

BRIEF FOR APPELLEE

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 24-CF-184

TIAQUANA CHANDLER,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

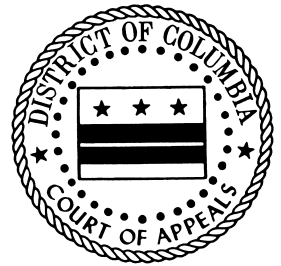
APPEAL FROM THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

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ISSUES PRESENTED

I. Whether the trial court abused its discretion when it permitted an eyewitness with intellectual disabilities to testify without conducting a competency voir dire or issuing a subpoena for records from the crisis facility in which she was staying, where the court confirmed the witness had previously demonstrated her competency when she testified in the grand jury, her trial testimony did not exhibit any unmistakable evidence she was not competent to testify, Chandler failed to establish that the request for a subpoena was anything more than a fishing expedition, and the trial court permitted wide latitude with respect to cross-examination into the witness's mental capacity and credibility.

II. Whether the trial court abused its discretion when it denied Chandler's request to compel the assault victim to submit to a drug test based on his testimonial demeanor, where the trial court permitted adequate cross-examination to explore the witness's credibility, and drug testing was not necessary to assist the jury's credibility determination.

III. Whether the trial court abused its discretion when it responded to a jury note seeking guidance on the law of aiding and abetting as applied to possession of a firearm during a crime of violence,

where the court addressed the jury's concern and provided an accurate statement of the law.

IV. Whether the evidence was sufficient to support Chandler's convictions for the "while armed" enhancement for aggravated assault and possession of a firearm during a crime of violence on an aiding-and-abetting theory of liability, where the jury could have reasonably inferred that Chandler's conduct enabled her co-conspirator to maintain possession of the firearm used in the attack.

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COUNTERSTATEMENT OF THE CASE

Upset about an altercation with Shawn Watts, appellant Tiaquana Chandler engaged her son, Donnell Tucker, to assist in exacting retribution against him. Chandler and her son returned to the apartment where Watts was staying and began to beat him. Chandler repeatedly struck Watts on his head and face, while Chandler's son pistol-whipped Watts. Chandler's son then shot Watts in the leg, fracturing his femur. As Chandler and her son left Watts bleeding in the hallway, Chandler's

son implored her to quickly retrieve the magazine of his gun, which had come out in the hallway of the apartment building.

Following a trial before the Honorable Sean Staples, a jury convicted Chandler of conspiracy with her son to assault Watts with a dangerous weapon, aggravated assault while armed with a firearm, and possession of a firearm during a crime of violence (PFCV) (Record on Appeal (R.) 293-95 (Verdict Form) (PDF pages); 11/6/23 Transcript (Tr.) 46-48).¹ The trial court sentenced Chandler to 72 months' incarceration and five years' supervised release (R. 324). Chandler filed a timely notice of appeal (R. 325).

The Trial

The Government's Evidence

1. The Shooting of Shawn Watts

In the evening of March 27, 2023, Hanaa Joher returned to her friend Darlene's apartment where she had been staying with her boyfriend, Shawn Watts, for approximately a week (11/1/23 Tr. 21, 23-27,

¹ The jury acquitted Chandler of first-degree burglary while armed, an associated PFCV charge, assault with significant bodily injury while armed with a dangerous weapon (ring), and soliciting assault with a dangerous weapon (R. 293-95; 11/6/23 Tr. 46-48).

71-73). Multiple people, including Watts, Darlene, and Chandler, were in the apartment “drinking beers and chilling” (*id.* at 27-29). Joher also saw both Watts and Chandler using drugs, including PCP and “Molly” (*id.* at 29-31).² Joher did not use any drugs but was drinking beers (*id.* at 29, 52, 54, 59).

At one point in the evening, Chandler and Watts argued, and Watts made Chandler leave the apartment (11/1/23 Tr. 31, 78-79).³ After others in the apartment left, Darlene went to sleep in her room, Joher laid down to relax in the living room, and Watts began to take out the trash (*id.* at 32-34). Joher heard a knock at the door, and when she looked through the peep hole, she saw Chandler and her son, Donnell (*id.* at 34, 66).⁴ Donnell was wearing a mask and carrying a gun (*id.* at 38, 55-56, 67).

² Watts denied he used PCP that night (11/1/23 Tr. 103).

³ Watts testified that he became “a little uncomfortable” because Chandler was “staying [in the apartment] for a long time . . . [and] didn’t want to go home” (11/1/23 Tr. 78-79). Chandler initially refused Watts’s requests to leave but eventually left (*id.*). Watts denied that the altercation with Chandler was ever physical (*id.* at 102). Joher testified that she saw Chandler “disrespecting” Watts and “hit him . . . on his eye” (*id.* at 31). Watts “hit her back,” told her to leave, and “got her out of the apartment” (*id.*).

⁴ Joher met Chandler when she came to live at Darlene’s apartment and had seen her multiple times during the prior week (11/1/23 Tr. 25-26, 37).
(continued . . .)

Donnell opened the door, which was unlocked, slamming it into Joher (11/1/23 Tr. 38, 56).⁵ When Chandler and Donnell entered, Donnell asked Watts, “Why you hit my mom? You shouldn’t hit her. I’m going to kill you right now.” (*Id.* at 38.) Chandler threatened, “I’m going to beat you up,” and “I’m going to kill you” (*id.* at 38-39). Donnell dragged Watts into the hallway of the building by his feet and began to beat Watts with Chandler’s help (*id.* at 39-40, 79-81). The pair hit Watts on his face, head, and body, and Donnell shot Watts in the leg (*id.* at 40-41, 80-81, 101). Chandler and her son fled the scene (*id.* at 40-41).

A neighbor called the police (11/1/23 Tr. 41). When officers arrived shortly after midnight, they found Watts screaming and “covered in blood, in a very awkward, unnatural-looking position, about halfway down the stairs in the hallway of the apartment building” (10/31/23 Tr. 225-27). Watts had injuries to his leg, face, and head, and was taken to the hospital (*id.* at 226; 11/1/23 Tr. 88). At the hospital, Watts received

Chandler, in turn, introduced Joher to her son Donnell on a prior occasion when they were all outside near a dumpster for the apartments (*id.* at 25-26, 35-37).

⁵ Watts testified that he looked through the door’s peephole, saw Chandler and her son Donnell, and opened the door for them (11/1/23 Tr. 79-80, 104-05).

surgery to fix his broken femur (which required insertion of a titanium rod in his leg), as well as 14 staples to close wounds on his head and face (11/1/23 Tr. 81, 83, 88; 11/2/23 Tr. 8-10). Watts had to stay in the hospital for a couple weeks and used a walker and cane for some time after the attack (11/1/23 Tr. 83-84, 88).

2. The Investigation

When detectives interviewed Watts at the hospital on the morning of the attack, he told them that Chandler and her son shot him and “tried to kill [his] ass” (11/1/23 Tr. 88; Gov’t Ex. 4 at 1:36:30 to 1:37:09 (embedded timestamp)). A canvass of the stairwell and surrounding area of the building, however, did not locate any firearms-related evidence (11/2/23 Tr. 19-21). Investigators saw that the stairwell landings “were covered in a substantial amount of blood,” including drops on the threshold of Darlene’s apartment, indicating there may be more blood inside (*id.* at 19). Unable to contact anyone within Darlene’s apartment, police obtained an emergency search warrant (*id.* at 28-29). A search of the apartment uncovered two unfired rounds of ammunition but no other ballistics-related evidence (*id.* at 30-31).

When detectives executed the emergency warrant at the apartment, they encountered Joher, who was interviewed on scene and at the police station (11/2/23 Tr. 30-31). Joher told police that Chandler and her son had assaulted Watts (11/1/23 Tr. 43). She also identified Chandler in a photograph, stating that she saw Chandler “beating and assault[ing]” Watts (*id.* at 43-48; 11/2/23 Tr. 31-36; Gov’t Exs. 14, 17). A few days after the attack, Watts also identified Chandler in a confirmation photograph procedure, stating “she attacked me in [the] hallway when I answered the door” (11/2/23 Tr. 38-39; Gov’t Ex. 9).

On March 29, a day after the attack, Chandler was stopped by police (11/1/23 Tr. 139-40). At the station, she waived her Miranda rights and spoke about her assault of Watts (Gov’t Ex. 11 at 20:31:51 to -38:55 (embedded timestamp)). Chandler told detectives that she was at Darlene’s house smoking weed and PCP when Watts began to choke her (*id.* at 20:45:33 to -45:50, 20:47:17 to -48:00, 20:57:38 to -58:02). A woman named Wanda intervened to help, and Chandler left the house to find someone to beat Watts up for her (*id.* at 20:46:20 to -46:32, 20:48:00 to -48:10). Chandler first told detectives that she “paid somebody five dollars to whoop [Watts’s] ass” (*id.* at 20:46:26 to -46:32); however, she

later claimed that she paid the “youngin” with three and a half ounces of weed (*id.* at 20:48:02 to -48:10; 20:54:25 to -54:44; 20:58:04 to -58:35). Chandler refused to tell the detectives any more information about her accomplice’s identity (*id.* at 20:48:10 to -48:16, 20:54:31 to -54:36), although she denied that it was her son (*id.* at 20:48:29 to -49:03).

Chandler claimed that she and the man she hired went back to the apartment building, and Watts came out into the hallway (Gov’t Ex. 11 at 20:59:05 to -59:15). The hired assailant began beating Watts with a gun, and Chandler joined in the beat down (*id.* at 20:54:25 to -54:32, 20:59:15 to 21:00:00, 21:02:04 to -02:16). Chandler then “stepped off,” claiming she never saw or heard any shooting (*id.* at 20:49:00 to -49:17, 21:00:06 to -00:14). Despite her prior repeated descriptions of the beating as a pistol-whipping, Chandler later denied ever seeing the hired assailant with a gun (*id.* at 21:05:34 to -06:09, 21:06:44 to -06:57, 21:07:32 to -07:34).

A detective obtained surveillance footage (with audio) of the exterior of Darlene’s apartment building (11/1/23 Tr. 125, 129; 11/2/23 Tr. 50). The footage showed a car enter and park on the circle in front of the apartment building shortly after midnight on March 28, 2023 (Gov’t

Ex. 10 at 00:24:19 to -24:32 (embedded timestamp)). A lone individual exited the driver's seat of the car and walked into Darlene's building (*id.* at 00:24:32 to -25:16). Approximately two minutes later, a loud sound and raised voices came from inside the building (*id.* at 00:27:15 to -27:25). Less than a minute later, a gunshot rang out, followed by the sound of someone screaming (*id.* at 00:27:25 to -28:05; 11/2/23 Tr. 56)). Shortly thereafter, the building's exterior door opened, and a shadowy figure fled the building, turning left at the sidewalk between apartment buildings (Gov't Ex. 10 at 00:28:22 to -28:29). As that first figure reached the sidewalk, the exterior door opened again and another person (moving more slowly) exited the building, turning to the right at the sidewalk (*id.* at 00:28:26 to -28:34).

As the second person headed in the direction of the parked car, a male voice called out, "Hey, get my clip" (Gov't Ex. 10 at 00:28:30 to -28:36). At the sound of the voice, the second individual stopped, turned around, and began to walk back toward the building (*id.* at 00:28:35 to -28:45). The male voice continued: "Go get my clip, hurry up. It's over in the corner." (*Id.* at 00:28:36 to -28:40.) The second person asked, "Where?," to which the voice responded, "By the window. Go in there to

the left. Hurry up. *Hurry up.*” (*Id.* at 00:28:40 to -28:48.) Approximately a minute and a half later, the second person re-emerged from the building, went to the parked car, and drove away (*id.* at 00:30:02 to -30:58). Officers arrived on scene approximately six minutes later (*id.* at 00:37:11 to -37:41).

3. Chandler’s Jail Calls

The government introduced multiple recordings of telephone calls Chandler made from jail while awaiting trial (11/1/23 Tr. 117-22; 11/2/23 Tr. 44-49). On March 30, 2023, Chandler told someone that “the n*gga Shawn is snitching on me,” and that her son Donnell needed to “stay away from Maryland before they lock his ass up” (Gov’t Ex. 13A; 11/2/23 Tr. 66). The next day, Chandler spoke with Donnell and told him to stay away from his home and “that house” and not to visit her at the jail (Gov’t Ex. 13B; 11/2/23 Tr. 66).

On April 4, Chandler admitted on the phone that, after Watts had strangled her, she “ran, got such-and-such,” the two of them were “fuckin’ his ass up,” and then “that thing came out, beatin’ on him, the clip came out, and I just had to run in there and grab his thing” (Gov’t Exs. 13C, 13D; 11/2/23 Tr. 66). Chandler regretted how she had handled the

situation, stating she “wish[ed] [she] could [have] done better than this” as she “was just reacting to this man” (Gov’t Ex. 13E; 11/2/23 Tr. 66).

On a May 12, 2023, phone call, Chandler explained that she was still wearing a ring that she had on the day of the beating because they could not get it off her finger (Gov’t Ex. 13F; 11/2/23 Tr. 66).

Chandler did not present any witnesses or evidence (11/2/23 Tr. 101).

SUMMARY OF ARGUMENT

The trial court did not abuse its discretion when it permitted Joher to testify without first conducting a competency voir dire or issuing a subpoena for records from the crisis facility in which she was staying. First, the court’s competency determination must be upheld because the record does not reveal any unmistakable evidence that it was incorrect. Second, the trial court did not fail to conduct an adequate investigation of the relationship between Joher’s mental conditions and her competency to testify. The trial court made adequate inquiry regarding the existing record of Joher’s competency and reasonably declined to issue a subpoena permitting Chandler to go on a fishing expedition through “crisis facility” records without an adequate proffer the records

would be relevant or admissible. Third, the trial court did not curtail Chandler's ability to adequately explore Joher's credibility. Indeed, defense counsel did not even attempt to inquire about Joher's alleged mental conditions on cross-examination. In any event, Chandler cannot show error or prejudice arising from the court's rejection of Chandler's subpoena request.

The trial court did not abuse its discretion when it declined to compel Watts to take a drug test based on his demeanor on the stand. The trial court permitted adequate cross-examination to explore Watts's credibility, and drug testing was not necessary to assist the jury in weighing his credibility, particularly given the reluctance of courts to require victims to submit to such procedures.

The court also did not abuse its discretion when responding to a jury note seeking guidance on aiding-and-abetting liability with respect to the PFCV charge. The trial court's response was a correct statement of the law and adequately addressed the jury's inquiry.

Finally, the evidence was sufficient to support Chandler's convictions for the "while armed" enhancement for aggravated assault as well as her conviction for aiding and abetting PFCV.

ARGUMENT

I. The Trial Court's Handling of Joher's Testimony Did Not Result in Reversible Error.

A. Additional Background

On the morning of Joher's testimony, the government disclosed that Joher was voluntarily staying at a "crisis facility" in Virginia to "assist with . . . being able to deal with the difficulties that she's been having with her life," including homelessness, domestic violence, and prior substance abuse (11/1/23 Tr. 5, 9-10).⁶ It also disclosed that when prosecutors spoke with facility staff that morning, they told prosecutors Joher had previously been diagnosed with "[a] form of Down syndrome, PTSD, and . . . a borderline intellectual disability" (*id.*).⁷ The government

⁶ The government noted Joher had "been clean at least since she[had] been in the facility" (11/1/23 Tr. 6).

⁷ The government first learned of Joher's diagnoses after speaking with Joher and facility staff the morning of her testimony (11/1/23 Tr. 5; see also *id.* at 10 (government was not aware of prior diagnoses before discussion with facility staff)). It immediately disclosed the information to defense before appearing before the trial court, and agreed "to get some follow-up information" on the length of Joher's stay at the facility at Chandler's request (*id.* at 5-6).

understood that these diagnoses pre-dated Joher's arrival at the crisis facility (*id.* at 10). Facility staff described Joher as "high-functioning" and capable of independent living (*id.* at 10-11). Moreover, the government's own discussions with Joher that morning showed that – despite a few moments of confusion – she was "able to respond to [the government's] questions and understand them" and have "a coherent discussion" (*id.* at 5).

Chandler expressed concerns regarding "Joher's ability to competently testify" and asked for "a voir dire outside the presence of the jury" (11/1/23 Tr. 6). Although the trial court indicated it was inclined to grant the request (*id.* at 6-8), after a brief recess, the court questioned whether its "initial instincts were correct" (*id.* at 9). The government explained that Joher had voluntarily entered the crisis facility and that her alleged diagnoses did not undermine her ability to testify before the grand jury or her ability to "recount everything" that occurred during a witness conference that morning (*id.* at 9-12). Given the government's representations, the court asked Chandler why a competency voir dire was necessary (*id.* at 12).

Chandler responded that, although she did not “have a clinician here” to explain the impact of Joher’s Down syndrome and intellectual disability on her competency, the diagnoses themselves raised “concerns about her ability to testify” (11/1/23 Tr. 12-13). Chandler urged the court to exercise its “wide discretion” to permit a competency voir dire given that some of Joher’s grand-jury testimony had been “childlike in a way” (*id.* at 13). Pressed by the trial court to describe the scope of her requested voir dire, Chandler proffered she would explore Joher’s “ability to distinguish between truth and falsity” (*id.* at 14).

In response, the trial court asked – in light of Joher’s prior grand-jury testimony – what information Chandler could point to that showed Joher was incapable of “understand[ing] the nature of [her] oath” or the “difference between a truth and a lie” (11/1/23 Tr. 14-15). Chandler highlighted grand-jury testimony that allegedly showed that Joher’s recollection of the timing of certain events differed from that of other witnesses, claiming it may indicate “time dislocation in terms of [Joher’s] ability to recall” (*id.* at 15). Chandler also pointed to Joher’s characterization of her relationship with Watts as “like fiancées” and her subsequent statement that “‘fiancé’ doesn’t mean we were engaged to be

married” as troubling (*id.* at 16). The trial court deemed these issues to be fodder for cross-examination as to the weight a jury should give Joher’s testimony but found they did not suggest Joher’s incompetency (*id.* at 15-17).

The trial court then found that Chandler had not made a threshold showing that a competency voir dire was necessary, particularly “given the fact that [Joher had] given intelligible testimony before in front of the grand jury under oath” (11/1/23 Tr. 16-17). The court, however, explicitly recognized it would “allow [Chandler] to cross-examine [Joher] . . . on these issues” and noted that “if something comes up,” the court and parties would “have to deal with that” (*id.* at 17).

Following the ruling, Chandler requested that the court “sign a subpoena for [Joher’s] records from the facility” (11/1/23 Tr. 17). The court denied the request, finding it was “not sure they’re even relevant at this point” given the uncertainty about how her residence or treatment in the facility related to her testimony (*id.*). The court nevertheless confirmed that Chandler could explore the issues on cross-examination and “to the extent that her perception is affected by any treatment she’s undergoing” such information would be “fair game” (*id.*). When the

government asked that any later-issued subpoena permit redaction related to witness-safety concerns, the trial court reiterated that any future ruling based on a renewed request would be subject to further discussion as necessary: “I think we could have her testify and you could ask her questions about that, and then we can see if there’s more information to be uncovered based on that. But I’m not going to do that at this point.” (*Id.* at 18.)

During cross-examination, Joher confirmed that she understood she was “under oath,” which she explained meant she “ha[d] to tell the truth and only the truth” (11/1/23 Tr. 54). Joher also denied ever using PCP (*id.* at 54-55). Chandler did not ask Joher or any other witness about Joher’s residence at the “crisis facility” or about any mental disabilities (*id.* at 50-63). Nor did she seek reconsideration of her subpoena request (see *id.*).

B. Applicable Legal Principles and Standard of Review

“A witness is generally presumed competent to testify.” 98 C.J.S. Witnesses § 90. “Competency depends upon the witness’ capacity to observe, remember, and narrate as well as an understanding of the duty

to tell the truth.” *Hilton v. United States*, 435 A.2d 383, 387-88 (D.C. 1981). “Although competency and credibility are related, the former concerns basic, prerequisite capabilities necessary to give testimony, whereas the latter is largely a concern of the factfinders – to decide whom and what to believe.” *Vereen v. United States*, 587 A.2d 456, 458 (D.C. 1991) (per curiam).

“A trial court has broad discretion to rule on the competency of witnesses.” *Barrera v. United States*, 599 A.2d 1119, 1126 (D.C. 1991). Where “a trial judge is confronted by any ‘red flag’ of *material* impact upon competency of a witness, an inquiry must be made into the facts and circumstances relevant thereto.” *Hammon v. United States*, 695 A.2d 97, 103-04 (D.C. 1997) (quoting *United States v. Crosby*, 462 F.2d 1201, 1203 (D.C. Cir. 1972)) (emphasis in *Crosby*). A trial court is not, however, required “merely on defense request, to conduct an exhaustive search of all available records to discover a ‘red flag.’” *Id.* at 104; *see also Crosby*, 462 F.2d at 1203 n.5 (“We do not mean . . . to imply that *every* allusion as to incompetency of a witness be required to be exhaustively explored by the trial judge, particularly where all other evidence substantiates competency.”). The manner of appraising competency is committed to the

discretion of the trial court, and “the trial court’s decision as to competency will be sustained even when it proceeds without a voir dire where the transcript reveals intelligible comprehension [by the witness] in terms of answering the questions that were asked.” *Smith v. United States*, 414 A.2d 1189, 1198 (D.C. 1980); *see also* *Tyer v. United States*, 912 A.2d 1150, 1156 (D.C. 2006) (“[A] trial court ruling regarding the competency of a witness ‘should not be disturbed unless the record provides unmistakable evidence that the trial court’s impressions are defective.’”) (quoting *Hammon*, 695 A.2d at 104).

“Generally, to obtain a subpoena *duces tecum* for documents, a party must show (1) that the documents are evidentiary and relevant; (2) that they are not otherwise procurable by exercise of due diligence; (3) that the party cannot properly prepare for trial without such production and (4) that the application is made in good faith and is not intended as a ‘fishing expedition.’” *Jones v. United States*, 293 A.3d 395, 403 (D.C. 2023) (cleaned up). A witness’s “psychiatric history is an area of great personal privacy.” (*Timothy*) *Parker v. United States*, 254 A.3d 1138, 1150 (D.C. 2021) (quoting *Velasquez v. United States*, 801 A.2d 72, 79 (D.C. 2002)). Where a party seeks access to a witness’s medical or mental-

health records, he must also show that “disclosure is required in the interests of public justice.” *Brown v. United States*, 567 A.2d 426, 427 (D.C. 1989) (citing D.C. Code § 14-307). Denial of a request for a subpoena is reviewed for abuse of discretion. *Tyer*, 912 A.2d at 1156.

C. Discussion

1. The Trial Court Did Not Abuse Its Discretion When It Permitted Joher to Testify After Denying Chandler’s Request for Voir Dire and a Subpoena *Duces Tecum* to Explore Joher’s Competency.

The trial court’s determination that Joher was competent to testify should not be disturbed on appeal because the transcript does not reveal any “unmistakable evidence” that the trial court erred in assessing Joher’s competency. *See Tyer*, 912 A.2d at 1156. Rather, the record shows that Joher provided responsive answers to the parties’ questions, gave a narrative account that was corroborated by other witnesses and surveillance video, and did not exhibit any outward manifestations of mental illness or intellectual disability that called into question her ability to perceive reality or understand her duty to tell the truth (11/1/23 Tr. 19-67). *See Hilton*, 435 A.2d at 388 (competency affirmed where

“testimony of the challenged witness, while ambiguous at times, presented a comprehensible and believable account of the robbery which was corroborated in many respects”).

Chandler highlights isolated moments of alleged confusion or inconsistency in Joher’s testimony she claims “raised serious questions about [Joher’s] ability to recall, comprehend, and narrate” (see Br. 9-16, 35-36, 42). Viewed in context, however, these isolated exchanges were nothing more than run-of-the-mill testimonial issues that “can be found in almost any trial,” and do not constitute a basis to reverse the trial court’s competency finding. *See In re A.H.B.*, 491 A.2d 490, 492-95 (D.C. 1985); *see also Barrera*, 599 A.2d at 1126 (competency affirmed where testimony was not “so confused” as to suggest incompetence, despite “inconsistencies” and “gaps in [witness’s] memory and knowledge”); *Mitchell v. United States*, 609 A.2d 1099, 1106 (D.C. 1992) (competency affirmed where “aspects of [witness’s] testimony may not always have been entirely clear” but witness “knew where he was and did not present the incomprehensible type of statements that could have caused the judge to conclude that he did not understand what was going on”); *In re B.D.T.*, 435 A.2d 378, 379 (D.C. 1981) (affirming competency

determination made without voir dire of 18-year-old who “attended a special education school” for “slow learners” even though testimony was “plagued with inconsistencies” where witness “never equivocated that a robbery had in fact occurred” and defendant “was one of the participants”). This is particularly true given that Joher testified in English – her second language – and it was reasonable to expect moments of confusion or inconsistency.⁸ Indeed, the immateriality of any alleged testimonial deficiencies is supported by the fact Chandler failed to re-raise her competency challenge following Joher’s testimony. *See Barrera*, 599 A.2d at 1126 (“There is no indication of record that defense counsel specifically requested the court to reconsider Milton’s competency during trial.”).

⁸ Joher was multilingual (speaking Arabic, French, English, Afghani, and “a little bit Spanish”) and English was her second language (11/1/23 Tr. 20-21). To the extent Chandler implies (at 36 n.70) that the government should have requested an interpreter for Joher – a request Chandler herself did not make – the record shows that Joher’s proficiency in English was such that “the crucial elements of h[er] testimony were quite understandable,” and it was therefore not error to take her testimony without the aid of an interpreter. *See In re Q.L.J.*, 458 A.2d 30, 31-32 (D.C. 1982).

Rather than directly challenging Joher's competency on appeal, Chandler argues instead (at 39-42) that the trial court reversibly erred by failing to make further inquiry into Joher's competency before she testified either through voir dire or issuance of a subpoena for facility records. This claim, however, fails. The manner of evaluating competency is entrusted to the broad discretion of the trial court. *See Smith*, 414 A.2d at 1198. Here, the trial court appropriately responded to defense counsel's competency challenge by gathering additional information from counsel about Joher's present state of mind, prior testimony in the grand jury (including her demonstrated ability to understand and respond to questioning), and the nature of her housing in a voluntary "crisis rehabilitation facility" (see 11/1/23 Tr. 12).

When the court asked Chandler to identify why a competency voir dire was necessary given Joher's prior grand-jury testimony, Chandler pointed to Joher's Down's syndrome and borderline intellectual disability (11/1/23 Tr. 12-13). Chandler, however, conceded she could not articulate how these diagnoses "could impact [Joher's] competence to testify" (*id.*). Absent information about how these conditions could affect Joher's capacity to observe, remember, narrate, or understand her duty to tell

the truth, Chandler's proffer failed to identify any red flag of *material* impact upon Joher's competency necessitating further inquiry by the trial court. *See United States v. George*, 532 F.3d 933, 936-37 (D.C. Cir. 2008) ("The days are long past when any mental illness was presumed to undermine a witness's competence to testify. . . . [S]ome indication is needed that a particular witness's medical history throws some doubt on the witness's competency or credibility."); *see also Hammon*, 965 A.2d at 104 n.14 ("[T]he fact that [witness] was in a 'treatment center' did not inherently suggest a 'red flag'" requiring further investigation); *Barrera*, 599 A.2d at 1127 ("Simply because a child is classified for educational purposes as developmentally delayed does not mean he or she is likely to be incompetent to testify."). The trial court also correctly dismissed Chandler's arguments that allegedly inconsistent portions of Joher's grand-jury testimony required a *competency* voir dire, finding those issues more appropriate subjects for credibility cross-examination (11/1/23 Tr. 15-17). *See Barrera*, 599 A.2d at 1126 ("Although competency and credibility are related, the former concerns basic, prerequisite capabilities necessary to give testimony, whereas the latter is largely a

concern of the factfinders—to decide whom and what to believe.”) (quoting *Vereen*, 587 A.2d at 458).

The trial court’s subsequent denial of Chandler’s request to subpoena records from Joher’s residential facility was also not an abuse of discretion. Chandler had the burden to show that his request for facility records was not merely a “fishing expedition.” *See Jones*, 293 A.3d at 403. But, as noted above, Chandler failed to show that Joher’s conditions had any bearing on her testimonial competence. *See George*, 532 F.3d at 936-37; *Hammon*, 965 A.2d at 104 n.14; *Barrera*, 599 A.2d at 1126-27. Moreover, even assuming Joher’s conditions were relevant to competency, Chandler failed to show that the facility in which Joher was staying would have any records relating to them. Rather, the government’s proffer tied Joher’s voluntary residence in the facility to her “homelessness” and prior instances of “domestic violence” and “substance abuse,” noting that the facility had not diagnosed Joher’s conditions (see 11/1/23 Tr. 9-10). Because Chandler could only speculate that facility records would have contained relevant information, the trial court did not err in denying the request. *See Jones*, 293 A.3d at 403 (proffer for subpoena insufficient where motion “stated no basis for believing that

[witness's] school records would reflect a history of lying"); *Tyer*, 912 A.2d at 1157 (proffer witness attended "school for students with learning disabilities" insufficient to support request for school records); *Barrera*, 599 A.2d at 1126-27 ("vague references" to "inappropriate behavior" insufficient to support request for "special education" records); *Hammon*, 695 A.2d at 104 (request for review of records unsupported by mere allegation juvenile was sent to "treatment center").

Chandler's reliance (at 39-42) on *Vereen* and *McCray v. United States*, 133 A.3d 205 (D.C. 2016), is misplaced. In *Vereen*, the trial court was confronted with a last-minute rebuttal witness who was being treated for schizophrenia and displayed ongoing symptomatic manifestations of her condition at trial, "freely acknowledged[ing] that she presently had premonitions and saw 'vapors'—florescent auras—that appeared over peoples' heads." *Vereen*, 587 A.2d at 457. Although the trial court conducted a competency voir dire, this Court reversed, finding that the trial court (who had not heard from an expert or permitted defense counsel access to the witness's medical records prior to voir dire) had not adequately explored whether the witness's "ongoing manifestations of mental illness" bore on her "perception, recollection, or ability to

distinguish fact from unreality.” *Id.* at 458. Unlike the witness in *Vereen*, however, Joher did not exhibit any ongoing manifestations of intellectual disability at trial that required the court to further explore their effect on her perception, recollection, or ability to distinguish fact from fiction. Thus, the trial court’s inquiry was sufficient to address the concerns raised by Chandler.

In *McCray*, a government witness entered a plea after opening statements and agreed to testify against his former co-defendants. 133 A.3d at 231. The witness had a diagnosis for bipolar disorder and had recently been involved in an incident in which he “threw feces and urine at a guard.” *Id.* at 233. Defense counsel did not challenge the witness’s competency but requested a brief continuance to hire an expert to advise on the potential impact the witness’s bipolar disorder may have had on his credibility. *Id.* at 231-32. The trial court denied the request. *Id.* This Court remanded for further factual development, finding that defense counsel was “entitled to an opportunity to show what an expert might contribute” to the question of the witness’s credibility. *Id.* at 234. *McCray* is distinguishable from this case, however, because it did not concern witness competency. *See id.* at 231-34. Further, unlike the witness in

McCray, Joher did not exhibit any recent, bizarre conduct that was arguably attributable to a mental-health condition. *See id.* Finally, Chandler never sought permission to hire an expert to advise on the potential impact of Joher’s conditions on her competence. Nor did Chandler request a continuance to permit her to do so.⁹ Given the record in this case, Judge Staples did not face the circumstances presented in *McCray*.

Even assuming the trial court should have conducted a voir dire prior to Joher’s testimony, any error was harmless. As discussed above, Joher’s testimony does not reveal any “unmistakable evidence” that the trial court clearly erred in finding that she was competent. *Smith*, 414 A.2d at 1198 (“[T]he trial court’s decision as to competency will be sustained even when it proceeds without a voir dire where the transcript

⁹ Given Chandler’s failure to seek further time or resources to explore the nexus between Joher’s conditions and her competence (other than a request to go on a fishing expedition through Joher’s facility records), Chandler’s allegation that the trial court “fail[ed] to permit inquiry” into Joher’s competence (Br. 39) is not supported by the record. This is particularly true where Judge Staples invited Chandler to revisit the matter if needed (see 11/1/23 Tr. 17-18).

reveals intelligible comprehension [by the witness] in terms of answering the questions that were asked.”).

2. The Trial Court Did Not Restrict Cross-Examination of Joher with Respect to Her Intellectual Capacity.

Chandler’s Sixth Amendment claim (at 34-37) that the trial court precluded cross-examination exploring the effect of Joher’s mental conditions on her credibility is squarely contradicted by the record. The court did not limit the subjects Chandler could explore regarding Joher’s mental conditions or their relationship to her credibility. Rather, the trial court made clear that Chandler was free to cross-examine Joher on her mental conditions, inconsistencies in her grand-jury testimony (which Chandler asserted called into question her competence), her stay at the crisis facility, and the effects of any treatment on her perception (11/1/23 Tr. 14-17). The trial court also agreed to reconsider any subpoena request for facility records “if there [was] more information to be uncovered” (*id.* at 17-18). Indeed, the trial court sustained only one objection during cross-examination when Joher was asked to speculate about the motives of another person (*see id.* at 50-63). Despite the trial court’s broad allowance for cross-examination, Chandler strategically chose not to ask

about Joher's mental conditions; how they affected her perception, memory, or understanding; her residence in the crisis facility; or any treatment she may have been receiving (*id.*).¹⁰ The record therefore clearly shows that the trial court did not restrict cross-examination, let alone do so in a way that violated the Sixth Amendment.

On appeal, Chandler now argues (at 32-37) that his right to cross-examine Joher was effectively curtailed by (1) the trial court's denial of his request for a subpoena and (2) his inability to present a witness "to explain [Joher's] conditions." The second of these claims is easily resolved: At no time did the trial court preclude Chandler from engaging an expert to advise on the effects of Joher's conditions on her competence or credibility – Chandler simply did not make this request. *Cf. McCray*, 133 A.3d at 231, 233-34 (error to deny *affirmative defense request* for time to explore impact of mental illness on witness's credibility).

¹⁰ Chandler's claim (at 35-36) that she had no ability to put Joher's conditions before the jury ignores that she could have asked Joher herself about them or could have subpoenaed the crisis-facility staff with whom defense counsel had spoken on the morning of her testimony. See 11/1/23 Tr. 13 (defense counsel's representations regarding discussion about Joher's conditions with non-clinical, residential-facility staff).

Chandler’s cross-examination claim therefore boils down to her allegation that the trial court erred when it denied her subpoena request (see Br. 35). Chandler, however, never argued in the trial court that her request for a subpoena was necessary to permit adequate cross-examination on Joher’s credibility. Her request for a subpoena was couched squarely within the parties’ discussion about Joher’s *competency* (see 11/1/23 Tr. 5-18). Having failed to sufficiently proffer her *credibility* theory in connection with the subpoena request, *see Barrera*, 599 A.2d at 1126 (distinguishing between competency and credibility), Chandler’s claim should be reviewed only for plain error. *See Austin v. United States*, 64 A.3d 413, 420 (D.C. 2013) (reviewing curtailment of cross-examination claim for plain error where “appellant made no argument, proffer, inquiry, or objection that would have suggested to the trial court the [relevance] theories he now advances”). Under that standard, appellant must show (1) error that (2) is plain, (3) affected substantial rights, and (4) resulted in a miscarriage of justice or seriously affected the fairness, integrity, or public reputation of judicial proceedings. *United States v. Olano*, 507 U.S. 725, 732-37 (1993).

Chandler cannot show error, let alone plain error, in the trial court's denial of her subpoena request. As discussed above, *supra* pp. 22-25, Chandler did not make an adequate proffer that (1) Joher's mental conditions were relevant to credibility and (2) facility records would contain relevant information about these conditions. The trial court therefore did not abuse its discretion when it denied Chandler's request as a fishing expedition (11/1/23 Tr. 17). *See Jones*, 293 A.3d at 403 (vague proffer as to how contents of records would undermine witness credibility did not support "compelling and detailed demonstration of need" required to subpoena school records) (quoting *Barerra*, 599 A.2d at 1126).

Even assuming error, the denial of Chandler's request for a subpoena was harmless under any standard.¹¹ Chandler's cross-

¹¹ Because the trial court permitted broad cross-examination into Joher's mental conditions, Chandler was able to "expose to the jury the facts from which jurors could appropriately draw inferences relating to the reliability of the witness," thereby "permit[ing] sufficient cross-examination to meet the requirements of the Sixth Amendment," *See In re J.W.*, 258 A.3d 195, 202 (D.C. 2021) (quoting *Delaware v. Van Arsdall*, 475 U.S. 673 (1986)). Thus, if this Court does not apply plain error, Chandler's claims should be reviewed for abuse of discretion, requiring a showing of prejudice. *See Velasquez*, 801 A.2d at 78-79; *Haney v. United States*, 41 A.3d 1227, 1231 n.25 (D.C. 2012) ("In this jurisdiction . . . we understand 'abuse of discretion' to include not only error but also a finding that the error is "of a magnitude to require reversal."). Even
(continued . . .)

examination of Joher was effective at casting substantial doubt on her reliability as a witness without defense counsel even arguing it in closing (see 11/2/23 Tr. 120-26). The jury's verdict clearly shows that they rejected any uncorroborated fact to which Joher was the sole witness. For example, Joher alone testified that Chandler and her son entered the apartment and dragged Watts into the hallway to beat him (see 11/1/23 Tr. 38-39). The jury, however, rejected those facts as supporting overt acts in their verdict on the conspiracy charge and acquitted Chandler on the burglary charge (11/2/23 Tr. 148; 11/6/23 Tr. 46-47). Joher was also the sole witness to testify that Chandler's son threatened to kill Watts in front of his mother, and the jury rejected that fact as an overt act supporting the conspiracy charge (see 11/1/23 Tr. 38; 11/2/23 Tr. 148; 11/6/23 Tr. 46). In contrast, the charges and overt acts on which the jury convicted were supported by Joher's testimony *and* other evidence, such as the contemporary identification procedures, Watts's testimony, Chandler's confession and jail calls, and surveillance video. Chandler's ability to cast further doubt on Joher's reliability would therefore have

assuming a violation of the Sixth Amendment, any error was harmless beyond a reasonable doubt.

had no effect whatsoever on the jury's assessment of the credibility of Chandler's confession or Watts's testimony about the attack. *In re Wiggins*, 359 A.2d 579, 581-82 (D.C. 1976) (confrontation violation harmless beyond a reasonable doubt where record included confessions to conduct constituting crime).

II. The Trial Court Did Not Abuse Its Discretion When It Denied Chandler's Request to Drug Test Watts.

A. Additional Background

Prior to cross-examination of Watts, Chandler raised concerns that Watts appeared under the influence and requested he "be sent down for a drug test" (11/1/23 Tr. 95). The trial court described Chandler's request as "beyond the pale," responding that Chandler was free to cross-examine Watts on whether he was under the influence (*id.* at 95-96). The court acknowledged that Watts was "speaking rather slowly and deliberately" but noted that he had not "admitted to doing anything" and had "suffered significant injuries" (*id.* at 96). It reiterated its belief that suspicion of drug use was "a matter for cross-examination" (*id.*).

Chandler added that Watts was "slurring his words" and reiterated her belief that the court had authority to order a test, although

acknowledged that authority was “to be exercised sparingly” (11/1/23 Tr. 96). The government disputed that a drug test was legally permissible, noted that Watts’s demeanor (including his “slurring of the words”) was consistent with prior interactions with him at times there was reason to believe he would not have had access to narcotics, and proffered that he had denied drug use earlier that day (*id.* at 97-98).

The trial court reiterated its denial of Chandler’s request (11/1/23 Tr. 98-99). It found that there had been no evidence of drug use presented yet, and that it did not have any evidence about how extensive the injuries to Watts’s head had been (*id.* at 98). The trial court summarized its findings:

[H]e’s speaking sort of slowly and deliberately.

I would say sometimes he had difficulty recalling, I think [it] was one of the names of the people that was there. He had to have his recollection refreshed regarding that. But I don’t think there’s anything about his demeanor on the stand which would compel me to order him to drug test. (*Id.* at 98-99.)

During cross-examination, Watts denied being under the influence of any substances (11/1/23 Tr. 104).

B. Applicable Legal Principles and Standard of Review

“The decision whether to order a physical or psychiatric examination for the purpose of determining competency to testify or to aid the jury in its assessment of a witness’ credibility is within the sound discretion of the trial judge.” *Hilton*, 435 A.2d at 387. Given that such examinations “may seriously impinge on a witness’ right to privacy,” “could serve as a tool of harassment,” and “could deter witnesses from coming forward,” there is a presumption against such examinations that “must be overcome by a showing of need.” *United States v. Butler*, 481 F.2d 531, 534 (D.C. Cir. 1973). A trial court’s denial of a request for physical examination of a witness is reviewed for abuse of discretion. *Hilton*, 435 A.2d at 387.

C. Discussion

Assuming, *arguendo*, Watts’s testimonial demeanor was sufficient to permit the trial court to order a drug test,¹² the court did not abuse its

¹² This Court has not opined on the minimum threshold showing required to permit such an order. *See Bethard v. Distr. of Columbia*, 650 A.2d 651, 652 n.4 (D.C. 1994) (noting this Court declined to reach question of whether order for drug test was proper based on court observations of witness demeanor in *In re Scott*, 517 A.2d 310 (D.C. 1986)). Given that
(continued . . .)

discretion when it denied this request. Chandler has not alleged, below or on appeal, that Watts's demeanor called into question his competency to testify. Rather, he asserts only (at 44) that Watts's drug use was relevant to his credibility. Chandler, however, was permitted to explore this issue on cross-examination, and the jurors – who were able to observe Watts's demeanor on the stand – were instructed on evaluation of witness credibility (11/2/23 Tr. 140-42). The jury was, therefore, adequately equipped to assess Watts's credibility based on his state-of-mind on the day of trial, and the trial court did not abuse its discretion when it denied Chandler's motion for a compelled drug test. *See Hilton*, 435 A.2d at 387-88 (no abuse of discretion to deny request for physical examination of witness who was alleged to have “shown signs of drug intoxication” and had been seen smoking marijuana where court permitted cross-examination on historical and present drug use); *United States v. Anderson*, 881 F.2d 1128, 1141-42 (D.C. Cir. 1989) (no abuse of discretion

the Supreme Court has repeatedly held a compelled drug test constitutes a search subject to the Fourth Amendment, *see, e.g., Skinner v. Ry. Labor Executives' Ass'n*, 489 U.S. 602, 617-18 (1989), it is likely the proponent of drug testing a witness must show more than mere suspicion the witness is intoxicated to warrant such an order.

to deny request for drug test where court observed witness's testimony, allowed cross-examination before the jury about prior involvement with and use of drugs, and instructed jury on credibility of witnesses). Chandler's argument (at 44) that the intrusion on Watts's privacy interests would have been minimal compared to the potential evidentiary value of any test results gives inadequate weight to the privacy interests at stake and the accompanying presumption against such examinations. It should therefore be rejected. *See Anderson*, 881 F.2d at 1142 (rejecting similar argument).

III. The Trial Court Adequately Addressed the Jury's Note Regarding Aiding and Abetting PFCV.

A. Additional Background

At the close of evidence, the trial court instructed the jury on the elements of PFCV in connection with the aggravated assault while armed charge:

In Count Five, Ms. Chandler is charged with possession of a firearm during a crime of violence. The crime of violence being aggravated assault while armed. The elements of the offense of possession of a firearm during a crime of violence, each of which the Government has to prove beyond a reasonable doubt, are that, . . . number one, Ms. Chandler possessed a firearm. Number two, Ms. Chandler possessed a firearm while

committing a crime of violence. . . . Number three, she did so voluntarily on purpose, not by mistake or accident. (11/2/23 Tr. 151-52.)

The court also instructed the jury on aiding-and-abetting liability, including that:

To find that the defendant aided and abetted in a crime, you must find that the defendant knowingly associated herself with the commission of the crime, that she participated in the crime as something she wanted to bring about, and that she intended by her action to make it succeed. Some affirmative conduct by the defendant in planning or carrying out the crime is necessary. Mere physical presence by Ms. Chandler at the place and time the crime is committed is not sufficient by itself to establish her guilt[]. However, mere physical presence is enough if it is intended to help in the commission of a crime. It is not necessary that you find Ms. Chandler was actually present when the crime was committed. (11/2/23 Tr. 154-55.)

During deliberations, the jury sent a note for clarification on the instructions with respect to Count Five:

Question about Count V #3: (1) Within the aiding and abetting framework, is the co-conspirator's intention of possession of the firearm sufficient to make the defendant have the same intention? In other words, if the co-conspirator intended to bring the firearm, would she also intend to do so under aiding and abetting?

(2) If the defendant first did not intend to bring the firearm, but then consented to it after the firearm was brought in, would that count as a "yes" under aiding and abetting? (R. 290.)

The trial court answered, “No,” to both questions in the first part of the jury note (11/6/23 Tr. 39-40). Chandler requested that the trial court also answer, “No,” to the second part of the note, arguing passive consent to the presence of a firearm brandished during an assault could not constitute aiding and abetting under (*Victor*) *Parker v. United States*, 298 A.3d 785 (D.C. 2023) (*id.* at 11-16). The trial court declined to adopt Chandler’s narrow view that the jury’s use of the term “consented” necessarily implied passivity, recognizing consent could be expressed through “words” or “conduct” (*id.*; see also *id.* at 19-20 (“[F]or example, . . . if the Jury finds that Miss Chandler was participating in a beating of Mr. Watts while the co-Defendant had a firearm, right, she’s preventing Mr. Watts from . . . taking the firearm away from the co-Defendant, right? So that could be – that’s sufficient. That could be – that’s enough facts to have participated in the crime with guilty knowledge.”)).

Over Chandler’s objection (11/6/23 Tr. 30), the trial judge instructed the jury:

For the Defendant to be found guilty of aiding and abetting the offense of possession of a firearm during a crime of violence of aggravated assault while armed, the Defendant must have taken some steps with guilty knowledge in the

planning or carrying out of the crime of the crime of possession of a firearm during a crime of violence by the co-conspirator.

Mere physical presence . . . at the place and time is not sufficient to establish her guilt. However, mere physical presence is enough, if it is intended to help in the commission of the crime of possession of the firearm. (*Id.* at 40-41.)

B. Applicable Legal Principles and Standard of Review

In responding to a jury's question, the trial court must give "an appropriate and effective response" that provides "an accurate and fair statement of the law" and "clear[s] away the jury's specific difficulties with concrete accuracy." *Lucas v. United States*, 240 A.3d 328, 343 (D.C. 2020). "If the jury's question focuses not on what the law means but on how the law should be applied to the facts," the court should take care its answer does not "invade the jury's province as fact-finder and, as a result, coerce the verdict." *Jordan v. United States*, 18 A.3d 703, 707 (D.C. 2011). Where a jury asks no follow-up questions, the Supreme Court "has presumed that the jury fully understood the judge's answer and appropriately applied the jury instructions." *Lucas*, 240 A.3d at 348 (quoting *Waddington v. Sarausad*, 555 U.S. 179, 196 (2009)). This Court reviews "the trial court's decision on what, if any, response to give to a

jury's question for abuse of discretion," although "the accuracy of the instruction itself is a legal question [this Court] review[s] de novo." *Id.* at 343.

C. Discussion

The trial court did not abuse its discretion when it responded to the jury's questions about Count Five. Contrary to Chandler's argument (at 30-31, 49), the trial court's response accurately stated the law – conveying that the jury had to find Chandler took "some steps with guilty knowledge in the planning or carrying out of the crime of the crime of possession of a firearm during a crime of violence by the co-conspirator" (11/6/23 Tr. 40-41 (emphasis added)). This instruction correctly tied Chandler's liability to conduct facilitating of the possession of the gun rather than facilitation of the assaultive conduct in general. The court also made clear that a defendant's mere presence while a co-conspirator possessed a gun was not sufficient to establish aiding-and-abetting liability unless that presence was meant to facilitate the co-conspirator's possession of the gun (11/6/23 Tr. 40-41). These instructions accorded with this Court's decision in *Parker*. See 298 A.3d at 791 ("To convict somebody of PFCV under an aiding and abetting theory, the government

must ‘prove some act on the defendant’s part that assisted the principal[] in [his] possession of firearms,’ undertaken ‘with guilty knowledge.’”) (quoting *Tann v. United States*, 127 A.3d 400, 431 (D.C. 2015)).

The trial court correctly rejected Chandler’s argument (repeated on appeal (at 49)) that the trial court was required to answer the second part of the jury’s note with an affirmative, “No.” As the trial court recognized, Chandler could be found guilty if the jury found that her manifestation of consent to her son’s use of the firearm assisted in the beating of Watts, thereby purposefully interfering with Watts’s ability to defend himself and dispossess the co-conspirator of the gun (see 11/6/23 Tr. 19-20). The trial court did not abuse its discretion by correctly instructing the jury on the law and then proceeding to instruct the jury how it should apply the law to those assumed facts. *See Jordan*, 18 A.3d at 707.

IV. The Evidence Was Sufficient to Support Chandler’s Convictions.

A. Standard of Review

This Court “reviews insufficiency-of-the-evidence claims de novo, but . . . view[s] the evidence in the light most favorable to the government, drawing all reasonable inferences in the government’s favor, and giving deference to the jury’s right to determine credibility and weight.” *Bruce*

v. United States, 305 A.3d 381, 392 (D.C. 2023) (citations and internal quotation marks omitted). “An appellant making a claim of evidentiary sufficiency bears the heavy burden of showing that the prosecution offered no evidence upon which a reasonable mind could find guilt beyond a reasonable doubt.” *Id.* The Court “make[s] no distinction between direct and circumstantial evidence” in assessing sufficiency. *Id.*

B. Discussion

1. Enhancement for Aggravated Assault While Armed

With respect to Chandler’s conviction for aggravated assault while armed, Chandler challenges only the sufficiency of the evidence supporting the “while armed” enhancement (see Br. 31-32, 49-50). A defendant may be found guilty of aiding and abetting a while-armed offense where she either “knew in advance that his associate was armed with a gun,” “mak[ing] the relevant (and indeed, moral) choice’ to aid and abet an armed offense” or “continue[d] to participate in a crime after a gun was displayed or used by a confederate” provided she “learned of the gun early enough to have a ‘realistic opportunity to quit the crime.’” (*Victor*) *Parker*, 298 A.3d at 793 (quoting *Tann*, 127 A.3d at 434, and

Rosemond v. United States, 572 U.S. 65, 78 & n.9 (2014)). The evidence at trial supported conviction under either theory.

The government presented evidence that, in response to a prior altercation with Watts, Chandler sought out her son to assist her in seeking retribution against him. Chandler and her son (who was openly carrying a gun) knocked on the apartment door, threatened to kill Watts, and then attacked Watts together. The two beat Watts about his head and face at the same time, and then Chandler's son shot Watts with the gun he was brandishing. As the attackers fled the building, Chandler acquiesced to her son's requests that she return to retrieve the magazine that had come out of his gun during the attack. This evidence permitted the jury to reasonably infer that Chandler knew and planned for her son to bring a gun to the attack in advance of the assault. *See Fox v. United States*, 11 A.3d 1282, 1289 (D.C. 2011) (evidence defendant made a plan to rob a store using guns and "actively participated in the robbery alongside his three visibly armed co-conspirators" sufficient to support while-armed enhancement); *Lancaster v. United States*, 975 A.2d 168, 170-71, 173-74 (D.C. 2009) (evidence defendant led victim to robbery and watched as armed men she knew executed it supported while-armed

enhancement); *Robinson v. United States*, 100 A.3d 95, 100-03, 108 (D.C. 2014) (“no question” that evidence unarmed defendant planned robbery with co-conspirators, was present in store while the others committed attack while visibly armed, and assisted in covering up the crime established guilt “as an aider and abettor of each ‘while armed’ crime”). That the jury made such an inference is supported by their (unchallenged) guilty verdict on the conspiracy to assault Watts with a dangerous weapon (see 11/2/23 Tr. 145-49; 11/6/23 Tr. 46-47).¹³

Even if the evidence could not support finding that Chandler and her son planned from the outset to use a gun during the assault,

¹³ This court should reject Chandler’s argument (at 50) that her acquittal on the solicitation charge shows the jury found she did not know her son was armed in advance of the assault. The trial court instructed the jury that to convict Chandler of solicitation it had to find she “request[ed], command[ed], or attempt[ed] to persuade” her son to “commit assault with a dangerous weapon” (11/2/23 Tr. 154 (providing Redbook Instruction 4.500 for Solicitation of a Crime of Violence)). Therefore, if the jury had any doubt that Chandler herself urged her son to use a gun during the assault (rather than her son coming up with the idea on his own), it was required to acquit on the solicitation charge. The jury’s acquittal on the solicitation charge, however, was not inconsistent with a jury finding that, although it may have been unclear who proposed using a gun in the attack when Chandler sought her son’s assistance in beating Watts, Chandler was aware of and had agreed to its use by the time she and her son knocked on the apartment door just before the assault.

Chandler confessed to police that she continued to assault Watts while her accomplice was pistol-whipping him. Therefore, even if this Court ignored the evidence supporting a reasonable inference Chandler knew of the gun before she arrived to beat Watts, Chandler's own confession to police established that, after she became aware of the gun, she continued participating in the beating. That evidence alone was sufficient to establish aiding-and-abetting liability for the while-armed enhancement. *See (Victor) Parker*, 298 A.3d at 793 (liability where non-armed participant does not withdraw from crime after learning of accomplice's possession of gun).

2. Aiding and Abetting PFCV

Chandler's confession that she continued to beat Watts while he was being pistol-whipped by her accomplice was also sufficient to support her conviction for aiding and abetting PFCV. It was reasonable to infer that Chandler's active role in assaulting Watts facilitated her son's continued possession of the gun because it necessarily impeded Watts's ability to defend himself against the attack. Although Chandler argues (at 47-48) there was no evidence that Watts made any efforts to disarm the gunman, such direct evidence is not required where it is reasonable

to infer that an individual in Watts's position would do so. *See (Victor) Parker*, 298 A.3d at 792-93 (recognizing Court has affirmed aiding-and-abetting conviction where circumstantial evidence supplied basis for reasonable inference that victim would have come to his friend's aid had he not been subdued). The evidence showed that Watts used force where he deemed it necessary (e.g., to remove Chandler from the apartment earlier in the evening), and it is reasonable to infer that Chandler's participation in the assault hindered Watts's ability to defend himself.

Chandler's reliance on *Parker*, *Fox*, and *Lancaster* is misplaced. None of those cases involved a defendant who was actively involved in assaulting *the same* individual in concert with an armed accomplice. *See (Victor) Parker*, 298 A.3d at 791-93 (unarmed accomplice "had no reason to think [the victim he dealt with] would try to disarm his accomplice" who was robbing the victim's companion); *Fox*, 11 A.3d at 1288 (unarmed accomplice acting as lookout did not "prevent the victims from seizing the handguns from his co-conspirators"); *Lancaster*, 975 A.2d at 174 (evidence insufficient to establish aiding and abetting PFCV where unarmed accomplice "did nothing after she lured [victim] into her apartment").

CONCLUSION

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

Respectfully submitted,

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/s/

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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, Adrian Madsen, Esq., madsen.adrian.eric@gmail.com, on this 22nd day of April, 2025.

/s/

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