No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

AARON FEAZELL
_____ — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA
_____ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

D.C. COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Aaron Feazell
(Your Name)

c/o Jejomar Untalan
1010 White Place SW
(Address)

Leesburg, VA 20175
(City, State, Zip Code)

571-439-9632
(Phone Number)

QUESTION(S) PRESENTED

Question (i). The information charges the defendant with violating a civil protection order (CPO) by being within a hundred (100) yards of the complainant. The same order, however, permits the defendant to be less than a hundred (100) yards from the complainant when both parties are at their shared apartment building. The trial evidence shows that both parties were present at the shared complex at the time of the alleged violation. Whether there is sufficient evidence to satisfy Due Process and to convict the defendant for disobeying the hundred (100) yard provision of the order, which is the specific offense charged in the information?

Question (ii). Procedural rules and fundamental principles of notice mandate the presentment to the Accused of the factual allegations constituting the offense charged in the information. There is a disconnect here between the charging document and the trial proof. Whether the inaccurate information filed by the prosecution comports with the Due Process Clause of the Fifth Amendment and its notion of fundamental fairness?

Question (iii). The trial court twice noted the variance between the information and the trial evidence, but the government did not move to amend its charging document and the defendant did not raise initially that issue in his appeal. Whether Due Process permits an appellate court to save a criminal prosecution via variance principles when the government did not litigate that issue at trial?

Question (iv). Whether the variance between the information and the trial evidence amounted to an impermissible constructive amendment that is inconsistent with the Due Process Clause of the Fifth Amendment?

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

None.

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TABLE OF AUTHORITIES

Constitutional Provisions

Statutes, Rules or Regulations

Cases

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[x] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[x] For cases from **state courts**:

The date on which the highest state court decided my case was 07/29/2020. A copy of that decision appears at Appendix A.

[X] A timely petition for rehearing was thereafter denied on the following date: 09/28/2020, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

Fifth Amendment:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

STATEMENT OF THE CASE

1. A CPO was issued in Case No. 2019 CPO 1537 on May 16, 2019 and set to expire on May 15, 2020. **Appendix C**. The order directs the defendant to stay at least 100 yards from Temple Doss and her home.

2. The defendant and Temple Doss lived in the same apartment complex and the order consequently provided, "As long as the Respondent lives at 2916 30th St., SE, he may enter that building. However, Respondent (defendant) shall not go to the third floor of the building. In addition, while he is at the building, he shall not be less than 10 feet away from the Petitioner (Temple Doss)." **Appendix C.**

3. On June 17, 2019, the government charged the defendant with one count of violating a civil protection order (CPO) pursuant to D.C. Code § 16-1005(g). The information filed with the trial court charged the defendant with violating the order on June 1, 2019 by "coming within 100 yards of the Petitioner's person." **Appendix D.**

4. On the date of this incident, Temple Doss testified that she was moving out of her third floor apartment and that the defendant was still living in his second floor apartment underneath her unit. Tr. 09/26/19 at 28 - 30.
5. Temple Doss testified that as she was moving in and out of the apartment building, the defendant came less than five (5) feet of her person. Tr. 09/26/19 at 31 - 32.
6. The trial judge convicted the defendant of violating the CPO on September 27, 2019 and found that the defendant came within five (5) feet of Temple Doss. Tr. 09/27/19 at 84.
7. On October 24, 2019, the defendant was sentenced to ninety (90) days incarceration, execution suspended as to all, and was placed on probation for a year.
8. A notice of appeal was filed on October 28, 2019 and the appeals court summarily affirmed the conviction July 29, 2020. **Appendix A.**
9. The appeals court denied a petition to rehear the case on September 28. **Appendix B.**

REASONS FOR GRANTING THE WRIT

The Court should grant review because the defendant seeks to clarify that Due Process obligates the government to allege in the information the correct set of essential facts constituting the criminal offense charged and to actually prove those actually prove those same essential facts at trial in order to properly secure a conviction.

The Accused has a Due Process right to notice of the "specific charge or factual allegations to be considered at the hearing." *In re Gault*, 387 U.S. 1, 33-34 (1967), *Russell v. United States*, 369 U.S. 749 (1962) (conviction overturned for indictment's failure to identify subject under congressional inquiry at the time witness refused to testify). The federal and the District of Columbia's criminal procedure Rule 7(c) both retained this principle of fundamental fairness within the modern concepts of pleading: "the information must be a plain, concise, and definite written statement of the essential facts constituting the offense charged and must be signed by an attorney for the government." Super. Ct. Crim. Pro. Rule 7(c).

Similar to an indictment, an information filed pursuant to

established procedural rules should not vary from the trial evidence such that it destroys the defendant's substantial right to be presented the factual allegations constituting the offense charged.

Moreover, the appellate court's use of variance principles to save a criminal prosecution when the government did not litigate that issue at trial offends Due Process and the defendant's right to an impartial tribunal.

The Court's review is necessary to reemphasize a return to the basic, fundamental protections for the Accused and to restore the citizenry's confidence in the "fairness, integrity, and public reputation of judicial proceedings". *United States v. Cotton*, 535 U.S. 625, 634, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002).

In *Cotton*, the indictment failed to allege threshold weights of cocaine which would have enhanced the statutory maximum sentences. The Supreme Court affirmed the enhanced sentences despite the indictment's omission and reasoned that Congress clearly intended large-scale drug operations to be severely punished more those involving lesser quantities. *See Cotton* at 634. The Court noted that it

would indeed harm the fairness, integrity and reputation of the proceedings if the *Cotton* defendants received lesser sentences due to a mere omission in the indictment.

With the full advantage of hindsight, this sort of rationale should no longer apply to today's society. The nation is in a state of urgency where it must rebuild and restore the ideals of trust and fairness in its criminal justice system. Debra Cassens Weiss, ABA addresses 'destabilizing loss of public confidence' in criminal justice in joint statement (July 16, 2015) https://www.abajournal.com/news/article/aba_addresses_destabilizing_loss_of_public_confidence_in_criminal_justice_i .

Americans have long held to the fundamental beliefs that the government bears the burden to prove the defendant guilty and that the Accused is entitled to a fair trial before a fair tribunal. See *In re Winship*, 397 U.S. 358, 364 (1970), *In re Murchison*, 349 U.S. 133 (1955).

From a reasonable American's perspective, it would seem to diminish the government burden to prosecute beyond a reasonable doubt if the principles of variance upholds the defendant's conviction. It

would further perpetuate the perception of the judiciary's bias for the prosecution when the system appears to overlook or minimize the government's error in filing the charging document.

From a layman's perspective, how can a person be convicted of a crime when the charging document itself is incorrect? It does appear that perceived bias for the government or excusing the government from established rules of criminal procedure sows the seeds of anger and frustration. And thus, a long train of errors or abuses, no matter how slight, ultimately questions the fairness, integrity and reputation of the criminal justice system. Geoffrey M. Klineberg, D.C. Bar, D.C. Court of Appeals Issue Statements on Justice and Equality (June 11, 2020)

https://www.dcbar.org/news-events/news/d-c-bar,-d-c-court-of-appeals-issue-statements-on-

Argument (i). The Court should grant review because Due Process forbids convictions based upon insufficient evidence, as in this case, where the defendant is accused of violating the hundred yard provision of a CPO that actually allows for a limited exception when the concerned parties are at their shared residential complex.

The Court had long held that, under the Due Process Clause, it would set aside convictions that are not supported by evidence. *See*

Thompson v. City of Louisville, 362 U.S. 199 (1960) (loitering statute required proof that Accused was without means of support); *Garner v. Louisiana*, 368 U.S. 157 (1961) (simply seating diner is not disturbing the peace); *Taylor v. Louisiana*, 370 U.S. 154 (1962) (no breach of the peace to refuse to move to unlawful segregation waiting room); *Barr v. City of Columbia*, 378 U.S. 146 (1964) (evidence of notice to trespass defendant required); *Johnson v. Florida*, 391 U.S. 596 (1968) (merely sitting on a bench is not evidence of unlawful wandering).

Pursuant to the Due Process Clause of the Fifth Amendment, the appellate court reviews the sufficiency of the evidence *de novo* to determine "whether, 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." *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979), *See United States v. Bamiduro*, 718 A.2d 547, 550 (D.C. 1998). Furthermore, the appellate court may not reverse the trial court's findings of a CPO violation "`unless they are without evidentiary support or plainly wrong.'" *See Jones v. Harkness*, 709 A.2d 722, 723 (D.C. 1998) (quoting *In re Vance*,

697 A.2d 42, 44 (D.C. 1997).

But when the defense fails to move for a judgment of acquittal at trial, the court's failure to direct an acquittal based upon the insufficiency of the evidence will be disturbed only to correct "manifest error" or "serious injustice." *See Battle v. United States*, 92 U.S. App.D.C. 220, 206 F.2d 440 (1953), *See Richardson v. United States*, 276 A.2d 237 (1971).

A review of previous CPO cases illuminates the insufficiency of the trial evidence in this case and urges the reversal of the conviction to correct the "manifest error." The trial judge in this case twice noted the apparent disjunct between the actual information and the government's evidence. Tr. 09/26/20 at 26 and Tr. 09/27/20 at 76. In previous CPO cases, the court carefully examined the information and protection order in determining the sufficiency of the evidence.

In *Davis v. United States*, 834 A.2d 861 (D.C. 2003), the court relied upon the date of the criminal information in determining whether there was sufficient evidence to show that the defendant failed to complete the required domestic violence counseling program. The

evidence showed that he missed three classes before the date he allegedly violated the CPO by not attending the program.

The government's first witness established that four absences were required for removal from the program. The government's second witness, however, testified that three absences were enough to have appellant removed from the program. There was no evidence that the second witness ever explained these rules to Davis. The court held that no impartial trier of fact could find beyond a reasonable doubt that appellant knew or understood, or should have known or understood, that three absences would terminate him from the program.

Much like the *Davis* case, no impartial trier of fact can also find beyond a reasonable doubt the defendant here violated the 100-yard provision as charged in the information.

In *In re Jackson*, 51 A.3d 529 (D.C. 2012), the court again examines the language in the protective order and the information in determining the sufficiency of the evidence.

The government specifically charged the defendant with violating the CPO by failing to "enroll in and complete a counseling program for

alcohol [abuse]; drug abuse; and domestic violence" designated by the probation office. A probation officer referred and transported the defendant to the Re-Entry and Sanctions Center (RSC), a facility which the defendant voluntarily left. The probation officer testified that the RSC was a drug assessment facility but not a treatment program. The probation office never identified or instructed the defendant to a specific treatment program, a precise requirement of the CPO. The court again concluded that there was insufficient evidence to support a conviction based on the information filed.

Davis and *Jackson* highlight the rigor with which the court scrutinizes the sufficiency of evidence with respect to the elements of the charge contained in the information. It would certainly be a "serious injustice" under *Battle* to gloss over the inconsistency between the information here and the trial evidence.

Protective orders may at times provide general prohibitions and limited exceptions, and the court must take care that the trial evidence is carefully tailored to an actual violation. In *In re Ferguson*, 37 A.3d 890 (D.C. 2012), for example, the protection order prohibited Ferguson

from contacting his former girlfriend unless it was about their child. Ferguson thereafter called his ex-girlfriend and said, "Happy New Year." The ex-girlfriend told Ferguson not to call her and immediately hung up.

The court found that there was a lack of evidence to show that Ferguson violated the order based on the greeting alone. The court reasoned that Ferguson was generally prohibited from contacting his ex-girlfriend, but was allowed a limited exception to contact her for issues relating to their child.

Similarly in this case, the defendant was generally prohibited from being within a hundred yards of Temple Doss. The limited exception in this protective order was when both parties were at the shared apartment building. During that limited time, the hundred yard prohibition does not apply.

The information against the defendant states that he violated the civil protection order by coming within a hundred yards of Temple Doss' person. But the trial evidence in this case establishes that the charged violation occurred while the defendant was at the shared apartment

complex. The protection order clearly allows the defendant to be within a hundred yards of Temple Doss in that limited instance.

<u>Argument (ii)</u>. The Court should grant review because the government's failure to properly present in the information the essential allegations constituting the criminal offense does not comport with fundamental fairness and falls short of the process that is due under the District's Super. Ct. Crim. Pro. Rule 7(c).

The Accused has a Due Process right to notice of the "specific charge or factual allegations to be considered at the hearing." *In re Gault*, 387 U.S. 1, 33-34 (1967), *Russell v. United States*, 369 U.S. 749 (1962) (conviction overturned for indictment's failure to identify subject under congressional inquiry at the time witness refused to testify). Rule 7(c) of the Federal Rules of Criminal Procedure retains this principle of fundamental fairness within the modern concepts of pleading.

The District's own Rule 7(c) mimics its federal counterpart and states that the "information must be a plain, concise, and definite written statement of the essential facts constituting the offense charged and must be signed by an attorney for the government." Super. Ct. Crim. Pro. Rule 7(c).

Means and party are essential elements of a crime that must be properly alleged in the charging document in order to satisfy the rules of criminal procedure and Due Process. *See Stirone v. United States*, 361 U.S. 212 (1960) (indictment incorrectly alleged importation of sane), *Russell v. United States*, 369 U.S. 749 (1962) (indictment failed to identify subject matter under congressional inquiry when witness refused to testify), (Oliver W.) *Johnson v. United States*, 613 A.2d 1381 (D.C. 1992) (indictment incorrectly alleged that the signature was forged on check), *Joseph v. United States*, 597 A.2d 14, 17 (D.C.1991) (indictment failed to name assault victim where multiple parties were injured).

Rule 7(c) and its pertinent case law clearly obligates the government to plainly state the essential circumstances and parties related to the offense(s) charged. The trial court noted, on at least two (2) occasions, the inconsistency between the information filed by the government and its trial evidence. Tr. 09/26/20 at 26 and Tr. 09/27/20 at 76. The trial record, however, is devoid of any ruling or resolution as to this disparity and the apparent noncompliance with the procedural

process in Rule 7(c).

Due Process and fundamental fairness at the very least requires the courts to apply the plain language of the law, make the appropriate inquiries to inform its decision and to explain its rationale. *See Bearden v. Georgia*, 461 U.S. 660, 672 (1983) (fundamental fairness requires court to inquire upon circumstances of failure to pay fine or restitution before revoking probation), *Kent v. United States*, 383 U.S. 541 (1966) (fundamental fairness requires the juvenile court to explain how it satisfied the full investigation required by statute before waiving jurisdiction over a youth). In *Kent,* a statute required a "full investigation" to be conducted by the trial court before transferring a juvenile to adult court. In this case, the case law requires some finding that an impeachable conviction was based on a final, appealable sentence. As in *Kent*, there was no such finding, explanation or statement of rationale by the trial court here as to the inconsistency between the information and the trial evidence.

Due Process necessitates the fair application of the law and reasoned rulings to protect against arbitrary judicial action. *See Bouie*

v. City of Columbia, 378 U.S. 347 (1964) (judicial expansion of trespass statute at odds with plain language), *Douglas v. Buder*, 412 U. S. 430, 432 (1973) (per curiam) (due process cannot allow the term arrest to somehow include a traffic citation). Here, it would be arbitrary to allow the government, without explanation, to plead a set of essential facts as required by the Rules and then to convict the defendant on a different set of essential facts.

Lastly, an amendment to the charging document now would plunge the information deeper into the sea of arbitrariness because the time for an amendment under the rules of criminal procedure have long expired. "Unless an additional or different offense is charged or a substantial right of the defendant is prejudiced, the court may permit an information to be amended at any time before the verdict or finding." Super. Ct. Crim. Pro. Rule 7(e). The time for amending the information before the trial court's findings has already passed. A constructive amendment at this point in the case would violate the substantial protections due process protections set forth in Rule 7(c) and (e).

<u>Argument (iii).</u> Because the government failed to litigate variance on two (2) occasions at trial and the defendant did not initially raise it on appeal, Due Process and the need for an impartial judiciary prohibits the appellate court from curing the deficient information filed by the prosecution.

"[J]ustice must satisfy the appearance of justice." *Offutt v. United States*, 348 U. S. 11, 14 (1954) (summary contempt reversed based on fairness concerns and judge's personal embroilment). "Prosecution and judgment are two quite separate functions; they must not merge." *Davis v. United States*, 567 A.2d 36, 36 (D.C. 1989) quoting Judge Learned Hand in *United States v. Marzano*, 149 F.2d 923, 926 (2d Cir. 1945).

The jealously guarded right to an impartial tribunal extends from evidentiary hearings before courts and agencies through the appellate stages, and even cautions against the probability and appearance of unfairness. *See In re Murchison*, 349 U.S. 133, 135 - 137 (1955) (judge who is a one-man grand jury in bribery proceeding cannot preside over contempt charges arising from same grand jury), *Aetna Life Ins. Co. v. LaVoie*, 475 U.S. 813 (1986) (state supreme court judge with pending

suit on an indistinguishable claim failed to recuse)

Here, there seems to be an improper appearance that the judiciary was somewhat aligned towards the prosecution in attempting to cure the disparity between the information and trial evidence.

Multiple cases have cautioned against the appearance of any judicial alignment with the prosecution. *See Isom v. Arkansas*, 140 S. Ct. 342 (2019) (concerns about the judge presiding over a defendant who was a suspect in a major case when the judge was a prosecutor). This Court has specifically ruled, for example, that a trial judge cannot comment on the defendant's credibility and interpret the defendant's wiping of his hands during his testimony. *See Quercia v. United States*, 289 U.S. 466, 471 (1933). The judge also cannot be an advocate for the judiciary as the prosecution must serve different functions. *See Shannon v. United States*, 311 A.2d 501, 505 (D.C. 1973) (trial judge cannot make or anticipate objections).

Tactical assistance to the prosecution is another area of concern. *See Greenhow v. United States*, 490 A. 2d 1130 (1985), the trial judge was cautioned for spearheading the cross-examination of the defendant.

The defendant in that case had testified that the cash in his possession was from his job as a street vendor. The court then provided the defendant's intake report to the prosecution and flagged this as an area for impeachment. *Greenhow* at 1135.

Further, it is also improper for the trial court to arrogate the prosecutorial function by suggesting tactical strategy. *See Robinson v. United States*, 513 A.2d 218 (D.C.1986). In *Robinson*, the trial court advised the prosecutor to first impeach the witness with a prior inconsistent statement, and then finish by having the witness adopt the truthful statements into evidence. *Robinson* at 222.

Here, it would seem to be a tactical advantage to the prosecution for the judiciary to now cure the defective information during the appellate phase. The government did not move to amend the information despite commentary from the trial court despite at least two (2) opportunities to do so.

<u>Argument (iv).</u> The appellate court's use of variance in this case is an improper constructive amendment of the information because the discrepancy involved the essential elements of the offense, an inconsistency between distinctly different sets of facts, and it broadened information unduly subjecting the defendant to a different provision of the CPO. See *Stirone v. United States*, 361 U.S. 212 (1960), *Carter v. United States*, 826 A.2d 300 (D.C. 2003).

Under *Carter*, a constructive amendment occurs when the trial evidence involves a complex of facts distinctly different from the charging document. *See Carter* at 306. The information, here, charges the defendant with violating a civil protection order pursuant to D.C. Code § 16-1005(g) (2020). The government bears the burden to prove that the defendant willfully disobeyed a civil protection order. *See Davis v. United States*, 834 A. 2d 861, 866 (D.C. 2003). In order to prove a wilful violation of the order, the government must rely upon a specific provision in its case-in-chief.

Moreover, means and party are essential elements of a crime and their disparities at trial constitute a constructive amendment. *See Joseph v. United States*, 597 A.2d 14, 17 (D.C.1991). Joseph was indicted for assaulting another with the intent to kill him while armed;

but the indictment failed to name a specific victim in a case where multiple persons were injured. The trial court interpreted the charging document to read that either Joseph assaulted Dickey with the intent to kill Dickey or Joseph assaulted Richardson with the intent to kill Richardson.

The trial evidence, however, showed that Joseph assaulted Richardson with the intent to kill Dickey. The appellate court found these discrepancies to result in a constructive amendment of the indictment as they involved the means and parties to the criminal offense.

In this case, the court order itself and its pertinent provisions are essential elements to the offense as they describe the means upon which a violation may be prosecuted. The order at the heart of this case makes an express distinction between the hundred yard prohibition and ten feet limit. Therefore, by nature of the order itself, distance is an essential element to the case and the factual circumstances of the distant measurements themselves carry different and distinct consequences.

As a general matter, the defendant must stay away from Doss by a hundred yards. But when the defendant and Doss are at their shared apartment complex, a ten foot limitation applies. The order at least envisioned a dual complex of facts: one set applies to when the parties are outside their residential building, and another when they are at their shared address. See *Carter v. United States*, 826 A.2d 300 (D.C. 2003).

The information charged a hundred foot violation which would encompass operative facts that occurred outside the shared building complex. The ensuing trial, however, pursued a ten feet violation and elicited testimony to factual circumstances at the shared location. These are a complex of facts that are distinctly different by nature of the order itself.

The constructive amendment, furthermore, impermissibly broadened the information by subjecting the defendant to another means of conviction: violating the hundred (100) yard provision (which was initially charged) or the ten (10) feet provision (as prosecuted at trial). See *Stirone v. United States*, 361 U.S. 212, 80 S.Ct. 270, 4

L.Ed.2d 252 (1960), (Oliver W.) *Johnson v. United States*, 613 A.2d 1381 (D.C. 1992).

In *Stirone*, the indictment alleged criminal interference with the interstate importation of sand into Pennsylvania, but the evidence at trial also included interference with the interstate exportation of steel from Pennsylvania. *Id.* at 214. Appellant's conviction for a CPO violation here is based upon an expanded charging document as in *Stirone*. The appellant was incorrectly subjected to conviction for the hundred yard provision as originally charged as well as the ten feet limitation as constructively amended.

The appellate court cautioned against such an expansion of the charging document. *See* (Oliver W.) *Johnson v. United States*, 613 A.2d 1381 (D.C. 1992). In that case, Johnson's indictment spelled out the manner of forgery as "a falsely made signature" while the trial evidence alleged the forgery as the writing of any part of a check without the signatory's authority. *Johnson* at 1386-87. The *Johnson* court found the evidence to have been a constructive amendment of the indictment and reversed the forgery convictions. Likewise, the appellant's

conviction should be reversed because the government initially alleged one means of violating the CPO and then tried him on violating a different provision of the order.

CONCLUSION

WHEREFORE, the petition for a writ of certiorari should be granted.

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

AARON FEAZELL — PETITIONER
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

PROOF OF SERVICE

I, Jejomar Untalan, do swear or declare that on this date, March 5, 20 21, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Elizabeth Trosman, AUSA
US Attorney's Office - Appeals
555 4th Street NW
Washington, D.C. 20530

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 5, 20 21

(Signature)

District of Columbia
Court of Appeals

No. 19-CM-1010

AARON L. FEAZELL,
Appellant,

v.

2019 DVM 610

UNITED STATES,
Appellee.

BEFORE: Beckwith and McLeese, Associate Judges, and Nebeker, Senior Judge.

J U D G M E N T

On consideration of appellee's motion for summary affirmance, the opposition thereto, appellant's motion to supplement the record, appellant's brief and appendix, and the record on appeal, it is

ORDERED that appellant's motion to supplement the record is granted and the civil protection order (CPO) attached to the motion is filed as a supplemental record. It is

FURTHER ORDERED that appellee's motion for summary affirmance is granted. *See Watson v. United States*, 73 A.3d 130 (D.C. 2013). Appellant argues the evidence was insufficient to support his conviction for violating a CPO, in violation of D.C. Code §§ 16-1004(d) and 1005(g), by coming within 100 yards of complainant. However, both parties proceeded at trial under the theory that appellant violated another provision of the CPO that prohibited him from coming with ten feet when both parties were at the apartment building, and appellant himself did not object to the variance and in fact testified that he did not come within ten feet of the complainant when they were both at the apartment. Because appellant failed to raise this variance issue at trial, we review for plain error. *See Clark v. United States*, 28 A.3d 514, 517 (D.C. 2011); *Smith v. United States*, 801 A.2d 958, 962 (D.C. 2002). Here, the change in the government's theory at trial constituted a variance; nonetheless, the variance did not prejudice appellant. *See Tann v. United States*, 127 A.3d 400, 451 (D.C. 2015) (explaining that prejudice occurs when the variance deprives the defendant of an opportunity to prepare an adequate defense or

exposes him to risk of another prosecution); *Carter v. United States*, 826 A.2d 300, 304 (D.C. 2003) (stating that when a variance occurs, reversal is only proper upon a showing of prejudice); *Ingram v. United States*, 592 A.2d 992, 1006 (D.C. 1991) (explaining that a variance occurs when there is an inconsistency between the facts proved at trial and the facts in the indictment but the essential elements of the offense are the same). Appellant does not challenge on appeal the sufficiency of the evidence that he violated the provision of the CPO prohibiting him from coming within ten feet of the complainant under certain circumstances. Therefore, the trial court did not commit plain error when it found appellant guilty of violation of the CPO under the theory the government presented at trial. It is

FURTHER ORDERED and ADJUDGED that the judgment on appeal is affirmed.

ENTERED BY DIRECTION OF THE COURT:

Julio A. Castillo

JULIO A. CASTILLO
Clerk of the Court

Copies e-served:

Honorable Maribeth Raffinan

Director, Criminal Division

Jejomar G. Untalan, Esquire

Elizabeth Trosman, Esquire
Assistant United States Attorney

cml

District of Columbia
Court of Appeals

No. 19-CM-1010

AARON L. FEAZELL,
Appellant,

v. **DVM610-19**

UNITED STATES,
Appellee.

BEFORE: Beckwith and McLeese, Associate Judges, and Nebeker, Senior Judge.

O R D E R

On consideration of appellant's petition for rehearing, it is

ORDERED that appellant's petition for rehearing is denied.

PER CURIAM

Copies to:

Honorable Maribeth Raffinan

Director, Criminal Division

Copies e-served to:

Jejomar G. Untalan, Esquire

Elizabeth Trosman, Esquire
Assistant United States Attorney

CIVIL PROTECTION ORDER
DOMESTIC VIOLENCE

Case No. 2019 CPO 1537

☒ Adjudicated Hearing
☐ Consent w/ Admissions
☐ Consent w/o Admissions
☐ Default Order

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
(202) 879-0157

PETITIONER ☐ Minor

Temple Doss
First Name Middle Last Name

PETITIONER IDENTIFIERS

7/5/1985
Petitioner's Date of Birth

Vs

RESPONDENT ☐ Minor

Aaron Feazell
First Name Middle Last Name

Other protected person/DOB

RESPONDENT'S IDENTIFIERS

Sex	Race	DOB	Height	Weight
M	AA	08/09/1977		
Eyes	Hair	PDID#:		
Driver's License #			State	

Relationship to Petitioner: ☐ Have a child in common; ☐ Marriage; ☐ Blood; ☐ Legal Custody; ☐ Now or previously having shared the same residence; ☒ Romantic/dating relationship; ☐ Other (specify)

Respondent's Address:
2916 30th Street SE APT 21
Washington DC 20020

THE COURT HEREBY FINDS:

☒ That it has jurisdiction over the parties and subject matter, and the Respondent has been provided reasonable notice and opportunity to be heard. That there is good cause to believe that the Respondent committed or threatened a criminal offense. Specifically the Court finds that the Respondent committed the following:
Threats to do Bodily Harm on 2/27/19 and 4/18/19

☐ That the Respondent has knowingly and voluntarily waived his/her right to a hearing and admits to:

☐ That it has jurisdiction and that the Respondent has agreed, without admitting to the allegations in the Petition to the entry of this Order.

THE COURT HEREBY ORDERS that from May 16, 2019 until May 15, 2020 *(a period not to exceed one year)*

☒ Respondent shall not assault, threaten, harass, or stalk petitioner or her child(ren) or destroy Petitioner's property.

☒ Respondent shall stay at least 100 yards away from Petitioner's ☒ person, ☒ home, ☒ workplace, ☒ vehicle, ☒ children's school/daycare, ☒ Other: [redacted]

Additional terms of this order follow on succeeding pages.

WARNING TO RESPONDENT:
This order shall be enforced by the courts of any state, the District of Columbia, and U.S. Territory, and may be enforced by Tribal Lands (18 U.S.C. § 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. § 2262). Federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition. (18 U.S.C. § 922(g)(8))

ONLY THE COURT CAN CHANGE THIS ORDER

☒ Respondent shall not contact Petitioner:
☒ By telephone ☒ In writing ☒ By electronic or social media ☒ In any other manner, either directly or indirectly through a third party ☐ except under the following conditions:

☐ Temporary custody of the following minor children is awarded to: ☐ Petitioner ☐ Respondent until further order of this Court or the expiration date of this Order. *(Specify names and dates of birth):*

☐ Visitation rights with the above minor child(ren) are awarded to: ☐ Respondent ☐ Petitioner under the following conditions: *(specify dates, times, person who will pick up and drop off, etc.)*:

☐ Respondent shall vacate the residence at: _____
on or before *(date)* _____.

☐ The Metropolitan Police Department shall accompany Respondent/Petitioner to retrieve his/her personal belongings from *(location)*: _____

On (*date*) _____ at *(time)* _____ ☐ am ☐ pm , and stand by to ensure Petitioner's safety and ☐ shall retrieve Petitioner's keys from Respondent.

☐ Respondent shall provide the petitioner with financial assistance in the amount of $ _____
☐ per month ☐ one time only ☐ other payment: _____

for ☐ rent/mortgage assistance; ☐ spousal support; ☐ property damage; ☐ medical cost; ☐ Other _____
Payment shall be made by (date(s)): _____
through the D.C. Superior Court Registry, Room JM-300, 500 Indiana Avenue, N.W. Washington, D.C. 20001. Checks will be made payable to the Clerk, D.C. Superior Court. Payments shall be forwarded to Petitioner at (non-confidential address): _____

☐ Possession and use of the following jointly owned property is awarded to:
☐ Petitioner: _____
☐ Respondent: _____

☐ Respondent shall enroll in and complete a counseling program for: ☐ alcohol; ☐ drug abuse; ☐ domestic violence; ☐ parenting skills; ☐ family violence; ☐ other: _____

Respondent shall report to the Probation Office (CSOSA), **300 Indiana Ave, NW Room 2070** TODAY and submit to a photograph for identification purposes. Respondent shall submit to an assessment by CSOSA and enroll in counseling programs on the date prescribed by CSOSA. The respondent shall refrain from using illegal drugs and shall submit to drug testing as directed by CSOSA.

☒ Other: As long as the Respondent lives at 2916 30th St., SE, he may enter that building. However, Respondent shall not go to the third floor of the building. In addition, while he is at the building, he shall not be less than 10 feet away from the Petitioner.

If Respondent has a change of address at any time, he/she immediately must provide the Domestic Violence Clerk's Office of the D.C. Superior Court with his/her correct, new address.

DC Law Firearms Warning

You must relinquish within 24 hours after being served with Civil Protection Order (CPO) all firearms that you own or possess to your local law enforcement officials. Failure to do so is a criminal offense under D.C. Code §22-4502 that if convicted, carries a penalty of two (2) to 10 years in prison or a fine of $15,000 or both. For more information about surrendering your firearm, please call (202) 727-4275 (Gun Control/Firearms Registration Unit).

Federal Law Firearms Warning

As a result of this order, it may be unlawful for the respondent to possess or purchase a firearm, including a rifle pistol, or revolver, or ammunition pursuant to federal law under 18 U.S.C. 922(g)(8). If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.

FAILURE TO COMPLY WITH THIS ORDER IS A CRIMINAL OFFENSE AND CARRIES A PENALTY OF 180 DAYS IN JAIL AND/OR A FINE OF $1,000.

☒ Respondent was served with a copy in open court.

☐ Respondent failed to appear. A DEFAULT Protection Order is issued. The Court finds that there was proper service and notice on the Respondent of the petition, and good cause for the issuance of this order. Respondent **shall** comply with all conditions of this Protection Order. The respondent has fourteen (14) days from the service of this order to file a motion to set aside the default judgment. The motion must state 1) the reason for failing to appear at the hearing and 2) any defense to the allegations in the petition or any other reason why the Court should not issue the Order.

If a motion to extend is filed timely, this Order will remain in effect until the court rules on that motion.

_____ _____

Respondent's Signature Date

John McCall 5-16-19

Judge's/Magistrate Judge's Signature Date Date

☐ **Child Support Addendum Attached**

THIS ORDER IS HEREBY EXTENDED FROM *(today's date):* _____ to _____

_____ _____

Judge's/Magistrate Judge's Signature Date

DIRECTIONS TO LAW ENFORCEMENT OFFICER ENFORCING THIS ORDER

This Order was issued in accordance with the requirements of the Full Faith and Credit Provisions of the Violence Against Women Act, Title IV, Subtitle B, Chapter 2 of the Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. section 2265, and **this Order is valid and enforceable in the District of Columbia and in all other U.S. States, Territories and Tribal Lands.**

Reporting alleged violations. If Respondent violates the terms of this Order and there has not been an arrest Petitioner may contact the Clerk of the Court of the county/state in which the violation occurred and complete an affidavit in support of the violation, or the Petitioner may contact the prosecutor's office for assistance in filing an action for civil or criminal contempt. The prosecutor may decide to file a criminal charge, if warranted by the evidence.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
DOMESTIC VIOLENCE DIVISION

500 INDIANA AVENUE, N.W., ROOM 4510
WASHINGTON, D.C. 20001
TELEPHONE (202) 879-0157

TEMPLE DOSS Petitioner ☐ Minor

VS.

Case No: 2019 CPO 001537

AARON L FEAZELL Respondent ☐ Minor

TEMPORARY PROTECTION ORDER

Upon consideration of the petition filed in this case, the Court finds that the safety or welfare of Petitioner and/or a family member is endangered by Respondent within the meaning of D.C. Code 16-1004(b)(1) (2008).

Therefore, **IT IS HEREBY ORDERED** that Respondent shall observe the following conditions:

☑ Respondent shall NOT assault threaten stalk harass or physically abuse Petitioner or his/her child(ren) or destroy property in any manner.

☑ Respondent shall stay at least ~~100 yards~~ 25 feet away from petitioner's ☑ person ☑ home ☑ work place ☑ vehicle ☑ children's school/day care ☑ other: MR. Miguel Tomlin

☑ Respondent shall not contact Petitioner in any manner, including but not limited to: ☑ by telephone ☑ in writing ☑ electronic or social media ☑ in any other manner, either directly or through a third party.

☐ Temporary custody of the following minor children is awarded to: ☐ Petitioner ☐ Respondent until further order of this Court or the expiration of this order _____

_____

(Names and Dates of Birth)

☐ Respondent shall vacate the residence at: _____

on or before _____, 20__ and turn over all keys to the residence to Petitioner.

☑ The Police Authorities shall stand by to: ☐ prevent violence while the Respondent/Petitioner vacates the residence; ☐ retrieve Petitioner's keys from Respondent; ☑ assist with service of process upon the Respondent and complete the Return of Service forms.

☐ Other:

FAILURE TO COMPLY WITH THIS ORDER IS A CRIMINAL OFFENSE AND CARRIES A PENALTY OF UP TO 180 DAYS IN JAIL AND/OR A FINE OF $1,000.00. IF A RESPONDENT SERVED WITH THIS ORDER FAILS TO APPEAR AT THE HEARING ON THE CIVIL PROTECTION ORDER AND A DEFAULT CIVIL PROTECTION ORDER IS ENTERED, THIS ORDER SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL THE CIVIL PROTECTION ORDER IS SERVED. IF THE COURT IS CLOSED ON THE DAY THAT THIS ORDER IS TO EXPIRE, THIS ORDER SHALL CONTINUE IN EFFECT UNTIL THE NEXT REGULAR COURT BUSINESS DAY.

THIS ORDER EXPIRES ON:

5/31, 2019		4/19/2019
EXPIRATION DATE	Judge/Magistrate Judge	Date

THIS ORDER HAS BEEN **EXTENDED** UNTIL:

_____, 20__		
EXPIRATION DATE	Judge/Magistrate Judge	Date
_____, 20__		
EXPIRATION DATE	Judge/Magistrate Judge	Date

009

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

INFORMATION

DCTN: U19017807
Lockup No: 109
Case No:
Citation Date:

The United States Attorney for the District of Columbia informs the Court that within the District of Columbia:

Defendant's Name:	**Aaron**	**L**	**Feazell**	**505474**	**19094906**	**08/09/1977**
	(First)	**(MI)**	**(Last)**	**(PDID)**	**(CCNO)**	**(DOB)**

Also Known As: Aaron Lee Feazell
(First) (Middle) (Last)

Address: 2916 30TH STREET SE Apt. 21, WASHINGTON DC

1 On or about June 1, 2019, within the District of Columbia, Aaron L Feazell did violate a Civil Protection Order, 2019 CPO 001537, which was issued on May 16, 2019, by coming within 100 yards of the Petitioner's person. **(Civil Protection Order Violation, in violation of 16 D.C. Code, Sections 1004(d), 1005(g) (2001 ed.))**

Co-Defendants:

Rule 105: ☐ **Judge:** _____

United States Attorney for the District of Columbia

By: Assistant United States Attorney	**Date: June 17, 2019**
By Officer:	**Badge No.:**
	PSA: 702 Domestic ☒