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BRIEF FOR APPELLEE

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 24-CF-972

ANTONE WATKINS,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

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

JEANINE FERRIS PIRRO
United States Attorney

CHRISELLEN R. KOLB
DANIEL J. LENERZ
GREGORY EVANS
MARK LEVY

* TIMOTHY R. CAHILL
D.C. Bar #1032630
Assistant United States Attorneys

* Counsel for Oral Argument
601 D Street, NW, Room 6.232
Washington, D.C. 20530
Timothy.Cahill@usdoj.gov
(202) 252-6829

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ISSUES PRESENTED

I. Whether permitting a detective to testify about the contents of lost D.C. Housing Authority surveillance footage was harmless error, where the evidence of Watkins's guilt was overwhelming, and the jury's assessment of his misidentification defense would not have been substantially swayed by the testimony in question; and whether the same detective's description of videos played at trial was plain error, where his testimony described his investigative conclusions, and where he relied on identifications provided by two individuals closely familiar with Watkins's appearance who recognized Watkins in the video footage.

II. Whether the trial court abused its discretion by allowing the victim to testify about his fear of Watkins, where the testimony was necessary to explain the victim's unusual statements and demeanor during cross-examination, and where there was no implication that Watkins had ever threatened the victim about testifying.

III. Whether Watkins waived his claim that the trial court erred by allowing a witness to identify himself as Watkins's probation officer, or, in the alternative, whether the trial court plainly erred by accepting the parties' agreement about the probation officer's testimony rather than sua sponte mandating a different approach.

IV. Whether there was sufficient evidence that Watkins committed the offenses while armed, where the victim testified that the assailant pointed a gun at him

and hit him in the face multiple times with it, and where the victim had injuries consistent with being hit in the face with a gun.

V. Whether some of Watkins's convictions merge.

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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

By superseding indictment filed on June 20, 2024, Antone Watkins was charged with one count of robbery while armed (D.C. Code §§ 22-2801, 4502); one count of assault with a dangerous weapon (ADW) (D.C. Code § 22-402); two counts of possession of a firearm during a crime of violence or dangerous offense (PFCV) (D.C. Code § 22-4504(b)), and one count of unauthorized use of a vehicle (UUV) (D.C. Code

§ 22-3215) (Record on Appeal (R) 587-88 (Indictment)).¹ These charges were based on the armed robbery of Carlos Martinez Rodriguez on June 17, 2022 (*id.*).

On June 25, 2024, a jury trial began before the Honorable Robert Salerno (6/25/24 Transcript (Tr.) 15). On July 3, 2024, the jury found Watkins guilty on all charges (R611-12 (Verdict Form); 7/3/24 Tr. 3-4). On October 21, 2024, Judge Salerno sentenced Watkins to concurrent sentences of 120 months' incarceration for robbery while armed; 78 months for ADW; 120 months for each PFCV count; and 36 months for UUV (R644 (Sentence)). On the same date, Watkins filed a timely notice of appeal (R645-47 (Notice of Appeal)).

The Trial

The Government's Evidence

On the evening of June 17, 2022, Carlos Martinez Rodriguez drove to Southwest D.C. to buy marijuana (6/26/24 Tr. 69). Shortly after 10:30 p.m., Rodriguez parked his white Dodge Dakota truck in the 1200 block of Howison Place, SW, and met up with Sherry Clark, a woman who lived in the area (*id.* at 70-73; 7/1/24 Tr. 51-56, 64-65). After Clark agreed to help Rodriguez buy marijuana, the two went inside her house to smoke (6/26/24 Tr. 73; 7/1/24 Tr. 159). They later returned to Rodriguez's truck, at

¹ All page references to the record are to the PDF page numbers.

which time Clark called someone who (according to Clark) agreed to sell Rodriguez marijuana (6/26/24 Tr. 73-74; 7/1/24 Tr. 58-60).

Clark led Rodriguez around a nearby corner and into an alley (6/26/24 Tr. 77-78). A man standing in the alley pointed a gun at Clark and told her to leave before he killed her (*id.* at 80). When Clark left, the man pointed the gun at Rodriguez and struck him with it several times in the face (*id.* at 78-80, 83, 87). These blows chipped Rodriguez's tooth and caused a laceration above his eyebrow (*id.* at 79, 106-07, 117-18). The man then held Rodriguez down and searched his body (*id.* at 83). During the assault, two other men on bicycles arrived and helped the man with the gun search Rodriguez's pockets (*id.* at 79-80, 83-86, 109-10). The men on bicycles were unarmed (*id.* at 79). Rodriguez surrendered two chains, cash, and his watch (*id.* at 84-85). The encounter ended when the man with the gun took Rodriguez's truck keys and left the alley (*id.* at 85, 88-89).²

Rodriguez walked from the alley to the nearby home of Mary Thomas, whose nephews were friends of his (6/26/25 Tr. 21-23, 35-36, 99-102). When Thomas opened her door, she saw Rodriguez acting "a little bit disoriented," with blood "all

² Rodriguez initially told responding police officers that a group of men surrounded his car and dragged him into the alley (7/1/24 Tr. 151-52). After an officer referenced a nearby surveillance camera, Rodriguez, while still "on the scene," gave a different account that was consistent with his trial testimony and, as discussed below, was significantly corroborated by surveillance footage and other evidence found by law enforcement officers (7/1/24 Tr. 151-55).

over his face and his clothes” (*id.* at 23). Thomas called 911, and Rodriguez was taken to the hospital (*id.* at 25-26, 102). Photographs of Rodriguez’s injuries were admitted at trial (*id.* at 117-19). Police found Rodriguez’s truck in the parking lot of the King-Greenleaf Recreation Center on N Street, SW, a short distance from the alley where the robbery occurred (*id.* at 112-13; 6/27/24 Tr. 8-9; 7/1/24 Tr. 39). Clothing and other personal items were strewn on the ground next to the truck (6/27/24 Tr. 8).³

Although Rodriguez did not recognize the men who robbed him and did not identify Watkins at trial (6/26/24 Tr. 87, 174; 7/2/24 Tr. 83), the government proved Watkins’s identity as the man who assaulted Rodriguez with the gun through extensive video surveillance footage, cell-phone records, DNA evidence, cell-site evidence, and Watkins’s social-media content.⁴ This evidence showed that the robbery was a set-up planned and carried out by Watkins, Clark, and the unidentified men on bicycles (6/26/24 Tr. 6-11; 7/2/24 Tr. 54-55, 102-03).

Police recovered video footage from multiple surveillance cameras in the areas of Howison Place and the King-Greenleaf Recreation Center capturing the events of

³ Rodriguez was impeached with criminal convictions, and he acknowledged that, in the past, he had consumed cocaine and marijuana and had dealt with multiple mental-health issues (6/26/24 Tr. 124-28). Rodriguez denied that his mental-health issues affected his perceptions of the robbery or his trial testimony (*id.* at 177-78). Watkins (at 2-4) describes the pretrial litigation about the government’s disclosure of Rodriguez’s mental-health history but does not assert any related claims.

⁴ The government will file a motion to supplement the record on appeal with the government’s trial exhibits.

June 17, 2022 (7/1/24 Tr. 40-47).⁵ Two witnesses identified a man appearing in this footage as Watkins: Ade Oyewole, who had been in a relationship with Watkins; and Sean Stallman, Watkins’s probation officer in a federal-court case who had many in-person encounters with him (6/26/24 Tr. 53-57; 6/27/24 Tr. 47-53; 7/1/24 Tr. 118-20, 128-29). Consistent with Rodriguez’s description that the gun-wielding assailant was “wearing all white,” Watkins in the footage wore a white t-shirt, white shorts, and white tights (6/26/24 Tr. 109; 7/1/24 Tr. 79-80). The back of Watkins’s t-shirt featured a large distinctive logo with a black palm tree in front of a red and orange rectangle (7/1/24 Tr. 80, 84; 7/2/24 Tr. 60). Watkins also wore distinctive shoes in the footage, which matched the shoes he wore in a video that he posted to Instagram about a month after the robbery (6/27/24 Tr. 67-70; 7/1/24 Tr. 120-26; 7/2/24 Tr. 59-61).

Surveillance video presented at trial showed the following. At 10:34 p.m., Watkins was at the King-Greenleaf Recreation Center with Clark and a man on a bicycle (7/1/24 Tr. 86-89; Government Exhibit (Gov. Ex.) 105). At about the same time, Rodriguez parked his truck on Howison Place (7/1/24 Tr. 64-65; Gov. Ex. 100). Soon after getting out of his truck, Rodriguez met Clark, and they walked into her

⁵ As discussed below, police were unable to recover footage from D.C. Housing Authority cameras inside the alley where the robbery occurred because it was lost due to a technical error (7/1/24 Tr. 182-86).

house (*id.*).⁶ At 10:42 p.m., Rodriguez and Clark returned to the truck (7/1/24 Tr. 67-68; Gov. Ex. 102A). At 10:43 p.m., Clark held up her cell phone, appearing to make a call (7/1/24 Tr. 59-60, 68-70; Gov. Exs. 102B, 102C). Telephone records showed that, at this time, Clark's cell phone completed a 27-second call to Watkins's cell phone number (7/1/24 Tr. 58-59, 192-93).

The video further showed that, at 10:44 p.m., just after Clark's call, Watkins left the King-Greenleaf Recreation Center and walked down N Street toward the southern entrance of the alley where Rodriguez would soon be robbed (7/1/24 Tr. 93-94, 98-99; Gov. Exs. 107, 108). At 10:45 p.m., Clark and Rodriguez walked into the same alley from the eastern entrance on Howison Place (7/1/24 Tr. 73; Gov. Ex. 103). At 10:46 p.m., Clark walked out of the alley alone (7/1/24 Tr. 75-76). At 10:47 p.m., two men on bicycles rode out of the alley and met with Clark near Rodriguez's truck (7/1/24 Tr. 76-78). At 10:49 p.m., Watkins ran out of the alley directly to the driver-side door of Rodriguez's truck, where he got inside and drove away southbound on Howison Place (*id.* 76-77; Gov. Ex. 103).⁷

⁶ Rodriguez identified himself in the surveillance footage, which showed him wearing the chains and watch that were taken in the robbery (6/26/24 Tr. 175-77; 7/1/24 Tr. 173). Detective David Naples determined that Clark was the woman in the footage after meeting with her as part of his investigation (7/1/24 Tr. 51-60).

⁷ Before Watkins arrived, Clark and the men on bicycles opened the passenger-side door of Rodriguez's truck and looked inside (7/1/24 Tr. 166). Watkins appeared to unlock the driver-side door when he arrived, then immediately got into the truck and drove away as the sole occupant (*id.* at 167).

Multiple cameras captured Watkins's drive from Howison Place to the nearby parking lot behind the King-Greenleaf Recreation Center (7/1/24 Tr. 100-06; Gov. Exs. 109-12). Surveillance video also captured Clark walking to the same location during the same time period (7/1/24 Tr. 101-04, 108; Gov. Exs. 109-10). Video footage showed that, at 10:51 p.m., Watkins parked Rodriguez's truck and rummaged through its contents (7/1/24 Tr. 108-11; Gov. Exs. 112, 113A). About a minute later, Clark arrived and joined Watkins in this effort (*id.*). When they were done, Watkins and Clark walked away from the scene together (7/1/24 Tr. 111-17; Gov. Exs. 114-18).

The government's DNA expert concluded there was "limited support" for the inclusion of Watkins as a contributor to the two DNA profiles she identified in samples from Rodriguez's pants pockets (6/27/24 Tr. 136). She specifically opined that the DNA results were 74 times more likely if the two contributors were Rodriguez and Watkins than if they were Rodriguez and an unknown individual (*id.* at 136-37).⁸

The government's cell-site expert concluded that on June 17, 2022, from 10:33 p.m. to 11:45 p.m., Watkins's cell phone was in the southwest waterfront area

⁸ The only DNA found on the steering wheel of Rodriguez's truck was from Rodriguez himself, and the DNA expert found limited support for the exclusion of Watkins as a contributor to the samples recovered from other parts of the truck's interior (6/27/24 Tr. 140-42). The expert explained that briefly touching smooth surfaces may not leave enough DNA to be detected (*id.* at 109). Indeed, as the government noted in closing, the surveillance footage plainly showed someone other than Rodriguez driving his truck to the recreation center (7/2/24 Tr. 65-67).

of D.C. (7/1/24 Tr. 22). He further opined it was “likely” the phone was at both the alley where the robbery occurred and the King-Greenleaf Recreation Center parking lot during this time period (*id.* at 29).

On July 15, 2022, about a month after the robbery, Watkins posted a live video on Instagram in which he lifted his shirt to display a gun in his waistband (6/27/24 Tr. 59-67; Gov. Ex. 801). This gun matched Rodriguez’s description of the gun used in the robbery in terms of color and size (7/2/24 Tr. 58-59, 109-10; Gov. Ex. 202).

SUMMARY OF ARGUMENT

The government acknowledges that the trial court erred by permitting Detective David Naples to testify about the contents of D.C. Housing Authority video footage that was lost due to a technical issue. This error, however, was harmless in light of the overwhelming evidence of Watkins’s guilt, the fact that Watkins’s misidentification defense was not undermined by Detective Naples’s testimony, and the government’s lack of reliance on the testimony in question. In addition, the trial court did not err, let alone plainly err, by failing *sua sponte* to preclude Naples from testifying about investigative connections that he drew based on his review of the surveillance video that was played at trial.

The trial court did not abuse its discretion by allowing Rodriguez to testify about his fear of Watkins, which was necessary to explain Rodriguez’s unusual statements and demeanor during cross-examination, as well as the inconsistent

accounts he provided to police about the robbery. The context and wording of Rodriguez's testimony indicated that his fear was the kind of fear a violent-crime victim would naturally feel toward the person charged with that crime, rather than a result of Watkins having ever threatened him about testifying. Furthermore, any error was harmless in light of the equivocal nature of Rodriguez's testimony and the overwhelming evidence of Watkins's guilt.

Watkins's claim that the trial court erred by allowing Sean Stallman to identify himself at trial as Watkins's probation officer is waived under the invited-error doctrine. Watkins did not merely fail to object to Stallman's testimony on this topic. Rather, Watkins's counsel expressly agreed that Stallman could testify that Watkins was on probation under Stallman's supervision. Furthermore, even if this Court were to consider the merits of this claim, Watkins has failed to show that the trial court plainly erred by accepting the parties' agreement about Stallman's testimony rather than sua sponte mandating a different approach.

The evidence was sufficient to prove that Watkins committed the offenses while armed. Watkins does not challenge the sufficiency of the evidence proving that he was the person who assaulted and robbed Rodriguez. As Watkins acknowledges, Rodriguez testified that the assailant pointed a gun at him and hit him in the face with it multiple times. Although the gun used in the offenses was not recovered, eyewitness testimony is sufficient to prove the use of a firearm.

The government agrees that some of Watkins's convictions merge.

ARGUMENT

I. Detective Naples's Testimony About the Lost Housing Authority Video Was Harmless, and His Description of the Videos Played at Trial Was Not Plain Error.

A. Additional Background

Detective David Naples, the lead Metropolitan Police Department (MPD) investigator for the robbery, recovered and reviewed footage from multiple surveillance cameras in the areas of Howison Place and the King-Greenleaf Recreation Center (7/1/24 Tr. 40-47). Naples also learned that the D.C. Housing Authority (DCHA) operated surveillance cameras inside the alley where the assault and robbery occurred, and he was able to view that footage a few days after the crimes (*id.* at 182-83). Naples submitted a request to the DCHA to preserve the video footage and provide it to law enforcement, but the DCHA was unable to do so (*id.*).

Before the preliminary hearing in February 2023, the government made extensive discovery disclosures to Watkins's counsel, including copies of the police paperwork (R175-76 (Gov. Opp. pp. 4-5)). When new counsel for Watkins was later

appointed, government counsel again provided the same discovery it had disclosed Watkins's previous counsel (2/27/24 Tr. 2-3; 3/8/24 Tr. 2-3).⁹

On direct examination, Naples testified about the investigatory steps he took that led him to identify Watkins as a suspect (7/1/24 Tr. 31-129). These steps included Naples's review and analysis of the surveillance footage that he recovered from the areas of Howison Place and the King-Greenleaf Recreation Center (*id.*). Naples explained that two different people closely familiar with Watkins's appearance — Watkins's ex-girlfriend and his probation officer — identified the man wearing the distinctive palm-tree shirt in the video footage as Watkins (7/1/24 Tr. 118-20, 128-29). Naples also explained that he determined Clark's identity by visiting the location near where the robbery occurred, finding and recognizing her from the surveillance footage, speaking with her, and reviewing her telephone records (*id.* at 51-60). In his testimony about the surveillance footage, Naples explained how he was able to track

⁹ The government disputes Watkins's suggestion, based on assertions about materials outside the record (Br. at 31-32), that the government failed to disclose information about the DCHA cameras to Watkins's trial counsel. Indeed, as discussed below, after the government represented at trial that it had made such disclosures, Watkins's trial counsel did not contest those representations and never moved for relief based on any discovery violation. Watkins, on appeal, raises only an evidentiary claim based on the lost DCHA footage and likewise does not assert a claim based on any purported discovery violation. Accordingly, this Court need not address or resolve any disputes about the government's disclosures, particularly since the government acknowledges that the trial court erred by allowing Naples to testify about the contents of the lost DCHA video footage. If the Court would find it helpful, however, we will supplement the record on appeal with additional materials related to discovery in this case.

Watkins and Clark across different videos based on the timeline of events, their movements as seen in the videos, and the distinctive clothing that each of them wore throughout this time period (*id.* at 77-117). Watkins's counsel did not object to Naples's testimony referencing the video footage (*id.*).

During cross-examination, Watkins's counsel asked Naples, "The incident in which Mr. Rodriguez described when he was struck and all these other things, that's not captured on CCTV, correct?" (7/1/24 Tr. 139.) Naples responded, "It is captured on CCTV. Not that it was presented here." (*Id.*) Watkins's counsel later followed up:

Q. [Y]ou're not aware of any video that's in the alley, correct?

A. Yes, there is cameras.

Q. And you're just saying that wasn't brought to you today?

A. Presented here, no.

(*Id.* at 139-40.)

On redirect, the government elicited from Naples that the DCHA had cameras in the alley, and that he attempted to have footage from those cameras preserved, but the DCHA failed to do so (7/1/24 Tr. 182-86). The government also elicited that Naples viewed the footage before it was lost, and government counsel asked, over objection, "What did the cameras show?" (*Id.* at 186.) Naples testified:

The cameras show the victim and . . . Sherry, walking into the alley. Shows the subject, Mr. Watkins, walking into the alley, as well as the two individuals on bike going into the alley.

And then actions are — the video shows actions consistent with the one individual that's identified as Mr. Watkins in this case, going up to the victim, striking him, going through his pockets, as well as the other

individuals on the bikes up around Mr. Rodriguez as well[,] and then the individuals leave out of the alley.

(*Id.* at 186-87.) Naples further testified that what he saw on the footage was consistent with what Rodriguez reported had occurred in the alley (*id.* at 187).

At a bench conference to address Watkins's objection, defense counsel initially stated he did not have "any discovery" about the DCHA cameras (7/1/24 Tr. 183-84). Government counsel explained that the information was disclosed "in the early stage of this case," and defense counsel noted he "was not counsel of record" at that time (*id.* at 184-85). When the court said that Watkins's counsel should have "everything that was disclosed to prior counsel," defense counsel clarified, "I'm just saying as far when the disclosure was made[,] I was not aware when it was made" (*id.* at 185). Watkins's counsel then argued that he was "entitled to have what [Naples] reviewed" (*id.*). The court responded that "they can't give you something they don't have," then overruled Watkins's objection to Naples's testimony (*id.* at 185-86).

The next day, the court provided an additional explanation for its ruling:

First, the Government did not try to elicit any testimony from Detective Naples, that he reviewed D.C. Housing Authority video of what he saw on the video.

That question was raised for the first time in cross examination when [defense] questioning suggested that MPD was negligent in not obtaining it, reviewing it or relying on an incomplete set of evidence, as it proceeded with its investigation.

That opened the door to the Government addressing the topic on redirect. I allowed the testimony about Detective Naples's review of the video

because it directly addressed that issue, but only after determining that . . . the evidence was not in the possession, custody or control of the Government. And therefore, any failure to preserve it [did] not constitute a discovery violation.

And also, after first determining that . . . the fact that [Detective Naples] had viewed the video and was not able to retrieve it, had been disclosed to the defense over a year before the trial. . . . [T]here[]’s no suggestion that the video was lost or destroyed because of any bad faith.

(7/2/24 Tr. 24-25.) Watkins’s counsel did not dispute the court’s statements about the government’s disclosures, nor did Watkins ever move for relief based on a purported discovery violation. Neither party referenced Naples’s testimony about the lost DCHA footage in closing arguments (7/2/24 Tr. 54-114).

B. Standard of Review and Legal Principles

Where a defendant objected at trial to the admission of evidence, this Court reviews the trial court’s ruling for abuse of discretion. *See Smith v. United States*, 665 A.2d 962, 967 (D.C. 1995). If evidence was admitted erroneously, it is evaluated for harmless error. *See Kotteakos v. United States*, 328 U.S. 750, 765 (1946). 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.*

Where evidence was admitted at trial without objection, this Court reviews for plain error. *See Walker v. United States*, 201 A.3d 586, 593-94 (D.C. 2019). To prevail on plain-error review, an appellant must show (1) an error, (2) that was

obvious, (3) that affected his substantial rights, and (4) that seriously affected the fairness, integrity, or public reputation of judicial proceedings. *See id.* at 594.

The testimony of lay witnesses “generally must be based on personal knowledge.” *Callaham v. United States*, 268 A.3d 833, 848 (D.C. 2022). A witness cannot “obtain[] personal knowledge” of events “solely by watching recorded surveillance footage” of them. *Id.*

A law enforcement investigator testifying as a lay witness may offer a “narrative of his own role in the events that led to [the defendant’s] arrest.” *Bedney v. United States*, 684 A.2d 759, 767 (D.C. 1996). Where an appropriate foundation is laid, this narrative can include a detective’s reliance on observations made from analyzing surveillance footage. *See Geter v. United States*, 306 A.3d 126, 139 (D.C. 2023).

C. Detective Naples’s Testimony About the Lost DCHA Video Footage Was Harmless.

The government acknowledges that the trial court erred by permitting Naples to testify about what he saw in the lost DCHA surveillance footage. This testimony was not based on Naples’s personal knowledge, *see Callaham*, 268 A.3d at 848, and — in contrast with the video footage that was played at trial — the jury did not have an opportunity to view the footage and draw its own conclusions. While the trial court correctly found that Watkins’s cross-examination “opened the door” to testimony that could rebut the inference that law enforcement failed to conduct a proper investigation

(7/2/24 Tr. 24-25), it would have been sufficient for Naples to testify about his unsuccessful efforts to procure the footage from the DCHA. Prior to Naples's redirect, his testimony did not suggest that he had ever viewed the footage in question, and defense counsel's questions did not touch on that issue. *See Furr v. United States*, 157 A.3d 1245, 1252 (D.C. 2017) ("Opening the door is one thing. But what comes through the door is another. Everything cannot come through the door.") (quotation marks and citation omitted).

This error, however, was harmless and does not warrant reversal in light of the substantial other evidence of Watkins's guilt, the fact that Watkins's defense hinged on identity, and the government's lack of reliance on the testimony in question. For these reasons, this Court can conclude "with fair assurance" "that the judgment was not substantially swayed by the error." *Kotteakos*, 328 U.S. at 765.

Although Watkins (at 7) downplays the government's case as "largely circumstantial," circumstantial evidence may nonetheless be powerful. *See, e.g., Williams v. United States*, 210 A.3d 634, 744 (D.C. 2019) ("Although the government's case against Mr. Williams was comprised almost entirely of circumstantial evidence, that evidence was powerful."). Here, the circumstantial evidence proving Watkins's guilt was overwhelming. Watkins's ex-girlfriend and his probation officer both identified him in the video surveillance footage played at trial (6/26/24 Tr. 53-57; 6/27/24 Tr. 47-53; 7/1/24 Tr. 118-20, 128-29). Before the robbery,

Watkins was seen on video at the King-Greenleaf Recreation Center with Clark and a man on a bicycle whose appearance matched one of the men who bicycled out of the alley and joined Clark near Rodriguez's truck (7/1/24 Tr. 86-89; Gov. Ex. 105). Phone records and video evidence showed that Clark called Watkins at 10:43 p.m., at which time Watkins immediately left the recreation center and walked toward the southern entrance of the alley (7/1/24 Tr. 58-60, 68-70, 192-93; Gov. Exs. 102B, 102C). Minutes after the robbery, video evidence showed Watkins run from the alley directly to Rodriguez's truck, get inside, and use the stolen keys to drive back to the recreation center (7/1/24 Tr. 76-77, 100; Gov. Ex. 103). Video evidence also showed Watkins and Clark rummaging through the contents of Rodriguez's truck in the recreation-center parking lot, then walking away together (7/1/24 Tr. 108-17; Gov. Exs. 112-18). Watkins's participation in the robbery was further corroborated by DNA evidence, cell-site evidence, and an Instagram video in which he displayed a gun matching Rodriguez's description of the gun used in the robbery (6/27/24 Tr. 59-67, 136-37; 7/1/24 Tr. 22-29; 7/2/24 Tr. 58-59, 109-10; Gov. Exs. 202, 801).

As Watkins notes (at 47), his defense at trial "was mis-identification, i.e., that it was not Watkins seen in the video footage, and not Watkins who robbed and assaulted the complainant." (See also 7/2/24 Tr. 97 ("Remember, this cases hinges on an ID.")). The erroneously admitted testimony about what Naples saw in the lost DCHA footage would not have "substantially swayed" the jury's assessment of this

defense. *Kotteakos*, 328 U.S. at 765. To the extent Naples described seeing the “individual that’s identified as Mr. Watkins” “striking” Rodriguez and “going through his pockets” (7/1/24 Tr. 186-87), his testimony provided no additional support to the government’s evidence that this man was, in fact, Watkins. Naples never suggested that his identification of Watkins in any of the surveillance footage was based on his independent knowledge of Watkins. To the contrary, as Naples explained, Watkins’s identity was established by Oyewole’s and Stallman’s identifications, combined with the distinctive palm-tree shirt Watkins was seen wearing across all of the surveillance footage (7/1/24 Tr. 80, 84, 118-20, 128-29). If the jury had reasonable doubt that the man in the palm-tree shirt was Watkins, Naples’s testimony about the DCHA footage would not have affected that conclusion.

The error was also harmless with respect to Watkins’s alternative argument that one of the men on bicycles may have been the perpetrator armed with the gun (7/2/24 Tr. 77-79). Watkins based this possibility on the fact that Rodriguez, who never identified Watkins, described the gun-wielding assailant as “wearing all white” (6/26/24 Tr. 109), which was also true of the two men on bikes. This theory, however, was directly contradicted by Rodriguez’s unequivocal testimony that the man with the gun was already in the alley when he and Clark arrived, and that he was also the perpetrator who took the truck keys (*id.* at 80, 85, 88-89). And while video evidence showed Watkins approach the alley from a different entrance *before* Rodriguez and

Clark entered, another video showed the men on bicycles ride into the alley *after* Rodriguez and Clark (7/1/24 Tr. 93-94, 98-99; Gov. Exs. 103, 107, 108). Furthermore, video evidence showed Watkins run directly from the alley to Rodriguez's truck, and — without interacting with anyone else — get in and drive the truck using the stolen keys (7/1/24 Tr. 76-77, 100; Gov. Ex. 103).

Finally, even assuming for the sake of argument that Naples's testimony about the DCHA footage could have substantially swayed the jury as to whether Watkins — as opposed to one of the men on bicycles — wielded the gun, this error was harmless with respect to Watkins's conviction for armed robbery. The government argued, and the jury was instructed, that Watkins could be convicted of armed robbery based on aiding and abetting (7/2/24 Tr. 48-50, 112-14).¹⁰ As discussed, the evidence that Watkins participated in the robbery was overwhelming, and Rodriguez testified that all three assailants searched through his pockets after he was assaulted with the gun, while the primary assailant was still wielding it in his hand (6/26/24 Tr. 79-80, 83-86, 109-10). Thus, even if the jury could have had reasonable doubt as to whether Watkins was the one who wielded the gun absent Naples's DCHA-footage testimony, the error would at most have impacted the PFCV conviction, and this Court can

¹⁰ Although Watkins objected to the aiding-and-abetting instruction below (7/2/24 Tr. 29-30), he does not challenge it on appeal.

conclude “with fair assurance” that Watkins nevertheless would have been convicted of armed robbery as an aider and abettor. *Kotteakos*, 328 U.S. at 765.¹¹

D. The Trial Court Did Not Plainly Err by Failing to Preclude, Sua Sponte, Naples’s Testimony About the Surveillance Videos Played at Trial.

The trial court did not err, let alone plainly err, by failing sua sponte to preclude Naples from testifying about the connections that he drew from his review of the surveillance video played at trial. As noted above, Watkins never objected at trial to Naples’s testimony in this regard. Watkins’s claim on appeal (at 38-39) is based primarily on Naples’s references to “the person the government alleged was [] Watkins” as being the “same person” in several different videos. This claim is meritless.

Unlike in *Callaham*, 268 A.3d at 837-38, or *Geter*, 306 A.3d at 135-36, Naples did not purport to identify Watkins in the video footage on his own. Rather, Naples relied on identifications provided by two individuals who were closely familiar with Watkins’s appearance, both of whom also testified at trial (6/26/24 Tr. 53-57; 6/27/24 Tr. 47-53; 7/1/24 Tr. 118-20, 128-29). *Cf. Sanders v. United States*, 809 A.2d 584, 596 (D.C. 2002) (permitting lay-witness testimony identifying a defendant in surveillance

¹¹ Watkins has not identified any way that the DCHA-footage testimony could have substantially swayed the UUV verdict, nor would the record support such a conclusion. In addition, the Court need not address any effect the error may have had on Watkins’s ADW and associated PFCV convictions, which the government agrees should be vacated based on merger.

video where the witness “is familiar with the defendant’s appearance and has had substantial contact with the defendant”). To the extent that Naples connected those identifications to what he saw in other video footage, he did so in the context of describing the investigatory steps that led him to identify Watkins as a suspect. Naples painstakingly explained how he was able to track Watkins across different videos based on the timeline of events, the paths Watkins took (with reference to a demonstrative map), and the distinctive palm-tree t-shirt that Watkins wore throughout this time period (7/1/24 Tr. 77-117). As this Court recognized in *Geter*, when an adequate foundation is laid about a “detective’s observations related to [his] investigative decision-making,” the detective may “review video footage from one point in time and [] testify about the distinctive clothing the suspect was wearing,” then “identify that same clothing in [different] surveillance footage.” 306 A.3d at 139.

Even if Naples’s testimony referencing the videos ever strayed beyond what was permissible, any error was not plain or obvious. As noted, this case is readily distinguishable from *Callahan* and *Geter*, and other courts have upheld the admission of similar testimony. *See, e.g., United States v. Callum*, 107 F.3d 878 (9th Cir. 1997) (unpublished) (permitting admission of testimony by a special agent comparing a tank top depicted in a surveillance photograph with a tank top worn by the defendant at the time of arrest where the agent “had carefully analyzed the surveillance photographs”); *United States v. Zepeda-Lopez*, 478 F.3d 1213, 1222 (10th Cir. 2007) (special agent

was permitted to testify to conclusions based on repeated viewings of surveillance video); *cf. People v. Larkins*, 131 Cal. Rptr. 3d 911, 916-18 (Cal. Ct. App. 2011) (permitting witness's identification of defendant in surveillance video where the witness had seen the defendant in multiple other surveillance videos).

Finally, Watkins cannot demonstrate, as he must on plain-error review, that any error affected his substantial rights or seriously affected the fairness, integrity, or public reputation of judicial proceedings. *See, e.g., Geter*, 306 A.3d at 139-41 (finding no plain error). The jury had the opportunity to view the same video footage themselves and evaluate Naples's explanations as to how he drew certain connections for his investigation. The jurors were also unambiguously instructed that they were "the sole judges of the facts" (7/2/24 Tr. 34).

II. The Trial Court Did Not Abuse Its Discretion by Allowing Rodriguez to Testify About His Fear of Watkins, and Any Error Was Harmless.

A. Additional Background

At a trial readiness hearing on June 21, 2024, the government notified the court that, upon receiving a subpoena to testify, Rodriguez stated he did not intend to appear for trial (6/21/24 Tr. 8-9). On June 24, 2024, the scheduled first day of trial, Rodriguez was absent, and the court issued a material witness warrant (6/24/24 Tr. 8-10, 21-22). By June 25, Rodriguez had been brought into custody (6/25/24 Tr. 4).

Also on June 25, the court granted the government’s request for a separation order after learning that Rodriguez had asked the Marshals to be separated from Watkins (6/25/24 Tr. 4-8). On June 26, counsel representing Rodriguez told the court that, despite the separation order, Rodriguez had been brought to the courthouse on the same bus as Watkins (6/26/24 Tr. 63-64). Rodriguez’s counsel expressed “concerns, generally, for [Rodriguez’s] safety” (*id.* at 64). The court asked the Marshals to ensure Rodriguez would leave on “a separate bus” (*id.* at 65).

Rodriguez testified on direct and cross-examination that he did not want to testify and was only in court because he had been compelled after disregarding a subpoena (6/26/24 Tr. 89-90, 123-24). On cross-examination, Rodriguez engaged in increasingly hostile exchanges with Watkins’s counsel when challenged about his inconsistent accounts of the robbery (6/26/24 Tr. 154-56). Although these previous statements were captured on body-worn camera and played during his testimony, Rodriguez denied at trial that he had made them (6/26/24 Tr. 150, 154-56).

When Watkins’s counsel asked Rodriguez about his uncertainty as to whether the gun-wielding assailant had dreadlocks or short hair, it led to the following exchange:

A. . . . I’m just trying — whatever, bruh. Yeah, I guess. Yeah. I’m trying to help your man out for real, for real.

[Defense counsel]: Your Honor . . . I’m going to ask to strike that last statement. I don’t know what[] he’s talking about.

THE WITNESS: Well, I’m trying to help your client, but you’re ticking me off. At this point, I’m on the stage. It doesn’t even matter.

THE COURT: It does matter. Your job is just to tell —

THE WITNESS: No. Because if I —

THE COURT: Tell the truth —

THE WITNESS: — identify who I claim that day — was that night, he would be mad.

[Defense counsel]: I'm going to ask to have that stricken, Your Honor.

THE COURT: No. Sir, are you telling the truth today?

THE WITNESS: Yes, I'm telling the truth today.

THE COURT: Okay. All right. Please proceed.

(6/26/24 Tr. 165-66.)

On redirect, government counsel asked Rodriguez what he meant when he told Watkins's counsel that he was "trying to help out" Watkins (6/26/24 Tr. 173). After the court told Rodriguez that he had to answer, the following exchange occurred:

Q. Why did you tell [defense counsel] that you were trying to help him out — help out his client?

A. Me admitting who did it, that's why.

Q. Sorry, what was that?

A. For me admitting to who assaulted me.

Q. Do you know who did that?

A. Gosh. No, I don't.

Q. I see you looking to your right —

[Defense counsel]: Objection.

THE COURT: Overruled.

Q. Are you being truthful?

A. I don't know.

Q. Why do you say you don't know? Are you scared?

[Defense counsel]: Objection.

THE WITNESS: Yes, I'm scared for my life. Yes.

THE COURT: Overruled.

Q. Why are you scared?

A. Because I don't know if this individual might harm me or my folks.

Q. And would you recognize him if you saw him out in the streets?

A. No, I wouldn't. I wouldn't recognize him until this day that y'all presented to me, yes. I would not know him in the streets.

(6/26/24 Tr. 173-74.)

Government counsel did not reference or rely upon Rodriguez’s testimony about his fear during closing argument (7/2/24 Tr. 54-74, 100-14). Watkins’s counsel, after challenging Rodriguez’s credibility on multiple grounds, asked the jury to “judge his demeanor,” and asked, “Does this look like a scared person?” (*Id.* at 90-91.) Defense counsel also reiterated Rodriguez’s inconsistent accounts of the robbery to the police, calling them “lies” (*id.* at 91).

B. Standard of Review and Legal Principles

Where a defendant objected at trial to the admission of evidence, this Court reviews the trial court’s ruling for abuse of discretion. *See Smith*, 665 A.2d at 967. “An exercise of judicial discretion will not be reversed unless it appears that it was exercised on grounds, or for reasons, clearly untenable or to an extent clearly unreasonable.” *Ebron v. United States*, 838 A.2d 1140, 1153 (D.C. 2003) (quotation marks and citation omitted). In reviewing a trial court’s exercise of discretion, an appellate court should consider “the context within which [the decision] was rendered.” (*James*) *Johnson v. United States*, 398 A.2d 354, 365-66 (D.C. 1979).

Evidence about a witness’s fear of testifying may be more prejudicial than probative “unless admitted to explain specific behavior of the witness, such as inconsistent statements, delay in testifying, or unusual courtroom demeanor.” *Blackson v. United States*, 979 A.2d 1, 11 (D.C. 2009) (cleaned up). If evidence of a witness’s fear is improperly admitted, the error is harmless if this Court “can say with fair

assurance, without stripping the erroneous action from the whole, that the error did not sway the verdict.” *Ebron*, 838 A.2d at 1150 (citing *Kotteakos*, 328 U.S. at 764-65).

C. Discussion

The trial court did not abuse its discretion in allowing Rodriguez to testify on redirect about his fear of Watkins, which was necessary to explain his unusual statements and demeanor during cross-examination, as well as his inconsistent accounts of the robbery. Furthermore, Rodriguez’s testimony, in context, did not implicate this Court’s primary concern about fear testimony, since it did not imply that Watkins had caused the fear by threatening Rodriguez.

Watkins’s claim (at 25) that “nothing” about Rodriguez’s testimony “needed explication for the jury” is belied by the record. After displaying increasing hostility to Watkins’s counsel, Rodriguez told him, “I’m trying to help your client, but you’re ticking me off” (6/26/24 Tr. 166). Such an unusual and unexplained assertion provided a special need for the government to address and clarify its meaning and basis on redirect. *See Blackson*, 979 A.2d at 11 (fear testimony is admissible to “explain specific behavior of the witness while testifying”). In addition, defense counsel impeached Rodriguez with prior inconsistent statements he made to the police, which was a core element throughout the trial of Watkins’s attempts to discredit Rodriguez (6/26/24 Tr. 14; 7/1/24 Tr. 197-98; 7/2/24 Tr. 80-81). *See McClellan v. United States*, 706 A.2d 542, 551-52 (D.C. 1997) (where a witness’s “credibility has been attacked on the basis of

[his] initial failure to tell the truth to the police,” it is within the trial court’s discretion to permit evidence that the witness acted out of “self-protective fear”).

Furthermore, this Court’s decisions about limiting the potential prejudice from fear testimony are based on avoiding unsubstantiated implications that the defendant caused the fear by threatening the witness. In *Mercer v. United States*, 724 A.2d 1176 (D.C. 1999), for example, this Court held that a witness’s testimony that “I could leave here today and y’all might never see me again” was inadmissible because it “implied that [she] had received some type of threat regarding her testimony.” *Id.* at 1186. By contrast, it was permissible to elicit that the same witness was “scared” upon seeing the defendant’s girlfriend while talking to an investigator because the witness “kn[e]w [her statements were] going to get back to [the defendant].” *Id.* This fear was based on “something the jury might naturally have understood anyway: that witnesses to a violent crime subpoenaed to testify in court may continue to exhibit fear of those they believe were the perpetrators.” (*Akande*) *Johnson v. United States*, 980 A.2d 1174, 1183 (D.C. 2009) (quotation marks and citation omitted). *See also* (*Antonio*) *Johnson v. United States*, 17 A.3d 621, 626-27 (D.C. 2011) (testimony that witness feared defendant was admissible where the witness had made “conflicting statements” and evidence “suggested that she would have very good reason to fear [the defendant]”).

The natural fear of a defendant experienced by an eyewitness to a violent crime is even more acutely experienced (and even more obviously natural) for the *victim* of a violent crime, such as Rodriguez. *See Murray v. United States*, 855 A.2d 1126, 1135 (D.C. 2004). In *Murray*, this Court distinguished between a permissible government argument ascribing the victim’s “reluctance as a witness and his evasive or shifting answers” to his being “still frightened” of the defendants and an improper argument collectively describing all of the government’s witnesses in the case “as motivated by fear of [the defendants] in their reluctance to testify.” *Id.* at 1132-33 (emphasis in original). Notably, all of the cases relied upon by Watkins (at 23-25) involved fear testimony by eyewitnesses, not victims.

Although Rodriguez specified that Watkins was the source of his fear — in contrast with the more generalized type of fear testimony this Court has endorsed in other cases, *see, e.g., Clayborne v. United States*, 751 A.2d 956, 964 (D.C. 2000) — the context and wording of his testimony indicated it was the kind of fear that a violent-crime victim would naturally feel toward the person charged with that crime, rather than an implication that Watkins had ever threatened him. Contrary to Watkins’s claim (at 23) that Rodriguez articulated a “specific fear” of him, Rodriguez testified equivocally, “I *don’t know* if this individual *might* harm me or my folks” (6/26/24 Tr. 174) (emphasis added). Rodriguez also consistently reiterated that he did not recognize Watkins and “would not know him in the streets” (*id.*).

Thus, there was no implication that Rodriguez’s fear was based on anything he knew about Watkins beyond the fact that Watkins was charged with the violent armed robbery and assault that Rodriguez experienced on June 17, 2022.

For these reasons, this case is readily distinguishable from *Blunt v. United States*, 959 A.2d 721 (D.C. 2008), the case on which Watkins primarily relies. In *Blunt*, an eyewitness testified that she was afraid to testify at trial because she “had been stabbed repeatedly” as a result of her grand-jury testimony in that case. *See id.* at 725. This Court held the testimony to be impermissibly prejudicial because it “carried a serious risk of implying an unfounded link” between the defendant and the stabbing, where no evidence of such a link had been presented. *Id.* Rodriguez’s testimony implied no similar attempt by Watkins to threaten him.

Even if Rodriguez’s fear testimony was erroneous, it would not warrant reversal under the harmless-error doctrine. *See Murray*, 855 A.2d at 1136. Rodriguez’s equivocal testimony about not knowing if Watkins might harm him or those close to him, and his insistence that he did not recognize Watkins at all, suggested to the jury only what they would “naturally have understood anyway” — that the victim of a violent crime would fear testifying against the man charged with that crime. *Id.* at 1135. In addition, as discussed above, there was overwhelming circumstantial evidence of

Watkins's guilt in this case.¹² The Court can thus say with fair assurance that Rodriguez's brief, equivocal testimony — which the government did not discuss in its closing argument — did not sway the verdict.

III. Watkins's Claim Based on Sean Stallman Being Identified as a Probation Officer Is Waived, and, in Any Event, Watkins Fails to Show Plain Error.

A. Additional Background

On July 6, 2022, Detective Naples contacted Sean Stallman, Watkins's probation officer in a federal-court case, for assistance identifying the man shown in surveillance footage rummaging through Rodriguez's truck at the King-Greenleaf Recreation Center (6/27/24 Tr. 47-53; 7/1/24 Tr. 83-84, 112-13). Stallman identified the man as Watkins (6/27/24 Tr. 51-53; 7/1/24 Tr. 117-20). Stallman also provided Naples with a phone number ending in 1259 that he used to communicate with Watkins and the address where he conducted Watkins's home visits (6/27/24 Tr. 43-47, 52-59; 7/1/24 Tr. 117-19). On July 15, 2022, Stallman contacted Naples to report that — while monitoring Watkins's Instagram account — Stallman saw a live video in which Watkins displayed a firearm (6/27/24 Tr. 59-67). Stallman recorded a portion of the video on his cell phone (6/27/24 Tr. 63).

¹² Although it may have been preferable for the trial court to issue a cautionary instruction after Rodriguez's testimony, the failure to do so was not reversible error, particularly where Watkins's counsel never requested such an instruction.

On May 10, 2023, the government filed a notice of intent to introduce evidence that Watkins possessed “a firearm matching the description of the gun used in the offense at issue” (R520-31 (Notice)). Specifically, the government proffered that the gun Watkins displayed in his Instagram video was consistent with Rodriguez’s description of the gun used by his assailant on June 17, 2022 (R522, R527 (Notice at 3, 8)). The government asserted that the Instagram video was thus direct evidence of the charged offenses under (*William*) *Johnson v. United States*, 683 A.2d 1087 (D.C. 1996) (R527-30 (Notice at 8-11)). On June 21, 2024, the trial court ruled that the Instagram video was admissible as *Johnson* evidence (6/21/24 Tr. 15).

Also on June 21, the trial court and the parties discussed how Watkins’s probationary status should be addressed when Stallman testified (6/21/24 Tr. 23-25). The court noted it was necessary to sufficiently explain Stallman’s relationship with Watkins to provide context for his testimony, particularly because identity was a contested issue (*id.* at 24). In light of the potential prejudice from the jury learning about Watkins’s probationary status, however, the court told the parties to “discuss this issue” to see if they could agree on an approach (*id.* at 25).

On June 26, 2024, the day before Stallman testified, the court asked for an update as to how his testimony would be presented at trial (6/26/24 Tr. 179). The government set forth the parties’ joint proposal, and Watkins’s counsel expressly agreed that the government could elicit “that [Watkins] was on probation in 2022,”

and “that he was under the supervision of Stallman” (*id.* at 179-80).¹³ The government also represented, again with defense counsel’s express agreement, that it would not elicit “the reason why [Watkins was] on probation,” the nature of “any prior convictions,” or the “performance of [Watkins] on probation” (*id.* at 180-81).

On June 27, 2024, Stallman testified consistent with the parties’ agreement (6/27/24 Tr. 32-93). He described how he identified Watkins in the surveillance footage based on his familiarity with Watkins’s appearance (*id.* at 47-53). Stallman also testified about the phone number ending in 1259 that he regularly used to call and text Watkins, and the government introduced a text exchange in which the person at that number identified himself as Watkins (*id.* at 43-47).¹⁴ Stallman also connected Watkins to Jamie Dickson, the person to whom the phone number was registered, since Dickson had accompanied Watkins to his intake interview (*id.* at 39-43, 58-59). Stallman identified Dickson in the courtroom gallery (*id.* at 43).¹⁵

¹³ After the discussion about Stallman’s expected testimony on June 21, the parties exchanged emails in which Watkins’s counsel agreed that the government could elicit that Watkins was on probation and Stallman was his supervisor. In light of the representations Watkins’s counsel made in open court, described above, we submit these emails are unnecessary for the resolution of this claim. If the Court would find it helpful, however, we will supplement the record on appeal with the emails.

¹⁴ Watkins’s phone records confirmed that Stallman completed calls to this number on June 17, 2022, the date of the offenses (7/2/24 Tr. 57; Gov. Ex. 415).

¹⁵ Watkins’s use of this phone number corroborated in two ways that he was the person who assaulted and robbed Rodriguez. First, call records showed that Clark called that number moments before surveillance video showed Watkins leave the
(continued . . .)

In addition, Stallman testified that he monitored Watkins’s social-media accounts and saw a live Instagram video in which Watkins displayed a gun (6/27/24 Tr. at 59-67). The government introduced a portion of the video recorded by Stallman (*id.* at 62-66). Stallman also identified Watkins in another video posted to the same account, in which Watkins wore the same distinctive shoes that the suspect wore in surveillance footage from June 17, 2022 (*id.* at 67-70; 7/2/24 Tr. at 59-61). Defense counsel did not object to Stallman describing his job as a probation officer or testifying about his various duties supervising Watkins (6/27/24 Tr. at 32-71).

On July 2, 2024, the government requested an instruction for the jury “not to consider the fact that [Watkins] was on probation for guilt in this offense” (7/2/24 Tr. 26). The government “defer[red to] whether the defense want[ed]” such an instruction, and defense counsel stated that he had no objection (*id.*). At the court’s direction, the parties conferred about the wording of this instruction, and Watkins’s counsel “agree[d] with the language proposed” by the government,¹⁶ asking only to add the word “only” between “You may” and “consider” in the final sentence (7/2/24

King-Greenleaf Recreation Center and walk toward the alley (7/1/24 Tr. 58-59, 98-99, 192-93). Second, an FBI cell-site expert testified that the cell phone using that number was likely at both the alley and the King-Greenleaf Recreation Center during the time period relevant to the offenses in this case (7/1/24 Tr. 22, 29-30).

¹⁶ If the Court would find it helpful, the government will supplement the record with government trial counsel’s email to Watkins’s counsel proposing the instructional language to which Watkins’s counsel agreed in open court.

Tr. 27, 30-31). The court accepted that revision and delivered the instruction to the jury with the agreed-upon language (*id.* at 43).

B. Standard of Review and Legal Principles

Where a defendant objected at trial to the admission of evidence, this Court reviews the trial court’s ruling for abuse of discretion. *See Smith*, 665 A.2d at 967.

Where evidence was admitted at trial without objection, this Court reviews for plain error. *See Walker*, 201 A.3d at 593-94. To prevail on plain-error review, an appellant must show (1) an error, (2) that was obvious, (3) that affected his substantial rights, and (4) that seriously affected the fairness, integrity, or public reputation of judicial proceedings. *See id.* at 594.

Under the invited-error doctrine, a party is “preclude[d]” “from asserting as error on appeal” a claim based on “a course that he or she has induced the trial court to take.” *Preacher v. United States*, 934 A.2d 363, 368 (D.C. 2007). As this Court has “repeatedly held,” “a defendant may not take one position at trial and a contradictory position on appeal.” *Mason v. United States*, 53 A.3d 1084, 1102 (D.C. 2012).

C. Discussion

Watkins’s claim (at 40-47) that the trial court erred by allowing Stallman to identify himself as Watkins’s probation officer is waived under the invited-error doctrine. Watkins did not merely fail to object to Stallman’s testimony on this topic, which would — as Watkins proposes (at 40) — subject this claim to plain-error

review. Rather, after the trial court encouraged the parties to agree on a mutually acceptable approach to Stallman's testimony (6/21/24 Tr. 25), Watkins's counsel expressly agreed that Stallman could testify "that [Watkins] was on probation in 2022," and "that he was under the supervision of Stallman" (6/26/24 Tr. 179-80). This precludes an appeal on this ground. *See Butts v. United States*, 822 A.2d 407, 416 (D.C. 2003) (claim precluded where "defense counsel not only failed to object, but actually agreed with the prosecutor"); *Brown v. United States*, 864 A.2d 996, 1003 (D.C. 2004) (claim precluded where "defense counsel agreed with the court" as to the "proper procedure" for a witness who invoked the Fifth Amendment).

Watkins's contention (at 45) that the government deviated from the parties' agreement because the Instagram video "signaled to the jury that [Watkins] was in violation of his probation" is belied by the record. The parties' discussion and agreement about how to present Stallman's testimony occurred after the trial court ruled that the Instagram video was admissible (6/21/24 Tr. 15) — a ruling that Watkins does not challenge on appeal. Indeed, during the same exchange in which the government agreed not to elicit testimony about Watkins's probation performance, defense counsel expressly agreed that Stallman could testify about "the efforts [he] made to capture" the Instagram video (6/26/24 Tr. 179-80). The government, consistent with its agreement, did not ask Stallman about Watkins's performance on probation or ever suggest the jury should consider Watkins's compliance with his

terms of supervision. In short, Stallman’s testimony was fully consistent with the parties’ agreement. *See United States v. Taylor*, 44 F.4th 779, 786, 793 (8th Cir. 2022) (rejecting as waived a challenge to probation officer’s testimony where officer “testified, without objection, consistent with the parties’ agreement”). *See also Henny v. United States*, 321 A.3d 621, 633 (D.C. 2024) (claim that IRAA defendant could not be cross-examined was precluded where defense counsel told the court that “the government and the defense . . . agreed that cross-examination will come out of the time allotment assigned to the party questioning”).

Although Watkins does not separately assert a claim of instructional error, he appears to challenge (at 43-44) the wording of the jury instruction concerning Watkins’s probationary status. Any claim on this ground is also waived. After the government “deferred” to whether Watkins wanted such an instruction, and Watkins’s counsel said he had no objection, the court asked the parties to confer on appropriate language (7/2/24 Tr. 26-27). Watkins’s counsel thereafter expressly “agree[d] with the language proposed” by the government, requesting only one minor change that the court accepted (*id.* at 30-31, 43). An appellant is precluded from challenging a jury instruction to which he expressly agreed at trial. *See Young v. United States*, 305 A.3d 402, 429-30 (D.C. 2023).

Even if this Court were to consider Watkins’s claim, he has failed to show that the trial court plainly erred by accepting the parties’ agreement rather than sua sponte

mandating a different approach. The trial court and parties recognized the need to balance the probative value of Stallman's testimony with the potential prejudice from the jury learning about Watkins's probationary status. Watkins acknowledges (at 42) that it was proper for Stallman to testify and does not challenge any of his substantive testimony. It is well-established that a probation officer may identify a defendant in a video or photograph if he is "familiar with the defendant's appearance and has had substantial contact with the defendant." *Sanders*, 809 A.2d at 596. A probation officer may also testify about probative facts that the officer learned while supervising the defendant. *See, e.g., (Woredell) Johnson v. United States*, 552 A.2d 513, 515 (D.C. 1989) (probation officer testified to statements made by defendant at supervision meeting); *United States v. Jones*, 642 F.2d 909, 914 (5th Cir. 1981) (same); *United States v. Hoskins*, 256 F. App'x 896, 897-98 (8th Cir. 2007) (probation officer testified to seeing a gun during a visit to defendant's apartment). As discussed, Stallman's testimony in this case included both types of evidence.

Balancing the probative value of a probation officer's testimony against the potential prejudice to a defendant is not always simple. On the one hand, as the trial court recognized, it is necessary to provide context for the jury to evaluate the reliability and significance of the officer's testimony (6/21/24 Tr. 24). On the other hand, the testimony may prejudice the defendant "either by highlighting the defendant's prior contact with the criminal justice system, if the witness's occupation is revealed to the

jury, or by effectively constraining defense counsel’s ability to undermine the basis for the witness’s identification on cross-examination, if the witness’s occupation is to remain concealed.” *United States v. Pierce*, 136 F.3d 770, 776 (11th Cir. 1998). The parties’ agreement in this case took account of these conflicting considerations, allowing the government to elicit enough information about Stallman’s job and duties to explain the basis for his testimony, while prohibiting any testimony about the reasons Watkins was on probation, the nature of his prior convictions, or his probationary performance (6/26/24 Tr. 179-81). The trial court’s acceptance of this agreed-upon approach was not error, let alone “obvious” error. *Walker*, 201 A.3d at 593-94.¹⁷

Nor can Watkins satisfy the third and fourth prongs of plain-error review. Watkins has not demonstrated a reasonable probability of acquittal if Stallman had testified without revealing his role as Watkins’s probation officer, especially since the government never ascribed any significance to Watkins’s probationary status,¹⁸ and the trial court expressly instructed the jury not to consider the fact that Watkins

¹⁷ Watkins proposes (at 43), for the first time on appeal, other ways that Stallman’s relationship with Watkins could have been described at trial. This Court need not address whether these proposals would have been viable approaches to Stallman’s testimony. It is sufficient to find that Watkins’s claim is precluded under the invited-error doctrine, or, in the alternative, that the trial court’s acceptance of the parties’ agreed-upon approach was not plain error.

¹⁸ The excerpts that Watkins quotes (at 44-45) from the government’s closing appropriately focused on how Stallman’s specific duties supported the reliability of his identification testimony. The government never argued that the jury should consider Watkins’s probationary status in any way.

was on probation. *See (John) Moore v. United States*, 927 A.2d 1040, 1063 (D.C. 2007) (“Juries are presumed to have followed unambiguous instructions given by the trial court, and [this Court] will not upset the verdict by assuming that the jury declined to do so”) (quotation marks omitted). Furthermore, the trial court’s approach here did not seriously affect the fairness, integrity, or public reputation of judicial proceedings, given that it was based on consultation with the parties and implemented with Watkins’s express agreement.

IV. The Evidence Was Sufficient to Prove That Watkins Committed the Offenses While Armed.

A. Standard of Review and Legal Principles

This Court reviews sufficiency claims de novo. *See In re T.B.*, 331 A.3d 242, 248 (D.C. 2025). To prevail on a sufficiency claim, an appellant “has the burden of establishing that the government presented no evidence upon which a reasonable mind could fairly conclude guilt beyond a reasonable doubt.” *Id.* (quotation marks and citations omitted).

When assessing sufficiency, this Court views the evidence in the light most favorable to the government, without disturbing the trier of fact’s right to weigh the evidence, determine the credibility of witnesses, and draw reasonable inferences. *See Gibson v. United States*, 792 A.2d 1059, 1065 (D.C. 2002). No distinction is drawn between direct and circumstantial evidence. *See (Calvin) Moore v. United States*,

757 A.2d 78, 82 (D.C. 2000). The evidence need not compel a finding of guilt nor negate every possible inference or hypothesis of innocence. *See Timberlake v. United States*, 758 A.2d 978, 980 (D.C. 2000). Rather, “proof of guilt is sufficient if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *In re T.B.*, 331 A.3d at 248 (emphasis in original; quotation marks and alterations omitted).

To prove the “while armed” element of robbery while armed, the government must show the defendant committed the robbery while armed with, or having readily available, “any pistol or other firearm (or imitation thereof) or other dangerous or deadly weapon.” D.C. Code § 22-4502. To prove ADW, the government must show the defendant committed an assault with “any object which the victim perceives to have the apparent ability to produce great bodily harm.” *Washington v. United States*, 135 A.3d 325, 330 (D.C. 2016) (quotation marks omitted). To prove PFCV, the government must show the defendant committed a crime of violence or dangerous offense while possessing “a pistol, machine gun, shotgun, rifle, or any other firearm or imitation firearm.” D.C. Code § 22-4504(b).

B. Discussion

Watkins does not challenge the sufficiency of the evidence proving that he was the person who assaulted and robbed Rodriguez. Watkins claims (at 47-49), however, that “there was insufficient evidence of his being armed” because the gun used in the

offenses was not recovered by law enforcement, and the government presented no video footage showing the assailant holding a firearm. This claim is meritless because “[e]yewitness testimony is sufficient to prove that a person used a firearm.” *United States v. Redd*, 161 F.3d 793, 797 (4th Cir. 1998).

As Watkins acknowledges (at 49), Rodriguez testified that the man who robbed him pointed a gun at him and hit him in the face with it multiple times (6/26/24 Tr. 78-79, 83, 87, 101). Rodriguez’s testimony was corroborated by evidence that he suffered injuries consistent with being struck in the face by a gun — particularly his chipped tooth and the laceration above his eyebrow (6/26/24 Tr. 79, 106-07, 117-18). This evidence, viewed in the light most favorable to the government, was sufficient to prove that Watkins used a firearm or imitation firearm in the commission of the charged offenses.

In *Bates v. United States*, 619 A.2d 984, 985 (D.C. 1993), this Court found sufficient evidence of armed robbery and PFCV based on eyewitness testimony that the defendant pointed a small “silver thing” that “looked like a gun” at a taxi driver while demanding money. Although law enforcement officers never recovered a gun, “the eyewitness testimony was sufficient to prove that [the defendant] used a real or imitation pistol.” *Id.* at 986. *See also Singley v. United States*, 548 A.2d 780, 783 n.2 (D.C. 1988) (finding sufficient evidence “concerning the presence of a gun during the commission of the crime” where the victim testified that the defendant “reached into

his coat and pulled out a ‘little gun’”). The eyewitness testimony and corroborative evidence in this case likewise satisfies the sufficiency standard.¹⁹

V. The Government Agrees That Some of Watkins’s Convictions Merge.

This Court reviews de novo a claim that convictions merge under the Double Jeopardy Clause. *See Kaliku v. United States*, 994 A.2d 765, 787 (D.C. 2010). “ADW is a lesser included offense of armed robbery” where, as here, “the assault is committed in order to effectuate the robbery.” *Beaner v. United States*, 845 A.2d 525, 540 (D.C. 2004). The government thus agrees that Watkins’s ADW conviction should be vacated, since it merges with his armed-robbery conviction. *See Kaliku*, 994 A.2d at 787. We also agree that Watkins’s PFCV conviction predicated on ADW should be vacated, since it merges with his PFCV conviction predicated on armed robbery. *See Morris v. United States*, 622 A.2d 1116, 1130 (D.C. 1993) (allowing for only one PFCV conviction when predicate convictions merge).

¹⁹ Watkins erroneously claims (at 49) that Detective Naples’s testimony about the lost DCHA video footage cannot be “factored in” to his sufficiency claim. When assessing sufficiency, this Court “consider[s] *all* the evidence admitted at trial, including the evidence appellant claims should have been excluded, regardless of whether the court erred in admitting it.” *In re T.B.*, 331 A.3d at 248 (emphasis in original; quotation marks and citation omitted). Regardless, as discussed above, Rodriguez’s testimony alone provides sufficient evidence that the offenses in this case were committed with the use of a firearm.

The trial court, which acknowledged the possibility that some of Watkins's convictions would merge on appeal (10/21/24 Tr. 12-13, 29-31), imposed concurrent sentences for all of the convictions (R644 (Sentence)). A full resentencing is therefore unnecessary, and this case can be remanded to the trial court with instructions simply to vacate Watkins's ADW conviction (Count Three) and the associated PFCV conviction (Count Four) based on merger.

CONCLUSION

WHEREFORE, the government respectfully submits that, with the exception of the merged convictions, the judgment of the Superior Court should be affirmed.²⁰

Respectfully submitted,

JEANINE FERRIS PIRRO
United States Attorney

CHRISELLEN R. KOLB
DANIEL J. LENERZ
GREGORY EVANS
MARK LEVY
Assistant United States Attorneys

/s/

TIMOTHY R. CAHILL
D.C. Bar #1032630
Assistant United States Attorney
601 D Street, NW, Room 6.232
Washington, D.C. 20530
Timothy.Cahill@usdoj.gov
(202) 252-6829

²⁰ Contrary to Watkins’s claim (at 49) that he is entitled to relief based on an “accumulation of errors” in this case, “there were no prejudicial errors that warrant reversal,” and “[c]onsequently, the cumulative effect of any such errors did not prejudice” Watkins. *Young*, 305 A.3d at 431. *See also Hagans v. United States*, 96 A.3d 1, 43-44 (D.C. 2014) (affirming the judgment where there was “no reasonable probability” that “the few errors we have found or assumed arguendo” “affected the outcome of [the] trial”).

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, Nancy Allen, Esq., nallenesq@gmail.com, on this 19th day of May, 2025.

/s/

TIMOTHY R. CAHILL

Assistant United States Attorney