CONSOLIDATED BRIEF FOR APPELLEE

DISTRICT OF COLUMBIA
COURT OF APPEALS

Nos. 24-CF-428 & 24-CF-496

DELONTA STEVENSON, and
VORREZE RICARDO THOMAS, Appellants,

v.

UNITED STATES OF AMERICA, Appellee.

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

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Cr. Nos. 2021-CF1-000968
2021-CF1-000967

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ISSUES PRESENTED

I. Whether the trial court abused its discretion by allowing the government's firearms-and-toolmark expert to use certain qualified conclusion language, where the government presented extensive unrebutted evidence that this language was supported by multiple peer-reviewed scientific studies[1]; and, alternatively, whether any error was harmless in light of the overwhelming evidence of appellants' guilt.

II. Whether, assuming arguendo the district court erred in striking Stevenson's rhetorical question in closing argument—"How many dark, puffy coats did you see[?]"—any error was harmless where Stevenson's counsel repeatedly argued that many people might wear dark, puffy coats; the court instructed the jury that they were permitted to use their common experience in evaluating the evidence; and the government's evidence of Stevenson's guilt was strong.

III. Whether appellants' respective convictions for possession of a firearm during a crime of violence or dangerous offense merge.

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[1] This issue is currently pending before this Court in *Tavon Owens v. United States*, No. 24-CF-713.

DISTRICT OF COLUMBIA
COURT OF APPEALS

Nos. 24-CF-0428 & 24-CF-0496

DELONTA STEVENSON, and
VORREZE RICARDO THOMAS, Appellants,

v.

UNITED STATES OF AMERICA, Appellee.

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

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

By indictment filed on June 1, 2022, appellants Delonta Stevenson and Vorreze Thomas were charged with conspiracy "to shoot and kill Troy Williams" (D.C. Code §§ 22-1805a, 401, 2101, 4502); first-degree premeditated murder while armed of Terrence Allen (D.C. Code §§ 22-2101, 4502); two counts of assault with intent to kill (AWIK) while armed of Troy Williams and James Fye (D.C. Code §§ 22-401, 4502); and three counts of possession of a firearm during a crime of violence or dangerous

offense (PFCV) (D.C. Code § 22-4504(b)) (Record on Appeal (R) 1186-90 (indictment)).[2] Stevenson was also charged with two counts of unlawful possession of a firearm (prior conviction and while on release) (D.C. Code §§ 22-4503(a)(1), 23-1328(a)(1)) (*id.*).[3] A third person, Brianca Phillips, was also charged in the indictment, but her case was severed before trial (*id.*; R33 (docket sheet)).

On January 9, 2024, a jury trial began before the Honorable Marisa Demeo (R44 (docket sheet)). On February 1, 2024, the jury found appellants guilty on all charges (R2792-16 (verdict form); Thomas R1442-45 (verdict form)). On May 2, 2024, Judge Demeo sentenced Stevenson to a total term of 1,020 months' incarceration, to be followed by five years of supervised release (R2812-13).[4] Thomas was sentenced on the same

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[2] Unless otherwise indicated, all record citations are to the PDF page numbers of the record in Stevenson's case, No. 24-CF-428. The record in Thomas's case, No. 24-CF-496, is cited as "Thomas R."

[3] Thomas was additionally charged with carrying a rifle or shotgun outside of his home or place of business (D.C. Code § 22-4504(a)(1), (a-1)) (R1190). We note that this Court will address the constitutional validity of this statute in *Brian Carruth v. United States*, No. 23-CF-0387.

[4] Specifically, Stevenson was sentenced to consecutive terms of incarceration of 60 months for conspiracy, 540 months for first-degree murder while armed, 180 months for each count of AWIK while armed (two counts), 36 months for unlawful possession of a firearm, and 12

(continued . . .)

date to a total term of 636 months' incarceration, to be followed by five years of supervised release (Thomas R1470 (amended judgment)).[5] Stevenson timely filed a notice of appeal on May 2, 2024 (R2814-15). Thomas timely noticed an appeal on May 28, 2024 (Thomas R1471-72).

The Trial

The Government's Evidence

1. The January 18, 2021, Shooting

On January 18, 2021, Troy Williams went to the Stanton Glenn apartment complex, located in southeast D.C., to check on his mother because she told him she had been assaulted (1/22/24 Tr. 65). Williams had been avoiding Stanton Glenn because he believed that Delonta Stevenson—who Williams knew from Stanton Glenn—and Brianca Phillips (Stevenson's girlfriend) blamed him for the shooting of Stevenson

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months for each count of unlawful possession of a firearm while on release (two counts) (R2812-13). He was sentenced to concurrent terms of 60 months' incarceration for each count of PFCV (three counts), and 36 months' incarceration for unlawful possession of a firearm (*id.*).

[5] Specifically, Thomas was sentenced to consecutive terms of incarceration of 36 months for conspiracy, 360 months for first-degree murder while armed, and 120 months for each count of AWIK while armed (two counts) (Thomas R1470). He was sentenced to concurrent terms of 60 months' incarceration for each count of PFCV (three counts), and 12 months' incarceration for carrying a rifle or shotgun (*id.*).

in November 2020 (*id.* at 69-70, 113, 121-23, 126, 151-57, 164). To get to Stanton Glenn, Williams asked for a ride from his girlfriend's uncle, Terrence Allen (*id.* at 65-66, 166). Williams asked Allen to bring a gun because Williams felt "tension around there" (*id.* at 167).

Around 10:00 a.m., Allen picked up Williams in Allen's white Ford Crown Victoria, and then picked up Allen's friend, James Fye (1/22/24 Tr. 168-69; 1/11/24 Tr. 141). As requested, Allen brought a Taurus G2 pistol with him (1/22/24 Tr. 167). The group arrived at Stanton Glenn at 10:26 a.m., learned that Williams's mother was okay, and drove her to a nearby grocery store at 10:52 a.m. (1/22/24 Tr. 170-71; Government Exhibit ("Ex.") 502 at 2:10–:30, 28:20–:30).[6]

At 10:48 a.m., Phillips's cell phone received two text messages and an audio note from the same phone number (1/23/24 Tr. 211-14, 217-18, 221-23; 1/25/24 Tr. 182-83). The text messages read, "Rara out[ ]here," and "Dat [n-word] ruh ruh right here"[7] (Ex. 1002 at 5-6). The audio note was from a male voice, "Hey bruh, get up, bruh. Rah Rah out here, bruh.

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[6] The time of day depicted on the Stanton Glenn surveillance footage is five minutes and five seconds fast (1/11/24 Tr. 47).

[7] "Rah Rah" is William's nickname (1/22/24 Tr. 62).

Hurry up." (Ex. 1003.) At 10:53 a.m., Phillips's phone made a 27-second call to "Lil V"—the nickname for Stevenson's nephew, Vorreze Thomas (Ex. 1002 at 9; 1/22/24 Tr. 73; 1/23/24 Tr. 215-16; 1/25/24 Tr. 138).

Surveillance video from a gas station in southeast D.C. showed Thomas answering a 27-second phone call at 10:53 a.m. (Ex. 516A at 0:28–:55). Thomas was wearing a navy-blue jacket with a light-brown fur hood, red sneakers, and a black face mask around his chin (*id.*). After the call, Thomas left the gas station, driving a green Volvo with Missouri license plate D40-BL (Exs. 516A at 3:20, 516C at 1:40–2:20, 516D at 0:34–2:48; 1/25/24 Tr. 69-74).

Shortly after 11:00 a.m., Stevenson, Thomas, and Phillips each arrived at Stanton Glenn separately, and congregated across the street from the apartment of Williams's mother, who lived at the back of the complex (Ex. 505Z). Thomas was wearing the same clothes he was wearing in the gas station, including the black face mask; Stevenson was wearing a blue puffer jacket, red-striped pants, and a balaclava; Phillips was wearing a light-colored cap, a black jacket with light stitching, black pants, and knee-high gray socks with a white band at the top (*id.*).

Meanwhile, Williams and the others in Allen's car returned to Stanton Glenn at 11:07 a.m. (Ex. 501 at 14:27–:48). Williams saw Stevenson across the street from his mother's building (1/22/24 Tr. 176, 182-85). He tried to speak to Stevenson, whom Williams identified in the Stanton Glenn surveillance footage (*id.* at 185, 187, 190-91).[8] Williams got "bad vibes," so he "rushed [his] mother inside," and "got back in the car and we pulled off" (*id.* at 185). Allen was driving, Fye was in the front-passenger seat, and Williams was in the back seat (*id.* at 185-86).

Stanton Glenn video surveillance showed Thomas retrieving a rifle from his Volvo while Stevenson held a pistol at 11:08 a.m. (Ex. 505Z). Seconds after Allen's car left, appellants drove away in the green Volvo, with Stevenson driving and Thomas in the front-passenger seat (Exs. 503 at :00–:45, 505 at 5:15–:33).

As Allen's car approached Stanton Glenn's exit, Williams saw the green Volvo, which Thomas typically drove, "driving towards [them] real fast" (1/22/24 Tr. 191, 196). Williams told Allen to speed up, and "as soon as he hit the gas, [they] started getting shot at" with gunfire coming from

[8] On cross-examination, Williams acknowledged that he did not mention that Stevenson was at Stanton Glenn until nearly two hours into his interview with the police after the shooting (1/23/24 Tr. 48-49).

the Volvo's passenger side (*id.* at 191, 193; Exs. 501Z, 507 at 10:00–:20, 507z). Williams tried to shoot back, but the gun misfired (1/22/24 Tr. 192).

Special Police Officer Adjawo Sani was on duty at Stanton Glenn's exit when he saw an individual in "the front passenger seat of a gold Volvo[9] shooting at" a car that had crashed into a pole (1/16/24 Tr. 77-78). The shooter's gun "had two grips," and was "way bigger" than Sani's pistol (*id.* at 113, 115). Sani described the shooter as having "light skin," and wearing a long-sleeve shirt, black gloves, and "a hood completely covering his face" (*id.* at 118). Sani testified that the Volvo was typically driven by a man who was "not tall," "skinny," had "dark skin," and was dating a woman named Andrea Waldo (*id.* at 138, 149-50).

Fye was shot three times in the shoulder (1/11/24 Tr. 147). Williams was shot in the foot, hip, and leg (1/22/24 Tr. 67). Allen was transported to the hospital and pronounced dead at 11:55 a.m. (1/29/24 Tr. 92-93).

2. Appellants' Flight

On January 18, 2021, at 11:10 a.m., Sergeant Michael Millsaps started hearing "a lot of gunfire," and "saw a gray color, like a crossover-

[9] Witnesses described the Volvo's color as "olive green," "like a lime green," gold, and gray (1/16/24 Tr. 78; 1/17/24 Tr. 43, 84; 1/22/24 Tr. 194).

type vehicle, coming out of the parking lot of Stanton Glenn" (1/17/24 Tr. 39-40, 43-44). He pursued the vehicle for approximately three-and-a-half minutes before losing sight of it around Denver Street SE and 32nd Street SE (*id.* at 55-56; Ex. 526).

A few blocks away, Kea Dodson saw from her window a car crash into a parked car near the intersection of 29th Street SE and Erie Street SE (1/16/24 Tr. 198; 1/17/24 Tr. 21, 56). Two men exited the car; "[i]t looked like they had guns" (1/17/24 Tr. 21). The passenger had "long dreads"[10] and was holding "a long gun, like it would have been a rifle" (*id.* at 22). The men ran north on a path that led to a wooded area behind another apartment building (*id.* at 25-27; Ex. 203).

North of the path was a shopping center that included a Safeway and a bank (1/17/24 Tr. 29-30). The bank's surveillance cameras captured appellants walking through the drive-up ATM at 11:16 a.m. (1/18/24 Tr. 165-66; Exs. 512A at 16:47–:50, 512B at 16:53–:55, 512C at 16:54–17:00, 512D at 16:39–:52, 512E at 16:50–:56). A Safeway surveillance camera

[10] Dodson testified that the dreadlocks were "blondish" with black roots (1/17/24 Tr. 24). She was impeached her grand-jury testimony, where she did not say that the dreadlocks were blond (*id.* at 36).

then captured appellants walking through the parking lot toward the bus stop (1/18/24 Tr. 121-22; Ex. 514 at 7:19–7:55). At 11:23 a.m., appellants boarded a metrobus (1/25/24 Tr. 105-07; Ex. 515B at 13:22–:44).

3. The Police Investigation

On January 19, 2021, a medical examiner determined that "multiple gunshot wounds" caused Allen's death and the manner of death was homicide (1/29/24 Tr. 79). The medical examiner recovered several bullets or bullet fragments from Allen's brain, neck, upper back, right arm, and both shoulders (*id.* at 71-77).

In the afternoon of January 18, 2021, a K-9 officer recovered a rifle in the wooded area along appellants' flight path (1/17/24 Tr. 69). DNA testing of swabs taken from the rifle detected a DNA profile comprised of "a mixture of four individuals with at least two male contributors" (1/24/24 Tr. 157). With Stevenson as an assumed contributor, the DNA profile "was approximately 103 quadrillion times more likely if the DNA originated from" Stevenson, Thomas, and two unknown individuals, than if the DNA originated from Stevenson and three unknown individuals (*id.* at 167-68). With Thomas as an assumed contributor, the DNA profile "was approximately 50.3 sextillion times more likely if the DNA

originated from" Thomas, Stevenson, and two unknown individuals, than if the DNA originated from Thomas and three unknown individuals (*id.*).

Chris Monturo, an expert in firearm and toolmark examination, examined the firearms and ammunition collected as evidence, including the rifle (1/17/24 Tr. 196-97). He opined that there was sufficient agreement between the rifle and cartridge casings and bullet fragments recovered from the Stanton Glenn parking lot, Allen's car, the autopsy, and an apartment building near Stanton Glenn[11] (*id.* at 197-99).

The green Volvo that crashed near the intersection of 29th Street SE and Erie Street SE had Missouri license plate D40-BL (1/17/24 Tr. 88). DNA testing of swabs taken from the Volvo's interior front passenger door detected "a mixture of four individuals with at least two male contributors" (1/24/24 Tr. 179). With Thomas as an assumed contributor, the DNA profile "was approximately 4.75 billion times more likely if the DNA originated from" Thomas, Stevenson, and two unknown

[11] On August 23, 2020, during the investigation of a separate incident at an apartment building located on 15th Place, SE, a rifle cartridge casing was recovered near a bullet hole in a window (1/17/24 Tr. 143, 150). Instagram records showed Thomas inviting someone to "my party" at that location on January 24, 2021 (Ex. 1021 at 3).

individuals, than if it originated from Thomas and three unknown individuals (*id.* at 181). With Stevenson assumed as a contributor, the DNA profile was "approximately 8.65 million times more likely" if the DNA originated from Stevenson, Thomas, and two unknown individuals, than if the DNA originated from Stevenson and three unknown individuals (*id.* at 182). DNA analysis of other mixtures found in the Volvo showed two contributors (*id.* at 176-78; 1/25/24 Tr. 25). The likelihood ratios that the mixtures contained DNA from Thomas and an unknown person, rather than two unknown persons, were 2.89 million times (steering wheel and driver controls), 2.599 million times (black face mask), and 855 sextillion times (juice bottle) (*id.*). Stevenson was excluded as a contributor for these items (*id.*).

A damaged cell phone was recovered from the Volvo's front-passenger seat (1/17/24 Tr. 97-100). A photo recovered from the phone depicted Thomas wearing a blue jacket with a light-brown fur hood, holding up his social security card and driver's license (1/23/24 Tr. 227-29; 1/24/24 Tr. 36-37; Ex. 1015). The phone was previously linked to Thomas's phone number, but was last used on January 11, 2021, and the number had been transferred to a new phone (1/25/24 Tr. 124). Historical

cell-site analysis of Thomas's phone number on January 18, 2021, showed cell tower usage consistent with the phone being near the gas station between 10:00 a.m. and 11:00 a.m., in the area of Stanton Glenn between 11:07 a.m. and 11:12 a.m., and in the area of the Volvo's crash from 11:15 to 11:26 a.m. (*id.* at 136-40). From 11:29 to 11:50 a.m., tower usage was consistent with the phone moving northeast (*id.* at 141).[12]

Detective James Wilson interviewed Phillips approximately three hours after the shooting (1/25/24 Tr. 166, 169, 172). The video of that interview showed Phillips wearing clothing identical to that in the Stanton Glenn surveillance videos (*id.* at 175-76; Exs. 532-34). Detective Wilson seized Phillips's phone, which contained photos and videos of Stevenson wearing a blue puffer jacket as recently as January 8, 2021 (1/23/24 Tr. 225-27; 1/25/24 Tr. 182; Exs. 1006, 1008, 1010). Stevenson's hand tattoos were visible in a video (Ex. 1010). Thomas's Instagram account also contained a video in which Stevenson was wearing a blue

[12] Instagram records showed "lil v," i.e. Thomas, instructing someone to text him at the phone number, and the Apple ID associated with the recovered phone was [v]dad@icloud.com (1/24/24 Tr. 35; Ex. 1021 at 6, 10). Thomas's daughter was named V.; V.'s mother was Andrea Waldo (1/29/24 Tr. 90; Ex. 905). Further, the name associated with the Instagram account linked to Thomas was, at one point, "[V.] Father Mr. Marlow" (Ex. 1021 at 1).

puffer jacket and had visible hand tattoos (1/29/24 Tr. 106; Ex. 1021E). Thomas's Instagram also depicted Thomas wearing red sneakers and a blue jacket with a light-brown fur hood (Exs. 1021B-D).

On February 17, 2021, Stevenson was arrested in an apartment near Stanton Glenn, and a pistol was recovered during a search of the apartment (1/29/24 Tr. 56-57). DNA testing of swabs taken from the pistol detected a DNA profile comprised of "a mixture of four individuals with at least two male contributors" (1/24/24 Tr. 172). As compared to four unknown individuals, the DNA profile was approximately 2.419 million times more likely if it originated from Stevenson and three unknown individuals, and 15,200 times more likely if it originated from Thomas and three unknown individuals (*id.*).

The Defense Evidence

Stevenson entered into evidence a chain-of-custody report for the swabs taken from the rifle (1/29/24 Tr. 111).

SUMMARY OF ARGUMENT

The trial court did not abuse its discretion by permitting the government's expert witness, Chris Monturo, to opine that there was

"extremely strong support" that that the rifle was the source of the toolmarks on certain ammunition recovered in this case. Unlike the expert testimony in cases where this Court has found firearms-and-toolmark testimony inadmissible, the government's expert made clear that he could not state that the toolmarks originated from the same source with 100% certainty. He further qualified his conclusion by clarifying that it was not based on any sort of statistically derived or verified measurement. Furthermore, extensive scientific research that this Court has not previously considered supported the expert's choice of language.

Even if this portion of the expert's testimony was incorrectly admitted, any error was harmless in light of the overwhelming evidence of appellants' guilt. The evidence showed Stevenson's motive to harm Williams, and that appellants went to Stanton Glenn after learning that Williams was there. Video surveillance showed that the gunfire came from a green Volvo, which Thomas and Stevenson had entered moments before. The surveillance video showed Thomas holding a rifle, and Stevenson a handgun, immediately before the shooting. Multiple witnesses testified that the shooter used a rifle, which was recovered on appellants' flight path, and appellants' DNA was found on the Volvo and the rifle. Phone

records showed that Thomas was in the area of Stanton Glenn at the time of the shooting.

Even assuming the trial court erred in striking Stevenson's rhetorical question in closing argument, asking jurors, "How many dark, puffy coats did you see," any error was harmless. Stevenson's counsel repeatedly argued that many people might wear dark, puffy coats, and the court instructed the jury to use their common experience in evaluating the evidence. Moreover, any error did not influence the jury's verdict given the strength of the government's evidence.

The government agrees that the multiple PFCV convictions should be vacated based on merger.

ARGUMENT

I. The Trial Court Did Not Abuse Its Discretion by Allowing the Government's Firearms Expert to State There was "Extremely Strong Support" For His Conclusion.

A. Additional Background

1. Pretrial Litigation

On April 5, 2023, the government filed a notice that it intended to call Chris Monturo at trial as a firearm and toolmark expert (R1262).

Appellants moved to preclude Monturo's testimony as unreliable and alternatively argued he should be limited to opining that "particular items cannot be excluded from having been fired from the same or particular firearm" (R1282; 5/12/23 Tr. 34 (Thomas joining Stevenson's motion)). The government filed a written opposition with copious exhibits (R1346-2312). The government explained that, where Monturo made a source conclusion, he would testify that it is his opinion there is "extremely strong support for the proposition that the two toolmarks . . . originated from the same source and extremely weak support for the proposition that the two toolmarks originated from different sources" (R2269). Monturo would not "use unqualified terms such as 'match,'" "state his expert opinion with any level of statistical certainty, much less 100% or absolute certainty," or make identifications "to the exclusion of all other firearms" or "to a reasonable scientific certainty" (R2268-69).[13] The government relied on multiple published, black-box, open-set studies that this Court had not had the opportunity to consider as part of a record

[13] Monturo's language was consistent with the Department of Justice's Uniform Language for Testimony and Reports (ULTR) and is very similar to language developed by the Organization of Scientific Area Committees for Forensic Sciences (R1444-46, 2270).

on appeal, each of which reported false-positive error rates between 0 and 1.01% (R2283-92). The government argued that these studies met and exceeded the benchmarks for scientific validity set forth in earlier reports that were critical of firearm and toolmark identifications (*id.*).

At a May 12, 2023, pretrial hearing, the trial court declined to exclude Monturo's testimony entirely, and heard additional argument on the conclusion language Monturo would be permitted use at trial (5/12/23 Tr. 6-7, 26-34). On October 10, 2023, the court issued a written order that "the Government's proposed firearm and toolmark identification testimony meets the parameters laid out in *Daubert* [*v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)]" (R2332). Based on its review of "data and literature submitted by the Government," the court found that firearm and toolmark identification "is testable," "can be reproduced," "is sufficiently validated through peer-review," has an "incredibly low known error rate," and is "generally accepted within the relevant scientific community" (R2332-33). The court also found that "[t]he government's expressed limitations on the expert's testimony comport with current case law in this jurisdiction," and the testimony is "not limited to the degree argued by the Defense"' (R2335).

On January 3, 2024, the trial court ordered the government to ensure that Monturo's testimony was consistent with this Court's recently issued decision in *Geter v. United States*, 306 A.3d 126 (D.C. 2023) (R2398). The government filed a motion addressing *Geter*, along with additional exhibits (R2400-2703). On January 10, 2024, the court heard additional argument and ruled that the conclusion language previously approved by the court complied with *Geter* (1/10/24 Tr. 23).[14]

2. Monturo's Testimony

At trial, Monturo was qualified by the trial court as an expert in forensic firearm and toolmark examination (1/17/24 Tr. 163). He explained that his work as a firearms examiner includes examining firearms and ammunition to determine "if a bullet or a cartridge case is consistent with having been fired from a particular firearm" (*id.* at 155). Monturo examines the marks—i.e., toolmarks—left by a gun on a cartridge case or bullet, which are softer than the gun and therefore

[14] The court relied on the "data and literature submitted by the Government" in its October 10, 2023, order (R2333), but did not "rel[y] on the evolved science" in ruling that Monturo's testimony complied with *Geter* (1/10/24 Tr. 23). After the court ruled, appellants each represented that they were not requesting a *Daubert* hearing (*id.* at 25).

susceptible to toolmarks (*id.*). He evaluates the toolmarks for class characteristics, such as caliber, and random imperfections that result from the manufacturing process of firearms (*id.* at 172-73, 187).

Monturo testified that a firearms examiner may reach one of four conclusions: (1) sufficient agreement, meaning "extremely strong support for the proposition that the toolmark came from the same source[,]" and "extremely weak support that . . . the marks were from different tools"; (2) elimination; (3) inconclusive, meaning the quality of the evidence was insufficient to reach a conclusion; and (4) not suitable, meaning the evidence was unsuitable for comparison (1/17/24 Tr. 183-85). Monturo acknowledged that he cannot ascertain whether two toolmarks originated from the same source to the exclusion of all other sources because "[t]hat would be implying that I've looked at every single gun ever made, and that simply is not feasible" (*id.* at 185-86). He agreed that there is "no generally accepted statistical way to measure or convey the weight of the evidence in firearms and toolmarks," and his conclusions were "not based on a statistically derived or verified measure," nor were they made with 100% certainty (*id.* at 185).

Consistent with his standard practice, Monturo test fired the guns submitted to him for review and compared the test-fired ammunition to the ammunition collected as evidence in this case (1/18/24 Tr. 13, 20-21). With respect to the rifle recovered from the woods, he reached a conclusion of sufficient agreement as to: 34 cartridge casings and one bullet fragment recovered from the Stanton Glenn parking lot, six bullet fragments recovered from Allen's car, one bullet fragment recovered during the autopsy, and the cartridge casing recovered from the apartment building on 15th Place, SE (1/17/24 Tr. 197-99). The 34 cartridge casings recovered from Stanton Glenn, as well as the casing recovered from 15th Place, SE, had the same headstamp and were of the same caliber (1/18/24 Tr. 13-15, 97). Additionally, Monturo found sufficient agreement between Sani's pistol and three cartridge casings recovered from Stanton Glenn, and a bullet recovered from the front-passenger floor of the green Volvo (*id.* at 20-21). As to the pistol recovered from Williams, Monturo found sufficient agreement with a cartridge case recovered from the backseat floormat of Allen's car (*id.* at 21).[15]

[15] Other bullet fragments from the shooting scene and the autopsy were either inconclusive or unsuitable for comparison (1/18/24 Tr. 22-24).

B. Standard of Review and Legal Principles

1. Expert Testimony

"[W]hether to admit expert testimony is committed to the discretion of the trial court; a ruling either admitting or excluding such evidence will not be disturbed unless manifestly erroneous—i.e., for abuse of discretion." *Girardot v. United States*, 92 A.3d 1107, 1113 (D.C. 2014). This Court applies the following criteria as to the admission of expert testimony:

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.

Parker v. United States, 249 A.3d 388, 401-02 (D.C. 2021) (quoting Fed. R. Evid. 702; citing *Motorola v. Murray*, 147 A.3d 751 (D.C. 2016) (en banc)).

In assessing whether an expert's proffered testimony is based on sufficiently reliable principles and methods, courts consider a variety of factors, including (1) whether a theory or technique is testable, (2) "the known or potential rate of error," (3) whether it "has been subjected to peer review and publication," (4) "the existence and maintenance of standards

controlling the technique's operation," and (5) whether it has "general acceptance" in the scientific community. *Daubert*, 509 U.S. at 593-94. In evaluating these factors, "the law grants [the trial] court the same broad latitude when it decides *how* to determine reliability as it enjoys in respect to its ultimate reliability decision." *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 141-42 (1999) (emphasis in original). The trial court's gate-keeping role is not meant to "displace the normal tools of the adversary system," such as "[v]igorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof." *Motorola*, 147 A.3d at 754.

If expert testimony is admitted erroneously, it is evaluated for harmless error. *See Gardner v. United States*, 140 A.3d 1172, 1185 (D.C. 2016). Reversal is not warranted if this Court determines, "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." *Id.* at 1186 (internal quotation marks omitted).

2. This Court's Prior Cases Addressing Firearms-and-Toolmark Testimony

This jurisdiction has allowed the admission of expert testimony concerning firearm identification for more than one hundred years. *See*

Laney v. United States, 294 F. 412, 416 (D.C. Cir. 1923). This Court has, however, issued several decisions addressing the permissible scope of an expert's testimony in this regard. In 2016, *Gardner* held that a firearms expert "may not give an unqualified opinion, or testify with absolute or 100% certainty, that based on ballistics pattern comparison matching a fatal shot was fired from one firearm, to the exclusion of all other firearms." 140 A.3d at 1177. The Court "allow[ed] toolmark experts to offer an opinion that a bullet or shell casing was fired by a particular firearm, but it does not permit them to do so with absolute or 100% certainty." *Id.* at 1184 n.19. The Court relied on the 2008 National Academy of Sciences (NAS) report that expressed doubt about the "validity of the fundamental assumptions of uniqueness and reproducibility of firearms-related toolmarks." *Id.* at 1183 (internal quotation marks omitted).

In *Williams v. United States*, 210 A.3d 734 (D.C. 2019), this Court reiterated that it is error to allow a firearms examiner to "provide *unqualified* opinion testimony that purports to identify a specific bullet as having been fired by a specific gun via toolmark pattern matching." *Id.* at 743 (emphasis added). The Court would not permit a ballistics expert to opine that markings on certain bullets were "unique" to only one gun, that

bullets test-fired from a gun found in the defendant's apartment had "match[ing]" markings, and that the expert did not have "any doubt" the bullets recovered by law enforcement were fired by that gun. *Id*. at 735-39. The Court relied on the 2016 President's Council of Advisors on Science and Technology (PCAST) report[16] "that reiterate[d] [that] toolmark and firearms examiners do not currently have a basis to give opinion testimony that matches a specific bullet to a specific gun and that such testimony should not be admitted without a verifiable error rate." *Id.* at 741. The Court expressly noted, however, that "we do not foreclose the possibility that the necessary data will exist at some point in the future to provide a foundation" for such opinion testimony. *Id*. at 743. "Rather, we conclude only that we do not have such a foundation in this case." *Id*.

Most recently, in *Geter*, this Court found it was plain error to allow a firearms expert to testify that the inside of a gun had "unique" markings, which would enable an expert to definitively link the markings on particular cartridge cases to a specific gun. 306 A.3d at 132. While the

[16] The 2016 PCAST report is available at: https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/PCAST/pcast_forensic_science_report_final.pdf (last accessed Aug. 20, 2025).

expert in *Geter* acknowledged "that pattern matching could be inconclusive in some cases," he testified "without reservation" that the five cartridge cases he examined came from a specific gun. *Id*. at 133. The Court stated that "the research does not exist to say that a specific bullet can be matched to a specific gun based on pattern matching," further explaining that "the core problem is not unfounded assertions of certainty, but rather the absence of data." *Id*. (citing *Gardner*, 140 A.3d at 1184, and *Williams*, 210 A.3d at 739-42). The Court acknowledged, however, "this kind of opinion testimony may be permitted at some future time" with sufficient empirical foundation. *Geter*, 306 A.3d at 132. Notably, the records on appeal in *Gardner*, *Williams*, and *Geter* were all bereft of the scientific studies that the government provided to the trial court in this case.

C. Current Science Enables a Firearms-and-Toolmark Expert to Opine That There Is "Extremely Strong Support" That Two Toolmarks Were from the Same Source.

1. Monturo's Qualified Conclusions Were Consistent with This Court's Decisions.

As the government argued below (R2774-77, 2402-14), this Court's prior decisions did not preclude the qualified testimony that Monturo

provided at trial. Unlike the experts in *Geter*, *Williams*, and *Gardner*, Monturo did not testify that the toolmarks produced by any particular gun were "unique," and he did not purport to match the ammunition to the recovered guns with absolute or 100% certainty, to the exclusion of all other firearms (1/17/24 Tr. 185-86). To the contrary, Monturo made clear that he could not state his conclusions with "100 percent certainty," nor could he exclude all other guns as the source of the toolmarks (*id.*). Monturo testified that there is no generally accepted statistical measure of the weight of the evidence in firearms-and-toolmarks forensics, and that his conclusions were not based on a statistically derived or verified measure (*id.* at 185). On cross-examination, Monturo agreed that the toolmark analysis is subjective, based on his "education, training, and experience," and that "sufficient agreement" does not require a particular number or percentage of matching toolmarks (1/18/24 Tr. 45-50).

Appellants argue that Monturo "nullified" the express limits he placed on his testimony when he explained that matching a projectile to a gun to the exclusion of all other guns "would be implying that I've looked at every single gun ever made, and that is simply not feasible" (Thomas Brief (Br.) 32 (quoting 1/17/24 Tr. 185-86)). Rather than

bolstering the strength of Monturo's testimony, however, this statement accurately conveyed its limits. To reach a conclusion of sufficient agreement, the examiner must be convinced that the agreement "exceeds the best agreement demonstrated between toolmarks known to have been produced by different tools and is consistent with the agreement demonstrated by toolmarks known to have been produced by the same tool." *AFTE Theory of Identification*, National Institute of Justice, https://nij.ojp.gov/nij-hosted-online-training-courses/firearms-examiner-training/module-09/afte-theory-identification (last visited Aug. 20, 2025) (hereinafter, "AFTE Theory of Identification"); 1/18/24 Tr. 49-50 (Monturo testifying as to the AFTE standard). Because this standard relies on an examiner's experience, a common criticism is that an examiner would "not have a complete set of circumstances" without examining every firearm in the world (R1481 (journal article); *see also id.* at 1422 (expert declaration)). Monturo's statement therefore properly qualified his testimony (*cf.* Thomas Br. 32).

Appellants also argue that Monturo "omitted even the pretense of qualifying language when he explained to the jury that he concludes that two items have 'come from the same source' when he observes consistency

and sufficient agreement in class and random characteristics" (Thomas Br. 31). However, Monturo immediately clarified that his conclusion would be subject to the definition of sufficient agreement previously explained to the jury (1/17/24 Tr. 188). And, in discussing his case-specific conclusions, Monturo repeatedly referred back to that sufficient-agreement definition (*id.* at 197-99; 1/18/24 Tr. 14-21). This was not "effectively the same" as giving an unqualified opinion that the toolmarks were unique to only one gun. *Cf. Geter*, 306 A.3d at 131-32.

Additionally, the government presented the trial court with extensive scientific research establishing a foundation for Monturo's conclusion language. *See Geter*, 306 A.3d at 132 (new scientific data may alter the scope of permissible toolmark testimony). This Court's prior decisions did not have the benefit of any information related to the science of firearm and toolmark examination beyond the 2008 and 2009 NAS reports and the 2016 PCAST report. PCAST found that only one appropriately designed study had validated firearms-and-toolmark examination at that time. PCAST Report at 111. Two years later, PCAST's co-chair wrote, "PCAST judged that firearms analysis fell just short of the criteria for scientific validity, which requires reproducibility.

A second study would solve this problem." Eric S. Lander, *Fixing Rule 702: The PCAST Report and Steps to Ensure the Reliability of Forensic Feature-Comparison Methods in the Criminal Courts*, 86 Fordham L. Rev. 1661, 1672 (2018). The NAS and PCAST reports were limited in their examination and are now outdated in light of more recent studies, discussed below (see pp. 30-33, *infra*). In short, Monturo's testimony was consistent with this Court's decisions because it was appropriately qualified, and the government provided precisely the type of scientific foundation that this Court concluded was missing in *Williams*, 210 A.3d at 743, and *Geter*, 306 A.3d at 133.

2. Monturo's Conclusion Satisfied the Reliability Standards of Rule 702.

As the government also argued below (R2278-2305), current scientific evidence shows that Monturo's testimony about the strength of his toolmark-source identifications satisfies the reliability standards of Rule 702 based on the factors set forth in *Daubert,* 509 U.S. at 593-94.

1. Testability. Testability focuses on "whether the expert's theory can be challenged in some objective sense, or whether it is instead simply a subjective, conclusory approach that cannot reasonably be assessed for

reliability." *See* Fed. R. Evid. 702 Advisory Committee's Note to 2000 Amendment. "Scientific methodology today is based on generating hypotheses and testing them to see if they can be falsified; indeed, this methodology is what distinguishes science from other fields of human inquiry." *Daubert*, 509 U.S. at 593 (internal quotation marks omitted).

There is a long history of research and testing of the objective reliability of firearm and toolmark identification. *See United States v. Harris*, 502 F. Supp. 3d 28, 37 (D.D.C. 2020) (collecting cases and observing that "[a] number of courts have examined this factor in depth to conclude that firearm toolmark identification can be tested and reproduced"). The government submitted to the trial court multiple published summaries of foundational research in this field, each of which cited scores of specific studies (R1475-99, 1523-38). This extensive testing has established that class and individual characteristics may be used to distinguish one firearm from another (*id.*).

Recent studies have used computer algorithms to test the theory of toolmark variability, employing larger numbers of intercomparisons than previously would have been possible (R1382-86). "This type of research rigorously tests the hypothesis of whether same-source and different-

source toolmarks can be differentiated" and "does not rely on human examiner judgment" (*id.* at 1382 (expert declaration)). The resulting data "has resulted in non-practitioner researchers concluding the research 'support[s] existing conclusions' and 'constitute[s] support of the experiential knowledge' and calculate[s] 'extremely small identification error rates'" (*id.* at 1386 (expert declaration)). Additionally, studies testing examiners' performance at comparing toolmarks demonstrate that the theory of toolmark examination can be tested (see pp. 31-33, *infra*).

2. Error Rates. The "critical inquiry" in evaluating the error rate for firearm and toolmark identifications "is the rate of error in which an examiner makes a false positive identification, as this is the type of error that could lead to a conviction premised on faulty evidence." *Harris*, 502 F. Supp. 3d at 39. As noted, this Court's previous decisions regarding firearm examinations rested primarily on three outdated policy papers: the 2008 and 2009 NAS reports and the 2016 PCAST report. While the government believes that PCAST's analysis of this issue was flawed (see R1426-29, 1448-69), recent studies have shown that the field now meets and exceeds even the benchmarks for scientific validity proposed by

PCAST (R1395-1401, 1775-85). Specifically, PCAST determined that two black-box studies[17] would be necessary to establish the foundational validity of firearms-and-toolmark identifications, but only one such study was then in existence. PCAST Report at 109-11.

While PCAST's benchmark would have been satisfied with just one additional black-box study, the government described for the trial court *five* additional black-box studies as defined by PCAST (R1395-1401, 1775-85). Even accepting PCAST's 5% error rate as a valid threshold, those studies showed error rates far below that, with reported false-positive error rates between 0 and 1.01% (*id.*). Moreover, those studies may have overstated the error rate in actual casework because the studies did not include a second-level review of the examiners' conclusions, which is an important step used in casework to ensure as close to zero errors as possible (R1396). Further, one of the studies was

[17] PCAST defined a "black-box study" as an "empirical study that assesses a subjective method by having examiners analyze samples and render opinions about the origin or similarity of such samples." PCAST Report at 48. To qualify, the study must include "examiners making a series of *independent* comparison decisions between [the] questioned sample and one or more known samples that may or may not contain the source." PCAST Report at 110.

designed to be more difficult than casework in that almost all of the firearms were either consecutively manufactured or "made in close temporal sequence," thus increasing the likelihood of erroneous identifications (R1400-01 (expert declaration)). Even still, the rate of false positives "that take examiner heterogeneity [i.e. errors were clustered among a minority of examiners] into account [was] 0.66% for bullets and 0.93% for cartridge cases" (*id.*).

In addition to these five studies, the government submitted a sixth study that conducted a multi-year blind proficiency test, where examiners were not aware they were being tested (R1439-41). The study resulted in a total of 558 comparisons, with no false positives or false eliminations (*id.*). In sum, the firearms-and-toolmark field responded to PCAST with more than ample data to establish the foundational validity and reliability of the methodology.

3. Peer Review. The peer-review factor is based on whether a methodology has been subject to peer review and published in scientific journals. Studies testing the foundational research of firearm and toolmark identification and examiners' ability to associate a cartridge case to a particular firearm have been authored by a variety of scientists,

most of whom hold PhDs in a wide range of the applied sciences—including statistics, engineering, quantum chemistry, mathematics, physics, computer science, and physical chemistry (R1416-18, 1434-36). The results of these studies have been published and subjected to peer review in a variety of respected scientific journals (R1430-33). Indeed, the government submitted to the trial court a non-exhaustive list of more than 50 published examinations of firearms-and-toolmark science outside the Association of Firearm and Toolmark Examiners (AFTE) Journal (*id.*), as well as a separate non-exhaustive list of almost 60 individuals not associated with crime labs who have published firearms-and-toolmark research (R1434-36). Accordingly, this factor, too, weighs in favor of admissibility. *See Harris*, 502 F. Supp. 3d at 39.

4. Standards. The standards and controls for firearm and toolmark examiners are published and maintained by several sources. The AFTE publishes multiple manuals for guidance and use, including the AFTE Training Manual (a 367-page document describing all steps a new trainee should undertake prior to starting casework), the AFTE Technical Procedures Manual (a 116-page document providing technical procedures for typical examinations that may occur in firearms and

toolmark identification laboratories), the AFTE Glossary (a 244-page document providing the profession with standardized terminology and definitions), and the AFTE Theory of Identification (which describes the basis for an identification as well as the limitations of the profession) (R1419). Another source of standardized guidance was established by the Scientific Working Group for Firearms and Toolmarks (SWGGUN) and is now maintained by the Organization of Scientific Area Committees (*id.*). The National Institute for Standards and Technology also provides metrological standards for the field and is working to produce a new set of reference standards for use in emerging 3D technology (*id.*). The efficacy of these standards is supported by the error-rate studies discussed above, as well studies showing that even examiners working in different laboratories largely use the same amount and same location of toolmarks in making identification conclusions (R1399-1400). In short, the sources of standards for firearms-and-toolmark identifications further support admissibility.

5. General Acceptance. A "reliability assessment does not require, although it does permit, explicit identification of a relevant scientific community and an express determination of a particular degree

of acceptance within that community." *Daubert*, 509 U.S. at 594. "Widespread acceptance can be an important factor in ruling particular evidence admissible[.]" *Id.* The firearms-and-toolmark methods established by the AFTE "certainly satisf[y] this element." *United States v. Romero-Lobato*, 379 F. Supp. 3d 1111, 1122 (D. Nev. 2019).

Firearms-and-toolmark identification is practiced worldwide in government and independent forensic laboratories and studied worldwide by scientists with expertise in multiple fields, including applied physics, computer science, chemistry, metallurgy, and statistics (R1416-18, 1419-20, 1434-36, 2477). In the United States alone, there are at least 228 laboratories with firearms-and-toolmark accreditation certificates (R2477). Furthermore, the firearms units do not exist in a vacuum; virtually all function within a larger forensic laboratory with other disciplines such as forensic biology, chemistry, and fingerprint identification (*id.*).

Therefore, based upon the applicable standards for the admission of expert testimony, the trial court here did not abuse its discretion in allowing Monturo to provide the jury with his expert assessment of the strength of the firearms and toolmark evidence in this case.

3. Appellants' Proposed Limitations Do Not Reflect the Current Science.

Although appellants do not challenge the scientific research discussed above, they assert that Monturo should have been limited to opining that the rifle could not "be excluded as the source" of the toolmarks, or, alternatively, that the toolmarks were consistent with the rifle (Thomas Br. 30-31; Stevenson Br. 17-18). To the contrary, Monturo's language accurately described the weight of his conclusion—that there was extremely strong support that the toolmarks originated from the rifle, and extremely weak support that the toolmarks came from a different source. Appellants' proposed language would inaccurately dilute Monturo's conclusions and potentially introduce *more* error into the analysis. "Exclusion" is a term of art that requires "significant disagreement of discernable class characteristics and/or individual characteristics," and "is most often based on observed differences in any class characteristics." AFTE Theory of Identification. Many firearms will fail this standard and thus cannot be excluded as the source of particular toolmarks (R1441-42). Similarly, toolmarks may be "consistent with"

many firearms.[18] A sufficient-agreement conclusion, in contrast, requires "[a]greement of a combination of individual characteristics and all discernable class characteristics where the extent of agreement" not only "is consistent with the agreement demonstrated by toolmarks known to have been produced by the same tool," but also "exceeds that which can occur in the comparison of toolmarks made by different tools." AFTE Theory of Identification. As discussed, research shows that examiners make identification conclusions using this standard with low error rates.

Appellants offer no scientific support or data for their proposed language. They cite several non-binding decisions analyzing firearm-and-toolmark testimony, but none are persuasive. In *United States v. Tibbs*, the court did not consider the substantial body of post-PCAST research, including the error-rate studies discussed herein. No. 2016-CFl-19431, 2019 WL 4359486, at *7-16 (D.C. Super. Ct. Sept. 5, 2019). *Tibbs*

[18] This case illustrates the point. Four metal bullet cores recovered from the autopsy were "of a bullet design . . . consistent with" the rifle but were unsuitable for further comparison (1/18/24 Tr. 22-23). As to other bullet fragments recovered from the shooting scene, the rifle could not be excluded as the source because the class characteristics were in agreement, even though Monturo determined that the individual characteristics were insufficient to reach a conclusion of sufficient agreement (*id.* at 22).

erroneously discounted numerous pre-PCAST studies based on the court's own evaluation of study design, including the one error-rate study that PCAST considered valid. *Id.* at 16. *Tibbs* also discounted studies published in the AFTE Journal because the court disagreed with the journal's open peer-review method. *Id.* at 9. However, open peer review "is well within the accepted norms of peer review," and, in any event, the AFTE Journal now uses double-blind peer review (R1411-13).

More recently, in *United States v. Green*, the court found that firearms examiners can reliably "find connections between guns and ammunition based on" toolmarks, but it disallowed the "extremely strong support" conclusion language because, in the DNA context, that language means "it is at least one million times more likely that the DNA profile originated from the defendant than from an unknown, unrelated contributor." No. 2018-CF1-4356, 2024 D.C. Super. LEXIS 8, at *63 (D.D.C. April 1, 2024). As explained in a research article submitted to the trial court in this case, however, DNA analysis is "so different from firearms and toolmark identification that analogies may be intellectually inappropriate" (R1480). Unlike in firearms-and-toolmark analysis, DNA analysis can measure the "relatively rare frequency with which a

combination of subclass characteristics occur in a given population" (*id.*). The probative value of DNA analysis is thus commonly expressed in terms of two alternative hypotheses—the likelihood of seeing the DNA profile if the suspect is included in the profile, versus not included in the profile. As *Green* recognized, DNA experts may also use a verbal scale to help explain the statistics. 2024 D.C. Super. LEXIS 8, at *62.

Firearms examiners, in contrast, do not "base their identifications on subclass characteristics or frequencies of combinations thereof" (R1480). Instead, they rely on "manufacturing methods and an ability to assess and distinguish among the class, subclass, and individual characteristics produced by the tool manufacturing process" (*id.*). Further weakening the comparison to DNA's use of statistics is that, unlike DNA, variation in toolmarks does not occur at fixed points. And unlike DNA, the sufficient-agreement conclusion in the firearms context is binary—either there is sufficient agreement or there is not. Notably, other forensic-science disciplines, like latent-print analysis, also use conclusion language similar to that at issue here without assigning it a statistical weight. *See ULTR*, Office of Legal Policy, U.S. Department of

Justice, https://www.justice.gov/olp/uniform-language-testimony-and-reports (last visited Aug. 20, 2025).

The lack of a quantitative model akin to the DNA context does not mean that a firearms examiner's "extremely strong support" conclusion language is unreliable.[19] *See Motorola*, 147 A.3d at 755 ("the test of reliability is 'flexible'") (citation omitted). To the contrary, that language accurately conveys the probative value of an examiner's opinion, while specifically avoiding language that might imply reliance on likelihood ratios or statistics.[20]

D. Any Conceivable Error Was Harmless Given the Overwhelming Evidence of Appellants' Guilt.

Even if Monturo's conclusion language should have been more limited, this Court can say with fair assurance that any error "did not influence the jury, or had but a slight effect." *Smallwood v. United States*,

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[19] To avoid any potential confusion in this case, the government's DNA expert did not use a verbal scale in describing his conclusions to the jury.

[20] Appellants' reliance on *Abruquah v. State*, 483 Md. 637 (2023), also does not support their proposed limitations on Monturo's testimony. In *Abruquah*, the only issue before the court was "whether the AFTE Theory can reliably support an *unqualified* opinion that a particular firearm is the source of one or more particular bullets." *Id.* at 680 (emphasis added).

312 A.3d 219, 227 (D.C. 2024) (quoting *Kotteakos v. United States*, 328 U.S. 750, 764 (1946)); *Gardner*, 140 A.3d at 1185-86 (improperly admitted ballistics testimony was harmless). Appellants each pursued a defense theory of mistaken identity, but overwhelming evidence established their identities the perpetrators of the shooting.[21]

Williams testified that Stevenson was at Stanton Glenn minutes before the shooting and identified Stevenson in a screenshot from the Stanton Glenn surveillance video (1/22/24 Tr. 190-91; Ex. 753). The video shows Stevenson getting into the passenger side of the green Volvo approximately 30 seconds before the shooting (Exs. 503 at 0:00–:30, 505Z at 2:15–:30). Although appellants challenge Williams's credibility, substantial evidence corroborated his identification of Stevenson (*cf.* Thomas Br. 6-8, 33-34; Stevenson Br. 6). Social-media videos depicted Stevenson's hand tattoos, which were visible on metrobus surveillance during appellants' flight, and faintly visible on the shooter's hands during the shooting (Exs. 507Z, 515E at 13:39–:41, 1010). Stevenson's face is

[21] At a minimum, any error was harmless as to Stevenson's conviction for unlawful possession of the gun recovered during the search after his arrest (Count 9). Stevenson admitted at trial that he possessed that gun, and Monturo's testimony was unrelated to that charge (1/30/24 at 144).

visible in the metrobus and bank surveillance (Exs. 512A at 16:47–:50, 512B at 16:53–:55, 512E at 16:50–:56, 515B at 13:25–:44). And photos and videos from social media and Phillips's phone depicted Stevenson wearing the blue puffer jacket seen in the surveillance footage (Exs. 1006, 1008, 1010, 1021E).

DNA analysis placed Stevenson in the Volvo's passenger seat and showed that he had handled the rifle recovered on appellants' flight path (1/24/24 Tr. 168-69, 181). Even without Monturo's challenged conclusion language, copious evidence established that a rifle was used in the shooting: surveillance video showed Thomas holding a rifle immediately before the shooting (Ex. 505Z); Sani testified that that the shooter's gun "had two grips" (1/16/24 Tr. 113); Dodson testified that the Volvo's passenger fled the car crash while holding "a long gun, like it would have been a rifle" (1/17/24 Tr. 22); and Monturo testified based on class characteristics that the cartridge casings recovered from the shooting scene were from a rifle (1/18/24 Tr. 13-14).

Moreover, Stevenson's animus against Williams provided circumstantial evidence of his identity as the shooter. Phone records established that appellants arrived at Stanton Glenn after Phillips

(Stevenson's girlfriend) alerted Thomas (Stevenson's nephew) that Williams was at Stanton Glenn (1/23/24 Tr. 214-218, 221; 1/25/24 Tr. 182-83). When Phillips and Thomas each arrived at Stanton Glenn, they met up with the person wearing the blue puffer jacket and red-striped pants—demonstrating that they knew him and he was, in fact, Stevenson.

As to Thomas, although no witness "identified him . . . as being present at Stanton Glenn on January 18, 2021" (Thomas Br. 33), overwhelming circumstantial evidence established his identity. Thomas's DNA was found in multiple places in the Volvo, including the steering wheel and driver controls, and a black face mask that matched the one Thomas was wearing at the gas station before the shooting (1/24/24 Tr. 176-78, 182). Thomas's DNA matched DNA from the recovered rifle (1/24/24 Tr. 167-68). Further, social-media photos and videos depicted Thomas wearing the same jacket and shoes seen in the surveillance videos introduced at trial (Exs. 1021B–D).[22] Thomas's face was visible in

[22] Thomas argues that he was never identified as the person in the social-media images. However, the photos and videos were either posted by Thomas's Instagram account or tagged with Thomas's Instagram username, see n.12, *supra*. Moreover, the jury could observe Thomas at trial and determine that he was the same person depicted in the social-media images (*accord* Exs. 497-98 (Thomas's arrest photos)).

the surveillance video from the metrobus and bank on appellants' flight path, as well as from the gas station before the shooting (Exs. 512B at 16:53–:55, 512D at 16:48–:51, 515B at 13:25–:44, 516A at 0:28–:55). In addition, cell site evidence demonstrated that Thomas's phone was in the area of Stanton Glenn at the time of the shooting and then moved northeast consistent with appellants' flight path (1/25/24 Tr. 137-41). Although Thomas claims that he was not the person using the phone (*cf.* Thomas Br. 34), gas station surveillance footage showed Thomas answering a call from Phillips's phone to "Lil V" approximately 20 minutes before the shooting (Ex. 516A at 0:28–:55).

Contrary to Thomas's claim, the inconsistent descriptions of his height at trial cast little doubt on his identity as the Volvo's driver (*cf.* Thomas Br. 34). Dodson testified that the Volvo's driver was taller than the passenger, which arguably conflicted with Sani's description of Thomas as short (1/16/24 Tr. 138; 1/17/24 Tr. 32). However, Dodson acknowledged that her vantage point was from her second-floor apartment looking down onto the street, and that she saw the fleeing individuals for "[n]ot long, maybe five to ten seconds" (1/17/24 Tr. 35).

Accordingly, Monturo's testimony did not play a substantial role in proving the identities of Stevenson and Thomas. Although appellants claim that the government "highlighted" Monturo's testimony in closing (Thomas Br. 33), government counsel only briefly discussed Monturo's conclusion during a nearly 90-minute closing argument (1/30/24 Tr. 72-74, 98-99)—an argument that primarily focused on the extensive video evidence, eyewitness accounts, DNA evidence, social-media evidence, and cell-site analysis that established appellants' guilt. The firearms evidence was not referenced at all in the government's rebuttal (1/31/24 Tr. 47-80). In short, Monturo's challenged testimony "did not influence the jury, or had but a slight effect." *Smallwood*, 312 A.3d at 227.

II. Any Error in the Trial Court's Ruling on Stevenson's Closing Argument Was Harmless.

A. Additional Background

In closing argument, the defense asserted that the blue puffer jacket was not evidence of Stevenson's identity. To bolster this claim, Stevenson's counsel asked the jury to consider "[h]ow many dark, puffy coats did you see" in January 2021 (1/30/24 Tr. 126). The government objected: "[Defense counsel] is violating the golden rule asking the jurors to place themselves in positions. . . . [S]he should not be able to ask . . .

the jury rhetorical questions of that nature." (*Id.*) The trial court ruled that defense counsel's argument was "not proper, in terms of the type of question to present to the jury" (*id.* at 127). Stevenson's counsel then argued:

> About that puffy jacket though, how do you know who is wearing it. You don't know. It could be a coincidence. It can be someone else that Mr. Stevenson lives with, someone who has access to it put it on that day, family member or brother. It could be could anybody. You don't know because nobody identified him. . . . How many people have tattoos on their hands? We don't know. Just like we don't know how many people have puffy jackets. (*Id.* at 127-28.)

B. Argument

"Because a trial court has broad discretion in controlling the scope of closing argument, [this Court] review[s] a decision to restrict such argument under an abuse of discretion standard." *Haley v. United States*, 799 A.2d 1201, 1207 (D.C. 2022). Here, even assuming, arguendo, that the trial court erred in sustaining the government's objection, reversal is not required because Stevenson was not "substantially prejudice[d], i.e., . . . 'we 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.'" *Plummer v. United States*, 813 A.2d 182, 191 (D.C. 2002) (citation omitted).

Notwithstanding the court's ruling, Stevenson's counsel repeatedly argued that the coat was not a meaningful identifier (1/30/24 Tr. 127-28 (counsel arguing, "how do you know who is wearing [the coat]," "[y]ou don't know," "[i]t could be a coincidence," "[i]t could be anybody," and "we don't know how many people have puffy jackets"). Stevenson's counsel ably made the point that many people might wear a dark, puffy coat, and the jury was not given "the impression that they could not use their common knowledge" (*cf.* Stevenson's Br. 27). To the contrary, the court instructed the jury that it may draw "reasonable inferences as you feel are justified in the light of your experience," and "should give any evidence such weight as in your judgment it is fairly entitled to receive" (1/31/24 Tr. 89). *See Tornero v. United States*, 94 A.3d 1, 10 (D.C. 2014) (any error in trial court's characterization of a closing argument as improper was harmless); *Robinson v. United States*, 606 A.2d 1368, 1373 (D.C. 1992) (no prejudice where trial court erroneously sustained prosecutor's objection to defense closing argument because counsel otherwise had sufficient opportunity to present defense theory).

Moreover, copious evidence identified Stevenson as the shooter, including Williams's identification of Stevenson, DNA evidence linking

Stevenson to the rifle and the Volvo, Stevenson's hand tattoos that were visible during the shooting and Stevenson's flight, photos and videos showing Stevenson wearing the same jacket seen in the surveillance videos, and Stevenson's motive (see pp. 42-44, *supra*). Thus, "we can say, with fair assurance," that any error did not influence the jury's verdict. *Plummer*, 813 A.2d at 191.

III. The Government Agrees that Thomas's and Stevenson's PFCV Convictions Merge.

A claim that convictions merge under the Double Jeopardy Clause is reviewed de novo. *See Kaliku v. United States*, 994 A.2d 765, 787 (D.C. 2010). The government agrees that, if appellants' convictions are otherwise affirmed, appellants' respective PFCV convictions merge and should be vacated. *See Matthews v. United States*, 892 A.2d 1100, 1106 (D.C. 2006) (PFCV convictions merge if "they arise out of a defendant's uninterrupted possession of a single weapon during a single act of violence").

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 Brian D. Shefferman, Esq., bshefferman@sheffermanlaw.com (counsel for appellant Delonta Stevenson), and Cecily E. Baskir, Esq., baskir@baskirlaw.com (counsel for appellant Vorreze Thomas), on this 21st day of August, 2025.

/s/
MARY C. FLEMING
Assistant United States Attorney