DISTRICT OF COLUMBIA COURT OF APPEALS

24-CF-660

DIANDRE CAESAR,

Appellant

v.

UNITED STATES OF AMERICA,

Appellee

Appeal from the Superior Court of the
District of Columbia – Criminal Division
2022 CF3 4933

CALENDARED: December 16, 2025

REPLY BRIEF FOR APPELLANT

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In challenging the sufficiency of the evidence to support assault with a dangerous weapon convictions, Mr. Caesar argued that the evidence was insufficient to permit any reasonable juror to find beyond reasonable doubt that that he "acted in such a manner as would under the circumstances portend an immediate threat of danger to a person of reasonable sensibility."[1] *Parks v. United States*, 627 A.2d 1, 7 (D.C. 1993) (quoting *Robinson v. United States*, 506 A.2d 572, 575 (D.C. 1986)). In so doing, Mr. Caesar argued that this court had never endorsed an approach allowing the combined observations of witnesses, here Mr. Graham and the complainants, to satisfy the 'as would under the circumstances portend' element, and that such an approach would stretch criminal liability far beyond any reasonable bounds.

In response, the United States, citing *Powell v. United States*, 238 A.3d 954, 957 (D.C. 2020), makes two related errors. First, it incorrectly asserts that "the

[1] Br. 31-38. "Br." refers to Mr. Caesar's opening brief. "Br. App." refers to the United States' brief. "Tr." refers to transcript by date of proceeding. "R." refers to the record on appeal. "S.R." refers to the sealed supplemental record on appeal. "GX" refers to government exhibit. "DX" refers to defense exhibit.

government was required to show only that [Mr.] Caesar intended to injure Smith or Bell *or* that he intended to create apprehension in them by some threatening conduct." Br. App. 42 (emphasis in original). This is incorrect. Evidence sufficient to support a conviction for intent-to-frighten assault requires proof both of one of the two alternative intents; i.e., intent to injure or intent to create apprehension; *and* specific conduct by the accused—that he or she "acted in such a manner as would under the circumstances portend an immediate threat of danger to a person of reasonable sensibility," a point made clear by *Powell* itself. That is, after articulating the act required, "that the defendant committed a threatening act that reasonably would create in another person a fear of immediate injury,"[2] which this court, consistent with its earlier decisions in *Parks*, *Robinson*, and more, stated requires proof "the assailant acted in such a manner as would under the circumstances portend an immediate threat of danger to a person of reasonable sensibility,"[3] this court made clear that the government must *also* show "that the defendant intended either to cause injury or to create apprehension in the victim by engaging in some threatening conduct." *Id.* at 957 (quoting *Parks*, 627 A.2 at 5).

Second, perhaps in part because it misapprehends the nature of Mr. Caesar's argument regarding Mr. Graham's testimony—not the also-existing conflict

[2] *Powell*, 238 A.3d at 957.
[3] *Id.* at 957-58 (quoting *Robinson*, 506 A.2d at 575).

between his grand jury and trial testimony, but the conflict between his trial testimony and video evidence—it fails to meaningfully grapple with the fact that no single witness perceived events sufficient to prove the 'as would portend' element.

a. Smith and Bell's After-The-Fact Claims, However Plausible or Implausible, Could Not Contribute to Any Finding That Mr. Caesar "Acted in Such a Manner as Would Under the Circumstances Portend an Immediate Threat of Danger."

It is undisputed that neither Smith nor Bell saw the suspect with a gun—not prior to, during, or after the offenses. 3/28/24 Tr. 165 (Bell); 4/1/24 Tr. 143 (Smith). This includes the time during which the complainants drove west on New York Avenue before any noises are heard. Whatever was later recovered from the car has no bearing[4] on whether "the circumstances"—at the time of the offenses[5]—would have "portend[e] an immediate threat of danger to a person of reasonable sensibility" in the complainants' shoes. Viewing the evidence in the light most favorable to the government, the circumstances as they appeared to the complainants at the time of the offenses were that they heard approximately six loud noises several seconds after they began driving west on New York Avenue after having a brief if heated argument with a stranger. Contrary to the United States' argument, this did not permit a reasonable juror to conclude beyond a reasonable doubt that Mr. Caesar "acted in

[4] *See* Br. App. 39 (arguing that "bullet holes" in back of car and "bullets" found in car supports intent element).
[5] *See* Br. 36 note 68.

such a manner as would under the circumstances" at the time of the offenses "portend an immediate threat of danger to a person of reasonable sensibility" in the complainants' shoes. The complainants' testifying, as characterized by the United States, that "Smith and [Bell[were subjectively aware that they were being fired upon"[6] is an opinion or a conclusion, not a fact, and insufficient to permit a reasonable juror to find beyond a reasonable doubt that Mr. Caesar acted in a manner that would have indicated to a person of reasonable sensibility in the complainants' shoes "an immediate threat of danger." To be sure, as both Mr. Caesar and the United States acknowledge, "[t]he test is not whether the victim experienced actual fear or had a subjective perception of fear,"[7] but the circumstances as they appear to the complainant(s), or at least a (single) person witnessing the actions of the accused, are the focus of the inquiry. But this subjective relevance does not allow the complainants' talismanic invocation of gunfire to substitute for observations that would lead a reasonable person in their shoes to believe they were being fired upon.[8]

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[6] Br. App. 41.

[7] Br. 32; Br. App. 41.

[8] Officer Jamieson's testimony that she "heard a series of… gunshots coming from the New York Avenue side," 4/2/24 Tr. 116, provides little if any support for this element where: 1) unlike the complainants, Officer Jamieson testified that she had previously heard gunshots, and thus had a basis from which to recognize the sound, and 2) as discussed in Mr. Caesar's opening brief, the focus of the inquiry is the circumstances as they appear to the complainant(s), or at least a (single) person witnessing the actions of the accused. Where Jamieson did not see anything in front of the McDonald's at the time of the offenses, this does not aid the government.

b. Mr. Caesar's Argument Regarding Mr. Graham's Testimony Relates Not to the Discrepancy Between His Grand Jury and Trial Testimony but Between His Trial Testimony and Video Evidence *Introduced By The Government*.

Mr. Caesar argued that Mr. Graham could not have seen what, if anything the suspect fired at because Graham, who did not testify that he looked in a mirror or turned around while driving, testified that when he heard "pop, pop" or "the sound of what appear[ed] to be a… firearm" before a car "took off,"[9] because GX7 does not depict any noises until three to four seconds after the complainants' car began driving west on New York Avenue. Br. 43-44. Said another way, no reasonable juror could have concluded that the noises to which Graham referred were the same noises to which the complainants referred. Apparently misapprehending Mr. Caesar's argument, the United States argues that the jury was permitted to credit Mr. Graham's trial over his grand jury testimony regarding where he was when he heard noises that might have been gunfire,[10] a point Mr. Caesar does not dispute. Instead, Mr. Caesar argues that Mr. Graham could not have seen what if anything the suspect was firing at because three to four seconds after the complainants began driving west on New York Avenue, Mr. Graham's bus was passing the complainants' car such that Mr. Graham could not have seen what if anything the suspect was firing at.[11]

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[9] 3/28/24 Tr. 184-85.
[10] Br. App. 40-41.
[11] *See, e.g.*, *Stringer v. United States*, 301 A.3d 1218, 1228 (D.C. 2023) (stating that this court "might be more likely to find clear error based on [its] own comparison

And when the noises, all of which are heard in the span of less than two seconds, ended, the complainants were well further west on New York Avenue than Mr. Graham's bus, such that each was entirely out of view of the other.

between [a] witness's version of events and the objective facts and [its] assessment of the significance of any inconsistencies."); *see also Hawkins v. United States*, 248 A.3d 125, 131 (D.C. 2021) (this court "need not go so far as to say that [a] videotape 'blatantly contradicts'" a witness's testimony" to render a finding clearly erroneous).

Because the evidence was insufficient to permit any juror to find beyond a reasonable doubt that Mr. Caesar "acted in such a manner as would under the circumstances portend an immediate threat of danger to a person of reasonable sensibility," and thus insufficient to sustain a conviction for intent-to-frighten assault (with a dangerous weapon), Mr. Caesar's ADW and possession of a firearm during a crime of violence ("PFCV") convictions must be vacated.

II. THE TRIAL COURT FOUND THAT MR. SMITH "OBSERVED" MR. CAESAR "FOR AROUND TWO MINUTES, DIRECTLY" *AT THE FENCE*, A FINDING THAT IS CLEARLY ERRONEOUS.

In arguing that the trial court erred by failing to suppress a concededly suggestive out-of-court identification—a single confirmation photo of a stranger of a different race with whom Mr. Smith interacted for a very brief period of time,

almost entirely through a fence—Mr. Caesar highlighted the trial court's clear error in finding that Mr. Smith "observed" Mr. Caesar "for around two minutes, directly"[12] and that it was "clear that [Mr. Smith's] attention was directly on Mr. Caesar."

DX1 5:25 (13:00:39).

In response, the United States argues (at 22 n.9) that this finding referred to the entirety of the time Smith could have seen Mr. Caesar, rather than simply the time at the fence. Not so. The trial court stated:

> Mr. Smith was observing the defendant for around two minutes, directly. And was engaged in a heated argument with him under conditions where it seems he had ample opportunity to observe the defendant. He *also* saw him as

[12] 3/27/24 Tr. 44.

> he approached the car from the front and the side. I think it's clear that his attention was directly on Mr. Caesar, *given the very heated argument that can be heard in the government's exhibit that is the dash cam*.

3/27/24 Tr. 44-45 (emphasis added).

But even if the trial court's finding was not clearly erroneous, the cases on which the United States relies regarding opportunity to observe differ *markedly* from the facts of this case. *See (James) Young v. United States*, 305 A.3d 402, 436 (D.C. 2023) ("Mr. Height and Mr. Mora spent *an evening out together*").[13]

III. SMITH HAD LITTLE OPPORTUNITY TO VIEW THE SUSPECT AFTER RETURNING TO THE CAR, WHEN DETECTIVE MAUPIN TESTIFIED THAT SMITH TOLD HER "HIS FOCUS WAS ON DRIVING."

Contrary to the United States' argument[14] and the trial court's finding, Mr. Smith had little opportunity to observe the suspect after returning to the car. That is: 1) the total amount of time that elapsed between the suspect appearing on the sidewalk near the exit of the McDonald's was less than forty seconds,[15] 2) for the bulk of that time, the suspect was not in view of Mr. Smith, who was in the driver's seat, both because the suspect was on the passenger side of the car and because a person standing is above the sightline from the driver's seat, and 3) during that time, Mr. Smith told Detective Maupin that his focus was on driving. 3/27/24 Tr. 29.

[13] Br. App. 23-24.
[14] Br. App.
[15] *See* GX2 3:30-4:09 (12:59:56-13:00:34).

IV. THE TRIAL COURT DID NOT RESOLVE THE DISPUTE OF WHETHER MR. SMITH DESCRIBED THE SUSPECT'S HEIGHT.

As relevant to the accuracy of the description,[16] the United States seemingly implicitly asserts that Mr. Smith described the suspect as six feet tall.[17] But the trial court failed to grapple with the fact that body-worn camera footage (GX) in which Mr. Smith provided a description of the suspect to Detective Maupin did not contain any height.[18] *See, e.g.*, *Hawkins,* 248 A.3d at 131 ("We need not go so far as to say that the videotape 'blatantly contradicts' the finding of consent, but we have not seen videotape evidence to support it.") (internal citations omitted).

But even if Mr. Smith's description had included height, the paucity of his description—containing, at most, height, race, "dreads," and "wearing all black"—is a far cry from the detailed description in cases on which the United States relies. *See, e.g.*, *Lyons v. United States*, 833 A.2d 481, 483 (D.C. 2003) ("Shives described her assailant as a black man in his twenties, approximately 5'9" tall, 160 lbs., with brown eyes, short black hair, a dark and rough complexion, wearing dark pants and a royal blue sweatshirt. Shives also described the getaway vehicle as a shiny, black,

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[16] *See Neil v. Biggers*, 409 U.S. 188, 199-200 (1972).

[17] Br. App. 23 ("Smith's prior description was general but accurate"). The prosecutor's description in court, Br. App. 17-18 n.8, like the trial court's impermissible in-court comparison, had no proper role in the determination below and has no proper role before this court.

[18] 3/27/24 Tr. 31.

two-door, Isuzu Rodeo truck with chrome.").[19] While with acknowledged differences, this case, on the whole, is closer to *Patrick v. United States*, No. 23-CF-1078, __ A.3d __, slip. op. at 26 (D.C. Sep. 18, 2025), and certainly closer to *Patrick* than *Lyons* ("Nicholas had no previous familiarity with Patrick—a total stranger—and she did not have a good opportunity to memorize his features. Her interaction with him lasted roughly one minute, during which she was under serious distress, and save for the last couple of seconds she was staring at "[j]ust the gun" and not "anything else" but the keys that she had been fumbling…with.") (footnote omitted).

V. THIS COURT REVIEWS DE NOVO—AND NOT FOR CLEAR ERROR—THE RELIABILITY DETERMINATION.

The United States also argues that "[u]nder the totality of these circumstances, the court's assessment of the reliability of the identification was not clearly erroneous or contrary to law." Br. App. 23. But, as the United States appears to acknowledge elsewhere,[20] this court reviews de novo the reliability determination. *See, e.g.*, *McCoy v. United States*, 781 A.2d 765, 771 (D.C. 2001).

VI. THERE IS AMPLE EVIDENCE THAT THE TRIAL COURT RELIED ON FACTORS EXTERNAL TO THE IDENTIFICATION IN VIOLATION OF *LONG* WHEN MAKING THE RELIABILITY DETERMINATION—ITS OWN WORDS.

Puzzlingly, the United States also disputes the trial court's impermissible

[19] Br. App. 24.S
[20] Br. App. 20.

comparison, when making reliability findings, of the appearance of the person depicted in video footage admitted at a motion hearing and Mr. Caesar's appearance in the courtroom, despite the trial court's own words:

> *I could observe the video that was Government's Exhibit 2, which is the dash cam on Mr. Smith's car, and it seemed evident to the Court, just seeing that video where Mr. Caesar walks in front of the car, that it is apparent that it's Mr. Caesar*. So that supports also, the, I think the reliability of the complainant's description.

3/27/24 Tr. 45 (emphasis added).

The United States' reference to *Saidi*[21] for the proposition that a trial court is presumed to know the law simply has no applicability here where: 1) the trial court's statements make clear that it misapplied the law, and 2) the full reference in *Saidi*, regarding the lack of a Rule 23(c)[22] request, plainly has no applicability here.[23]

VII. THE UNITED STATES HAS FAILED TO SHOW THE ERROR WAS HARMLESS BEYOND A REASONABLE DOUBT.

Nor, contrary to the United States' argument,[24] has it carried its burden of showing that the trial court's error was harmless beyond a reasonable doubt. "[I]t is a matter of common experience that, once a witness has picked out the accused at

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[21] *Saidi v. United States*, 110 A.3d 606, 613 (D.C. 2015).
[22] Super. Ct. Crim. R. 23(c).
[23] 110 A.3d at 613 ("The trial judge's failure to make findings on the disputed issues relating to Mr. Saidi's defense-of-property defense thus likely would pose no problem on appeal *had Mr. Saidi not made a timely request for special findings* under Rule 23(c).") (emphasis added).
[24] Br. App. 26-27.

the line-up, he is not likely to go back on his word later on." *Patrick*, No. 23-CF-1078, slip op. at 19. As in *Patrick*, albeit for different reasons, there was "no readily apparent reason why the officers could not have utilized far more reliable identification procedures that did not lend themselves so heavily to false positive identifications." *Id.* at 3. There was no "necessity for a prompt" confirmation photo "identification that very well might have led to the suspect's release (if the complainant indicated they were not the culprit)"[25] because no suspect was in custody, and the United States' failure to seek a warrant for two weeks after the offenses[26] belies any notion that the exigencies of the moment precluded detectives from conducting a far more reliable identification method the same day.

This was not an overwhelming case for the government. In addition to the jury acquitting Mr. Caesar of more than half the charges after close to three days of deliberation, no other eyewitness to the offense identified Mr. Caesar as the suspect—something the United States believed Smith unable to do prior to trial. No firearm was recovered at any time. No forensic or cell site location information linked Mr. Caesar to the offenses. While the United States complains that Mr. Artis, called by Mr. Caesar, identified Mr. Caesar as being present on the day of the offenses, Mr. Caesar, of course, made the decision to call Mr. Artis based in part

[25] *Id.* at 10.
[26] R. 43 (PDF).

upon the trial court's erroneous rulings. *See, e.g.*, *Fuller v. United States*, 873 A.2d 1108, 1118 (D.C. 2005) ("We take appellant's point that, once the trial judge had decided to give the transcript to the jury, defense counsel had no option but to make the best of the unwanted ruling."). Moreover, as the United States has not contested, the photograph of Mr. Caesar shown to Mr. Smith during the incredibly—and unnecessarily—suggestive identification procedure almost certainly came from 2016, some six years before the identification, further calling into question its value. Br. 4 note 9. And the bulk of Mr. Wallace's testimony related to identifying Mr. Caesar as an employee of the Salvation Army, not as the suspect. Because the United States has failed to carry its burden of showing harmlessness beyond a reasonable doubt, assuming, *arguendo*, that this court does not vacate all of Mr. Caesar's convictions on sufficiency grounds, his convictions must nonetheless be reversed.

VIII. UNLIKE THE HIGHER DEFENSE BURDEN OF SHOWING MATERIALITY UNDER RULE 16—ITSELF NOT A HIGH BAR—*BRADY* OBLIGATES THE GOVERNMENT TO DISCLOSE ALL INFORMATION THAT IS "ARGUABLY MATERIAL."

When responding to Mr. Caesar's argument regarding the trial court having erroneously denied Mr. Caesar's motion to compel *Brady*[27] information—information and materials related to a gun linked by NIBIN (Br. 5-6 note 14) to the gun allegedly used in this case—the United States erroneously recasts Mr. Caesar's

[27] *Brady v. Maryland*, 373 U.S. 83 (1963).

motion to compel *Brady* material as a motion to compel discovery, a point made clear by its reliance on *United States v. Curtis*, 755 A.2d 1011, 1014-15 (D.C. 2000) and *(Robert) Young v. United States*, 63 A.3d 1033, 1051 (D.C. 2013), both cases involving Rule 16, not *Brady*. Br. App. 25-36; *Curtis*, 755 A.2d at 1014 ("The government specifically contends that the discovery ordered was not authorized by Rule 16 because the materials sought were not shown to be material to the defense of Curtis and Price…"); *Young*, 63 A.3d at 1036 ("Young moved the court pursuant to Criminal Rule 16").[28] In so doing, the United States misapprehends the applicable standard and the burdens of production and persuasion. Under Rule 16, the burden of showing materiality of requested materials, borne by the defense, is itself "not a high bar." *Crocker v. United States*, 253 A.3d 146 (D.C. 2021). Conversely, "*Brady* is not a discovery rule but a rule of fairness and minimum prosecutorial obligation." *Miller v. United States*, 14 A.3d 1094, 1107 (D.C. 2011) (quoting *Curry v. United States*, 658 A.2d 193, 197 (D.C. 1995)). Under that "minimum prosecutorial obligation," the United States must, without any request from the accused, disclose information that is "'arguably' material," a lower standard than even the 'not high' standard under Rule 16. *Vaughn v. United States*, 93 A.3d 1237, 1262 n.29 (D.C.

[28] While Mr. Caesar also cited *Young*, Br. 41, he did so for the proposition that, unlike the facts of *Young*, production would not have been burdensome, as the United States possessed and could have readily and easily disclosed all of the requested information.

2014) (quoting *Boyd v. United States*, 908 A.2d 39, 61–62 (D.C. 2006)).

IX. THERE IS NO RECORD EVIDENCE THAT BALLISTICS TESTS WERE PERFORMED IN CONNECTION WITH THE FEBRUARY 16, 2023 SHOOTING.

The United States repeatedly asserts that that ballistics testing on a ghost gun recovered during a search of the apartment of a man named Zion Ray-Valentine "*did not* yield a link to ballistics evidence recovered from the scene of the February 16, 2023 shooting," Br. App. 27-28 (emphasis in original). But, as Mr. Caesar repeatedly reminded the trial court below,[29] none of the discovery or *Brady* material provided indicated that ballistics testing was performed in connection with the February 16, 2023 shooting, or that any comparison was made between ballistics evidence from this case and the February 16, 2023 shooting. Indeed, the prosecutor stated "I *believe* casings were recovered from that February shooting and they were submitted to the NIBIN system." 3/19/24 Tr. 9 (emphasis added). While Mr. Caesar had no reason to think the prosecutor was intentionally "misleading [him] or the Court," there was certainly a basis to question whether any ballistics evidence from the February 16, 2023 shooting would have been suitable for comparison, even if it had been submitted,[30] and Mr. Caesar had received no documentation of such a comparison. More fundamentally, the defense should have been able "to actually look at that for

[29] 3/19/24 Tr. 9 ("And right now, we have no information that there was any comparison.").
[30] 3/19/24 Tr. 9.

ourselves,"[31] particularly where barely three weeks passed between the February shooting and the recovery of the gun from Ray-Valentine's apartment.

X. LIKE THE TRIAL COURT, THE UNITED STATES CONFLATES THE STANDARD FOR PRESENTING A *WINFIELD* DEFENSE—RELEVANCE—WITH THE GOVERNMENT'S PRETRIAL OBLIGATION UNDER *BRADY* TO DISCLOSE INFORMATION THAT IS "ARGUABLY" MATERIAL.

As discussed in Mr. Caesar's opening brief, when erroneously denying Mr. Caesar's motion to compel, the trial court conflated the ultimate standard—relevance[32]—governing whether the defense may present a *Winfield* defense with the standard governing pretrial disclosure of *Brady* material. 3/19/24 Tr. 10 ("There has to be some nexus between that third party that have, I think the language is a motive and a practical opportunity, to actually even commit the offense.")

The United States' reliance on *Gethers v. United States*, 684 A.2d 1266 (D.C. 1996), and *McCullough v. United States*, 827 A.2d 48 (D.C. 2003), makes clear that it repeats the analytical error. Br. App. 34. That is, in both *Gethers* and *McCullough*, this court analyzed a claim that the trial court erred by preventing the appellants from

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[31] 3/19/24 Tr. 10.

[32] "*Winfield*… explain[ed] 'the 'reasonable possibility' formulation of *Johnson* and its conclusion that relevance here means what it generally does in the criminal context[: it] requir[es] a 'link, connection or nexus between the proffered evidence and the crime at issue.'" *Moghalu v. United States*, 263 A.3d 462, 478 (D.C. 2021) (quoting *Winfield v. United States*, 676 A.2d 1, 4-5 (D.C. 1996) (en banc)).

presenting a third-party perpetrator defense,[33] not whether *Brady* required disclosure of information that was relevant to investigating a *potential Winfield* defense was "arguably material" or "'of a kind that would suggest to any prosecutor that the defense would want to know about it." *Miller*, 14 A.3d at 1110 (quoting *Leka v. Portuondo*, 257 F.3d 89, 99 (2d Cir. 2001)).

United States v. Mason, 951 F.3d 567 (D.C. Cir. 2020), on which the United States also relies (at 35), also does not support its position. In *Mason*, which included a retrospective analysis not germane to the issue presented to this appeal,[34] the defense ultimately *received*—prior to trial—an exculpatory letter from (but not authored by) a witness who died by the time the defense learned of the information (and before the government received the letter). *Id.* at 571-72. Further limiting the utility of the letter to the defense was a handwriting expert opining that a government witness did not write the letter—which professed that its author was going to "go down there and lie on everybody"—such that the defense risked the government bolstering the witness's denial with the expert's opinion. *Id.* at 572. Unlike the facts of Mason, Mr. Caesar—to this day—never received the information in question from

[33] *Gethers*, 684 A.2d at 1270-71 ("Both appellants contend that the trial court erred when it prevented defense counsel from suggesting that an unknown third party or parties might have committed the shooting…"); *McCullough*, 827 A.2d at 55 ("McCullough and Williams claim that the trial court erred when it refused to allow them to suggest that Williams' father… was the true murderer, or in the alternative, that some other unnamed and unidentified person committed the murder.").
[34] *Id.* at 573.

the government. While the issue raised in this appeal is not that of a retrospective *Brady* analysis following belated disclosure, but instead the failure to order disclosure of "arguably material" *Brady* information in order to investigate further, such an analysis would in any event not be possible, unlike the facts of *Mason*.

XI. MR. CAESAR ARGUES THAT THE TRIAL COURT ERRONEOUSLY BELIEVED THAT D.C. CODE § 22-402 OR 22-4504(b) REQUIRED OR SUGGESTED THAT THE TRIAL COURT SHOULD RUN THE SENTENCES FOR ADW AND PFCV CONSECUTIVELY TO ONE ANOTHER, WHICH THEY DO NOT.

Mr. Caesar also argued that if this court does not vacate or reverse his convictions, resentencing is required because his sentence was imposed in an illegal manner where the trial court erroneously believed that either D.C. Code § 22-4504(b) or D.C. Code § 22-402 required or contained a presumption that the ADW and PFCV sentences should run consecutively with one another. Br. 49-50. Appearing to misapprehend Mr. Caesar's argument, the United States argues that the trial court was *permitted* to run the PFCV and ADW sentences consecutively to one another, a point Mr. Caesar does not dispute. Invoking D.C. Code § 23-112—a statute never cited or even alluded to by the trial court[35]—for the general proposition that, unless a court specifies otherwise, sentences run consecutively, the United States argues that the trial court did not commit an error of law when sentencing Mr.

[35] 7/10/24 Tr. 30-33.

Caesar. But the trial court's words strongly suggest that it believed the *PFCV* statute required it to sentence the ADW and PFCV counts consecutively to one another and bely any notion that it considered the authorities cited by the United States.

> I'm going to run those two sentences on Counts 1 and 3 consecutively to one another. *And I think the statutory scheme contemplates that that should be consecutive to the possession of a firearm during a crime of violence*. So the sentences on each count will run consecutively.

7/10/24 Tr. 32-33 (emphasis added).

Where D.C. Code § 22-4504 contains no such requirement or presumption, resentencing is required. Unlike *Johnson v. United States*, No. 24-CO-548, slip op. (D.C. Sep. 4, 2025),[36] in which this court found unreviewable an "argument… about the Sentencing Guidelines," Mr. Caesar's claim rests on the trial court's error of law regarding the statutory scheme; i.e., a sentence imposed in an illegal manner.

Respectfully submitted,

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[36] Although *Johnson* was decided after briefing in this case, the United States has forfeited any argument that this claim is not reviewable by failing to raise any such argument. *See generally Rose v. United States*, 629 A.2d 526, 535 (D.C. 1993).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing reply brief was electronically served upon the United States Attorney's Office for the District of Columbia, this 5th day of December, 2025.

/s/ Adrian E. Madsen
Adrian E. Madsen