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BRIEF FOR APPELLEE

DISTRICT OF COLUMBIA
COURT OF APPEALS

Nos. 23-CF-205 & 23-CF-229

RONNIKA JENNINGS AND DEREK TURNER,

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. 2017-CF1-15352,
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ISSUES PRESENTED

I. Whether the trial court erred in denying Turner's motion to suppress evidence from his cell phones, where the search warrants authorizing the seizure of the evidence were amply supported by probable cause and were sufficiently particularized, and where, in any event, the good-faith exception to the exclusionary rule applied.

II. Whether the trial court erred in denying Turner's motion to suppress evidence seized during a search of his car, where the police had probable cause to seize Turner's car because it contained evidence of a crime, and where, in any event, the search warrant they obtained the following day provided an independent source for the evidence.

III. Whether the trial court erred in denying Jennings's motion to suppress statements, where the trial court did not plainly err in failing to find a violation of *Garrity v. State of New Jersey*, 385 U.S. 493 (1967); the statements were voluntary; and the court did not plainly err in failing to hold a hearing pursuant to *Kastigar v. United States*, 406 U.S. 441 (1972).

IV. Whether the evidence was sufficient to support Turner's convictions for murder and assault with intent to kill, where Turner possessed the firearm used in the crimes, cell-site evidence placed him in the vicinity of the shootings, Turner's

car was at each of the three crime scenes, there was strong motive evidence, and Turner engaged in extensive efforts to evade apprehension and obstruct justice.

V. Whether the evidence sufficiently established that Jennings was an accessory after the fact to Turner's crimes of violence, where compelling circumstantial evidence supported an inference that Jennings shared information with Turner about the police investigations of Turner's crimes with the intent to assist him in avoiding detection and apprehension.

VI. Whether the trial court plainly erred by failing to instruct the jury on the definition of "assisted" for purposes of accessory after the fact, where the offense does not rely on a technical legal meaning of the word that is different from its ordinary meaning, and where the jury would have reached the same verdict had it received a definition of the term.

VII. Whether this Court should vacate Turner's and Jennings's convictions for obstruction of justice and Turner's conviction for conspiracy to obstruct justice.

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APPEALS FROM THE SUPERIOR COURT
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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

In a 55-count superseding indictment filed on March 14, 2019, Derek Turner and Ronnika Jennings were charged with conspiracy to “kill, assault and destroy property of members, friends and associates of a rival street gang” (Count 1) and conspiracy to obstruct justice (Count 42), in violation of D.C. Code § 22-1805a (R.I 220, 268).¹ Turner was also charged with numerous violent crimes and weapons

¹ “R. _” refers to the record on appeal, by volume, in case number 23-CF-229 (Derek Turner), and “Hill. R.” refers to the record on appeal in case number 23-CF-255 (Duan Hill), at the PDF page number indicated. “Tr.” refers to the transcript of the
(continued . . .)

offenses, including: seven counts of unlawful possession of a firearm, in violation of D.C. Code § 22-4503(a)(1), (b)(1) (Counts 3, 7, 12, 22, 33, 38, 40); two counts of first-degree murder while armed, in violation of D.C. Code §§ 22-2101, -4502 (Counts 4, 35); eight counts of possession of a firearm during a crime of violence (“PFCOV”), in violation of D.C. Code § 22-4504(b) (Counts 6, 11, 16, 19, 26, 29, 32, 37); and seven counts of assault with intent to kill while armed (“AWIKWA”), in violation of D.C. Code §§ 22-401, -4502 (Counts 9, 14, 17, 20, 24, 27, 30) (R.I 255-68). Additionally, Turner was charged with 13 counts of obstruction of justice, in violation of D.C. Code § 22-722(a)(6) (Counts 43-55) (R.I 284-87).

Jennings was likewise charged with first-degree murder while armed (Count 35); seven counts of AWIKWA (Counts 9, 14, 17, 20, 24, 27, 30); and seven counts of PFCOV (Counts 11, 16, 19, 26, 29, 32, 37) (R.I 257-66). Jennings was also charged with 16 counts of accessory after the fact (“AAF”), in violation of D.C. Code § 22-1806 (Counts 3, 5, 8, 10, 13, 15, 18, 21, 23, 25, 28, 31, 34, 36, 39, 41) (R.I 255-68); and 12 counts of obstruction of justice (Counts 44-55) (R.I 284-87).²

proceedings in the trial court by date and page number. “App.” refers to Jennings’s appendix.

² Co-defendant Duan Hill was also indicted on charges of obstructing justice and conspiring to do so, and was jointly tried with Turner and Jennings (R.I 337, 354-56). Hill appealed his convictions. On March 25, 2025, the government filed an unopposed motion to vacate Hill’s convictions and remand for dismissal of the
(continued . . .)

On September 20, 2022, a two-and-a-half-month jury trial commenced before the Honorable Marisa Demeo (9/20/22 Tr. 24). On December 14, 2022, the jury returned its verdicts (12/14/22 Tr. 11-24). The jury found Turner guilty of both conspiracy counts, two counts of first-degree murder while armed (decedents Devin Hall and Andrew McPhatter), three counts of AWIKWA (victims Andrew McPhatter, Raheem Osborne, and Joseph Tyler), four counts of PFCOV, four counts of unlawful possession of a firearm, and seven counts of obstruction of justice (App. 152-67). The jury acquitted Turner of the remaining charges (*id.*). The jury convicted Jennings of four counts of AAF and one count of obstruction of justice, and acquitted her of the remaining charges (*id.*).

On March 10, 2023, the trial court sentenced Turner to a total of 133 years of incarceration, followed by five years of supervised release (3/10/23 Tr. 109-13). The court sentenced Jennings to a total of 15 years of incarceration, followed by five years of supervised release (*id.* at 115). Turner and Jennings timely appealed (R.II 772; App. 169-70).

indictment. On March 27, 2025, this Court granted the government's motion. 3/27/25 Order, *Hill v. United States*, No. 23-CF-255 (D.C.).

The Trial

The Government's Evidence

This case arose from a series of violent crimes perpetrated by rival street gangs from the Wahler Place and Trenton Park neighborhoods of Southeast, D.C., from 2016 to 2017. Turner was a member of the Wahler Place crew. As discussed in more detail below, from May to November 2016, members of both gangs were wounded or killed in back-and-forth shootings, and Turner himself was targeted at least twice.

From November 2016 to March 2017, Turner committed several shootings, ultimately killing two Trenton Park members and injuring others. Jennings, a long-time employee of the Metropolitan Police Department (“MPD”), assisted Turner in avoiding detection and apprehension by passing him information about the police investigation of his crimes. Turner’s shooting spree came to an end in March 2017 when, after his car was damaged in a drive-by shooting, the police seized his car and found the 10mm Glock he had used to assault and kill his victims. Following his arrest for possession of the gun, Turner conspired with Jennings and others to obstruct justice. Jennings continued to monitor the police investigations and share information with Turner until his arrest for murder in September 2017.

1. The Wahler Place/Trenton Park Feud

The violence between the Wahler Place and Trenton Park crews began in the spring of 2016. On May 10, 2016, Trenton Park member Jaquan Haney was

murdered on Wahler Place (9/29/22 Tr. 198-99, 203). The next day, Turner was shot in the 3800 block of 9th Street, Southeast (10/3/22 Tr. 37-38). Two months later, on July 15, 2016, Trenton Park member Broadus Daniels was shot at 4351 4th Street, Southeast (10/3/22 Tr. 138, 158). Forty minutes later, Turner, fellow Wahler Place crew member Antwon Jones, and Turner's girlfriend Pebla Cotton, were shot at while sitting in a car at 9th Street and Wahler Place (10/4/22 Tr. 28-30). Jones and Cotton suffered injuries, but Turner was unharmed (*id.* at 30). Later that night, a shootout occurred in a parking lot in the 3500 block of 6th Street, Southeast, in Trenton Park, where around 100 people were present (10/3/22 Tr. 71-72, 78). Turner was not charged with these shootings and was incarcerated on an unrelated matter from September 1 to November 21, 2016 (*id.* at 90).

One month after the parking-lot shootout, members of Trenton Park, including Jamal Ellis, Todd Foreman, and Devin Hall, appeared in a YouTube video entitled "Whop Parking Lot" referencing the shootout (10/4/22 Tr. 172-76; 10/6/22 Tr. 45). A different video, extracted from Turner's cell phone, showed Turner and Armand Johnson mocking the YouTube video (10/4/22 Tr. 175-80). Toward the end, Johnson can be heard saying, "Fuck you all" (*id.* at 180). An image found on Turner's cell phone, dated February 18, 2017, showed the rear of a building on Wahler Place, and contained the inscription, "You Ns ain't meet real until you meet them Ns on the hill[] #BigWahler, #Spanksomething, #parkinglotparkinglot." (11/2/22 Tr. 66-68.)

Turner's cell phone also contained photos of Ellis, Hall, and Andrew McPhatter (9/28/22 Tr. 191-93; 11/15/22 Tr. 56).

2. The Wheeler Market Shooting

On November 23, 2016, a vehicle was damaged by gunfire outside Wheeler Market in the Trenton Park area (10/3/22 Tr. 92, 95-96). No one was injured in the shooting (*id.* at 97). Surveillance video showed Turner at Wheeler Market around the time of the shooting (11/15/22 Tr. 30-31). Turner was on GPS monitoring in an unrelated case; evidence from his GPS device corroborated that he was at Wheeler Market at the time of the shooting (10/12/22 Tr. 66). Based on images of the shooter captured by surveillance video, police issued a "be on the lookout" ("BOLO") flyer (10/3/22 Tr. 99-100, 115). Photos later recovered from Turner's cell phone showed him wearing clothing similar to the clothing depicted in the BOLO flyer (10/4/22 Tr. 154-66). Ten 10mm cartridge casings were recovered from the crime scene (10/3/22 Tr. 123). Later that day, Turner contacted Jennings several times by cell phone, including at 8:14 p.m. and 8:17 p.m. (10/4/22 Tr. 191-92). At 8:38 p.m., Jennings, who worked for MPD as a customer-service representative, accessed the police report for the shooting through Cobalt, MPD's records-management system (10/17/22 Tr. 28, 41-42).

3. The Murder of Devin Hall

On January 7, 2017, Trenton Park member Devin Hall—whose photo was in Turner’s phone—was shot to death in his car in a parking lot at 3510 6th Street, Southeast (10/11/22 Tr. 217-18, 223-24; 10/12/22 Tr. 126). Vernikca Banks witnessed the shooting from her apartment window (10/11/22 Tr. 147). Banks called 911 and explained that the shooter had gotten out of a white Lexus bearing paper tags, shot into the victim’s car, and fled the scene in the Lexus (10/11/22 Tr. 144). Another witness, Sharon Mouton, described seeing a “white, tan-ish looking vehicle” in the parking lot “off and on” over the course of three hours (10/19/22 Tr. 25-26, 36). Mouton saw two people emerge from the white car, shoot into the driver-side of the victim’s car, and then flee in the white car (*id.* at 28, 30). According to Mouton, one of the shooters was “heavy-set” and “light-skinned[,]” and the other had dreadlocks (*id.* at 29). Jones, the Wahler Park member who was shot while sitting with Turner on July 15, 2016, weighed 250 to 260 pounds; Turner did not weigh anywhere near that range (11/2/22 Tr. 103-04). Turner had dreadlocks (Govt. Ex. B1-B3). Police recovered both .40-caliber and 10mm shell casings from the scene (10/13/22 Tr. 134-48; 10/20/22PM Tr. 72-75). Turner’s two cell phones

pinged off a cell tower 0.2 miles from the murder scene just minutes after the shooting (10/27/22 Tr. 90-91).³

The following afternoon, Jennings and Turner exchanged several phone calls, and Jennings ran warrant searches in the Washington Area Law Enforcement System (“WALES”) and the National Crime Information Center (“NCIC”) for Jones (10/17/22 Tr. 168; 10/19/22 Tr. 91-93). On January 12, 2017, Turner and Jennings again exchanged numerous calls (10/19/22 Tr. 93-96). Following this exchange, Jennings ran a search in WALES/NCIC for Turner’s name, and then called him back (10/17/22 Tr. 169-70; 10/19/22 Tr. 96-97). On January 15, Turner called Jennings, and Jennings again ran a warrant check on Turner’s name in WALES/NCIC (10/19/22 Tr. 99-100). On January 17, Jennings ran additional warrant checks for Turner, and texted him, “You still good” (10/6/22 Tr. 19-21; 10/17/22 Tr. 171-72; 10/19/22 Tr. 112, 116-17, 119). Turner responded, “Ok, thank you,” and Jennings replied, “LMAO” (10/6/22 Tr. 19-21; 10/19/22 Tr. 112, 119). On January 26, Turner and Jennings again exchanged calls, and Jennings again searched for warrants in Turner’s name (10/19/22 Tr. 121).

³ At the time of the murder, Turner’s GPS device was located at his home address on Bruce Place, Southeast (10/12/22 Tr. 116-18). However, on other dates, including December 18 and 23, 2016, while Turner’s GPS device appeared to be at his home, Turner was seen on video in other locations (*id.* at 77, 181-89; 10/13/22 Tr. 21-23). GPS expert Gabriel Rogers testified that there is publicly available information about ways to defeat a GPS device (10/12/22 Tr. 100).

4. The February 2017 Shootings

On February 16, 2017, Trenton Park member Reginald Williams was shot at while sitting in his car in front of Trenton Park member Andrew McPhatter's house (10/19/22 Tr. 162, 171; 10/25/22 Tr. 23). Terrie Fairfax was in her home nearby when she saw a beige or "golden" car pull up next to Williams's car (10/17/22 Tr. 217). Fairfax heard gunshots and saw Williams run for cover behind a house (*id.* at 213, 215-18). Eight 10mm shell casings were recovered from the scene (10/19/22 Tr. 191-93). Less than three hours later, Jennings viewed the police report of the shooting in Cobalt (11/8/22 Tr. 43, 45).

On February 17, 2017, McPhatter and Raheem Osborne were driving in McPhatter's green Buick when Osborne noticed a white car following them (11/3/22 Tr. 124-25). McPhatter and Osborne drove back to the Trenton Park neighborhood, parked the car, and got out (*id.* at 119-20, 124-25, 162). A masked gunman with dreadlocks, holding a black semi-automatic weapon, emerged from the white car and started shooting (*id.* at 125, 128, 133-34, 163). McPhatter fired back (11/3/22 Tr. 131). Osborne described the car as a "white Honda-style vehicle[] . . . with paper tags" (*id.* at 179; 11/8/22 Tr. 19). Osborne was hit in the lower thigh (11/3/22 Tr. 129). Joseph Tyler, an innocent bystander, suffered gunshot wounds to the face and left arm (10/25/22 Tr. 176, 179). Approximately 11 minutes before the shooting, one of Turner's cell phones pinged off a cell tower in the vicinity of the shooting

(10/27/22 Tr. 99-101). Ten 10mm cartridge casings and two .40-caliber cartridge casings were recovered from the scene (9/29/22 Tr. 92).

On February 20, 2017, Turner called Jennings (11/8/22 Tr. 47-48). The following day, at 6:39 a.m., Jennings viewed the police report for the February 17 shooting (*id.* at 48-49).

On February 22, 2017, Todd Foreman, Jamal Ellis, and Melvin Robinson, all from Trenton Park, were walking in the area of 10th Street and Alabama Avenue, Southeast, when a gunman approached from behind and started shooting (10/20/22AM Tr. 75-79, 82). Foreman described the shooter as wearing a blue jacket and a mask (*id.* at 81-82; 11/3/22 Tr. 142), and he subsequently identified the shooter as “Fats” (11/3/22 Tr. 142). “Fats” is Turner’s nickname (11/9/22 Tr. 153). Ellis and Robinson were each shot in the stomach, and Foreman had minor injuries (10/20/22AM Tr. 83, 86-87; 11/1/22 Tr. 121). Nine 10mm cartridge casings were recovered from the scene (10/25/22 Tr. 92-94).

Nine minutes after the shooting, Turner texted Jones, “Check your local news station, boy” (11/2/22 Tr. 81-83). Approximately two hours later, Turner called Jennings (11/8/22 Tr. 51). The next morning, February 23, 2017, Jennings searched Cobalt for the police reports pertaining to the February 17 and 22 shootings (*id.* at 52, 56). Turner and Jennings exchanged several calls in the days following these searches (*id.* at 57).

5. The Murder of Andrew McPhatter

On March 1, 2017, two weeks after he and Osborne were shot at, McPhatter was shot and killed near the intersection of Wheeler Road and Upsal Street, Southeast (10/25/22 Tr. 23). At the time of the murder, McPhatter was in the same green Buick sedan that had been damaged in the February 17 shooting (10/24/22 Tr. 156-58; 10/25/22 Tr. 8, 24-27). Surveillance video from a nearby school showed McPhatter's car drive down Upsal Street toward Wheeler Road shortly before the shooting, followed by a backhoe and a white car (11/2/22 Tr. 193-99). After the shooting, two witnesses saw a white car flee from the crime scene "at a high rate of speed" (11/3/22 Tr. 51-52). Minutes later, Turner's cell phones utilized cell towers in the vicinity of the shooting (10/27/22 Tr. 109-10). Eight 10mm cartridge casings were recovered from the scene (10/26/22 Tr. 157, 162-64).

Turner contacted Jennings less than 10 minutes after the shooting, and the two exchanged several calls between 10:57 a.m. and 1:42 p.m. (11/8/22 Tr. 58). The following day, Jennings searched Cobalt for the police report of the McPhatter murder (*id.* at 60). She called Turner later that day and again four days later, on March 6, 2017 (*id.* at 61-63).

6. The March 8, 2017, CSOSA Shooting and Turner's Arrest

On the afternoon of March 8, 2017, Turner was the victim of a drive-by shooting in front of the Court Services and Offender Supervision Agency (“CSOSA”) office at 4415 South Capitol Street, Southwest (Government Exhibit (“Govt. Ex.”) A61; 9/27/22 Tr. 24, 36). Twenty-three cartridge casings and 14 projectile fragments were found on the scene (9/21/22 Tr. 125; 9/27/22 Tr. 75-76). Turner’s white Lexus, which was parked in front of the building, was hit by the gunfire (9/27/22 Tr. 91). Turner left the scene unharmed and returned later that day with Sukarno Turner (an unrelated associate) (9/21/22 Tr. 157-158). Police asked for Turner’s consent to search the car (9/27/22 Tr. 40). Turner initially consented but later refused (*id.* at 40-41). While he was still on the scene, Turner called Jennings and spoke with her for over 24 minutes (11/14/22 Tr. 123). Turner’s car was ultimately towed to the Department of Forensic Sciences (“DFS”) for processing (9/27/22 Tr. 94). When Carol Snyder, a CSOSA employee, told Turner that his Lexus was being towed, Turner was “distraught” (9/21/22 Tr. 159).

The police subsequently obtained two search warrants for the car (9/27/22 Tr. 112). A loaded, Glock 10mm firearm was found in the locked glove box (*id.* at 116, 124, 148-49; 9/28/22 Tr. 88). From the trunk, police recovered several paper targets

(9/27/22 Tr. 122).⁴ The center console contained the car-registration certificate, an insurance card, credit cards, and mail matter, all in Turner's name (*id.* at 128-31, 169-74). A Maryland paper license tag and a black fabric mask were recovered from the seat back pocket of the driver's seat (9/27/22 Tr. 137, 140, 142-43). Turner's DNA was on the mask (10/24/22 Tr. 63).

On March 11, 2017, law enforcement executed a search warrant at Turner's home (9/27/22 Tr. 178). Police found a key fob for the white Lexus, a D.C. certificate of title for the car, a Maryland sales contract for the car dated January 5, 2017, and a notice of infraction dated February 24, 2017, listing Turner as the vehicle's registered owner (*id.* at 182-83, 190-92).

That same day, Turner was arrested at the Marriott Marquis Hotel, where he was accompanied by another girlfriend, Marshay Hazelwood (9/28/22 Tr. 35, 52-53, 57-58, 62). Police seized two cell phones—one from Turner's coat pocket and one from on top of a bed (*id.* at 65-66, 72). The police obtained search warrants for the phones on March 11 and September 14, 2017 (*id.* at 92, 100).

⁴ The paper targets were from a shooting range in Charlotte, North Carolina, that Turner had visited on February 25, 2017, between Turner's first, failed attempt to murder McPhatter on February 17, and his successful killing of McPhatter on March 1 (11/2/22 Tr. 106-09, 120). A video posted to Instagram on March 5, 2017, showed Turner and Hill at a Maryland gun range (*id.* at 69-77, 88).

Firearms expert Christopher Monturo testified that a 10mm Glock is not a “common” firearm (9/29/22 Tr. 69). Monturo examined the 10mm cartridge casings recovered from the shooting scenes of November 23, 2016 (Wheeler Market); January 7, 2017 (Hall murder); February 16, 17, and 22, 2017 (various shootings, including McPhatter, Osborne, and Tyler); and March 1, 2017 (McPhatter murder), and determined that they were all fired from the gun found in Turner’s car (*id.* at 73-74, 80, 88-91, 97-98, 100, 103).

7. The Obstruction-of-Justice Conspiracy

On March 12, 2017, the day after Turner’s arrest, Jones texted Jennings, “Hey Nik, man, they say he in district court, can you check for me and see what they got” (11/10/22 Tr. 47). Jones and Jennings then exchanged several calls (11/10/22 Tr. 47-49). On March 14, 2017, Turner was charged by indictment in federal court with possessing the gun recovered from the glove box of his car (11/9/22 Tr. 117). Two weeks later, Jones died (11/10/22 Tr. 49).

Through a series of recorded jail calls, the government established that Turner, his co-defendants Hill and Jennings, and others conspired to obstruct justice in the federal case and in the MPD investigations of Turner’s violent crimes by having

Hazelwood falsely claim ownership of the gun.⁵ The jail calls showed, among other things, the following:

- On March 14, 2017, Turner called his girlfriend, Pebla Cotton, confirmed with her that the police had seized his phones, and asked if she had gotten them “turned off” or “blocked” and whether she had “erase[d] everything out of them” (11/10/22 Tr. 54-58; Govt. Ex. JC-25). In fact, Cotton had already had the phone numbers changed on March 9, the day after the CSOSA shooting (11/10/22 Tr. 58).
- On March 15, 2017, Turner called Hazelwood and, after referencing Jones, stated to Hazelwood, “He told you what we gonna do, that’s alright?” Hazelwood responded, “Yeah” (11/9/22 Tr. 156-57; Govt. Ex. JC-3). In a second call 15 minutes later, Turner told Hazelwood, “After I talk to her, I’m gonna call you. . . . But you gotta be sharp. You hear me? . . . You think you got it?” (11/9/22 Tr. 159-60; Govt. Ex. JC-4.) Hazelwood responded in the affirmative (*id.*).
- On March 16, 2017, Turner called Hazelwood and urged her to talk to “Nikki,” an attorney Turner had tried to retain (11/9/22 Tr. 161-62; Govt. Ex. JC-5). Hazelwood, who was employed as a security guard, stated, “That’s not

⁵ Hazelwood was charged with obstructing justice and conspiring to do so (R.I 337, 353-56), but she was deceased by the time of trial (9/28/22 Tr. 169).

gonna mess with my license? Cause you know my name can't be in no type system," to which Turner replied, "Ask her, ask her" (11/9/22 Tr. 161-62, 165; Govt. Ex. JC-5).

- On April 2, 2017, Turner called his unrelated associate Sukarno Turner, and stated, "I'm about to beat that shit. . . . I'm about to work it the same way 'Heavy' worked it." (11/9/22 Tr. 175-177; Govt. Ex. JC-8.) "Heavy" was the nickname of a Wahler Place member named Jarrad Childs (9/28/22 Tr. 179; 11/9/22 Tr. 179). When asked, "Who you got?" Turner replied, "I got a friend" (11/9/22 Tr. 175-177; Govt. Ex. JC-8). Sukarno Turner then asked whether Turner had to "pay them," and Turner, responded, "Fuck no. I paid her with the shit I've been doing for her." (*Id.*)
- On May 4, 2017, Turner called Hazelwood and asked if she had spoken to "Rick," referring to his attorney Richard Finci (11/9/22 Tr. 194-96; Govt. Ex. JC-10). Turner told Hazelwood to arrange a three-way call with Hill, and the three discussed plans for Hazelwood and Hill to visit Finci the next day (*id.*).
- On May 5, 2017, Turner instructed Hazelwood to tell Finci that she "need[ed] a lawyer" (11/9/22 Tr. 197-98; Govt. Ex. JC-11). In a second call less than an hour later, Turner, Hazelwood, and Hill discussed the meeting with Finci:

Turner: Everything went cool?

Hazelwood: Yeah, he just said I gotta write what I said, so then I told him I got subpoenaed and stuff. And he really don't know

if what I say—he like, it'll help you but he don't know that it'll help me because, he don't know. But he like, he can't give me no advice because he represents you, he don't represent me.

Turner: Oh yeah, yeah, yeah. Yeah. Yeah.

Hazelwood: That was it. And I paid him.

. . . .

Turner: Yeah, just explain, like, the same way Heavy did.

Hill: Yeah.

Turner: That's all. Ain't really nothin' to it.

Hill: Yeah, I know, I already know, she just gotta be right.

Turner: Alright.

Hill: She just gotta be sharp.

Turner: Alright. . . . We told her what to do, we told her what to do.

Hill: Yeah, we got everything straightened out on that end. She just gotta be sharp, take her time. . . . He said the reason why she got subpoenaed is because they still investigating.

Turner: Oh, they still investigating?

Hill: Yeah. And they think you tell her everything. The boyfriend tell the girlfriend everything. . . . She talkin' good though, man.

Turner: I'm trying to tell her, it gonna go the same way like Heavy. Far as like, far as like, ain't really nothin'. Ain't nothin' with Heavy. . . . It ain't nothin' though, boo.

Hazelwood: I know it's not nothin'. I'm just confused in all this 'cause I don't know. Because.

Hill: You alright. You got it. (11/9/22 Tr. 198-200; Govt. Ex. JC-12.)

- On May 13, 2017, Turner spoke with Hazelwood and Jennings in a three-way call (11/10/22 Tr. 29-32; Govt. Ex. JC-14). Turner told Jennings that he wanted Hazelwood to meet her and that Jennings should “just let her know” (*id.*). Later that day, Turner urged Hazelwood, “Make sure you go see Nik. . . . Let her know I say just give you the run down on everything, . . . on everything and everybody. . . . I don’t want you to talk to her over the junk. . . . Talk to her in person. Tell her what I need.” (11/10/22 Tr. 32-33; Govt. Ex. JC-15.)
- On May 31, 2017, Hazelwood told Turner that she was getting ready to meet “Nik” (11/10/22 Tr. 41; Govt. Ex. JC-21). Shortly thereafter, Turner called Hazelwood, and the following exchange took place:

Turner: Everything alright?

Hazelwood: Yeah.

Turner: She said it?

Hazelwood: Yeah.

Turner: What, they fishin’?

Hazelwood: No.

Turner: Huh?

Hazelwood: I said she said no. . . . Double check. Nothing right now.

Turner: What, like, I ain't never come up?

Hazelwood: Uh-uh.

Turner: Oh my God. . . . Y'all just made my day.

Hazelwood: Mine too.

Turner: Text her and tell her I said I send my love, man. Tell her I'm on the phone right now.

. . . .

Hazelwood: Saved the case. (11/10/22 Tr. 42; Govt. Ex. JC-22.)

While Hazelwood was on the phone with Turner, she texted Jennings, "He said he sent his love" (11/10/22 Tr. 43-44). Jennings replied, "Tell him me . . . too" (*id.* at 44).

The trial court took judicial notice of the following: (1) "on March 14, 2017, in the case of *United States v. Derek Turner*, 1:17-cr-055(CRC), a grand jury in the U.S. District Court for the District of Columbia issued an indictment charging Derek Turner with one count of unlawful possession of a firearm"; (2) on April 27, 2017, Richard Finci entered his appearance as Turner's defense counsel in the district court case; (3) Finci was the same defense counsel who had represented Sukarno Turner in the criminal case *United States v. Sukarno Turner*, 2015-CF2-5673, wherein Sukarno Turner was charged with a firearm, and had also represented Hill in an unrelated matter; (4) on January 26, 2017, Jerrad Childs ("Heavy") testified in

Sukarno Turner's case and claimed ownership of the charged firearm; and (5) on January 31, 2017, Sukarno Turner was found not guilty (11/10/22 Tr. 94-109).

On the morning of September 6, 2017, Turner was arrested for the murder of Andrew McPhatter. Shortly after Turner's arrest, Jennings viewed the police report for the March 1, 2017, shooting of McPhatter five separate times within the span of two hours (11/9/22 Tr. 91-93). Hazelwood texted Jennings, "Can you keep me updated with anything else?" (11/14/22 Tr. 122.) Jennings responded, "I sure will" (*id.*).

On January 17, 2018, Jennings was interviewed by MPD detectives at the Homicide Branch (11/10/22 Tr. 79). Jennings claimed that she was close with Jones, but that she did not know Turner well (Govt. Ex. RJ-1 at 14:00-16:00). Jennings denied knowing anything about Turner's unlawful activities (Govt. Ex. RJ-1 at 14:08-16:20, 19:30-20:25, 20:50-21:51, 1:28:55-1:29:15, 1:47:00-1:47:55). She admitted that she ran his name one time through law enforcement databases, and that she spoke with him regarding the March 8, 2017, drive-by shooting and the seizure of his car (11/14/22 Tr. 70; Govt. Ex. RJ-1 at 29:25-30:05, 1:30:20-1:32:20, 1:48:00-1:48:40). However, Jennings denied that she did any Cobalt searches at Turner's request (11/14/22 Tr. 71-72). During the interview, Jennings gave oral and written consent to search her cell phone (10/4/22 Tr. 112-114).

The Defense Evidence

John Minor, an expert in forensic cell-site analysis, testified on Turner's behalf. Minor opined that the findings of the government's cell-site expert were unreliable (11/8/22 Tr. 150). Minor noted that the government's expert had not taken steps to validate his findings or mitigate error (*id.* at 151-53, 162-64). Minor explained that certain factors, such as topographical features and "subscriber aggregation events," could cause a cell phone not to connect to the closest tower (*id.* at 155-62).

CSOSA Officer Stephanie Thompson testified that she began supervising Turner on May 12, 2016 (11/15/22 Tr. 74). According to Thompson, a parole warrant issued for Turner on August 29, 2016 (*id.* at 76-77). Another warrant was requested on December 9, 2016 (*id.* at 80).

SUMMARY OF ARGUMENT

The trial court did not err in denying Turner's motion to suppress the evidence extracted from his cell phones. The search warrants authorizing the seizure of the evidence were amply supported by probable cause and were sufficiently particularized. Even if they were not, the judge properly admitted the evidence under the good-faith exception to the exclusionary rule.

The trial court also did not err in denying Turner's motion to suppress evidence seized from his car. The police lawfully seized the car based on probable

cause that it contained evidence of a crime. In any event, the search warrant they secured the following day provided an independent source for the evidence.

The trial court properly denied Jennings's motion to suppress her recorded statements to police. Those statements were voluntarily made. The court did not plainly err in failing to find a *Garrity* violation, nor did it err in determining that the totality of the circumstances showed that the statements were uncoerced. Because Jennings did not testify under a grant of immunity, the court also did not plainly err in failing to hold a *Kastigar* hearing.

Turner's convictions for murder and assault with intent to kill were supported by sufficient evidence, including: (1) the presence of Turner's car at each crime scene, (2) physical descriptions of the assailant that matched Turner's appearance, (3) cell-site evidence confirming Turner's location in the vicinity of the shootings, (4) ballistics evidence connecting the shell casings on each scene with the gun found in Turner's car, (5) Turner's motive to target Trenton Park members, and (6) Turner's extensive efforts to avoid detection and obstruct justice.

Sufficient evidence established that Jennings was an accessory after the fact to Turner's crimes of violence. The government presented strong circumstantial evidence supporting the inference that Jennings shared information with Turner about the police investigations of Turner's crimes with the intent to assist him in avoiding detection and apprehension.

The trial court's accessory after the fact instruction was not plainly erroneous because it did not define the term "assisted." The accessory after the fact offense does not rely on a technical legal meaning of the word that is different from its ordinary meaning. And even if there was error, Jennings is not entitled to reversal because there is no reasonable probability that the jury would have returned a different verdict had it received a definition of the term.

The government agrees that the Court should vacate Turner's and Jennings's convictions for obstruction of justice and Turner's conviction for conspiracy to obstruct justice.

ARGUMENT

I. The Trial Court Did Not Err in Denying Turner's Motion to Suppress the Evidence From His Cell Phones.

Citing *Burns v. United States*, 235 A.3d 758 (D.C. 2020), Turner argues that the warrants authorizing the search of his cell phones were lacking in probable cause and were insufficiently particularized, and that no officer could have reasonably relied on them (Brief of Appellant Derek Brian Turner ("Turner Br.") 21-30). Because this case differs in significant respects from *Burns* and aligns with post-*Burns* cases upholding the admission of cell phone evidence under similar circumstances, this claim must fail.

A. Additional Background

On March 11, 2017—the day of Turner’s arrest on the federal gun charge—the police obtained search warrants for the two cell phones they seized incident to his arrest (R.II 55-59). In support of the warrants, the police described the events of March 8-10, 2017, including the CSOSA shooting and the subsequent discovery of the gun in Turner’s car (R.II 56-58). Efforts to extract information from the phones pursuant to the warrants were unsuccessful (R.II 209 n.1).

Turner was arrested for the McPhatter murder on September 6, 2017 (R.II 209). On September 14, the police again sought warrants for the cell phones, this time providing information about the evidence tying Turner to the violent crimes with which he was ultimately charged (R.II 209 n.1, 231-32). The 16-page affidavit described, among other things: (1) the ballistics evidence linking the firearm found in Turner’s car to the shootings that occurred on January 7, February 16, February 17, February 22, and March 1, 2017; (2) video evidence showing a car similar to Turner’s car driving to or fleeing from these crime scenes; and (3) witness interviews explaining the origins of the feud between the Wahler Place and Trenton Park crews that began in May 2016, and suggesting that Turner twice was a victim of a feud-related shooting (R.II 232-33).

The affiant, Detective Jeffrey Weber, who had been a police officer since 2005 and a homicide detective since 2014, stated that, based on his “training and experience,” he knew that

people who commit crimes in Washington, D.C., often use their cell phones in ways that reveal their location and/or activities before, after, or while engaging in criminal activity. For example, this may include location information (e.g., GPS data), app usage information (e.g., Internet search inquiries), and images or video recordings relevant to the criminal activity. Furthermore, . . . call logs, text messages, emails, and any app enabling communication with others frequently include communications that shed light on the cell phone user’s location and activity during a particular time period. (R.II 235.)

Weber explained that “evidence of communication among accomplices,” and between victims, witnesses, and perpetrators, is also frequently found on cell phones, as is evidence (such as photos and videos) depicting possession of guns and other contraband (R.II 236-38). Weber further explained that “individuals involved in criminal activity use their cell phones to search the internet or social media sites to learn the status of a criminal investigation” (R.II 238). In this case, Weber noted, there was evidence that Turner’s associates had posted photos on Instagram from the Marriott Hotel where Turner was arrested and from a shooting range that Turner had visited in February 2017 (R.II 235-36). Additionally, there was evidence that Turner had used a Google account to search media websites for information related to shootings on Wheeler Road and South Capitol Street (R.II 238).

Attachment B to the warrant application specified the evidence to be seized:

1. All records on the Device . . . that relate to the suspected feud between Wahler/Wheeler and Trenton Park neighborhoods, that involved numerous shootings and several homicides, believed to stem from shootings that began on May 10, 2016, including:

a. Information relating to Derek Turner's, other Wahler/Wheeler associates', and alibi witnesses', e.g. girlfriends, family members, and close friends, location and/or activities when the shootings occurred, and during the periods of time before and after the Offenses;

b. Information relating to Derek Turner's and other Wahler/Wheeler associates' possession of a firearm(s);

c. Communications relating to the Offenses, including any communications among accomplices who helped facilitate or participated in the Offenses and witnesses;

d. Information relating to Derek Turner's and other Wahler/Wheeler associates' knowledge of and relationship with victims or witnesses to the Offenses, and their knowledge of and relationship with each other;

e. Information relating to Derek Turner's and other Wahler/Wheeler associates, any victim's, or any witness's knowledge of or presence at the crime scene or another location relevant to the Offenses;

f. Information relating to Derek Turner's and other Wahler/Wheeler associates' motive and/or intent to commit the Offenses;

g. Information relevant to any victim's or witness's identification, including . . . Derek Turner's and other Wahler/Wheeler associates' or accomplice's distinguishing characteristics (such as hairstyle, tattoos, and clothing); and

h. Information relating to Derek Turner's and other Wahler/Wheeler associates' access to, use of, and/or control over the white 2011 Lexus LS350.

i. Information relating to Derek Turner's and other Wahler/Wheeler associates['] efforts to avoid detection by law enforcement, including CSOSA.

2. Evidence of user attribution showing who used or owned the Device at the time the things described in this warrant were created, edited, or deleted, such as logs, phonebooks, saved usernames and passwords, documents, images, and browsing history.

As used above, the terms “records” and “information” include all of the foregoing items of evidence in whatever form and by whatever means they may have been created or stored, including any form of computer or electronic storage.

On January 13, 2021, Turner filed a motion to exclude the cell phone evidence on the ground that the March 2017 search warrants were invalid under *Burns* (R.II 39). Turner argued that the warrants were “overbroad, lacking in particularity, [and] unsupported by probable cause” (R.II 43). Turner asserted that, because the warrants in this case, like the warrants in *Burns*, were clearly “bare bones,” the good-faith exception to the exclusionary rule did not apply (R.II 51). Turner further claimed that the warrants were not severable (R.II 51-52).

In a supplemental suppression motion filed on June 29, 2022, Turner made the same arguments with respect to the September 2017 warrants (R.II 158-61). Turner contended that these warrants likewise “sought access to and seizure of the entire contents of the defendant’s phones, w[ere] not tailored to specific evidence for which there was a demonstration of probable cause, and contained no meaningful limitations on the data and personal information contained therein” (R.II 160).

In opposition, the government argued that the warrants amply established probable cause to believe that Turner’s cell phones contained evidence related to the

many shootings and murders that arose from the feud between the Wahler Place and Trenton Park neighborhoods (R.II 211). The government noted that the warrant applications provided detailed information about the “crimes of violence in which defendant Turner was a putative suspect” (*id.*). The government argued that the warrants did not violate the Fourth Amendment’s particularity requirement, because they were “‘strictly limited’ in scope” and “narrowly tailored to the probable cause described in the affidavit[s]” (R.II 214-15). In any event, the government asserted, even assuming the warrants were invalid, suppression was unnecessary because the good-faith exception applied (R.II 215).

On September 7, 2022, the trial court held an evidentiary hearing on the motion. Detective Jeffrey Weber testified that he submitted the March 11 search warrant application based on the evidence of the firearm found in Turner’s car (9/7/22 Tr. 13, 16-17). According to Weber, after the warrants were approved, a DFS technician attempted to extract data from the phones but was unsuccessful because the phones were password protected (*id.* at 16, 19).

Weber applied for “follow-up search warrant[s]” in September 2017, this time including information about the ballistics evidence linking Turner’s gun to the Trenton Park shootings (9/7/22 Tr. 25-27). Weber acknowledged that the September warrants were not limited by date, time, or data type, and that ultimately the entire contents of the phones was extracted (*id.* at 49-50).

By written order filed on September 16, 2022, the trial court denied Turner’s suppression motion (R.II 323). Because no evidence was downloaded from Turner’s phones pursuant to the March 2017 warrants, the court focused its analysis on the September 2017 search warrants (R.II 328). The court concluded that the warrants adequately met the Fourth Amendment’s probable cause and particularity requirements (R.II 331-36). The court distinguished Turner’s case from *Burns* in several significant respects. First, the court noted, Burns was not a suspect at the time the police seized his phone and obtained a search warrant; by contrast, at the time of the warrant applications in this case, Turner had already been charged with possession of a firearm and first-degree murder (R.II 331-32). Second, while the evidence as to Burns was limited to his communications with the decedent the day before the murder, here, “[t]he amount of evidence against Mr. Turner . . . was expansive and directly implicated him as the suspect in numerous crimes,” including two homicides, that stemmed from a feud between neighborhood gangs dating back to May 2016 (*id.*).

Based on the evidence articulated in the warrants, it was “clear” that Turner was an “integral part” of the Wahler Place crew: his gun was used in numerous shootings, and he himself was shot at on three different occasions (R.II 332). Turner had used his phone to communicate with family members and associates, his associates had used their phones to post Instagram photos of themselves with Turner

at the Marriott Hotel in March 2017 and at a shooting range in North Carolina, and Turner had used a Google account to search for media reports related to shootings on Wheeler Road and South Capitol Street (R.II 332-33). Further, the warrant judge was provided “locational video evidence” showing a car similar to Turner’s going to or fleeing from the shooting locations on January 7, February 22, and March 1, 2017 (R.II 333). Given this evidence and the detective’s experience “as to how criminals use their cellphones,” the court found that the affidavits established probable cause (R.II 334).

In assessing the warrants’s particularity, the court undertook a “fact specific review” of this case compared to *Burns* (R.II 335). Whereas *Burns* involved “one discreet murder on one date, in which Mr. Burns was not a suspect,” this case presented a “completely different set of circumstances” (*id.*). The warrant judge here “was presented with a wide-ranging set of events, spanning months, involving shootings back-and-forth between Wahler/Wheeler and Trenton Park neighborhoods,” in which Turner was a “key player” (R.II 335-36). Although the warrants did not specify the type of data to be seized or a date range for that data, “what was particularized was that the records to be obtained were limited to those that were related to the feud between Wahler/Wheeler and Trenton Park neighborhoods, that involved numerous shootings and several homicides,” and the warrant “then enumerated by letter [] specific information tied to those events” (R.II

336). This, the court concluded, was sufficient to meet the Fourth Amendment's particularity requirement (*id.*).

The court found that, even if the warrants were deficient, the “good faith exception to the exclusionary rule would apply” (R.II 337). The court noted that the affidavit “clear[ly]” established probable cause to believe that Turner possessed a firearm, murdered McPhatter, and was involved in several other shootings (*id.*). Given that the two cell phones were seized from Turner close in time to those crimes, and given the detective’s experience that criminals often leave evidence of their crimes on their cell phones (e.g., “the offender’s location on or around the date of the crime; internet searches relating to the crime; images relating to or depicting the crime; communications with associates relating to the crime; and statements to others about the crime”), the police reasonably could have believed that the affidavit established probable cause that Turner’s phones contained evidence related to the crimes under investigation (*id.*). The court noted that in 2017, when the warrants were issued in this case, “a number of other courts had either found probable cause or upheld cell phone search warrants issued in analogous circumstances,” and that “[i]t certainly was the regular practice of judges on the Superior Court of D.C. to approve warrants similar to the ones in this case” (R.II 338). Relying on *Abney v. United States*, 273 A.3d 852, 863-64 (D.C. 2022), the court concluded that the good faith exception applied and therefore exclusion was not warranted (R.II 338).

At trial, the government used the evidence from Turner's cell phones to demonstrate that Turner and Jennings frequently called each other between November 23, 2016, and March 10, 2017 (the day before Turner's arrest), and texted each other in January and February 2017 (10/4/22 Tr. 192-206; 10/6/22 Tr. 17-18, 20; 11/2/22 Tr. 62-64). The government also introduced a text message to Jones following the February 22, 2017, shooting of Foreman, Robinson, and Ellis, in which Turner wrote: "Check your local news station, boy" (11/2/22 Tr. 81-83).

Additionally, the government introduced several photos and a video extracted from Turner's cell phones. One image, captured on February 18, 2017, showed the rear of 900 Wahler Place and contained the inscription, "You Ns ain't meet real until you meet them Ns on the hill[] #BigWahler, #Spanksomething, #parkinglotparkinglot" (11/2/22 Tr. 67-68). Another image captured the same day showed Turner at a gun range with Hill (11/2/22 Tr. 73, 76-77, 79-80). Turner also had photos of Trenton Park members Ellis, Hall, and McPhatter (9/28/22 Tr. 190-93; 11/2/22 Tr. 84), and a video showed Turner and Armand Johnson mocking the Trenton Park "parking lot" video (10/4/22 Tr. 175-79).

B. Standard of Review and Legal Principles

Under the Fourth Amendment, "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Probable cause "is not a high bar,"

requiring “only a probability or substantial chance of criminal activity, not an actual showing of such activity.” *District of Columbia v. Wesby*, 583 U.S. 48, 57 (2018) (quotation marks omitted); *see also Jenkins v. District of Columbia*, 223 A.3d 884, 890 (D.C. 2020).

“A judge considering an application for a search warrant must determine whether, in light of all of the circumstances described in the supporting affidavit, ‘there is a fair probability that contraband or evidence of a crime will be found in a particular place.’” *Burns*, 235 A.3d at 771 (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). “The affidavit thus ‘must demonstrate cause to believe’ not only that an item of evidence ‘is likely to be found at the place to be searched,’ but also that there is ‘a nexus between the item to be seized and the criminal behavior’ under investigation.” *Id.* (quoting *United States v. Griffith*, 867 F.3d 1265, 1272 (D.C. Cir. 2017)). But “a warrant need not – and in most cases cannot – scrupulously list and delineate each and every item to be seized. Frequently, it is simply impossible for law enforcement officers to know in advance exactly what records a defendant maintains or how the case against him will unfold.” *United States v. Cobb*, 970 F.3d 319, 327-28 (4th Cir. 2020) (computer search). “A warrant that empowers police to search for something satisfies the particularity requirement if its text constrains the search to evidence of a specific crime.” *United States v. Castro*, 881 F.3d 961, 965 (6th Cir. 2018) (cell-phone search).

“On appeal from the denial of a motion to suppress evidence, this [C]ourt’s scope of review is limited.” *Lawrence v. United States*, 566 A.2d 57, 60 (D.C. 1989). The Court “review[s] the facts and reasonable inferences therefrom in the light most favorable to the prevailing party.” *Hooks v. United States*, 208 A.3d 741, 745 (D.C. 2019). Legal conclusions are reviewed de novo. *United States v. Lewis*, 147 A.3d 236, 239 (D.C. 2016) (en banc). Reversal is appropriate only where the trial court reached legal conclusions contrary to existing law or made factual findings unsupported by the evidence. *United States v. White*, 689 A.2d 535, 537-38 (D.C. 1997).

C. Discussion

1. The Cell Phone Warrants Were Amply Supported by Probable Cause and Were Sufficiently Particularized.

Contrary to Turner’s contention (at 24-28), this Court’s decision in *Burns* did not require suppression of the cell-phone evidence. Unlike the warrants in *Burns*, the warrants here made a robust showing of probable cause and satisfied the Fourth Amendment’s particularity requirement.

In *Burns*, this Court for the first time “analyze[d] the validity of a cell phone search warrant under the Warrant Clause.” 235 A.3d at 767. *Burns* involved the seizure of two cell phones from the defendant after he was found in his mother’s apartment along with his mother, another witness, and the decedent. *Id.* at 768. *Burns*

told the police that he had been texting with the decedent on the day of the murder. *Id.* Although the lead detective did not consider Burns to be “a suspect at the time his phones were seized,” the detective applied for and received warrants to search all the data on both of Burns’s phones. *Id.* at 769, 771. Because the detective used a “standard” template for the warrants, they authorized police to seize records of internet activity and photographs even though police “had no information suggesting that any photographs or evidence of internet activity on the phones had any connection to the” murder investigation. *Id.* Searches of the phones, however, “yielded a highly incriminating set of internet search inquiries” made by Burns prior to the murder. *Id.* at 770.

This Court held that the search warrants violated the Warrant Clause and that the good-faith exception did not apply. *Burns*, 235 A.3d at 774-75, 778-79. Although the affidavits established probable cause that the phones contained “discrete items” of evidence—primarily text messages between Burns and the decedent on the day of the murder—they “stated no facts that even arguably provided a reason to believe that any other information or data on the phones had any nexus to” the murder investigation. *Id.* at 774. The “affidavits were thus classic ‘bare bones’ statements as to everything . . . beyond the three narrow categories of data[.]” *Id.* The search warrants themselves were therefore fatally overbroad by “authoriz[ing] the review of literally all of the data on both phones,” including “several expansive categories

of data never even mentioned in the affidavits.” *Id.* The warrants also lacked sufficient particularity, “authoriz[ing] the seizure of ‘any evidence’ on the phones and list[ing], by way of examples, generic categories covering virtually all of the different types of data found on modern cell phones.” *Id.* at 774-75.

As the trial court correctly found, this case is “*completely* different” from *Burns* (R.II 335). Unlike the warrants in *Burns*, the 16-page warrant affidavits here made a “robust showing[] of probable cause for a range of relevant evidence likely to be contained within the phones’ data.” *Burns*, 235 A.3d at 776. In contrast to *Burns*, who was not even a suspect at the time the police obtained the search warrants and who was then only believed to have texted with the decedent, at the time Detective Weber applied for the warrants in this case, Turner had been arrested for McPhatter’s murder and had been charged in federal court with possessing the gun tied to that murder and several other crimes of violence. The warrant affidavits described in detail Turner’s involvement in the feud between Wahler Place and Trenton Park, including shooting incidents in which he was a victim, and the shooting in front of CSOSA which ultimately led to the discovery of the Glock 10mm firearm in the glove box of Turner’s car (R.II 228-33). The affidavits also highlighted the ballistics evidence connecting the 10mm firearm to the shootings on January 7, February 16, February 17, February 22, and March 1, 2017, and the video evidence depicting a car similar to Turner’s car on or near the scene of three of these

incidents (R.II 231-232). Weber noted that “[i]n some shootings, there was evidence of multiple firearms being used, indicative of more than one perpetrator” (R.II 232). *See Griffith*, 867 F.3d at 1274 (“[T]he police often might fairly infer that a suspect’s phone contains evidence of recent criminal activity, perhaps especially when, as here, multiple perpetrators may have coordinated the crime.”) (citation omitted).

Further, Weber explained that, based on his training and experience, he was aware that “people who commit crimes in Washington, D.C., often use their cell phones in ways that reveal their location and/or activities before, after, or while engaging in criminal activity,” and that such evidence may be found in “location information (e.g., GPS data), app usage information (e.g., Internet search inquiries), . . . images or video recordings relevant to the criminal activity,” as well as “call logs, text messages, emails, and any app enabling communication with others” (R.II 235). Weber’s training and experience also showed that cell phones are often used to store “trophy photos” of gun possession; facilitate communication among accomplices, victims, witnesses, and perpetrators “using text messaging, apps, social media, photographs, [and] audio and/or video recordings”; and search the internet or social media sites for information about a crime (R.II 236-38). *See United States v. Garay*, 938 F.3d 1108, 1113 (9th Cir. 2019) (“[A]ffiants seeking a warrant may state conclusions based on training and experience. . . . [M]agistrate judges may rely on the conclusions of experienced law enforcement officers regarding where evidence

of a crime is likely to be found.”). Significantly, Weber underscored these assertions by reference to the evidence in Turner’s case, including photos posted to Instagram by Turner’s associates depicting the Marriott hotel where Turner was arrested and a shooting range he had visited close in time to the February shootings, and evidence of Turner searching media websites for information about shootings on Wheeler Road and South Capitol Street (R.II 235-36). Weber’s comprehensive affidavits thus made an ample showing of probable cause that evidence of the shootings would be found on Turner’s cell phones.

Unlike the warrants in *Burns*, the warrants here were also sufficiently particularized. As the trial court noted, the warrants were limited to records related to the violent feud between Wahler Place and Trenton Park—which began with shootings on May 10, 2016—and they “enumerated . . . specific information tied to those events, e.g., Turner’s associates when the shooting[s] occurred, Turner’s possession of firearms, [and] communications relating to those offenses” (R.II 336). The warrants thus included a temporal guide—evidence related to crimes occurring on or after May 10, 2016—and a list of specific information to be seized (R.II 223 (“Attachment B”)).⁶ This was a far cry from the “wide-ranging exploratory search[]

⁶ Turner suggests that the warrants’ reference to the first shooting in May 2016 provided an insufficient temporal limitation (Turner Br. 27-28). But, as the trial court noted (R.II 333-36), the affidavits described a number of shootings, spanning several months, between the rival neighborhoods, and they identified the specific dates on
(continued . . .)

not carefully tailored to its justifications,” authorized by the warrants in *Burns*. *Burns*, 235 A.3d at 775 (internal quotation marks and citation omitted).

Turner takes issue with language in Attachment B authorizing the seizure of “[a]ll records” related to the feud (Turner Br. 30). Turner acknowledges that immediately following this language is a “list [of] specific categories of information,” but asserts that these were “only examples” (*id.*). Even if the list was not exhaustive, however, it was specifically limited to evidence pertaining to the feud-related violence. The authorization to search all records which might contain such evidence was supported by Detective Weber’s explanation that:

the complex interrelatedness of cell-phone data may undermine the efficacy of narrow search techniques based on the type, location, or date of information. Indeed, the vast array of apps now available on cell phones makes it extremely hard to determine the exact form and organization of user information and metadata prior to conducting a search. Finally, criminals can mislabel, misspell, or hide information; encode communications to avoid using key words; attempt to delete

which the shootings occurred (R.II 231-33). Whereas “[t]he affidavits supporting the search warrants in *Burns* supplied probable cause to search the phone for text messages sent to one person on one particular day, GPS data showing the phone’s location on two days, and a single phone call,” *In re J.F.S.*, 300 A.3d 748, 757 (D.C. 2023), here, the affidavits established probable cause to believe that Turner’s cell phones contained evidence of his involvement in a vast number of crimes from May 2016 to March 2017, making a more specific temporal limitation within this timeframe impracticable. *See Commonwealth v. Henley*, 171 N.E.3d 1085, 1112 (Mass. 2021) (“temporal limit on a search warrant . . . can be based on the type of crime, the nature of the [evidence] sought, and normal inferences about how far back in time the evidence could be found”) (internal quotations marks and citations omitted).

information to evade detection; or take other steps designed to frustrate law enforcement searches for information.

[] Accordingly, law enforcement officials or other analysts with appropriate expertise may need to conduct more extensive searches, such as scanning storage areas not obviously related to the evidence described in this warrant application or perusing all stored information briefly to determine whether it falls within the scope of the warrant. (R.II 239-240.)

See Henley, 171 N.E.3d at 1111-12 (where police did not know “what evidence existed” or “the precise location within the cell phone where the evidence would be found[,] . . . warrant properly limited the search to enumerated categories of evidence related to the crime without limiting where in the electronic contents of the cell phone the search would take place”); *United States v. Bass*, 785 F.3d 1043, 1050 (6th Cir. 2015) (rejecting particularity challenge to warrant authorizing search of cell phone “for any records of communication, indicia of use, ownership, or possession”; “[a]t the time of the seizure, . . . the officers could not have known where this information was located in the phone or in what format. Thus, the broad scope of the warrant was reasonable under the circumstances at that time.”). Given the evidence that Turner was a “key player” in the shootings (R.II 336), and given the state of the technology as detailed in the affidavits, the warrants were as particularized as the circumstances permitted.

2. Even if the Warrants Were Invalid, the Good Faith Exception Applies.

The exclusionary rule’s “sole purpose . . . is to deter future Fourth Amendment violations. . . . Where suppression fails to yield appreciable deterrence, exclusion is clearly unwarranted.” *Davis v. United States*, 564 U.S. 229, 236-37 (2011). “[T]he marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion.” *United States v. Leon*, 468 U.S. 897, 922 (1984). Therefore, the exclusionary rule generally does not apply to evidence seized by “an officer acting with objective good faith [who] has obtained a search warrant from a judge or magistrate and acted within its scope.” *Id.* at 921. “[This Court] assess[s] the reasonableness of the officers’ reliance in light of the law at the time of the warrant’s issuance and execution.” *Abney*, 273 A.3d at 862.

Burns refused to apply the good-faith exception because (1) the “bare bones” affidavits lacked minimally sufficient indicia of probable cause to support a search of all information stored on the phones, and (2) the “obviously deficient warrants” demonstrated “truly extreme overbreadth” in their expansive search and seizure terms. *Burns*, 235 A.3d at 779. *Burns* emphasized two additional facts in the record that “preclude[d]” application of the good-faith exception: the lead detective “prepared the warrants using the boilerplate language of a template and made no effort to tailor their scope” to the case, and “the detective’s knowledge at the time

he submitted the warrants that Mr. Burns was not a suspect made the existence of any nexus between the great majority of the data on the phones and the crime under investigation even more unlikely.” *Id.* As discussed above, this case is wholly different from *Burns*. The affidavits described in detail the evidence of Turner’s involvement in the shootings between Wahler Place and Trenton Park and explained why the police believed evidence of those crimes could be found on his cell phones.

Since *Burns*, this Court has twice revisited cell phone warrants, each time painting the *Burns* warrants as outliers and finding suppression unwarranted under the good-faith doctrine. *See J.F.S.*, 300 A.3d at 757-59; *Abney*, 273 A.3d at 862-67. Whereas *Burns* had been merely viewed as a witness, the warrants in *Abney* and *J.F.S.* “established probable cause to believe that the phone’s owner was a suspect and that the phone ‘contained a range of relevant evidence’ about that crime, distinguishing it from the ‘slender’ showing of probable cause in the *Burns* affidavit.” *J.F.S.*, 300 A.3d at 758 (quoting *Abney*, 273 A.3d at 867). *Abney* and *J.F.S.* also stressed that, until *Burns*, “courts had generally held cell phone search warrants to be sufficiently tailored and particularized where they ‘limited the officers to searching for and seizing evidence of a specific crime.’” *J.F.S.*, 300 A.3d at 758 (quoting *Abney*, 273 A.3d at 865) (citing *Bass*, 785 F.3d at 1049-50). Officers executing pre-*Burns* warrants could reasonably rely on similar limitations.

The reasoning of *J.F.S.* and *Abney* applies with equal force to Turner’s case. The warrants here were issued nearly three years before *Burns*, at a time when it was “the regular practice of judges on the Superior Court of D.C. to approve . . . similar [warrants]” (R.II 338). “Because *Burns* was not decided until 2020, the officers in this case could not have considered the reasoning in *Burns* when obtaining and executing the warrant[s] in this case.” *Abney*, 273 A.3d at 867. Moreover, as in *J.F.S.* and *Abney*, the search warrants here (1) were “supported by a detailed affidavit,” which established probable cause to believe that Turner was involved in the shootings under investigation; (2) explained why, based on the detective’s training and experience, “a broad swath of data on the phone[s] might contain relevant evidence”; and (3) “limited the officers to searching for evidence pertaining to the [shootings], for which [Turner] was a suspect, in keeping with the particularity standard as it was generally understood before *Burns*.” *J.F.S.*, 300 A.3d at 758-59; *Abney*, 273 A.3d at 863-65. Because this case is “on all fours” with *J.F.S.* and *Abney*, and is “worlds apart” from *Burns*, *J.F.S.*, 300 A.3d at 758, this Court should affirm the trial court’s alternative ruling that the good-faith exception applies.

3. Any Error Was Harmless Beyond a Reasonable Doubt.

Even assuming arguendo that the trial court erred in admitting the cell-phone evidence, any error was harmless beyond a reasonable doubt. *See Green v. United*

States, 231 A.3d 398, 414 (D.C. 2020) (applying harmless-beyond-a-reasonable-doubt standard to erroneous admission of cell-phone evidence). As discussed in detail in Part IV below, the government presented strong evidence of Turner’s guilt of the violent crimes and weapons offenses of which he was convicted.⁷ The cell-phone evidence was of minimal value given (1) the ballistics evidence tying Turner’s gun to the shootings, (2) the testimony and video evidence placing Turner’s car at the crime scenes, and (3) the compelling consciousness-of-guilt evidence arising from Turner’s efforts to obstruct justice in the wake of his March 11, 2017, arrest. To the extent the cell-phone evidence showed the connections Turner had with Jennings and other Wahler Place associates (see Turner Br. 36), and his animosity towards Trenton Park, it was cumulative of other evidence, including the testimony of Detective Charles Fultz and Special Agent Samuel Ward about the background of the Wahler Place/Trenton Park feud (9/28/22 Tr. 158-79; 10/3/22 Tr. 145-49), the jail calls and text messages among Turner, Hazelwood, and Jennings (see, e.g., 11/9/22 Tr. 188-94; 11/10/22 Tr. 29-33, 41-46), and the evidence of Jennings’s searches of law enforcement databases on Turner’s behalf (see, e.g., 10/6/22 Tr. 179-

⁷ Because we acknowledge that Turner’s convictions for obstructing justice and conspiring to do so should be vacated, we do not address the impact of any error on those convictions.

80; 10/11/22 Tr. 47-61, 65-66). There is thus no reason to believe that the cell-phone evidence materially affected the verdict.

II. The Trial Court Did Not Err in Denying Turner’s Motion to Suppress the Evidence Seized from His Car.

Turner next challenges the trial court’s denial of his motion to suppress the evidence found in his car, asserting that the police lacked probable cause to seize the car (Turner Br. 31-35). This claim too is meritless.

A. Additional Background.

On February 12, 2020, Turner filed a motion to suppress evidence obtained as a result of the seizure of his Lexus (R.I 412). Turner argued that the March 8, 2017, seizure of his car was unlawful because the police “had neither legal access to [his] vehicle, nor reason to believe the vehicle contained evidence of criminality” (R.I 415).

On March 12, 2020, the government filed an opposition (R.I 724). The government argued that the police properly seized the Lexus because they had reason to believe that it contained evidence of a crime—the drive-by shooting outside CSOSA—and that they were justified in taking steps to assure that the car was not left on a public street or moved under “unsecure circumstances, or in a manner that potentially interfered with the recovery of evidence” (R.I 728-29). The government asserted that the police could have searched the car without a warrant, but that, out

of an abundance of caution, they secured the vehicle and applied for a search warrant the next day (R.I 729-30).

On July 5, 2022, the trial court held a hearing on the motion (7/5/22 Tr. 6-7). Detective Weber testified that shortly before 3:00 p.m. on March 8, 2017, two people in a gold Ford Explorer shot in the direction of Turner and his car as Turner was walking out of the CSOSA building (*id.* at 11). The same Ford Explorer was seen on surveillance video driving through the block 30 minutes earlier (*id.*). Four vehicles, including Turner's white Lexus, were struck by the gunfire (*id.* at 12). At the time of the shooting, another individual was sitting in Turner's car (*id.* at 44-45). The police sought consent to search from the owners of all four vehicles; three consented, and their cars were processed on the scene (*id.* at 12-13). Ballistics evidence was recovered from two of those cars (*id.* at 45).

Turner left the scene before the police arrived, but later came back (7/5/22 Tr. 13). In the meantime, a woman approached the police, claimed that the Lexus belonged to her boyfriend, and asked to retrieve some items from the car (*id.*). The woman, who refused to identify herself, was denied access (*id.*). Turner eventually returned and consented to a search of the car (*id.*). Before the car could be searched, however, Turner withdrew his consent (*id.*). The police ultimately had the car towed to the DFS garage (*id.* at 13-14).

Detective Weber described the 4400 block of South Capitol Street as “a pretty major thoroughfare,” with two lanes of traffic in each direction, a shopping center on the west side of the street, and residences on the east side (7/5/22 Tr. 14, 17). Weber explained that, after Turner withdrew consent, the police decided to tow the car to a secure facility “[g]iven the time of day and the amount of time it took for the evidence technicians to come out” (*id.* at 23). When asked why the police did not just search the car on the scene, Weber explained that they chose to seek a warrant “[o]ut of an abundance of caution” and out of respect for Turner’s privacy rights (*id.* at 47, 60). However, because there was no “exigent reason or emergency reason to obtain a search warrant after the normal hours of the court,” the police waited until the next day to apply for a warrant (*id.* at 24). The warrant authorized the collection of ballistics evidence, evidence of motive and identity of the shooters, and evidence identifying the woman who had sought access to the car (*id.* at 23, 46).

The search warrant was executed at the DFS garage on March 9, 2017 (7/5/22 Tr. 24). When a DFS technician opened the glove box and saw the gun, the police stopped the search because the warrant did not include firearms evidence (*id.* at 24-25). The following day, the police sought a second warrant for the gun and related evidence (*id.* at 25-26).

The trial court concluded that the seizure of Turner’s car did not violate the Fourth Amendment and therefore denied his motion to suppress (9/6/22 Tr. 104-05).

The court found that the police had probable cause to believe the car contained evidence of a crime—the drive-by shooting—given that the car sustained damage from the gunfire and that ballistics evidence was in fact recovered from the other cars that were struck (*id.* at 102). Based on the fact that “Turner and the passenger in the vehicle appeared to be the targets of the crime,” there was further cause to believe that the car might contain “evidence of the targets, witnesses and the motive, which could lead to the identity of the perpetrator” (*id.*). The appearance of the woman who refused to identify herself and sought to remove items from the car further supported an inference that the car might contain evidence of the crime (*id.* at 102-03).

Relying on *Carroll v. United States*, 267 U.S. 132, 153 (1925), the court found that the police were justified in seizing the car and moving it “from a public street to a secure location” to “prevent the evidence of the shooting from being lost or moved during the time a search warrant would be obtained” (9/6/22 Tr. 103-04). The court noted that, after securing the car in a safe location, the police “quickly applied for a search warrant” (*id.* at 103). Thus, the court concluded, Turner failed to establish a violation of his Fourth Amendment rights (*id.* at 104).

B. Legal Principles

Under the automobile exception to the Fourth Amendment’s warrant requirement, police may “search an automobile without a warrant if they have

probable cause to believe the car contains ‘contraband or evidence of a crime.’” *Tuckson v. United States*, 77 A.3d 357, 365 (D.C. 2013) (quoting *Holston v. United States*, 633 A.2d 378, 385 (D.C. 1993)). “[T]he automobile exception does not have a separate exigency requirement.” *Maryland v. Dyson*, 527 U.S. 465, 467 (1999) (per curiam). Rather, a finding of probable cause that a car contains contraband or evidence of a crime “alone satisfies the automobile exception.” *Id.* Because cars are generally “readily movable,” where there is probable cause, a car may be searched “immediately without a warrant or the car itself m[ay] be seized and held without a warrant for whatever period is necessary to obtain a warrant for the search.” *Chambers v. Maroney*, 399 U.S. 42, 51 & n.9 (1970) (recognizing the risk that a search “hours or days later would of course permit instruments or fruits of crime to be removed from the car before the search”).

C. Discussion

The trial court properly denied Turner’s suppression motion. As the court correctly concluded, the police had probable cause to believe Turner’s car contained evidence of a crime, namely, the drive-by shooting that had just occurred in front of the CSOSA building. Given the visible bullet damage to the car, the police reasonably concluded that a search would reveal ballistics evidence related to the shooting, as their search of other damaged cars on the scene had borne out. Moreover, the fact that Turner and/or the passenger in his car appeared to have been

targeted gave cause to believe that the car might contain evidence of the shooter's motive and identity. And the mystery woman who attempted to retrieve items from the car heightened the officers' suspicion that the car contained items of evidentiary value. Because, under these circumstances, the police had probable cause to believe the car contained evidence of a crime, they were justified in seizing it. *See Chambers*, 399 U.S. at 51; *Arrington v. United States*, 382 A.2d 14, 17 (D.C. 1978) ("Where probable cause exists to search an automobile when it is stopped on a highway, police may remove the vehicle to a more secure location, such as a police station, before conducting such a search and they need not first obtain a search warrant."). As the Supreme Court made clear in *Chambers*, "[f]or constitutional purposes, [there is] no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment." 399 U.S. at 52.

Turner mistakenly asserts that probable cause was lacking because he was the victim of a crime, not a suspected perpetrator (Turner Br. 31-33). But the law makes no such distinction: if there is probable cause to believe that a car contains evidence of a crime, the Fourth Amendment does not prohibit its warrantless search or seizure. *See Tuckson*, 77 A.3d at 366 (under automobile exception, "police must have probable cause to believe that a car will contain *either* contraband *or* evidence of a

crime”) (emphasis added); *United States v. Scott*, 987 A.2d 1180, 1191 (D.C. 2010) (“Probable cause to search a particular place exists ‘where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband *or* evidence of a crime will be found’ there.”) (emphasis added). That Turner was believed to be the victim is thus irrelevant.

Even assuming *arguendo* that the seizure of the car was unlawful, the evidence recovered from the search was properly admitted because it was obtained pursuant to a wholly independent source, untainted by the alleged illegality. “[T]he independent source doctrine allows trial courts to admit evidence obtained in an unlawful search if officers independently acquired it from a separate, independent source.” *Utah v. Strieff*, 579 U.S. 232, 238 (2016). “So long as a later, lawful seizure is genuinely independent of an earlier, tainted one,” exclusion is not appropriate. *Murray v. United States*, 487 U.S. 533, 542 (1988) (unlawful warrantless entry into warehouse did not require suppression of evidence obtained during subsequent search pursuant to warrant, where (1) decision to seek warrant was not prompted by what officers had seen during the initial entry, and (2) information discovered during that entry was not presented to magistrate and did not affect his decision to issue a warrant).

Here, the search warrant that the police secured the day after the car was seized was wholly independent of that seizure. The evidence established that the

police decided to seek a warrant once Turner withdrew his consent because they believed it was the “most prudent” course of action (7/5/22 Tr. 47, 60). Having decided to seek a warrant, they then seized the car and had it towed to a “secure facility” (*id.* at 60). The seizure of the car in no way influenced the decision to obtain a warrant. Nor did it influence the issuance of the warrant. The warrant affidavit recited only the facts known to the police before the car was seized (R.I 735-37), and nothing in the record suggests that either the police or the judge who approved the warrant learned anything from the seizure itself. Thus, even if the initial seizure of the car was unlawful, the search warrant provided an independent, untainted source for the evidence. *See, e.g., United States v. Miller*, 68 F.4th 1065, 1070 (7th Cir. 2023) (rejecting argument that officer’s use of key fob to identify defendant’s car required suppression, where search warrant provided independent source for evidence obtained from car; before officers used key fob, they had already identified the car, which had bullet damage, as “key evidence in a shooting, giving them ample probable cause for a warrant”); *United States v. Mithun*, 933 F.2d 631, 635 (8th Cir. 1991) (applying independent source doctrine to uphold admission of evidence seized from car pursuant to search warrant, where earlier, warrantless search did not “taint” later search).

III. The Trial Court Did Not Err in Denying Jennings's Motion to Suppress Statements.

Jennings contends that her recorded statement to detectives was “involuntary as a matter of law” because (1) she knew she would lose her job if she failed to cooperate, and (2) “the totality of the circumstances rendered her interrogation coercive” (Brief for Appellant (“Jennings Br.”) 39). Jennings further contends that the trial court erred by failing to conduct a *Kastigar* hearing regarding the government’s derivative use of her statements (*id.*). These contentions are meritless.

A. Additional Background

On January 21, 2020, Jennings filed a motion to suppress statements (App. 126). Jennings argued that she was subjected to custodial interrogation without *Miranda* warnings (*id.*). In support of her custody claim, Jennings asserted that (1) she was escorted to the Homicide Branch from her work station in the Seventh District (“7D”); (2) she was interviewed in a “tiny interrogation room”; and (3) the detectives suggested “that she was lying,” that they had been investigating her for some time, and that she would be arrested and charged with murder if she did not cooperate (App. 126-28). According to Jennings, these same factors demonstrated that her statements were involuntary (App. 129). In addition, Jennings noted that the detectives (1) told her that she was “part of the [MPD] family” and was making “life changing decisions,” (2) suggested that she take a polygraph test, (3) emphasized

that she was a single mother with three children to support, and (4) told her that someone from the Internal Affairs Division (“IAD”) wanted to speak with her (App. 129). Jennings argued that these “subtle forms of coercion” were “designed to convince [her] to speak” (*id.*).

The government filed an initial opposition on March 15, 2020, and a supplemental opposition on July 14, 2022 (Hill R. 426). The government argued that Jennings, who was in her 30s and had worked for MPD for more than a decade, was not in custody and that under the totality of the circumstances, a reasonable person would have felt free to terminate the interview and leave (Hill R. 427-429).

On July 5 and 8, and September 6, 2022, the trial court conducted a hearing on Jennings’s motion. Detective Charles Fultz testified that during his investigation of the Devin Hall murder, he discovered that Jennings had conducted a number of WALES/NCIC searches of Turner’s name (7/5/22 Tr. 79-81). At Fultz’s request, two detectives from 7D, where Jennings worked, asked Jennings to go to the Homicide Branch for an interview, and escorted her there in an unmarked police car (*id.* at 81-82; 9/6/22 Tr. 39). Jennings was interviewed at the Homicide Branch, rather than at the 7D station, because the detectives “[w]anted a neutral ground for Ms. Jennings, and to try to save [her the] embarrassment of anything dealing with us” (9/6/22 Tr. 62). Fultz emphasized that “it was none of 7th District personnel officers[’] . . . business” (*id.*). When they entered the interview room at the Homicide

Branch, Jennings was asked if she was “comfortable temperature wise,” and she responded in the affirmative (7/5/22 Tr. 87). After advising Jennings that he and Detective Weber, who was also in the room, were “investigating something where [her] name came up,” Fultz told Jennings, “No matter what, at the end of the day, you’re walking out this door here. You’re free to go, you’re free to stop at any point in time. You’re not under arrest and free to go.” (Govt. Ex. RJ-1 at 4:48–5:02; 7/5/22 Tr. 81, 84.) Fultz also told Jennings that she did not have to answer any questions she did not want to answer (Govt. Ex. RJ-1 at 10:25–10:40). Jennings was not handcuffed, shackled, or frisked, and at no time did the detectives brandish any weapons (7/5/22 Tr. 81, 83; 9/6/22 Tr. 60-61). During the interview, Jennings was offered water and food “multiple times,” and she was allowed to use the bathroom (7/5/22 Tr. 84; 7/8/22 Tr. 17). She was also permitted to keep her belongings, including her purse (7/5/22 Tr. 93).

Jennings, a high school graduate who had worked at MPD for 13 years, remained “[c]alm” and “relaxed” throughout the interview and never asked to leave (7/5/22 Tr. 82, 85). When, after Jennings denied talking to Turner, Fultz suggested that Jennings might not appreciate the “severity” of the position she was in and that she might be nervous, Jennings stated, “I understand the severity of the position I’m in. . . . I’m not nervous. At all.” (Govt. Ex. RJ-1 21:30–22:15.) An hour into the interview, Fultz asked Jennings whether she thought the questions they had asked

her were “unfair,” and Jennings said, “no” (*id.* at 1:12:20–1:12:30). Fultz asked whether Jennings felt “obligated in any way to be [t]here,” and Jennings responded, “I’m here because I chose to come here” (*id.* at 1:12:45–1:12:54). He then asked, “Do you feel that we’ve pressured you in any way, do you think I’m trying to make you say something that you don’t . . . –”, and Jennings replied, “No, I don’t” (*id.* at 1:12:56–1:13:04). Later, Fultz reminded Jennings, “I know what I told you before, and if you don’t want to hear what I got to say, that’s cool. If you’re done, you’re done. I don’t want you to have to listen to me if you don’t want to.” (*Id.* at 3:48:00–3:48:15.)

At the beginning of the interview, Fultz told Jennings that she was part of the MPD “family” (Govt. Ex. RJ-1 at 3:58–4:15). Later, Detective Weber stated that it seemed that Jennings was “going more with this dude from the streets more than your blue family” (*id.* at 47:45–47:52). Jennings responded, “That’s your opinion” (*id.* at 47:52–48:00).

Subsequently, when Jennings claimed that she did not know that Turner had gotten locked up in March 2017, and did not know what he was locked up for, Fultz confronted her with the fact that she had gone into Cobalt and seen the arrest paperwork (Govt. Ex. RJ-1 at 1:29:30–1:30:00). Fultz asked, “At what point do you draw the line of helping, Ronnika?” and stated, “You know you could be fired for this” (*id.* at 1:32:40–1:33:02). Fultz explained, “I want to help and I want you to

understand that the only way to help this is if we . . . communicate everything.” (*id.* at 1:33:07–1:33:25). Fultz stated, “[Y]ou’re making life decisions that I don’t think you realize . . . about you and your future, possible jail, you and your future employment with the Metropolitan Police Department, friends, family – for what?” (*Id.* at 1:35:38–1:36:00.) Fultz assured Jennings that “[n]obody knows about this, your bosses, 7D doesn’t know about this,” and that he and Detective Weber had wanted to extend her “some professional courtesy” (*id.* at 1:57:05–1:57:35). After joking with Jennings about her admittedly “bad luck with cars,” Fultz noted that Jennings was a single mother and stated, “Ronnika, you may lose your job. How are you going to survive, dear?” (*Id.* at 1:36:10–1:37:35.) Jennings remained steadfast in her claim of innocence, responding, “Believe me, if I had something else to tell you –” (*id.* at 1:37:20–1:37:25).

Later in the interview, Fultz asked Jennings whether she had been “threatened or promised anything,” and Jennings responded in the negative (Govt. Ex. RJ-1 at 1:51:00–1:51:06). He then asked whether she had “[a]ny complaint” she wished to make against him or Weber (*id.* at 1:51:10–1:51:15). Jennings laughed and said, “no” (*id.* at 1:51:15–1:51:20). Fultz and Weber assured Jennings that she would go back to work, that they would not reveal what she had said during the interview, and that they were “not rushing to put somebody in jail or get somebody fired” (*id.* at 3:53:20–3:53:40). Fultz let her know that the “door [was] open” in case she wanted

to share information in the future (7/8/22 Tr. 22). At the end of the interview, Jennings was taken back to the 7D station and was not arrested (*id.* at 24).

On cross-examination, Jennings's counsel questioned Fultz about his statements that Jennings was part of the police "family," and suggested that Fultz had implied that "she really had no choice, she had to answer the questions" (9/6/22 Tr. 42). Fultz rejected this characterization, noting that he had told Jennings that she was "free to go" and was "not under arrest" (*id.*). Counsel subsequently confronted Fultz with grand jury testimony in which Fultz stated, "[S]he works for the police. She knows if she does not cooperate she is fired[.]" (*Id.* at 45.)

On September 6, 2022, the trial court denied Jennings's motion (9/6/22 Tr. 114-24). The court noted that, after Jennings agreed to be interviewed, the police transported her in an unmarked car and did not handcuff, shackle, or frisk her, and never displayed any weapons (*id.* at 117, 119). The detectives made clear that Jennings was not under arrest, did not have to answer questions, and was free to leave, and she in fact did leave at the conclusion of the interview (*id.*). The court further noted that although Jennings spent four hours and 45 minutes in the interview room, there were breaks during that time, and Jennings was offered water, food, and bathroom breaks (*id.* at 118). The court found that Jennings was "calm" and "relaxed," "sometimes laughed," never appeared fearful, and maintained that she

was “not nervous” (*id.*). The court also highlighted Jennings’s statement that she chose to be there and did not feel pressured (*id.* at 118-19).

The fact that the interview took place in a locked room at the Homicide Branch, and that the police confronted Jennings with evidence of her association with Turner, did not, in the court’s assessment, convert this consensual interview into a custodial interrogation (9/6/22 Tr. 119-20). The court noted that, when confronted, Jennings “appeared not to be nervous” or “afraid,” but instead “seemed comfortable” and responded in a way that “did not seem pressured or coerced” (*id.* at 120). Considering the totality of the circumstances, the court concluded that a reasonable person would have felt at liberty to terminate the interview and leave; thus, Jennings was “not in custody for purposes of *Miranda*” (*id.* at 121).

Turning to whether the statements were involuntary, the court incorporated its findings on the custody issue, emphasizing that “Jennings voluntarily came to the questioning,” “seemed relaxed and not nervous throughout,” and was advised that she was not under arrest and could refuse to answer questions (9/6/22 Tr. 121-22). The court found that Jennings was “a mature adult” with a high-school education who had worked for MPD for over a decade and thus “had some level of familiarity with police and comfortability around police” (*id.* at 123). There was “no evidence of any physical or mental impairments nor any use of medication,” and the “tone” of the interview was “conversational” (*id.* at 122-23). Finally, the court found that

neither “the statements ma[d]e [n]or the questions asked constituted coercion or trickery as contemplated in [the] case law” (*id.* at 123). The trial court thus concluded that Jennings’s will “was not overborne in such a way as to render her statements the product of coercion” (*id.* at 123-24).

B. Legal Principles

The Fifth Amendment “precludes the prosecution’s use at trial of a defendant’s involuntarily made or ‘compelled’ statements.” (*Marquette*) *White v. United States*, 68 A.3d 271, 276 (D.C. 2013). “The test for determining the voluntariness of specific statements ‘is whether, under the totality of the circumstances, the will of the [suspect] was overborne in such a way as to render his confession the product of coercion.’” *United States v. Turner*, 761 A.2d 845, 854 (D.C. 2000) (quoting *Arizona v. Fulminante*, 499 U.S. 279, 288 (1991)). “[C]oercive police activity is a necessary predicate to the finding that a confession is not ‘voluntary’ within the meaning of the Due Process Clause.” *Colorado v. Connelly*, 479 U.S. 157, 167 (1986).

“In determining whether a defendant’s will was over-borne in a particular case,” the Supreme Court “has assessed the totality of all the surrounding circumstance – both the characteristics of the accused and the details of the interrogation.” *Schneckloth v. Bustamonte*, 412 U.S. 218, 225 (1973). “In general, the personal factors to be considered include the suspect’s age, education, prior

experience with the law, and physical and mental condition.” (*Marcus*) *Graham v. United States*, 950 A.2d 717, 736 (D.C. 2008). The relevant details of the interrogation “include its duration and intensity, the use of physical punishment, threats or trickery, and whether the suspect was advised of his rights.” *Id.*

In *Garrity v. State of New Jersey*, the Supreme Court held that police officers under investigation for fixing traffic tickets were coerced into giving incriminating statements where each was “warned (1) that anything he said might be used against him in any state criminal proceeding; (2) that he had the privilege to refuse to answer if the disclosure would tend to incriminate him; but (3) that if he refused to answer he would be subject to removal from office.” 385 U.S. 493, 494 (1967). In so holding, the Court noted that “[t]he choice given petitioners was either to forfeit their jobs or to incriminate themselves. The option to lose their means of livelihood or to pay the penalty of self-incrimination is the antithesis of free choice to speak out or to remain silent.” *Id.* at 497. The Court thus concluded that the right against compelled self-incrimination “prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office.” *Id.* at 500. The Court subsequently reiterated that “answers elicited upon the threat of the loss of employment are compelled and inadmissible in evidence.” *Lefkowitz v. Turley*, 414 U.S. 70, 85 (1973). *See also United States v. Thomas*, 595 A.2d 980, 982 n.7 (D.C.

1991) (“one may not be required to relinquish one’s Fifth Amendment privilege on threat of a loss of job”).

To establish a *Garrity* claim, a defendant must show that she “in fact believed h[er] . . . statements to be compelled on threat of loss of job and this belief must have been objectively reasonable.” *United States v. Friedrich*, 842 F.2d 382, 395 (D.C. Cir. 1988); *see also United States v. Wells*, 55 F.4th 784, 797 (9th Cir. 2022) (reviewing cases from various circuits and noting that courts “consider both the public employee’s subjective belief and the objective reasonableness of that belief to determine whether the employee’s statements were improperly coerced”).

C. Standard of Review

Superior Court Criminal Rule 12(b)(3) and D.C. Code § 23-104(a)(2) require a defendant to file a motion to suppress evidence before trial. Where a claim has been preserved, “[t]his [C]ourt applies a de novo standard of review to the legal determination regarding voluntariness and reviews for clear error the factual findings supporting that determination. ‘The facts and all reasonable inferences therefrom must be viewed in favor of sustaining the trial court’s ruling.’” *Turner*, 761 A.2d at 853 (quoting *Moctar v. United States*, 718 A.2d 1063, 1070 (D.C. 1998)).

Where an objection to the admission of evidence has not been raised in a pretrial motion, such an objection is “waived, . . . ‘unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion.’” *Artis v.*

United States, 802 A.2d 959, 965 (D.C. 2002) (quoting D.C. Code § 23-104(a)(2)). “Objections must be made with specificity in order to fairly apprise the court of the question presented.” *Ebron v. United States*, 838 A.2d 1140, 1147 (D.C. 2003). “Moving to suppress on one ground does not preserve a claim that the evidence should have been suppressed on a different ground.” *Walker v. United States*, 201 A.3d 586, 593 (D.C. 2019); *see Lowery v. United States*, 3 A.3d 1169, 1177 (D.C. 2010) (declining to consider argument that statement should have been suppressed on Fourth Amendment grounds where pretrial motion asserted only Fifth Amendment grounds).

D. Discussion

1. Jennings’s *Garrity* claim is waived.

Jennings’s *Garrity*-based claim fails at the outset because she did not preserve that claim below. Jennings did not raise a *Garrity* claim in her pretrial motion to suppress, nor did she argue in the trial court that her *Garrity* rights were violated. Although her counsel cross-examined Detective Fultz about references he had made to potential employment consequences Jennings might suffer, counsel never suggested that the court should apply the *Garrity* framework to Jennings’s claims of coercion. Instead, he argued that Fultz’s statements supported a finding of custodial interrogation (9/6/22 Tr. 74-75). *See Wells*, 55 F.4th at 792 (noting that the Supreme Court has recognized *Garrity* as a “different exception” to “the general rule that the

Fifth Amendment privilege is not self-executing,” separate and distinct from the exception of custodial interrogation) (citation omitted)). Jennings’s *Garrity* claim has therefore been waived.

2. The Trial Court Did Not Plainly Err in Failing to Find a *Garrity* Violation.

Should this Court nonetheless choose to consider Jennings’s *Garrity* claim, “at best . . . the plain error standard would apply.” *Walker*, 201 A.3d at 594 (applying plain-error standard to forfeited claim that witness’s statements were involuntary). “Under the test for plain error, appellant first must show (1) ‘error’, (2) that is ‘plain’, and (3) that affected appellant’s ‘substantial rights.’ Even if all three of these conditions are met, this [C]ourt will not reverse unless (4) ‘the error seriously affects the fairness, integrity, or public reputation of judicial proceedings.’” *Id.* (citations omitted).

The trial court did not plainly err in failing to find a *Garrity* violation. “[T]he Supreme Court has made clear that public employees cannot be compelled to choose between providing unprotected incriminating testimony or losing their jobs.” *Aguilera v. Baca*, 510 F.3d 1161, 1171 (9th Cir. 2007). Contrary to Jennings’s contention (at 41-43), Jennings was never forced to make that choice. Unlike the police officers in *Garrity*, Jennings was not told that she would be dismissed from her job if she refused to answer questions. Although Fultz reminded her that she was

part of the MPD “family” (Govt. Ex. RJ-1 at 3:58–4:15), and cautioned that she could get fired for what she had done (i.e., misusing her access to police databases to supply information to Turner) (Govt. Ex. RJ-1 at 1:32:40–1:33:02), he never presented her with the “Hobson’s choice of either making an incriminating statement or being fired.” *United States v. Vangates*, 287 F.3d 1315, 1321 (11th Cir. 2002) (citation omitted).

Jennings points to Fultz’s statements encouraging her to think about her “future employment with the Metropolitan Police Department,” noting that she was a single mother with three children to support and suggesting that she was making “detrimental decisions” regarding her employment (Jennings Br. 42). But none of these statements, the earliest of which came nearly 40 minutes after the start of the interview, conveyed that Jennings would be terminated if she chose to remain silent. “[W]here there is no direct threat, the mere possibility of future discipline is not enough to trigger *Garrity* protection[.]” *United States v. Smith*, 821 F.3d 1293, 1302 (11th Cir. 2016). As the First Circuit has explained,

In all of the cases flowing from *Garrity*, there are two common features: (1) the person being investigated is explicitly told that failure to waive his constitutional right against self-incrimination will result in his discharge from public employment (or a similarly severe sanction imposed in the case of private citizens); and (2) there is a statute or municipal ordinance mandating such procedure. In this case, there was no explicit “or else” choice and no statutorily mandated firing is involved. We do not think that the subjective fears of defendant as to what might happen if he refused to answer his superior officers are sufficient to bring him within *Garrity*’s cloak of protection.

United States v. Indorato, 628 F.2d 711, 716 (1st Cir. 1980). Here, as in *Indorato*, Jennings “was not told that [s]he would be dismissed if [s]he failed to answer the questions asked,” nor was she “asked to sign a waiver of immunity.” *Id.* at 717.

Fultz’s grand jury testimony that Jennings knew she would be fired if she did not cooperate (9/6/22 Tr. 45), like his trial testimony that he was unconcerned about the Internal Affairs Division’s position regarding Jennings’s employment rights (11/14/22 Tr. 49), is irrelevant to the question whether, at the time of the interview, Fultz conveyed these sentiments to Jennings such that she was coerced to surrender her Fifth Amendment rights or face termination. “The core of the Fifth Amendment is the protection against coerced self-incriminating testimony. And for an employee to be coerced, [s]he must both be objectively threatened with a substantial adverse employment consequence for refusing to incriminate h[er]self and be subjectively aware of that penalty.” *Wells*, 55 F.4th at 797. No such overt threat occurred here.

In the absence of a direct threat, Jennings was required to establish both that she actually believed she would be fired if she did not cooperate and that this belief was objectively reasonable under the circumstances. *See Wells*, 55 F.4th at 797; *Smith*, 821 F.3d at 1302-03; *Friedrick*, 842 F.2d at 395. Jennings makes neither showing. Jennings did not testify as to her actual belief during the interview, and nothing in the record suggests that she believed she would be terminated if she did not confess. To the contrary, Jennings denied that she felt obligated to be there,

affirmed that she did not feel pressured in any way, and indicated that she understood she did not have to answer questions and could terminate the interview at any time (Govt. Ex. RJ-1 at 4:48–5:02, 1:12:45–1:13:04). *See Wells*, 55 F.4th at 798 (defendant failed to show subjective belief that he would be discharged if he did not answer questions; defendant “never expressed this belief,” and in fact showed “affirmative intent to cooperate with the investigation”); *Shields v. State*, 890 S.E.2d 505, 509-10 (Ga. 2023) (no *Garrity* violation where defendant “failed to present evidence of either an overt threat of termination or subjective belief on [defendant’s] part that his employment would be terminated if he refused to answer . . . questions”).

Even if Jennings could demonstrate a subjective belief that she was at risk of losing her job if she failed to comply with the interview, any such belief would be objectively unreasonable. Jennings identifies no MPD rule or policy mandating termination or other adverse employment consequence should an employee invoke the right against self-incrimination, much less evidence that Jennings herself was aware of such a rule. *See Wells*, 55 F.4th at 799 (rejecting *Garrity* claim where there was no evidence that defendant was aware of Coast Guard employment manual that suggested that failure to give oral or written statements could lead to removal); *Indorato*, 628 F.2d at 716 (same where “no statutorily mandated firing is involved”). Further, the record does not demonstrate that Fultz or anyone else had the intent or authority to seek termination of Jennings’s employment if she refused to cooperate.

Indeed, Fultz repeatedly emphasized that Jennings was not required to answer questions, and assured Jennings that she would go back to work, that he would not reveal to her superiors what she had said during the interview, and that he was “not rushing to . . . get somebody fired” (Govt. Ex. RJ-1 at 3:53:20–3:53:40). *See United States v. Trevino*, 215 F. App’x 319, 321-22 (5th Cir. 2007) (“objective circumstances” surrounding interview showed no violation of *Garrity* rights, where defendant “was told before questioning began that he was free to leave the interrogation room at any time,” and defendant’s supervisors were not present and “never indicated to him that his job would be in any greater jeopardy if he failed to cooperate”); *People v. Sapp*, 934 P.2d 1367, 1372 (Colo. 1997) (“[I]n order for a law enforcement officer’s subjective belief that he might be fired to be considered objectively reasonable for purposes of *Garrity* immunity, it must be supported by some demonstrable action of the state.”). As promised, at the conclusion of the interview, Jennings returned to her work station at 7D. No reasonable person in Jennings’s circumstances would have understood that they were being forced to choose “between the rock and the whirlpool”: “self-incrimination or job forfeiture.” *Garrity*, 385 U.S. at 496. Jennings thus cannot establish either that the trial court erred by failing to find a *Garrity* violation or that any such error was plain on these facts.

Assuming *arguendo* that Jennings could meet the *Garrity* test and demonstrate error that was plain or obvious, she nevertheless fails to establish that any error affected her substantial rights or the fairness and integrity of the proceedings. *See generally Comfort v. United States*, 947 A.2d 1181, 1189-90 (D.C. 2008) (“the appellant must demonstrate that the error affected his substantial rights by showing a reasonable probability that it had a prejudicial effect on the outcome of his trial . . . [and] also must show that the error seriously affected the fairness, integrity or public reputation of the judicial proceeding”). Jennings never admitted guilt to any of the charged offenses; instead, throughout the interview, she steadfastly asserted her innocence. Although the government argued that her denial of wrongdoing demonstrated a lack of credibility (11/16/22 Tr. 96-102), given the compelling evidence of her guilt discussed in Part V below, there is no reasonable probability that, had her statements been suppressed, the jury would have returned a different verdict. *See Dancy v. United States*, 745 A.2d 259, 273 (D.C. 2000) (erroneous denial of defendant’s motion to suppress statements was harmless beyond a reasonable doubt where defendant’s statement was “not directly incriminating,” and where “there was compelling evidence of [defendant’s] involvement in the crimes apart from his statement”); *Madison v. United States*, 512 A.2d 279, 283 (D.C. 1986) (any error in denying motion to suppress statements was harmless beyond a

reasonable doubt, where defendant's denial of guilt was "exculpatory, and its probative value, if any, [wa]s de minimis").

3. Jennings's Statements Were Voluntary.

As an alternative to her *Garrity* claim, Jennings asserts that her statements were involuntary under the totality of the circumstances (Jennings Br. 43-44). The record belies this assertion.

Jennings's personal characteristics and the circumstances of the interview demonstrate that her statements were not coerced. At the time of the interview, Jennings was 39 years old, had achieved a high-school education, and had worked for MPD for over a decade (Govt. Ex. RJ-1 at 5:40–5:50, 1:19:55–1:20:40). As the trial court noted, Jennings's work experience gave her "some level of familiarity with police and comfortability around police" (9/6/22 Tr. 123). This was evident in Jennings's demeanor, which was "relaxed and not nervous" (*id.* at 122), as she herself confirmed (Govt. Ex. RJ-1 at 21:30–22:15 ("I'm not nervous. At all.")). The court further noted that there was "no evidence of any physical or mental impairments nor any use of medication" (9/6/22 Tr. 123).

The surrounding circumstances strongly support the conclusion that Jennings spoke with the detectives voluntarily and of her own free will. Jennings was escorted to the interview in an unmarked police car, and was not handcuffed, placed under arrest, or frisked (7/5/22 Tr. 83; 9/6/22 Tr. 60-61). At the beginning of the interview,

Fultz told Jennings that she was “free to go,” “free to stop at any point in time,” was “not under arrest,” and did not have to answer any questions (Govt. Ex. RJ-1 at 4:48–5:02, 10:25–10:40; 7/5/22 Tr. 81, 84). Jennings affirmed that she was there because she “chose” to be, and denied that she felt pressured in any way (Govt. Ex. RJ-1 at 1:12:45–1:13:04). The detectives maintained a “conversational tone” throughout the interview and offered Jennings water, food, and bathroom breaks (7/5/22 Tr. 84; 7/8/22 Tr. 17; 9/6/22 Tr. 122). Indeed, nothing in the record suggests that the police engaged in the sort of “trickery” or “mental or physical tactics” that either this Court or the Supreme Court has deemed coercive. *See Turner*, 761 A.2d at 854 (noting coercion found in cases where, for example, a defendant was questioned “while ‘encumbered by tubes, needles, and breathing apparatus’ and complaining of ‘unbearable’ pain”; a defendant, who was questioned for eight hours, “repeatedly was denied counsel and rest”; a defendant who had “mental problems” was questioned for eight hours in “small, crowded room”; a defendant was promised protection from “outside mob”).

Jennings highlights that (1) she was interviewed in a locked interrogation room at the Homicide Branch, (2) the detectives took her phone, (3) the detectives referred to possible punishment, (4) she was never given a *Miranda* or *Garrity* warning, and (5) the detectives reminded her that she was “part of the police department” (Jennings Br. 43-44).

None of these circumstances, either individually or together, establishes that Jennings's statements were involuntary. Fultz explained that Jennings was brought to the Homicide Branch in an effort to be discrete and prevent any embarrassment that might result from Jennings being interviewed at the station house where she worked (9/6/22 Tr. 62). Fultz took Jennings's cell phone only after Jennings handed it to him and consented to have it searched (Govt. Ex. RJ-1 at 1:16:25).⁸ Although Fultz made reference to the fact that Jennings "might be sitting next to [Turner]" in jail (Govt. Ex. RJ-1 at 55:50–56:05), "truthful statements about the defendant's predicament are not the type of coercion that threatens to render a statement involuntary." *United States v. Braxton*, 112 F.3d 777, 782 (4th Cir. 1997) (internal quotation marks and brackets omitted) (cited with approval in *Toudle v. United States*, 187 A.3d 1269, 1287 n.21 (D.C. 2018)). As this Court has noted, "convey[ing] the gravity of the defendant's situation by referring to charges he might

⁸ Jennings does not challenge the validity of her consent to search the phone. Instead, she argues that her act of producing the phone should have been suppressed on Fifth Amendment grounds because it was an expression of ownership (Jennings Br. 46). As this Court has recognized, however, the "act of production privilege is not automatic; it is not available if the existence, possession, and authenticity of a document is a foregone conclusion, as would be the case if the act of production adds little or nothing to the sum total of the Government's information." *In re Clark*, 311 A.3d 882, 890 (D.C. 2024) (internal quotation marks and citations omitted). Jennings's ownership of the cell phone she was carrying in her pocket was a foregone conclusion, and her act of producing the phone added little or nothing to the government's information about its existence, possession, and authenticity.

face,” or suggesting that a defendant might go to jail or face a “harsher sentence for failure to cooperate,” does not necessarily amount to coercion. *Toudle*, 187 A.3d at 1287 & n.23. In this case, neither Fultz’s reference to possible punishment nor his efforts to encourage cooperation by reminding Jennings of her connection to the police department overbore Jennings’s will. Despite these statements, Jennings never wavered in her claim of innocence. *See Turner*, 761 A.2d at 854 (revelation of search warrant did not amount to “trickery” where there was “no evidence that [defendant] was so affected by the revelation that it led him to make statements against his will”; defendant was “very consistent in his statements to the police both before and after the warrant was revealed to him”).⁹

Even assuming that the trial court erred in admitting Jennings’s statements, any error was harmless beyond a reasonable doubt for the reasons previously discussed.

4. The Trial Court Did Not Plainly Err in Failing to Conduct a *Kastigar* Hearing.

In *Kastigar v. United States*, 406 U.S. 441, 453 (1972), the Supreme Court held that a defendant who testifies under a grant of immunity pursuant to the federal

⁹ Jennings asserts that the detectives’ failure to provide *Garrity* or *Miranda* warnings also added to the coercive nature of the interview (Jennings Br. 44). Because Jennings was not subject to custodial interrogation, a finding she does not challenge on appeal, *Miranda* warnings were not required. As discussed above, *Garrity* warnings also were not required.

immunity statute, 18 U.S.C. § 6002, enjoys protection from use and derivative use of her testimony commensurate with the Fifth Amendment right against self-incrimination. Once a defendant demonstrates that she has so testified, “the prosecution [has] the affirmative duty to prove that the evidence it proposes to use is derived from a legitimate source wholly independent of the compelled testimony.” *Id.* at 460. *Kastigar*’s requirements have been applied to cases of “informal (i.e., non-statutory) promises of immunity” and to state immunity statutes. *See Aiken v. United States*, 956 A.2d 33, 46 (D.C. 2008). As this Court has noted, the purpose of a *Kastigar* hearing is to “assure[] that the government cannot use immunized testimony.” *Graves v. United States*, 472 A.2d 395, 400 (D.C. 1984).

Jennings did not raise a *Kastigar* claim in the trial court; thus, this Court’s review is limited to plain error. Contrary to Jennings’s contention (at 49), the arguments raised in support of Jennings’s voluntariness claim did not fairly apprise the trial court that it was being asked to determine whether a *Kastigar* hearing was necessary. *See Kastigar*, 406 U.S. at 462 (distinguishing between voluntariness claim and *Kastigar* claim).

Regardless of the standard of review, *Kastigar* has no application to this case. Jennings did not testify under a grant of immunity; thus, a *Kastigar* hearing was not required. *See Aiken*, 956 A.2d at 46 (noting that “[a] *Kastigar* hearing . . . is virtually the only way the defendant effectively can enforce his right to immunity”); *Graves*,

472 A.2d at 399 (*Kastigar* hearing is “vehicle for challenging the government’s compliance with the immunity grant”). Where a defendant, like Jennings, has not been granted immunity, “a coerced-confession claim under the Fifth Amendment must first prevail in a voluntariness hearing before [the defendant’s] confession and evidence derived from it become inadmissible.” *Kastigar*, 406 U.S. at 462. The trial court held a voluntariness hearing, and, as discussed above, properly concluded that Jennings’s statements were not coerced. No other hearing was necessary.

In any event, even assuming *arguendo* that the court plainly erred by failing to hold a *Kastigar* hearing, Jennings cannot establish prejudice to her substantial rights or to the fairness and integrity of the proceedings. Where testimony has been compelled under a grant of immunity, “the evil to be avoided is that the prosecuting authorities will gain affirmative information from the substance of the compelled testimony.” *United States v. Anderson*, 450 A.2d 446, 451 (D.C. 1982). In this case, Jennings’s statements were exculpatory and offered no leads to the prosecution. *See id.* at 451-452 (“The possibility that [defendant’s] statements were used as an investigative lead is ruled out by the government’s proof that the testimony is suspect and exculpatory”; defendant denied engaging in assault and “gave no new information to the investigators, thus no leads could have been developed from his testimony”). “The most that could be shown would be that the [detectives] disbelieved [Jennings’s] statement. But that would not establish improper use of

[her] testimony.” *Id.* at 451. The evidence showed that the government had developed evidence of Jennings’s guilt well before the detectives interviewed her; “the statements were not the means by which they focused their investigation on [her] or the reason they decided to prosecute.” *Id.* at 452. Because her statements were “devoid of any helpful or incriminating evidence,” *id.* at 453, there is no reasonable probability that Jennings would have prevailed at a *Kastigar* hearing.¹⁰

IV. The Evidence Sufficiently Supported Turner’s Convictions for the Murders of Hall and McPhatter and the Assaults with Intent to Kill of McPhatter, Osborne, and Tyler.

Turner argues that the evidence was insufficient to support his violent-crimes and weapons convictions arising from the shootings on January 7, February 17, and March 1, 2017, because (1) the government failed to establish that he was present at the scenes of the shootings, (2) there was insufficient evidence connecting Turner to the gun used to commit these crimes, (3) the conscious-of-guilt evidence was subject to interpretation, and (4) the evidence did not prove that Joseph Tyler was a victim of the February 17 shooting (Turner Br. 39-45). Turner’s argument ignores the strong circumstantial evidence of his guilt and is otherwise meritless.

¹⁰ The government did not improperly use Jennings’s consent to search her cell phone, in violation of *Kastigar*, as Jennings contends (at 50). The government ultimately secured a search warrant for the phone (7/8/22 Tr. 27, 38-39); the cell phone evidence was thus obtained by wholly independent means.

A. Standard of Review and Legal Principles

In reviewing the sufficiency of evidence, this Court views the evidence in the light most favorable to the government, without disturbing the right of the trier of fact to weigh the evidence, determine the credibility of witnesses, and draw reasonable inferences from the facts. *Gibson v. United States*, 792 A.2d 1059, 1065 (D.C. 2002). The government need only present “at least some probative evidence on each of the essential elements of the crime.” *Jennings v. United States*, 431 A.2d 552, 555 (D.C. 1981) (citation omitted). Furthermore, the evidence need not compel a finding of guilt or negate every possible inference or hypothesis of innocence. *Timberlake v. United States*, 758 A.2d 978, 980 (D.C. 2000).

To prevail on a sufficiency claim, a defendant “has the burden of establishing that the government presented ‘no evidence’ upon which a reasonable mind could fairly conclude guilt beyond a reasonable doubt.” *Mihos v. United States*, 618 A.2d 197, 200 (D.C. 1992) (quoting *Robinson v. United States*, 506 A.2d 572, 573 (D.C. 1986)). No distinction is drawn between direct and circumstantial evidence. *Moore v. United States*, 757 A.2d 78, 82 (D.C. 2000). In fact, “circumstantial evidence may be more compelling than direct testimony.” *Mills v. United States*, 599 A.2d 775, 780 (D.C. 1991).

B. Discussion

Turner contends that the evidence was insufficient to establish his identity as the perpetrator in the January 7, February 17, and March 1, 2017, shootings for which he was convicted (Turner Br. 39-43). However, ample evidence demonstrated his guilt. As noted in more detail below, this evidence included: (1) the presence of Turner's car at each crime scene, (2) physical descriptions of the assailant that matched Turner's appearance, (3) cell-site evidence confirming Turner's location in the vicinity of the shootings, (4) ballistics evidence connecting the shell casings on each scene with the gun found in Turner's car, (5) extensive evidence that Turner had communicated with Jennings to acquire information about the police investigations into each shooting, and (6) Turner's efforts to obstruct justice, demonstrating his consciousness of guilt.

The government's evidence showed that on January 7, 2017, Turner and an accomplice killed Devin Hall as he sat in his car in a parking lot on 6th Street, Southeast. Sharon Mouton saw the two shooters emerge from a "white, tan-ish looking vehicle," which she had observed in the parking lot "off and on" over the course of three hours; shoot into the driver-side of the victim's car; and flee in the same white car after the shooting (10/19/22 Tr. 25-26, 28, 30, 36). Mouton's description of the shooters—one was "heavy-set" and "light-skinned[]," and the other had dreadlocks (*id.* at 29)—matched the appearance of Antwon Jones and

Turner, respectively (11/2/22 Tr. 103-104). Another eyewitness, Vernicka Banks, substantially corroborated Mouton's account and identified the assailants' vehicle as a white Lexus bearing paper tags (10/11/22 Tr. 144, 147). Turner's two cell phones pinged off a cell tower 0.2 miles from the murder scene just minutes after the shooting (10/27/22 Tr. 90-91). Police recovered both .40-caliber and 10mm shell casings from the scene (10/13/22 Tr. 134-48; 10/20/22PM Tr. 72-75).

Starting the day after the shooting, and for two-to-three weeks afterwards, Turner and Jennings exchanged several phone calls, and Jennings ran numerous warrant checks in WALES and NCIC for Jones and Turner (10/17/22 Tr. 168-72; 10/19/22 Tr. 91-100, 116-17, 121). Following one such search, Jennings texted Turner, "You still good", and Turner responded, "Ok, thank you" (10/6/22 Tr. 19-21; 10/19/22 Tr. 112, 119).

The evidence further demonstrated that on February 17, 2017, Turner shot at Andrew McPhatter and Raheem Osborne, injuring Osborne and Joseph Tyler, an innocent bystander (10/25/22 Tr. 176, 179; 11/3/22 Tr. 129). Osborne testified that the gunman, who wore a mask and had dreadlocks, emerged from a "white Honda-style vehicle[] with paper tags," after following McPhatter's green Buick into a parking lot in the Trenton Park neighborhood (11/3/22 Tr. 119-20, 124-25, 128, 133-34, 162-63, 179; 11/8/22 Tr. 19). Approximately 11 minutes before the shooting, one of Turner's cell phones utilized a cell tower in the vicinity (10/27/22

Tr. 99-101). Ten 10mm cartridge casings were recovered from the scene (9/29/22 Tr. 92).

Three days later, Turner called Jennings (11/8/22 Tr. 47-48). The following day, at 6:39 a.m., Jennings viewed the police report for the February 17 shooting (*id.* at 48-49). Jennings again viewed the police report on the morning of February 23 (*id.* at 56). Turner and Jennings exchanged several calls in the days following these searches (*id.* at 57).

On March 1, 2017, Turner, using the same tactics, again pursued McPhatter, this time murdering him. Surveillance video showed a white car following McPhatter's green Buick into the intersection of Wheeler Road and Upsal Street, a short distance from where Turner had attempted to kill McPhatter days earlier (11/2/22 Tr. 193-99). After the shooting, two witnesses saw the white car flee the scene "at a high rate of speed" (11/3/22 Tr. 51-52). Minutes after the shooting, Turner's cell phones utilized cell towers in the vicinity (10/27/22 Tr. 109-110). Eight 10mm cartridge casings were recovered from the scene (9/29/22 Tr. 100; 10/26/22 Tr. 157, 162-64).

Less than ten minutes after the shooting, Turner called Jennings, and the two exchanged several phone calls that morning and afternoon (11/8/22 Tr. 58). The following day, Jennings viewed the police report for the previous day's shooting (*id.*

at 60). She called Turner later that day and again four days later, on March 6, 2017 (*id.* at 61-63).

Less than two weeks after Turner murdered McPhatter, police searched Turner's white Lexus and found a 10mm Glock in the locked glove box (9/27/22 Tr. 116, 124). Ballistics evidence showed that all of the 10mm cartridge casings recovered from the January 7, February 17, and March 1, 2017, crime scenes were fired by the Glock (9/29/22 Tr. 73-74, 80, 88-91, 97-98, 100, 103). Police also found inside the car a black mask containing Turner's DNA, a paper tag for the car, and paper targets from a shooting range Turner had visited on February 25, 2017, just days before Turner successfully murdered McPhatter (9/27/22 Tr. 122, 137, 140, 142-43; 10/24/22 Tr. 63).

The government also introduced strong evidence of Turner's motive for these shootings. The evidence showed a string of violent confrontations between Wahler Place and Trenton Park members starting in the spring of 2016. In a two-month period between May and July 2016, Turner was targeted in two different shootings, each instance following quickly on the heels of the shooting of a Trenton Park member. Evidence from Turner's cell phones showed that he kept photos of Trenton Park members whom he ultimately assaulted or killed, including Devin Hall, Jamal Ellis, and McPhatter. A video from one of Turner's phones showed Turner and Armand Johnson mocking the YouTube "parking lot" video created by Trenton Park

members (10/4/22 Tr. 175-80). Another image, dated February 18, 2017, showed the rear of a building on Wahler Place and contained the inscription, “You Ns ain’t meet real until you meet them Ns on the hill. #BigWahler, #Spanksomething, #parkinglotparkinglot.” (11/2/22 Tr. 66-68.)

Turner argues that the evidence identifying his car on the crime scenes was “conflicting” and “riddled with inconsistencies” (Turner Br. 39-40). Turner notes that some witnesses described the car as “grey,” “beige,” or “gold” in color (Turner Br. 40). Each of those descriptions related to different incidents, however. A witness described seeing a “grey” car on the scene of the July 15, 2016, parking-lot shootout for which Turner not charged (10/12/22 Tr. 152). And the “beige” or “gold” car described by another witness was in connection with the February 16, 2017, shooting of Reginald Williams (10/17/22 Tr. 213, 215-18), of which Turner was acquitted (App. 154). As to the shootings of which Turner was convicted, the witnesses consistently identified the assailant’s car as white. Although one witness described it as “white, tan-ish” in color (10/19/22 Tr. 25-26, 36), and another described it as a “Honda-style vehicle” (11/3/22 Tr. 179), these minor variations in description were for the jury to resolve and do not undermine the sufficiency of the evidence. *See (David) Graham v. United States*, 12 A.3d 1159, 1163 (D.C. 2011) (“Contradictions between the testimony from various witnesses is unremarkable, and in and of itself is not enough to reverse a jury verdict.”); *Gibson*, 792 A.2d at 1066

(“[I]nconsistencies in the evidence affect only its weight, not its sufficiency, and are in any event for the jury to resolve.”).

Turner attempts to undermine the significance of his car’s presence on the January 7 murder scene by noting that his GPS device indicated that he was at home (Turner Br. 40). Although the evidence showed that Turner’s *device* was at his home at the time of the murder, the jury was not required to conclude that Turner himself was there. Indeed, the government presented evidence that, on previous occasions, Turner’s device was at his home at the same time Turner was seen on video at other locations (10/12/22 Tr. 77, 181-87; 10/13/22 Tr. 21-23).

Turner contends that the gun evidence also had minimal value, because there was no evidence that he purchased or registered the gun and “no physical evidence or DNA tying [him] to the gun” (Turner Br. 41-42). However, a reasonable juror could find that Turner possessed the gun based on the gun’s location in the locked glove box of a car that was indisputably owned by, registered to, and driven by Turner on the day it was seized, together with his “distraught” reaction upon hearing that the car would be towed and his extensive efforts to have Hazelwood falsely claim ownership of the gun (9/21/22 Tr. 159). *See Rivas v. United States*, 783 A.2d 125, 135 (D.C. 2001) (en banc) (jury could reasonably infer that car’s “owner and driver” has “control over its contents”); *Burwell v. United States*, 901 A.2d 763, 767 (D.C. 2006) (evidence sufficiently demonstrated that defendant possessed marijuana

found in glove compartment, where, inter alia, defendant was “the driver of the vehicle, and in possession and control of it”); (*Vincent White v. United States*, 729 A.2d 330, 333 (D.C. 1999) (evidence sufficiently supported conclusion that defendant possessed cocaine found in car, where defendant “was in control of the car” and “[h]is actions upon being stopped suggested guilty knowledge”), *overruled on other grounds by Berroa v. United States*, 763 A.2d 93 (D.C. 2000); *Taylor v. United States*, 662 A.2d 1368, 1373 (D.C. 1995) (“It is usually easy to establish that the owner of a car . . . has constructive possession of illicit items recovered from [it].”). That other people had access to the car does not, as Turner suggests (at 42), undermine this conclusion. *See Patterson v. United States*, 301 A.2d 67, 70 (D.C. 1973) (evidence was sufficient to support defendant’s conviction for possessing gun found in unlocked glove box notwithstanding “fact that many other people had previously driven the vehicle in question”); *see also Carter v. United States*, 957 A.2d 9, 16 (D.C. 2008) (“possibility that [passenger] too, may have had the ability to exercise control over the gun in the car . . . does not undermine an inference that [driver] had the requisite intent to control the gun. ‘Constructive possession may be sole or joint.’”) (citation omitted).

Turner challenges the “conscious of guilt” evidence—namely, his extensive communications with Jennings and Jones—as “innocent acts” that could be “construed in any number of ways that do not indicate any criminal wrongdoing”

(Turner Br. 43). This contention ignores the compelling evidence that Turner (1) repeatedly engaged Jennings to monitor the police investigations of the assaults and murders he had committed, (2) alerted Jones to the success of his mission (11/2/22 Tr. 81-83), (3) instructed his girlfriend to erase or change his cell phones (11/10/22 Tr. 54-58; Govt. Ex. JC-25), and (4) subsequently conspired with Jennings, Hill, and Hazelwood to avoid responsibility in his district-court case and obstruct the MPD investigations of his violent crimes. And, in any event, “[t]he evidence need not compel a finding of guilt beyond a reasonable doubt, and it need not negate every possible inference of innocence.” *Fitzgerald v. United States*, 228 A.3d 429, 437 (D.C. 2020) (citation omitted).¹¹ Even where innocent explanations are plausible, “[w]hen two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the

¹¹ Contrary to Turner’s contention (at 42-43), the fact that the jury acquitted Jennings of the violent-crimes conspiracy does not undermine the sufficiency of the evidence for Turner’s convictions. As argued above, Turner had the motive and opportunity to commit the charged offenses, actively participated in their commission, and then devised a scheme to avoid detection. Turner suggests (at 43 n.11) that his conviction of the conspiracy is inconsistent with Jennings’s acquittal. But, even if these verdicts were truly inconsistent, which they are not, it is “well-established that inconsistent verdicts by themselves do not mandate reversal.” *United States v. Dobyns*, 679 A.2d 487, 490 (D.C. 1996). “So long as the evidence was sufficient to support the conviction in question, the fact that the jury acquitted . . . of certain related counts does not invalidate the conviction.” (*Erik Jones v. United States*, 716 A.2d 160, 164 (D.C. 1998).

[factfinder].” *Rose v. United States*, 49 A.3d 1252, 1259 (D.C. 2012) (internal quotation marks and citation omitted)).

Finally, Turner argues that the evidence was insufficient to show that Josphe Tyler was injured during the February 17 shooting (Turner Br. 44-45). Detective Thomas Ellingsworth testified that he arrived on the scene and saw a blood trail that went from the parking lot into an adjacent apartment building (10/25/22 Tr. 171-73). Ellingsworth followed the trail and found Tyler, who had been shot in the face and arm, sitting in the bathroom of an apartment (*id.* at 172-76). Tyler was transported to the hospital to receive treatment for his gunshot wounds (*id.* at 176-79). Based on this evidence, and the lack of any evidence of another shooting in the area at around the same time, the jury could reasonably infer that Tyler was shot in the parking lot when Turner opened fire on McPhatter and Osborne. *See Brocksmith v. United States*, 99 A.3d 690, 697 (D.C. 2014) (contrasting “inference,” which is “[a] conclusion reached by considering other facts and deducing a logical consequence from them,” with “speculation,” which is “[t]he act or practice of theorizing about matters over which there is no certain knowledge”) (citations omitted).

V. The Evidence Sufficiently Supported Jennings’s Convictions for Accessory After the Fact.

Jennings was convicted of four counts of AAF, three of which (Counts 15, 18, and 21) related to the assaults with intent to kill of McPhatter, Osborne, and Tyler

on February 17, 2017, and one of which (Count 36) related to the murder of McPhatter on March 1, 2017 (R. 723-25, 728). Jennings argues that the evidence was insufficient to establish that (1) she knew of Turner’s crimes, and (2) she assisted him in avoiding detection or apprehension (Jennings Br. 23-37). These claims are meritless.

A. Legal Principles

[T]he elements of accessory after the fact [are] as follows:

- (1) A completed felony must have been completed by another prior to the accessoryship;
- (2) The accessory must not be a principal in the commission of the felony;
- (3) The accessory must have knowledge of the felony; and
- (4) The accessory must act personally to aid or assist the felon to avoid detection or apprehension for the crime or crimes.

Outlaw v. United States, 632 A.2d 408, 411 (D.C. 1993) (citing *Howell v. State*, 489 A.2d 55, 58 (Md. App. 1983)). “Summarized, an accessory after the fact is one who, with knowledge of the principal crime, rendered aid to the guilty actor.” *Clark v. United States*, 418 A.2d 1059, 1061 (D.C. 1980) (internal quotation marks and citation omitted). “[A] defendant may not be convicted of accessory after the fact to [a felony] unless the government has proven that the defendant knew before he acted that the [felony] had actually been perpetrated.” (*Erik Jones v. United States*, 716 A.2d 160, 164 (D.C. 1998).

In considering the “kind of conduct [that] aids a principal to avoid detection or apprehension,” this Court has noted that “[t]here can, of course, be no exhaustive or all-embracing answer.” *Outlaw*, 632 A.2d at 411. Instead, “‘any assistance whatever given to a felon to hinder his being apprehended, tried, or suffering punishment’ is sufficient.” *Id.* (citing IV Blackstone, Commentaries on the Laws of England, at 37-38).

B. Discussion

The evidence amply demonstrated that Jennings both knew of Turner’s crimes and assisted him to avoid detection or apprehension for those crimes. The evidence showed that Jennings and Turner were well acquainted and had extensive contact after Turner and Jones murdered Devin Hall in January 2017, exchanging at least 28 phone calls that month (11/16/22 Tr. 59-60). During that time, Jennings ran numerous warrant checks on Turner and Jones (10/17/22 Tr. 168-72; 10/19/22 Tr. 91-97, 99-100, 116-17, 121). On January 17, 2017, after running one such search, Jennings texted Turner, “You still good” (10/6/22 Tr. 19-21; 10/19/22 Tr. 112, 119). Turner responded, “Ok, thank you,” and Jennings replied, “LMAO” (10/6/22 Tr. 19-21; 10/19/22 Tr. 112, 119).

On February 17, 2017, Turner shot at Andrew McPhatter and Raheem Osborne, injuring Osborne and Joseph Tyler. On February 20, Turner called Jennings (11/8/22 Tr. 47-48). At 6:39 a.m. the next morning, Jennings viewed the

police report for the February 17 shooting (*id.* at 48-49). The following day, Turner called Jennings again (*id.* at 51). On the morning of February 23, Jennings again viewed the police report for the February 17 shooting, and also viewed the police report pertaining to the February 22 shooting of Todd Foreman, Melvin Robinson, and Jamal Ellis (*id.* at 52, 56). Jennings returned Turner's call that same day at 2:34 p.m. (10/4/22 Tr. 201). Turner and Jennings exchanged several calls in the days following these Cobalt searches (10/4/22 Tr. 202; 11/8/22 Tr. 57).

Less than ten minutes after McPhatter's murder on March 1, 2017, Turner called Jennings, and the two exchanged several calls between 10:57 a.m. and 1:42 p.m. (10/4/22 Tr. 203-04; 11/8/22 Tr. 58). The next morning, Jennings twice viewed the police report pertaining to the shooting (10/17/22 Tr. 89-90; 11/8/22 Tr. 60). Jennings called Turner later that day and again on March 6, and Turner called her again on March 8 and 10 (10/4/22 Tr. 204-06; 11/8/22 Tr. 61-63). On March 10, Turner texted Jennings, "Nik I need u to call me ASAP Please" (App. 717). After Turner was arrested for the McPhatter murder on September 6, 2017, Jennings viewed the police report for the murder five separate times within the span of two hours (11/9/22 Tr. 91-93).

The internal Cobalt reports that Jennings viewed included information about the shooting victims, evidence recovered, and the "investigative process" (10/11/22 Tr. 172; 10/17/22 Tr. 79-82, 91). This information was not available in the public

version of the reports (10/11/22 Tr. 173; 10/17/22 Tr. 52-53). The Cobalt reports that Jennings viewed also showed that no suspect had been identified (10/17/22 Tr. 79, 91-92).

Jennings, who was a customer-service representative, had no “legitimate law enforcement role” in the investigation of the charged shootings, and, in fact, the vast majority of her Cobalt searches were for traffic crash reports (10/4/22 Tr. 107-09; 10/17/22 Tr. 130-33). Jennings falsely claimed that she ran only one warrant check on Turner and denied searching for police reports of the charged crimes (11/14/22 Tr. 70-72).

In the months following Turner’s March 11, 2017, arrest, Jennings continued to show affection for Turner and a ready willingness to assist him. For example, on April 12, 2017, Hazelwood texted Jennings that Turner wanted to speak with her, but not over the jail phone (11/9/22 Tr. 189-94). Jennings responded, “Tell him okay. Just tell him call me another name. Tell him keep that head up.” (*Id.* at 194.) In a recorded jail call on May 13, 2017, Turner told Jennings that he wanted Hazelwood to meet with her (11/10/22 Tr. 29-32 & Govt. Ex. JC-14). Jennings agreed and told Turner that she loved him and to “keep [his] head up” (*id.*). In another recorded jail call, on May 31, 2017, Hazelwood reported to Turner that Jennings had said no one was “fishing” and there was “no evidence” (Govt. Ex. JC-22). During this call, on Turner’s instruction, Hazelwood texted Jennings, “He said he sent his love”

(11/10/22 Tr. 43-44). Jennings replied, “Tell him me . . . too” (*id.* at 44). On the day Turner was arrested for McPhatter’s murder, Jennings texted Hazelwood and agreed to “keep [her] updated” (11/14/22 Tr. 122).

Given (1) Jennings’s and Turner’s close relationship and frequent contact, (2) Turner’s phone calls to Jennings shortly after committing each of the charged crimes, (3) Jennings’s corresponding Cobalt searches close in time to these phones calls, (4) Jennings’s and Turner’s phone contact after Jennings viewed the relevant police reports, (5) Jennings’s eagerness to help Turner in the months following his arrest, and (6) Jennings’s false denial of having run Cobalt searches or warrant checks on behalf of Turner, the jury could reasonably conclude that Jennings knew of Turner’s crimes and assisted him to avoid detection by keeping him informed of the pending police investigations.

Jennings argues that the evidence did not establish her knowledge of Turner’s role in the charged offenses because the evidence did not reveal the content of the calls between her and Turner, and the police reports she accessed did not identify him as a suspect (Jennings Br. 28-31). But evidence of the “personal knowledge . . . required for a conviction of being an accessory after the fact” is “often not susceptible to direct proof.” *Clark*, 418 A.2d at 1061. Here, the government presented strong circumstantial evidence supporting a reasonable inference that Jennings—who had frequent contact with Turner, particularly in the aftermath of his

crimes, and responded to his calls by repeatedly searching for police reports she had neither the purpose nor the practice to view in the course of her job as a station clerk—knew that Turner had committed the shootings at issues. This inference was strengthened by the circumstances leading up to and following the charged shootings, including Jennings’s search for, and thus knowledge that Turner was concerned about, potential arrest warrants during the month of January (10/17/22 Tr. 169-72; 10/19/22 Tr. 96-100, 116-17, 121), and her continued efforts in the months following Turner’s arrest to help him determine whether the authorities were “fishing” or had uncovered “evidence” of his guilt (see, e.g., Govt. Ex. JC-22).

Jennings’s reliance (at 30-31) on *Butler v. United States*, 481 A.2d 431 (D.C. 1984), and *Clark*, 418 A.2d at 1059, is misplaced. In *Butler*, this Court found the evidence of knowledge insufficient, where the government relied on newspaper reports about the charged murder and evidence that the defendant had visited a co-conspirator at the D.C. Jail, but presented no evidence that the defendant had actually read the newspaper reports or had spoken with the co-conspirator about the murder. 481 A.2d at 443-44. Similarly, in *Clark*, the government’s knowledge evidence was too “attenuated,” where it showed only that the defendant dropped off and later picked up a robber, but did not support the inference that the defendant knew a robbery had been committed in the interim. 418 A.2d at 106162. Indeed, the fact that the defendant drove at a “normal” speed, and immediately pulled over once pursued

by the police, “argue[d] against any inference of guilt available from other evidence.” *Id.* at 1061.

In contrast with *Butler* and *Clark*, here, the government presented evidence of a relationship of trust between Turner and Jennings; numerous contacts between the two immediately following the charged shootings; Jennings’s personal knowledge, through repeated Cobalt searches, of the details of the crimes; and Turner’s requests for assistance from Jennings in the months both before and after the shootings, as proof that he sought her assistance to avoid detection in the days following his crimes. The government thus relied on neither “pure speculation,” *Butler*, 481 A.2d at 444, nor “sketchy and tentative” evidence, *Clark*, 418 A.2d at 1061, to meet its burden of proof.

Jennings claims that government failed to prove that she “assisted Turner in avoiding detection or apprehension,” because (1) the government’s theory that her actions allowed Turner to commit future crimes was “insufficient as a matter of law” to prove AAF; (2) the conduct in which Jennings engaged did not fall within the “type of assistance recognized by the common law of accessoryship”; and (3) absent evidence of the content of their phone calls, the evidence did not show that Jennings assisted Turner in evading detection or apprehension (Jennings Br. 32-34). Not so.

First, the government’s theory was not simply that Jennings’s actions permitted Turner to “continue his violent ends” (11/15/22 Tr. 44). Rather, the

government argued that, by keeping Turner informed about the police investigation into each violent offense, Jennings enabled Turner to remain in public without fear of detection (11/16/22 Tr. 60-61). Without this knowledge, Turner would have had to go to greater lengths to avoid apprehension—for example, by disposing of his car and the gun, or by fleeing the jurisdiction.

Second, contrary to Jennings’s contention, this assistance was precisely the kind recognized at common law as AAF conduct. *See Outlaw*, 632 A.2d at 411 (“aiding the felon in making his escape” is “[i]llustrative of the acts which qualify”) (quoting Wayne R. Lafave & Austin W. Scott, *Substantive Criminal Law*, § 6.9 at 167-68)); *McClain v. State*, 268 A.2d 572, 577 (Md. App. 1970) (finding evidence sufficient for AAF to armed robbery, where defendant “gave advice to the felons to guide them in avoiding police detection”) (cited with approval in *Outlaw*, 632 A.2d at 412 n.12)). By monitoring the state of the police investigations into the shootings, Jennings essentially served as a lookout, enabling Turner to avoid apprehension. *See (Erik) Jones*, 716 A.2d at 165 n.8 (noting that a person serving a “lookout function” can be liable as an AAF).

Finally, as explained above, the content of the calls can readily be inferred from the surrounding circumstances, including the timing of Turner’s calls to Jennings, and the corresponding Cobalt searches, in relation to the timing of the shootings; the fact that Jennings typically did not access Cobalt information of that

type; the timing of the follow-up calls; and the entire context of Turner's and Jennings's relationship, including Turner's repeated requests for assistance and Jennings's willing compliance with those requests.¹²

This Court's decision in *Outlaw*, 632 A.2d 408, upon which Jennings relies (at 34), is distinguishable. There, the Court concluded that the evidence was insufficient to establish that the defendant acted as an AAF, where the evidence showed, among other things, that the defendant reprimanded his brother for not having killed the victim, handed his brother back the gun, and instructed him to go to their aunt's house. *Id.* at 412. The Court found that the reprimand, while "morally repugnant," did not rise to the level of actually or potentially silencing a witness, and that the instruction to go to the aunt's id not assist the brother's escape because "[t]here [wa]s no indication that [the brother] was unaware of the existence of this potential refuge." *Id.* Here, by contrast, Jennings used her position to affirmatively

¹² Jennings contends that her actions after Turner's March 11, 2017, arrest, including updating him, through Hazelwood, that he was not being investigated, could not have assisted Turner to avoid detection or apprehension since he was already incarcerated (Jennings Br. 35-37). In addition to providing context for Jennings's actions and intentions prior to Turner's arrest, her conduct in the months following his arrest could also reasonably be perceived as assisting him "in order to hinder [his] . . . trial[] or punishment." *Clark*, 418 A.2d at 1061 (internal quotation marks and citation omitted). By assuring Turner that the police were not "fishing" and had "no evidence" (Govt. Ex. JC-22), Jennings allowed Turner to follow through on his plan to have Hazelwood falsely claim possession of the gun and, as a result, frustrate possible prosecution of Turner for the violent crimes tied to the gun.

obtain and supply Turner with information of which he would have otherwise been unaware – that he was not a suspect in the crimes he committed – and thus facilitated his evasion of apprehension and prosecution. This conduct went well beyond “mere approval” of Turner’s crimes (see Jennings Br. at 35).

VI. The Trial Court Did Not Plainly Err by Failing to Instruct the Jury on the Definition of “Assisted” for Purposes of AAF.

Jennings claims that the trial court should have instructed the jury on the meaning of “assisted” for purposes of AAF because that term has a technical, legal meaning specific to that offense (Jennings Br. 37-39). Because Jennings fails to show any error, much less plain error, this claim too must fail.

A. Additional Background

For Counts 15, 18, 21, and 36, the trial court instructed the jury that to convict Jennings of AAF, the jury had to find, among other things, that “Ronnika Jennings assisted Derek Turner,” and that “when she assisted Derek Turner, Ronnika Jennings intended to delay, interfere with, or prevent the arrest, trial, or punishment of that person” (11/22/22PM Tr. 23-24, 29-30, 34-35, 60). Jennings raised no objection to this instruction.

B. Legal Principles and Standard of Review

“[A] trial court has no general duty to instruct the jury sua sponte regarding the definition of particular terms.” *Wilson v. United States*, 785 A.2d 321, 327 (D.C. 2001) (internal quotation marks and citation omitted). “A court need not give an instruction defining a term unless it has a technical legal meaning so different from its ordinary meaning that the jury, without further explanation, would misunderstand its import in relation to the factual circumstances.” *Id.* at 328 (citation omitted). Where a word is “commonly used” and “its meaning is understandable,” no definition is required. *Griffin v. United States*, 850 A.2d 313, 318 (D.C. 2004).

“When a party fails to raise a timely objection to an instruction, [this Court] review[s] that claim of error under the plain error standard.” *Buskey v. United States*, 148 A.3d 1193, 1204 (D.C. 2016) (quotation marks and citation omitted). “In reviewing claims of instructional errors, [this Court] consider[s] the instructions as a whole.” *Williams v. United States*, 858 A.2d 984, 995 (D.C. 2004).

C. Discussion

Here, the trial court properly instructed the jury on each element of AAF. Although “assistance” to the principal is an element of the offense, the *definition* of that term is not. *See Curington v. United States*, 621 A.2d 819, 823 (D.C. 1993) (trial court’s failure to define “pistol” for purposes of CPWL was not plain error; “[t]he statutory definition of the term ‘pistol,’ . . . is just that—a *definition* of a term

included in one of the elements. It is *not an element* of the statutory offense that the trial court was required to specifically include as part of the jury instructions”). Indeed, when setting forth the elements of AAF in *Outlaw*, 632 A.2d at 411, this Court did not suggest that a definition of “assistance” was necessary. The trial court thus did not plainly err when it did not include a definition of “assistance” as part of its jury instructions.

Jennings nonetheless claims that the word “assisted” has a “technical legal meaning” that the jury would not have understood without explanation by the trial court (Jennings Br. 38). Jennings points to examples of assistance described by Blackstone and Lafave as proof that the term retains a “narrow legal meaning” (Jennings Br. 38). But this Court has recognized that those examples are merely “[i]llustrative,” and that there is “no exhaustive or all-embracing answer” to the question “[w]hat kind of conduct aids a principal to avoid detection or apprehension.” *Outlaw*, 632 A.2d at 411. Indeed, the Court has made clear that “‘any assistance whatever given to a felon to hinder his being apprehended, tried, or suffering punishment’ is sufficient.” *Id.* (quoting IV Blackstone, Commentaries, at 37-38).

The instructions as a whole properly conveyed the kind of assistance that would satisfy the offense. The court instructed the jury that it was required to find that Jennings assisted Turner with the intent to “delay, interfere with, or prevent the

arrest, trial, or punishment of that person” (11/22/22PM Tr. 24). This instruction sufficiently described the common-law conception of AAF: “(a)n accessory after the fact is one who . . . assists the felon in order to hinder the felon’s apprehension, trial, or punishment.” *Clark*, 418 A.2d at 1061 (quotation marks and citation omitted). So instructed, the jury could not have failed to grasp the meaning of “assisted” in determining whether Jennings acted as an accessory.

In any event, the court’s failure to define the term “assisted,” even if error, was not plain error. “‘Plain’ is synonymous with ‘clear’ or, equivalently, ‘obvious.’ This means that the error must be clear under settled law either at the time of trial or on appeal.” *Williams*, 858 A.2d at 995 (citations omitted). Jennings identifies no authority from this Court or the Supreme Court requiring a definition of “assisted” in the context of an AAF instruction. Jennings thus fails to establish clear or obvious error.

Even assuming arguendo that the court plainly erred, Jennings cannot show that any error affected her substantial rights or seriously affected the fairness, integrity, and public reputation of the proceeding. Nothing in the record suggests that the jury in fact was confused or misunderstood the meaning of “assisted.” *See Wilson*, 785 A.2d at 328 (trial court’s failure to define “serious bodily injury” was not plainly erroneous where, among other things, there was “not even a hint that the jury misunderstood the elements of aggravated assault,” and “jury sent no note to

the judge requesting clarification related to an element of the crime”). Further, there is no reasonable likelihood that, even if the jury had received a definition of the term “assisted,” it would have returned a different verdict. *See Curington*, 621 A.2d at 822 (“at least where no objection is raised at trial to the instructions as given, any . . . error will not be a cause for reversal where the relevant facts are so closely related that no rational jury, shown by its verdict to have found the facts necessary to convict the defendant under the instructions as given, could have failed, if fully instructed on each element, to have found in addition the facts necessary to comprise the omitted element”) (citation omitted). As discussed above, the government presented compelling evidence that Jennings assisted Turner in avoiding detection and apprehension by providing him with critical information about the police investigations into his violent crimes. This constituted “assistance” for purposes of AAF, and thus Jennings was not prejudiced by the trial court’s failure sua sponte to instruct the jury on the definition of that word. *Cf. Alleyne v. United States*, 327 A.3d 472, 484 (D.C. 2024) (defendant could not show effect on substantial rights from court’s failure to define “intent to steal,” where (1) “instructions, when read as a whole, arguably communicated the very instruction [defendant] . . . contend[ed] was omitted”; and (2) evidence demonstrated that defendant had the requisite intent); *Wilson*, 785 A.2d at 328 (no plain error affecting substantial rights, where, given evidence of injury presented at trial, there was no reason to think jury would have

acquitted had it been given the definition of “serious bodily injury”); *Curington*, 621 A.2d at 823 (court’s failure to define “pistol” was not plain error affecting substantial rights, where jury was “appropriately instructed” on elements of offense and “the uncontroverted facts surrounding the commission of the offenses [we]re so closely related that no rational jury could have failed to find that the gun admittedly used by the appellant was a pistol”).

VII. Turner’s and Jennings’s Convictions for Obstruction of Justice and Turner’s Conviction for Conspiracy to Obstruct Justice Must be Vacated.

Turner and Jennings assert that the evidence was insufficient to support their convictions for obstructing the due administration of justice in an official proceeding, because the official proceeding alleged – Turner’s district court case – was not an “official proceeding” within the meaning of the D.C. obstruction-of-justice statute, D.C. Code §§ 22-721, -722(a)(6). For the reasons discussed below, we agree that these convictions should be vacated.

A. Additional Background

Count 42 of the indictment alleged that between March 8, 2017, and September 9, 2017, Turner, Jennings, and Hill conspired to “obstruct justice in an official proceeding then pending in the District of Columbia” (R. 337):

The object of the conspiracy was to corruptly impede the due administration of justice in the case of U.S. v. Derek Turner, 1:17-cr-055 (CRC) (D.D.C), in which Derek B. Turner[] was charged with a

federal firearms offense, and in the process corruptly impede investigations into the following criminal incidents, all of which occurred in Washington, D.C.: a shooting that occurred on November 23, 2016 at 4137 Wheeler Road, SE; a homicide that occurred on January 7, 2017 at 3510 6th Street SE; a shooting that occurred on February 16, 2017 at 713 Congress Street SE; a shooting that occurred on February 17, 2017 at 3639 6th Street SE; a shooting that occurred on February 22, 2017 at 916 Alabama Avenue SE; and a homicide that occurred on March 1, 2017 at 3501 Wheeler Road SE. (R. 338.)

Turner and Jennings were also charged with a number of substantive obstruction-of-justice counts. As pertinent here, Jennings was charged in Count 47 with “corruptly endeavor[ing] to obstruct and impede the due administration of justice in an official proceeding then pending in the District of Columbia,” for taking measures to deactivate her cell phone on March 28, 2017 (R. 354), and Turner was charged in Counts 43-47 and 49-51, for actions he took between March 11 and May 13, 2017, including his efforts to have Hazelwood take the blame in Turner’s district court case (R. 341-48).

In closing argument, the government explained that appellants had conspired “to obstruct justice in an official proceeding pending in the District of Columbia, . . . the official proceeding being the United States versus Derek Turner, U.S. District Court, federal firearms charge” (11/16/22 Tr. 52-53). The government stressed, however, that “[t]he byproduct of that conspiracy . . . was to impede the investigation into two murders and four other crimes of violence. . . . The focus of the obstruction

conspiracy was to distance Derek Turner from the murder weapon.” (11/16/22 Tr. 53.)

In its final instructions to the jury, the trial court stated:

Derek Turner, Ronnika Jennings, and Duan Hill are charged with conspiring to obstruct justice in an official proceeding then pending in the District of Columbia. It is against the law to agree with someone to commit the crime of corruptly impeding the due administration of justice in the case of U.S. v. Derek Turner, 1:17-CR-055(CRC), . . . in which Derek B. Turner was charged with a federal firearms offense and, in the process, corruptly impede investigations into the following incidents, all of which occurred in Washington, D.C.: a shooting that occurred on November 23rd, 2016, at 4137 Wheeler Road Southeast; a homicide that occurred on January 7th, 2017, at 3510 6th Street Southeast; a shooting that occurred on February 16, 2017, at 713 Congress Street Southeast; a shooting that occurred on February 17, 2017, at 3639 6th Street Southeast; a shooting that occurred on February 22nd, 2017, at 916 Alabama Avenue Southeast; and a homicide that occurred on March 1st, 2017, at 3501 Wheeler Road Southeast. (11/22/22 Tr. 67-68.)

The court defined the elements of the conspiracy charge in pertinent part as follows:

The elements of conspiracy, each of which the government must prove beyond a reasonable doubt, are that, . . . between on or about March 8th, 2017, and on or about September 9th, 2017, an agreement existed between two or more people to commit the crime of corruptly impeding the due administration of justice in a pending criminal case in a court of the District of Columbia and related investigations conducted by the Metropolitan Police Department and United States Attorney’s Office” (11/22/22 Tr. 68-69).

As to the elements of obstruction of justice, the court stated:

The elements of the offense of obstruction of justice, the substantive offense of the conspiracy, are defined as follows: One, the defendant endeavored to obstruct or impede the due administration of justice in a pending criminal case in a court of the District of Columbia and related

investigations conducted by the Metropolitan Police Department and United States Attorney's Office; and two, the defendant did so with the intent to undermine the integrity of the pending proceeding and related investigation. (11/22/22 Tr. 68.)

As to each substantive count of obstruction, the court described the elements of the offense as follows: that appellants (1) "endeavored to obstruct or impede the due administration of justice in a proceeding in a court of the District of Columbia," and (2) that they "did so with the intent to undermine the integrity of the pending proceeding" (11/28/22 Tr. 20-26, 30-32).

B. Discussion

Under D.C. Code § 22-722(a)(6), "[a] person commits the offense of obstruction of justice if that person . . . [c]orruptly, or by threats of force, any way obstructs or impedes or endeavors to obstruct or impede the due administration of justice in any official proceeding." Section 22-721(4) defines "official proceeding" as "any trial, hearing, investigation, or other proceeding in a court of the District of Columbia or conducted by the Council of the District of Columbia or an agency or department of the District of Columbia government, or a grand jury proceeding." Section 22-721(1) defines a "court of the District of Columbia" as "the Superior Court of the District of Columbia or the District of Columbia Court of Appeals."

Turner and Jennings were charged with corruptly impeding the due administration of justice in Turner's gun case in U.S. district court, "in the process,"

impeding the investigation of the violent crimes committed with the same firearm (R. 338). Because the U.S. district court is not considered a “court of the District of Columbia” within the meaning of § 22-721(1), appellants’ efforts to obstruct the district court proceedings cannot be a valid basis for their convictions for obstructing the due administration of justice (Turner and Jennings), or conspiring to do so (Turner), as charged in Counts 42-47 and 49-51. And because the jury instructions on the substantive counts (43-47 and 49-51) rested exclusively on obstructing the pending district court case, the convictions on those counts cannot stand.

For the conspiracy charge, the jury instructions and arguments of counsel presented an alternative theory: that Turner, Jennings, and others conspired to obstruct the MPD investigations of the violent crimes tied to the gun with which Turner was charged. Although “the due administration of justice in any official proceeding” does not include “an initial police response to the scene of a crime,” *Wynn v. United States*, 48 A.3d 181, 191 (D.C. 2012), this Court has recognized that efforts to impede an MPD investigation may satisfy § 22-722(a)(6) where the investigation has developed beyond “a preliminary street investigation by police,” *id.* at 189. *See Decuir v. United States*, 285 A.3d 512, 522 (D.C. 2022); *Brown v. United States*, 89 A.3d 98, 103 (D.C. 2014).

Here, at the time Turner and Jennings conspired to obstruct justice, they knew that the MPD investigations of the charged shootings were well beyond the nascent,

on-scene-investigation stage; indeed, Jennings, at Turner's behest, repeatedly accessed the Cobalt reports for each incident and could see when new information was added (see, e.g., 10/11/22 Tr. 165, 175-80; 10/17/22 Tr. 42-45, 53-65, 89-90). She then shared this information with Turner. Turner thus knew that having Hazelwood claim ownership of the gun would stymie MPD's investigation of his role in the shootings.

Notwithstanding the sufficiency of this evidence to support Turner's conviction for conspiracy to obstruct justice, the conviction should nonetheless be vacated because the record does not disclose on which theory the jury convicted. "[This Court] ha[s] held that 'whenever various alternative theories of liability are submitted to a jury, any one of which is later determined to be improper, the conviction cannot be sustained. This is because of the possibility that the verdict might have rested entirely upon the improper theory.'" (*Andre) Jones v. United States*, 16 A.3d 966, 970 (D.C. 2011) (quoting *Barkley v. United States*, 455 A.2d 412, 414 (D.C. 1983)); see also *Chiarella v. United States*, 445 U.S. 222, 237 n.21 (1980) ("We may not uphold a criminal conviction if it is impossible to ascertain whether the defendant has been punished for noncriminal conduct.")). Because the government argued (11/16/22 Tr. 53, 67-68), and the court instructed (11/22/22PM Tr. 67-69; 11/28/22 Tr. 19), that the conspiracy conviction could rest on a finding that appellants endeavored to obstruct or impede the due administration of justice in

either Turner's pending criminal case in the district court or the related MPD investigations, there is no way to know whether the jury's verdict relied upon the former, improper theory of liability. Given this uncertainty, vacatur of the conviction is required.¹³

¹³ Because we agree that the convictions for obstructing justice and conspiring to do so should be vacated, this Court need not address Jennings's claim (at 21-23) that the trial court plainly erred by failing to instruct the jury on the definition of "official proceeding" under D.C. Code § 22-721(1) and (4).

CONCLUSION

WHEREFORE, the government respectfully submits that the judgment of the Superior Court should be affirmed, except that Turner's and Jennings's convictions for obstruction of justice, and Turner's conviction for conspiracy to obstruct justice, should be vacated.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused a copy of the foregoing to be served by electronic means, through the Court's EFS system, upon counsel for appellant Turner, Tobias S. Loss-Eaton, Esq., tlosseaton@sidley.com, and counsel for appellant Jennings, Matthew T. Martens, Esq., matthew.martens@wilmerhale.com, on this 30th day of June, 2025.

/s/

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