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**DISTRICT OF COLUMBIA
COURT OF APPEALS**

RODNEY A. BROWN & LEONARD E. BISHOP

Appellants,

v.

UNITED STATES

Appellee.

On Appeal from the Superior Court
of the District of Columbia, Criminal Division
Case Nos. 1994 FEL 012246 & 1994 FEL 012247
(The Honorable Jason Park, Judge)

**REDACTED JOINT REPLY BRIEF FOR
RODNEY A. BROWN & LEONARD E. BISHOP**

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INTRODUCTION

On November 25, 1994, Eugene Nixon saw Roy Tolbert near the Circle, doubled back, ran up through “the cut” in an attempt at a sneak attack, and opened fire. He shot a number of people that day, but did not succeed in killing Tolbert. Instead, he killed Andre Newton and wounded Carrington Harley, Keith Williams, and Joey Payne. The shooting was a part of an ongoing, violent feud between two gangs: the Alabama Avenue gang, of which Nixon was a part, and Roy Tolbert’s gang. The two gangs had shot at one another in the months leading up to November 25, including an incident when Tolbert’s gang shot Nixon’s close friend, Michael Raymond. Following Newton’s death, the tit-for-tat violence continued: about a week later, a member of Tolbert’s gang, Marcus Johnson, sought retribution for Newton’s death by stabbing several Alabama Avenue gang members outside the Eastside Club in Southwest DC.

None of this was known in 1994, because Johnson told police a lie after the Eastside Club stabbing, and that lie led them to suspect Rodney Brown and Leonard Bishop who were from the Circle and not a part of the Alabama Avenue or Tolbert gangs. All the while, as one would expect, Nixon’s gang kept quiet, content to see Rodney and Leonard go to prison rather than one of their own.

Years later, having seen the impact a wrongful conviction can have, Rodney Gordon, Nixon’s friend and fellow gang member, decided to come forward with the truth. Approached thereafter by an investigator from the Mid-Atlantic Innocence Project (MAIP), other Alabama Avenue gang members—independent

of one another and surprised to be receiving a visit—told the same story: Eugene Nixon was the shooter.

Other evidence supported their accounts, just as one would expect when the witnesses are telling the truth. Contemporaneous records from the 1990s confirmed a feud between the Tolbert and Alabama Avenue gangs, including police and transcript records; Tyrone Jones, a previously unknown eyewitness who saw the shooting at a distance of 20 feet, confirmed Rodney and Leonard were not the shooters, and identified a photo of Nixon as someone who resembled the shooter; and Marcus Johnson, Newton's best friend and unquestionably an unbiased witness, confirmed his belief that the Alabama Avenue gang was responsible for the shooting, that the Eastside club stabbing was retaliation against the Alabama Avenue gang for Newton's death, and that he purposely misled police in the direction of Rodney and Leonard.

The trial court's reasons for rejecting this (and other) evidence of innocence were erroneous. It (i) relied on categorical factors without considering evidence that showed how ill-fitting they are to the circumstances of this case, (ii) overstated insignificant differences between the witnesses' accounts, (iii) understated notable consistencies in those accounts, (iv) failed to consider powerful evidence that supported the reliability of the IPA evidence, and (v) generally failed to make a realistic, rather than ivory-tower, assessment of the witnesses' circumstances and motives. Had the proper analysis been done, at the very least, a new trial should have been granted.

The government in its consolidated opposition (“Opposition”) fails to address—indeed, to a great extent, fails even to acknowledge—Rodney and Leonard’s arguments concerning specific errors made by the trial court and identified in the Opening Briefs. Rather, the Opposition is content to parrot the trial court’s conclusions, with little more.

ARGUMENT

I. THERE IS CLEAR AND CONVINCING EVIDENCE OF INNOCENCE

The Opposition does not defend many of the trial court’s stated reasons for finding the IPA witnesses unreliable and, like the trial court, does not acknowledge the evidence that rendered the IPA witnesses credible. Where the Opposition does attempt to defend the trial court’s reasoning, it misstates the trial court’s order, resorts to hyperbole, or repeats the errors made below. Like the trial court, the Opposition also fails to properly weigh the weaknesses in the evidence used to convict Rodney and Leonard.

A. The IPA Witnesses Are Reliable

i. The Evidence and Arguments Ignored

The trial court categorically, and therefore erroneously, relied on the mere passage of time, the fact of a prior conviction, and Nixon’s intervening death, to discount certain IPA witness testimony.¹ The Opposition makes no attempt,

¹ In two glancing footnotes, the Opposition mentions Nixon’s death and Gaulden’s prior convictions. Gov. Br. at fns. 27 & 29. Neither footnote undertakes the task of attempting to rebut the arguments raised in the Opening Briefs. Brown Br. at 21-24, 27-29.

however, to justify or explain away those errors. It similarly does not defend the trial court's erroneous conclusion that there was insufficient evidence to connect the shooting of Michael Raymond to Newton's death. For the reasons explained in the Opening Briefs, those findings by the trial court are not supported by the record. Brown Br. at 18, 21-24, 27-30.

Nor does the Opposition respond to Section I(B) of Rodney's opening brief relating to the evidence of innocence overlooked by the trial court. Four Alabama Avenue gang members swore that Nixon was the gunman. The three who were not incarcerated and spoke face-to-face with Nixon at the time related a markedly similar account.² Nixon told each of them that he saw Tolbert in the Circle while driving by, doubled back, ran up through "the cut," tried to shoot Tolbert, but got his "mans" instead. That account is corroborated by undisputed evidence that Tolbert was indeed near the Circle shortly before the shooting, that the shooter ran up through "the cut," and that the shooter was spraying gunfire.

In footnote 29, the Opposition also mentions the trial court's "demeanor" finding regarding Gaulden, but fails to grapple with the Opening Briefs' argument that it does not warrant deference because it is unaccompanied by any explanation of *how* and *why* Gaulden's demeanor affected his credibility. Brown Br. at 28-29 (and authorities cited therein). Indeed, the trial court's single sentence related to demeanor is tacked onto the end of a paragraph discussing Gaulden's prior convictions and *another* judge's credibility finding in a separate and unrelated ineffective assistance of counsel proceeding. A813. Neither of which have to do with Gaulden's demeanor at the IPA proceeding, and both of which involved circumstances markedly different from what we have here. Brown Br. at 27-28.

² The fourth Alabama Avenue member (Michael Wonson) was incarcerated at the time and was communicating with Nixon via coded phone calls.

Each witness also described ongoing gang violence between the Alabama Avenue and Tolbert gangs. Contemporaneous police records corroborate the feud, as did Marcus Johnson, Newton's best friend, and as did *the government* in its prosecution of Johnson and Tolbert for the Eastside Club stabbing. Brown Br. at 22-23. Nowhere in its Opposition does the government dispute that, before the November 25 shooting, the Tolbert gang shot at Michael Raymond (Nixon's friend) and that, shortly afterward, a member of the Tolbert gang attacked members of the Alabama Avenue gang outside the Eastside Club in retaliation for Newton's murder.

Finally, there is Tyrone Jones, who not only witnessed the murder from 20 feet away and was firm in his belief that Rodney and Leonard were not the shooters, but was "confident" that a photo of Nixon resembled the shooter.

This consistent and corroborated testimony on key points is notable—and called for close attention by the trial court—because there is no evidence of collaboration amongst the witnesses, a fact not contested by the Opposition. None of the witnesses discussed what they knew about Nixon's responsibility for the killing before speaking with an investigator.³ Fogle and Gaulden were surprised to receive a visit from said investigator. 9/22/22 Tr. at 68:17-69:13, 80:24-81:21 (Fogle); 10/25/22 Tr. at 43:17-45:15 (Gaulden). And as of the hearing, Fogle wasn't even aware others had identified Nixon as the culprit. 9/22/22 Tr. at 69:8-10. Further, Marcus Johnson and Tyrone Jones named Nixon without knowing that

³ 9/22/22 Tr. at 68:21- 69:13, 80:24-81:21 (Fogle), 164:8-165:15 (Wonson); 10/25/22 Tr. at 43:21-45:15 (Gaulden).

the IPA proceedings implicated him as the shooter. 9/22/22 Tr. at 134:10-16 (Johnson); 10/11/22 Tr. at 106:25-107:3 (Jones). Indeed, Johnson’s testimony that he blamed the Alabama Avenue gang for the shooting and attacked members of the gang at the Eastside Club in revenge was not known until *the government* elicited the information on cross-examination at the IPA hearing. Brown ROA at 1892 n.8. Concocted stories do not align in this way.

Nor are they concocted for someone you have no reason to lie for. The IPA witnesses are not friends of Rodney or Leonard,⁴ but members of a rival gang,⁵ one of whom (Gaulden) refused to testify absent immunity given his involvement in Newton’s death. 9/30/22 Tr. at 23:13-18. Surely, a witness’s willingness to put themselves in harm’s way for someone *from a rival gang* counts in favor of credibility.

The trial court, however, considered none of this, despite the IPA requiring it to do so. D.C. Code § 22-4135(g)(1)(B) (“[T]he court ... *shall* consider ... [h]ow the new evidence demonstrates actual innocence.”) (emphasis added). The Opposition offers no defense except to assert that the trial court considered the evidence “as a whole.” Gov. Br. at 43. Yet, the trial court “does not mention” much of the above, *see Faltz v. United States*, 318 A.3d 338, 350 (D.C. 2024), and

⁴ 10/25/22 Tr. at 39:7-21, 46:20-22 (Gaulden); 9/22/22 Tr. at 64:22-65:8 (Fogle); 118:22-119:24-25 (Johnson). The Opposition makes no attempt to reconcile the trial court’s erroneous characterization of Wonson as a “good friend” of Rodney and Leonard. Brown Br. at 33-34.

⁵ 10/25/22 Tr. at 39:7-21; A676-77; A749-56 (describing gang violence in Simple City).

if it did consider it, offers no “explanation for why it seemingly rejected” important evidence that bears on the credibility of the IPA evidence, *see Henny v. United States*, 321 A.3d 621, 629 (D.C. 2024); *see also People v. Johnson*, 502 Mich. 541, 570-71 (2018) (“While Skinner’s testimony contained some questionable aspects, which the trial court appropriately noted, it also contained some reliable aspects, which the trial court failed to acknowledge.”).

ii. The Misstated and Misguided Arguments

Where the Opposition does engage with the arguments raised in the Opening Briefs, it misstates the trial court’s order or simply parrots the same errors made below:

Delay. Besides simply saying it does, the Opposition fails to explain *why*, under the circumstances here, the Alabama Avenue witnesses’ “delay” in recounting what Nixon told them should negatively affect their credibility. Reasons are needed. *See United States v. Facon*, 288 A.3d 317, 338 (D.C. 2023) (error for trial court not to give more explanation for why a certain factor was important); *Howell v. Superintendent Albion SCI*, 978 F.3d 54, 60 (3d Cir. 2020) (evidence “should be analyzed on an individual and fact-specific basis,” not “categorically rejected”). Absent reasons specific to the circumstances of the case, simply citing delay reads a *de facto* statute of limitations into the IPA, contrary to its plain language.

The delay in this case is perfectly understandable. Fogle, Gaulden, Gordon, and Wonson were all members of a rival gang. If they had come forward in 1994, they were at risk of being killed. 9/22/22 Tr. at 96:3-7 (“I would be dead right now.

There would be no doubt about that.”). Even apart from that risk, what reason did they have to come forward? They were not vying for the Rotary Club’s citizenship award; they were gang members. And a member of their gang (Nixon) had just retaliated for the Tolbert gang’s attempted killing of Nixon’s friend. 10/25/22 Tr. at 30:11-31:13, 34:5-35:4, 68:8-16. So why should the Alabama Avenue gang members care what happened to Rodney or Leonard, once they were blamed? *Id.* at 39:4-40:10 (“[I]f you don’t deal with somebody and you got a problem with them, why would you care what happened to them.”). Instead, they laughed about it: “it was a joke, it was them dumb n***** went to jail for something they didn’t do.” *Id.* at 40:4-5. This is common sense, but there is no indication the trial court considered this reason for why the witnesses spoke up when they did. For the court, delay was delay—and disqualifying. The Opposition merely says the same.

The trial court stated that it counted against the witnesses’ credibility that they did not come forward three months after the trial, when Nixon died, and the Opposition now repeats that. A808-809; Gov. Br. at 37-38. But his death gave the witnesses no reason suddenly to shed tears about Rodney and Leonard’s fate or to experience a road-to-Damascus conversion that would spur them to volunteer information to the police. And, in the years that followed, there were no events—certainly none the Opposition points to—that should have caused them to make a different calculation of self-interest. Ratting on a fellow gang member, even if dead, is not bred in the bone. Here, gang feuds in Simple City had been “going on since the ‘60s.” 10/25/22 Tr. at 39:19-21. And telling the truth could have led to retribution. 9/22/22 Tr. at 97:7-17 (“The penitentiary is a dangerous environment,

and I don't know how they feel if I tell them, man, Gene did that, you know what I am saying?").⁶ Indeed, the delay renders their accounts credible in light of these circumstances: given the historical feuding between the gangs, the only reason for these witnesses to come forward now is *because* of the passage of time.

The witnesses spoke about Nixon only many years later because someone asked. Without someone asking, they planned to leave “a closed door closed.” *Id.* at 97:18. And a MAIP investigator might never have asked if one gang member, Rodney Gordon, had not decided finally to “do what is right” after serving time with others who “were doing time for crimes they didn’t commit.” A682-84. Neither the trial court nor the Opposition grapples with this reality.

Motive/Target. The Opposition’s assertion that the IPA witnesses offered “wildly different accounts of the motive for the shooting” is inaccurate, blinkered, and, like the trial court’s order, fails to account for all the evidence. Gov. Br. at 40. Three of the Alabama Avenue witnesses acknowledged an ongoing feud between the Alabama Avenue and Tolbert gangs and explained the shooting in that context—a context that is undisputed, but which the Opposition never acknowledges. Indeed, it never uses the word “gang.”

The fact that Gordon, Gaulden, and Fogle attributed somewhat different motives to Nixon is not significant for two reasons. First, none of the three purported to recount what Nixon said about his immediate motive; all three

⁶ Like the trial court, the Opposition does not mention that Michael Wonson did not find out that Rodney and Leonard had been convicted of the shooting until 2010, at which time he was advised by counsel not to get involved. 9/22/22 Tr. at 161:19-162:17.

speculated based on the history of rivalry between the two gangs. Second, that speculation fell within a narrow and consistent range. Fogle said that Tolbert had shot at Nixon's good friend, Michael Raymond; Gaulden said that the Raymond shooting led to an agreement to kill Tolbert and "anybody that be with him;" and Gordon said they "got into it ... over a crap game" and, days later, Tolbert shot at Nixon. Brown Br. at 25.⁷ In other words, each of these witnesses described the same underlying motive: a violent feud between two gangs.

How the shooting unfolded is also consistent with the gang warfare that these witnesses described as background and explains how Nixon mistakenly believed he shot Tolbert that night. Nixon (i) saw Tolbert in the Circle; (ii) ran up through "the cut" in an attempted sneak attack; (iii) began firing, causing those in the parking lot to start running, and hitting several people in the back, including Carrington Harley, Keith Williams, and Joey Payne, any one of whom Nixon could have believed was Tolbert; (iv) came upon Newton who had fallen and shot him point blank because he was part of the Tolbert gang and someone Nixon had a separate grudge with. Brown Br. at 31-32, 34-35.

The Opposition makes no attempt to explain *why* the "plausible" explanations enumerated above and in Rodney's opening brief do not render any

⁷ Michael Wonson speculated that Nixon shot Newton over a girl. But there is no necessary conflict between Nixon's heading off to kill Tolbert because of an ongoing gang feud *that Wonson acknowledged*, 9/22/22 Tr. at 196:16-22, but then killing Newton when Nixon came upon him because of a separate squabble. Brown Br. at 26, 31, 34-35.

differences “insignificant.” See *Stringer v. United States*, 301 A.3d 1218, 1229-31 (D.C. 2023) (“[P]lausible” explanations not considered by the trial court rendered inconsistencies “of [not] much significance”).

Marcus Johnson. The Opposition claims the trial court rightfully ignored Marcus Johnson’s testimony because Johnson merely “assumed” the Alabama Avenue gang was responsible for Newton’s death. Gov. Br. at 41. But Johnson more than just assumed: he acted on the assumption, going to the Eastside Club to kill Alabama Avenue gang members. In any event, the government misses the larger point. Johnson’s testimony is significant and must be taken into account, not because it definitively proves innocence on its own, but because it corroborates the testimony of the Alabama Avenue witnesses that Newton’s death was the byproduct of gang warfare, and because it helps explain why Rodney and Leonard wrongly became suspects in the first place.

Tyrone Jones. Like the Alabama Avenue witnesses, the Opposition argues “[t]he trial court could reasonably discount Tyrone Jones’s claims given Jones’s lengthy delay in coming forward.” Gov. Br. 42. First, to cite delay without considering the circumstances that explain it is inadequate. Jones testified that talking to the police would have been a “cardinal sin” where he was from, 10/11/22 Tr. at 38:14-21, and that he did not realize until 2009 that Rodney and Leonard did not know he had witnessed the killing, at which point he immediately told Rodney what he witnessed, *id.* at 40:18-42:3. That can hardly be considered “delay.”

Second, the trial court did *not* cite delay in Jones coming forward as a reason to discount his testimony. A822. Rather, the court questioned the reliability of

Jones's memory because it was "based on observations made nearly three decades ago." *Id.* Again, this was error as the trial court made a categorical judgment without considering the facts at hand. Here, Jones has been repeating the same story since the 90s: (i) he told his cousin after Rodney and Leonard were arrested, (iii) he told Rodney in 2009, (iii) he executed an affidavit in 2011, then (iv) testified in 2022. And why would a 12-year old, who witnessed a murder committed right in front of him—only 20 feet away—ever forget it? Jones testified that his memory of the incident was "vivid," and there is no real-world reason to doubt him. Brown Br. at 42. Notably, the Opposition does not defend any of the trial court's *actual* stated reasons for determining that the reliability of Jones's non-identification of Rodney and Leonard was "far from clear." A822. Nor can it. Brown Br. at 40-43.

Finally, the Opposition argues the trial court "correctly concluded that Jones's identification of Nixon was wholly unreliable." Gov. Br. at 42. That is not what the order states. What the trial court concluded was that the evidence was "entitled to little weight." A822. Hyperbole aside, the Opposition relies on the *Biggers* factors to defend the court's conclusion, but the court did not rely on those factors or cite *Biggers* when discussing Jones. Like the non-identification of Rodney and Leonard, the Opposition does not defend any of the trial court's *actual* reasons for affording "little weight" to Jones's identification of Nixon. Brown Br. at 40-44.

B. The Evidence of Innocence Outweighs the Trial Evidence

Neither the trial court nor the Opposition acknowledges it, but the jury deliberated for over a week, deadlocking twice, and only reaching a verdict after receiving an anti-deadlock instruction. Good reason existed for their prolonged deliberations. Each of the government's witnesses at trial had incentive to lie:

Keith Williams told police on three separate occasions that he did not see the shooters. A116 at 146:2-24. He only changed his story when his probation was at risk and when he was being interrogated by a detective who scared him. A723; A728; A116 at 153:19-24. And by the time of trial, he was testifying pursuant to a plea deal that saved him from a mandatory 15-year sentence. A686; A116 at 159:6-165:23. New charges that all but forced him to testify given that he had been evading the police since changing his story. A116 at 156:14-23, 157:21-158:16.

Carol Jefferies, who had substance abuse issues and believed her memory *improved* when she drank, A303 at 376:13-378:5, 410:13-411:10, came forward six months after the shooting and only after she was evicted from her apartment, *id.* at 369:13-372:20. By the time of trial, the government had provided her with subsistence benefits totaling over \$6,000, including housing that solved her eviction problems. *Id.* at 376:2-7.

James Jones waited a year to come forward,⁸ and shortly thereafter found himself moving out of Simple City—an area he had been trying to leave for 8 years

⁸ The trial court holds delay against the IPA witnesses, but does not do the same for Carol Jefferies, who had incentive to lie when she came forward six months after the shooting, or for James Jones who came forward a year later and who

to no avail—and into an apartment owned by one of the detectives on the Newton homicide. *Id.* at 454:16-455:9; 458:25-459:6. Supposedly, by sheer coincidence.

Not only does self-interest explain their testimony, they contradicted one another and the undisputed evidence. Jefferies’s story contradicted both Jones and Williams; Jones contradicted the medical examiner; and Williams was impeached by Michael Toland’s IPA testimony. Brown Br. at 47-48.

The IPA evidence further established that the first lead the police got in the case (from Marcus Johnson) was a lie, *id.* at 48; that witnesses were being harassed and threatened by the police, *id.* at 46; and that the lead detective on the case was

Bishop Br. at 18.

Contrast that with the evidence of innocence: six witnesses who have no reason to lie for Rodney and Leonard, and whose testimony aligns with one another and the contemporaneous record.

On the one side, you have three government-incentivized witnesses who contradict one another, a motive that requires one to believe Rodney and Leonard fired at and shot two of their own friends (Michael Toland and Joey Payne), an investigation that pointed to Rodney and Leonard as a result of a now-admitted lie, allegations of witness harassment combined with a lead detective who was

, and a jury that struggled to convict.

On the other side, you have six witnesses who have no reason to lie—one of whom

admitted he had no excuse for his delay. A429 at 485:3-23 (stating he simply “chose not to report it”).

even required immunity because he was testifying against his self-interest—who all point to Eugene Nixon as the shooter, and a motive that makes sense and is supported by independent contemporaneous evidence indicating Newton was killed as a result of a tit-for-tat war between Alabama Avenue and Roy Tolbert. The latter certainly leaves any factfinder with a “firm belief” in Rodney and Leonard’s innocence. *See District of Columbia v. Hudson*, 404 A.2d 175, 179 & n.7 (D.C. 1979) (en banc) (clear and convincing standard).

The Opposition alleges deference is owed to the trial court in its assessment of the 1996 trial evidence. For support, however, it cites *Simms v. United States*, 244 A.3d 213, 217 (D.C. 2021), and *Parker v. United States*, 254 A.3d 1138, 1150 (D.C. 2021). Gov. Br. at 45. *Simms* and *Parker* involve cases where the trial judge presided over the relevant proceedings below. Judge Park did not preside over the 1996 trial. Thus, “his assessment of the weight of the trial evidence can be no better than [this Court’s].” *Caston v. United States*, 146 A.3d 1082, 1099 (D.C. 2016); *Stringer*, 301 A.3d at 1233 (“The [IPA] judge did not preside over [Appellant’s] trial and thus was not in an advantageous position to assess the weight of the trial evidence.”). Deference is also not owed to the trial court in its assessment of the IPA evidence for all the reasons argued *supra* and in the Opening Briefs.

II. THE IPA EVIDENCE IS NEW

The Opposition does not contest that the information learned from Fogle, Gaulden, Gordon, and Wonson is new under the IPA. Its reasons for why the testimony of Marcus Johnson and Tyrone Jones is not new mirrors the same errors

made by the trial court and does not contend with the arguments raised in the Opening Briefs. Bishop Br. at 8-16.

In any event, this issue need not be decided because even if they are not new, the trial court was still required to consider their testimony when assessing the evidence that was new. Bishop Br. at 11-12, 16. Johnson's testimony supports the Alabama Avenue witnesses as he (i) confirms there was an ongoing war between Alabama Avenue and Roy Tolbert, including exchanges of gunfire prior to Newton's death, and a retaliatory stabbing outside the Eastside Club following his death; and (ii) explains how Rodney and Leonard wrongly became suspects in the first place. Jones's testimony supports the Alabama Avenue witnesses as he confirms the shooters were not Rodney and Leonard and even identified a photo of Nixon as resembling one of the shooters, despite not knowing Nixon or his relevance to this case. The Opposition does not address any of this.

III. DETECTIVE RICE'S DISCIPLINARY FILE IS RELEVANT

Like the trial court, the Opposition asserts that Rice's credibility is not relevant absent him testifying. Gov. Br. at 48. This is misguided for two reasons.

First, to support its argument, the Opposition cites cases that discuss admissibility at a trial under the rules of evidence. Gov. Br. at 48. The IPA, however, does not require consideration of what may be admissible at a trial. It only contemplates relevancy. D.C. Code § 22-4135(g)(1) ("In determining whether to grant relief, the court may consider *any relevant evidence*.") (emphasis added). Relevant evidence is fundamentally different from evidence that can be admitted at a trial. *In re L.C.*, 92 A.3d 290, 297 & n.17 (D.C. 2014) ("Relevance, and the

concept it embodies, determines initially whether a proffered item of evidence will be admissible.” (citation omitted)); *see also* Fed. R. Evid. 401-402 (relevant evidence is admissible unless certain rules provide otherwise).

Second, the Opposition alleges that because Williams denied at trial any misconduct on Rice’s part, that no misconduct occurred. Gov. Br. at 48. That misses the mark. For evidence to be relevant, it does not need to definitely prove a point. *Dawkins v. United States*, 41 A.3d 1265, 1271 (D.C. 2012) (to be relevant, “evidence certainly need not be unambiguous to have some probative value” (internal quotation marks omitted)). It merely needs to have “*any tendency* to make the existence of any fact that is of consequence more or less probable than it would be without the evidence.” *Id.* at 1270-71 (internal quotation marks omitted). That Williams denied any misconduct at trial does not detract from the fact that Rice’s

has “any tendency” to make it “more

probable” that Rice used improper techniques during his interrogation of Williams.

CONCLUSION

Removing the trial court’s errors from its assessment of the IPA evidence, clear and convincing evidence exists that Eugene Nixon committed the November 25 shooting, not Rodney and Leonard. At the very least, a new trial should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2025, a true and correct copy of the foregoing Redacted Joint Reply Brief for Rodney A. Brown & Leonard E. Bishop was served upon:

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by the DCCA e-filing system. Pursuant to D.C. Ct. App. Rule 25(C)(2), electronic service by any means shall suffice where the party has consented to accept service, and D.C. Ct. App. Rule 25(B)(x) whereby electronic service shall constitute personal service.

/s/ Margaret Abernethy
Margaret Abernethy