notes containing several substantive questions over parts of two days. R. 287-

[34] 11/2 Tr. 44-49.
[35] 11/2 Tr. 66-73.

291 (PDF).[36] As relevant here, on November 3, near the end of the first full day of deliberations, the jury sent a note containing three questions relevant to Count Five, entitled "Questions about Count V #3"

1. Within the aiding and abetting framework, is the co-conspirator's intention of possession of the firearm sufficient to make the defendant have the same intention?
2. In other words, if the co-conspirator intended to bring the firearm, would she also intend to do so under aiding and abetting?
3. If the defendant first did not intend to bring the firearm, but then consented to it after the firearm was brought in, would that count as a "yes" under aiding and abetting?

R. 290 (PDF).[37]

Ms. Chandler, citing *Parker v. United States*, 298 A.3d 785 (D.C. 2023), repeatedly requested that the court answer "no" to all three questions because "consenting" "after the firearm was brought in" would be insufficient to constitute "help[ing] the armed [assailant] maintain possession of his weapon," required to prove PFCV under an aiding and abetting theory, as alleged in the instant case. 11/6 Tr. 11, 19. Once the court denied that request and instead over Ms. Chandler's objection elected to give a lengthy instruction not answering the question posed by the jury, Ms. Chandler objected to the instruction because it failed to "convey[] the requirement as restated under *Parker* that for PFCV, specifically, that the aider and

[36] While the jury notes all contain the correct date and time, for reasons unclear, they do not appear in chronological order in the record on appeal.

[37] The note contained two numbers, rather than three. Ms. Chandler separately numbers the questions for ease of reading.

abettor has to do something to assist in the maintaining the possession of the firearm." 11/6 Tr. 19, 30.[38] The trial court responded "no" to the jury's first two questions regarding Count Five, and gave the following answer to its third question in the 4:28 pm note from November 3 (R. 290).[39]

> Count Five is possession of a firearm during a crime of violence, specifically aggravated assault while armed. For the Defendant to be found guilty of aiding and abetting the offense of possession of a firearm during a crime of violence of aggravated assault while armed, the Defendant must have taken some steps with guilty knowledge in the planning or carrying out of the crime of possession of a firearm during a crime of violence of violence by the co-conspirator.
>
> Mere physical presence at time and place—I'm sorry, at the place and time is not sufficient to establish her guilt. However, mere physical presence is enough [] if it is intended to help in the commission of the crime of possession of the firearm.

11/6 Tr. 40-41.

Later the same day, the jury returned a split verdict, finding Ms. Chandler guilty of Counts One (conspiracy to commit ADW), Four (AAWA), and Five (PFCV of AAWA), and acquitting her of the remaining counts. On February 28, 2024, the trial

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[38] The November 6, 2023 transcript on numerous occasions attributes statement to an attorney for the incorrect party. *See, e.g.*, 11/6 Tr. 16-17 (17-1); 17 (10-15); 20 (11-16); 22-23 (22-2).

[39] The court agreed with Ms. Chandler that the United States forfeited any argument that she could be convicted of any of Counts Two through Seven (i.e., the non-conspiracy offenses) under a theory of conspiracy liability where the United States failed to request and the trial court failed to give such an instruction. 11/6 Tr. 32-35.

court sentenced Ms. Chandler to an aggregate seventy-two months' incarceration. R. 324 (PDF). This timely appeal followed. R. 325-26.

SUMMARY OF THE ARGUMENT

The Sixth Amendment's Confrontation Clause "protects the right of the accused in a criminal trial to confront and cross-examine the witnesses against [her][,]… an important means of testing the credibility of government witnesses by exposing any biases or reasons for the witness not telling the truth." *McCray v. United States*, 133 A.3d 205, 232 (D.C. 2016) (quoting *Velasquez v. United States*, 801 A.2d 72, 78-79 (D.C. 2002)). "[A]lthough competency and credibility are related, the former concerns certain basic, prerequisite capabilities necessary to give testimony, whereas the latter is largely a concern of the factfinders — to decide whom and what to believe." *Vereen v. United States*, 587 A.2d 456, 458 (D.C. 1991). "[O]nce a trial judge is confronted by any 'red flag' of material impact upon competency of a witness, an inquiry must be made into the facts and circumstances relevant thereto." *Hammon v. United States*, 695 A.2d 97, 104 (D.C. 1997) (quoting *United States v. Crosby*, 462 F.2d 1201, 1203 (D.C. Cir. 1972)). While "[t]here is a 'strong presumption' against ordering an [independent medical examination], because of the invasion of privacy and the potential for harassment that it entails,'"[40]

[40] *Dorsey v. United States*, 935 A.2d 288, 294 (D.C. 2007) (quoting *Barrera v. United States*, 599 A.2d 1119, 1126 (D.C. 1991)).

"an inquiry… into the facts and circumstances relevant thereto" may and in some cases must include production and review of relevant medical or psychiatric records,[41] an opportunity for voir dire on the issue of competency outside the presence of the jury,[42] and the opportunity to engage experts to opine on the impact of disabilities on the credibility or competency of a witness.[43] "The Confrontation Clause is violated… only when the trial court precludes a meaningful degree of cross-examination to establish bias." *McCray*, 133 A.3d at 232 (quoting *Grayton v. United States*, 745 A.2d 274, 279 (D.C. 2000)).

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[41] *See, e.g.*, *Crosby*, 462 F.2d at 1203 ("While a competency hearing was held in the case at bar (unlike Hansford), the trial court refused to examine the medical records bearing on Chapman's condition. We think that such refusal was an abuse of discretion.").

[42] *See, e.g.*, *Mitchell v. United States*, 609 A.2d 1099, 1106 (D.C. 1992) ("The 'red flag' of repeated hospital commitments presented by the defense proffer merited careful consideration by the judge, and it was appropriate for the trial judge to conduct a lengthy examination, by counsel and the court, of the witness on voir dire.") (citing *Hilton v. United States*, 435 A.2d 383, 388 (D.C. 1981)); *compare Hammon*, 695 A.2d at 105 ("Finally, we emphasize that none of the defendants asked for a voir dire of A.W…").

[43] *See, e.g.*, *McCray*, 133 A.3d at 234 ("[I]n light of defendant's right to present a defense, and given the seriousness of the bipolar disorder and the proffer about Mr. Faison's recent episode of throwing urine and feces at a prison guard, we believe Mr. Parker and Mr. McCray were at least entitled to an opportunity to show what an expert might contribute in an effort to determine any impact of Mr. Faison's mental disabilities on his credibility."); *accord Vereen*, 587 A.2d at 458 ("Given the procedure that evolved in this case, we conclude the judge erred in submitting the witness to the jury, while denying the defense access to the medical records during voir dire and without the benefit of hearing expert opinion as an aid in deciding competency.").

On the morning of the expected testimony of one Hanaa Joher, one of two alleged eyewitnesses to the offenses, the United States disclosed for the first time[44] that Ms. Joher "has been diagnosed with three things… [a] form of Down syndrome,[45] PTSD, and… a borderline intellectual disability," and "ha[d] been in a facility for some time before today,"[46] described variously as "more like a crisis facility,"[47] "a voluntary situation,"[48] and a "crisis rehabilitation facility." 11/1 Tr. 10. After hearing only—regarding the nature of Ms. Joher's diagnoses—a subjective, non-expert impression of Ms. Joher's ability to answer questions and live independently,[49] the latter provided secondhand by staff of the facility present in court who were not clinicians[50]—the trial court denied Ms. Chandler's request for a voir dire on the issue of competency (after initially indicating that it would permit such a voir dire[51]) and declined to authorize issuance of a subpoena for Ms. Joher's treatment records. 11/1 Tr. 9-17.

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[44] The prosecutor indicated that the United States had only become aware of the information the same day. 11/1 Tr. 5.
[45] The United States later described this as "mosaic Down syndrome." 11/1 Tr. 10.
[46] 11/1 Tr. 5.
[47] 11/1 Tr. 9 (17-18).
[48] 11/1 Tr. 9 (23).
[49] *See, e.g.*, *Vereen*, 587 A.2d at 457 ("Without the benefit of an expert's evaluation at the voir dire stage, the trial judge was ill-equipped to determine whether the 'vapors,' premonitions, and any other irregularities were harmless aberrations or might, in some way, bear on her perception, recollection, or ability to distinguish fact from unreality.").
[50] 11/1 Tr. 5 (12-14), 13 (13-16).
[51] 11/1 Tr. 6-7.

Without records documenting Ms. Joher's conditions (or the ability to obtain those records) and their impact on her competency and credibility, and without the ability to offer testimony from an expert regarding the nature of Ms. Joher's conditions and their impact on her ability to perceive, recall, and narrate (who in any event would only have been able to discuss the impact of "mosaic Down syndrome" or Ms. Joher's other unspecified intellectual disability without access to records or conducting an independent evaluation), the trial court's actions entirely "preclude[d]… cross-examination to establish bias"[52] on this basis, thereby violating Ms. Chandler's Sixth Amendment right to confront Ms. Joher, an error that was not harmless under the "demanding" *Chapman*[53] standard.[54]

Even if this court does not view the trial court's error as being of constitutional dimension, reversal is nonetheless required[55] because the trial court abused its discretion by failing to make or permit "inquiry… into the facts and circumstances relevant" to competency and credibility, plainly raised by the witness's diagnosis with a condition "caus[ing] lifelong intellectual disability and developmental

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[52] *McCray*, 133 A.3d at 232 (quoting *Grayton*, 745 A.2d at 279)).
[53] *Chapman v. California*, 386 U.S. 18 (1967).
[54] "To satisfy the constitutional harmless error standard, the government must show that 'the verdict was surely unattributable to the erroneously admitted evidence.'" *Austin v. United States*, 315 A.3d 580, 602 (D.C. 2024) (quoting *Kaliku v. United States*, 994 A.2d 765, 775 (D.C. 2010)).
[55] As discussed, *infra*, Ms. Chandler challenges the sufficiency of the evidence to support her convictions for PFCV and AAWA. Assuming this court agrees with Ms. Chandler's sufficiency challenges, there could be no retrial on those counts.

delays."[56] The "'red flag' of material impact on competency was flying," and the trial court abused its discretion by failing to permit a voir dire on the issue of competency, refusing to authorize issuance of a subpoena for relevant records,[57] and taking no other steps to make "an inquiry… into the facts and circumstances relevant" to Ms. Joher's competency, a marked contrast from circumstances in which this court has rejected distinguishable, far weaker evidence of impairment, illness, or disability,[58] and stronger even than the facts of *McCray*,[59] in which this court remanded "to provide… appellants with an opportunity to show, at a hearing

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[56] *Down Syndrome—Symptoms and Causes*, Mayo Clinic, https://www.mayoclinic.org/diseases-conditions/down-syndrome/symptoms-causes/syc-20355977 (last accessed Dec. 22, 2024). The National Down Syndrome Society describes "Mosaicism" or "mosaic Down syndrome" as "the least common form of Down syndrome" and explains that while "individuals with mosaic Down syndrome *may* have fewer characteristics of Down syndrome than those with other types of Down syndrome[,]… broad generalizations are not possible due to the wide range of abilities people with Down syndrome possess." https://ndss.org/about (last accessed Dec. 22, 2024).

[57] *See generally Brown v. United States*, 567 A.2d 426 (D.C. 1989).

[58] *See, e.g.*, *Velasquez*, 801 A.2d at 79 ("proposed cross-examination concerned [witness's] condition some three years after the crime charged" and "[d]efense proffered no evidence that [witness] had a mental illness which would have affected her credibility at the time" of trial).

[59] In *McCray*, unlike the facts of the instant case, a judge *authorized* issuance of a subpoena for the witness's juvenile records, from which the defense then obtained "a thirteen-page psychiatric evaluation" showing a diagnosis of bipolar disorder some six years earlier and three to five years before the offense conduct. 133 A.3d at 231. Down syndrome, including mosaic Down syndrome, is a genetic condition which causes "lifelong intellectual disability"; i.e., to the extent it impacted Ms. Joher, it did so both at the time of the offenses and the time of her testimony; and Ms. Chandler lacked *any* records based on the timing of the disclosure and the trial court's refusal to permit Ms. Chandler to issue a subpoena for relevant records.

and through expert opinion, whether at the time of his trial testimony, [the witness's] mental disabilities seriously impacted his credibility." *Id.* at 234.

Ms. Chandler's convictions must be reversed for a second reason related to a witness's competency to testify or the jury's assessment of the witness's credibility—the trial court's failure to order a brief physical examination—urinalysis—of Shawn Watts, who often slurred his words during his testimony, whose testimony was marked by long pauses after questions, who often answered basic questions in a way suggesting he did not comprehend them, and who had a recent history of using illegal drugs. While "[t]he decision whether to order a physical or psychiatric examination for the purpose of determining competency to testify or to aid the jury in its assessment of a witness'[s] credibility is within the sound discretion of the trial judge," and requires balancing "the potential evidentiary advantage of the examination against the dangers of an unwarranted invasion of privacy,"[60] the trial court abused its discretion on the facts of this case.

Evidence sufficient to support a conviction for PCFV under an aiding and abetting theory—the government's theory of liability in this case[61]—requires proof "that an unarmed assailant has taken 'affirmative steps to aid his [accomplices] in

[60] *Hilton*, 435 A.2d at 387 (citing *Rogers v. United States*, 419 A.2d 977 (1980)).
[61] 11/2 Tr. 104 ("[E]ven though Ms. Chandler didn't possess the gun, she is just as culpable as the trigger puller.").

their possession of firearms,'"[62] a standard unsatisfied even by evidence that an unarmed person "physically subdued a person—absent some evidence that the person subdued posed a threat of otherwise disarming the gunman." *Id.* Where there was no evidence that any person "posed a threat of… disarming the gunman," Ms. Chandler's PFCV (Count Five) conviction must be vacated.

This court "review[s] de novo whether challenged jury instructions adequately state the law,"[63] and such instructions are "accurate if [they] 'clearly explain[]' the applicable law." *Alleyne v. United States*, No. 23-CF-55, slip op. at 20 (D.C. Dec. 5, 2024) (citing *Dawkins v. United States*, 189 A.3d 223, 237 (D.C. 2018)). Even if the evidence was sufficient to support Ms. Chandler's PFCV conviction, which it is not, Ms. Chandler's PFCV conviction must be reversed because the trial court's response, over Ms. Chandler's repeated objection, to a jury question, failed to correctly explain the law, let alone "clearly" do so. More specifically, the trial court responded to the jury's question of whether if Ms. Chandler "first did not intend to bring the firearm, but then consented to it after the firearm was brought in," this would be sufficient to prove PFCV under an aiding and abetting theory by stating:

> Count five is possession of a firearm during a crime of violence, specifically aggravated assault while armed. For the Defendant to be found guilty of aiding and abetting

[62] *Parker v. United States*, 298 A.3d 785, 793 (D.C. 2023) (quoting *Fox v. United States*, 11 A.3d 1282, 1288 (D.C. 2011)) (emphasis in original).
[63] *Smith v. United States*, 306 A.3d 67, 71 (D.C. 2023) (quoting *Fleming v. United States*, 224 A.3d 213, 219 (D.C. 2020) (en banc)).

> [PFCV] of [AAWA], the Defendant must have taken some steps with guilty knowledge in the planning or carrying out of the crime of [PFCV] by the co-conspirator.
>
> Mere physical presence at the time and place—I'm sorry, at the place and time is not sufficient to establish her guilt. However, mere physical presence is enough if it is intended to help in the commission of the crime of possession of the firearm.

11/6 Tr. 40-41.

Because this failed to convey that, to be guilty of PFCV, an aider and abettor must have "helped the armed [assailant] maintain possession of his weapon,"[64] and because the government cannot show that this omission was harmless beyond a reasonable doubt,[65] if not vacated for insufficiency, Ms. Chandler's PFCV conviction must be reversed.

Finally, the armed enhancement for Count Four must be vacated because the evidence was insufficient to prove beyond a reasonable doubt that Ms. Chandler "knew in advance that [her] associate was armed with a gun," preventing her from "'mak[ing] the relevant (and indeed, moral choice' to aid and abet an armed offense." *Tann v. United States*, 127 A.3d 400, 434 (D.C. 2015) (quoting *Rosemond v. United States*, 572 U.S. 65, 78 (2014)). That is, the only specific testimony

[64] *Parker*, 298 A.3d at 792.

[65] *See Kelly v. United States*, 281 A.3d 610, 617 (D.C. 2022) ("The failure to instruct the jury on an essential element, however, is harmless if 'it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.'") (quoting *Neder v. United States*, 527 U.S. 1, 15 (1999)).

regarding where Ms. Chandler was when a witness saw Donnell Tucker holding the gun was "in front of" Mr. Tucker,[66] and the jury acquitted Ms. Chandler of solicitation of a crime of violence (ADW). R. 295 (PDF) (Verdict form p. 3).

ARGUMENT

I. THE TRIAL COURT'S REFUSAL TO PERMIT A COMPETENCY VOIR DIRE OF HANAA JOHER, DIAGNOSED WITH MOSAIC DOWN SYNDROME AND AN INTELLECTUAL DISABILITY, REFUSAL TO AUTHORIZE ISSUANCE OF A SUBPOENA FOR MS. JOHER'S RECORDS, AND FAILURE TO TAKE ANY STEPS TO LEARN ABOUT THE IMPACT OF THE CONDITIONS VIOLATED MS. CHANDLER'S SIXTH AMENDMENT RIGHT TO CONFRONT MS. JOHER.

a. Standard of Review.

"When a criminal defendant claims that the trial court unduly restricted cross-examination, [this court's] reviewing standard 'will depend upon the scope of cross-examination permitted by the trial court measured against our assessment of the appropriate degree of cross-examination necessitated by the subject matter thereof as well as the other circumstances that prevailed at trial.'" *Brown v. United States*, 952 A.2d 942, 950 (D.C. 2008) (quoting *Springer v. United States*, 388 A.2d 846, 856 (D.C. 1978), overruled on other grounds, *Bassil v. United States*, 517 A.2d 714, 717 n. 5 (D.C. 1986)). Said another way, this court reviews such rulings de novo unless it determines "that trial court permitted sufficient cross-examination to meet

[66] 11/1 Tr. 67. Mr. Tucker was acquitted on all counts in a separate trial following severance.

requirements of Sixth Amendment." *In re J.W.*, 258 A.3d 195, 2023 (D.C. 2021) (citing *Brown*, 952 A.2d at 950).[67] "Only by examining the facts can a court determine whether the alleged error was of constitutional magnitude, and it is only when the Sixth Amendment… is satisfied that [this Court] will review more leniently for abuse of discretion.'" *Lewis v. United States*, 10 A.3d 646, 653 (D.C. 2010) (quoting *Brown*, 952 A.2d at 950). Cross-examination sufficient to meet the requirements of the Sixth Amendment includes the opportunity to "show a prototypical form of bias on the part of the witness, and thereby… expose to the jury the facts from which jurors could appropriately draw inferences relating to the reliability of the witness." *J.W.*, 258 A.3d at 202 (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 680 (1986)). Bias, which can also bear on competency, includes evidence of mental illness or intellectual disability. *See, e.g.*, *McCray*, 133 A.3d at 230-34 (characterizing evidence of mental illness as potential form of bias); *Velasquez*, 801 A.2d at 79 (same); *United States v. George*, 532 F.3d 933, 937 (D.C. Cir. 2008) ("We do not foreclose the possibility that testimony by an expert, which

[67] This court recognized in *J.W.* a dispute regarding whether this court reviews, as held in *Brown*, de novo, unless it determines that the trial court permitted sufficient cross-examination to satisfy the Sixth Amendment, in which case it reviews for abuse of discretion, or whether all such rulings are reviewed only for abuse of discretion. *Id.* While Ms. Chandler believes that *Brown* correctly articulates the standard, she includes this court's summary of *Brown*'s holding not to indicate that this court resolved this dispute in *J.W.* (in which this court found error under any standard), but only as a more cogent way of expressing the test articulated in *Brown*.

the trial judge suggested, could have shown evidence of Ms. George's condition to be relevant to her credibility and sufficiently distinct from evidence of drug use and violence that the Confrontation Clause might require its admission.").

b. The Trial Court's Rulings Violated Ms. Chandler's Sixth Amendment Right to Confront Ms. Joher.

In *Velasquez*, this court found no Confrontation Clause violation in the trial court prohibiting cross-examination of the complainant regarding a "mental breakdown" three years after the offense or depression caused by the offense where "the defense proffered no evidence that [the complainant] had a mental illness which would have affected her credibility at the time that she testified." 801 A.2d at 79. Because evidence of the complainant's mental illness had "minimal, if any, relevance to her credibility, and… its prejudicial effect outweighed any probative value," this court reviewed for abuse of discretion, finding none. *Id.* at 80.

In *Brown*, the trial court permitted recross-examination of a government witness, one of two eyewitnesses, about her "discomfort" because of a spectator "look[ing] at her with a 'mad face,'" but precluded cross-examination of any out-of-court events, including the spectator having threatened the witness, including with a gun, and attempted to find and kill the defendant. 952 A.2d at 946-47. This court found this curtailment of cross-examination to violate the Sixth Amendment and thus reviewed de novo (and for constitutional error), stating that "efforts… to have [the witness] testify about her history with [the spectator] w[ere] aimed precisely at

'explaining' her testimony, so that the jury could understand why she might be testifying in the manner that she was." *Id.* at 950.

Without records documenting Ms. Joher's conditions and their impact on her behavior—records Ms. Chandler could not obtain without the trial court's authorization, which it declined to grant[68]—without specialized opinion testimony to explain how Ms. Joher's conditions impacted her ability to perceive, recall, and narrate, Ms. Chandler was entirely unable to "show a prototypical form of bias on the part of [Ms. Joher], and thereby… expose to the jury the facts from which jurors could appropriately draw inferences relating to the reliability of the witness." That is, without records relevant to Ms. Joher's mental conditions and reliability and a witness to explain such conditions, Ms. Chandler could not put any such facts before the jury; when Ms. Joher offered confusing testimony, the United States repeatedly told the jury that these inconsistencies resulted from a language barrier,[69] not a

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[68] *See generally Brown v. United States*, 567 A.2d 426 (D.C. 1989).

[69] 11/1 Tr. 20-21 ("Q And without giving any specifics, have you lived in the DMV, Washington/Virginia/Maryland, area for some time? A No, I'm not living in DC. Q Not specifically Washington, DC. But have you lived in this general area for some time? A Probably one week, two weeks. Q Okay. Let me just step back for a minute. Ms. Joher, do you speak any other languages other than English? A I speak Arabic, French, English, a little bit Spanish, and Afghani. Q Is English your first language? A Arabic is my first language. Q Okay. A English is my second language. Q Okay. And as we're talking today, if there's any sort of disconnects, and you have any trouble understanding the questions that I ask or something -- find something confusing in the phrasing of the questions that I ask, will you just let me know?"); 11/2 Tr. 114 ("And Ms. Joher told you she knows five different languages. English is not her first language. And so whether it's face or the skull, Mr. Watts clarified

condition, such a (mosaic) Down syndrome or other intellectual disability (about which the jury heard nothing), which the jury might view as impacting Ms. Joher's credibility.[70] Far from the years-removed evidence of mental illness at issue in *Velasquez*, Down syndrome, including mosaic Down syndrome, causes "lifelong intellectual disabilities"[71]; i.e., it would have impacted her both at the time of the events about which she testified and at the time of trial. Much like the bias at issue in *Brown*, the subject of Ms. Joher's conditions was "aimed precisely at 'explaining' her testimony, so that the jury could understand why she might be testifying in the manner that she was." "[B]ias is not 'a matter on which an examiner is required to take a witness's answer,'"[72] but here, Ms. Chandler—without the information and tools needed to put before the jury the impact of Ms. Joher's conditions on her credibility—was left with something far worse, not only the inability to present extrinsic evidence of Ms. Joher's conditions, but the inability for the jury to hear about the conditions in the first instance. Because the trial court's actions in refusing to permit a voir dire and denying Ms. Chandler even the opportunity to obtain

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that clearly -- you saw the scars on his head, right? That two minutes, the majority of which are spent with him getting pummeled by the Defendant and her son, one of which had a gun.").

[70] The record does not reveal why the United States did not request that an interpreter be provided for Ms. Joher.

[71] *See Down Syndrome*, *supra* note 56.

[72] *J.W.*, 258 A.3d at 204 (quoting *Martinez v. United States*, 982 A.2d 789, 795 (D.C. 2009)).

relevant records did not permit Ms. Chandler to conduct "sufficient cross-examination to meet the requirements of the Sixth Amendment," this court reviews de novo.

A violation of the Sixth Amendment is established if "[a] reasonable jury might have received a significantly different impression of [the witness's] credibility had [defense] counsel been permitted to pursue [the] proposed line of cross-examination.'" *J.W.*, 258 A.3d at (quoting *Van Arsdall*, 475 U.S. at 680). Given the centrality of the issues, much like the facts of *Brown*, the trial court's actions, which effectively prevented any cross-examination on the subject, violated Ms. Chandler's Sixth Amendment right to confront Ms. Joher.

c. The Government Cannot Show That the Errors Were Harmless Beyond a Reasonable Doubt.

"[T]he constitutionally improper denial of a defendant's opportunity to impeach a witness for bias, like other Confrontation Clause errors, is subject to *Chapman* harmless-error analysis.'" *Van Arsdall*, 475 U.S. at 684. Under *Chapman*, Ms. Chandler's convictions must be reversed unless the government proves that the errors were harmless beyond a reasonable doubt. Said another way, "[u]nder that analysis, reversal is required unless, 'assuming that the damaging potential of the cross-examination were fully realized,' the constitutional error was harmless beyond a reasonable doubt." *Brown*, 952 A.2d at 950 (citing *Chapman*, 386 U.S. at 24). "The *Van Arsdall* Court's non-exhaustive list" of factors relevant to the determination

"include[] 'the importance of the witness'[s] testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and… the overall strength of the prosecution's case." *Brown*, 952 A.2d at 950 (quoting *Van Arsdall*, 475 U.S. at 684).

Where Ms. Joher was one of only two eyewitnesses, where the jury rejected Ms. Joher's testimony on several issues, including, for example, whether Ms. Chandler entered the apartment[73] and whether Mr. Tucker threatened to kill Mr. Watts, where Ms. Joher's testimony regarding when she first spoke to police was contradicted by Detective Bingner, where Ms. Joher testified that Mr. Tucker shot Mr. Watts five times and the evidence permitted an inference, at most, that two shots were fired, where evidence of Ms. Joher's conditions would have been relevant to all of her testimony, and where the jury acquitted Ms. Chandler of more counts than it found her guilty of—i.e., the government's case was far from overwhelming—the government cannot show that the errors were harmless beyond a reasonable doubt.

[73] While the November 3, 2023 transcript reads, in relevant part, that the trial court stated overt act "F" as "Ms. Chandler and Mr. Tucker walked into the second floor of the building, *into* the door of the apartment unit occupied by Shawn Watts," 11/3 Tr. 147-48 (emphasis added), this is incorrect. As made clear by the indictment, R. 139 (PDF) (Indictment p. 2), and the written jury instructions, with which Ms. Chandler will move to supplement the record, the this alleged overt act, not found by the jury, was that Ms. Chandler and Mr. Tucker walked into the building and *to* the door of the apartment unit, not into the door of the apartment unit.

d. Assuming, *Arguendo*, That this Court Does Not Find the Trial Court's Errors to be of Constitutional Dimension, Reversal is Nonetheless Required Because the Trial Court, "Confronted by [a] 'Red Flag' of Material Impact Upon Competency of" Ms. Joher, Failed to Inquire or Permit Inquiry "Into the Facts and Circumstances Relevant Thereto."

Assuming, *arguendo*, that this court does not find the errors regarding Ms. Joher's conditions to be of constitutional dimension, reversal is nonetheless required because the trial court, "confronted by [a] 'red flag' of material impact upon [the] competency of" Ms. Joher, abused its discretion by failing to inquire or permit inquiry "into the facts and circumstances relevant thereto."

When considering whether a witness's mental condition, often mental illness, required permitting further inquiry to ascertain its impact on competency or credibility, this court has repeatedly focused on three central themes: 1) whether and to what extent pretrial inquiry was permitted, including through review of records and pretrial voir dire or competency hearings, 2) the importance of experts to understanding the issue, and 3) the temporal relationship between the condition and trial or the events about which the witness would testify.

For example, *Vereen* implicated all three principles. In *Vereen*, medical records initially only possessed by the government and trial court confirmed a witness's diagnosis of schizophrenia, which caused the witness to see "fluorescent auras… over peoples' heads." 587 A.2d at 458. During a pretrial voir dire, the witness, who took medication for the condition, "answered questions coherently[,]

and was functioning as a student and in her employment," described these visions as a lifelong occurrence, including on the morning of trial. *Id.* After the records were provided to the defense after the witness's direct examination, the trial court denied Vereen's request to call an expert as a means of attacking the witness's credibility. Despite the voir dire and provision of records, albeit belatedly, this court reversed:

> Normally, we do not anticipate that a challenge to competency will require a psychiatric examination or testimony from a psychiatrist. However, in the unusual circumstances of this case — where the witness was currently experiencing mental irregularities — the effort to evaluate her competency was certainly more difficult. Recognizing that the witness appeared outwardly rational, the remaining concern was whether the "vapors" and premonitions had any substantial latent effect on the witness'[s] contact with reality not readily observable. On this point, it would seem that any insight which a person with training and experience in this area could offer would be useful. Such opinions need not be definitive, but where there are ongoing manifestations of mental illness, they may well assist the judge in assessing whether the witness can distinguish the real from the imagined.
>
> Given the procedure that evolved in this case, we conclude the judge erred in submitting the witness to the jury, while denying the defense access to the medical records during voir dire and without the benefit of hearing expert opinion as an aid in deciding competency.

Id. at 458.

So too *McCray*, in which, this court remanded "to provide… appellants with an opportunity to show, at a hearing and through expert opinion, whether at the time of his trial testimony, [the witness's] mental disabilities seriously impacted his

credibility." 133 A.3d at 234. In *McCray*, the defense uncovered a diagnosis of bipolar disorder (for the witness) in a thirteen-page, six-year-old psychiatric report, discovered after the trial court granted a defense request for access to the witness's juvenile file. *Id.* at 231. The trial court denied defense requests "for an expert to evaluate [the witness] and to determine the impact of mental illness on [the witness's] credibility." *Id.* In remanding, this court observed that "in light of defendant's right to present a defense, and given the seriousness of the bipolar disorder and the proffer about [the witness's] recent episode of throwing urine and feces at a prison guard," the appellants "were at least entitled to an opportunity to show what an expert might contribute in an effort to determine any impact of [the witness's] mental disabilities on his credibility." *Id.* at 234.

By contrast, in cases whether evidence of mental illness or other disability has been remote or where the trial conducted hearings regarding competency before which the defense possessed relevant records, this court has often affirmed. *See, e.g.*, *Velasquez*, 801 A.2d at 79-80 (mental illness remote in time and defense possessed records); *Bryant v. United States*, 859 A.2d 1093, 1103 (D.C. 2004) (restriction on cross-examination about possible mental illness prior to events about which witness would testify); *Dorsey*, 935 A.2d at 294 (competency hearing held, defense and court possessed medical records, and witness testified coherently under oath at competency hearing).

As in *Vereen*, stronger than the record in *McCray*, and unlike the facts of *Velasquez* and *Bryant*, there was ample reason to believe that Ms. Joher's conditions, proffered by the government, of mosaic Down syndrome and an intellectual disability, both lifelong conditions, impacted her at the time of the events about which she testified and at the time of trial. Stronger than the facts of *Vereen* and *McCray*, Ms. Chandler, along with the government and trial court, lacked records of Ms. Joher's conditions and treatment, and the trial court refused to authorize Ms. Chandler to obtain them. Stronger still than the facts of *Vereen*, in which this court nonetheless reversed, the trial court did not permit any voir dire of Ms. Joher, and Ms. Joher's trial testimony raised serious questions about her ability to recall, comprehend, and narrate. "Confronted by [a] 'red flag' of material impact upon [the] competency of" Ms. Joher, abused its discretion by failing to inquire or permit inquiry "into the facts and circumstances relevant thereto."

II. THE TRIAL COURT ERRED BY FAILING TO ORDER SHAWN WATTS TO SUBMIT TO A DRUG SCREENING WHERE LONG PAUSES FREQUENTLY PRECEDED MR. WATTS' ANSWERS, SOME OF WHICH SUGGESTED DIFFICULTY UNDERSTANDING BASIC QUESTIONS, AND WHERE MR. WATTS SLURRED HIS WORDS WHILE TESTIFYING AND HAD A RECENT HISTORY OF SUBSTANCE ABUSE.

a. Standard of Review.

Where failing to do so does not amount to the denial of the Sixth Amendment right to confrontation, this court reviews for abuse of discretion a trial court's

decision not to order a physical examination. *See Hilton*, 435 A.2d at 387 (citing *Rogers*, 419 A.2d 977).[74] Properly exercising the discretion requires balancing "the potential evidentiary advantage of the examination against the dangers of an unwarranted invasion of privacy."[75]

b. The Trial Court Abused Its Discretion by Failing to Order Mr. Watts to Submit to a Brief Physical Examination, a Drug Screening, to Confirm or Dispel Whether His Signs of Impairment Resulted From Unlawful Use of a Controlled Substance.

As discussed in greater detail, *supra*, complainant Shawn Watts, one of just two eyewitnesses, had a recent history of using illegal drugs. Mr. Watts often slurred his words while testifying, paused for long periods after questions,[76] and at times answered straightforward questions in a manner suggesting he did not understand the questions.[77] The trial court characterized Mr. Watts as speaking "rather slowly

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[74] Where there was evidence of Mr. Watts' substance abuse in the record and Ms. Chandler was permitted to cross-examine Mr. Watts, including about whether he was under the influence of an unlawful controlled substances while testifying, Ms. Chandler does not argue that the trial court's failure to order a physical examination of Mr. Watts violated her rights under the Confrontation Clause.

[75] *Hilton*, 435 A.2d at 387 (citing *Rogers*, 419 A.2d 977).

[76] Ms. Chandler will move to supplement the record on appeal with an audio recording so this court may listen to Mr. Watts' testimony. *See, e.g.*, *Stringer v. United States*, 301 A.3d 1218, 1228 (D.C. 2023) (This court "might be more likely to find clear error based on [its] own comparison between [a] witness's version of events and the objective facts and [its] assessment of the significance of any inconsistencies.").

[77] *See, e.g.*, 11/1 Tr. 75 (19-22) ("Q Do you remember what the friends' names were? A Yeah. Q Take your time. A Okay. What was the question again?"); 11/1 Tr. 84-85 ("Q Okay. As far as mentally goes, what type of mental – what's happened to you mentally as a result of this incident? A Well, I mean, it's a lot of difficulties. Q How

and deliberately,"[78] which the trial court wondered might be evidence of a brain injury, before acknowledging there was no evidence Mr. Watts had suffered a brain injury. 11/1 Tr. 98. That PCP use might negatively impact the jury's assessment of Mr. Watts' credibility is beyond serious dispute. *See, e.g.*, *Kigozi v. United States*, 55 A.3d 643, 651 (D.C. 2012) ("Both parties agree that the crucial issue at trial was whether Lynch was actively under the influence of PCP at the time of the shooting so as to undermine the reliability of his dying declaration.") (internal punctuation omitted). Said another way, the potential evidentiary value of the very brief requested examination was high, and the dangers of the "invasion of privacy" low. That is, there was no "likelihood that" Mr. Watts "would be deterred from coming forward,"[79] as he had already testified on direct examination. Nor would ordering the brief physical examination have required much if any additional time from Mr. Watts, who could have undergone the urinalysis in the same courthouse on the same day during a break in the testimony. On these facts, the trial court abused its discretion by declining to order urinalysis, a very brief physical examination.

III. BECAUSE THE EVIDENCE WAS INSUFFICIENT TO PROVE BEYOND A REASONABLE DOUBT THAT MS. CHANDLER "T[OOK] AFFIRMATIVE STEPS TO AID [HER] ACCOMPLICE[]

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so? A It's a lot of difficulties, you know, moving around, you know—"); 11/1 Tr. 102 (8-12) ("Q So when -- when he appeared at your door, you didn't know why he was there? A I seen her in the peep -- I seen Ms. Chandler -- her in the peephole. And that's when I answered the door, when I seen her, you know.").

[78] 11/1 Tr. 96 (6-7).

[79] *Hilton*, 435 A.2d at 387.

IN [HIS] POSSESSION OF [A] FIREARM[]," HER PFCV CONVICTION MUST BE VACATED.

a. Standard of Review.

"When reviewing the sufficiency of the evidence," under the familiar standard, this court "ask[s] [de novo] whether the evidence 'viewed in the light most favorable to the government' was 'strong enough that a jury behaving rationally really could find it persuasive beyond a reasonable doubt.'" *Parker*, 298 A.3d at 789 (quoting *Rivas v. United States*, 783 A.2d 125, 134 (D.C. 2001) (en banc)). In so doing, this court gives "full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Rivas*, 783 A.3d at 134.

b. Evidence Sufficient to Support a Conviction for Aiding and Abetting PFCV Requires Proof That the Purported Aider and Abettor "T[ook] Affirmative Steps to Aid [Her] Accomplice[] in [His] Possession of [a] Firearm," Entirely Absent in the Instant Case.

Evidence sufficient to support a conviction for PFCV as an aider and abettor, the government's theory of liability in this case,[80] requires proof of "'some act on the defendant's part that assisted the principal[ ] in [his] possession of firearms,'"

[80] 11/2 Tr. 104 ("[E]ven though Ms. Chandler didn't possess the gun, she is just as culpable as the trigger puller."). As noted, *supra*, the United States failed to request and the trial court failed to give prior to deliberations a *Pinkerton* instruction, forfeiting any argument regarding co-conspirator liability. The trial court correctly declined the United States' belated request to do so in response to a note after the jury had been deliberating for more than a full day.

undertaken 'with guilty knowledge.'" *Parker*, 298 A.3d at 792 (quoting *Tann*, 127 A.3d at 431, 438-39). "'For such criminal liability to attach, of course, the… aid must be deliberate, not accidental.'" *Id.* (quoting *Walker v. United States*, 167 A.3d 1191, 1201-02 (D.C. 2017)). As this court has made clear in *Parker*, *Fox*, and *Lancaster*,[81] the "act" requires proof of "'affirmative steps [by the purported aider and abettor] to aid his [accomplices] in *their* possession of firearms,'"[82] a standard unsatisfied even by evidence that a purported aider and abettor "ha[s] physically subdued a person—absent some evidence that the person subdued posed a threat of otherwise disarming the gunman." *Id.*

This court thus found the evidence insufficient to support a conviction for PFCV as and aider and abettor in *Fox* where the accused "did not take any affirmative steps to aid his co-defendants in *their* possession of firearms: he did not provide the weapons, prevent the victims from seizing the handguns from his co-conspirators, or do anything to assist in their use." 11 A.3d at 1288. The behavior "the government points to" in *Fox*—"standing in the front of the store, ordering customers to the floor, and warning his accomplices that the alarm had been triggered—sp[oke] only to his active involvement in the robbery itself." *Id.*

Similarly, in *Lancaster*, this court found the evidence insufficient for lack of

[81] *Lancaster v. United States*, 957 A.2d 168 (D.C. 2009).
[82] 298 A.3d at 793 (quoting *Fox*, 11 A.3d at 1288).

"proof that [the accused] did anything at all *to aid in the possession of a firearm* by any of the robbers," where she "did nothing after she lured" the complainant into her apartment, where three men then entered and robbed him: "[s]he did not 'block the way' to prevent [the complainant] from leaving and she did not 'guard' or threaten him," but instead "merely stood in the bathroom in her apartment watching the confrontation between [the complainant] and the robbers for a brief time until she followed the robbers' directive to leave the apartment." 975 A.2d at 174-75.

In *Parker*, this court again found no evidence that Parker, unarmed, "helped the armed robber maintain possession of his weapon" where "Parker ordered [the complainant] to the ground, giving him a few light slaps on the back of the head to encourage him to comply, and then took some of his property from his pockets." 298 A.3d at 792. Said another way, the evidence was insufficient because, "even when" a purported aider and abettor "ha[s] physically subdued a person[,] absent some evidence that the person subdued posed a threat of otherwise disarming the gunman," this is insufficient prove the actus reus for PFCV. *Id.* at 793.

Here, when viewed in a light most favorable to the government, leaving aside that the record is devoid of evidence regarding what Ms. Chandler was doing when the armed accomplice shot Mr. Watts, there was no evidence that Mr. Watts or any other person "posed a threat of otherwise disarming the gunman" but for any actions of Ms. Chandler, or that Mr. Watts or any other person made any effort to do so. So

far as the testimony reveals, Ms. Joher remained inside the apartment, made no effort to disarm the armed principal, and was not dissuaded from doing so by any of Ms. Chandler's actions, which Ms. Joher did not testify included saying anything to Ms. Joher. Mr. Watts did not testify that he saw the firearm prior to being shot, that he struggled in any way, that he attempted to disarm the principal, or that he would have done so but for the actions of Ms. Chandler. As in *Parker*, *Lancaster*, and *Fox*, such evidence is insufficient to support Ms. Chandler's conviction for PFCV.

IV. THE TRIAL COURT'S RESPONSE TO JURY NOTES DID NOT "ADEQUATELY STATE THE LAW" REGARDING THE ACTUS REQUIRED FOR PFCV AS AN AIDER AND AN ABETTOR.

a. Standard of Review.

Assuming, *arguendo*, that this court does not remand for the entry of a judgment of acquittal on Count Five (PFCV), Ms. Chandler's PFCV conviction must nonetheless be reversed because the trial court's response to a jury note regarding Count Five failed to "adequately state the law," an issue this court reviews de novo.[83]

b. The Trial Court's Response to a Jury Note Regarding Count Five Did Not Adequately State the Law Regarding PFCV.

As discussed, *supra*, the jury sent a note containing three questions about Count Five (PFCV of AAWA), the third of which asked, "[i]f the defendant first did not intend to bring the firearm, but then consented to it after the firearm was brought

[83] *Smith*, 306 A.3d at 71 (quoting *Fleming*, 224 A.3d at 219).

in, would that count as a "yes" under aiding and abetting?" Rather than answering "no," as requested by Ms. Chandler, as "consenting" to the presence of a firearm would be insufficient to satisfy the requirement of proof of "'affirmative steps [by the purported aider and abettor] to aid his [accomplices] in *their* possession of firearms.'" *See* Part III, *supra*. Instead, the trial court over objection gave an instruction—answering a question far broader than the question posed by the jury—which included an actus reus but failed to convey the requirement of assisting the principal in maintaining possession of a firearm. 11/6 Tr. 40-41. As discussed in Part III, this failed to "adequately state the law" and was error.

Even if this court does not vacate Ms. Chandler's conviction on sufficiency grounds, the United States cannot demonstrate that the instructional error was harmless beyond a reasonable doubt[84] where Mr. Watts or any other person "posed a threat of otherwise disarming the gunman" but for any actions of Ms. Chandler, or that Mr. Watts or any other person made any effort to do so.

V. THE EVIDENCE WAS INSUFFICIENT TO PROVE MS. CHANDLER "KNEW IN ADVANCE THAT [HER] ASSOCIATE WAS ARMED," PREVENTING HER FROM "'MAK[ING] THE RELEVANT… CHOICE' TO AID AND ABET AN ARMED OFFENSE."

a. Standard of Review.

As discussed in Part III, *supra*, this court reviews de novo the sufficiency of

[84] *See Kelly v. United States*, 281 A.3d at 617.

the evidence, viewing the evidence in the light most favorable to the government.

b. The Evidence Was Insufficient to Prove Ms. Chandler "Knew in Advance That [Her] Associate Was Armed With a Gun."

"In order to convict of" while armed "enhancements under an aiding and abetting theory, the government" must "prove that [she] 'knew in advance that h[er] associate was armed with a gun—enabling the defendant to 'make the relevant… choice' to aid and abet an armed offense.'" *Parker*, 298 A.3d at 793 (quoting *Tann*, 127 A.3d at 434). "[I]f a defendant continues to participate in a crime after a gun was displayed or used by a confederate, the jury can permissibly infer from his failure to object or withdraw that he had such knowledge,' but only if he learned of the gun early enough to have a 'realistic opportunity to quit the crime.'" *Id.* (quoting *Rosemond*, 572 U.S. at 78 & n.9). Where the only specific evidence regarding where Ms. Chandler was when a witness saw Donnell Tucker holding the gun was "in front of" Mr. Tucker,[85] where the encounter was brief, and where the jury acquitted Ms. Chandler of solicitation of ADW, belying any notion that she knew in advance that Mr. Tucker was armed, even assuming *arguendo* that Ms. Chandler saw the gun prior to its use, the evidence was insufficient to permit a finding beyond a reasonable doubt that she knew had a realistic opportunity to quit the crime.[86]

[85] 11/1 Tr. 67. Presumably, Ms. Chandler could not see behind her.

[86] Even assuming that the jury concluded that Ms. Chandler was a speaker on jail calls introduced by the government and credited those statements, such statements provide no evidence that Ms. Chandler knew in advance that Mr. Tucker was armed.

Respectfully submitted,

Adrian E. Madsen, Esq.
Bar Number: 1032987
Counsel for Appellant
8705 Colesville Road, Suite 334
Silver Spring, MD 20910
madsen.adrian.eric@gmail.com
Phone: (202) 738-2051
Fax: (202) 688-7260

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Brief was electronically served upon the United States Attorney's Office for the District of Columbia, this 25th day of December, 2024.

/s/ Adrian Madsen
Adrian E. Madsen, Esq.