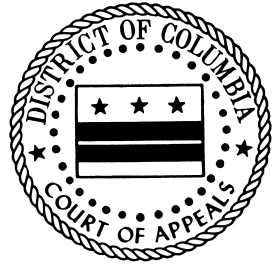


DISTRICT OF COLUMBIA COURT OF APPEALS



No. 24-CF-0972
ANTONE WATKINS
Appellant

2022-CF3-05457

Clerk of the Court
Received 06/27/2025 12:48 PM
Filed 07/07/2025 12:48 PM

v.

UNITED STATES
Appellee

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

REPLY BRIEF FOR APPELLANT ANTONE WATKINS

Nancy E. Allen
Attorney At Law
400-7th Street, N.W.
Suite 206
Washington, D.C. 20004
(434) 444-5395
Attorney For Appellant
(Appointed by the Court)

TABLE OF CONTENTS

TABLE OF AUTHORITIES	i
ARGUMENTS	
1. Appellant’s Merger Argument	1
2. Detective Naples’ Testimony Regarding D.C. Housing Authority Video Surveillance Footage.	1
3. The Complainant’s Testimony About his Fear of Appellant	5
a. Alternative Means	8
b. Generalized vs Specific Fear	10
c. Limiting Instructions	12
d. No Plain Error in Not Requesting Limiting Instruction	13
4. The Accumulation of Errors in the Instant Case	14
CONCLUSION	15

TABLE OF AUTHORITIES

CASES

<i>Allen v. United States</i> , 837 A.2d 917 (D.C.2003)	4
<i>Blackson v. United States</i> , 979 A2d 1 (D.C. 2009)	11-12
<i>Blunt v. United States</i> , 959 A.2d 721 (D.C. 2008)	10
* <i>Carpenter v. United States</i> , 635 A.2d 1289 (D.C. 1993)	7-8, 9
<i>Carter v. United States</i> , 614 A.2d 913 (D.C. 1992)	6, 11
<i>Clayborne v. United States</i> , 751 A.2d 956, 964 (D.C. 2000)	6
<i>Dyson v. United States</i> , 418 A.2d 127 (D.C. 1980)	12
<i>Ebron v. United States</i> , 838 A.2d 1140 (D.C. 2003)	7
* <i>Foreman v. United States</i> , 792 A.2d 1043 (D.C. 2002)	7, 14
* <i>Gordon v. United States</i> , 783 A.2d 575 (D.C. 2001)	6-11
<i>Lloyd v. United States</i> , 64 A.3d 405 (D.C. 2013)	4
* <i>McClellan v. United States</i> , 706 A.2d 542 (D.C. 1997)	6, 8, 11
<i>McGrier v. United States</i> , 597 A.2d 36 (D.C. 1991)	13
<i>McLeod v. United States</i> , 568 A.2d 1094 (D.C.1990)	4
* <i>Mercer v. United States</i> , 724 A.2d 1176 (D.C. 1999)	6, 8-9, 11-12, 13
<i>Murray v. United States</i> , 855 A2d 1126 (D.C. 2004)	7, 8
<i>Parker v. United States</i> , 797 A.2d 1245 (D.C. 2002)	6
<i>Price v. United States</i> , 697 A.2d 808 (D.C. 1997)	14

<i>Scott v. United States</i> , 619 A.2d 917 (D.C.1993)	4
<i>Shepherd v. United States</i> , 296 A.3d 389 (D.C. 2023)	4
<i>Smith v. United States</i> , 26 A3d 248 (D.C. 2011)	14
<i>Warren v. United States</i> , 436 A.2d 821 (D.C. 1981)	14
<i>Wilkins v. United States</i> , 582 A.2d 939 (D.C. 1990)	13

* cases principally relied upon

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 24-CF-0972

ANTONE WATKINS

Appellant

2022-CF3-05457

v.

UNITED STATES

Appellee

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

REPLY BRIEF FOR APPELLANT ANTONE WATKINS

Appellant Antone Watkins, through below signed counsel, submits on the arguments made in his initial brief and responds specifically to certain arguments in the government’s brief.

1. Appellant’s Merger Argument

Appellant notes initially that the government agrees that:

Watkins’s ADW conviction should be vacated, since it merges with his armed-robbery conviction. We also agree that Watkins’s PFCV conviction predicated on ADW should be vacated, since it merges with his PFCV conviction predicated on armed robbery.

Govt. Brief at 42 (citations omitted).

2. Detective Naples’ Testimony Regarding DC Housing Authority Video Surveillance Footage.

Appellant also notes that the government agrees with Appellant Watkins that it was error for Detective Naples to testify to “what he saw in the lost DCHA

surveillance footage.” Govt. Brief at 15. Appellant disagrees with the government that such error was harmless, particularly where the only eyewitness to the incident was a complainant the government charitably characterized at trial as “a character” (7/2/2024:61).

The complainant, Carlos Martinez Rodriquez initially told officers responding to the scene that a group of men had surrounded him and dragged him into an alley (7/1/24:151-152). That version of events was belied by surveillance footage that officers viewed on the scene, and that showed the complainant entering the alley with another individual – not being dragged by a group of men.

Thus, from the very start of the police investigation into the instant case, the complainant was embellishing and exaggerating. To the extent that jurors may have doubted his credibility as to what occurred in the alley, who struck him, and with what, Detective Naples’ erroneously admitted and prejudicial testimony bolstered testimony about which jurors would otherwise have harbored a reasonable doubt. For example, the evidence was certainly not overwhelming that appellant struck the complainant with a gun; there is no object in the hands of the individual identified as Appellant Watkins in surveillance footage; there is no weapon discarded at the scene; and the trial court specifically advised jurors that a weapon recovered during a search of appellant’s apartment was *not* alleged to be one used in the instant offense (7/2/24:43-44).

Detective Naples effectively vouched for the complainant's veracity and verified the complainant's version of events in very damaging testimony that the jury should have been precluded from hearing:

Q. What did the cameras show?

A: The cameras show the victim and the individual, Sherry, walking into the alley. Shows the subject, Mr. Watkins, walking into the alley, as well as the two individuals on bike going into the alley. And then actions are -- the video shows actions consistent with the one individual that's identified as Mr. Watkins in this case, going up to the victim, striking him, going through his pockets, as well as the other individuals on the bikes up around Mr. Rodriguez as well and then the individuals leave out of the alley.

Q. Is what you saw consistent with what Carlos reported happening in that alley?

A: Consistent with what he said is being struck with the firearm and then individuals going through his pockets and taking items from him.

(7/1/2024:186-187).

Such testimony cannot be considered harmless where it struck at the very heart of appellant's misidentification defense, *and* put a weapon on the scene that jurors could easily have doubted was there. Appellant contends that, even if jurors were convinced that he was the individual seen in video surveillance footage, evidence of anyone wielding a weapon was not strong – no one is seen in surveillance footage holding a weapon, examining a weapon, or passing it amongst themselves. To the extent the government characterizes the evidence of armed

robbery and PFCV as “overwhelming,” appellant contends that it was so only because of Detective Naples’ improper testimony.

Appellant contends that Detective Naples’ testimony regarding the non-existent video footage was not harmless in that – through his testimony – the government impermissibly bolstered the credibility of the complainant when it asked if what the detective saw in the video was “consistent with what Carlos reported happening in that alley?”

Asking a witness to comment on the credibility of another witness is impermissible. See, e.g. *Shepherd v. United States*, 296 A.3d 389,401 (DC 2023).

This Court wrote in *Lloyd v. United States*, 64 A.3d 405 (DC 2013):

More than twenty years ago, in *McLeod v. United States*, 568 A.2d 1094 (D.C.1990), we declared:

Asking the witness on the stand whether another witness's testimony is “accurate” is equivalent to asking the witness whether the other witness was lying or mistaken.... [T]his line of questioning is impermissible. We urge that litigants in this jurisdiction desist from attempting to find “nice” distinctions between phrasings which we have already explicitly condemned and those we have not yet explicitly condemned. *What is prohibited is seeking to have one witness comment or opine on the credibility of a prior witness, however phrased. Id.* at 1097 (emphasis added); *see also Allen v. United States*, 837 A.2d 917, 920–921 (D.C.2003) (rejecting “the false supposition that the witness must have perjured himself to be disbelieved”); *Scott v. United States*, 619 A.2d 917, 925 (D.C.1993) (“such questioning is patently improper”).

Lloyd at 412.

3. The Complainant's Testimony About his Fear of Appellant

Rodriquez, during cross-examination and evidently annoyed by defense counsel's questioning, blurted out that he was "trying to help [defense counsel's] client." On re-direct, then, and over continuing objection, the government intentionally prompted Rodriquez to testify that he specifically feared Watkins' reprisals from his testifying:

Q: I see you looking to your right.

(Objection overruled)

Q Are you being truthful?

A I don't know

Q Why do you say you don't know? Are you scared?

(Objection overruled)

W Yes, I'm scared for my life. Yes.

Q Why are you scared?

A Because I don't know if this individual might harm me or my folks.

Q And would you recognize him if you saw him out in the streets?

A. No, I wouldn't. I wouldn't recognize him until this day that y'all presented to me, yes. I would not know him in the streets.

(1/26/2024:173,174).

In the instant case, the trial court allowed government counsel to encourage Rodriquez to say not only that he was afraid of Watkins - indeed, *scared for his life* - but afraid that Watkins might harm his people as well. This was not a generalized fear of testifying in a criminal case, but an articulated and specific fear of Watkins that government counsel intentionally elicited and that the jury was allowed to hear. Government counsel made sure to note for the jury – over

objection – that Rodriquez was looking to his right (i.e. toward Watkins in the courtroom) while he was so testifying.

In order to avoid unfair prejudice, this court has also held that it is generally improper for a prosecutor to elicit evidence that a witness has a fear of the defendant. *See Mercer v. United States*, 724 A.2d 1176, 1184 (D.C. 1999); *McClellan v. United States*, 706 A.2d 542, 551 (D.C. 1997), *cert. denied*, 524 U.S. 910 (1998). However, evidence of a witness' "generalized fear," not specifically a fear of the defendant, may be admissible, in the court's discretion, to show bias or motive when the witness has previously withheld information or makes conflicting statements. *See Clayborne v. United States*, 751 A.2d 956, 964 (D.C. 2000); *McClellan*, 706 A.2d at 552 ("evidence that the real reason for [the witness'] silence was such self-protective fear is not necessarily inadmissible"). In such cases, this court has determined the admissibility of the challenged evidence by looking to the specificity of the fear, *i.e.*, by considering whether the threat is specifically linked to the defendant. *See Gordon v. United States*, 783 A.2d 575, 587 (D.C. 2001) (questions about witness' general fears were proper, but not questions about witness' fear of "these people," *i.e.*, the defendants); *Clayborne*, 751 A.2d at 964 (general question about "snitching" not linked to defendant was permissible); *Carter v. United States*, 614 A.2d 913, 917-918 (D.C. 1992) (question about a general threat from "other people" on "the street" was proper, but question about a more specific threat from the defendant would be improper).

Parker v. United States, 797 A.2d 1245, 1249-50 (D.C. 2002).

The government argues that the trial court did not abuse its discretion in permitting the prosecutor to elicit such testimony from Rodriquez on redirect because it was necessary to explain Rodriquez's demeanor during cross examination as well as his inconsistent accounts of the robbery, and did not suggest that Appellant Watkins had actually threatened him. Govt. Brief at 26. Government counsel notably began his examination of Rodriquez by highlighting

his fear of Watkins in the courtroom (“I see you looking to your right . . . are you scared?”). Thus, making clear to jurors that Rodriquez’s fear was directly linked to Appellant Watkins.

The government, in its brief, suggests that this Court distinguishes between eyewitnesses and victims – with victims experiencing fear “even more acutely” than mere eyewitnesses (Govt. Brief at 28, citing *Murray v. United States*, 855 A2d 1126 (DC 2004)), and writes “[n]otably, all of the cases relied upon by Watkins involved fear testimony by eyewitnesses, not victims.” *Id* at 28. This Court has consistently held that a trial court commits reversible error when it allows the government to elicit evidence that an *eyewitness* has been threatened for her testimony against the defendant, absent any evidence that the defendant was responsible for such threats. See *Ebron v. United States*, 838 A.2d 1140, 1148-51 (D.C. 2003) (reversing a murder conviction where a witness testified about “throat-slashing gestures made by two spectators during his testimony”); *Foreman v. United States*, 792 A.2d 1043, 1048-51 (D.C. 2002) (reversing a murder conviction where a witness testified she was “scared” after a conversation with the defendant’s girlfriend); *Gordon v. United States*, 783 A.2d 575, 587-88 (D.C. 2001) (reversing a murder conviction where a witness testified that she was reluctant to testify in front of “these people” because “she feared for her life”); *Carpenter v. United States*, 635 A.2d 1289, 1293-94 (D.C. 1993) (reversing a

voluntary manslaughter conviction where a witness testified that she was assaulted several weeks before trial).

Specifically, the *Murray* Court wrote:

Our decisions have explained that "evidence concerning a witness' fear tends to be extremely prejudicial because it appeals to the passions of the jury and may cause the jury to base its decision on something other than the rule of law." *Gordon*, 783 A.2d at 586, citing *Mercer*, 724 A.2d at 1184, and *McClellan v. United States*, 706 A.2d 542, 551 (D.C. 1997). More particularly, reference to fear may "suggest[that] the witness fears reprisal at the hands of the defendants or [their] associates if [he] testifies," *McClellan*, 706 A.2d at 551; see *Gordon*, 783 A.2d at 588, thereby substituting concern -- in the jurors' minds -- with the ongoing dangerousness of the defendants for the issue of whether they committed the crimes charged. The government argues that it had a special need to mention King's fear of appellants because his character and credibility had been harshly attacked, but it frankly admitted at oral argument that a similar justification for testimony and comment regarding witness fear could be urged in a good many cases involving witness-complainants who have been the victim of violent crime. Our decisions such as *McClellan*, *Mercer*, and *Gordon* teach that permissible questioning and argument by prosecutors about witness fear -- especially fear of the defendants on trial -- must be the limited exception rather than the rule.

Murray at 1132-1133.

a. Alternative Means

This Court has repeatedly held that, even when evidence of witness intimidation is relevant "to explain the specific behavior of a witness, such as inconsistent statements, delay in testifying, or unusual courtroom demeanor," it should nevertheless be excluded as substantially more prejudicial than probative if the government can accomplish the same goal through "an alternative, less

prejudicial method,” *Mercer* at 1187-1188, such as eliciting evidence of the witness’s general fear of testifying. This is so because evidence of witness intimidation “appeals to the passions of the jury and may cause the jury to base its decision on something other than the rule of law.” *Gordon* at 586.

Although this Court has recognized that weighing the probative value of evidence against its prejudicial impact is “quintessentially a discretionary function of the trial court,” *Mercer* at 1185, this Court’s decisions in *Carpenter*, *Mercer*, and *Gordon* stand for the proposition that, while evidence of a witness’s fear can be admitted to explain inconsistent statements, delay in testifying, or unusual courtroom demeanor, such evidence must be “narrowly tailored” to this goal, *Gordon* at 587, and where the prosecution can achieve this goal through “an alternative, less prejudicial method,” such as eliciting the witness’s general fear of testifying, *Mercer* at 1188, any evidence of specific threats against the witness is inadmissible as substantially more prejudicial than probative, not only because such threats are likely to be imputed to the defendant, thereby heightening the prejudicial effect, but also because such evidence lacks significant probative value if the government can achieve the same goal with substantially less prejudicial evidence.

In the instant case, Rodriquez had to be arrested on a material witness warrant on the first scheduled day of trial (6/24/24:8-10, 21-22), and had already

testified on direct and cross-examination that he did not want to testify and was only in court because he had been forced to do so after disregarding a subpoena (6/26/24: 89-90, 123-124). Thus, it was clear that he was reluctant to testify in a criminal case; there were alternative means of explaining his reluctance to the jury without first asking him if he is scared of Mr. Watkins and then having him elaborate on his fear of gristly reprisals from the defendant in the courtroom. Government counsel in the instant case specifically linked Rodriguez's fear of testifying to the prospect of Appellant Watson's retaliation, thus inviting the jury to speculate "that no one else had the same motive to retaliate as did [Mr. Watson] or persons acting for him." *Blunt v. United States*, 959 A.2d 721, 725 (DC 2008).

b. Generalized vs Specific Fear

This Court, in *Gordon*, noted that the prosecutor had every right to establish that the witness' testimony in that case was not due to her fear of a possible perjury prosecution – as defense counsel had suggested on cross-examination. *Gordon* at 587. The Court found that, even if the government's redirect examination elicited evidence of the witness' "general fear of testifying in open court" that would be admissible. *Id.* The *Gordon* Court wrote:

Thereafter, the prosecutor's first three questions to Gravette established that 1) she was afraid, 2) the only reason she was testifying was because the prosecutor came to get her, and 3) she never wanted to participate in the proceedings. At that point, the prosecutor had solicited the reasons for Gravette's reluctance to testify and her possible motive for not testifying in a manner consistent with her grand jury statement. Once the prosecution had

elicited this testimony, it should have ended its re-direct examination. By encouraging [the witness] to tell the jurors why she did not want to testify "in front of *these people*," referring to Gordon and Williams, the questioning by the prosecutor was no longer narrowly tailored to respond to the specific allegation of government intimidation made by Gordon.

Id.

Generalized fear of testifying has been found admissible by this Court.

Mercer at 1189-90 (holding that the trial court did not err in admitting evidence that a witness initially failed to comply with a subpoena because "she was scared"); *McClellan v. United States*, 706 A.2d 542, 551 (D.C. 1997) (holding that the trial court did not err in admitting evidence of a witness's "generalized fear for her own safety after witnessing a murder"); *Carter v. United States*, 614 A.2d 913, 917 (D.C. 1992) (holding that the trial court did not err in admitting a witness's testimony that "in some cases" informants "might face other consequences in the street").

This Court in *Blackson v. United States*, 979 A2d 1 (DC 2009), a case on which the government relies, found no abuse of discretion in the trial court's allowing a witness to be questioned about his generalized fear of testifying as a means of explaining his inconsistent statements. In that case, unlike in the instant case, the witness' testimony that he was afraid of being considered a snitch, that snitches are disliked in the community, and that he had been threatened by "unfamiliar people" did not specifically implicate the defendant.

The trial court in *Blackson* gave a limiting instruction following the witness' testimony:

The Court allowed testimony about snitches and prior threats for purposes of your considering Mr. Yeager's testimony here in court, [his] credibility and believability here in court. Not as any evidence that [Blackson] had threatened a witness or any evidence that [Blackson] had any third party threaten [Yeager]. So you are instructed to consider it only on the issues of credibility and not on issues, any issues, you cannot consider it any way as any evidence that [Blackson] threatened [Yeager] or caused anyone to threaten [Yeager].

Blackson at 8.

The *Blackson* Court found it significant that (1) the witness' testimony was meant to explain his inconsistent statements; (2) the court gave an instruction advising jurors of the proper use of that testimony; (3) the witness' testimony did not implicate Blackson; and (4) the court's limiting instruction made clear that there was no evidence that Blackson had any third party threaten the witness.

Blackson at 11.

c. Limiting Instructions

So, too, in *Mercer*, the Court noted "decisive factors" in determining whether an error was reversible, including "the steps taken to mitigate the effects of the error." *Mercer* at 1194, quoting *Dyson v. United States*, 418 A.2d 127, 132 (D.C. 1980). Such steps, in *Mercer*, included the trial court's instructing the juror on the proper use of the objected-to testimony of a government witness. *Mercer* at 1190.

Compounding the error in the instant case was the trial court's failure to give any limiting instruction to the jury following Rodriguez's prejudicial testimony that expressed a strong fear for his life and of Watkins harming his people as well. The government underplays the importance of such an instruction by noting that "it may have been preferable for the trial court to issue a cautionary instruction after Rodriguez's testimony, [but] the failure to do so was not reversible error, particularly where Watkins's counsel never requested such an instruction." Govt. Brief at 30, n. 12.

d. No Plain Error in Not Requesting Limiting Instruction

Just as this Court does not expect defense counsel to continue making futile objections, so too a request for a limiting instruction would certainly have been unsuccessful in the instant case. "An objection to evidence, once made and overruled, need not be renewed to the same type of evidence subsequently received." *Wilkins v. United States*, 582 A.2d 939, 942 n.7 (D.C. 1990). *See also McGrier v. United States*, 597 A.2d 36, 45 n.14 (D.C. 1991). *Mercer* at 1182. Defense counsel objected throughout the redirect exam of the complainant, and his objections were overruled without an opportunity to approach the bench, and without the court explaining its rulings. Given that the trial court clearly saw no legal issues with Rodriguez's testimony on redirect, Appellant Watkins contends

that a request for a limiting instruction would have been fruitless. Thus, under the circumstances, it was not plain error not to request one.

4. The Accumulation of Errors in the Instant Case

Finally, Appellant Watkins suggests that the accumulation of errors in the instant case resulted in his conviction.

The standard for reversal where more than one error is asserted on appeal is whether the cumulative impact of the errors substantially influenced the jury's verdict. *See Price v. United States*, 697 A.2d 808, 811 (D.C. 1997) . . . In assessing whether the combination of errors may have substantially influenced the jury's verdict requiring reversal of Foreman's convictions, we evaluate the significance of the alleged errors and their combined effect against the strength of the prosecution's case. *See Warren v. United States*, 436 A.2d 821, 842 (D.C. 1981).

Foreman v. United States, 792 A.2d 1043, 1058 (D.C. 2002).

This Court has long recognized that “individual errors, not warranting reversal, may when combined so impair the right to a fair trial” that reversal is required. *Smith v. United States*, 26 A3d 248, 264 (DC 2011).

In the instant case, Detective Naples was allowed to provide “eyewitness” testimony to an offense to which he was not an eyewitness, from video footage that was never shared with defense counsel, not preserved, and about which the detective apparently had no notes. Additionally, Rodriquez was allowed to testify – without any evidentiary basis – that he feared violent reprisal from Appellant Watkins for his testimony, and the trial court did not address the prejudicial impact

of such testimony with any kind of limiting instruction. The combination of errors going to critical issues in the case requires reversal.

Appellant contends that the prosecution's case against him was not so overwhelming that the complained of errors did not have significant impact. Even if jurors thought that Watkins was somehow involved in an offense against Rodriquez, the only evidence of a weapon – without the prejudicial testimony of Detective Naples – was the testimony of Rodriquez himself. Without Detective Naples' testimony regarding what he allegedly saw on video footage, the jury could certainly have questioned the complainant's credibility as to the use of a weapon. Compounding the error was the trial court's allowing Rodriquez to testify that he feared for his life, i.e., that he might be murdered, not just for testifying in open court, but specifically for testifying against Watkins.

CONCLUSION

Based on the foregoing and arguments in the initial brief, Appellant Watkins respectfully requests that this Honorable Court reverse his convictions as described.

A handwritten signature in dark ink, appearing to read "Nancy E. Allen", with a horizontal line underneath.

Nancy E. Allen, DC Bar 430554
400-7th Street, N.W. Suite 206
Washington, D.C. 20004
(434) 444-5395
Counsel for Antone Watkins
(Appointed by the Court)

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of June 2025, a copy of the foregoing reply brief was served on the Court and delivered to the Office of the U.S. Attorney for the District of Columbia, Appellate Division, 601 D Street, NW, Washington, D.C. 20530 via the DCCA E-File System. It was sent by first class mail to ANTONE WATKINS, FED. REG. NO. 60425-007, USP CANAAN, P.O. BOX 300, WAYMART, PA 18472.

A handwritten signature in dark ink, appearing to read "NEA", written over a horizontal line.

Nancy E. Allen