

BRIEF FOR APPELLEE

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 24-CF-660

DIANDRE CAESAR,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

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

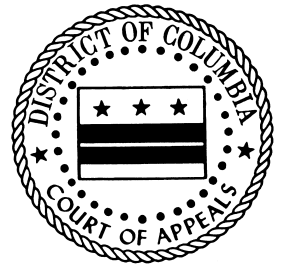
JEANNINE FERRIS PIRRO
United States Attorney

CHRISELLEN R. KOLB
TRAVIS WOLF
MICHAEL TOOGUN

* DAVID P. SAYBOLT, VA Bar #44518
Assistant United States Attorneys

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

Cr. No. 2022-CF3-4933



Clerk of the Court
Received 06/16/2025 01:21 PM
Filed 06/16/2025 01:21 PM

TABLE OF CONTENTS

COUNTERSTATEMENT OF THE CASE	1
The Trial.....	3
The Government’s Evidence	3
The Defense Evidence	12
SUMMARY OF ARGUMENT	12
ARGUMENT	15
I. The Trial Court Did Not Err by Denying Caesar’s Motion to Suppress Smith’s Single-Photograph Identification of Caesar, Nor Did It Err by Permitting Smith’s Subsequent Identification of Caesar in Court.....	15
A. Additional Background.....	15
1. Motion Hearing.....	16
2. Trial Court’s Ruling on Smith’s Pre-Trial Identification.....	18
3. Trial Court’s Deferral of Possible In-Court Identification by Smith	19
4. Trial	20
B. Standard of Review and Applicable Legal Principles	20
C. Analysis	22
II. The Trial Court Did Not Abuse Its Discretion by Denying Caesar’s Motion to Compel Discovery.....	27
A. Additional Background.....	27
B. Standard of Review and Applicable Legal Principles	31
C. Analysis	32

III. There Was Sufficient Evidence That Caesar Assaulted Smith and Greene with a Dangerous Weapon.	36
A. Standard of Review and Applicable Legal Principles	36
B. Analysis	37
IV. The Trial Court Did Not Abuse Its Discretion in Pronouncing Sentence.	42
A. Additional Background.....	43
B. Standard of Review and Applicable Legal Principles	44
C. Analysis	45
CONCLUSION.....	48

TABLE OF AUTHORITIES*

Cases

<i>Bradley v. District of Columbia</i> , 107 A.3d 586 (D.C. 2015)	44, 47
<i>Brady v. Maryland</i> , 373 U.S. 83 (1963).....	29, 35
<i>Chapman v. California</i> , 386 U.S. 18 (1967)	26
<i>Collins v. United States</i> , 73 A.3d 974 (D.C. 2013)	36
<i>Fitzgerald v. United States</i> , 228 A.3d 429 (D.C. 2020).....	36
<i>Foreman v. United States</i> , 114 A.3d 631 (D.C. 2015).....	41
* <i>Freeman v. United States</i> , 600 A.2d 1070 (D.C. 1991)	45, 46, 47
<i>Gethers v. United States</i> , 684 A.2d 1266 (D.C. 1996)	34
<i>Hanna v. United States</i> , 666 A.2d 845 (D.C. 1995)	46
* <i>Herring v. United States</i> , 169 A.3d 354 (D.C. 2017).....	46
<i>Hilton v. United States</i> , 250 A.3d 1061 (D.C. 2021)	20, 21, 22
<i>Joiner-Die v. United States</i> , 899 A.2d 762 (D.C. 2006)	37
<i>Jones v. United States</i> , 293 A.3d 395 (D.C. 2023)	42
<i>Kaliku v. United States</i> , 994 A.2d 765 (D.C. 2010)	21
<i>Long v. United States</i> , 156 A.3d 698 (D.C. 2017).....	21, 24, 25
<i>Lyons v. United States</i> , 833 A.2d 481 (D.C. 2003)	24
<i>Manson v. Brathwaite</i> , 432 U.S. 98 (1977)	21
<i>McCullough v. United States</i> , 827 A.2d 48 (D.C. 2003)	34
<i>Mills v. United States</i> , 599 A.2d 775 (D.C. 1991)	37

* Authorities upon which we chiefly rely are marked with asterisks.

<i>Mitchell v. United States</i> , 64 A.3d 154 (D.C. 2013)	36
<i>Morales v. United States</i> , 248 A.3d 161 (D.C. 2021).....	22, 23, 26
<i>Neil v. Biggers</i> , 409 U.S. 188 (1972)	19, 21, 22
<i>Nixon v. United States</i> , 730 A.2d 145 (D.C. 1999).....	47
<i>Parks v. United States</i> , 627 A.2d 1 (D.C. 1993)	41, 42
<i>Perry v. United States</i> , 36 A.3d 799 (D.C. 2011).....	37
<i>Powell v. United States</i> , 238 A.3d 954 (D.C. 2020).....	37, 42
<i>Rivas v. United States</i> , 783 A.2d 125 (D.C. 2001) (en banc)	36, 40
<i>Ruffin v. United States</i> , 642 A.2d 1288 (D.C. 1994)	40
<i>Saidi v. United States</i> , 110 A.3d 606 (D.C. 2015).....	25
<i>Sanders v. United States</i> , 809 A.2d 584 (D.C. 2022)	24
<i>Snell v. United States</i> , 68 A.3d 689 (D.C. 2013)	46
<i>Snowden v. United States</i> , 52 A.3d 858 (D.C. 2012).....	39
<i>Terry v. United States</i> , 114 A.3d 608 (D.C. 2015).....	47
<i>United States v. Curtis</i> , 755 A.2d 1011 (D.C. 2000)	31, 32, 35, 36
<i>United States v. Mason</i> , 951 F.3d 567 (D.C. Cir. 2020).....	35
<i>Vining v. District of Columbia</i> , 198 A.3d 738 (D.C. 2018)	44
<i>Winfield v. United States</i> , 676 A.2d 1 (D.C. 1996) (en banc)	29, 33
<i>Wood v. Bartholomew</i> , 516 U.S. 1 (1995)	35
* <i>Young (James) v. United States</i> , 305 A.3d 402 (D.C. 2023)	20, 23, 26
* <i>Young (Robert) v. United States</i> , 63 A.3d 1033 (D.C. 2013)	31, 32, 35, 36

Statutes

D.C. Code § 7-2502.01(a)	2
D.C. Code § 7-2506.01(a)(3).....	2
D.C. Code § 17-305(a)	33
D.C. Code § 22-402.....	1
D.C. Code § 22-1101(b)	1
D.C. Code § 22-4504(a)(1).....	1
D.C. Code § 22-4504(b)	1
D.C. Code § 23-112.....	44, 45, 46

Other Authorities

Sentencing Guidelines § 6.1	43
Sentencing Guidelines § 6.3	45
Sentencing Guidelines § 9.16.....	43

ISSUES PRESENTED

I. Whether the trial court erred in denying Caesar's motion to suppress the victim's identification of Caesar from a confirmation photo when the victim argued face to face with the suspect on a clear sunny day, observed as the suspect jumped in front of his car and attacked the vehicle, positively identified the suspect one hour later, and provided a general but accurate physical description of the suspect.

II. Whether the trial court abused its discretion by denying Caesar's motion to compel discovery of the names of witnesses and police born-worn-camera footage in connection with a shooting and execution of a search warrant eight months after the charged shooting where any connection between the two shootings was attenuated and speculative.

III. Whether the government produced sufficient evidence that Caesar assaulted the two victims with a dangerous weapon when he fired a gun multiple times at their fleeing car and bullets struck the car four times.

IV. Whether, after stating its understanding that the statutory scheme "contemplate[d]" consecutive sentences for assault with a dangerous weapon and possession of a firearm during commission of a

crime of violence, the trial court abused its discretion by imposing consecutive sentences for those convictions.

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 24-CF-660

DIANDRE CAESAR,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

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

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

By indictment filed on May 17, 2023, appellant Diandre Caesar was charged with three counts of assault with a dangerous weapon (ADW) (D.C. Code § 22-402) in connection with his shooting at a car containing Shelby Greene, Jeffrey Smith, and their infant child, L.R.S.; three corresponding counts of possession of a firearm during a crime of violence (PFCV) (D.C. Code § 22-4504(b)); second-degree cruelty to children (D.C. Code § 22-1101(b)); carrying a pistol without a license (D.C. Code § 22-

4504(a)(1)); possession of an unregistered firearm (D.C. Code § 7-2502.01(a)); and unlawful possession of ammunition (D.C. Code § 7-2506.01(a)(3)) (Record on Appeal (R.) 18 (Docket), 131 (Indictment)). After a jury trial from March 27 to April 8, 2024, before the Honorable Andrea L. Hertzfeld, Caesar was convicted of two counts of ADW (against Greene and Smith), as well as the two corresponding PFCV counts, and acquitted of the remaining charges (R.30-35 (Docket), 387 (Verdict Form)).

On July 10, 2024, Judge Hertzfeld sentenced Caesar to an aggregate term of 96 months' incarceration, comprised of consecutive terms of 18 months' incarceration for each of the ADW convictions, and a consecutive term of 60 months' incarceration for the PFCV conviction, with a second term of 60 months' incarceration for the second PFCV conviction to run concurrently to the first (R.429 (Judgment); 7-10-24 Transcript (Tr.) 32-33). On July 19, 2024, Caesar timely noted his appeal (R.430 (Notice of Appeal)).

The Trial

The Government's Evidence

The offense conduct arose from a June 28, 2022, shooting in front of the McDonald's restaurant at 2208 New York Avenue, NE (4-1-24 Tr. 25; see 3-27-24 Tr. 171-82). Adjacent to the McDonald's on New York Avenue, the Salvation Army owned a warehouse, not in use at the time, but maintained by Salvation Army employees (3-27-24 Tr. 189-91; 4-1-24 Tr. 198; 4-2-24 Tr. 45-46). A parking lot on the Salvation Army property was located on the side of the warehouse adjacent to the McDonald's; a chain-link fence separated the two properties with a strip of grass bordering the parking lot on the Salvation Army side of the fence (3-27-24 Tr. 189-91; Government Exhibit (GX.) 1A, 1B, 2). At the time of the incident, Caesar, a Salvation Army employee, was mowing the grass along that fenceline (3-27-24 Tr. 196-97, 212; 3-28-24 Tr. 30, 37-39; 4-1-24 Tr. 65-68).

On June 28, 2022, Jeffrey Smith drove with his girlfriend, Shelby Bell Greene, and their infant child, L.R.S., from their home in Annapolis to Washington, D.C., to purchase marijuana (3-28-24 Tr. 42; 4-1-24 Tr.

18-20).¹ Smith, Greene, and L.R.S. met the driver in the McDonald's parking lot shortly before 1:00 p.m.; Smith got out of the car, exchanged cash for a package with the driver, and got back in his car (3-28-24 Tr. 48-50; 4-1-24 Tr. 23, 26, 104). Afterwards, Smith started to leave the parking lot by driving in a lane next to the restaurant's drive-through, while the delivery driver left in the other direction (3-28-24 Tr. 51; 4-1-24 Tr. 27).

Smith kept a dash camera in his car, and the government introduced dash-cam video from Smith's car as GX.7 (3-28-24 Tr. 56; 4-1-24 Tr. 28; GX.7). As Smith and Greene tried to exit the parking lot through the exit lane next to the fence, they saw an empty milk crate in the lane; Smith got out and tossed the crate over the chain-link fence (3-28-24 Tr. 53, 57-59; 4-1-24 Tr. 30-31; GX.7 at 12:56:28-47). A man mowing

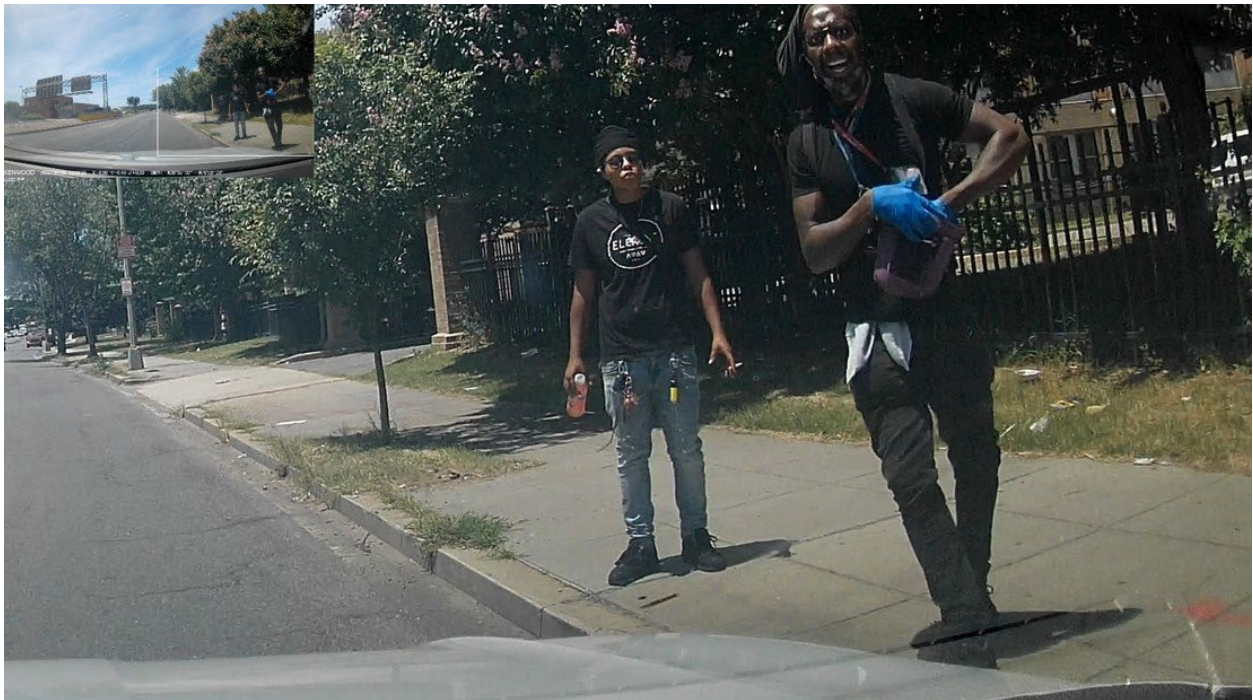
¹ Smith and Greene were no longer together at the time of trial; Greene was the victim of a domestic violence incident involving Smith, and was prohibited from speaking to him in person or on the phone (3-28-24 Tr. 43-44). Greene used marijuana to help herself sleep, but had not used marijuana that day (*id.* at 44-45). Smith was impeached with his prior convictions for reckless endangerment in D.C. in 2023 and misdemeanor theft in D.C. in 2023 (4-1-24 Tr. 19). Smith did not use marijuana at the time of trial but had smoked marijuana on the morning of June 28, 2022 (*id.* at 20-22).

the grass on the other side of the fence, subsequently identified as Caesar, picked up the crate and tried unsuccessfully to throw the crate back over the fence; on his second try, the crate cleared the fence and struck Smith's car (3-28-24 Tr. 59; 4-1-24 Tr. 32-34; GX.7 at 12:56:53-12:57:03). Smith stopped the car, got out, and began to argue with the man through the chain-link fence (3-28-24 Tr. 60; 4-1-24 Tr. 34-36; GX.7 at 12:57:08). In a conversation that lasted just under two minutes,² the two men exchanged angry obscenities, with Greene chiming in as well (3-28-24 Tr. 61-65; 4-1-24 Tr. 37-39, 41-43; GX.7 at 12:57:12-12:58:59). After Smith threw the crate back over the fence, got into his car and started driving, Caesar ran to the front of the Salvation Army building and intercepted Smith and Greene near New York Avenue on the sidewalk to the right of the car (3-28-24 Tr. 68-70; 4-1-24 Tr. 50-56; GX.7 at 12:59:06-57).

Caesar was wearing a cross-body bag, which Greene suspected contained a gun (3-28-24 Tr. 71; 4-1-24 Tr. 56; GX.7 at 12:59:58-13:00:01).

² The two men were face to face during the argument, approximately six inches apart, but did not touch each other (3-28-24 Tr. 62, 66; 4-1-24 Tr. 389).

Smith got out of his vehicle, peeking his head up above the car, and asked Caesar if he wanted to “play” (4-1-24 Tr. 57; GX.7 at 12:59:57). Smith got back in the car and tried to go home by taking a left on New York Avenue, but was blocked by another car (3-28-24 Tr. 76; GX.7 at 13:00:15). As Smith’s car was waiting in traffic to turn left, Caesar approached the car on the passenger side, punched the passenger-side window, and started kicking and hitting the bumper and passenger side of the car (3-28-24 Tr. 76-77; 4-1-24 Tr. 58-59; GX.7 at 13:00:09-19). Smith then backed up to take a right onto New York Avenue, at which time Caesar was visible on the sidewalk with his hand in the cross-body bag, as depicted below in GX.8(J) (3-28-24 Tr. 87-89, 113; GX.7 at 13:00:19-24).



GX.8(J), a still photograph from GX.7, Smith and Greene's dash camera.

As Smith and Greene drove away, they heard gunshots behind them and could hear the sound of bullets striking the back of their car (3-28-24 Tr. 79-80, 113; 4-1-24 Tr. 60-61; GX.7 at 13:00:32-37).³ Smith drove to a gas station, where he observed four bullet holes in the back of his car, before returning to the scene where police had already assembled (3-28-24 Tr. 84-86, 125-27; 4-1-24 Tr. 62-65). Smith and Greene subsequently removed two bullets from the steel frame of the backseats

³ Smith testified that:

Q: Can you tell us what the noises were that we were hearing [in GX.7]?

A: Those were gunshots.

Q: And why did you believe those were gunshots?

A: Because . . . it's pretty distinct. I heard the firearm go off, and then I could also hear them hitting the back of my car. (4-1-24 Tr. 60-61.)

Greene testified that:

Q: And those sounds we hear [in GX.7], what are those sounds?

A: Those are the bullets hitting the car . . .

Q: And where did it come from?

A: From behind us.

Q: And how many shots did you hear?

A: . . . Six shots, and then . . . four bullets that hit the car. (3-28-24 Tr. 79-80.)

of their car (3-28-24 Tr. 127). Greene never saw a firearm (3-28-24 Tr. 165).⁴

The court received two surveillance videos from the Salvation Army warehouse, one from the side of the Salvation Army warehouse showing the parking lot, the fence, and the McDonalds (GX.4), and one from the front of the Salvation Army warehouse showing the parking lot and gate in front of the warehouse and New York Avenue (GX.5) (3-28-24 Tr. 25, 27-28, 91, 121). Government Exhibit 4 shows Caesar mowing the grass next to the chain-link fence and tossing the milk crate over the fence (GX.4 at 12:58:29). Exhibit 4 also shows Smith approaching the milk crate in a small white car and tossing the crate back over the fence (*id.* at 12:59:30-45; 3-28-24 Tr. 91; 4-1-24 Tr. 45-47). The video then depicts

⁴ MPD Officer Jennifer Jamieson was in the drive-through lane of the McDonald's ordering lunch when she observed a tall, slender, black male in his 30's or 40's on the Salvation Army side of the fence arguing with someone on the McDonald's side of the fence (4-2-24 Tr. 105-14). After about 30 seconds, the man on the Salvation Army side of the fence walked away; a short time later, Jamieson heard four or five gunshots coming from New York Avenue (*id.* at 115-16). From her training, Jamieson recognized the sounds as gunshots (*id.* at 118). Jamieson then saw the man who had been arguing run through the Salvation Army parking lot, after which a dark-colored Suburban drove from the rear of the warehouse heading out to New York Avenue (*id.* at 118-21).

Caesar tossing the crate unsuccessfully and then successfully over the fence (GX.4 at 12:59:56-13:00:02); the two men arguing at the fence (*id.* at 13:00:10-13:01:48); Smith throwing the crate back over the fence (*id.* at 13:01:53); and Caesar walking to the front of the parking lot and out of range of the camera (*id.* at 13:01:54-13:02:10). A figure appearing to be Caesar is then visible through the Salvation Army fence walking on the sidewalk of New York Avenue toward the McDonald's (*id.* at 13:02:51). A confrontation between a man and the occupants of a small white car is visible through the fence (*id.* at 13:03:08-32), after which the man is seen jogging through the parking lot towards the back of the warehouse (*id.* at 13:03:57). At the end of the video, a dark-colored SUV drives quickly from the back of the warehouse towards New York Avenue (*id.* at 13:04:52).

Government Exhibit 5 shows a gray pick-up truck approaching the front gate of the Salvation Army parking lot just as a man climbs over the gate onto the sidewalk (GX.5 at 13:02:55). While Smith and Greene's white car was stopped at the McDonald's exit (*id.*; 3-28-24 Tr. 123), the man started grabbing the passenger door handle and kicking the car (GX.5 at 13:03:12; 3-28-24 Tr. 123-24). The white car drove off (GX.5 at 13:03:36; 3-28-24 Tr. 124). The video also depicts the pick-up truck

pulling into the parking lot through the opened gate (GX.5 at 13:03:12), a man walking from the direction of the McDonald's back into the parking lot (*id.* at 13:03:43), the man passing by the open window of the pick-up truck and jogging toward the back of the warehouse (*id.* at 13:03:54), and the dark-colored SUV driving quickly out of the gate and turning right (*id.* at 13:04:54).

Anthony Graham, a retired military veteran and Maryland state police officer, was driving a Coach U.S.A. charter bus eastbound on New York Avenue, when he noticed a slim, black man standing on the passenger side of a small car on the westbound portion of New York Avenue and arguing with people inside (3-28-24 Tr. 170, 173, 178-80, 186-88, 191, 193-94, 206; GX.13A; GX.13B).⁵ Graham saw the man pull out what appeared to be a gun and start firing at the car; he observed muzzle flashes and, through his open utility window, he heard what he recognized to be gunshots (*id.* at 179-80, 185, 189-90, 196, 202-03). Graham saw the man then run inside the gate and alongside the building of the Salvation Army warehouse (*id.* at 196, 198).

⁵ Graham identified his bus on New York Avenue in Smith's dash camera (3-28-24 Tr. 200-01; GX.7 at 13:00:29).

Earlier that day, Michael Peete, Caesar's co-worker at the Salvation Army, dropped Caesar off at the Salvation Army warehouse on New York Avenue, while Peete went to cut grass at another location (4-1-24 Tr. 191-99). Caesar was the only worker on the New York Avenue site (*id.* at 199). As Peete returned to the warehouse in his gray pick-up truck, he observed Caesar walking out of the parking lot, climbing over the gate leading to New York Avenue, and then walking on the sidewalk toward the McDonald's next door (*id.* at 200-09). Peete heard Caesar arguing with a guy in a white car, but he did not hear any gunshots (*id.* at 207-08, 212; 4-2-24- Tr. 16). Caesar returned to the parking lot and told Peete, "I'm leaving" (4-2-24 Tr. 17). Caesar drove away in a black Suburban vehicle his girlfriend had dropped off for him (*id.* at 21, 26, 40).

Caesar's supervisor, Christopher Wallace, who was not present for the shooting, provided police with the name of the Salvation Army employee who had been at the warehouse that day; he subsequently identified Caesar from a still photograph taken from the dash camera in Smith's car (3-28-24 Tr. 30, 37-39).

After learning Caesar's name from his supervisor at the Salvation Army, police obtained a confirmation photograph from a law-enforcement

database (3-27-24 Tr. 194-97). At the scene, Smith identified Caesar as the person with whom he had argued and who had attacked his car and fired shots at him (3-27-24 Tr. 196-97, 212; 4-1-24 Tr. 65-68). In court, Smith spontaneously identified Caesar as the person with whom he had the confrontation (4-1-24 Tr. 41-42).

From the sidewalk in front of the Salvation Army, police recovered two expended cartridge casings (4-1-24 Tr. 162-67; 4-2-24 Tr. 84).

The Defense Evidence

Antonio Artis had employed Caesar for nine years in his auto-detailing business and believed that Caesar was a peaceful person (4-3-24 Tr. 41-43). Caesar told Artis that after the milk crate struck the car, the man in the car spat on him; Caesar then walked over to the car and “defended himself” (*id.* at 49-50). Caesar told Artis that he did not have a gun (*id.* at 53).

SUMMARY OF ARGUMENT

The trial court did not err by permitting the government to elicit Smith’s single-photograph identification of Caesar. Smith was face to face with Caesar for two minutes as the men argued on a clear sunny

day, at a time when Smith's attention was wholly focused on the altercation with Caesar. In addition, Caesar repeatedly stood in front of Smith's car as Smith tried to leave the McDonald's. Indeed, the dash-camera of Smith's vehicle captured a clear view of Caesar's face. Smith identified Caesar one hour after the shooting after viewing a single confirmatory photograph. Despite the suggestivity of the procedure, Caesar cannot show that the court clearly erred by finding the identification reliable. For these same reasons, Smith's pre-trial identification could not taint his in-court identification. Finally, any error in admission of the testimony was harmless beyond a reasonable doubt because there was overwhelming evidence, including video evidence and testimony by Caesar's co-workers who knew him well, that he was the person involved in the altercation with Smith.

The trial court did not abuse its discretion by denying Caesar's motion to compel production of police body-worn camera and information about a suspect in a February 2023 shooting when any connection to that shooting was speculative and attenuated. Although Caesar's charged shooting was connected by a preliminary ballistics comparison to a gun recovered in a March 2023 search warrant, the gun recovered in the

March 2023 search warrant was not connected to the February 2023 shooting. Indeed, Caesar ultimately acknowledged that the February 2023 shooter was no longer a potential third-party perpetrator.

The evidence was more than sufficient to prove that Caesar assaulted both Smith and Greene with a dangerous weapon. Caesar's identity as the assailant was abundantly established. Although the gun Caesar used was not recovered at the time, the victims perceived that they were being shot at, the victims found bullet holes and bullets in back of their car, an eyewitness described a shooting complete with muzzle flashes, and police located spent cartridge casings on the scene.

Finally, the trial court did not make an error of law or otherwise abuse its discretion at sentencing when it imposed consecutive sentences for Caesar's convictions for ADW and PFCV. The trial court's statement that the statutory scheme "contemplates" consecutive sentences for PFCV and the underlying offense was not incorrect as a matter of law, and the court properly exercised its discretion to impose consecutive terms. However, the government agrees that Caesar's two convictions for PFCV should merge.

ARGUMENT

I. The Trial Court Did Not Err by Denying Caesar's Motion to Suppress Smith's Single-Photograph Identification of Caesar, Nor Did It Err by Permitting Smith's Subsequent Identification of Caesar in Court.

Caesar claims (at 42-46) that the police display of a single photograph to Smith was unduly suggestive, that Smith's identification of Caesar was not otherwise reliable, and that this display tainted Smith's unsolicited in-court identification of Caesar at trial. His claim lacks merit.

A. Additional Background

On October 4, 2023, Caesar moved to suppress the out-of-court identification made by Smith and any subsequent in-court testimony by Smith identifying Caesar (R.169 (Motion to Suppress Identification)). On October 12, 2023, the government opposed (R.207). After an evidentiary hearing on March 27, 2024, the trial court orally denied Caesar's motion

to suppress the out-of-court identification, and deferred ruling on the motion to suppress the in-court identification (3-27-24 Tr. 42-50).⁶

1. Motion Hearing

MPD Detective Yvette Maupin testified that on June 28, 2022, she responded to the shooting scene and interviewed Smith, who described the shooter as a black male with dreads, six-feet tall, and wearing all black clothing (3-27-24 Tr. 8-10, 31). The weather was “beautiful” and sunny (*id.* at 9). From Salvation Army employees on the scene, Detective Maupin obtained a probable name for the suspect who worked with them, and had a detective email her a photograph of Caesar from a law-enforcement database (*id.* at 10-11, 32-33; Government Motion Exhibit (GMX.) 1 [GX.3]).⁷ Police obtained a copy of video from Smith’s dash camera (GMX.2 [GX.7]), which Smith reviewed several times before police arrived and with police while they were there (3-27-24 Tr. 13, 15).

⁶ The parties initially argued the motion to suppress identification before Judge Lynn Leibovitz on October 20, 2023 (10-20-23 Tr. 18-32; 10-27-23 Tr. 3-4). Judge Leibovitz stated, “I’ve seen the videos. I would have a hard time saying [Smith] didn’t have a perfectly good opportunity to observe under the circumstances.” (10-20-23 Tr. 18-19.)

⁷ When the exhibits are the same, we cite to the trial exhibit number in brackets.

Smith was “pretty hyper,” pointing out the suspect in the dash-cam footage (*id.*).

Prior to showing the photograph to Smith, Detective Maupin told him that the person in the photograph may or may not be the person in the video (3-27-24 Tr. 20, 23). Detective Martin then showed Smith the photograph of Caesar on her phone, and he stated, “That’s him. Looks like him. Looks just like him.” (*Id.* at 23-24.)

The court received BWC showing the identification procedure (GMX.4), as well as video surveillance from the side of the Salvation Army warehouse (GMX.3 [GX.4]) showing the confrontation between the two men at the fence (3-27-24 Tr. 19, 21). Detective Maupin stated that she should have used a photographic array but did not because that would delay the procedure and because of the identification of Caesar by co-workers on the scene and Smith’s repeated review of the dash-cam footage (*id.* at 34). Detective Maupin conceded that showing a single photograph was not a best practice, and the government conceded suggestivity (*id.* at 42-43; *see also id.* at 5).⁸

⁸ During argument on the motion, the prosecutor proffered to the court without objection that based on Caesar’s appearance in the courtroom, (continued . . .)

2. Trial Court's Ruling on Smith's Pre-Trial Identification

The court found that, after Smith described the shooter to police on the scene, police obtained a suspect name from co-workers on the scene, obtained a photograph of Caesar, and showed it to Smith, who then positively identified Caesar as the person with whom he had the altercation (3-27-24 Tr. 42-43).

Upon seeing the photograph, Smith said “that looks just like him” (3-27-24 Tr. 44). The court found that Smith observed the suspect for two minutes “directly” and had “ample opportunity” to observe him during their heated argument (*id.*). Smith had additional opportunities to observe the suspect as the suspect approached the car from the front and the side at a time when Smith’s attention was “directly” on the suspect because of the “very heated” argument (*id.* at 44-45). Smith’s prior description was “general” but “accurate”: a black male with dreads wearing all black, at least six feet (*id.* at 45). Smith identified Caesar

he was “over six feet tall or at least six feet tall” (3-27-24 Tr. 36-27). The prosecutor also proffered, based on the time stamp on the BWC (GMX.4 at 14:04:10 [2:04 p.m. on June 28, 2022]) that Smith’s identification occurred approximately one hour after the shooting (3-27-24 Tr. 37).

“immediately after” the incident (*id.*). Smith was “pretty emphatic” about his identification and recognized Caesar “right away” (*id.*).

The court then stated that it observed the dash-cam video “and it seemed evident to the Court, just seeing that video where Mr. Caesar walks in front of the car, that it is apparent that it is Mr. Caesar” (3-27-24 Tr. 45). The court added, “So that supports also . . . the reliability of the complainant’s description” (*id.*). Caesar objected that the court’s own comparison of Caesar to the person in the video was not relevant (*id.* at 46). The court responded, “I’m not relying on that in terms of finding that it is reliable. I’m relying on the [*Neil v. Biggers*, 409 U.S. 188, 197 (1972)] factors. I thought I made that clear but maybe I didn’t.” (*Id.*) The court added, “If it wasn’t, I’m relying on the findings I just made under *Biggers*” (*id.*).

3. Trial Court’s Deferral of Possible In-Court Identification by Smith

The prosecutor stated that although it was “possible” Smith could “spontaneously” identify Caesar in court, the government was not planning on eliciting an in-court identification (3-27-24 Tr. 46). Caesar asked the court to direct the government not to elicit an in-court

identification (*id.* at 47). After further argument, the court declined to rule on Caesar’s motion before trial but invited Caesar to submit legal authority in support (*id.* at 50).

4. Trial

On direct examination of Smith, the prosecutor reviewed GX.7, the dash-cam video with Smith; the prosecutor drew Smith’s attention to a racial slur being used during the conversation and asked, “[W]ho made that statement?” (4-1-24 Tr. 41-42). Smith answered, “That was the defendant,” and nodded his head toward Caesar (*id.* at 42). Over objection, the court granted the prosecutor’s motion to have the record reflect an in-court identification of Caesar (*id.*).

B. Standard of Review and Applicable Legal Principles

Suggestivity and reliability are mixed questions of law and fact; this Court reviews “mixed questions of law and fact under [its] usual deferential standard of review for factual findings . . . and [applies] de novo review to the ultimate legal conclusions based on those facts.” (*James) Young v. United States*, 305 A.3d 402, 435 (D.C. 2023) (quoting *Hilton v. United States*, 250 A.3d 1061, 1068 (D.C. 2021)) (internal

citation omitted). “This [C]ourt is bound by the trial court’s findings on whether identification procedures were impermissibly suggestive and whether an identification was reliable if they are supported by the evidence and in accordance with the law.” *Kaliku v. United States*, 994 A.2d 765, 781 (D.C. 2010) (citation omitted).

To suppress an out-of-court identification, a defendant must prove that the procedure was “so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.” *Long v. United States*, 156 A.3d 698, 707 (D.C. 2017) (quoting *Neil v. Biggers*, 409 U.S. 188, 197 (1972) (internal quotations omitted)). “Even if the procedure is found to be impermissibly suggestive, the government can defeat the motion to suppress by showing the identification was reliable nonetheless.” *Hilton*, 250 A.3d at 1068.

Reliability is the “linchpin” of admissibility. *Manson v. Brathwaite*, 432 U.S. 98, 114 (1977)). In determining the reliability of the identification, the Court assesses (1) the witness’s opportunity to observe the perpetrator at the time of the crime, (2) the degree of attention the witness paid to the perpetrator, (3) the accuracy of any prior descriptions of the perpetrator given by the witness, (4) the witness’s level of certainty

at the time of identification, and (5) the lapse in time between the crime and the identification procedure. *Biggers*, 409 U.S. at 199-200.

C. Analysis

Contrary to Caesar's claim (at 42-46) the trial court did not err by denying Caesar's motion to suppress Smith's pre-trial identification. Although the single-photo display was inherently suggestive, *Morales v. United States*, 248 A.3d 161, 173 (D.C. 2021) ("single-photo displays are inherently suggestive") (internal citation omitted), the identification was nonetheless reliable under the circumstances. *Hilton*, 250 A.3d at 1068.

As the trial court found without clear error, one hour after the incident, Smith positively and emphatically identified Caesar as the man who argued with him through the fence and then shot at his car as he drove away (3-27-24 Tr. 44-45). On a clear, sunny day, the two men argued face to face for two minutes, at a time when Smith was paying close attention to the suspect because they were engaged in a heated argument (*id.*).⁹ In addition, as the court also found, and the video

⁹ Although Caesar contends (at 44) that there were "periods of time when the two did not face each other," he cannot show clear error in the court's finding that the Smith observed the suspect for two minutes given the video footage reviewed by the court (see GMX.2 [GX.7]; GMX.3 [GX.4]).

evidence established, Smith had additional opportunities to observe the suspect's face with a high degree of attention when the suspect appeared suddenly in front of his car as Smith attempted to leave the McDonald's parking lot, then attacked the passenger side of the car, and stood in front of the car again when Smith backed up to turn right onto New York Avenue (*id.*; GMX.2 [GX.7]; GMX.3 [GX.4]). Thus, the most important reliability factors, opportunity to observe, and the lapse in time between the incident and the identification, strongly support the reliability of Smith's identification. *See Morales*, 248 A.3d at 177 n.15 (first and fifth *Biggers* factors "typically drive the reliability analysis"). In addition, Smith's prior description was general but accurate, and he was emphatic in his identification.

Under the totality of these circumstances, the court's assessment of the reliability of the identification was not clearly erroneous or contrary to law. *See (James) Young*, 305 A.3d at 437 (identification of suspect from display of single photograph sufficiently reliable where suspect and witness were in close proximity prior to assault, identification took place approximately one hour after assault, witness was able to describe accurately defendant's height and build, and witness identified

defendant without hesitation); *Lyons v. United States*, 833 A.2d 481, 486 (D.C. 2003) (show-up identification not unduly suggestive where witness viewed defendant in handcuffs and under high beams of police car; potential for suggestivity outweighed by promptness of show-up one hour and fifteen minutes after robbery and identification reliable where witness looked at defendant several times during robbery).¹⁰

Caesar contends (at 44) that the trial court used its own identification of Caesar in the dash-cam footage to bolster the reliability of Smith's identification, and then sought to "walk this statement back." *See Long*, 156 A.3d at 708 ("the reliability inquiry may not include the consideration of evidence of the defendant's guilt external to the

¹⁰ Caesar does not claim on appeal that Smith improperly bolstered the reliability of his identification by repeatedly reviewing the dash-cam footage. Nor would such a claim prevail. Smith was a percipient witness to the events recorded on the video and was not improperly gaining personal knowledge through that viewing. *See, e.g., Sanders v. United States*, 809 A.2d 584, 596 (D.C. 2022) (lay witness opinion testimony identifying defendant in surveillance footage admissible where (1) the testimony is rationally based on the perception of a witness who has sufficient familiarity with the defendant's appearance because of "substantial contact with the defendant," (2) the testimony is "helpful to the factfinder in the determination of a fact in issue," and (3) the court is "reasonably satisfied that . . . the lay witness is more likely to accurately identify the defendant than is the factfinder").

identification”). But as the trial court explained (see 3-27-24 Tr. 45-46), the court grounded its ruling in the *Biggers* reliability factors, not its own comparison from the video. Moreover, the court was permitted to rely on the video evidence as probative of Smith’s opportunity to observe the suspect and his degree of attention in doing so; here, the dash-cam footage showed Smith’s point of view as Caesar popped out repeatedly in front of the car, and the Salvation Army video showed the two men face to face through the chain-link fence. Because the trial court is presumed to know the law, *Saidi v. United States*, 110 A.3d 606, 613 (D.C. 2015), there is no evidence to support Caesar’s suggestion that the court employed the videos in a forbidden manner. *See Long*, 156 A.3d at 707-08 (trial court’s findings on reliability deficient where judge failed to address *Biggers* factors but “relied solely on forbidden inferences” arising from defendant’s possession of proceeds of the robbery and presence inside the car involved in the robberies).

Caesar’s challenge (at 45-46) to admission of Smith’s in-court identification fails for the same reasons. Caesar appears to suggest that the prior out-of-court identification tainted Smith’s in-court testimony. However, because the prior identification was reliable and admissible,

there was no taint that could preclude the later identification. (*James Young*, 305 A.3d at 437 n.23 (no error to admit subsequent identification by witness from photographic array where earlier single-photograph identification deemed reliable and thus “there was no taint that would invalidate the [later] identification”).

Finally, even if the court erred, any error was harmless beyond a reasonable doubt. *Morales*, 248 A.3d at 181; *see Chapman v. California*, 386 U.S. 18, 24 (1967). Caesar was identified by name by two co-workers as the person working at the warehouse that day; one of them, Wallace, identified Caesar in the dash-cam video and the other, Peete, identified him hopping over the fence and arguing on New York Avenue with the occupants of the small white car (see *supra* p. 11). Officer Jamieson described Smith as arguing with the person mowing the grass at the Salvation Army warehouse, as did Greene, and Greene described him attacking her car (see *supra* pp. 4-8). Caesar’s own witness identified him as the person engaged in the altercation (4-3-24 Tr. 49-53). Last, the dash-cam footage itself, in conjunction with the Salvation Army video, clearly identified Caesar as the person who menaced Smith and Greene with his left hand grabbing an apparent pistol inside his cross-chest bag

(see GX.4, 5, 7). Indeed, for all of these reasons, Caesar's identification as the person engaged in the altercation with Smith and Greene was not seriously in dispute at trial.

II. The Trial Court Did Not Abuse Its Discretion by Denying Caesar's Motion to Compel Discovery.

Caesar claims (at 38-42) that the trial court abused its discretion by refusing to order discovery of the names of witnesses to a February 16, 2023, shooting and police body-worn camera footage from the execution of the search warrant at the apartment of a suspect in that shooting. His claim lacks merit.

A. Additional Background

On March 9, 2023, nine months after the charged shooting, police executed a search warrant at 2119 I Street, NE, Unit 9, as part of an investigation into a February 16, 2023, shooting (R.291 (U.S. Opposition)). During execution of the warrant, police recovered a Patmos Polymer P80 Ghost Gun and charged one of the occupants of the apartment, Zion Ray-Valentine, with possession of the gun (*id.*). Ballistics testing of the Ghost Gun yielded a potential National Integrated Ballistic Information Network (NIBIN) link to the June 28,

2022, shooting charged in this case but *did not* yield a link to ballistics evidence recovered from the scene of the February 16, 2023 shooting (*id.* at 291-92).

On June 2, 2023, the government disclosed the NIBIN lead to Caesar (R.277 (U.S. Notice of Filing)). On October 12, 2023, pursuant to Caesar's October 5, 2023, request for discovery, the government turned over search warrant documentation, including arrest reports, police radio, the search warrant inventory list, property reports, and the NIBIN hit (R.178 (October 5, 2023, Caesar Notice of Discovery); R.225 (October 12, 2023 U.S. Notice of Filing); R.277 (March 7, 2024 U.S. Notice of Filing); R.289 (U.S. Opposition to Motion to Compel)).

Pursuant to Caesar's October 23, 2023, request for additional discovery and February 27, 2024, motion to compel, the government disclosed the search warrant affidavit, including surveillance still photographs of the suspect in the February 16, 2023, shooting, and video of a custodial interview of Ray-Valentine, who was arrested for possession of the weapon on March 9, 2023 (R.266 (Caesar Motion to Compel Discovery); R.277 (March 7, 2024 U.S. Notice of Filing); R.279 (Caesar Amended Motion); R.304 (Caesar (Second) Amended Motion)).

The government declined to disclose, however, body-worn camera (BWC) from the execution of the search warrant, the names of the victims and witnesses to the February 16, 2023, shooting, and information regarding whether the suspect in the February 16 incident is or was an informant (R.292 (U.S. Opposition to Motion to Compel)).

In his amended motion to compel, Caesar sought names of witnesses to the February 16, 2023, shooting on the ground that the shooting involved the potential sale of marijuana and two witnesses told police the shooter lived at 2119 I Street, NE, Apartment 9; that in video of the February 2023 shooting, Ray-Valentine had identified “Scrap” from Carver Terrace as the shooter; and that Caesar’s GPS confirmed he was not present for the February 2023 shooting (R.281 (Amended Motion to Compel)). Caesar contended that information regarding the February 2023 shooting was discoverable under *Brady v. Maryland*, 373 U.S. 83 (1963), and *Winfield v. United States*, 676 A.2d 1, 4 (D.C. 1996) (en banc) (*id.*).

The government countered that it had disclosed all information relevant to execution of the search warrant, and that BWC from execution of the search warrant would show only information that Caesar

already possessed—the location of the seized property and Ray-Valentine’s presence in the home (R.295 (U.S. Opposition to Motion to Compel)). The government also contended that because the weapon used in the June 28, 2022, shooting was *not linked* to the weapon used in the February 2023 shooting, there was an insufficient nexus to compel disclosure of sensitive witness information in a pending investigation (*id.*). The government stated that guns are fungible and could be passed around over the course of nine months, the marijuana transactions in the two shootings were not similar, and there was no additional connection between the two shootings because the February 2023 shooter had fired with his right hand, and Caesar had used his left hand to retrieve the gun from his bag (*id.* at 293-94).

During oral argument on the motion, Caesar conceded that Ray-Valentine was no longer a potential *Winfield* third-party perpetrator, but asked to interview witnesses to the shooting on the theory that Ray-Valentine “may be directly involved in the drug trade” and was connected to a third person who sells “small amounts of marijuana,” which was similar to that purchased by Smith (3-19-24 Tr. 3-6). The government

proffered that cartridge casings had been recovered from the February 2023 shooting and submitted for ballistic comparison (*id.* at 9-10).

After reviewing the record, the trial court found that Caesar's request was "far too attenuated" and "speculative" to warrant additional discovery and denied the motion (3-19-24 Tr. 3-4, 13; see also 3-18-24 Tr. 3-9). The court stated that there was "absolutely, based on the ballistics, . . . no nexus between the two shootings other than [that] they're both drug[-]related shootings" (3-19-24 Tr. 8-9).

B. Standard of Review and Applicable Legal Principles

This Court reviews for abuse of discretion a trial court's determination whether to order disclosure of information sought by a defendant on the ground that the information would be material to the preparation of his defense. (*Robert*) *Young v. United States*, 63 A.3d 1033, 1051 (D.C. 2013); *United States v. Curtis*, 755 A.2d 1011, 1014-15 (D.C. 2000).

The burden of establishing materiality is on the defendant. (*Robert*) *Young*, 63 A.3d at 1051. The defendant "must demonstrate a relationship between the requested evidence and the issues in the case, and there

must exist a reasonable indication that the requested evidence will either lead to other admissible evidence, assist the defendant in the preparation of witnesses or in corroborating testimony, or be useful as impeachment or rebuttal evidence.” *Id.* (quoting *Curtis*, 755 A.2d at 1014-15). “While ‘[t]he threshold showing of materiality is not a high one . . . , [n]either a general description of the information sought nor conclusory allegations of materiality suffice.” *Id.* (quoting *Curtis*, 755 A.2d at 1015) (internal citation omitted).

C. Analysis

Caesar challenges (at 38-42) the trial court’s refusal to compel BWC footage from the execution of a search warrant in March 2023 and disclosure of the names of witnesses to the February 16, 2023, shooting. Caesar bears the burden of demonstrating that the information he seeks is discoverable. (*Robert*) *Young*, 63 A.3d at 1051. Here, where he claims the missing information could have been material to developing a third-party perpetrator defense, he is obliged to demonstrate a “reasonable indication” that the witness names would have led to admissible evidence, *id.*, that is, evidence giving rise to “some reasonable possibility that a person other than the defendant” had the motive and opportunity

to commit the shooting. *Winfield*, 676 A.2d at 5 (internal quotation marks omitted). Caesar has not made this showing at trial or on appeal.

As both the court and the government recognized, the NIBIN hit potentially connected the charged shooting to recovery of the Ghost Gun from Ray-Valentine's apartment in March 2023, i.e., nine months later (R.291-92 (U.S. Opposition to Motion to Compel; 3-19-24 Tr. 3-6)). Accordingly, the government provided fulsome and timely discovery regarding recovery of the gun (R.277 (March 7, 2024, U.S. Notice of Filing)). Ultimately, Caesar determined that Ray-Valentine was not a viable third-party perpetrator (3-19-24 Tr. 5).

As the trial court found without clear error, however, *see* D.C. Code § 17-305(a), any connection between Caesar's case and the February 2023 shooting was attenuated and speculative (3-19-24 Tr. 8, 13). There was no ballistics link to the February 2023 shooting despite the submission of evidence for comparison (*id.* at 9-11). Thus, whatever the provenance of the Ghost Gun found in Ray-Valentine's apartment in March 2023, there was no evidence connecting the Ghost Gun to the February 2023 shooting. Nor was there an articulable reason to suspect that the February 2023 shooter, even if he had a connection to Ray-Valentine's

apartment, was connected to the Ghost Gun. Indeed, the ballistics evidence suggested that shooter was connected to a *different gun*, and *not connected to Caesar’s case*. Finally, the February 2023 shooting took place nine months after the charged shooting, a time-frame which readily—but not necessarily—permitted the gun to change hands multiple times. *See Hilton*, 250 A.3d at 1073 (proffer of third-party-perpetrator evidence based on use of same gun five months later insufficient in part because “the handgun could easily have been passed around in the months following the murder”).

Moreover, the trial court permissibly rejected as unduly speculative Caesar’s suggestion that the two shootings could be connected because they both involved the sale of small amounts of marijuana. *See McCullough v. United States*, 827 A.2d 48, 55–56 (D.C. 2003) (no abuse of discretion to preclude evidence “that [the victim’s] lifestyle as a drug dealer gave others reason to kill her”); *Gethers v. United States*, 684 A.2d 1266, 1272 (D.C. 1996) (defense proffer “that a dissatisfied customer to whom [the victim] had sold a burn bag might have shot him in retaliation” was insufficient to meet the “reasonable possibility” test).

There is no merit to Caesar’s claim (at 40 (citing 3-19-24 Tr. 10)) that the trial court “conflated” the standards for admissibility of *Winfield* evidence and ordering discovery. To make its discovery ruling, the trial court was required to consider whether compelling disclosure could produce admissible evidence, and that required the court to consider the *Winfield* standard. (*Robert*) *Young*, 63 A.3d at 1051; *Curtis*, 755 A.2d at 1014-15. Nor does Caesar’s effort (at 39-40) to frame his argument as a claim under *Brady v. Maryland*, 373 U.S. 83 (1963), call the trial court’s denial of his motion to compel discovery into question. “Hypothesizing that certain ‘information, had it been disclosed to the defense, might have led [defense] counsel to conduct additional discovery that might have led to some additional evidence that could have been utilized’ is disfavored.” *United States v. Mason*, 951 F.3d 567, 573-74 (D.C. Cir. 2020) (quoting *Wood v. Bartholomew*, 516 U.S. 1, 6 (1995) (per curiam)). Here, although there was a nexus to Ray-Valentine and the gun used in this case, there was no connection to the February 2023 shooting other than Caesar’s theory that they were both “drug motivated shooting[s]” (3-19-24 Tr. 10-11). Because the proffer of materiality was too attenuated, Caesar cannot

demonstrate an abuse of the trial court’s discretion. *(Robert) Young*, 63 A.3d at 1051; *Curtis*, 755 A.2d at 1015.

III. There Was Sufficient Evidence That Caesar Assaulted Smith and Greene with a Dangerous Weapon.

Contrary to Caesar’s claim (at 31-38), the evidence was more than sufficient to establish that Caesar assaulted Smith and Greene with a dangerous weapon.

A. Standard of Review and Applicable Legal Principles

This Court reviews the sufficiency of the evidence *de novo*. *Fitzgerald v. United States*, 228 A.3d 429, 436 (D.C. 2020). Proof of guilt is sufficient “if, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Rivas v. United States*, 783 A.2d 125, 134 (D.C. 2001) (en banc). The evidence need not compel a finding of guilt or negate all inferences of innocence. *Collins v. United States*, 73 A.3d 974, 985 (D.C. 2013). “[N]o distinction is made between direct and circumstantial evidence; indeed, ‘circumstantial evidence may be more compelling than direct testimony.’” *Mitchell v. United States*, 64

A.3d 154, 157 (D.C. 2013) (quoting *Mills v. United States*, 599 A.2d 775, 780 (D.C. 1991)).

To prove intent-to-frighten assault, the government must prove “(1) that the defendant committed a threatening act that reasonably would create in another person a fear of immediate injury; (2) that, when he/she committed the act, the defendant had the apparent present ability to injure that person; and (3) that the defendant committed the act voluntarily, on purpose, and not by accident or mistake.” *Joiner-Die v. United States*, 899 A.2d 762, 765 (D.C. 2006). A conviction of intent-to-frighten assault also “requires proof that the defendant intended either to cause injury or to create apprehension in the victim by engaging in some threatening conduct.” *Powell v. United States*, 238 A.3d 954, 957 (D.C. 2020) (citation omitted). For ADW, the evidence must “prove the common law crime of simple assault, plus the fact that the assault is committed with a dangerous weapon.” *Perry v. United States*, 36 A.3d 799, 811 (D.C. 2011).

B. Analysis

Viewing the evidence in the light most favorable to the government, the government presented sufficient evidence that Caesar assaulted

Greene and Smith with a dangerous weapon on an intent-to-frighten theory.¹¹ Abundant evidence established that Caesar was the person engaged in the confrontation with Smith: Peete identified Caesar by name as the person arguing with the man in the small white car, Wallace identified Caesar as the Salvation Army employee working at the warehouse that day and as the man visible in Smith’s dash-cam footage, Smith identified Caesar as the man who attacked his car, and Greene and Officer Jamieson each described a series of events in which the Salvation Army employee cutting the grass argued with and subsequently attacked Smith’s car on New York Avenue (see *supra* pp. 4-8, 11-12). Caesar’s own witness, Artis, testified that Caesar was involved in a confrontation involving a milk crate, after which Caesar “defended himself” (4-3-24 Tr. 49-53). These accounts were corroborated by three videos—the dash-cam, and the two warehouse videos—one of which—the dash cam video and the stills therefrom—plainly established Caesar’s identity (see GX.4, 5, 7).

¹¹ The government proceeded on the ADW counts on an intent-to-frighten theory, and the court instructed the jury accordingly (4-2-24 Tr. 93; 4-3-24 Tr. 151-52).

That Caesar fired a gun multiple times at the rear of Smith’s and Greene’s car was also well-established—even without the recovery of a firearm. Smith and Greene described hearing “gunshots” as they drove away from Caesar, hearing “bullets” strike their car, finding four “bullet holes” in the back of their car, and recovering two “bullets” from the steel frame of their backseat (3-28-24 Tr. 79-80, 113; 4-1-24 Tr. 60-61; GX.7 at 13:00:32-37). Officer Jamieson, who had been trained in firearms, recognized the sounds of gunshots as well (4-2-24 Tr. 115-18). Finally, Anthony Graham observed a slim, black man, consistent with Caesar’s description, arguing with the occupants of a small car, and then pull out what appeared to be a gun and fire multiple times at the fleeing vehicle (*supra* p. 10). Graham, a military veteran and former police officer, saw the muzzle flash and heard the gunshots (*id.*).

On these facts, a reasonable juror could easily find beyond a reasonable doubt that Caesar fired gunshots repeatedly at Smith and Greene, and that he intended either to injure them or to create apprehension in them by firing shots that struck their vehicle. *See Snowden v. United States*, 52 A.3d 858, 868-69 (D.C. 2012) (“[I]ntent to frighten assault includes situations in which a weapon is used in any

manner that would reasonably justify the other person in believing that the weapon might immediately be used against him.”); *Ruffin v. United States*, 642 A.2d 1288, 1296 (D.C. 1994) (evidence sufficient for ADW where defendant fired multiple shots into small passenger vehicle).

Caesar complains (at 35-36) that neither Smith nor Greene saw a firearm, but the jury was permitted to infer, given the gunshot testimony from Smith, Greene, Jamieson, and Graham, that a gun had been fired. Caesar also complains (at 38) that Greene was not asked to explain why she described the sounds as “gunshots,” that Smith was not asked to parse which were “gunshots” and which were the sounds of bullets hitting his car, and that Smith was not required to explain whether he had ever heard gunshots before. To be sure, a reasonable juror could weigh these considerations, but Caesar cannot show that *no reasonable juror* could conclude that Caesar fired a gun at the victim’s car. *Rivas*, 783 A.2d at 134.

Caesar further contends (at 37-38) that Graham was not in a position to see Caesar fire the gun. Despite any inconsistencies about his location between his grand jury and trial testimony, the jury was permitted to credit Graham’s account at trial that he was adjacent to

Smith's car at the time of the shooting, and able to see and hear the shooting with his utility window open (3-28-24 Tr. 178-79). *See Foreman v. United States*, 114 A.3d 631, 639 (D.C. 2015) ("It is the jury's province to resolve questions of credibility and to make reasonable inferences from the evidence.") (citation and quotation marks omitted). Moreover, Graham was able to point to his bus in the dash-cam video, thereby providing unbiased corroboration of his testimony at trial (3-28-24 Tr. 200-01; GX.7 at 13:00:29).

Finally, Caesar suggests (at 34) that there was insufficient evidence that his actions would have caused a reasonable person in Smith's and Greene's circumstances to experience an immediate threat of danger. Contrary to Caesar's suggestion, the government's evidence did not rely exclusively on third parties to establish the existence of the threat—both Smith and Green were subjectively aware that they were being fired upon (3-28-24 Tr. 79-80, 113; 4-1-24 Tr. 60-61). *See Parks v. United States*, 627 A.2d 1, 5 (D.C. 1993) (victim's subjective perception of fear or apprehension relevant to whether the circumstances would portend an immediate threat of danger to a reasonable person). In any event, the government was required to show only that Caesar intended to injure

Smith or Greene *or* that he intended to create apprehension in them by some threatening conduct. *Powell*, 238 A.3d at 957. Here, as discussed *supra*, Caesar did both by firing a gun multiple times at the rear of their car, and striking the car multiple times, where Smith and Greene perceived at the time that they were being shot at, an earwitnesses described gunshots, and one eyewitness, Graham, observed the shooting itself.¹²

IV. The Trial Court Did Not Abuse Its Discretion in Pronouncing Sentence.

Caesar claims (at 48-50) that the trial court erred in pronouncing sentence by stating its understanding that the statutory scheme “contemplates” that a sentence for PFCV should be consecutive to the underlying offense. His claim lacks merit.

¹² Caesar relies (at 33-34) on *Jones v. United States*, 293 A.3d 395, 400–01 (D.C. 2023), and *Parks*, 627 A.2d at 6, but those cases do not aid him. *Jones* is a non-sexual offensive-touching case. 293 A.3d at 399. In *Parks*, the victim was unaware of the threat posed by the defendant, *see* 627 A.2d at 5-6, whereas here, as discussed in the text, both Smith and Greene were subjectively aware that they were being fired upon.

A. Additional Background

At sentencing on July 10, 2024, Caesar asked the trial court to sentence him at the bottom of the District of Columbia Voluntary Sentencing Guidelines (Sentencing Guidelines) on each count and to run each term of incarceration concurrently (7-10-24 Tr. 15). The government allocuted for consecutive terms, with the exception of the merged counts (*id.* at 10; R.410-11 (Government’s Memorandum in Aid of Sentencing)). Citing the Sentencing Guidelines, the government noted that the court had discretion to impose a PFCV sentence consecutive to the underlying ADW counts and urged that the longer sentence appropriately reflected the dangerousness of Caesar’s conduct (R.418-19) (citing Sentencing Guidelines, §§ 6.1, 9.16) (Government’s Memorandum in Aid of Sentencing).

In imposing sentence, the court announced it would impose the mandatory minimum of 60 months’ incarceration on the two merged PFCV counts, and sentences of 36 months’ incarceration at the bottom of the Sentencing Guidelines on each of the ADW counts (7-10-24 Tr. 32). The court noted that the Sentencing Guidelines “contemplate” consecutive sentences on the ADW counts because there were two

separate victims and imposed those sentences consecutively (*id.* at 32-33). With respect to the PFCV count, the court stated: “And I think the statutory scheme contemplates that [the ADW sentences] should be consecutive to the possession of a firearm during a crime of violence. So the sentences on each count will run consecutively.” (*Id.* at 33.)

B. Standard of Review and Applicable Legal Principles

This Court reviews sentencing procedures for abuse of discretion. *See Bradley v. District of Columbia*, 107 A.3d 586, 595 (D.C. 2015). “A court by definition abuses its discretion when it makes an error of law.” *Vining v. District of Columbia*, 198 A.3d 738, 754 (D.C. 2018) (internal quotation omitted).

D.C. Code § 23-112 (Consecutive and concurrent sentences) provides that:

A sentence imposed on a person for conviction of an offense shall, unless the court imposing such sentence expressly provides otherwise, run consecutively to any other sentence imposed on such person for conviction of an offense, whether or not the offense (1) arises out of another transaction, or (2) arises out of the same transaction and requires proof of a fact which the other does not.

The Sentencing Guidelines provide that the trial court has discretion to impose sentences for PFCV consecutively or concurrently to

the underlying crime of violence or dangerous crime. *See* Sentencing Guidelines, § 6.3 (“The Court has the discretion to sentence any remaining count(s), including those not covered by Sections 6.1. and 6.2, to run either consecutively or concurrently.”); § 9.16 (providing examples of the trial court’s discretion to impose sentences for PFCV consecutively or concurrently to underlying offenses). The Sentencing Guidelines further state: “If the Court does not state on the Judgment and Commitment Order how a sentence shall run, it shall run consecutively.” § 6.3 (citing D.C. Code § 23-112).

C. Analysis

Caesar contends (at 48-50) that the trial court committed an error of law when it commented that “the statutory scheme contemplates that [the ADW sentences] should be consecutive to the possession of a firearm during a crime of violence” (7-10-24 Tr. 32-33). Caesar misapprehends the law.

Caesar’s convictions for ADW and PFCV arise out of the same transaction, but each requires proof of a fact that the other does not. *Freeman v. United States*, 600 A.2d 1070, 1073 (D.C. 1991). Accordingly, in the absence of the sentencing court expressly providing otherwise,

Caesar’s sentences for ADW and PFCV “shall . . . run consecutively” to each other. D.C. Code § 23-112. In this sense, the statutory scheme contemplates that Caesar’s convictions for ADW and PFCV should run consecutively. *See, e.g., Herring v. United States*, 169 A.3d 354, 357 (D.C. 2017) (“District law presumes that sentences run consecutively unless the court expressly indicates otherwise”) (citing D.C. Code § 23-112).

The presumption of consecutive terms is not happenstance or technicality; the Council affirmatively chose the presumption for policy reasons. *See Herring*, 169 A.3d at 362 & n.6 (explaining that Congress enacted D.C. Code § 23-112 to reverse the presumption that, absent a specification of consecutiveness, multiple sentences operate concurrently); *Snell v. United States*, 68 A.3d 689, 695 (D.C. 2013) (“In the absence of such legislative intent to prohibit consecutive sentences for various firearms offenses [CPWL and Felon in Possession], we apply the Council’s general intent to sentence consecutively as embodied in D.C. Code § 23–112.”).

The statutory scheme supports consecutive sentences for ADW and PFCV for the additional reason that “each offense addresses a distinct societal interest.” *Freeman*, 600 A.2d at 1073; *see also Hanna v. United*

States, 666 A.2d 845, 856 n.19 (D.C. 1995) (same). As this Court explained in *Freeman*, “[i]n creating the offense of possession of a firearm during a crime of violence, the Council focused on the concern that firearms were increasingly involved in murders and assault. By contrast, assault with a dangerous weapon focuses on punishing those who assault others with any kind of a dangerous weapon.” 600 A.2d at 1073 (internal citation omitted).

Caesar cites no authority (at 49-50) for his assertion that the trial court misstated the law, and we are aware of none. Accordingly, the trial court did not err, and Caesar cannot demonstrate an abuse of the trial court’s discretion at sentencing. *Bradley*, 107 A.3d at 595.¹³

¹³ We agree with Caesar’s claim (at 46-48) that his two convictions for PFCV merge because they arise out of Caesar’s uninterrupted possession of a single weapon during a single act of violence. *See Terry v. United States*, 114 A.3d 608, 629 (D.C. 2015); *Nixon v. United States*, 730 A.2d 145, 153 (D.C. 1999).

CONCLUSION

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

Respectfully submitted,

JEANNINE FERRIS PIRRO
United States Attorney

CHRISELLEN R. KOLB
TRAVIS WOLF
MICHAEL TOOGUN
Assistant United States Attorneys

/s/

DAVID P. SAYBOLT, VA Bar #44518
Assistant United States Attorney
601 D Street, NW, Room 6.232
Washington, D.C. 20530
David.Saybolt@usdoj.gov
(202) 252-6829

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused a copy of the foregoing appellee's brief to be served by electronic means, through the Court's EFS system, upon counsel for appellant, Adrian E. Madsen, Esq., madsen.adrian.eric@gmail.com, on this 16th day of June, 2025.

/s/

DAVID P. SAYBOLT
Assistant United States Attorney