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

REPLY BRIEF FOR APPELLANT BARRY STRINGER

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SUMMARY OF ARGUMENT

After preaching "deference to [the trial court's] credibility determination" (Gov. Br. 34), the government barely defends the actual reasoning underlying that determination. On remand after *Stringer 1*, the trial court cited "two critical facts" discrediting Roderick Charles's exonerating testimony. 2024R1 at 10 (A276). But these two critical facts depended on clear errors of logic and fact, and the government is unable to dispute those errors or rehabilitate the resulting findings.

Instead, the government proposes other, hypothetical reasons to discredit Charles's testimony. But the trial court did not adopt the government's alternatives, which also contradict this Court's decision in *Stringer 1*, other findings that the trial court did make, or other evidence in the record.

First, the government does not directly defend the trial court's mistaken assumption that the absence of blood on Charles's seat reflected the absence of blood on Charles himself. The government does not and cannot defend this logic; at trial, the prosecutor told the jury that Tilford Johnson's blood "should have been on that seat" but "somebody was there and it covered them instead." 8/16/06 Afternoon Tr. 22:25–23:4. Instead, the government argues that the blood evidence did not require the trial court to credit Charles, and points to other physical evidence that the trial court might have relied on. But the Court must

review the trial court's actual findings and reasons, not the government's proposed alternatives—which themselves contradict the record.

Second, the government does not dispute that the trial court's other main assumption—that the government charged Stringer before he wrote a letter to Charles in jail—is false. Hoping to downplay the trial court's factual error, the government again proposes fallback findings. Again, however, the trial court did not adopt the government's hypothetical findings—which depend on circular reasoning and subvert the Court's analysis in *Stringer 1*.

Finally, the government is unable to defend the trial court's incomplete evaluation of the government's case against Stringer. Because the trial court appears to have overlooked the trial testimony of two witnesses who corroborated Charles's hearing testimony, the government proposes yet more hypothetical bases on which Stringer could have been convicted. Again, the government's appellate brief cannot cure a trial court's omissions, especially when this Court has already directed the trial court "to consider the potential weaknesses in the government's case to a greater extent than it did." A262 (cleaned up).

As the Court explained in *Stringer 1*, if Charles "is believed, Mr. Stringer is innocent." A253. In again discrediting Charles's testimony, the trial court relied on

new errors of logic and fact. And the government's attempt to improvise corrections does not cure the trial court's clear error.

ARGUMENT

I. The government fails to justify the trial court's basic logical error when evaluating the blood evidence.

A. Stringer could not have challenged the trial court's post-remand reasoning in his pre-remand appeal.

The government incorrectly faults Stringer for failing to challenge the trial court's post-remand analysis—about the relationship between the blood on the front passenger seat and Charles's ability to produce a blood trail—in his pre-remand IPA appeal. In a footnote, the government asks the Court to "deem the claim waived" on the ground that "Stringer chose not to brief this claim on his first appeal at a time when he could have done so." Gov. Br. 37 n.17. But the trial court did not analyze the blood inside the car until after the remand ordered by *Stringer 1*; the government does not explain how Stringer could have prepealed something that the trial court had not yet said or done.

None of the cases cited in the government's footnote required a party to preemptively address, in its first appeal, hypothetical reasoning that the trial court had not discussed or relied on. *See* Gov. Br. 37 n.17. In two of the cases, the party had failed to appeal a ruling issued before the first appeal. *See Breezevale Ltd. v.*

Dickinson, 879 A.2d 957, 967 n.10 (D.C. 2005) (trial court had rejected an unclean-hands argument in an order issued before appellant's first appeal, but first appeal did not challenge the unclean-hands ruling); *Parker v. United States*, 254 A.3d 1138, 1142 n.8, 1144 (D.C. 2021) (defendants' claim of instructional error had been rejected by the trial court before the first appeal; the claim was neither argued nor revisited on remand). In another, the argument was raised and rejected in the first appeal. *See Thoubboron v. Ford Motor Co.*, 809 A.2d 1204, 1215 (D.C. 2002) (challenge to reasonableness of fee award challenge was conclusively "determined by this court" in the first appeal). The government's final case did not involve a second appeal, let alone a waiver in a second appeal; rather, the Court was considering a merger argument in the defendant's first, direct appeal. *See Nixon v. United States*, 730 A.2d 145, 151–53 (D.C. 1999).

In this case, conversely, the primary basis for the trial court's post-remand order was announced for the first time after the remand ordered in *Stringer 1*. Stringer "had no reason to anticipate" that it would be part of a possible future trial court order in the event of a remand. *See United States v. Teixeira*, 62 F.4th 10, 18 (1st Cir. 2023) (rejecting government's argument that defendant forfeited objection to reasoning introduced in the trial court's final ruling). He need not have—and could not have—challenged the trial court's reasoning before it existed.

B. The government fails to rehabilitate the trial court's analysis of the blood evidence.

1. The government does not directly defend the trial court's logical error about the absence of blood on the front passenger seat.

On the merits, the government overlooks the "most important[]" reason for the trial court's post-remand credibility determination. 2024R1 at 10 (A276). To repeat: The trial court wrote 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." *Id.* at 2 (A268). Believing blood on the seat to be a proxy for blood on the seat's occupant, the trial court opined 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.* (emphasis omitted). The government's argument barely identifies this basis for the trial court's credibility decision, and the government does not directly defend the trial court's reasoning. *See* Gov. Br. 36–39.

The government's silence is understandable: The trial court's logic not only is backwards, but also contradicts the government's theory at trial. *See* Opening Br. 41–44. As the prosecutor told jurors during closing, "Why do you think there's not any blood on the passenger seat? 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." 8/16/06 Afternoon Tr. 22:25–23:4. Whether or not the prosecutor's closing claimed that the front passenger was the shooter (Gov. Br. 6 n.4), the prosecutor understood that the absence of blood on the front passenger seat evinces the presence of blood on the front passenger. In discrediting Charles, the trial court reached the opposite conclusion, which the government does not try to reconcile with its argument at trial.

Equally unavailing is the government's argument that Stringer cannot challenge the trial court's forensic analysis because he did not present a blood-spatter expert at the IPA hearing. *See* Gov. Br. 37. Again, the government sang a different tune at trial. After telling jurors that Johnson's blood landed on the front passenger, rather than on the front passenger seat, the prosecutor added, "You don't need a blood splatter expert to tell you that." 8/16/06 Afternoon Tr. 22:25–23:4. "Common sense indicates" that when 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).

If expert testimony were required, then its absence would further undermine the trial court's conclusion that the blood spatter discredits Charles's testimony. The trial court, not Stringer, deemed this blood evidence to be the "most

important" factor affecting Charles's credibility and then, when evaluating that evidence, deviated from both logic and basic forensics principles. Despite relying on this blood evidence as the new basis to question Charles's credibility, the trial court did not request expert testimony—unlike in other post-remand proceedings in this case. *See United States v. Stringer*, No. 2005 FEL 4970, at 1 (D.C. Super. Aug. 31, 2021) (after this Court vacated denial of compassionate release, trial court sua sponte scheduled evidentiary hearing and set "deadline for lay and expert witness disclosures"). The resulting lack of foundation undermines the trial court's basis for disbelieving Charles, not Stringer's underlying claim of innocence.

2. The trial court's clear error is reinforced by the presence of blood in the car's back seat.

The government likewise misunderstands Stringer's argument about the presence of blood on the back seat. He does not claim, as the government suggests, that this blood spatter independently proves his innocence. *See* Gov. Br. 37 ("For the first time in this (second) appeal of the trial court's denial of his IPA motion, Stringer claims (at 41–45) that the blood-spatter evidence at trial demonstrates that only one person was in the car with Stringer, and that person was in the front-passenger seat, and could not have been in the back-passenger seat."). Rather, the presence of blood in the car's back seat reinforces that the trial court clearly erred when concluding that the blood evidence discredits Charles's exculpatory

testimony. *See Jones v. United States*, 918 A.2d 389, 412 (D.C. 2007) ("At the very least, the fingerprint evidence cannot be viewed as so conclusive that it itself destroys the credibility of the proffered alibi witness.").

What is more, the government again contradicts its theory at trial. The government claims that "no witness described the back seat as 'covered' in blood." Gov. Br. 38. But the relevant witness said that in so many words: The backseat and floorboard had "a vast amount of blood." Trial Tr. 435:18–25. As the trial court reiterated, "on the rear seat and on the rear floorboard, there was a vast amount of blood that was still wet." 2024R1 at 3 (A269) (cleaned up). That blood, the prosecutor told the jury, "is all in the back seat." 8/16/06 Afternoon Tr. 22:22–23:5.

In sum, the government is unable to defend the trial court's conclusion that the location of Johnson's blood contradicts Charles's testimony. The government argues only that (1) "there is no evidence that the blood spatter in the back seat was inconsistent with a second person sitting there" (Gov. Br. 38), and (2) the cited cases "cannot answer whether there was a void pattern on the back seat and what significance, if any, that pattern held" (Gov. Br. 38–39 n.18). The government's equivocation further undermines the trial court's belief that Charles's testimony was discredited by the location of the blood in Johnson's car.

3. The hearing record refutes the government's assumption about the position of the front passenger seat, which the trial court did not rely on.

Unable to defend the trial court's discussion of the blood, the government asks the Court to make its own, speculative factual findings about evidence that the trial court did not consider. The government writes that "the front-passenger seat was pushed forward when police discovered the locked car, thus permitting the inference, as the government urged in closing, that two persons were in the car with Johnson." Gov. Br. 36. The hearing transcript offers a different explanation: Charles testified that after killing Johnson, he "grabbed the bag [of cash] out the back seat." 10/23/18 Tr. 25:21–23 (A125).

In any event, the government concedes that "the trial court did not discuss it." *Id.* The Court "cannot affirm the trial court's ruling on a factual ground that was not relied upon by the trial court." *Mason v. United States*, 170 A.3d 182, 188 (D.C. 2017).

II. The government fails to justify the trial court's other factual errors and omissions.

A. The government cannot rehabilitate the trial court's mistake of fact about the timing of Stringer's letter to Charles.

The government does not defend the trial court's mistaken assumption that *Stringer 1* had upheld reliance on Stringer's letter to Charles. *See* Opening Br. 46–

47. Nor does the government dispute that the trial court's chronology was wrong: The trial court mistakenly believed that Stringer had written to Charles "[a]fter they were both arrested for the murder," 2024R1 at 8 (A274); at the time, Stringer had not been charged. *See* Opening Br. 45–46. Unable to defend the trial court's actual, mistaken finding, the government invents new reasons on which the trial court did not rely. The Court may not make findings that the trial court did not, and in any event the record does not support the government's largely circular reasoning.

Because Stringer had not been charged at the time he wrote the letter to Charles, the government asks the Court to find that Stringer was "well aware" that he "could be charged with Johnson's murder." Gov. Br. 39. Again, however, this Court may not find backup facts that the trial court did not. *See Evans v. United States*, 122 A.3d 876, 884 (D.C. 2015) (although the government argued that the police would have gotten a search warrant even if the officer had not entered the apartment, "the trial court had no occasion to make a factual finding as to what the officers would have done if [the officer] had not entered the apartment"). In any event, the government's relies on circular reasoning comparable to what the Court rejected in *Stringer 1*. *See* A257 (it was "circular" reasoning "to assume that there

was a partner and it was Mr. Stringer because Mr. Charles spoke to someone numerous times after the murder") (emphasis in original).

To begin, the government insists that Stringer, in June 2005, was afraid of being charged because, "right after Stringer called Charles on June 4, Charles called to change (or cancel) his phone number." Gov. Br. 39 (cleaned up). This argument assumes two of its conclusions. When the government writes that "Stringer called Charles on June 4," the government assumes that the phone registered to Carlos Sly actually belonged to Stringer. *Stringer 1* held that this assumption was unconvincing, and on remand the trial court withdrew its previous findings about "the telephone records." 2024R1 at 10 (A276). More fundamentally, if Stringer did not participate in the murder he would have found it unremarkable that Charles changed his phone number. *See generally* Matthew Hausmann, *Why Low-Income Families Often Change Mobile Numbers—And What That Means for School Communication*, Wellfleet Associates (May 27, 2025), https://tinyurl.com/4nfvm2ux. Charles's change of phone number would not have suggested that Charles was worried about being charged with murder, let alone that he (Stringer) was also a suspect in that murder.

Equally circular is the government's attempt to infer guilt from the fact that on "the day police executed the search warrant at Charles's home, Stringer called

Thompson and told her to cancel his phone." Gov. Br. 26. Again, the government repeats the faulty assumption that the phone registered to Sly actually belonged to Stringer. And again, the government assumes its own conclusion. If Stringer did not participate in the murder on June 3, he would have found it unremarkable that Thompson was being asked to cancel Sly's phone on June 27.

There is even less basis for the government's claim that "the fact that Stringer had not been charged with the murder at the time he wrote the letter to Charles only strengthens the court's inference: Stringer and Charles had killed Johnson together and Stringer needed to be sure that Charles, who had been charged with the crime, kept to the 'code' of silence and did not himself 'rat' on Stringer (see R3.56 (2024 Order))." Gov. Br. 40. This too assumes the conclusion: Only if Stringer had committed the murder would the lack of murder charges against him be suspicious. Otherwise, the lack of charges against him—two years after the shooting, and nine months after someone else had been charged—would have suggested that he was unlikely to be charged.

The government then deviates even further from the trial court's actual findings. "[A]lthough the court did not mention it," writes the government, "Stringer's admission at trial that he had written the letter but had not written the notes on the confidential separation order strained credulity"; the government

even asks the Court to make factual findings about the "handwriting on various parts of the [attached] document." Gov. 40. But even if Stringer had written these notes, they would not link Stringer to the crime for which Charles had been charged (and for which Stringer had not been charged): The list includes two witnesses in Stringer's then-pending case; Charles's father, Roderick Stringer; and even Stringer himself. 6/26/06 Charles Tr. 17:8–12, 20:8–16, 22:1–4; Trial Tr. 585:20–586:7. These notes, even if considered, would further undermine the trial court's conclusion that Stringer was writing to Charles about Johnson's death.

The contemporaneous understanding of Charles's trial counsel further undermines the government's alternate factual theories; like the trial court, the government fails to address it. Although he would have received ample discovery about the government's investigation of the shooting—including *Brady* disclosures about other suspects or participants—Charles's trial counsel was "very surprised that Mr. Stringer ended up [as a] co-defendant." Opening Br. 46 (quoting 6/26/06 Charles Tr. 9:17–19). If Charles's trial counsel did not think Stringer would be charged, it is even less likely that Stringer would have feared otherwise.

B. The government fails to justify the trial court's failure to address other material exculpatory evidence, and continues to overstate the strength of the case against Stringer.

As the Court recognized in *Stringer 1*, on remand it was "incumbent on the [trial] court to consider the potential weaknesses in the government's case to a greater extent than it did." A262 (cleaned up). Yet the government insists that the trial court "was under no obligation to discuss explicitly the two defense witnesses, Driver and Vanderhall" who testified at trial that Charles had told them—well before Stringer was charged—that he (Charles) had acted alone. Gov. Br. 41. Especially given this Court's guidance in *Stringer 1*, the trial court was not free to overlook the trial testimony of two witnesses who, if believed, (1) corroborate Charles's declaration and testimony that he acted alone, and (2) corroborate Charles's testimony about his conversation with Vanderhall when they shared a jail cell on unrelated charges.

Again, the government tries to supply the analysis that the trial court omitted; this time, the government proposes reasons why the trial court could have rejected Driver's and Vanderhall's testimony. Gov. Br. 41. Yet again, there is no reason to believe that the trial court would have shared the government's view—or even that the trial court considered these witnesses' testimony at all. And as in *Stringer 1*, these omissions are even more concerning because 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." A262.

Unable to defend the trial court's omissions, the government proposes alternate reasoning—which either the trial court withdrew after *Stringer 1* or otherwise contradicts the record and *Stringer 1*.

First, the government claims that Tiffany Thompson's inculpatory grand jury testimony was more credible than her exculpatory trial testimony. Gov. Br. 41–42. In response to *Stringer 1*, however, the trial court observed that it had "no basis to judge the credibility of Ms. Thompson's trial testimony" and that the record does not "offer any objective reason to credit her trial testimony over her grand jury testimony." 2024R1 5 (A271).

Second, the government revisits the trial testimony of Robert Lyles, conceding only "the natural suspicion that a cooperating witness can invite." Gov. Br. 42. But as the Court recognized in *Stringer 1*, Lyles's testimony was unusually suspicious. Even when facing a decade in prison, "Lyles told law enforcement four times that Mr. Stringer had not told him anything about the shooting before he reversed course, claiming that Mr. Stringer volunteered with no prompting that he was the shooter." A265. And when he finally claimed that Stringer had confessed

unprompted, Lyles recited an account that appears to contradict the ballistics evidence. *See id.*

Third, the government revisits the "circumstances of Charles's 2014 affidavit." Gov. Br. According to the government, "Charles waited eight years after his conviction in 2006, and five years after his conviction was affirmed on appeal in 2009, to state that Stringer was not involved in the murder, and he did so for the first time when Stringer just happened to be incarcerated with him at the D.C. jail." Gov. Br. 42 (emphasis omitted). But *Stringer 1* rejected this argument, because there was "no evidence that Mr. Charles and Mr. Stringer were in the same unit or area of the jail." A260. On remand, in turn, the trial court agreed that "there is no basis to infer that they spoke to each other at the jail in 2014 or that they collaborated in devising Mr. Charles's affidavit." 2024R1 at 6 (A272). This absence of "evidence of where the two were housed in the jail" is especially telling, because that evidence "would have been uniquely in the government's possession." A260.

It is unsurprising that Charles did not prepare his affidavit until he was back in the District of Columbia, where his family could have more easily arranged for an investigator to interview him and help him prepare an affidavit for a case in the District of Columbia courts. It also is unsurprising that Stringer was in the District

of Columbia at the same time, because Charles and Stringer were codefendants in the same case. "Correlation and causation are hardly synonymous." *Lasley v. Georgetown Univ.*, 688 A.2d 1381, 1387 (D.C. 1997).

In a footnote, the government speculates that the trial court "might have added skepticism that the two people Charles claimed to have been with the night of the murder had since died, and that Charles, facing a murder charge and represented by able counsel from the Public Defender Service, never told his lawyer that Stringer wasn't there." Gov. Br. 34–35 n.16. The trial court did not rely on either theory, and for good reason.

If Charles were lying and Stringer had participated in shooting Johnson, it would have been easier for Charles to recite the actual version of events and identify one of those decedents, rather than Stringer, as the accomplice who joined him in Johnson's car. But if, as the government implies, Charles were clever enough to invent a fictional version of events (erasing his accomplice and casting two deceased friends in new, secondary roles), he also would have been clever enough to simplify his task by reciting the actual events and replacing only Stringer's name with the name of a deceased friend.

It also is unremarkable that Charles did not tell his trial counsel that "Stringer wasn't there," even though Charles was "facing a murder charge and

represented by able counsel from the Public Defender Service." *Id.* Criminal defendants often distrust appointed counsel, including appointed counsel from PDS. *See Leak v. United States*, 757 A.2d 739, 745 (D.C. 2000) (defendant claimed that his "PDS attorney was unprepared" and "then said that he felt the attorney's status as a government employee biased the representation against him"); *Waters v. United States*, 302 A.3d 522, 526 (D.C. 2023) (although murder defendant "was initially represented by an attorney from the Public Defender Service," "about a year into PDS's representation, the court removed PDS and appointed [a Criminal Justice Act panelist] as counsel"). The complicated relationship between Charles and his trial counsel populates this record: "Charles had—or would have thought he had—quite a bit to lose by confessing to be the sole killer" (A262 n.2), yet he wrote and signed his confession without consulting his able counsel from the Public Defender Service (*see, e.g.*, 49:15–50:6 (A149–A150).

C. The government overstates the trial court's discussion of Charles's demeanor.

Although the government asks the Court to "defer to the trial court's demeanor-based credibility finding" (Gov. Br. 33), the trial court did not make a clear finding or offer a specific basis to infer Charles's credibility from his demeanor. The trial court stressed "the inherently subjective nature of observations based on demeanor, facial expressions, body language, and the like."

2024R1 at 9 (A275). And the trial court observed that "nothing in Charles's demeanor clearly suggested he was lying." *Id.* Ultimately, Charles's demeanor was not one of the "two critical facts" underlying the trial court's finding. 2024R1 at 10 (A276). These hedged and ambiguous observations fell short of "factual findings on which the rulings rest." *Jenkins v. United States*, 80 A.3d 978, 989 (D.C. 2013).

Indeed, this Court interprets trial courts' factual findings precisely. *See Brown v. United States*, 313 A.3d 555, 564 (D.C. 2024) ("We do not understand that to be a finding that Brown did not consent to the pocket search, but instead as the trial court reserving judgment on that question, based on its reasoning that it did not matter to the ultimate question of suppression."); *Castellon v. United States*, 864 A.2d 141, 152–53 (D.C. 2004) ("[T]he record does not bear out [the appellant's] claim that the trial court made a finding that he was in custody. Rather, the record shows that the trial court found only that he had been 'detained.'"). And on this record, the government's more categorical claim "overstates the matter." *Brown*, 313 A.3d at 564.

CONCLUSION

The judgment should be reversed.

Respectfully submitted,

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