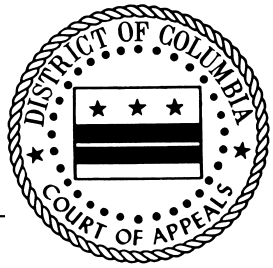
24-CO-0163



IN THE DISTRICT OF COLUMBIA
COURT OF APPEALS

BARRY D. STRINGER,
Appellant,

v.

UNITED STATES,
Appellee.

On Appeal from the Superior Court of the District of Columbia
Criminal Division, 2005 FEL 4970

OPENING BRIEF FOR APPELLANT BARRY STRINGER

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DISCLOSURE STATEMENT

The parties have been represented by the following counsel:

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APPEAL AFTER REMAND (24-CO-0163)	Gregory M. Lipper	N/A	Chrisellen Kolb

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STATEMENT OF ISSUES PRESENTED

This Innocence Protection Act case arrives at the Court a second time. Appellant moved for relief under the Act after his codefendant confessed to fatally shooting the victim and doing so alone. The hearing judge, who had not presided over either defendant's trial, declined to credit the codefendant's testimony. This Court vacated and remanded, identifying at least seven factual or logical errors underlying the credibility finding, and further instructing the trial court to more thoroughly consider the weaknesses in the government's case.

On remand, the trial court again declined to credit the codefendant's exculpatory testimony. This post-remand appeal raises the following questions:

1. The trial court concluded that the codefendant could not have caused the blood trail from the victim's car because minimal blood was found on the front passenger seat, where the codefendant was sitting when he shot the victim. But the trial court did not consider whether the blood instead covered the codefendant while he was sitting in that seat—an explanation that even the trial prosecutor had deemed to be obvious. Does a trial court clearly err when basing a credibility finding on an elementary error of logic?

2. The trial court's finding also relied on an allegedly incriminating letter, from appellant to the codefendant, which the trial court believed had been written in an

effort to silence the codefendant after appellant had been charged with the shooting. Contrary to the trial court's assumption, appellant wrote the letter more than two months before he was charged. Does a trial court clearly err when basing a credibility finding on an overt error of fact that alters the significance of the evidence?

3. When purporting to evaluate new exculpatory evidence in light of the strength or weakness of the government's case against a defendant, does a trial court clearly err in failing to address exculpatory trial testimony that also directly corroborates the testimony of the new exculpatory witness?

STATEMENT OF THE CASE & JURISDICTION

This is an appeal of the trial court's post-remand order denying relief under the Innocence Protection Act. Citations to the appellate record for the original appeal (*Stringer 1*), are preceded by 2019R; citations to the record for the current appeal are preceded by 2024R.

On August 30, 2005, a grand jury indicted Barry Stringer for (1) murder (D.C. Code § 22-2101); (2) armed robbery (*id.* §§ 22-2801, -4502); (3) felony murder (*id.* §§ 2101, -4503); and (4) three counts of possessing a firearm during a crime of violence (*id.* § 22-4504(b)). 2019RB at 1–4. Judge Rhonda Reid Winston presided over Stringer's jury trial, which began on August 10, 2006. Stringer was

convicted of six counts, including second-degree murder while armed and first-degree felony murder while armed. 8/17/06 Tr. 6:16–8:2. On November 3, 2006, the trial court sentenced him to 36 years in prison. 11/03/06 Tr. 8:13–9:17. This Court affirmed Stringer's convictions, on July 20, 2009, but remanded for resentencing due to merger. 2019R1, Ex. 2 (MOJ in 06-CF-1515).

On December 16, 2014, Stringer moved for relief under the Innocence Protection Act, D.C. Code § 22-4131 *et seq*. 2019R5. In June 2018, Judge Judge Winston recused herself and transferred the case to Judge Julie Becker. 6/8/18 Tr. 5:8–7:2. An evidentiary hearing was held in October 2018; in a written opinion dated January 4, 2019, Judge Becker denied relief. 2019R13 (A217–A230).

In *Stringer 1*, the Court vacated and remanded on September 21, 2023. *See Stringer v. United States*, 301 A.3d 1218 (D.C. 2023) (A231–A266). On remand, Judge Becker denied Stringer's motion, in a written opinion issued on January 22, 2024. 2024R1 (A267–A277). Stringer filed a timely notice of appeal on February 21, 2024. 2024R2.

STATEMENT OF FACTS

A. Tilford Johnson is found dead in his car.

Early in the morning of June 3, 2003, Maryland resident Tilford Johnson was found dead in the driver's seat of a car parked in an alley in Southeast DC. Trial

Tr. 201:22–23, 206:10–15, 593:21–594:1. Johnson had been shot once, above his right ear, at a distance of "inches to feet." *Id.* at 471:23–472:7, 472:20–22. His doors were locked, his windows were up, his parking brake was active, his keys were in the ignition, his trunk was closed, and his wallet contained "no money." *Id.* at 207:10–15, 435:6–11, 436:1–11, 456:18–20. The back left window was broken (*id.* at 207:18–20, 436:12–15); a shell casing rested in the backseat floorboard (*id.* at 213:23–214:2, 438:19–23).

Although the backseat and floorboard were covered by "a vast amount of blood," on the front passenger seat "there was only a little bit of blood that had dried." *Id.* at 435:18–25. DNA analysis later confirmed that the blood inside the car was Johnson's blood. *Id.* at 594:5–14. From the car, a trail of blood led to an area bordering the alley on the adjacent street, Buena Vista Terrace. *Id.* at 213:7–22.

B. Phone records reveal that during the final hours of his life, Johnson exchanged a dozen phone calls with Roderick Charles.

Johnson, according to his roommate, "really didn't know anybody in D.C. except for like two people, a female and [Roderick Charles]." *Id.* at 417:9–13. Johnson and Charles had met in Virginia in 2001 while "looking at dogs." 2019R7, Ex. 5 at 1.

On the night of June 2, 2003, Johnson asked Charles to join him on a trip to Boston. Trial Tr. 415:22–23. Johnson left his apartment after midnight on June 3,

driving a black and gold Acura Legend with temporary D.C. tags. *Id.* at 207:16–17, 421:11–16. Between 11:38 p.m. on June 2 and 2:58 a.m. on June 3, Johnson and Charles exchanged a dozen phone calls. *Id.* at 239:22–240:15; Gov. Ex. 14A.

At the time, Johnson was chronically unemployed, unable to pay his share of the rent, and "in a little trouble" financially. *Id.* at 421:4–10. Nevertheless, his roommate was "sure" Johnson had money because "[h]e couldn't go all of the way up to Boston, broke." *Id.* at 423:8–16.

Later in the morning on June 3, between 3:20 and 3:30 a.m., Charles made four phone calls to the home of his friend James Campbell, who lived "approximately 150 feet" from where Johnson's body was found. Trial Tr. 402:19–403:25, 454:14–455:1; 8/16/06 Afternoon Tr. 18:5–21. Earlier that night, Campbell had joined Charles at the laundromat. *Id.* at 246:12–21, 247:11–17, 483:23–484:2. Two weeks earlier, Charles and Campbell had been arrested together and charged with possession with intent to distribute cocaine while armed. *Id.* at 486:23–487:4; *United States v. Roderick Charles*, 2003 FEL 002953; *United States v. James V. Campbell*, 2003 FEL 002954.

In addition to calling Johnson and Campbell's home, Charles spoke several times with someone using the phone number (202) 256-9730. That number was

assigned to a phone bought in Maryland, in late 2002, by Tiffany Thompson, who had a child with a man named Carlos Sly. *Id.* at 314:21–23, 316:10–23.

Charles exchanged four calls with the Thompson phone "between 1:23 a.m. and 1:55 a.m. on June 3, all of ten seconds or less." 2019R13 at 8–9 (citing 2019R7, Ex. 1 at 8 (A72)). There was also "a 63-second call at 2:17 a.m., and then several more calls over the next hour lasting between six and 158 seconds." *Id.* at 9 (citing 2019R7, Ex. 1 at 8–9 (A72–A73)). The calls and messages then stopped until the morning. Nine more calls took place "between 9:22 a.m. on June 3 and 10:59 a.m. on June 4," but each lasted between only two and 64 seconds. 2019R13 at 9 (citing 2019R7, Ex. 1 at 11–12 (A75–A76)).

Shortly after 11 a.m. on June 4, Sprint received a request to change Charles's phone number on the ground that it was "receiving harassing calls." *Id.* at 242:11–24. When Johnson's roommate tried to call Charles on June 4, his phone had been disconnected. *Id.* at 418:11–15.

On June 27, Tiffany Thompson asked AT&T to end service to the -9730 phone; service was terminated on July 6, the last day of the billing cycle. Trial Tr. 595:4–15. Also on June 27, police executed a warrant to search Charles's apartment. *Id.* at 398:3–9. In a vent in his bedroom, police found five pairs of latex gloves and "some assorted" nine-millimeter ammunition—the same caliber

ammunition that killed Tilford Johnson. *Id.* at 386:9–16, 389:13–18, 461:22–462:4. Charles's fingerprints also matched the prints found on the wall next to that vent. *Id.* at 595:19–596:6.

In December 2004, Charles was arrested and charged with murdering Tilford Johnson. *United States v. Charles* (2004 FEL 007591), 6/26/06 Tr. 37:23–25.

C. Charles's uncle Robert Lyles is arrested on federal drug-distribution charges and—eventually—claims that Charles and Barry Stringer separately confessed to shooting Johnson.

On June 18, 2003—about two weeks after the shooting—Charles's uncle Robert Lyles was arrested and charged in federal court with distributing crack cocaine. Trial Tr. 268:4–10 (A25). Lyles had been caught selling crack five different times, for "a total of 119.5 grams of crack cocaine." *Id.* at 268:11–13, 293:8–294:22 (A25, A50–A51). He was jailed while awaiting trial, and jail "wasn't pleasant." *Id.* at 277:9–11, 281:17–21 (A34, A38). From his federal public defender, Lyles learned that—because he had sold "over 50 grams of crack cocaine"—he faced "a mandatory 10 years in jail." *Id.* at 292:23–293:7 (A49–A50).

Just over three months later, Lyles pleaded guilty to one count of distributing cocaine in violation of federal law. *Id.* at 268:19–21 (A25). As part of his plea agreement, he soon began making undercover drug buys on behalf of federal law

enforcement. *Id.* at 271:5–7 (A28). Still, he faced a mandatory sentence of at least five years in prison and a likely sentence of "8 to 10" years in prison. *Id.* at 299:15–18, 300:14–19 (A56, A57). If the 50-year-old Lyles wished to avoid those sentences, he would need to provide the government with "substantial assistance" and then receive, from the government, "a 5-K letter." *Id.* at 300:25–301:6 (A57–A58).

The plea also required Lyles "to provide the government with information about any crimes that he knew of." 2019R7 at 16. When the government questioned him, they "stat[ed] that they was trying for murders, guns and drugs." *Id.* at 297:12–21 (A54). Lyles understood that if he "withheld any information, [he] would be in violation of [the plea] agreement." *Id.* at 282:24–283:20 (A39–A40).

Before he was released from jail on Halloween, Lyles met with the police. *Id.* at 280:11–15, 302:24–303:3 (A37, A59–A60). But he did not claim to have heard any confessions from Charles or Stringer. *Id.* at 280:20–281:10 (A37–A38). Lyles continued meeting with police after he was released and began buying drugs undercover. *Id.* at 282:7–16 (A39). In total, during the first ten months after he was arrested, Lyles met with police between eight and ten times. *Id.* at 286:5–17 (A43). Yet he never claimed to have discussed the shooting with Charles or Stringer. *See id.*

In April 2004, Lyles's son was arrested and jailed. *Id.* at 290:21–291:3 (A47–A48). On April 21, 2004, Lyles claimed—for the first time—to have discussed the shooting with Charles. *Id.* at 288:1–23 (A45). According to Lyles, a few days after the shooting in June 2003, he approached Charles on the street to "ask him where to get" marijuana and Charles said that "he had some, but someone else was selling it for him." *Id.* at 264:5–19 (A21). During that conversation, Lyles claimed, Charles said that he had robbed and shot someone. *Id.* at 263:20–21 (A20).

From the physical evidence, the government understood that Johnson was shot by the person sitting in his front passenger seat. 8/16/06 Afternoon Tr. 22:22–23:5. Lyles, however, claimed that (Charles told him) the first two people in the car were Johnson (the driver) and Charles (the passenger), and that the shooter was Stringer, the third person who entered the car: When they got into the alley, Lyles says Charles told him, Stringer "came up and got in the car, and [Stringer] shot the person." Trial Tr. 265:18–23 (A22). In Lyles's telling, Charles "just sort of volunteers this. And there's no reason really, no motivation." 8/11/06 Tr. 26:6–8 (statement of trial judge).

After Lyles claimed to have spoken with Charles, Lyles was asked—on "at least four specific occasions"—whether "Stringer had said anything about the shooting." Trial Tr. 289:21–25 (A46). Each time, Lyles "said no." *Id.* (A46).

By the time he testified before the grand jury, however, Lyles had told police that Stringer too had confessed—also in June 2003—during another impromptu street encounter "a few days" after Lyles spoke to Charles. *Id.* at 266:17–23 (A23). This time, Lyles claimed, he was walking on the street and Stringer stopped his car; Lyles "walked up to the car window"; Stringer asked Lyles if he "hear[ed] about what happened in the alley"; Stringer said, "That was me"; and Lyles said nothing in response. *Id.* at 266:25–268:3 (A23–A25).

Lyles had not mentioned these discussions for ten months and then had denied—four times—ever discussing the shooting with Stringer. Yet government officials never threatened to withdraw the plea agreement "based on [his] false statements to them." *Id.* at 290:14–20 (A47).

D. Stringer is eventually arrested and separately tried for murder.

Lyles's claims notwithstanding, the government did not charge Stringer until August 30, 2005: more than two years after the shooting and more than eight months after Charles was arrested. 2019R7 at 1 n.1. Stringer declined a plea offer that would have limited his prison sentence to ten years. Trial Tr. 40:2–11 (A93). Charles's counsel had "not anticipate[d]" that Stringer would be charged and was "very surprised that Mr. Stringer ended up [as Charles's] co-defendant." 6/26/06 Charles Tr. 9:17–19.

Charles was tried first, in late June and July 2006. He did not testify in his own defense. Trial Tr. 491:22–24. In July 2006, he was convicted of felony murder, second-degree murder while armed, armed robbery, and three counts of possession of a firearm during a crime of violence. *Id.* at 489:8–490:3.

1. The government's case.

As the prosecutor recognized, the "case against Mr. Stringer" was "not as strong as the case against Mr. Charles." 5/12/17 Charles Tr. 40:25–41:7 (A93–A94). No fingerprints, firearm, hair, fiber, DNA, or eyewitnesses linked Stringer to the crime. *See, e.g.*, *id.* at 194:24–195:2 (A9), 199:2–6 (A14), 455:22–456:2, 594:5–14, 596:3–6. And the government did not know "how much" money Johnson had with him. 8/16/06 Afternoon Tr. 8:17–25. In its opening statement, the government predicted that "[t]here are going to be some gaps in the bricks" and "[t]here will be some questions that we, as the government, cannot answer for you." Trial Tr. 197:4–7 (A12). In trying to fill those gaps and answer those questions, the government built its case against Stringer around "two things." Trial Tr. 195:3 (A10).

First, the government introduced "cell phone records." *Id.* at 195:3–4 (A10). None of these records identified calls to or from a phone number in registered to Stringer. Rather, the records detailed repeated calls between (1) Charles and

Tilford Johnson, and (2) Charles and the phone registered to Tiffany Thompson. The government argued, however, that the Thompson phone actually belonged to Stringer and suggested that, over the phone, Charles and Stringer had coordinated a plan to lure Johnson to the District and rob and kill him. *See, e.g.*, 8/16/06 Afternoon Tr. 16:24–17:14.

Government witness Tiffany Thompson said otherwise. At trial, she testified that she had bought the phone at the request of her child's father, Carlos Sly, who would use the phone himself and pay the monthly bill. Trial Tr. 315:20–23, 317:1–6, 322:21–22. By June 27, Thompson and Sly "were no longer together," so Stringer told Thompson of the termination request on behalf of Sly. *Id.* at 322:21–25. In response, the government questioned Thompson about her grand-jury testimony that she had bought the phone for Stringer's use. *Id.* at 344:25–345:25.

Second, although maintaining that Charles and Stringer were "very careful" (*id.* at 194:24–195:1), the government alleged that each man had boasted about the shooting to Robert Lyles, who testified as part of the cooperation agreement in his federal drug case. *See, e.g.*, *id.* at 195:24–196:13, 271:5–272:2. Lyles continued to face eight to ten years in prison, but he "hope[d] [to] get probation." *Id.* at 271:15–17, 275:17–18. Prosecutors "didn't make me no promises, but they said I could help myself." *Id.* at 271:10–14.

2. Two witnesses testify that Charles admitted to acting alone, and Charles takes the Fifth Amendment.

Contrary to Lyles, two witnesses testified that Charles had admitted to shooting Johnson alone.

First, the jury heard from Ahman Driver, a former neighbor of Charles and Stringer. *Id.* at 547:6–12, 549:9–14. While Driver was socializing and smoking marijuana on his back porch with Charles and a few other people, Charles referred "to a guy that he had robbed, and he said that he had to get the money, and then he shot him to the dome"—that is, "[h]e shot him in the head." *Id.* at 547:13–548:13.

Second, the jury heard from Mark Vanderhall, who is the brother of Stringer's daughter but also considers Charles to be "[l]ike family." *Id.* at 427:19–428:4. After the shooting, Vanderhall and Charles had been locked up together, and Charles admitted that he had "shot somebody" "behind some houses" in Southeast DC. *Id.* at 428:513–429:16, 430:5–9. Charles added "that he acted alone." *Id.* at 431:5–9.

The defense also called Charles as a witness. He denied telling Lyles that either Charles or Stringer had shot Johnson. *Id.* at 484:25–485:6. On the night of the shooting, Charles testified, he was with Campbell and also talked to Carlos Sly at (202) 256-9730. *Id.* at 486:7–20. Charles admitted that he spoke to Johnson, made plans to carpool with him to Boston, and was waiting for him at his house, but

said that "Johnson never showed up." *Id.* at 544:24–545:3. But when questioned about the murder itself, Charles invoked the Fifth Amendment and declined to answer. *Id.* at 545:4–18.

3. Stringer testifies in his own defense.

Stringer elected to testify as well. *Id.* at 566:19–24. He stated that the -9730 phone did not belong to him; he did not know or shoot Johnson or help to plan his murder; and he did not discuss the shooting with Robert Lyles. *Id.* at 572:2–20, 573:12–581:12.

In addition, Stringer answered questions about a letter he had written to Charles in June 2005, but which the government had seized before it reached him. 2019R13 at 4 (A220). When he wrote the letter, Stringer had not been charged with killing Johnson. Stringer was in custody awaiting trial for murder in a different case—a murder of which he would be acquitted in October 2005. 6/26/06 Charles Tr. 15:4–7. Stringer's codefendant in that other case was Charles's father. 6/26/06 Tr. 22:1–6.

The letter advised Charles to "live by the code. See nothing. Know nothing. Hear nothing" and said, "we fucked up" but "it won't be long before we get home, all you have to do is ride this shit out." Trial Tr. 579:2–11. According to Stringer, the letter described how (1) he and his cellmate, who was Charles's

cousin, "didn't have no commissary money" and wanted Charles "to send us some commissary," *id.* at 579:14–19, and (2) he was urging Charles "not to say anything about his legal work," *id.* at 580:11–14.

In addition, the letter identified people subject to separation orders against Charles. That list included two witnesses in Stringer's other case, Charles's father, and Stringer himself. 6/26/06 Charles Tr. 17:8–12, 20:8–16, 22:1–4; Trial Tr. 585:20–586:7. Stringer denied writing a note on the top of the letter stating, "These are the n***ers that got a separation on you. Rats." *Id.* at 576:7–15.

Stringer had received a copy of the separation list from his brother and co-defendant, Roderick Stringer, who also was in custody. *Id.* at 574:4–576:2. The government claimed that Stringer "couldn't have" gotten the document from his brother because "they were not housed in the same area of the jail." 8/16/06 Afternoon Tr. 24:19–24. A government witness testified, however, that inmates sometimes get copies from their case managers, and often want to modify the orders if they affect their placements or security designations. Trial Tr. 373:11–374:1, 380:21–381:9.

4. Verdict and sentencing.

Stringer was convicted of second-degree murder while armed, first-degree felony murder while armed, and related offenses; he was acquitted of first-degree

premeditated murder while armed. 8/17/06 Tr. 6:16–8:2. The trial court sentenced him to 36 years in prison. 2019R13 at 4 (A220).

At Stringer's first sentencing, the government insisted that Stringer was "the leader of this" and "the one that pulled the trigger." 11/3/06 Tr. 4:1–8. But as the lead prosecutor testified years later, it was "not fair to say" that "Stringer was the principal actor in this case." Charles 5/12/17 Tr 40:12–15 (A93). Likewise, the government was "never really sure who did it—who actually pulled the trigger." *Id.* In fact, one cooperating witness "seemed to indicate that Mr. Charles had been the person who pulled the trigger." *Id.* at 40:15–18 (A93).

E. In a written declaration, Charles admits that he killed Johnson and acted alone.

On direct appeal, the Court affirmed both Charles's and Stringer's convictions but, because certain offenses merged, remanded their cases for resentencing. *See Stringer v. United States*, No. 06-CF-1515, MOJ 1 (D.C. July 20, 2009). While Charles was waiting to be resentenced, he "confessed to killing Tilford Johnson." 2019R13 at 5 (A221). He finalized and signed the confession on June 19, 2014. *See* 2019R5, Charles Aff. (A79–A80).

When he signed the written confession, Charles "still had a Fifth Amendment privilege against self-incrimination." 2019R7 at 11 n.8. At his first sentencing, Charles had received a prison term that was five-years shorter than

Stringer's sentence. While sentencing Stringer the first time, the trial court stated that while Charles was "technically an adult," Stringer was the person "to whom [his] nephew was supposed to be looking up." 11/03/06 Tr. 7:15–24. As he awaited resentencing, however, Charles both confessed to the shooting and admitted that he had acted alone.

In particular, Charles and Tilford Johnson planned to drive to Boston "to sell drugs." 2019R5, Charles Aff. 1 (A79). Joined by James Campbell, Charles met Johnson in the District; they were "suppose to meet up with Carlos Sly[] also, but his phone kept going to answering service after he said he's going to meet us at James['s] house." *Id.* While waiting to meet Johnson, Charles "realized [he] didn't need Carlos as a decoy." *Id.* And "before you know it I pulls out my gun and pull the trigger before he even gets a chance to see me." *Id.* Charles then "runs out the alley and jumps in the car with James and we ends up at my house." *Id.* at 1–2 (A79–A80).

CJA investigator Ronnie Reece helped Charles draft the confession, and he signed it in front of Reece and his son, CJA investigator Christopher Reece. *Id.*; 2019R7, Ex. 4. Ronnie Reece then gave a copy of this confession to Stringer's counsel, who had neither retained nor directed Reece; later that year, Stringer's counsel moved for relief under the Innocence Protection Act. 2019R5 at 8. To

avoid Fifth Amendment concerns, the trial court deferred Stringer's evidentiary hearing until after Charles's postconviction § 23-110 motion was decided and resolved on appeal. *See, e.g.*, 11/02/16 Tr. 13:20–14:6; 6/28/17 Tr. 3:2–13; *see also* 6/28/17 Tr. 17:18–18:7.

F. At the evidentiary hearing, Charles testifies that he killed Johnson and acted alone.

In October 2018, Stringer's evidentiary hearing took place before Judge Julie Becker, to whom the case was reassigned. Charles testified that between 11 p.m. and midnight on June 2, Johnson called Charles and asked "to ride [with] him to go to Boston to see some little broads and to try to set up shop to get rid of some weed." 10/23/18 Tr. 6:11–15 (A106). Johnson had $13,000 in cash but no marijuana, and he wanted Charles "to help him find some [pot] so we can take it down there with us." *Id.* at 6:16–25 (A106).

When Johnson called, Charles and Campbell were at the laundromat. *Id.* at 7:15–22 (A107). After a few calls from Johnson, Charles called Carlos Sly to see if he would supply the marijuana. *Id.* at 7:23–9:12 (A107). Charles reached Sly's voicemail a few times but eventually spoke to him. *Id.* at 9:9–10:5 (A109–A110). After several more phone conversations, Sly agreed to sell 20 pounds of marijuana for $13,000. *Id.* at 11:1–12:15 (A111–A112).

Charles, joined by Campbell, drove to meet Johnson near Eastern High School. *Id.* at 15:7–25 (A115). They met up at about 2 a.m. and discussed the marijuana deal. *See id.* at 16:1–6, 17:5–12 (A116, A117). Charles then returned to his car and told Johnson to follow Charles as he dropped off Campbell at his house and then met Sly to buy the marijuana. *Id.* at 17:13–19:4 (A117–A119). As Charles was driving, he thought to himself, "I can just take the money and buy the weed myself. Like, what's the reason of me going through this with him and I can just profit all the way around the board with it and everything can be mine." *Id.* at 19:15–22 (A119). By the time Sly called, Charles had decided that he "was going to kill T and take the money." *Id.* at 20:14–17 (A120). And because Charles had already "seen [Johnson's] money," Charles no longer needed Sly as "a decoy." *Id.* at 64:4–6 (A164).

When they reached Campbell's home, Charles told Johnson to "go pull in the alley," followed Campbell into his building, and "took the gun off my hip and put it inside my hoodie." *Id.* at 21:1–22 (A121). Next, Charles walked to Johnson's car and sat in the front passenger's seat. *Id.* at 23:10–22 (A123). Johnson then "turned his head"; Charles pulled out the gun and "shot [Johnson] in the head." *Id.* at 23:18–24:21 (A123–A124). Charles recalled that the bullet made a hole in the

car's back left window: "That was what I noticed." *Id.* at 24:22–25:15 (A124–A125).

After shooting Johnson, Charles "grabbed the bag" containing $13,000. *Id.* at 25:2–3, 25:21–25 (A125). He "wiped down" the car: the door handle, the glove-box latch, the radio, the doors, the door panels. *Id.* at 72:10–18 (A172). He removed Johnson's phone from the ash-tray charger and "threw the gun in the bag" with Johnson's cash. *Id.* at 27:3–6 (A127). He "didn't touch [Johnson's] wallet." *Id.* at 27:16–17 (A127). Charles realized that he had handled some of Johnson's CDs earlier that night, before deciding to kill him; after the shooting Charles "grabbed the CDs out of the glove box." *Id.* at 26:1–13 (A126). "I know I wiped it down as much as I could, what I felt like I touched. But I don't remember locking no doors." *Id.* at 27:21–25 (A127). He also recalled that the car was still running and the keys were "[s]till in the ignition." *Id.* at 27:11–15 (A127). Then he took his gun and Johnson's phone and CDs and threw them "down the sewer." *Id.* at 32:2–5 (A132). Afterwards, Charles returned to his car, which he recalled had been parked on 28th Street. *Id.* at 73:3–10 (A173).

After he shot Johnson, Charles tried calling Campbell several times. *Id.* at 28:25–29:5 (A128–A129). Meanwhile, Sly had called Charles a few times and "was getting impatient." *Id.* at 29:6–22 (A129). Charles and Sly arranged to meet at the

parking lot of a nearby carryout restaurant and exchange Sly's marijuana for Johnson's cash. *Id.* at 30:8–17, 31:3–6, 32:11–12 (A130–A132). Eventually, Campbell met them there. *Id.* at 28:25–29:5 (A128–A129). Charles and Campbell "left and went to [Charles's] mother's house" and "broke the weed down" for resale. *Id.* at 31:12–32:1 (A131–A132).

In his 2014 statement, Charles wrote that, after shooting Johnson, "I runs out of the alley and jumps in the car with James [Campbell] and we end up in my house." *Id.* at 28:11–17 (A128). At the hearing, Charles clarified that they were not together "right then and there" but "ended up getting back together." *Id.* at 28:18–19 (A128).

According to Charles, Stringer was not involved "with the events of that night" and Charles did not talk to Stringer that night. *Id.* at 32:14–21 (A132). Calls to and from the -9730 phone were calls to and from Sly, whom Charles referred to as "Uncle Carlos." *Id.* at 62:11–14 (A162). After arranging the meeting with Johnson, Charles had "called Carlos Sly three or four times before eventually reaching him, and then had several more calls with him to arrange the details of the transaction." 2019R13 at 8 (A224).

Charles denied discussing the shooting with Robert Lyles, the government cooperator. 10/23/18 Tr. 75:23–25 (A175). But in 2004, Charles did tell Mark

Vanderhall, the brother of one of Stringer's daughters. *Id.* at 33:1–14 (A133). Before he was arrested for shooting Johnson, Charles was detained on a bench warrant in an unrelated gun case. *Id.* at 32:22–33:7 (A132–A133). Vanderhall "caught a gun charge that [same] night and [he and Charles] ended up in central cell together." *Id.* at 33:12–14 (A133). At the time, Charles assumed that he had been arrested "[f]or the murder of Tilford" and told Vanderhall that he "was thinking that that's what they were picking [him] up for." *Id.* at 33:14–16 (A133).

In 2012 or 2013, Charles told his aunts that he needed to meet with an investigator. 10/23/18 Tr. 60:21–23 (A160). By June 2014, he had returned to the D.C. Jail to await resentencing; Stringer arrived at the D.C. Jail at around the same time and for the same reason. *Id.* at 46:8–17 (A146). In the interim, Charles's aunts had hired investigator Ronnie Reece, with whom Charles twice met at D.C. Jail. *Id.* at 47:7–14, 51:15–25, 54:23–25, 85:4–7 (A147, A151, A154, A185). Before his first meeting with Reece, Charles "drew up a rough draft." *Id.* at 52:6–7 (A152). At the second meeting, Charles prepared a new draft with more detail. *Id.* at 53:1–24 (A153). Reece died more than a year before the evidentiary hearing. *See* 6/10/16 Tr. 17:24–18:2, 18:10–19; *Ronnie Reece, Sr. "Ron,"* Wash. Post (Sept. 15, 2017), https://tinyurl.com/yswphwe2 (obituary).

Finally, Charles admitted that he had lied to the police when questioned about the murder in 2003 and (through counsel), denied the charges at his trial. 10/23/18 Tr. 40:20–41:22 (A140–A141). According to Charles, he "was young at the time" when—at age 18—he shot Johnson in 2003, and when—at age 21—he denied the charges at Stringer's trial. *Id.* at 33:19–21, 44:11–13 (A133, A144). But in 2018, Charles felt—at age 34—"like [he'd] been selfish and inconsiderate for a long time now." *Id.* at 33:24–25 (A133). "It's been 15 years. You've got an innocent man standing over there and he didn't have anything to do with this." *Id.* at 34:1–4 (A134).

G. After the trial court declines to credit Charles's testimony, this Court vacates and remands.

In a written order, the trial court found that Charles's testimony was "not credible" based on perceived bias and inconsistencies in his testimony. 2019R13 at 6–13 (A222–229). On appeal in *Stringer 1*, this Court vacated the trial court's order and remanded the case. A265. The unanimous opinion addressed seven categories of the trial court's reasoning, as well as the weaknesses in the government's case against Stringer.

1. Physical evidence.

In declining to credit Charles, the trial court had pointed to perceived inconsistencies between his testimony and "the physical evidence." 2019R13 at 7

(A223). The trial court highlighted Charles's testimony that "the bullet made a single hole in the window, but did not shatter it"; he "left the car without locking the door and with the car still running"; and "he went from the alley directly back to his own car on 28th Street, and never crossed to Buena Vista Terrace on the other side of the alley." *Id.*

This Court agreed that "Mr. Charles's account of the crime scene as he left it was inconsistent with the account provided by the responding police officers." A254. Yet if Mr. Charles is wrong about the state of the crime scene, either "he was not present for the murder—which is not a theory anyone is advancing (and would also undermine, if not destroy, the case against Mr. Stringer)" or "his memory of a 15-year-old event was faulty." *Id.* Given the government's position that "Mr. Charles committed or was present for the murder," the Court did "not see how his mistakes regarding details bear on whether Mr. Stringer was with him or not." *Id.*

2. Johnson's wallet.

In declining to credit Charles, the trial court also pointed to his testimony that he "did not touch Mr. Johnson's wallet," and opined that this testimony contradicted police testimony, in 2006, that police found only 55 cents and an empty wallet. 2019R13 at 7–8 (A223–A224). As this Court explained, however,

there would be an inconsistency "only if there was evidence that Mr. Johnson's wallet contained money before he was murdered." *Id.*

The Court did "not see such evidence in the record." A254. And it was "plausible that Mr. Charles, having just stolen $13,000, would not have thought to or had any reason to touch Mr. Johnson's wallet." A255. Ultimately, Charles's credibility as to Johnson's wallet "cannot be evaluated without recognizing that [his roommate's] testimony about Mr. Johnson taking money to Boston was speculative." A264.

3. Phone records.

In evaluating whether Stringer or Sly had been using the phone registered to Tiffany Thompson, the trial court stated that Charles did not "testify about any other contact, or reason for contact, with Mr. Sly after the marijuana transaction on the morning of June 3." 2019R13 at 9 n.3 (A225). To the trial court, it was "more plausible" that Charles changed his phone number after talking to "his partner in committing the murder" than it would be "after talking to Mr. Sly, who according to Mr. Charles knew nothing about the killing." *Id.* at 10 (A226).

This Court, however, was "less convinced that Mr. Charles's version of events is significantly inconsistent with the telephone records." A256. "Even if Mr. Sly did not know about the murder, it strikes us as plausible that Mr. Charles

would speak to Mr. Sly—a friend he had known for a while whom he called 'Uncle Carlos'—nine times in two days after the two had engaged in a substantial drug transaction and Mr. Charles had 20 pounds of marijuana to sell." *Id.*

The Court added that "Mr. Charles testified that he was 'always calling' Mr. Sly, and his hearing testimony was consistent with his testimony at Mr. Stringer's trial that he talked to Mr. Sly on the night of the murder." *Id.* Although it is "reasonable to assume that, had there been a 'partner in committing the murder,' Mr. Charles would have spoken to him in the days after the murder," it was "circular" for the trial court "to assume that there *was* a partner and it was Mr. Stringer because Mr. Charles spoke to someone numerous times after the murder." A257 (emphasis in original).

What is more, "although she was impeached with her grand jury testimony, Ms. Thompson provided at trial an explanation about the user of the -9730 number that was consistent with Mr. Charles's explanation"—an explanation that "the trial court found 'critical to Mr. Charles's version of the events of that night.'" A264. And because the hearing judge had not presided over Stringer's trial, the hearing judge "had no basis for assessing the credibility of Ms. Thompson's trial testimony." *Id.* (alterations and quotation marks omitted).

4. Whether Charles reached Carlos Sly.

In declining to credit Charles, the trial court further noted differences between Charles's account of whether he had reached Carlos Sly by phone earlier on June 3. Charles's affidavit stated that "he and Carlos Sly had arranged to meet up with Mr. Johnson and James Campbell, but Mr. Sly never arrived at the meeting point because 'his phone kept going to answering service after he said he's going to meet us.'" 2019R13 at 10 (A226). At the hearing, noted the trial court, Charles testified that "he got Mr. Sly's voicemail several times *before* reaching him to arrange the transaction, and that once he reached him they had several more phone calls to set up the details." *Id.* (emphasis in original).

Although agreeing that this was "a minor inconsistency," this Court noted that Charles's affidavit "was a one-paragraph handwritten statement that provided an abridged version of the events of that night." A257–A258. While "one reading" of the affidavit is that Charles did not reach Sly, "Mr. Charles did not actually say as much." *Id.* As a result, the Court did "not discern a direct contradiction between the account in the affidavit and the account at the hearing." A258.

5. Charles's interactions with James Campbell.

In declining to credit Charles, the trial court also perceived inconsistencies in his statements about James Campbell's role in the events. Charles averred, in 2014,

that "James Campbell was with him when he went to meet Mr. Johnson" and "after the killing he [Charles] 'runs out the alley and jumps in the car with James and we ends up at my house.'" 2019R13 at 10–11 (quoting 2019R5, Charles Aff. 1–2) (A226). At the hearing in 2018, Charles testified that he met Johnson alone, called Campbell after the shooting, met up with Campbell at a carry-out restaurant, and returned to his home with Campbell so that they could "br[eak] the weed down for resale." 10/23/18 Tr. 28:9–29:5, 31:12–32:1 (A128–A129, A131–A132). The trial court had "difficulty believing that Mr. Charles has a specific memory of the events surrounding the killing—including how it was arranged, how he did it, and what he did immediately afterward—but cannot remember who was with him and when it happened." 2019R13 at 11 (A227).

This Court, however, concluded that the trial court's decision "overstates the extent of the discrepancy between Mr. Charles's accounts." A259. The Court did "not read Mr. Charles's affidavit to suggest that he was with Mr. Campbell the entire time; it appears to be silent on Mr. Campbell's whereabouts during the shooting itself." *Id.* Nor did Charles testify that "Mr. Campbell was with him and Mr. Johnson until they arrived at Mr. Campbell's house, at which point Mr. Campbell went inside." *Id.*

Rather, "Mr. Charles's account appears to be consistent that he committed the shooting himself and he drove with Mr. Campbell sometime after the shooting." *Id.* And while "Mr. Charles's accounts of when he and Mr. Campbell were in his car together are in tension," that tension "is more sensibly attributed to sloppiness or memory lapses than to lack of credibility as to Mr. Stringer's involvement"—"unless the theory is that Mr. Charles did not commit the offense at all." *Id.*

6. Whether Charles or Stringer saw each other before Charles prepared the affidavit.

In declining to credit Charles, the trial court found that Charles and Stringer had seen or interacted with each other when they were brought back to the D.C. Jail for resentencing in 2014. According to the trial court, Charles testified that 2014 "was the first time" since 2006 that "he and Mr. Stringer had seen each other." 2019R13 at 13 (A229). This timing made it "more likely" that Charles and Stringer "crafted the plan for the affidavit together when they met in the jail in 2014." *Id.*

As this Court explained, however, the record "does not reflect Mr. Charles testifying that he saw or met Mr. Stringer in jail in 2014." A260. And there was "no evidence that Mr. Charles and Mr. Stringer were in the same unit or area of the jail, a point that the government used at trial to rebut Mr. Stringer's claim that

he received a copy" of an order separating Mr. Charles from his brother. *Id.* Of course, it is "*possible* that Mr. Charles and Mr. Stringer saw each other in the D.C. jail in 2014." *Id.* (emphasis in original). But "to question Mr. Charles's credibility on that basis requires . . . some affirmative basis to find or infer that they did." *Id.* Information about their housing, moreover, "would have been uniquely in the government's possession." *Id.*

7. Whether Charles had anything to lose.

More generally, the trial court opined that Charles "has no reason not to confess now to committing [the murder] on his own, exonerating Mr. Stringer in the process." 2019R13 at 13 (A229). Although this circumstance "in itself does not mean that Mr. Charles is lying," it does "not offer any reason to conclude he is telling the truth." *Id.*

As this Court recognized, however, "whether Mr. Charles faced a risk at the time of the *hearing* does not entirely resolve the 'nothing to lose' question if, as the trial court appeared to accept, Mr. Charles signed the affidavit in June 2014." A262 (emphasis in original). It was unclear "what exposure Mr. Charles had—or believed he had—when he wrote the affidavit in June 2014." A261. When he wrote the affidavit, Mr. Charles was still awaiting resentencing on remand, and it "does

not appear that the trial court considered whether the sentencing court could have increased Mr. Charles's sentence when resentencing him on remand." *Id.*

The Court added that "Mr. Charles had—or would have had—quite a bit to lose by confessing to be the sole killer." A262 n.2. Not only had Charles's original sentence been five years shorter than Mr. Stringer's original sentence, but "the government acknowledged during Mr. Charles's sentencing that Mr. Stringer had been 'the leader of all this' and argued during Mr. Stringer's sentencing that Mr. Stringer was 'the leader' and 'the one that pulled the trigger.'" *Id.* In addition, during Stringer's sentencing the trial court had noted that "Mr. Charles had been only 'technically' an adult at the time and 'looked up' to his uncle Mr. Stringer, who was 18 years older than him." *Id.* (alteration omitted). Once Charles averred that he had "acted alone," however, his "arguments in favor of relative leniency disappeared." *Id.*

8. Weaknesses in the government's case.

To the trial court, Stringer also argued that any assessment of Charles's credibility must consider the inconsistencies and other anomalies in the government's case. *See, e.g.*, 10/23/18 Tr. 94:13–100:12 (detailing weaknesses in government's case) (A194–A200); *see also id.* at 101:1–3 (arguing that Charles's testimony is "more compelling evidence than anything the Government presented

at trial") (A201). The trial court alluded to those weaknesses in a single, subordinate clause: "As a result, even viewed in connection with Mr. Stringer's arguments about the weaknesses of the government's case, *see Caston*, 146 A.3d at 1100, [Charles's testimony] fails to establish Mr. Stringer's innocence . . . ." 2019R13 at 13–14 (A229–A230).

On remand, said this Court, it would be "incumbent on the [trial] court to consider the potential weaknesses in the government's case to a greater extent than it did." A262 (citations and quotation marks omitted). For one, the hearing judge "did not preside over Mr. Stringer's (or Mr. Charles's) trial and thus was not in an advantageous position to assess the weight of the trial evidence." *Id.* Especially under these circumstances, "an assessment of Mr. Charles's credibility based on any inconsistencies between his affidavit and hearing testimony, on the one hand, and the trial evidence, on the other, requires some consideration of the strength of the trial evidence against Mr. Stringer." A263.

For example, Robert Lyles's inculpatory trial testimony "raises significant questions." A265. When he testified at trial, Lyles was hoping "for a favorable recommendation from the government in exchange for his inculpatory testimony against Mr. Stringer." *Id.* (quotation marks omitted). Lyles previously had "told law enforcement four times that Mr. Stringer had not told him anything about the

shooting"—before Lyles "reversed course, claiming that Mr. Stringer volunteered with no prompting that he was the shooter." *Id.*

In addition, Lyles testified that Charles had told him that Charles and Johnson "were in a car together in an alley when Mr. Stringer came up, got in the car, and shot the victim"—"suggesting that Mr. Charles and Mr. Johnson were in the front seats of the car and Mr. Stringer, as the third person in the vehicle, got into a back seat." *Id.* The government presented no expert ballistics testimony, and "it seems at least worth questioning whether, if Mr. Stringer had in fact shot Mr. Johnson from a back seat toward the front driver's seat, the bullet would have exited through the rear driver's side window, as it did." *Id.*

The Court added that "Mr. Charles is not exactly a recanting witness, as he did not inculpate Mr. Stringer at trial and then seek to retract that inculpatory testimony later." A263. And if Charles "is believed, Mr. Stringer is innocent." A253 (emphasis omitted).

H. On remand, the trial court again denies Stringer's motion.

Without requesting supplemental briefs or holding further argument, the trial court again denied Stringer's motion. As directed by *Stringer 1*, the trial court "reconsidered Mr. Charles's testimony" and withdrew most of the original analysis: "the placement of the deceased's wallet; the telephone records;

inconsistences between his affidavit and his hearing testimony; the timing of his affidavit; and the idea that Mr. Charles had nothing to lose by testifying as he did." 2024R1 at 10 (A276). But the trial court nonetheless reached "the same conclusion: that it cannot find Mr. Stringer innocent, either by a preponderance or by clear and convincing evidence." *Id.* at 1–2 (A267–A268). In so doing, the trial court emphasized "two critical facts." *Id.* at 10 (A276).

First, the trial court reasoned that "the *only* way to square Mr. Charles's testimony with the physical evidence is for someone else to have been in the car at the time of the shooting." *Id.* at 2 (A268) (emphasis in original). The trial court agreed that the "physical evidence does support the notion that Mr. Johnson was shot from his right side and not from behind." *Id.* at 3 (A269). But the trial court emphasized the location of the blood found inside Johnson's car: "On the passenger side near the floorboard, 'there was only a little bit of blood that had dried. However, on the rear seat and on the rear floorboard, there was a vast amount of blood that was still wet.'" *Id.* (quoting 8/15/06 Tr. 435:19–25).

The trial court viewed the amount of blood found on a given seat as a proxy for the amount of blood that had covered the person occupying that seat. Because there was "only a small amount of blood on the passenger side, where Mr. Charles claims to have been when he shot Tilford Johnson," the trial court believed that

this did "not explain how [Charles] would have left a blood trail behind, when the largest amount of the blood from the shooting was on the rear seat and rear floorboard." *Id.* at 2–3 (A268–A269).

Second, the trial court pointed to "relationship between Mr. Stringer and Mr. Charles." *Id.* at 8 (A274). To support this basis, the trial court quoted its analysis from the original order, including that Stringer's 2005 letter to Charles "strongly suggests that they had 'fucked up' together and were now facing the same consequences." *Id.* (quotation marks omitted). As in its original order, the trial court asserted that Stringer had written to Charles "[a]fter they were both arrested for the murder." *Id.* In fact, when Stringer wrote the letter in June 2005 (2019R13 at 4), he had not been charged with killing Johnson—that did not happen until August 30, 2005 (2019R7 at 1 n.1). Nevertheless, the trial court continued to "stand[] by this analysis" and believed it to be "unquestioned in the appellate ruling." 2024R1 at 8 (A274).

The trial court added that its original order had not discussed Charles's demeanor while testifying, given "the inherently subjective nature of observations based on demeanor, facial expressions, body language, and the like." On remand, the trial court observed that "nothing in Charles's demeanor clearly suggested he was lying." *Id.* at 9 (A275). Although Charles's "affect was flat, even when

explaining why he decided to come forward after so many years" and he "did not appear remorseful," the trial court recognized that people "react and show emotions in different ways" and reiterated that "judgments about demeanor are highly subjective." *Id.* at 9–10 (A275–A276). Charles's demeanor "contributes to the decision not to credit Mr. Charles," said the trial court—"[t]o the extent that this factor does play into [its] determination." *Id.* at 10 (A276).

Finally, in evaluating the strength of the government's case against Stringer at trial, the trial court noted the "reasons to doubt the credibility of [Robert Lyles's] trial testimony, including his cooperation agreement with the government and inconsistent statements he made over time to law enforcement." *Id.* at 8 (A274). Indeed, "Lyles may have been lying when he testified that Mr. Stringer confessed to him and that Mr. Charles inculpated both himself and his uncle." *Id.* at 8–9 (A274–A275).

"None of those facts," said the trial court, "shed[s] light on whether Mr. Charles's most recent testimony is true or whether Mr. Stringer was actually involved in the murder." *Id.* According to the trial court, the "two critical facts"—the location of the blood found in Johnson's car, and Stringer's letter to Charles in June 2005—"defeat[ed] Mr. Stringer's efforts to prove his innocence even by a preponderance of the evidence." *Id.* at 10–11 (A276–A277).

SUMMARY OF ARGUMENT

In *Stringer 1*, the Court identified seven logical or factual errors underlying the trial court's conclusion that the exculpatory testimony of Roderick Charles was not credible. In addition to repeatedly erring factually and logically, the hearing judge—which had not presided over Stringer's trial—had failed to adequately consider the weaknesses in the government's case against Stringer. The Court vacated and remanded the case for the trial court to evaluate Charles's credibility free of the errors undermining the original finding. On remand, the trial court again declined to credit Charles, concluding that his testimony contradicted the blood evidence found in Tilford Johnson's car and a letter that Stringer had written two years later.

But as in *Stringer 1*, the trial court's finding is undermined by a pair of clear errors—one clear and material error of logic, and one clear and material error of fact. Compounding these dual errors, the trial court again failed to scrutinize the evidence at trial. Not only did the trial court again overlook exculpatory trial evidence, but the trial court's reasoning again contradicted the prosecutors' underlying theory of the case.

First, the trial court's assumptions about the blood evidence upended basic logic. The trial court concluded that Charles could not have acted alone, because he

could not have produced the blood trail leading away from Johnson's car, because there was little blood on front passenger seat, where Charles was sitting when he shot Johnson; the trial court assumed that the blood trail must have come from someone sitting in the bloody rear seats. But as even the trial prosecutors recognized, there was little blood on the front passenger seat because Johnson's blood landed on the seat's occupant. If anything, the ample blood on the rear seat corroborates Charles's testimony that he acted alone: If Stringer had been sitting in the back, blood would have covered his clothing, not the seat.

Second, the trial court's analysis of Stringer's 2005 letter introduced another clear error of fact. Repeating a factual error from its original order, the trial court stated that Stringer wrote to Charles "after police arrested both men for the murder." 2024R1 at 8 (A274) (quoting 2019R13 at 4). In fact, Stringer wrote the letter in June 2005—more than two months before he unexpectedly was charged as a codefendant.

The proper chronology undermines the trial court's interpretation of the letter as an implicit confession and attempt to silence Charles. Stringer wrote the letter more than two years after the shooting and more than six months after the government arrested Charles, and even Charles's trial counsel was surprised when Stringer was eventually charged. Yet because the trial court mistakenly assumed

that a murder charge preceded Stringer's letter, the trial court inferred a motive in tension with the facts.

Finally, the trial court again failed to thoroughly consider the weaknesses in the government's case against Stringer. In particular, and as in its original order, the trial court did not address two witnesses' exculpatory trial testimony that Charles had confessed to shooting Johnson on his own—and likewise failed to address the portion of Charles's hearing testimony directly corroborating one of those exculpatory trial witnesses.

Even after shedding the errors identified in *Stringer 1*, the trial court clearly erred in declining to believe Charles. And in this murder case, there is no room for clear error, because "if Mr. Charles is believed, Mr. Stringer is innocent." A253 (emphasis omitted).

ARGUMENT

The Innocence Protection Act permits Stringer to present "new evidence" and ask the trial court "to vacate the conviction" (if evidence of his innocence is clear and convincing) or "to grant a new trial on grounds of actual innocence" (if his innocence is more likely than not). D.C. Code § 22-4135(a) & (g)(2)–(3). Because the government conceded that Charles's confession is new evidence, Stringer's claim turns on Charles's credibility. 2019R13 at 7 (A223); *see also id.* at 7

n.1 (A223). If Charles "is believed, Mr. Stringer is innocent." A253 (emphasis omitted).

On appeal, factual findings are reviewed for clear error, but they are clearly erroneous if they are "plainly wrong or without evidence to support them," *Thomas v. United States*, 934 A.2d 389, 392–93 (D.C. 2007) (alteration and quotation marks omitted). Likewise, factual findings are clearly erroneous if they reflect "a manifest misunderstanding of the record evidence." *Ashrafi v. Fernandez*, 193 A.3d 129, 133 (D.C. 2018). Even when underlying a credibility finding, "the significance of inconsistencies" is a question "of law, subject to appellate scrutiny." *Caston v. United States*, 146 A.3d 1082, 1096 (D.C. 2016). Given these factors, the Court "may well find clear error even in a finding purportedly based on a credibility determination." *Dorsey v. United States*, 60 A.3d 1171, 1206 n.120 (D.C. 2013) (quoting *Anderson v. City of Bessemer*, 470 U.S. 564, 575 (1984)).

That was the case in *Stringer 1*. And here, as in *Stringer 1*, material errors of fact and logic caused the trial court to clearly err in declining to credit the exculpatory testimony of Roderick Charles.

I. Due to elementary logical errors in evaluating the physical evidence, the trial court clearly erred in finding that another person was in the car with Johnson and Charles.

A trial court may not "rely on mistaken information or baseless assumptions." *United States v. Hamid*, 531 A.2d 628, 645 (D.C. 1987) (citation and quotation marks omitted). Here, the trial court inverted the logical relationship between blood on a seat and blood on the seat's occupant. Due to this logical mistake, the trial court misunderstood the blood evidence—which reinforces, rather than refutes, Charles's testimony that he acted alone.

In its decision after remand, the trial court opined that the blood trail from Johnson's car could not have come from Charles, the front passenger, because the passenger seat had "only a little bit of blood that had dried," while "on the rear seat and on the rear floorboard, there was a vast amount of blood that was still wet." 2024R1 at 2 (A268). According to the trial court, "the *only* way to square Mr. Charles's testimony with the physical evidence is for someone else to have been in the car at the time of the shooting." *Id.* at 2 (emphasis in original) (A268). This was the "most important[]" reason for the trial court's decision. 2024R1 at 10 (A276). Despite the importance of this analysis, the trial court's logic was backwards.

As even the government recognized at trial, Johnson's blood was scarce on the front passenger seat because the blood landed on the person—Charles—sitting in that seat. And Charles, covered in the blood that otherwise would have landed on his seat, would then have produced a blood trail once he walked away from the car. As forensic scientists put it, a "void" exists "when a person's body, shoe, hand, etc. intercepts blood in flight, blocking it from reaching a surface such as a wall or floor." Suzanne Bell, *Void Pattern*, *in Oxford Dictionary of Forensic Science* (2012). Given this inverse relationship, the trial court's opinion defied "fundamental principles of logic." *State v. Meyer*, 832 P.2d 357, 364–65 (Kan. Ct. App. 1992).

While the trial court inverted this logical relationship, it was understood by the government at trial. During closing arguments, the prosecutor asked the jury, "Why do you think there's not any blood on the passenger seat?" 8/16/06 Afternoon Tr. 22:25–23:4. "The blood that must have popped right out of his head should have been on that seat. But somebody was there and it covered them instead." *Id.* To the government, this was obvious: "You don't need a blood splatter expert to tell you that." *Id.* The trial court overlooked this trial theory, even after *Stringer 1* instructed the trial court "to consider the potential weaknesses

in the government's case to a greater extent than it [previously] did." A262 (citations and quotation marks omitted).

What the government thought was obvious, other cases have confirmed. "Common sense indicates" that if someone is shot in the head "at point-blank range," there will "be a large amount of blood spatter on the shooter." *Bryant v. State*, 181 So. 3d 1087, 1148–49 (Ala. Ct. Crim. App. 2011). The blood spatter on the shooter, in turn, explains the absence of blood on the shooter's seat. In a similar case, the victim was the car's driver, who was struck by a 9mm bullet, which shattered the driver's front window after killing the driver. *See State v. Mickles*, No. L-05-1206, 2006 WL 2053306, at *1, *3 (Ohio Ct. App. July 21, 2006). Given that "the front passenger seat of the vehicle was clean and void of blood spatter," the forensic investigator concluded that someone else may have been "sitting in the passenger seat when the fatal shot was fired." *Id.* at *2. The logic of *Mickles* reinforces that if the front passenger is covered in blood after shooting the driver, the driver's blood is likely to be absent from the passenger seat itself.

More generally, the killer's location often is inferred from the absence of blood on a surface near the victim. In one case, the "void in the blood spatter" near the victim "was consistent with a person kneeling next to the body during the murder." *Lambert v. State*, 435 P.3d 1011, 1014 (Alaska 2018) (testimony of

forensic analyst). In another, experts for both the prosecution and defense agreed that the shooter "was sitting next to [the victim] when the fatal shot was fired," given the "absence of blood on the chair located directly next to [him]." *State v. Fischer*, 360 P.3d 105, 114–15 (Ariz. Ct. App. 2015). In yet another, the forensic analyst testified that "the lack of blood in certain areas was consistent with the attacker's body being on top of [the victim] and blocking the transfer of blood to those areas." *Bess v. State*, No. AP-76,377, 2013 WL 827479, at *5 (Tex. Crim. App. Mar. 6, 2013). In each case, the trial court's logic would have dictated the opposite conclusion.

For the same reason, the trial court upended logic when concluding that "there were two people in the car with Mr. Johnson; one on his right who did the shooting, and one in back who trailed the blood away from the car." 2024R1 at 3 (A269). Once covered in Johnson's fresh blood, Charles inevitably would have left a trail when he walked away from Johnson's car. Given that the back seat was covered in blood, it is unlikely that anyone was sitting there. If Stringer had been sitting in the back seat, most of the blood would have covered Stringer, not his seat. Far from undermining Charles's credibility, the blood evidence corroborates his testimony that he acted alone.

II. In evaluating the other evidence, the trial made clear, material factual errors and overlooked significant exculpatory evidence.

Even if reversal were not required by the logical errors in describing the blood evidence, other clear errors further undermine the trial court's finding. First, in describing the other piece of evidence underlying its decision, the trial court made a clear error about the timing—and hence the significance—of Stringer's 2005 letter to Charles. Second, the trial court overlooked, and failed to address, other exculpatory evidence from Stringer's trial—including two other witnesses who testified that Charles had previously admitted to acting alone.

A. The trial court clearly erred in concluding that Stringer had already been charged when he wrote to Charles.

After relying on the blood evidence, the trial court identified only one other piece of evidence supporting its conclusion that Stringer had not established his innocence. Block quoting the analysis from its original order, the trial court stated that Stringer's June 2005 letter to Charles (1) "not only reflects the close relationship between Mr. Charles and Mr. Stringer, but strongly suggests that they had 'fucked up' together and were now facing the same consequences," and (2) Stringer's letter would not "make sense if, as Mr. Charles claims, Mr. Charles committed the murder alone and Mr. Stringer had nothing to do with it." 2024R1 at 8 (A274) (quotation marks omitted).

But the trial court's analysis depends on a mistaken chronology. The trial court believed that Stringer had tried to send the letter to Charles "[a]fter they were both arrested for the murders." *Id.* (quotation marks omitted). That was incorrect.

When he wrote that letter, Stringer had not been charged with shooting or killing Johnson. At the time, he was in custody awaiting trial for murder in a different case—a murder of which he would be acquitted in October 2005, and in which Charles's father was Stringer's co-defendant. 6/26/06 Charles Tr. 15:4–7. At least two more months would pass before the government charged Stringer. *See* 2019R7 at 1 n.1 (Stringer charged on August 30, 2005). Even Charles's trial counsel had "not anticipate[d]" that Stringer would be charged and was "very surprised that Mr. Stringer ended up [as a] co-defendant." 6/26/06 Charles Tr. 9:17–19. Because the trial court's chronology was backwards, however, the trial court perceived a motive that did not exist.

And while the trial court wrote that its original analysis "was unquestioned in the appellate ruling" (2024R1 at 8, A274), the analysis was unquestioned only in the sense that it was not addressed. Stringer's briefs in *Stringer 1* invoked this factual error. *See Stringer 1* Opening Br. 36; *Stringer 1* Reply Br. 8–9. Having identified at least seven other material factual and logical errors requiring a remand

to the trial court, the Court in *Stringer 1* did not need to scrutinize the 2005 letter as well. In these circumstances, the Court's silence "lends no support to" the trial court's elementary mistake of fact. *Hicks v. United States*, 658 A.2d 200, 202 (D.C. 1995).

B. The trial court did not address other material exculpatory evidence, including the testimony of Driver and Vanderhall.

In addition to mistakenly classifying evidence as inculpatory, the trial court again overlooked exculpatory evidence. Most notably, the trial court omitted the testimony of Ahman Driver and Mark Vanderhall; at trial, each witness testified that Charles had admitted to acting alone. Driver testified that while he was socializing with friends on his back porch, Charles referred "to a guy that he had robbed, and he said that he had to get the money, and then he shot him to the dome"—"[h]e shot him in the head." Trial Tr. 547:6–548:13. Similarly, Vanderhall testified that, when he and Charles were incarcerated together before he was charged in this case, Charles admitted that he had "shot somebody" "behind some houses" in Southeast DC and had "acted alone." *Id.* at 428:513–429:16, 430:5–9, 431:5–9. Neither witness is addressed in the trial court's order.

Nor did the trial court address the hearing testimony of Charles, who corroborated Vanderhall's account from trial. Charles testified that before he was arrested in this case, he had been detained on a bench warrant in an unrelated gun

case. 10/23/18 Tr. 32:22–33:7 (A132–A133). Vanderhall "caught a gun charge that [same] night and [he and Charles] ended up in central cell together." *Id.* at 33:12–14 (A133). At the time, Charles assumed that he had been arrested "[f]or the murder of Tilford," and he told Vanderhall that he "was thinking that that's what they were picking [him] up for." *Id.* at 33:14–16 (A133). The trial court did not identify any inconsistencies or other reasons to disbelieve this testimony, which also reinforces the exculpatory trial testimony that the trial court failed to address. As in *Stringer 1*, these omissions undermine the trial court's conclusion about Charles's credibility and Stringer's innocence.

CONCLUSION

The judgment should be reversed.

Respectfully submitted,

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