IN THE DISTRICT OF COLUMBIA
COURT OF APPEALS

Appeal No. 23-CF-852
(Crim. No. 2021-CF1-005603)

SHAKA HALTIWANGER

Appellant,

v.

UNITED STATES OF AMERICA

Appellee.

APPEAL FROM THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

REPLY BRIEF FOR APPELLANT

Mindy Daniels, Esq.
#375439
P.O. Box 1594
Landover, MD 20785
mindydaniels@verizon.net
(202) 302-7441

Attorney for Appellant
(Appointed by this Court)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

ARGUMENT

I. The Trial Court Erred By Failing To Strike Juror 55 For Cause.

Appellee assures the court (at 13-19) that Juror 55 was an appropriate juror for a shooting case that would necessarily involve graphic images, including live footage of efforts to save the decedent on the scene, even though Juror 55 expressed concerns about his ability to sit on the case. Juror 55 articulated that they were squeamish to the point where they would not go to and sit through a scary movie and must even turn away from the sight of their own blood drawn during routine blood screening (3/7/23 Tr. 39-40). [1]

Appellee does not deny (at 19, n.4) appellant's assertion that the government's exhibit list included 25 graphic exhibits. Appellee argument is meritless that the thought these exhibits would have affected this particular juror's concerns is speculation, because the exhibits were gory by any standards (*id*.). The prosecutor knew during the discussion what exhibits it intended to introduce at trial and recalled that Juror 55 expressed a "general discomfort with graphic photos" and the court agreed (3/7/23 Tr. 180). In addition, having presided over pretrial proceedings, the trial court was aware this was a shooting where the victim

[1] Appellee states (at 1 n.1) that its references to the PDF record is split into two parts, one 647 pages and another at 650 pages. The court's docket does not show appellee's asserted split of the record. Appellant's citations in his pleadings are to the PDF record sent to counsel for appellant by the appeals coordinator. It is one record amounting to 1,297 consecutively numbered PDF pages. As a result, there is a disconnect between the PDF record pages cited to by appellant and appellee.

bled out on the scene so at a minimum it could anticipate there would be a lot of blood in photographs, this was a homicide and autopsy photographs would ordinarily be entered into evidence by the government, alongside graphic testimony from the medical examiner. Prior to trial and in anticipation of graphic evidence defense counsel unsuccessfully filed a motion seeking to have graphic exhibits excluded (R. 1,117 (PDF)).

The record indicates there was a plethora of graphic evidence entered into evidence. When the juror responded "I don't know" and "I hope so" in response to inquiry, those responses were not reassuring and they could not have imagined the extent of the graphics they would ultimately experience in this case. Appellee does not address the graphic nature of the evidence in this trial in their analysis. They do not address that jurors were forced to watch on a screen Officer Krycia's body-worn camera footage of him coming upon Mr. Kelley suffering from a gunshot wound and medics treating him on the scene, hopelessly (3/8/23 Tr. 64-67; R. 1186 (PDF); Gov. Exh. Nos. 401-403). Through that same officer the government introduced photographs of two different angles of the bullet wound to the victim's chest (*id*. at 75), photographs of Mr. Kelley's back with bullet hole (*id.* at 77), of blood on the scene in various areas (*id*. at 79-80), photographs of the victim and victim's stomach (*id.* at 74).

Dr. Golden presented a detailed walk through with numerous pictures and accompanying testimony of every aspect of the autopsy she performed. Included was a photograph of the body bag with victim in it, his blood covering a white sheet in the body bag and even a gruesome picture of the deceased with an intubation tube still in his mouth (3/15/23 Tr. 43-66). The exhibits that show Mr. Kelley (uncovered), his wounds, blood on the scene and any other graphic evidence is succinctly summarized in the Exhibit Summary (R. 1188-97 (PDF)). The obviously graphic evidence is designated as Exhibit Nos. 401, 402, 403, 109, 110, 111, 129, 130, 131, 132, 147, 148, 149, 151, 156, 169, 170, 292, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311 (*id*.).

For a juror with a stated aversion to blood and frightening scenes, the danger is that the only logical way through would be expediency and a rush to judgment to end the disturbing scenes before them. As a practical matter, the juror who would not venture into a scary movie, and does not look when blood is drawn, must be just hoping to get it over with. Even though the juror did not complain again to the trial court, the defense was correct to begin with, that out of an abundance of caution, the juror should have been struck for cause (3/7/23 Tr. 181). The trial court's failure to appreciate a juror who was unqualified and would have an aversion to an overload of graphic evidence in a murder case and thereby rush to

judgment to get it over with, was an abuse of discretion. *Doret v. United States*, 765 A.2d 47, 53 (D.C. 2000); *(Phillip H.) Johnson v. United States*, 701 A.2d 1085, 1089-90 (D.C. 1997) (juror who could not look at evidence should have been struck for cause).

II. The Trial Court Abused Its Discretion By Overruling Defense Objections To The Admission Of Non-Probative And Prejudicial Evidence That Mr. Haltiwanger Missed Mandatory Check-Ins With A Government Employee In Another Matter Shortly After The Offense Was Committed In This Case, And, Evidence Of A Legal Retainer Agreement For An Unrelated Matter Found In Haltiwanger's Car.

Ronetta Harris testified she was a "government employee", and that Haltiwanger was required to check in with her on a continuing weekly basis, he did so between April and September 7, 2021, but failed to do so after that date (3/13/23 Tr. 127-28). Appellee states (at 32) that evidence of Haltiwanger's failure to check in with the government employee "support[ed] the reasonable inference that he stopped checking in because he killed Kelley (*id*.). According to the government it was "evidence of his consciousness of guilt" (*id*. at 11). There was no question Haltiwanger shot Kelley and that he died from the gunshot wound. The question was whether the shooting was in self-defense. In any event, a "required" check in with a government employee and failure to do so presumes wrongdoing. The evidence was not just that he was checking in voluntarily, but that he was required

to do so. And the fact the agency Ms. Harris worked for was ghosted only added to juror speculation. The defense sought to have the evidence declared inadmissible prior to trial as prejudicial other crimes or bad acts evidence (R. 1129-32 (PDF)).

This was not cast as an optional check in to obtain some sort of government benefits. A "required" check in made for many months to a government agent, and then not, implied a need for accountability for past and current wrongdoing. Haltiwanger was already in some sort of legal trouble and being monitored. The government's effort to sanitize the prejudice by not naming the agency of the government employee is unavailing. It did involve the risk the jury would know that Haltiwanger was a "known criminal". *Parker v. United States*, 249 A.3d 388, 408-09 (D.C. 2021). Appellee's argument (at 25-26) that there was "no need to analyze the evidence under *Drew*" is incorrect. The same reasoning the trial court employed for finding a flight instruction would be prejudicial (that Haltiwanger feared his probation would be revoked) should have been used to sustain the defense objections to a failure or flight from checking in with a government agent.

The fact that Haltiwanger was using a particular telephone number was already in evidence through the witnesses he contacted after he left the scene and therefore provided no additional information in that regard.

In tandem with his failure to check in with a government agent, the government admitted over objection evidence of the retainer agreement in Haltiwanger's car. This, too, was the subject of a defense pretrial motion to suppress (R. 1129-32 (PDF)). Haltiwanger offered to stipulate the car was his. The document was not necessary to prove it was Haltiwanger's car, and where the gun was found in the wheel well. Even if the government is not required to accept a stipulation, the key fob found on the scene by police led to the car, Haltiwanger testified the car was his, and if he had not done so, the evidence could have been used for rebuttal.

The error of admission of the retainer agreement was exacerbated by it being called a retainer agreement instead of a contact, as the defense requested to mitigate prejudice. Appellee asserts (at 28) that any prejudice the evidence of the retainer agreement showed was miniscule because Haltiwanger was otherwise already in trouble with the law by evidence he was a drug dealer. But later appellee differently asserts (at 32) that evidence of his failure to comport with a required check in with a government agent and evidence of the retainer agreement provided little chance the jury would speculate Haltiwanger was involved in criminal activity and was therefore harmless.

Appellee contends (at 31) that evidence of the failure to check in with the government in another matter and evidence of the retainer agreement were "not an important part of the government's case" (*id.*). This concession by appellee shows that the evidence was less probative of anything having to do with guilt and simply prejudicial as appellant has argued, and evidence of other crimes. Evidence of other crimes and uncharged misconduct committed by a defendant to show propensity is presumptively prejudicial and inadmissible. *Drew v. United States*, 118 U.S. App. D.C. 11, 331 F.2d 85 (1964); (*William*) *Johnson v. United States*, 683 A. 2d 1087, 1090 (D.C. 1996). Evidence or prior bad conduct however can he useful to the government and in this case was far more prejudicial than probative.. "One study suggests that when a defendant's criminal record is known and the prosecution's case has contradictions, the defendant's chances of acquittal are 38% compared with 68% otherwise." *Thompson v. United States*, 546 A.2d 414, 425 (D.C. 1998).

The prosecutor knew that if Haltiwanger took the stand and testified, and unlike in many other cases, there were no impeachable convictions in the government's arsenal. But by putting together these two pieces of objectionable evidence together, the prosecutor was able to imply Haltiwanger had legal issues, enough to have to check in with a government agent, and retain an attorney.

III. The Trial Court Committed Reversible Error In Allowing The Prosecutor To Cross Examine Haltiwanger On His Knowledge Of Self-Defense Law.

Haltiwanger testified in his own defense and asserted he felt a general need to arm himself because by the age of 23 years, he had already been shot three separate times in his life. One of those shootings resulted in a spinal cord injury that caused him to have a drag foot and limp affecting his ability to walk normally. He used a cane at trial (3/20/23 Tr. 26-27). He testified he blindly shot at the decedent one time, in self-defense and because he feared for his life (*id*. at 33-37).

To support its cross-examination into Haltiwanger's knowledge of the law of self-defense in the District of Columbia, appellee makes much of its impeachment at trial of Haltiwanger with prior statements he made suggesting someone else did it or he did not appear to otherwise commit to the defense of self-defense early on. This is a red herring. The court has long held that self-defense is still a viable legal defense and to warrant a jury instruction, so long as this affirmative defense is reasonably supported by the evidence and even if it is different, or even contradictory, to another or prior defense theory. *Guillard v. United States,* 596 A.2d 60, 62 (D.C. 1991).

In this case, the evidence was undisputed that Haltiwanger is suddenly woken up and confronted by a drunk man larger than himself. A man he does not

know who is screaming at him, threatening him and physically assaulting him. It was undisputed the decedent was out of control, could not be stopped by his father from assaulting Haltiwanger, and followed Haltiwanger even after he kicked him out of his father's apartment. It was undisputed that only a few seconds before a shot rang out, a witness heard the decedent threatening to assault Haltiwanger again.

Neither appellant nor appellee have cited to a case directly on point on the issue raised: whether over objection a prosecutor can grill before the jury a testifying defendant on his knowledge of the law of self-defense because he has claimed he acted in self-defense and then use that lack of scholarly knowledge against him in closing argument to disprove he acted in self-defense. Appellant would argue a lack of case precedent is because the nature of this cross-examination is so egregious and counter intuitive to fairness that it has never come up. The prosecutor specifically stated that Haltiwanger's knowledge of the "law of self-defense" was relevant to his state of mind and therefore appropriate for cross-examination (3/20/23 Tr. 53). In response to a separate argument, appellee acknowledges (at 31-32) the proposition in *Morten v. United States,* 856 A.2d 595, 602 (D.C.2004) ("A prosecutor's stress upon the centrality of particular evidence in closing argument tells a good deal about whether the admission of the evidence

was meant to be, and was, prejudicial.")(cleaned up)." The prosecutor did use his lack of knowledge of the law against Haltiwanger in closing argument (3/20/23 Tr. 204).

The court cannot let this stand and affirm on this issue under the guise of any reasoning by appellee, even if the case were to be decided in an unpublished opinion. The message here to the government cannot be that it is fair game to cross-examine a defendant on his knowledge of the *law* surrounding his defense, and especially where there is an affirmative defense of self-defense, where case precedent and all of its permutations are complicated even for seasoned attorneys and the reason for hours long courses offered on this defense alone.

Attorneys are the ultimate strategists of the law, not defendants. Attorneys ultimately decide what defense will be put forward in a criminal matter. If this type of cross-examination is green lighted as a means to attack a defendant's credibility, it also dangerously treads on the sacrosanct privileges of the attorney-client relationship and advice given on what defenses may apply in a criminal matter. Haltiwanger got tied up in his own shorts by a polished prosecutor because he did not know the law. It was ultimately his attorney's knowledge of the law that led to a request for a jury instruction on self-defense. While a defendant's state of mind is subjectively relevant to an affirmative defense of self-defense, nowhere in

the lengthy jury instructions on self-defense (R. 1,233-35 (PDF) (Jury Instructions p. 30-32)) is there a mention of relevance of the defendant's knowledge of the law of self-defense in the District. As in every self-defense case, it was not Mr. Haltiwanger's burden to prove he acted in self-defense; it was the government's burden to prove he did not. *Bynum v. United States,* 408 F.2d 1207 (D.C. Cir. 1968). The government and the trial court took a wrong turn and shifted that burden by the improper cross-examination. The cross-examination in this case that was permitted over objection and to attack Haltiwanger's credibility as to his affirmative defense of self-defense is reversible error. [2]

[2] Appellee claims (at 44 n.8) that even if Haltiwanger's conviction for murder is reversed, his convictions for the firearms offenses must stand including the conviction for possession of a large-capacity ammunition feeding device in violation of D.C. Code § 7-2506.01. This position is contrary to the more recent position the government has otherwise taken as to the constitutionality of cases involving large-capacity magazines. Haltiwanger's brief and that of the appellee were filed before a current government determination on its position on feedings devices in *Benson v. United States*, Appeal No. 23-CF-0514. Haltiwanger asserts here his Second Amendment rights as to the legality of possessing a large-capacity magazine and pursuant to the government's position in *Benson*, the conviction should be vacated by the government in any event.

CONCLUSION

For all the reasons set forth in his briefs and for any other reasons the court deems appropriate, Haltiwanger's convictions should be reversed. [3]

Respectfully submitted,

/s/: *Mindy Daniels*
Mindy Daniels (CJA)
D.C. Bar # 375439
P. O. Box 1594
Landover, MD 20785
(202) 302-7441
mindydaniels@verizon.net

[3] Appellant's Reply Brief addresses certain aspects of the Brief for Appellee. Appellant maintains all arguments made in his opening brief. Any failure here not to address a point or argument appellee has made in its oppositional pleading is not meant to be taken as and should not be treated as a concession by the appellant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused a copy of the foregoing to be served by electronic means through the Court's electronic E-Filing system upon counsel for appellee, AUSA(s) Chrisellen R. Kolb and Bryan H. Han, this 18th day of November, 2025.

/s/: *Mindy Daniels*
Mindy Daniels