BRIEF FOR APPELLEE

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 23-CF-852

SHAKA HALTIWANGER, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

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

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Cr. No. 2021-CF1-5603

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II. Whether the trial court abused its discretion under Rule 403 in admitting otherwise relevant evidence that appellant Shaka Haltiwanger was required to check in weekly with a government employee but stopped doing so after the murder, and had a legal retainer agreement with his name on it in a car where other evidence was found, where the evidence was sanitized to avoid any mention that Haltiwanger had another pending criminal case.

III. Whether the trial court abused its discretion by allowing the government to cross-examine Haltiwanger on his knowledge of self-defense, where that knowledge was relevant to assess the credibility of his explanations for actions later showing his consciousness of guilt; and whether the trial court plainly erred by not intervening when the government argued, without objection, that Haltiwanger's professed ignorance of self-defense could be used to evaluate his credibility.

IV. Whether the evidence was sufficient to refute Haltiwanger's claim of self-defense, where a witness testified Haltiwanger approached the decedent from behind and shot him in the back and the autopsy confirmed the decedent had been

shot in the back, and there was no evidence other than Haltiwanger's self-serving testimony that the decedent was armed.

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COUNTERSTATEMENT OF THE CASE

On May 11, 2022, a grand jury charged appellant Shaka Haltiwanger with second-degree murder while armed, D.C. Code §§ 22-2103, -4502; possession of a firearm during a crime of violence, D.C. Code § 22-4504(b); carrying a pistol without a license, D.C. Code § 22-4504(a)(1); and possession of a large-capacity ammunition-feeding device, D.C. Code § 7-2506.01(b) (Record Part I (R1.) 11 (Docket 11)).[1] On March 3, 2022, following a trial before the Honorable Rainey

[1] All page references to the record are to the PDF page numbers. The record appears to be split into two PDF files, a 647-page part one and a 650-page part two.

Brandt, a jury found Haltiwanger guilty as charged (R1. 31 (Docket 31)). On September 19, 2023, the court sentenced Haltiwanger to an aggregate term of 24 years of imprisonment and three years of supervised release (Record Part II (R2.) 645 (Judgment)). On October 11, 2023, Haltiwanger timely filed a notice of appeal (R2. 649 (Notice)).

The Trial

The Government's Evidence

The decedent, Anthony Kelley, was a senior supervisor for Amtrak and a veteran of the United States Air Force (3/8/23 Transcript (Tr.) 102-03). As an adult, Kelley often drank alcohol (3/8/23 Tr. 137). His family members knew him to be happy or sad while drunk, but never angry, violent, or mad (3/8/23 Tr. 116-17, 138). Kelly had never been known to carry a gun (3/8/23 Tr. 113, 118, 164). In 2018 or 2019, Kelley's father, Keith Taylor, suffered a stroke (3/8/23 Tr. 104-05, 130-31). Kelley moved into Taylor's second-floor apartment, located in a building on the 1300 block of 29th Street SE, to help care for him (3/8/23 Tr. 105-06, 132-33). Taylor regularly used crack cocaine for most of his life, and Kelley got upset at his father for using illegal drugs (3/8/23 Tr. 104, 106-07, 132-32, 141-43). Kelley moved out in early 2021, although he kept a key and continued to drop by to assist Taylor with errands (3/8/23 Tr. 107, 144, 159-60).

Taylor was dating Vanessa Green, another resident of the apartment building (3/8/23 Tr. 146). Haltiwanger, a local drug dealer, regularly visited the building to sell crack cocaine to Taylor and Green (3/8/23 Tr. 149-50; 3/9/23 Tr. 24, 56-57). In 2021, Green saw the handle of a gun sticking out of Haltiwanger's backpack while at a friend's home (3/9/23 Tr. 61-62).

1. The Shooting

On the night of September 9, 2021, Taylor and Green bought crack cocaine from Haltiwanger (3/8/23 Tr. 148-49, 151-52). Haltiwanger, who had a red backpack with him, asked to sleep on Taylor's couch, as he had done on several prior occasions when delivering drugs to Taylor, and Taylor agreed (3/8/23 Tr. 157-58). Taylor and Green smoked the drugs together, then Green left to her own apartment (3/8/23 Tr. 155-56). Taylor ate some food and went to sleep in his bedroom (3/8/23 Tr. 156-57).

Kelley made an unexpected visit to Taylor's apartment the next morning (3/8/23 Tr. 159-60). Taylor woke to the sounds of Kelley entering the apartment and then yelling at Haltiwanger (3/8/23 Tr. 161). Taylor, who had slept off the effects of the drugs, came out into the living room and saw Kelley grab Haltiwanger and say, "Get the fuck out. Get the fuck out." (3/8/23 Tr. 161.) Haltiwanger grabbed his backpack, and Kelley shoved him out the front door of the apartment (3/8/23 Tr. 162-63). Taylor tried to stop Kelley, but Kelley shoved Taylor out of the way and followed Haltiwanger out of the apartment (3/8/23 Tr. 163).

Residents of the apartment building heard Haltiwanger and Taylor arguing as they traveled to the first floor (3/9/23 Tr. 13-14, 30-31; 3/13/23 Tr. 135). One neighbor heard someone say, "I'll drag your ass," meaning "[t]hat they going to have a fight" (3/13/23 Tr. 139, 142).

Green, who lived on the first floor, came out of her apartment when she heard the argument (3/9/23 Tr. 31). She saw Kelley, looking unhappy, walk down the first-floor hallway towards her (3/9/23 Tr. 38). Then she saw Haltiwanger approach Kelley from behind and shoot him once in the back (3/9/23 Tr. 39-40). Green said to Haltiwanger, "Damn, you just shot him" (3/9/23 Tr. 39-40). Haltiwanger said nothing but looked at Green, and then hurried out of the building (3/9/23 Tr. 40).[2]

In his haste, Haltiwanger accidentally left his jacket with his car keys in the apartment building (3/9/23 Tr. 44; 3/15/23 Tr. 19). When he reached his car, a silver Infiniti parked near 29th and O Streets SE, a neighbor saw him hide his firearm in

[2] On cross-examination, Green was impeached with three statements she made to police the day of the shooting. First, she said Haltiwanger turned around and shot Kelley (3/9/23 Tr. 74). Second, she said, "I turned around, and I heard something go pop. I could smell the debris, and when I heard it, I had to turn around. And that's when I saw him laying on the floor." (3/9/23 Tr. 80.) Third, she said, "Look liked somebody pushed the other. I hear a pop. I turn around, and I saw [Kelley] on the floor." (3/9/23 Tr. 83.) On September 24, 2021, Green testified to the grand jury that Haltiwanger approached Kelley from behind and shot him (3/9/23 Tr. 84). Her daughter had been arrested for an unrelated crime the day Kelley died (3/9/23 Tr. 48-49, 84).

the well of the front passenger tire (3/9/23 Tr. 59-60; 3/13/23 Tr. 77-80, 158). A white car picked him up a few minutes later and he left (3/13/23 Tr. 159-61).

Several residents of the apartment building heard the gunshot and called 911 (3/8/23 Tr. 163, 166-67; 3/9/23 Tr. 20-21; 3/13/23 Tr. 144-45). Taylor rushed downstairs and saw Kelley, suffering from a gunshot wound, in the lobby of the building (3/8/23 Tr. 165-66). He tried to use Kelley's phone, but it was locked, so he returned to his apartment and called 911 (3/8/23 Tr. 166-67). By the time he made it back, Green's daughter, who had been dating Kelley, was there attempting to stanch Kelley's bleeding with a towel (3/8/23 Tr. 167; 3/9/23 Tr. 48).

Paramedics and police responded, but Kelley was pronounced dead on scene (3/8/23 Tr. 63-64, 71). Haltiwanger's jacket was recovered, which had in its pockets the key and a title document to the silver Infiniti (3/13/23 Tr. 63, 65-66; 3/15/23 Tr. 18-20). No firearms were found near Kelley, and neither Taylor nor Green saw him with a weapon (3/8/23 Tr. 183; 3/9/23 Tr. 63; 3/15/23 Tr. 14).

A neighbor heard the gunshot and saw Haltiwanger walk down the street and hide something under his car (3/13/23 Tr. 157-58). She told police, who found a firearm in the well of the front passenger tire, and a 50-round drum magazine and loose ammunition under the car (3/13/23 Tr. 76-80; 3/14/23 Tr. 38; 3/15/23 Tr. 22, 26). The gun was a "privately made firearm," i.e., a partially assembled firearm sent as part of a kit that the purchaser finished putting together at home (3/14/23 Tr. 22-

23). The magazine fit the firearm, and a fired cartridge was found jammed in the gun's chamber (3/14/23 Tr. 38-39; 3/15/23 Tr. 24-25). Haltiwanger had no license to carry a firearm in D.C. (3/14/23 Tr. 46).

Later that day, Taylor and Green received multiple phone calls from blocked numbers (3/8/23 Tr. 169-71; 3/9/23 Tr. 44). Call records later confirmed that Haltiwanger had called Taylor and Green a total of 16 times from blocked numbers (3/13/23 Tr. 191-96, 198-99). Haltiwanger also called Green from a blocked number eight times on September 23, 2024, the day before she was due to testify before the grand jury in this case (3/9/23 Tr. 32; 3/13/23 Tr. 212-14).

2. Further Evidence

In 2021, Haltiwanger was required to check in with a government employee weekly by phone (3/13/23 Tr. 127). He did so from April 2021 until September 7, 2021, but then stopped (3/13/23 Tr. 127-28).

Kelley's autopsy, completed on September 11, 2021, revealed an entrance wound on the left side of Kelley's back and an exit wound on the left side of his chest (3/15/23 Tr. 55-58). After entering Kelley's back, the bullet fractured the back of his eighth left rib; hit his left lung, pericardial sac, and pulmonary artery; fractured the front of his second left rib; and exited through his front chest (3/15/23 Tr. 60). The gunshot caused massive internal injuries that proved fatal to Kelley (3/15/23 Tr. 66).

The medical examiner was "very confident" that the bullet entered through Kelley's back and exited through his front (3/15/23 Tr. 65-66). Among other things, the size and shape of the entry and exit wounds and the abrasions to the skin caused by the bullet differentiated them (3/15/23 Tr. 65-66). In addition, the rib fracture of the second left front rib was facing outward (3/15/23 Tr. 65-66). Had the bullet entered Kelley through his chest, that fracture would have been facing backwards (3/15/23 Tr. 65-66).

Kelley's body and clothing were also examined for soot—deposits of carbon and combustible gases—and stippling—a pattern of an arrangement of abrasions on the skin (3/15/23 Tr. 53). Generally, a gunshot would leave soot or stippling if the muzzle of the firearm were three feet or less from the target (3/15/23 Tr. 54). There was no soot or stippling on Kelley's body or clothing (3/15/23 Tr. 55). Kelley's body was also tested for drugs and alcohol (3/13/23 Tr. 105). His blood alcohol level was .29 grams per hundred milliliters (3/13/23 Tr. 108).[3]

On September 29, 2021, Haltiwanger's silver Infiniti was processed for evidence (3/9/23 Tr. 133-34). A prescription receipt in Haltiwanger's name was

[3] An initial autopsy report, issued December 2021, said there was an "abrasion of left arm" on the front page but on a later page said there was "[a] 3/8 inch abrasion above the right elbow" (3/15/23 Tr. 76, 98). The inconsistency was due to a typographical error on the front page (3/15/23 Tr. 98). In February of 2023, a supplemental report was issued correcting that error (3/15/23 Tr. 76, 98).

recovered from the rear driver's seat, as was "a written agreement to represent Shaka Haltiwanger in a legal matter" signed by him on September 7, 2021 (3/9/23 Tr. 141, 148). Various areas of the car were also swabbed for DNA (3/9/23 Tr. 144).

Swabs from the car, Haltiwanger's jacket, the firearm, and the drum magazine were submitted for DNA analysis (3/13/23 Tr. 43, 46, 48, 54). Swabs from the car's steering wheel, gear shift, and wiper light control generated a DNA profile of a mixture of four individuals, which was 25.5 octillion times more likely to be Haltiwanger's DNA and three unknown individuals than four unknown individuals (3/13/23 Tr. 54-55). Swabs from the hood, collar, cuffs, pockets, and zipper of Haltiwanger's jacket generated a DNA profile of a mixture of three individuals, which was 38.6 octillion times more likely to be Haltiwanger's DNA and two unknown individuals than three unknown individuals (3/13/23 Tr. 52-53). Swabs from the firearm generated a DNA profile of a mixture of three individuals, which was 1.63 octillion times more likely to be Haltiwanger's DNA and two unknown individuals than three unknown individuals (3/13/23 Tr. 46-47). Swabs from the drum magazine generated a DNA profile of a mixture of four individuals, which was 1.76 sextillion times more likely to be Haltiwanger's DNA and three unknown individuals than four unknown individuals (3/13/23 Tr. 48-49).

On September 30, 2021, Haltiwanger was arrested (3/15/23 Tr. 128). He was detained pending trial and spoke to others in recorded calls in October and November

of 2021 (3/15/23 Tr. 118). He discussed the evidence in his case, including that the gun did not have his fingerprints, and that the witnesses against him were "crackheads" that would not come to court and would not be credible even if they did (3/15/23 Tr. 118-19, 122-23; Government Exhibits (Ex.) 424, 506). He also complained about his previous attorney, saying:

> I don't even feel like he really with me, like he really– he really on my side like he believe what– like when I'm talkin' to him he tryin' to tell me what happened, and like, like, just throwin' me off basically– He like, if you did it because you were scared or in– I'm like, no, that was not the case. (3/15/23 Tr. 122-23; Ex. 425.)

The Defense Evidence

Haltiwanger testified (3/20/23 Tr. 22). He admitted to dealing drugs to Taylor and Green but had never met Kelley (3/20/23 Tr. 23-26). In 2021 and at trial, Haltiwanger walked with a limp because he had previously been shot and suffered a spinal cord injury (3/20/23 Tr. 26-27).

On September 10, 2021, Haltiwanger went to Taylor's apartment and sold drugs to Taylor and Green (3/20/23 Tr. 27-28). He brought a gun with him in his backpack (3/20/23 Tr. 28). The gun was loaded, with 15 bullets in the magazine (3/20/23 Tr. 47). Haltiwanger spent the night on Taylor's couch with Taylor's permission (3/20/23 Tr. 28).

Haltiwanger testified that he was awoken by Kelley, who shook Haltiwanger and held a gun to his head (3/20/23 Tr. 29). Kelley told Haltiwanger to get his

belongings and leave (3/20/23 Tr. 29). Taylor, who heard the commotion, came out of the bedroom and told his son to stop and put the gun away (3/20/23 Tr. 31). Kelley dragged Haltiwanger off his feet and threw him out of the apartment (3/20/23 Tr. 32). Haltiwanger grabbed his backpack on the way out (3/20/23 Tr. 32).

Haltiwanger claimed that, as he tried to leave the building, he heard Kelley say he was going to shoot and kill Haltiwanger (3/20/23 Tr.33). Haltiwanger asked Kelley why Kelley was following him, and Kelley replied, "N[—], I'll drag your ass" (3/20/23 Tr. 34). Kelley then grabbed Haltiwanger from behind (3/20/23 Tr. 34). When Kelley grabbed him, Haltiwanger slipped out of his jacket, reached into his bag, slightly turned, and fired a shot at Kelley (3/20/23 Tr. 35). He heard Kelley say, "Ouch, ouch, ouch" (3/20/23 Tr. 36). He then left the building (3/20/23 Tr. 37). Once he reached his car, he realized he had left his car keys inside the building (3/20/23 Tr. 38, 45). He placed his gun in the tire of the car, called a friend to pick him up, and left (3/20/23 Tr. 39, 59, 63). He did not call 911 (3/20/23 Tr. 64).

Haltiwanger admitted to calling Taylor and Green but claimed he did so because he wanted to know who Kelley was and how badly Kelley had been hurt (3/20/23 Tr. 39-40). He said he blocked his number because he knew they would not answer if they knew he was calling (3/20/23 Tr. 39-40). Haltiwanger also admitted to calling Green on September 23, 2021, from a blocked number, but said he did not know she was testifying before the grand jury the next day (3/20/23 Tr. 41, 84-86).

Haltiwanger also had an explanation for the jail-call complaint he made about a previous attorney where he had rejected the idea that he had shot Kelley in self-defense (3/20/23 Tr. 42). Haltiwanger claimed that what he meant was that his lawyer had advised him to take a plea offer if he was scared, and he rejected that advice (3/20/23 Tr. 44). Haltiwanger denied planning to blame Kelley's girlfriend for Kelley's murder (3/20/23 Tr. 108). He was confronted on cross-examination with another jail-call recording where he noted that his paperwork said Kelley's girlfriend was arrested that day because she had a warrant, and then said, "What I am reading and coming up with, is she killed him. Why would she kill him? Cause he was gonna turn her in and she didn't want to go to jail." (3/20/23 Tr. 110-11; Ex. 437.) While in jail, Haltiwanger also sent text messages about how he was going to "beat" his charges because the shooting was not on camera (3/20/23 Tr. 118-19).

SUMMARY OF ARGUMENT

Haltiwanger's convictions should be affirmed. First, the trial court's decision not to strike a juror, whom the court reasonably determined could consider the evidence fairly and impartially despite his discomfort with graphic material, was not an abuse of discretion.

Second, the court properly admitted evidence that Haltiwanger stopped checking in with a government employee as required after Kelley was killed as evidence of his consciousness of guilt, and minimized possible unfair prejudice by

ensuring the jury did not hear that the government employee was a pretrial services officer for Haltiwanger's other pending criminal case. The trial court also did not abuse its discretion by admitting evidence that a legal-retainer agreement—evidence that was likewise sanitized so the jury did not hear it pertained to Haltiwnager's other criminal case—was found in Haltiwanger's car to establish his control over the vehicle. Moreover, even assuming error, the admission of these pieces of evidence, unmentioned by the government in closing argument, was harmless due to the strength of the evidence disproving Haltiwanger's self-defense claim.

Third, the court properly allowed the government to probe Haltiwanger's understanding of self-defense on cross-examination to test the credibility of his explanations for various actions he took that evidenced consciousness of guilt and the changing of his defense from a theory of lack of evidence, to a third-party perpetrator, and finally to self-defense. Additionally, even assuming error, allowing that questioning was also harmless.

Finally, the evidence was sufficient to disprove Haltiwanger's self-defense claim where an eyewitness testified he shot Kelley in the back and Haltiwanger's self-serving testimony to the contrary was inconsistent with the forensic evidence.

ARGUMENT

I. The Trial Court Properly Refused to Strike Juror 55.

A. Additional Background

During voir dire, the trial court asked the venire a series of 13 questions and instructed them to indicate any affirmative responses (3/7/23 Tr. 9). One of the questions was, "Is there any reason that seeing pictures or hearing testimony about a shooting that would make it difficult for you to consider all the evidence fairly and impartially?" (3/7/23 Tr. 16.) The court then spoke to each member of the venire at the bench in the presence of Haltiwanger and the attorneys (3/7/23 Tr. 9-10).

Juror 55 initially had no affirmative responses to the court's questions (3/7/23 Tr. 39). At the bench, the court asked whether Juror 55 "underst[ood] each of the questions" (3/7/23 Tr. 39), and the juror volunteered the following.

> Juror: There was one question about if you have a problem seeing something graphic or –
>
> The Court: Yes. I did ask that question. This case involves a shooting, so there – there quite possible will be pictures. Does that give you –
>
> Juror: Gives me a little pause just because I don't even watch scary movies or can see myself have blood drawn out because I get really squeamish.
>
> The Court: Okay. Squeamish to the point where you pass out?
>
> Juror: I wouldn't say pass out, but it's definitely not something I like to look at. (3/7/23 Tr. 39-40.)

The court then allowed the parties to inquire:

> [Prosecutor]: Hi, sir. Do you think that your discomfort with seeing those types of things would distract you or prevent you from being able to hear the evidence in this case?
>
> Juror: Honestly, I don't know.
>
> [Prosecutor]: Do you think it would affect your ability to consider the evidence impartially?
>
> Juror: I would hope not.
>
> The Court: [Defense counsel], any questions on that narrow issue?
>
> [Defense Counsel]: No, Your Honor. (3/7/23 Tr. 40.)

Haltiwanger moved to strike Juror 55 for cause, arguing that Juror 55's final response to the question of whether he could be fair and impartial despite his discomfort with graphic material was "not a firm response" (3/7/23 Tr. 181). Because the juror had "expressed some concerns about graphic pictures" counsel believed that "out of an abundance of caution . . . he should be stricken for cause" (3/7/23 Tr. 181). The government opposed, interpreting Juror 55's response, "I would hope so," as meaning, "I would expect myself to be able to put that [discomfort with graphic material] to the side" (3/7/23 Tr. 182).

The trial agreed with the government's view of the juror's response (3/7/23 Tr. 182). The court also noted it had asked if the juror was squeamish to the point that he passed out (3/7/23 Tr. 182). If the parties were discussing "something at that level, then excusing that juror would be appropriate" (3/7/23 Tr. 182). With Juror 55, however, "if he just doesn't like – none of us like to see pictures that make us a

little squeamish. But I mean it's not like they're going to be on the screen for extended periods of time." (3/7/23 Tr. 182.) The court explicitly found the juror's answers did not "ris[e]to the level of him not being able to be fair and impartial" (3/7/23 Tr. 182).

Juror 55 sat on the jury (3/7/23 Tr. 194). No further mention of his possible distress at seeing graphic images was made during the trial.

B. Standard of Review and Legal Principles.

"The trial judge has broad discretion over whether to strike a juror for cause, and the exercise of that discretion will not be reversed unless the juror's partiality is manifest." *Harris v. United States*, 606 A.2d 763, 764 (D.C. 1992) (cleaned up). "The court is allowed to dismiss a juror on the ground of inferable bias only after having received responses from the juror that permit an inference that the juror in question would not be able to decide the matter objectively." *Mason v. United States*, 170 A.3d 182, 185 (D.C. 2017) (cleaned up). "Key considerations in making this determination include the juror's own assertion of whether he or she is able to lay aside his or her impressions and the trial court's assessment of the juror's demeanor, which is a decision particularly within the province of the trial judge." *Bost v. United States*, 178 A.3d 1156, 1177 (D.C. 2018) (cleaned up).

C. Discussion

The trial court properly exercised its discretion in declining to strike Juror 55 for cause. The juror conscientiously raised his discomfort with seeing graphic material (3/7/23 Tr. 39-40). The trial court probed whether that discomfort was serious enough to genuinely affect the juror's ability to serve, and found that it was not (3/7/23 Tr. 40, 182). When the government asked if Juror 55's discomfort would affect his ability to consider the evidence impartially, the juror said, "I would hope not" (3/7/23 Tr. 40). As the government noted, and the trial court found, Juror 55's demeanor when giving that answer showed that the juror would "expect . . . to be able to put [his discomfort] to the side" when evaluating the evidence (3/7/23 Tr. 181-82). Accordingly, the court did not abuse its discretion in concluding the juror should not be struck merely "out of an abundance of caution," as defense counsel urged (3/7/23 Tr. 181-82). *See Dennis v. Jackson*, 258 A.3d 860, 875 n.13 (D.C. 2021) ("A trial judge has broad discretion in deciding whether to excuse a juror for cause . . . , among other reasons because the judge's assessment of a potential juror's demeanor plays such an important part in evaluating the juror's ability to serve.") (cleaned up).

Haltiwanger argues (at 23-26) that Juror 55's responses were equivocal and he should have been struck for cause because of the "potential for bias." However, "generally, courts have found error where a potential juror is disqualified for cause

based solely on the potential juror's belief, without a determination that the belief would interfere with the potential juror's ability to be impartial." *Mason*, 170 A.3d at 187 (collecting cases). The "appropriate standard for review . . . is not whether the juror was 'completely impartial,' but rather whether the juror was manifestly partial." *Harris*, 606 A.2d at 765 n.3. Accordingly, courts have often upheld decisions not to strike potential jurors where the juror's answers were not firm or definite. *See United States v. Johnson*, 495 F.3d 951, 964 (8th Cir. 2007) (upholding denial of strike "[a]lthough the juror gave some equivocal answers and acknowledged the possibility that his judgment could be affected by some aspects of the case"); *United States v. Hines*, 943 F.2d 348, 353 (4th Cir. 1991) ("The mere fact that a juror states that he 'thinks,' 'hopes' or 'would try' to weigh the evidence impartially after he has previously expressed an opinion about drugs generally, is not sufficient to require the juror to be excused.").

Juror 55's responses here were not evidence of manifest partiality. Instead, he gave honest answers indicating that he was not certain how his discomfort with graphic material might affect him but would endeavor to be impartial (3/7/23 Tr. 39-40). Those responses reflected positively on his credibility. *See United States v. Gabriel*, 365 F.3d 29, 30-31 (D.C. Cir. 2004) ("The candidate most ready to proclaim his impartiality may be the one least likely to be impartial. It is the rare juror who could honestly 'guarantee' that his feelings about the particular type of

crime alleged would in no way affect his deliberations.") (cleaned up), *vacated and remanded for other reasons*, 543 U.S. 1101 (2005), *reasoning reaff'd on remand*, 123 Fed. App'x 1 (D.C. Cir. 2005). After viewing Juror 55's demeanor, the trial court evaluated his answers and concluded that the juror's answer expressed a willingness to be fair and impartial despite his discomfort with graphic material (3/7/23 Tr. 182). Denying Haltiwanger's motion to strike Juror 55 for cause was not an abuse of discretion. *See Johnson*, 495 F.3d at 964; *Gabriel*, 365 F.3d 29, 30-31; *Harris*, 606 A.2d at 764-65 & n.3.

Haltiwanger also implies (at 26) that the "brevity of the inquiry made" was error. His passing reference is insufficient to raise that issue and the argument is therefore waived. *See Bardoff v. United States*, 628 A.2d 86, 90 n.8 (D.C. 1993) (where defendants "provide[d] no supporting argument in their brief for [a] general assertion" argument was considered abandoned); *cf. Tuckson v. United States*, 77 A.3d 357, 366 (D.C. 2013) ("It is a basic principle of appellate jurisprudence that points not urged on appeal are deemed to be waived.") (quoting *Rose v. United States*, 629 A.2d 526, 535 (D.C. 1993)). In any event, any such challenge would be meritless. "Certainly, the purpose of voir dire is to expose juror bias that might affect the verdict, but how such biases will be uncovered during voir dire is left to the trial court's broad discretion." *Bruce v. United States*, 305 A.3d 381, 391 (D.C. 2023) (cleaned up). The trial court here followed up on Juror 55's initial concern, asked

whether Juror 55 reacted so strongly to graphic material that he passed out, and allowed both parties to inquire further (3/7/23 Tr. 39-40). Defense counsel declined to ask any questions (3/7/23 Tr. 40), and on appeal Haltiwanger does not suggest any further inquiry the court should have done. The court did not abuse its discretion by not inquiring further. *See Bruce*, 305 A.3d at 391 (no abuse of discretion in inquiry where court "addressed [juror's] initial response, provided her an opportunity to clarify, and considered [juror's] answer to defense counsel's question" and "trial counsel did not ask for further inquiry").[4]

II. The Trial Court Did Not Abuse Its Discretion in Admitting Sanitized Evidence of Haltiwanger's Missed Check-Ins and the Legal-Retainer Agreement in His Car.

A. Additional Background

In September 2021, Haltiwanger had been on pretrial release in an unrelated Superior Court case for drug and gun offenses and was required to check in weekly

[4] Haltiwanger lists (at 25) various exhibits containing "graphic evidence" that he speculates could have affected Juror 55. However, there is no indication that Juror 55 was unable to impartially discharge his responsibilities as a juror. *Cf. Johnson v. United States*, 701 A.2d 1085, 1089-90 (D.C. 1997) (holding that prospective juror who knew victim's family members and "stated that it would be difficult for her to be impartial" should have been struck for cause, and noting that "[h]er statements were confirmed by her actions [during trial] and noted by the trial court: she did not look at the evidence and she said she felt uncomfortable participating as a member of the jury").

by phone with his Pretrial Services officer (R2. 391 (Motion in Limine (MIL) 8 & n.4)). The government filed a pretrial motion in limine to admit testimony from the officer that would show Haltiwanger's use of a phone number ending in 8844 (a number he used to communicate with Taylor and Green) to check in with her, and his consciousness of guilt because he stopped checking in weekly, as required, following the murder (R2. 390-94 (MIL 7-11)). The government offered to reduce potential prejudice by referring to the officer as a "D.C. government employee" (R2. 393 (MIL 10)). The government also sought to introduce evidence of a criminal-defense retainer agreement found in the back of Haltiwanger's silver Infiniti that would help establish Haltiwanger's possession and control of that car (R2. 394-95 (MIL 11-12)). The government offered to reduce potential prejudice by referring to the document as "an agreement to represent Mr. Haltiwanger in a legal matter" (R2. 394 (MIL 11)).

Haltiwanger opposed on the ground that the evidence that he stopped checking in and the discovery of the legal-retainer agreement were more unduly prejudicial than probative (R2. 484-85 (MIL Opp. 5-6)).

1. Missed Check-ins Evidence

At a pretrial hearing, defense counsel maintained that evidence of Haltiwanger's failure to check in after the date of Kelley's murder was more unfairly prejudicial than probative (3/3/23 Tr. 29, 33). People could "stop checking in for a

host of reasons that has nothing to do with them committing crimes," although counsel provided no specific reason Haltiwanger would have done so (3/3/23 Tr. 29, 33). Haltiwanger did not oppose the government's use of the evidence "to establish a connection to the 844 [*sic*] number" with "the sanitation proposed by the [g]overnment" (3/3/23 Tr. 33).

The court concluded that the evidence of Haltiwanger's use of the 8844 phone number was probative and not unduly prejudicial assuming the jury would not hear that Haltiwanger had another criminal case (3/3/23 Tr. 30-31). The court then preliminarily excluded the consciousness-of-guilt evidence because it believed sanitization would be ineffective if the government introduced evidence of the potential consequences Haltiwanger faced if he failed to check in (3/6/23 Tr. 18-19). The government, however, explained that it had not planned to elicit any evidence of those potential consequences (3/6/23 Tr. 20-22). After that clarification, the court allowed admission of the sanitized version of the evidence (3/6/23 Tr. 23-25).

At trial on March 13, 2023, Ronetta Harris testified that she was a "government employee in the District of Columbia" (3/13/23 Tr. 127). In 2021, Haltiwanger was required to check in with her by phone on a weekly basis and used an 8844 number to do so (3/13/23 Tr. 127-28). He checked in every week until September 7, 2021, but did not do so again (3/13/23 Tr. 128).

2. Admission of the Legal-Retainer Agreement

During a pretrial hearing, defense counsel argued that the evidence of the legal retainer agreement would be unduly prejudicial because the jury could infer that it involved a separate criminal case (3/3/23 Tr. 37). Counsel also contended that the document was duplicative because a prescription in Haltiwanger's name was recovered from the car and offered to stipulate to Haltiwanger's ownership of the car (3/3/23 Tr. 37-38). Counsel also suggested that the document, if admitted, should be described as a "contract" with another person instead of a "retainer agreement" (3/3/23 Tr. 40-41). The government responded that it was not required to stipulate to evidence and that a legal retainer agreement was more sensitive and private than a generic contract, which added to the probative force of the document in establishing Haltiwanger's connection to the car (3/3/23 Tr. 41-45).

The trial court agreed with the government, finding that "what the document represents" was uniquely probative, and that a person "wouldn't leave private documents just laying around in the back of someone's car that was not your own" (3/3/23 Tr. 46). The court was also skeptical that the jury would make the "wide leap" that the agreement necessarily involved a criminal case, and even if it did, the prejudice was minimal because the jury would already hear about Haltiwanger's drug dealing (3/3/23 Tr. 40, 46).

At trial on March 9, 2023, a crime scene scientist with the D.C. Department of Forensic Sciences testified that she processed the silver Infiniti (3/9/23 Tr. 129, 133-34). She found "a written agreement to represent Shaka Haltiwanger in a legal matter" in the back seat, signed by him on September 7, 2021 (3/9/23 Tr. 148).

B. Standard of Review and Legal Principles

"Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence more or less probable than it would be without the evidence." *Foreman v. United States*, 792 A.2d 1043, 1049 (D.C. 2002). "Under *Drew v. United States*, 331 F.2d 85 (D.C. Cir. 1964), evidence of 'other crimes' is not admissible to prove general criminal propensity, but other-crimes evidence can be admitted for another 'substantial, legitimate purpose.'" *Drake v. United States*, 315 A.3d 1196, 1207 (D.C. 2024) (quoting *Drew*, 331 F.2d at 89-90). To admit evidence of consciousness of guilt, "the court must be satisfied, that the chain of inferences connecting the defendant's post-crime conduct to the crime itself would allow a reasonable jury to find that the conduct was inconsistent with that of an innocent person." *Williams v. United States*, 52 A.3d 25, 39 (D.C. 2012).

"Admissible evidence may be excluded, of course, if its probative value is substantially outweighed by the danger of unfair prejudice." *Hagans v. United States*, 96 A.3d 1, 29 (D.C. 2014). This Court reviews "the trial court's decision to admit evidence, including evidence of other crimes, for an abuse of discretion."

Valdez v. United States, 320 A.3d 339, 359 (D.C. 2024) (cleaned up). If evidence is improperly admitted, this Court reviews for nonconstitutional harmless error and will not reverse if it can "say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error." *King v. United States*, 75 A.3d 113, 118-20 (D.C. 2013) (quoting *Kotteakos v. United States*, 328 U.S. 750, 765 (1946)).

C. Discussion

1. The Check-In Evidence

The trial court did not abuse its discretion in admitting the evidence of Haltiwanger's failure to continue checking in with "a government employee" as required after September 7, 2021. He checked in every week until Kelley's murder, then stopped (3/13/23 Tr. 127-28). His conduct was "inconsistent with the way an innocent person would have acted," supporting the reasonable inference that he stopped checking in because he killed Kelley. *See Williams*, 52 A.3d at 40 (evidence that defendant charged with killing his wife avoided his wife's funeral was probative of consciousness of guilt).

Haltiwanger does not contest the probative value of the check-in evidence but argues (at 27-31) that it was outweighed by its unfair prejudice. However, once the probative value of consciousness-of-guilt evidence is established, "the inquiry shifts . . . to [the defendant's] proffered explanations" of why the conduct was innocent in

nature. *Williams*, 452 A.3d at 40. Although defense counsel said that there could be other reasons a person might stop checking in with Pretrial Services, he provided no explanation for why Haltiwanger might have done so (3/3/23 Tr. 29, 33). Absent any such proffer, the trial court did not abuse its discretion in admitting the evidence. *Compare Williams*, 52 A.3d at 41 (trial court abused its discretion by not considering defendant's proffered innocent explanations of conduct suggesting consciousness of guilt) *with Smith v. United States*, 777 A.2d 801, 808-09 (D.C. 2001) (court properly admitted evidence defendant attempted to flee from preliminary hearing after considering defendant's claim "that his attempted flight was in reaction to the court's bail ruling").[5]

Additionally, the possible unfair prejudice from the check-in evidence was mitigated by sanitization. There was no evidence presented to the jury that Haltiwanger had another pending criminal case or was otherwise involved in the

[5] The lack of an alternative explanation for Haltiwanger's failure to check in also differentiates the court's ruling on this evidence from its decision not to give the flight instruction, which Haltiwanger mentions (at 28). Unlike his failure to check in, Haltiwanger's other criminal case—of which the jury was deliberately not informed—was an alternative reason he might have fled after shooting Kelley (3/15/23 Tr. 143-47). *See Headspeth v. United States*, 86 A.3d 559, 566-67 (D.C. 2014) (flight instruction inappropriate if "particular information known by the court but not the jury suggests another reason" and "there is no reason to think that the jury would envision that other reason"). By contrast, the other criminal case was the reason Haltiwanger was supposed to *continue* checking in, so it could not explain why he stopped.

criminal justice system, and therefore no need to analyze the evidence under *Drew*. *See Hartridge v. United States*, 896 A.2d 198, 218-19 (D.C. 2006) (no *Drew* analysis required where trial court "whittled down the evidence" such that it "did not admit testimony showing a propensity to commit a crime"). Moreover, the court assured itself that there would be no mention of pretrial release or the consequences Haltiwanger could face if he did not check in (3/6/23 Tr. 23-25). *See Hartridge*, 896 A.2d at 218 (upholding trial court's exercise of discretion where it "carefully scrutinized and whittled down the evidence" due to concerns with prejudice); *Dockery v. United States*, 853 A.2d 687, 698 (D.C. 2004) (trial court properly considers "sanitizing the evidence as it comes in" when evaluating admission). The careful sanitization of the evidence thus mitigated the possible prejudice. *See Busey v. United States*, 747 A.2d 1153, 1165-66 (D.C. 2000) (trial judge properly allowed witness to testify defendant had gun two days before charged murder but "exercised his discretion to preclude the government from eliciting the context"); *Minnick v. United States*, 506 A.2d 1115, 1120 (D.C. 1986) ("Potential prejudice was further diminished because the parole papers which were shown to the jury did not contain any reference to the crime [the defendant] had committed.").

Haltiwanger also does not challenge the admission of the evidence of his use of the 8844 phone number, and did not do so at trial (3/3/23 Tr. 33). Thus, the jury would have heard that he was required to check in with a government employee

anyway, presenting the same concern that the jury might speculate the check-in requirement involved a criminal case. The evidence that he stopped checking in after September 7, 2021, did not materially add to this possible prejudice. *See Parker v. United States*, 249 A.3d 388, 408-09 (D.C. 2021) (risk that would cause jury to "infer that [the defendant] was a known criminal" was "lessened by the fact that, due to [a] stipulation, the jury already knew [he] had been incarcerated").

2. The Legal-Retainer Agreement

The court also properly admitted evidence of that Haltiwanger's legal-retainer agreement was found in the silver Infiniti, which was highly probative of Haltiwanger's possession of the car where the murder weapon was found and sanitized to remove any mention of a criminal case. Haltiwanger argues (at 30) that the evidence's probative value was reduced because other evidence linked him to the car. As the trial court recognized, however, a legal-retainer agreement is "not just any old contract," but is among the most sensitive personal documents that a person can possess (3/3/23 Tr. 44). That Haltiwanger kept such a sensitive document in the car raised a very strong inference that he actively used the car and that the sensitive items in and around the car—like the murder weapon—were his. In addition, as the trial court reasoned, the existence of any unfair prejudice from the admission of the sanitized evidence was highly speculative (3/3/23 Tr. 40). It was a "wide leap" to assume the jury would speculate that the legal-retainer agreement was

for a criminal matter (3/3/23 Tr. 40). Moreover, even assuming the jury could have speculated that the retainer agreement involved a criminal case, any such prejudice was minimized because the jury had already heard Haltiwanger was a drug dealer and would have assumed that the case related to that undisputed activity (3/3/23 Tr. 40). Accordingly, to the extent there was a risk of unfair prejudice from the possibility the jury might speculate the legal-retainer agreement had to do with another criminal case, that risk did not outweigh the evidence's probative value. *See Minnick*, 506 A.2d at 1119-20 (admission of testimony that parole papers found in wallet at scene of crime were the same papers defendant had shown witnesses earlier was not more unfairly prejudicial than probative).

Haltiwanger also argues (at 30) that his offer to stipulate that he owned the car removed the need for the legal-retainer evidence. As noted above, however, the probative value of the legal-retainer agreement as a legal-retainer agreement was high. Additionally, "[i]t is well-settled that 'the government has a large measure of discretion in deciding to accept or reject an offer to stipulate.'" *Edwards v. United States*, 767 A.2d 241, 253 (D.C. 2001) (quoting *United States v. Washington*, 705 F.2d 184, 194 (D.C. Cir. 1983)). Here, the government declined to stipulate, and the trial court carefully listened to Haltiwanger's concerns and ruled that the evidence of the legal retainer agreement was admissible if sanitized (3/3/23 Tr. 40-46). *See Washington*, 705 F.2d at 498-99 (where defendant was charged with false statements

in passport applications for three minor children, trial court properly exercised its discretion by admitting testimony that might "raise [unfair] suspicions that [the defendant] was kidnapping the children" but carefully limited the scope of that testimony).

Finally, Haltiwanger reargues (at 31) that the trial court should have sanitized the evidence further by accepting his suggestion at trial that the document be called a "contract." As the trial court determined, however, the importance and private nature of a legal retainer agreement made its presence more probative than the presence of a different legal contract, even if it made it the possibility of unfair prejudice slightly more likely (3/3/23 Tr. 45-46). The court's careful consideration of the party's arguments and its choice to use the phrase "legal retainer agreement" instead of "legal contract" was not an abuse of discretion. *Cf. Curry v. United States*, 658 A.2d 193, 199 (D.C. 1995) ("Where an exercise of discretion is called for, no single conclusion is preordained; the decision-maker, and not the law, decides.") (cleaned up).

3. Harmlessness

Even assuming the trial court erred by admitting the check-in or retainer-agreement evidence, any alleged error was harmless. The evidence disproving Haltiwanger's self-defense claim was very strong. *See Riddick v. United States*, 995 A.2d 212, 220 (D.C. 2010) ("In determining whether an error was harmless, we look

at, *inter alia*, the closeness of the case.") (cleaned up). Green testified that she saw Haltiwanger shoot Kelley in the back (3/9/23 Tr. 39-40). Although she was impeached, this was not a pure credibility contest because the physical evidence corroborated Green, not Haltiwanger. The autopsy of Kelley's body corroborated Green's testimony because the nature of the entrance and exit wounds and the path of the bullet established that Kelley was shot in the back (3/15/23 Tr. 65-66). In contrast, Haltiwanger's self-serving testimony (3/20/23 Tr. 35) that he turned slightly and shot Kelley after Kelly had grabbed him from behind was inconsistent with the forensic evidence. Haltiwanger's story did not account for how Kelley was shot in the back. Kelley was also, according to Haltiwanger, within arm's reach when he grabbed Haltiwanger shortly before he was shot, but the autopsy found no soot or stippling on Kelley's body that would indicate that he was shot from "close range" (within three feet) (3/15/23 Tr. 53-55). Additionally, Kelley was excluded from the DNA profile mixture obtained from swabs of Haltiwanger's jacket, which contradicted Haltiwanger's story that Kelley had grabbed him from behind (3/13/23 Tr. 52-53). Moreover, no other witness saw the firearm that Haltiwanger claimed Kelley had (3/8/23 Tr. 183; 3/9/23 Tr. 63; 3/15/23 Tr. 14).

The evidence showing Haltiwanger's consciousness of guilt in other ways was also very strong. He tried to hide his gun and magazine, left without calling 911, and called Green and Taylor from blocked numbers following Kelley's murder (3/8/23

Tr. 168-71; 3/9/23 Tr. 44; 3/13/23 Tr. 191-96, 198-99). Even after his arrest, Haltiwanger was confident that the government could not prove he shot Kelley, explaining in jail calls that his fingerprints were not found on the firearm and that Taylor and Green were "crackheads" that would not appear in court and would not be credible even if they did (3/20/23 Tr. 110-11; Ex. 437). He also mentioned rejecting his previous attorney's suggestion "if you did it [shot Kelley] because you were scared"—likely referring to self-defense—to which he replied, "no, that was not the case" (Ex. 425). Haltiwanger also discussed accusing Green's daughter of shooting Kelley (Ex. 437). He did not claim self-defense until trial, after he had learned the government had DNA evidence tying him to his firearm and car (3/20/23 Tr. 111-13). *See Riddick*, 995 A.2d at 220 (error harmless where "forensic evidence was completely inconsistent" with defendant's account and jury could infer consciousness of guilt from defendant's abscondment to New York).

Finally, the check-in and legal-retainer evidence was not an important part of the government's case. Both the pretrial services officer's testimony and the legal-retainer evidence took up less than two transcript pages each (3/9/23 Tr. 148-49; 3/13/23 Tr. 127-28). Neither was mentioned by the government in closing or rebuttal argument (3/20/23 Tr. 177-209, 236-43). *See 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). There was no attempt to use either piece of evidence to suggest Haltiwanger had a criminal history. Moreover, each snippet of evidence was presented to the jury on different days through different witnesses, further reducing the chance that jurors might connect the two and speculate that Haltiwanger was involved in other criminal activity (3/9/23 Tr. 148-49; 3/13/23 Tr. 127-28). *Cf. Bellamy v. United States*, 296 A.3d 909, 917-19 (D.C. 2023) (prejudice of joined charges mitigated if evidence of two incidents is kept "separate and distinct"). Under the circumstances, any alleged error in the admission of the check-in or legal-retainer evidence, either separately or together, was harmless. *See Carpenter v. United States*, 144 A.3d 1141, 1150 (D.C. 2016) (trial court failure to strike irrelevant and prejudicial testimony harmless where "the government did not highlight this testimony in closing" and "the evidence establishing [the defendant's] guilt was otherwise strong").

III. The Trial Court Did Not Abuse Its Discretion in Allowing Limited Cross-Examination of Haltiwanger on HisUnderstanding of Self-Defense.

A. Additional Background

During Haltiwanger's testimony, he admitted on direct examination that he had brought a gun to Taylor's apartment, and that he had pulled the gun out of his backpack and shot Kelley "to save [his] life out of desperation" (3/20/23 Tr. 28, 35). On cross-examination, Haltiwanger admitted he kept his gun in his backpack with

"a round in the chamber" ready to fire, claiming he did so for protection because he had "been shot multiple times" (3/20/23 Tr. 50). The government asked Haltiwanger where he got the gun, and the trial court initially sustained an objection (3/20/23 Tr. 52). At the ensuing bench conference, the government argued that Haltiwanger "testified that he got this gun for self-defense, that he's been shot, and that's why he acquired it" (3/20/23 Tr. 53). The government sought to "probe the circumstances by which he got the gun, to establish if, at the time he was getting this gun for self-defense, he had any idea about the law of self-defense" (3/20/23 Tr. 53). The government added that Haltiwanger's understanding of self-defense and belief that he was justified in shooting Kelley went "directly to his state of mind at the time that he did the shooting and, more importantly, to help explain his actions after the fact" (3/20/23 Tr. 53-54). The court allowed a "limited probe" because Haltiwanger had testified on direct examination that he had called Taylor from a blocked number "because he figured that Mr. Taylor wouldn't pick up if he knew it was [Haltiwanger] calling" (3/20/23 Tr. 54). The trial court found that testimony "just wonky enough, so to speak, because if you shot in self-defense," then "why wouldn't the father pick up and talk to you?" (3/20/23 Tr. 54). Defense counsel then proffered that there were "lots of clients who do not believe that there is a self-defense law in D.C." (3/20/23 Tr. 54-55). The trial court advised the government to "tread gingerly" and overruled the initial objection (3/20/23 Tr. 55).

In response to the government's questions about where he got the gun and why, Haltiwanger testified that he bought it from "a person in [his] neighborhood" because he "need[ed] to be able to protect [him]self" after he was shot for a third time (3/20/23 Tr. 56). The government then asked whether Haltiwanger "kn[e]w at the time [he] got the gun that the law in D.C. allows people to defend themselves if they are shot," and Haltiwanger responded, "No" (3/20/23 Tr. 56). After being confronted with the fact that he had testified that he "got this gun to defend [him]self, but" he claimed to have "no knowledge that the law allowed [him] to use the gun to defend [him]self," Haltiwanger testified that he "may have heard" about the law of self-defense "once the laws changed in D.C.," but he "didn't know about it" and "didn't know if it was actually true or not" (3/20/23 Tr. 57). The defense objected to further questioning, and the government moved on (3/20/23 Tr. 57-58).

Later during cross-examination, the government asked Haltiwanger a series of questions about hiding his gun after the shooting (3/20/23 Tr. 62). In response to a question about whether it "would be bad" if police had searched him and found a gun, Haltiwanger testified, "Possibly but not really" (3/20/23 Tr. 62). The government challenged Haltiwanger to name a circumstance where "being stopped near a shooting location with a gun" would "not be bad for you," and Haltiwanger answered, "Where you acted in self-defense" (3/20/23 Tr. 62). When the prosecutor pointed out that Haltiwanger had previously "said [he was not] even sure self-

defense was a thing," Haltiwanger replied that "now [he was] educated on that defense" (3/20/23 Tr. 63).

At the start of redirect examination, defense counsel asked Haltiwanger about the October 28, 2021, jail call with his sister, in which he denied shooting Kelley "because [he was] scared," and whether Haltiwanger was aware at the time "that self-defense was a defense in D.C." (3/20/23 Tr. 106-07, 120). Haltiwanger testified that he was not aware that he could claim self-defense, and that "people at the jail" had told him "there's no self-defense in D.C. (3/20/23 Tr. 120). According to Haltiwanger, he "sa[id] what [he] said" because he was "really scared [that] nobody was going to believe that [he] acted in self-defense" (3/20/23 Tr. 121).

In closing, the government made the following unobjected-to argument concerning Haltiwanger's knowledge of self-defense:

> "This whole concept of he had never heard of self-defense – he was very comfortable going out and arming himself with a gun. You'll have to believe – or excuse me, you'll have to consider for yourself if you think it's reasonable that someone who purposefully seeks out a gun has absolutely no idea of what the law on self-defense is." (3/20/23 Tr. 204.).

B. Standard of Review and Legal Principles

"It is essential, to the proper functioning of the adversary system that when a defendant takes the stand, the government be permitted proper and effective cross-examination in an attempt to elicit the truth." *Pitt v. United States*, 220 A.3d 951, 954 (D.C. 2019) (quoting *United States v. Havens*, 446 U.S. 620, 626-27 (1980))

(alteration omitted). "Prosecutors may cross-examine as to both the facts asserted by the defendant in testimony and the reasonably related inferences drawn from the direct testimony." *Id.* (cleaned up). "[T]he evaluation and weighing of evidence for relevance and potential prejudice is quintessentially a discretionary function of the trial court," thus this Court "review[s] the trial court's determinations defining the extent and scope of the prosecution's cross-examination of [a defendant's] testimony for abuse of discretion." *Id.* at 954-55 (cleaned up).

This Court "review[s] allegations of prosecutorial misconduct [in closing argument] not first raised before the trial court for plain error." *Young v. United States*, 305 A.3d 402, 422 (D.C. 2023). "[U]nder plain error review, an appellant is required to show that a trial court's allowance . . . was (1) error, (2) that is plain, (3) that affects substantial rights, . . . [and] (4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.* at 422-23 (cleaned up).

C. Discussion

The trial court did not abuse its discretion in allowing limited cross-examination of Haltiwanger on his understanding of self-defense, which was relevant to contested issues in the case. The government introduced several pieces of evidence that Haltiwanger acted in a way that showed consciousness of guilt after shooting Kelley (3/8/23 Tr. 168-71; 3/9/23 Tr. 44; 3/13/23 Tr. 191-96, 198-99). As the prosecutor argued, if Haltiwanger believed he had acted in legal self-defense, he

would not have taken steps that showed he believed he had acted wrongly (3/20/23 Tr. 53-54). His knowledge of self-defense was relevant to the credibility of his explanations for those actions. *See United States v. Raper*, 676 F.2d 841, 846-47 (D.C. Cir. 1982) ("Matters affecting the credibility of the witness are always open to cross-examination.") (cleaned up). The government also challenged Haltiwanger's credibility with evidence that he initially did not claim self-defense. Instead, he had focused on the likelihood the witnesses would not appear; the lack of fingerprints or video; and the false theory that Kelley's girlfriend killed Kelley (3/20/23 Tr. 108, 110-11, 118-19; Exs. 424, 425, 437, 506). It was not until trial, when Haltiwanger had learned the government had other evidence tying him to his firearm and car, that he claimed self-defense (3/20/23 Tr. 111-13). *Cf. Portuondo v. Agard*, 529 U.S. 61, 73 (2000) ("A witness's ability to hear prior testimony and to tailor his account accordingly, and the threat that ability presents to the integrity of the trial, are no different when it is the defendant doing the listening."). Haltiwanger's understanding of self-defense, both at the time of Kelley's murder and at trial, was relevant to whether he had fabricated his story of self-defense and shaped his testimony in response to the government's evidence. *See Pitt*, 220 A.3d at 964 (cross-examination of defendant on prior burglary proper where it was "used to impeach the general credibility of [his] relatively innocent explanations of the evidence"). Ultimately, the defense implicitly acknowledged as much; at the

beginning of redirect, Haltiwanger tried to explain away his statement to his sister that "[it] was not the case" that he "did it because [he was] scared" by testifying that he had believed "there's no self-defense in D.C." based on his conversations with other jail inmates (3/20/23 Tr. 120).

Haltiwanger argues (at 37) that the probative value of the evidence was outweighed by its unfair prejudice and confusion. Not so. At the trial court's clear direction, the government's questioning was limited, and it moved on after it became clear Haltiwanger was claiming he did not know anything about the law of self-defense when he killed Kelley (3/20/23 Tr. 56-59). The prosecutor only asked about self-defense again when Haltiwanger raised it in response to questions about why he hid his firearm after Kelley's shooting (3/20/23 Tr. 62-63). No argument was made, as Haltiwanger suggests (at 37-38), that he had a burden to understand the law of self-defense or that his lack of knowledge precluded his ability to claim self-defense. Instead, as Haltiwanger recognizes (at 37-38), the trial court properly instructed the jury that the government had the burden of proof and that the use of force in lawful self-defense depended on whether Haltiwanger "under the circumstances as they appeared to him at the time of the incident, actually believed he was in imminent danger of death or serious bodily harm and could reasonably hold that belief" (R2. 567, 586 (Jury Instructions 11, 30)).

In any event, cross-examination of Haltiwanger on his understanding of self-defense was harmless. The government mentioned it once in closing argument and, as described above, the government's evidence disproving Haltiwanger's self-defense claim was strong. Even assuming error, Haltiwanger's convictions should be affirmed. *See Carpenter*, 144 A.3d at 1150; *Riddick*, 995 A.2d at 220.

Haltiwanger also claims (at 36) that the government improperly argued that the jury could consider his claim he did not know about self-defense when he bought his firearm when evaluating his credibility (3/20/23 Tr. 204). He shows no error, much less plain error, in the trial court's failure to intervene sua sponte to preclude that unobjected-to argument. "The prosecutor is entitled to make reasonable comments on the evidence and urge such inferences from the testimony as will support his theory of the case." *Young*, 305 A.3d at 424 (cleaned up). Here, the prosecutor correctly pointed out that the jury could consider the believability of Haltiwanger's claim regarding his knowledge of self-defense when evaluating his credibility (3/20/23 Tr. 204). That comment was set within the wider context of the prosecutor's argument that the evidence undermined Haltiwanger's credibility (3/20/23 Tr. 201-05, 208). The trial court did not commit error, much less plain error, by not intervening to preclude the government's argument sua sponte. *See Young*, 305 A.3d at 424-25 (prosecutor's argument describing defendant's testimony as "self-serving statements" proper because "it was based on evidence that contradicted

the self-defense theory, and not just a personal opinion"); *Teoume-Lessane v. United States*, 931 A.2d 478, 497 (D.C. 2007) ("[T]he argument that a witness's testimony is incredible . . . is permissible when that is a logical inference from the evidence and not merely the opinion of counsel.") (cleaned up).[6]

In any event, assuming that argument was improper, it did not affect Haltiwanger's substantial rights or the fairness, integrity, or public reputation of judicial proceedings. The point was not central to the government's theory of the case, the comment was brief, and, as argued above, the government's evidence disproving self-defense was very strong. *See Lucas v. United States*, 102 A.3d 270, 283 (D.C. 2014) (on harmless error, improper argument did not require reversal where "prosecutor's comment was a single, brief, non-emphasized statement in the

[6] Although Haltiwanger mentions (at 36) other arguments in the government's closing, he does not claim that they were improper and has therefore abandoned those arguments. *See Tuckson*, 77 A.3d at 366; *Bardoff*, 628 A.2d at 90 n.8. Nor could he. The first was that the firearm Haltiwanger procured was more suited for intimidation than self-defense, undermining his claim he bought the gun for protection (3/20/23 Tr. 203-04). The second was that Haltiwanger changed his story to one of self-defense only after the government's investigation revealed evidence tying him to his car and firearm (3/20/23 Tr. 205). Both were proper arguments based on the evidence, and the second was a major theory of the government's case. *See Young*, 305 A.3d at 424 (prosecutor's statements proper where they "did not misstate or mischaracterize evidence" and "did not engage in impermissible speculation or argue facts not in evidence"); *Teoume-Lessane*, 931 A.2d at 495 (prosecutor may permissibly comment on effect of defendant's presence at trial on his credibility as a witness).

midst of around an hour of closing argument"). Thus, assuming error that was plain, reversal is not appropriate.[7]

IV. The Evidence Was Sufficient to Disprove Self-Defense.

A. Standard of Review and Legal Principles

This Court reviews "challenges to the sufficiency of the evidence by viewing the evidence in the light most favorable to the government, giving full play to the right of the fact-finder to determine credibility, weight the evidence, and draw justifiable inferences of fact, and making no distinction between direct and circumstantial evidence." *Young*, 305 A.3d at 413-14 (cleaned up).

To prove second-degree murder, the evidence must establish that the defendant "(1) caused the death of the victim; (2) had the specific intent to kill" or "seriously injure the decedent, or acted in conscious disregard of an extreme risk of death or serious bodily injury to the decedent; and that (3) there were no mitigating circumstances." *Mitchell v. United States*, 985 A.2d 1125, 1135 (D.C. 2009) (cleaned up).

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[7] *Thomas v. United States*, 447 A.2d 52 (D.C. 1982), does not, as Haltiwanger claims (at 36), stand for the proposition that *any* improper argument or instruction that goes to credibility requires reversal. *Thomas* involved an improper missing-witness instruction and argument that led to reversal. 447 A.2d at 56-60. This Court said that "where the defendant's credibility is a key issue *and the missing witness inference goes to that credibility*, an improper argument or instruction will ordinarily require reversal." *Id.* at 59 (emphasis added). There was no missing-witness inference in this case.

"Where a defendant has presented any evidence that she acted in self-defense, the government bears the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense." *Dawkins v. United States*, 189 A.3d 223, 231 (D.C. 2018) (cleaned up). "The government may carry this burden by showing that a defendant who employed deadly force either did not reasonably believe that she was in imminent danger of death or serious bodily injury, or used greater force than she actually and reasonably believed to be necessary under the circumstances." *Id.* at 232 (cleaned up).

B. Discussion

The evidence was sufficient to establish Haltiwanger committed second-degree murder. Green testified that Haltiwanger approached Kelley from behind and shot him in the back (3/9/23 Tr. 39-40). There was no indication that Kelley was attacking Haltiwanger at that moment, and Kelley had no firearm (3/9/23 Tr. 38-40, 63). Green's testimony alone was sufficient to establish that Haltiwanger committed second-degree murder by shooting Kelley and that the killing was not done in self-defense because Haltiwanger was not in fear of serious bodily injury at the time. *See Young*, 305 A.3d at 414-15 (evidence sufficient for second-degree murder and to disprove self-defense where witness saw defendants shoot unarmed victim).

Haltiwanger protests (at 44-45) that Green was impeached with prior inconsistent statements and could have been influenced by her daughter's pending

criminal case. However, "[i]nconsistencies in the evidence affect only its weight, not its sufficiency, and are in any event for the jury to resolve." *Graham v. United States*, 12 A.3d 1159, 1163 (D.C. 2011) (cleaned up). The jury could—and did—credit Green's testimony, corroborated by the forensic evidence, over Haltiwanger's, which was inconsistent with that evidence (3/8/23 Tr. 168-71; 3/9/23 Tr. 44; 3/13/23 Tr. 191-96, 198-99; 3/15/23 Tr. 65-66; Ex. 425; Ex. 437). *See Graham*, 12 A.3d at 1163-64 (testimony of single witness was sufficient for conviction even where he was impeached with inconsistent statements and a plea agreement with the government); *see also Smith v. United States*, 175 A.3d 623, 628 (D.C. 2017) ("As we have often stated, the testimony of a single witness is sufficient to sustain a criminal conviction . . . even when the witness is not a perfect witness.") (cleaned up).

Haltiwanger points out (at 45) that a supplemental autopsy report was issued to correct a typographical error. That does not, however, undermine the medical examiner's detailed reasoning underpinning her conclusions on the bullet's trajectory (3/15/23 Tr. 65-66). He also points (at 45-46) to his own testimony claiming self-defense, but the jury was free to discredit him. *See Young*, 305 A.3d at 415 (evidence sufficient where jury could have credited government's witnesses and discredited defendant's testimony); *Gibson v. United States*, 792 A.2d 1059, 1066 (D.C. 2002) (evidence sufficient even where defendant's "account of the incident

was very different" and "supported in various ways by the testimony of other witnesses"). Moreover, even assuming the jury believed that Kelley grabbed Haltiwanger from behind, it could have discredited his claim that Kelley had threatened him with a firearm, making Haltiwanger's resort to lethal force unreasonable. *See Milhausen v. United States*, 253 A.3d 565, 569 (D.C. 2021) (evidence sufficient to disprove self-defense where, even assuming victim was first aggressor, defendant's use of force was excessive). Haltiwanger's convictions should be affirmed.[8]

[8] Haltiwanger claims (at 46) that all his convictions should be reversed. However, even assuming error, the evidence supporting his convictions for carrying the firearm and large-capacity magazine was overwhelming since he admitted to bringing them to Taylor's apartment, hours before his confrontation with Kelley (3/20/23 Tr. 28, 47). He could not claim self-defense for his carrying of the firearm in anticipation of a speculative, generalized need for protection. *See, e.g.*, *Mack v. United States*, 6 A.3d 1224, 1229-30 (D.C. 2010) (self-defense "inapplicable where one anticipating harm carries a pistol in public for a period of time before the actual danger arises") (cleaned up). Those convictions should be affirmed.

CONCLUSION

WHEREFORE, the government respectfully submits that the judgment of the Superior Court should be affirmed.

Respectfully submitted,

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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 EFS system, upon counsel for appellant, Mindy Daniels, Esq., mindydaniels@verizon.net, on this 23rd day of May, 2025.

/s/
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