BRIEF FOR APPELLEE

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 24-CF-242

SHAQUILLE TAYLOR, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

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

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II. Whether the trial court abused its discretion when it responded to a jury note about the second element of aggravated assault while armed by using language from the aggravated assault statute.

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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Appellant Shaquille Taylor was indicted on September 29, 2022, with aggravated assault while armed (AAWA) (motor vehicle), in violation of D.C. Code §§ 22-404.01, -4502; assault with a dangerous weapon (ADW) (motor vehicle), in violation of D.C. Code § 22-402; fleeing a law enforcement officer, in violation of D.C. Code § 50-2201.05b(b)(2); destruction of property, in violation of D.C. Code § 22-303; unlawful possession of a firearm (prior conviction), in violation of D.C. Code §§ 22-

4503(a)(1), (b)(1); carrying a pistol without a license (CPWL), in violation of D.C. Code § 22-4504(a)(2); possession of an unregistered firearm (UF), in violation of D.C. Code § 7-2502.01(a); and unlawful possession of ammunition (UA), in violation of D.C. Code § 7-2506.01(a)(3) (Record on Appeal (R.) 219-221 (Indictment)).[1] Taylor filed a motion to suppress physical evidence on August 15, 2022 (R. 158-160 (Motion pp. 1-3)), and the government filed its opposition on September 29, 2022 (R. 206-212 (Opposition pp. 1-7)). A suppression hearing took place before the Honorable Jason Park on October 30, 2023, after which Judge Park denied Taylor's motion (10/30 Transcript (Tr.) 142). A jury trial began on October 31, 2023, before Judge Park, and, on November 3, 2023, the jury convicted Taylor of AAWA, ADW, fleeing, and destruction of property (11/3 Tr. 16-17). The jury acquitted him of the remaining counts (*id.*).

On March 5, 2024, the trial court sentenced Taylor to concurrent terms of 144 months' imprisonment for AAWA, 72 months' imprisonment for ADW, and 32 months' imprisonment each for fleeing and destruction

[1] All citations to the Record refer to the PDF page number.

of property (R. 361 (Judgment)). The trial court also ordered Taylor to pay $400 to the Victims of Violent Crime Fund (*id.*).

Taylor timely appealed on March 14, 2024 (R. 362-363 (Notice of Appeal)).

The Motion to Suppress

The Pleadings

In his motion to suppress, Taylor stated that he was involved in a car accident on May 6, 2022 (R. 158 (Motion p. 1)). After the accident, a United States Secret Service (USSS) officer ordered Taylor out of the car, searched the car, and found a gun (*id.*). Taylor argued that the gun should be suppressed because the officer did not have permission to search the car and did not have a warrant (*id.* at 158-159).

In its opposition, the government stated that a Secret Service officer was patrolling in the 1700 block of Massachusetts Avenue, Northwest, when the officer saw an illegally-parked black Nissan Altima; Taylor was in the driver's seat (R. 206 (Opposition p. 1)). The officer attempted a traffic stop, but Taylor sped off (*id.*). Taylor approached the intersection of 12th Street and Massachusetts Avenue at nearly 100 miles per hour, ran a red light, and hit a Jaguar driven by Kareem Gage (*id.*). Gage was

ejected from his car and severely injured (*id.*). The Secret Service recovered a firearm and a bottle of alcohol from the Nissan, and Taylor was arrested (*id.* at 206-207). The government argued that several different rationales supported the officer's entry into the Nissan: (1) because Taylor fled, there was probable cause to search the car for evidence of the offense of fleeing a law enforcement officer; (2) Taylor's car was disabled as a result of the crash and was blocking the road, and thus the community caretaking function permitted the officer to enter the car so it could be moved; and (3) the government later obtained a warrant to search the car, and thus the gun would have been inevitably discovered (*id.* at 207-209).

The Suppression Hearing

The government presented the testimony of USSS Special Agent Alexander Smead.[2] Agent Smead testified that he was patrolling alone in D.C. during the early morning hours of May 6, 2022 (10/30 Tr. 113-115). He was wearing a uniform and driving a fully-marked police cruiser (*id.*; see also *id.* at 114-115 (uniform included "a black uniform shirt with

[2] On May 6, 2022, Smead was a USSS Uniform Division Officer; when he testified, he had been promoted to Special Agent (10/30 Tr. 113).

a Secret Service patch on the shoulder," a gold police patch, and a bullet-proof vest that read "Secret Service" on the front and "'police' in large letters" on the back); *id.* at 114 (describing vehicle as a black and white Chevy Tahoe bearing, among other things, several lights, a "big old badge," and "foot tall" letters spelling the word "police")).

As he was patrolling, Agent Smead saw a black Nissan Altima parked in a no-parking zone in the 1700 block of Massachusetts Avenue (10/30 Tr. 115). The car was also blocking the driveway of an embassy (*id.*). Agent Smead parked behind the Nissan and "briefly" activated his lights and sirens (*id.* at 116). He also radioed the Secret Service control center that he was initiating a traffic stop (*id.*). At the same time, the driver of the vehicle, subsequently identified as Taylor, opened the driver's side door of the Nissan, stuck his head out, and looked back at Agent Smead (*id.* at 116).

Using a loudspeaker, Agent Smead told Taylor to close the door and stay in the car (10/30 Tr. 116-117). Taylor closed the door and then sped off southeast down Massachusetts Avenue (*id.* at 117). Agent Smead began canvassing in the direction Taylor had driven (*id.* at 117). A few blocks later, in the 1100 block of Massachusetts Avenue, Agent Smead

saw a green Jaguar "crashed out in the middle of" the road (*id.* at 117-118). He also saw the Nissan "crashed up on the curb into . . . a retaining wall" (*id.* at 118). The Nissan "was completely up on the sidewalk" and was "pouring gas" (*id.* at 118-119; see also Government Exhibit (GE) 2 (photo of Nissan on sidewalk)).[3] Agent Smead explained that "[b]oth vehicles were completely inoperable" and had sustained "[s]evere front end damage" (*id.* at 118).

Agent Smead saw Taylor get out of the Nissan through the front windshield and reach toward his waistband (10/30 Tr. 118-119). The agent then arrested Taylor for fleeing from a law enforcement officer (*id.* at 118-119, 136; see also *id.* at 136 (stating that no weapons were found on Taylor's person)). Taylor was transported to Washington Hospital Center to treat his injuries (*id.* at 119).

Agent Smead explained that the Nissan had to be towed because it was inoperable and blocking the road, and because Taylor had been arrested (10/30 Tr. 119). Because the car had to be towed, Secret Service policy required a vehicle inventory (*id.* at 124 ("Because [the] vehicle was

[3] The government will file a motion to supplement the record with the government exhibits admitted during the suppression hearing.

being towed by us from the scene and it was going to be towed by our tow company that we contract through, A and A towing[, i]t had to be inventoried by the Secret Service.")). Agent Smead gave the following reasons for the policy:

> [I]f something ends up at that private lot, if – for example, if an individual leaves an expensive item in the car, we do not inventory it. We're not aware it's in there when it goes to the private lot. And if they show [*sic*] you and pick it up and it's missing, we don't know if it was ever in there. We don't know who to go to or who to file a police report for [it]. (10/30 Tr. 125.)

Agent Smead received training on the policy, and also learned about it on the job (*id.* at 123-124; see also *id.* at 124-125 (agreeing that it was "the usual practice" to conduct inventory searches of cars before they were towed by the Secret Service)).

Accordingly, around ten minutes after arriving on scene, Agent Smead began an inventory search of the Nissan (10/30 Tr. 120). He followed the procedure prescribed by the Secret Service, which required officers to inventory search cars one section at time (*id.* at 124). When Agent Smead reached the Nissan's front passenger area, he saw that the glove box had fallen from the dashboard onto the floor (*id.* at 122-123). He picked up the glove box and saw a pistol on the floorboard (*id.*; see

also GE 1 (depicting floorboard of Nissan where Agent Smead found the gun)). Agent Smead stopped his inventory search, and the crime scene unit then searched the vehicle before it was towed away (*id.* at 123, 125).

The Parties' Arguments and the Trial Court's Ruling

The government argued that the vehicle search was lawful because (1) the Nissan was on the sidewalk "in a precarious position" and (2) Secret Service policy required a vehicle inventory search before it was towed (10/30 Tr. 137-138).[4] The government noted that Agent Smead had explained when and how he learned of the policy; that the policy required an inventory search before towing a vehicle to a private lot; and how officers conducted the inventory search (*id.*).

Taylor argued that Agent Smead's actions amounted to a search and complained that the only evidence of the Secret Service's inventory-search policy was the agent's testimony (10/30 Tr. 138-139).

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[4] The transcript reflects that government referred to the search as "a *Terry*[*v. Ohio*, 392 U.S. 1 (1968)] search" (10/30 Tr. 137). The mention of *Terry* appears to be a typographical error or an unintentional reference given that the government subsequently presented argument on a valid inventory search (*id.*).

In denying Taylor's motion to suppress, the trial court recognized that there are two requirements for a lawful inventory search: that (1) the police had lawful possession of the Nissan, and (2) the inventory search was "conducted pursuant to an establish[ed] law enforcement policy" (10/30 Tr. 141). The trial court credited Agent Smead's testimony and found that it established both elements (*id.* at 139).

As to the first requirement, the court found that Agent Smead saw the Nissan illegally parked in front of an embassy and that Taylor fled when the agent attempted a traffic stop (10/30 Tr. 139-140). When Agent Smead canvassed Massachusetts Avenue and found the Nissan, the car had crashed into a retaining wall and was on the sidewalk "in a completely disabled state" and "in a location where the police could not allow that vehicle to remain" (*id.* at 140; see also GE 1; GE 2). The court further noted that Taylor was arrested for fleeing, and that it was thus "common sense" for police to decide to tow the Nissan (*id.* at 141 ("[The car] could not be allowed to remain there in the condition it was in and the location it was in, which posed a danger to and impeded both pedestrian and automobile traffic.")).

As to the second requirement, the court found that Agent Smead's testimony established that the Secret Service had a policy requiring police to inventory search a car that had been taken into Secret Service custody before the car was towed away (10/30 Tr. 141-142). The court stated, "to the extent that the [g]overnment did not produce any sort of written policy, I do find that the preponderance of the evidence based on the [o]fficer's testimony nonetheless establishes that there was such a policy" (*id.* at 142). The court noted that Agent Smead testified not only that there was a policy, but also that he had received training on the policy and that the policy was followed consistently (*id.*).

Ultimately, the trial court concluded:

> [T]he weapon that was found in the passenger seat by the [o]fficer was the result of an inventory search that was conducted consistent with and pursuant to an established Secret Service policy and so because of that, I find that the [g]overnment has established by a preponderance of the evidence that both elements of the inventory search exception to the warrant requirement have been satisfied. I will therefore deny the [d]efendant's motion to suppress. (10/30 Tr. 142.)

The Trial

The Government's Evidence

1. The Crash

At about 2:00 a.m. on May 6, 2022—around the same time that Agent Smead told Taylor to remain in the Nissan in front of the embassy[5]—Derrick Garnett was driving his girlfriend, Nija Saunders, to get food (10/31 Tr. 97; 11/2 Tr. 5). The two were stopped at a red light near row homes on Massachusetts Avenue at the intersection with 12th Street, when Saunders "heard a loud noise like a car going really, really fast" (10/31 Tr. 98; 11/2 Tr. 8). Saunders "looked up and . . . saw headlights coming toward" them "really, really fast" down Massachusetts Avenue (10/31 Tr. 99). She screamed, "closed [her] eyes[,] and balled up" (*id.*).

Saunders grabbed Garnett, who looked up and saw the Nissan that Taylor was driving speeding toward the intersection (11/2 Tr. 7-10). Just then, the traffic light on 12th Street turned green and a green Jaguar entered the intersection (11/2 Tr. 8-9; 10/31 Tr. 102). The Nissan then

[5] Agent Smead's trial testimony (10/31 Tr. 24-96) was consistent with his suppression hearing testimony.

crashed into the driver's side of the Jaguar (11/2 Tr. 9). The Jaguar remained in the intersection, and the Nissan rebounded onto the sidewalk and into a retaining wall (11/2 Tr. 9). Debris from the crash rained down on Garnett's car (10/31 Tr. 100).

Kareem Gage, who had been driving the Jaguar, was ejected from his car and lay face down on the pavement 20 to 25 feet away (10/31 Tr. 104; 11/2 Tr. 11; see also 11/1 Tr. 118 (describing Gage as laying "[h]alf on the street and half up onto the curb onto the sidewalk")). Gage's body "was mangled up," one of his legs was at a "wrong" angle, and he was not wearing any shoes (10/31 Tr. 104; 11/2 Tr. 11; 11/1 Tr. 119). Officers later found his shoes near the driver's side pedals in his Jaguar (11/1 Tr. 120).

Gage was taken to the hospital, where doctors determined he was in hemorrhagic shock (i.e., bleeding to death) (11/1 Tr. 131-132). Trauma Surgeon Dr. Jack Sava testified that Gage's injuries included a pelvic fracture, broken spine, and numerous rib fractures (*id.* at 133-135; see also *id.* (noting that the rib fractures were so extensive that Gage's "ability to breathe was at risk")). He underwent several procedures and surgeries without which he would have died (*id.* at 138).

Metropolitan Police Department (MPD) Detective Victor Deperalta retrieved the air bag control module from the Nissan (11/1 Tr. 65).[6] According to the data from the module, neither the driver- nor passenger-side seat belts were fastened (*id.* at 70). Five seconds before the crash, the car was traveling at 95 miles per hour, and "[t]he accelerator pedal was at 93 percent throttle" (*id.*). One-and-a-half seconds before the crash, the car was traveling at 96 miles per hour (*id.* at 72). The brakes were applied one second before the crash, and the steering wheel was pulled to the right; the Nissan was traveling 81 miles per hour when it hit the Jaguar (*id.* at 72-73).[7]

Brian Chase, an expert in the field of automotive technology, testified that the Nissan's braking, steering, and acceleration systems were functioning properly before the crash (11/1 Tr. 76, 83, 99-106; see also *id.* at 108 ("All of the realms, all of the different system of the 2015

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[6] The module is an event data recorder that retains five seconds of pre-crash data, including vehicle speed, braking input, steering information, and air bag deployment information (11/1 Tr. 65-67). Detective Deperalta downloaded the data from the module using "box diagnostics crash data retrieval software" (*id.* at 67).

[7] The speed limit on the relevant portion of Massachusetts Avenue was around 35 miles per hour (10/31 Tr. 35).

Nissan Altima were in a condition that would have allowed proper steering, proper stopping, proper handling of the vehicle. There were not pre[-]existing deficiencies within any of these systems that would have affected the control of the vehicle.")).

2. The Inventory Search and the DNA Results

At trial, Agent Smead repeated his suppression hearing testimony about the attempted traffic stop, the crash, and the inventory search (10/31 Tr. 24-96). He also provided additional details about the inventory search. Specifically, Agent Smead explained that, after Taylor was taken to the hospital, he decided that both the Jaguar and the Nissan need to "be towed for safekeeping as they were both blocking the road and were involved in our scene" (*id.* at 47). Agent Smead saw that "the entire front of" the Jaguar "appeared to be completely gone," and "large quantities of what seemed to be oil, gasoline, [and] transmission fluid [were] leaking from" it (*id.* at 40, 49, 51). As for the Nissan, the dashboard assembly and roof had caved in, the windshield was "destroyed," and the car was leaking oil and gas (*id.* at 65, 67). Agent Smead notified A & A Towing to

send a tow truck, and then began to inventory both cars (*id.* at 48). Agent Smead described the reasons for inventorying the cars:

> [T]he Secret Service has a form. It's an inventory form that we are trained on. We're basically looking for anything inside that vehicle that could be determined of value. We do use a private tow company. So once the vehicle leaves our scene, there's no – it's not secured. There's no police. No Secret Service. It's not secured by us. So anything of value that may be left in the vehicle we'll [*sic*] go down to the lot and if it becomes missing at a later point, it would then be on the tow company because we have inventoried what's in it, but if it was not on the inventory and came up missing, it could be addressed at that point. (10/31 Tr. 60.)

Agent Smead began his inventory at the driver's side of the Nissan: he opened the door, moved aside vehicle parts (for example, the air bag) that had fallen into the car, and looked for "anything of value" (10/31 Tr. 62). He could see the front passenger-side door from his vantage point and noted that the door did not look like it would open (*id.*). Agent Smead thus climbed into the car and leaned over the center console to inventory search the front passenger area (*id.* at 63). The closed glove box was in one piece on the front passenger floorboard, so Agent Smead lifted the box and saw a black pistol was underneath (*id.* at 63-64; see also GE 209 (photo depicting glove box on passenger seat and pistol on floorboard)). Upon seeing the firearm, the agent notified his crime scene team to take

over (*id.* at 64 ("It is standard operating procedure for the Secret Service. If you location [*sic*] any sort of evidence or it may become evidence, you notify crime scene.")). In addition to the gun, the crime scene unit found and collected a bottle of alcohol from the backseat of the Nissan (*id.* at 144).

Charity Davis, who was qualified as an expert in forensic DNA analysis, testified that DNA swabs from the firearm revealed "[m]ale DNA" that "was interpreted as originating from four individuals," and that it was "eight hundred [and] ten sextillion times more likely if [ ] Taylor and three unknown individuals are contributors than if four unknown unrelated individuals are contributors" (11/1 Tr. 6, 9, 16-17; see also *id.* at 17 (noting that a sextillion has 24 zeros)).

The Defense Evidence

Taylor testified in his own defense. He claimed that the Nissan belonged to his children's mother and that other people also drove the car (11/2 Tr. 34). Taylor also denied owning the gun or knowing that one was in the car (*id.* at 34). He denied parking in a no-parking area or in front of an embassy (*id.* at 28). Taylor also denied seeing anyone in a police

uniform, hearing a police siren before speeding off, or seeing a police car or police lights until moments before the crash (*id.* at 28-30).

SUMMARY OF ARGUMENT

The trial court properly denied Taylor's motion to suppress. Because the Nissan was disabled by the car crash and Taylor was unable to make arrangements to move the car elsewhere, the Secret Service lawfully decided to take custody of and tow the vehicle. Upon deciding to tow the Nissan, the Secret Service conducted a reasonable inventory search of the car pursuant to a standard policy.

Additionally, the trial court did not abuse its discretion when it responded to a jury note seeking clarification on AAWA by reinstructing the jury on the second element of the offense using the plain language of the aggravated assault statute. The trial court's reinstruction was an accurate statement of the law. In proving an aggravated assault under D.C. Code § 22-404.01(a)(2) (hereinafter, (a)(2) aggravated assault), the government need not show that a defendant intended to harm a specific individual. Rather, this Court's case law makes clear that a defendant commits an (a)(2) aggravated assault when he acts with gross

recklessness, and his actions cause serious bodily injury to another person.

ARGUMENT

I. The Trial Court Did Not Err In Denying Taylor's Motion To Suppress Evidence.

Taylor argues (at 26-27) that the trial court erred in denying his motion to suppress because Agent Smead's inventory search was pretextual and the government did not produce a written inventory search policy. Taylor is incorrect.

A. Standard of Review and Applicable Legal Principles.

This Court reviews the trial court's findings of fact and the reasonable inferences drawn therefrom in the light most favorable to sustaining the ruling below. *Bingman v. United States*, 267 A.3d 1084, 1087 (D.C. 2022). Moreover, in reviewing a denial of a motion to suppress, this Court "must uphold the trial court's findings of fact unless clearly erroneous and view all facts and reasonable inferences in the light most favorable to the government." *Butler v. United States*, 102 A.3d 736, 739 (D.C. 2014). The trial court's legal conclusions on Fourth Amendment

issues are subject to de novo review. Mayo *v. United States*, 315 A.3d 606, 616 (D.C. 2024) (en banc).

The Fourth Amendment prohibits "unreasonable" searches and seizures. U.S. Const. amend. IV. Generally, "inventory searches of vehicles lawfully in police custody, conducted according to established police procedures, are not 'unreasonable' under the Fourth Amendment and thus are not linked to the probable cause or warrant requirement." *Hill v. United States*, 512 A.2d 269, 275 (D.C. 1986) (citing *South Dakota v. Opperman,* 428 U.S. 364, 370 n.5 (1976)). Thus, inventory searches conducted pursuant to standard operating procedures are presumptively reasonable. *Madison v. United States*, 512 A.2d 279, 281-282 (D.C. 1986). And, "[e]ven if not conducted pursuant to standard operating procedures or written guidelines, the search may nonetheless be constitutionally reasonable if it was reasonable under the Fourth Amendment." *Id.*

In assessing the legality of an inventory search, this Court must first determine whether the vehicle is lawfully in police custody. *Hill*, 512 A.2d at 273. "Lawful possession exists where there is statutory or regulatory authority for impoundment of a vehicle, the police have probable cause to believe that the car contains contraband, or a person

consents to such possession or is unable to make other arrangements for disposition of the automobile." *Madison*, 512 A.2d at 281. If police have lawful custody, this Court then determines whether the inventory search is justified by one of three reasons: "(1) the protection of the owner's property while it remains in police custody, (2) the protection of the police against claims or disputes over lost or stolen property, and (3) the protection of the police from potential danger." *Hill*, 512 A.2d at 275 (citations and internal quotation marks omitted).

B. Discussion

1. Police conducted a proper inventory search.

The trial court correctly found that the police conducted a proper inventory search. The evidence presented at both the suppression hearing and the trial, *see West v. United States*, 604 A.2d 422, 427 (D.C. 1992) (court may rely on undisputed trial testimony to sustain suppression ruling), established that the police had lawful custody of the vehicle and that the search was conducted pursuant to standard Secret Service policy. First, the Nissan had crashed into Gage's Jaguar and rebounded into a retaining wall, was inoperable, and was "pouring gas" into the street and onto the sidewalk. Thus, it was reasonable for the

police to take custody of and tow the Nissan. *See Opperman*, 428 U.S. at 369 ("The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge."). Moreover, Taylor could not arrange for the disabled car to be removed from the sidewalk or the road given that he was injured and had to be transported to the hospital immediately after the crash. *See, e.g.*, *Arrington v. United States*, 382 A.2d 14, 18 (D.C. 1978) (vehicle impoundment lawful where operator is "incapable of making other arrangements for its disposition").[8] Second, Secret Service policy required officers to conduct an inventory search of the Nissan before releasing it to the private towing company (10/30 Tr. 123-124 (inventory search was required "any[ ]time any vehicle was towed by the Secret

[8] Taylor's own testimony established that he broke his arm and his leg during the crash, and had to be rushed to the hospital (11/2 Tr. 33-34). Even if Taylor had been able to remain on scene, police would have been justified in taking custody of the Nissan. Because the car was completely disabled and "pouring gas" into the road (10/30 Tr. 118-119), it was a "dangerous vehicle" and thus subject to "immediate" towing. *See* D.C. Code § 50-2421.02 (defining "dangerous vehicle" as one that is "extensively damaged" or presents "another dangerous condition that poses an imminent hazard to the public health, safety, or welfare"); D.C. Code § 50-2421.04 (a)(2) ("A dangerous vehicle shall be immediately removed without the placement of a warning notice.").

Service.")). According to Agent Smead, that policy protects (1) the property in cars towed by the Service and (2) officers from claims of theft (*id.* at 125). Finally, the inventory search was limited in scope to the purpose underpinning the policy. Specifically, when Agent Smead searched the front passenger area for "items of value," he noticed that the glove box had fallen from the dashboard onto the floorboard; he did not try to open the glove box, but instead shifted it aside to see if anything was on the floorboard underneath (*id.*; see also *id.* at 127). He then saw the pistol on the floor and alerted crime scene officers (*id.* at 124). Those actions were reasonable. *See, e.g.*, *Madison*, 512 A.2d at 281-282 ("Checking beneath the seat of a lawfully impounded vehicle is [a] reasonable action by the police" when seeking to "retrieve items of value").[9] Accordingly, the trial court appropriately denied Taylor's motion to suppress.

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[9] For the same reasons, Taylor's contention (at 26) that the absence of evidence of a written policy rendered the inventory search pretextual fails. In any event, the argument also fails because it flouts the standard of review by rejecting Agent Smead's credited testimony and instead reading the record in the light most favorable to Taylor (Br. at 26). Indeed, Taylor has not argued that the trial court clearly erred in crediting the agent's testimony. *See Germany v. United States*, 984 A.2d 1217, 1221 (D.C. 2009) (This Court "must accept the trial judge's findings

(continued . . .)

Taylor complains (at 26-27) that the government did not produce a written inventory policy. But Taylor's trial court pleading did not mention the lack of a written policy, and he did not ask any questions about a written policy during the suppression hearing or trial. Regardless, this Court has explained that there need not be a written policy if an inventory search is independently reasonable. *Madison*, 512 A.2d at 281-282; *see also United States v. Morris*, 915 F.3d 552, 555 (8th Cir. 2019) ("The absence of the written policy in the record does not preclude establishing its content. 'While a written policy may be preferable, testimony can be sufficient to establish police impoundment procedures.'") (quoting *United States v. Betterton*, 417 F.3d 826, 830 (8th Cir. 2005)). Indeed, this Court has held that a similar inventory search for "items of value" was reasonable and thus lawful even in the absence of a written procedure. *Madison*, 512 A.2d at 281-282.

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of evidentiary fact and his resolution of conflicting testimony,'" reviewing them only for clear error).

2. Any error in admitting the evidence associated with the inventory search was harmless beyond a reasonable doubt.

Contrary to Taylor's argument (at 27), any error in the trial court's failure to suppress the gun recovered from the Nissan was harmless beyond a reasonable doubt. *See Parsons v. United States*, 15 A.3d 276, 279 (D.C. 2011) (applying *Chapman v. California*, 368 U.S. 18 (1967) to analysis of evidence admitted upon erroneous denial of Fourth Amendment motion). The evidence of Taylor's guilt was overwhelming and did not depend on the gun or the subsequently developed DNA evidence.

The government's case that Taylor recklessly turned the Nissan into a weapon when he fled from a traffic stop was strong. Agent Smead, who was driving a fully-marked Secret Service police car, saw Taylor parked in a no-parking area and tried to initiate a traffic stop using both his lights and sirens; when Agent Smead asked Taylor over a loudspeaker to remain in his car, Taylor instead sped away; Saunders and Garnett heard and saw the Nissan approaching them head-on at a red light in a residential area on Massachusetts Avenue; the air bag control module revealed that the Nissan was traveling at 96 miles per hour just one-and-

a-half seconds before the crash; Garnett saw a Jaguar, which had the green light, enter the intersection just before the Nissan hit the Jaguar; and Gage was ejected from the Jaguar and nearly died from his injuries.

The other evidence obtained as a result of the inventory search—i.e., the gun and the DNA obtained from it, as well as the small liquor bottle—each served as some additional evidence that the reason Taylor drove so recklessly was because he was fleeing (i.e., due to consciousness of guilt), and evidence that Taylor himself was driving the Nissan. However, given the overwhelming other evidence already establishing the relevant facts, the inventory-search evidence was merely cumulative. Agent Smead testified that Taylor did, in fact, flee. And eyewitnesses testified that Taylor was the only person inside the Nissan when it crashed into Gage's car at a dangerous rate of speed.

Indeed, the verdict demonstrates that the evidence about the gun and the DNA did not inflame the jury. The jury acquitted Taylor of the gun-related charges despite hearing testimony that his DNA was on the gun. Given that the jury evidently had reasonable doubt as to whether Taylor possessed or was even aware of the gun, it is difficult to see how that evidence could have made any difference to its guilty verdicts. *See*

Stewart v. United States, 881 A.2d 1100, 1112 (D.C. 2005) ("Appellant overreaches when he argues that juries are so inflamed by the sight of a gun that they will simply disregard the court's instructions to decide the case without prejudice and to base their verdict solely on the evidence. Absent any showing to the contrary, juries are presumed to follow the trial court's instructions.").

II. The Trial Court Did Not Abuse Its Discretion When It Answered the Jury Note Using the Plain Language of the Aggravated Assault Statute.

Taylor argues (at 32-34) that the trial court erred in responding to a note from the jury. In particular, Taylor contends that the trial court improperly amended its instruction on AAWA (Br. at 32). Taylor's argument is without merit.

A. Additional Background

In its final instructions to the jury, the trial court instructed on AAWA (i.e, count one of the indictment) as follows:

> The elements of the crime of aggravated assault while armed, each of which the Government must prove beyond a reasonable doubt, are that, number one, Shaquille Taylor caused serious bodily injury to Kareem Gage. Number two, Mr. Taylor was aware that his conduct created an extreme risk of serious bodily injury to Mr. Gage and under

> circumstances which demonstrated an extreme indifference to human life, Mr. Taylor engaged in that conduct nonetheless and number three, at the time of the offense Mr. Taylor was armed with or had readily available a weapon and that weapon was dangerous. (11/2 Tr. 63-64.)

During its deliberations, the jury sought clarification about the instruction, inquiring: "Is 1.b specific to injuring Mr. Gage or can we swap any human life with 'Mr. Gage'?" (R. 321 (Juror's Note of Nov. 3, 2023, at 12:49 p.m.)).

Upon receiving the note, the trial court asked the parties if they understood the jury's question (11/3 Tr. 3). The government believed the note referred to the second element of AAWA, and Taylor's counsel agreed (*id.* at 3-4).[10]

The court asked the parties to propose responses to the jury note (11/3 Tr. 4). The government opined that "the jury [wa]s asking whether [when] the [d]efendant was engaging in extraordinary reckless conduct he was aware of Mr. Ga[]ge, specifically" and argued that "the answer

[10] The written instructions are not contained in the Record. In context, the parties and the court understood that "1.b" in the jury note was a reference to the second element (i.e., "b") of the first count (i.e., "1") of the indictment (see 11/2 Tr. 63-64 (transcript of trial court's AAWA instructions)).

[wa]s clearly no, the [g]overnment d[id] not need to prove that" (*id.* at 10). The government relied on the (a)(2) aggravated assault statute's language criminalizing an assault committed "under circumstances manifesting extreme indifference to human life" where the perpetrator "intentionally and knowingly engages in conduct which creates a grave risk of serious bodily injury to another person and thereby causes serious bodily injury" (*id.*). The government noted that the statute did not "indicate the [d]efendant needs to be aware of who his victim is" (*id.*). Defense counsel said he "disagree[d,]" arguing, "[T]he statute is what it is and I think adding those additional like clarifications of the statute [would] defeat the whole purpose of the jury instruction" (*id.* at 13, 15).

The trial judge stated, "It seems to me that the jury instruction adds something which is not in the statute which is the problem with the [Redbook] instruction" (11/3 Tr. 13). The court noted that the plain language of the (a)(2) aggravated assault statute "does not require that extreme risk be associated with an extreme risk to any specific person" (*id.* at 11). The court also observed that case law supported the notion that the mens rea required for an (a)(2) aggravated assault was similar to that required for second-degree murder, which itself could be satisfied

by taking an action "such as firing a bullet into a room occupied . . . by several people. Starting a fire at the front of an occupied dwelling; shooting into a moving automobile necessarily occupied by human beings or playing a game of Russian Roulette." (*Id.* at 11.)[11]

The government urged the trial court to frame its response using the "injury to another person" language found in subsection (a)(2) of the aggravated assault statute (11/3 Tr. 13-14). The court agreed, over Taylor's objection (*id.* at 14-15). Thus, at 2:02 p.m., the court provided the following written response to the jury's note:

> I am in receipt of your note set [*sic*] at 12:49 p.m. today, which I understand to be asking about the second element of Count 1 (Aggravated Assault While Armed), found at page 24 of the final jury instructions. I understand you to be asking whether the government must prove beyond a reasonable doubt that Mr. Taylor was aware that his conduct created an extreme risk of serious bodily injury to Mr. Gage specifically, or

[11] The trial court did not provide citations for the cases it mentioned (11/3 Tr. 11 (discussing "*Perry*" and "*In Re VP*"). The quoted language, however, makes clear that the court was referring to *Perry v. United States*, 36 A.3d 799 (D.C. 2011) and *In re D.P.*, 122 A.3d 903 (D.C. 2015). *See In re D.P.*, 122 A.3d at 909 (citing *Perry* and noting that an (a)(2) aggravated assault "require[ed] a showing of 'gross recklessness,'" which can "be properly inferred from actions such as 'firing a bullet into a room occupied, as the defendant knows, by several people; starting a fire at the door of an occupied dwelling; shooting into a moving automobile, necessarily occupied by human beings; [or] playing a game of Russian [R]oulette'") (citations omitted).

> whether the government must prove beyond a reasonable doubt that Mr. Taylor was aware that his conduct created an extreme risk of serious bodily injury to "any human life."
>
> I instruct you as follows. To satisfy the second element of Aggravated Assault While Armed, the government must prove beyond a reasonable doubt that Mr. Taylor was aware that his conduct created an extreme risk of serious bodily injury to another person and under circumstances which demonstrated an extreme indifference to human life, Mr. Taylor engaged in that conduct nonetheless. (R. 322.)

At 2:50 p.m., the jury sent another note stating that it had reached its verdict (11/3 Tr. 16).

B. Standard of Review and Applicable Legal Principles.

A preserved challenge to the trial court's response to a jury note is reviewed for an abuse of discretion. *Wheeler v. United States*, 930 A.2d 232, 238 (D.C. 2007); *Washington v. United States*, 11 A.3d 16, 24 (D.C. 2015) ("The decision on what further instructions to issue to the jury lies within the sound discretion of the trial court, and we review for abuse.") (internal quotation marks omitted).

A trial court enjoys "broad discretion" in responding to a jury's note. *Foreman v. United States*, 114 A.3d 631, 644 (D.C. 2015) (citation omitted). "[W]hen a jury sends a note which demonstrates that it is

confused, the trial court must not allow that confusion to persist[,] but must make an appropriate and effective response dispelling the jury's confusion." *Gray v. United States*, 79 A.3d 326, 337 (D.C. 2013) (internal quotations marks and citations omitted). The trial court has a duty to clear away a jury's difficulties with "concrete accuracy." *Bollenbach v. United States*, 326 U.S. 607, 612-13 (1946).

In reviewing challenged instructions, a "central question" this Court asks is whether the challenged instruction "is an adequate statement of the law." *See Wheeler*, 930 A.2d at 238 (citations omitted). The D.C. Code provides that an aggravated assault can be committed where the defendant (1) intentionally causes another person serious bodily injury or, as relevant here, (2) "[u]nder circumstances manifesting indifference to human life, [the defendant] intentionally or knowingly engages in conduct which creates a grave risk of serious bodily injury to another person, and thereby causes serious bodily injury." D.C. Code § 22-404.01(a)(2). This Court has stated that, "[i]n order to give effect to the [aggravated assault] statute as a whole, subsection (a)(2) must be read as requiring . . . "gross recklessness . . . as shown by 'intentionally and knowingly' engaging in conduct" creating a "grave risk of seriously

bodily injury,' and doing so 'under circumstances manifesting extreme indifference to human life.'" *Perry v. United States*, 36 A.3d 799, 817 (D.C. 2011) (citations omitted). The Court elaborated that its interpretation of the required mens rea "is supported by the Committee Report's use of the words 'knowingly and *recklessly*' in describing the two-part aggravated statute." *Id.* (citing D.C. Council, Report on Bill 10-98 at 15 (Jan. 26, 1994) (Committee Report accompanying the passage of the aggravated assault statute)) (emphasis in original). Finally, this Court has observed that "'[r]ecklessness' by nature involves a lack of directed action." *Flores v. United States*, 37 A.3d 866, 869 (D.C. 2011).

C. Discussion

The trial court did not abuse its discretion in removing Gage's name from the second element of the AAWA instruction and replacing his name with the phrase "another person." The parties agreed that the jury was confused about the reference to Gage in the second, mens rea element of the AAWA instruction, which originally read: "Mr. Taylor was aware that his conduct created an extreme risk of serious bodily injury to Mr. Gage and under circumstances which demonstrated an extreme indifference to human life, Mr. Taylor engaged in that conduct nonetheless" (11/2 Tr. 63-

64). In its response, the court appropriately relied upon the statutory language and told the jury that "the government must prove beyond a reasonable doubt that Mr. Taylor was aware this his conduct created an extreme risk of serious bodily injury *to another person*" (R. 322) (emphasis supplied). *See* D.C. Code § 22-404.01(a)(2) (defendant "intentionally or knowingly engages in conduct which creates a grave risk of serious bodily injury *to another person*") (emphasis supplied). This was an accurate statement of the law. An (a)(2) aggravated assault requires "gross recklessness," *Perry*, 36 A.3d at 817, and this Court has made clear that recklessness is "consistently defined as conduct without direction or target." *Flores*, 37 A.3d at 869. As such, the gross recklessness required for an (a)(2) aggravated assault "need not be specifically directed at the injured party." *Id.* Thus, the trial court did not abuse its discretion in its response to the jury's note.

Taylor argues (at 32) that the trial court erred in its response because the revised instruction did not exactly match the aggravated assault instruction set forth in the Criminal Jury Instructions for the District of Columbia (the "Redbook"). But the Redbook is not binding on either the trial court or this Court. *Cousart v. United States*, 144 A.3d 27,

30 & n.7 (D.C. 2016) (referring to the Redbook instructions as "technically unofficial"). And, although this Court occasionally approves specific Redbook instructions, *see, e.g.*, *Smith v. United States*, 709 A.2d 78 (D.C. 1998) (en banc) (adopting Redbook instruction on "reasonable doubt"), Taylor has cited no case adopting the Redbook instruction for (a)(2) aggravated assault and we are aware of none.

Contrary to Taylor's suggestion (at 32), there is no indication in the record that the trial court's response confused or misled the jury. Rather, the court's response clarified the second element of AAWA, as evidenced by the fact that the jury returned its verdict shortly after receiving the response. *See Washington*, 111 A.3d at 25 (trial court did not abuse its discretion in clarifying jury instruction where, inter alia, "the jury did not express continuing confusion after the clarification was issued"). Further, the instruction was not misleading given that the trial court's response was an accurate statement of the law, as discussed above—indeed, it directly quoted the statute itself.

Taylor argues (at 32-33) that he was prejudiced by the trial court's response because it undermined his theory that he merely caused an accident that injured Gage. Notably, Taylor did not advance this

argument in the trial court. Moreover, although he now complains (at 33) that he could not reargue his case once the court clarified the AAWA instruction, he did not ask the trial court to permit him to reopen his closing argument to address the impact of the court's response. In any event, Taylor cannot show any unfair prejudice. The government argued in closing (and with no objection from Taylor): "No one here is saying that [Taylor] set out that day whenever he left his house, whenever he left with the intent to injure [ ] Gage . . . but when somebody operates their vehicle, a thousand pounds of huge metal at a hundred mils an hour when they're not looking at the road[,] not looking where they're going[,] that the natural and probable consequences of driving your vehicle that way is someone is going to be harmed and harmed very very very badly." (11/2 Tr. 79.) In other words, the government's closing argument was in line with the subsequently given revised instruction (and hence the plain terms of the statute itself), and Taylor accordingly was able to meet the force of the instruction. For his part, Taylor argued repeatedly that the incident amounted to an accident (*id.* at 85 ("When I opened, I made clear this is an accident. I told you it was an accident."); *id.* at 89 ("[W]e all know that D.C. streets are narrow. We all know that many people occupy

these streets and when you pursue someone on these streets, it can cause an accident like this."); *id.* at 91 ("The crash expert says the data shows you at some point he was trying to move around cars and that at that one to two seconds before he got to [ ] Gage, he was driving to avoid the accident. . . he turned around and that's when he got into the accident and he tried to do the best he could.")). Moreover, Taylor argued specifically that the government had not proven the second element of aggravated assault because Taylor had tried to avoid causing an accident (*id.* at 94-95 ("[W]hen he noticed that there was going to be an accident, the data shows that he tried to avoid it. There's nothing in the law that says he had to be successful in avoiding it . . . At that moment his state of mind was I've got to get out of here because I'm in danger. That's not intent to harm anyone.")).

Contrary to Taylor's suggestion (at 33-34), the trial court's revised instruction did not take the "spotlight" off of Gage and permit jurors to base their verdict on personal feelings instead of the evidence. As discussed supra, grossly reckless conduct need not be directed at a particular person. Rather, it is enough for a defendant to take actions that make it obviously likely that another person will suffer serious

bodily injury, and for the defendant to do so in a way that demonstrates that he does not care who might be in his way. *See In re D.P.*, 122 A.3d at 909 ("gross recklessness" can "be properly inferred from actions such as 'firing a bullet into a room occupied, as the defendant knows, by several people; starting a fire at the door of an occupied dwelling; shooting into a moving automobile, necessarily occupied by human beings; [or] playing a game of Russian [R]oulette'") (citations omitted). Here, Taylor did not drive a car on an empty country road. Rather, he drove the Nissan (1) in a residential area (2) at more than 60 miles per hour *over* the speed limit (3) while there were other cars on the road (10/31 Tr. 34-35 (Agent Smead's testimony other cars were on the road, and the speed limit was around 35 miles per hour); 11/1 Tr. 72-73 (Nissan was traveling at 96 miles per hour one-and-a-half seconds before the crash, and 81 miles per hour when it crashed); 11/2 Tr. 8 (the accident occurred near several row homes)). Under those circumstances, it was obvious that Taylor was traveling at speeds that could—and here, did—cause catastrophic injury. Indeed, Taylor's closing argument suggested in a slightly different context that driving at high speeds on "narrow" D.C. streets "would cause a situation like we have right now" (11/2 Tr. 89

(discussing why police policy limits police pursuit of suspects in traffic)). In any event, the government still had to prove that Taylor's conduct caused serious bodily injury to Gage. The first element of AAWA was unchanged by the court's response to the jury's note, and it required the government to prove beyond a reasonable doubt that "Shaquille Taylor caused serious bodily injury to Kareem Gage" (11/2/ Tr. 63-64).[12]

CONCLUSION

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

[12] Because the AAWA and ADW stemmed from a single transaction, we agree with Taylor (at 34-35) that, under this Court's precedents, his AAWA and ADW convictions merge. *See Nero v. United States*, 73 A.3d 153, 159 (D.C. 2013) ("AAWA and ADW merge."); *Gathy v. United States*, 754 A.2d 912, 919-920 (D.C. 2000) ("[W]e readily conclude that ADW is a lesser included offense of [AAWA]."). Thus, assuming that this Court agrees that there was no instructional error as to Taylor's AAWA conviction, this Court should remand this case with instructions to the trial court to vacate Taylor's ADW conviction.

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, Mindy Daniels, Esq., mindydaniels@verizon.net, on this 31st day of December, 2024.

/s/
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