

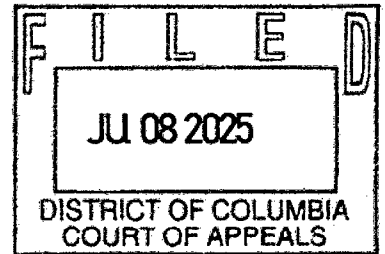
DISTRICT OF COLUMBIA COURT OF APPEALS

No. 22-CM-0482

DEVON J. TUCKER, APPELLANT,

v.

UNITED STATES, APPELLEE.



Appeal from the Superior Court of the
District of Columbia
(2021-DVM-000867)

(Hon. Jennifer M. Anderson, Trial Judge)

(Submitted April 25, 2023)

Decided July 8, 2025)

Before EASTERLY and HOWARD, *Associate Judges*, and THOMPSON, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Appellant, Devon Tucker, appeals from the Superior Court's judgment convicting him of simple assault of Hillary Tucker (appellant's wife, from whom he was "separated" at the time of the incident). On appeal, Mr. Tucker claims that once the prosecutor, for impeachment purposes, had introduced some portions of the body-worn camera (BWC) video of his encounter with police, the trial court erred in declining to require the government to play the full BWC video. Our review, however, is limited to whether the trial court abused its discretion. Upon review of the record, we discern no abuse of discretion; therefore, we affirm.

I. Background

Mr. Tucker proceeded to a bench trial where the following was revealed in testimony. Ms. Tucker first testified that on August 17, 2021, after she had returned to her apartment from an evening out with her cousin, Mr. Tucker, who was in the apartment taking care of the couple's infant child, questioned her about her activities

Appendix A1

that evening. Ms. Tucker allowed Mr. Tucker to look at her cell phone to see the exchanges with her cousin coordinating their meet-up, and then she went to bed. At some point thereafter, Mr. Tucker entered the bedroom, straddled Ms. Tucker while she lay on her back, accused her of lying about where she had been that evening, grabbed her throat in a choking action, and then struck her twice in the face. Mr. Tucker eventually pushed her from the bed, picked up the baby from a nearby bassinet, and, calling Ms. Tucker a "ho[]," said that he would be taking the baby home with him.

Ms. Tucker then testified that she held out her arms to take the child away from Mr. Tucker and may have touched his shirt or shoulder, and that Mr. Tucker responded by kicking her in the stomach and threatening to punch her in the face if she touched him again. When she threatened to call the police, Mr. Tucker called them instead. Once police arrived at the apartment building to investigate the incident, their BWC captured the account that Mr. Tucker gave the officers.

The prosecutor introduced into evidence police photographs of Ms. Tucker's face, which was swollen in the area of her left eye and cheekbone. Ms. Tucker denied having struck, pushed, or scratched Mr. Tucker or having jumped on him. She acknowledged on cross-examination that she had obtained a civil protection order against Mr. Tucker and was seeking full custody of the couple's child (a matter that the trial court observed went "to bias").

The government rested their case and Mr. Tucker moved for a judgment of acquittal, which the trial court denied. Mr. Tucker's recount of the incident largely differed from Ms. Tucker's. During the government's cross-examination of Mr. Tucker, the prosecutor sought to impeach him with statements he made to police as portrayed on a portion of the BWC video. Initially the government appeared to be seeking to introduce the entire video, but Mr. Tucker's trial counsel objected to the admission of the entire video on the basis that "there is definite inadmissible hearsay in that recording." The government then noted it would like to mark the full video as exhibit 4, but would seek to admit segments of it to impeach Mr. Tucker as 4A, 4B, etc. Mr. Tucker's trial counsel did not object

After the government played a segment of the video, Mr. Tucker objected to the government's use of portions of the video based on the "rule of completeness," asking the court to require the government to play "the previous portion of the body-worn camera where it . . . provides context of [Mr. Tucker] speaking with the police officers." Mr. Tucker wanted "the [c]ourt [to] see everything . . . how he is speaking with the officers, the questions they are asking him under the situation, as well as his

demeanor,” as well as “the way he is talking with the police, what he is saying, and the context of the questions that are being asked.” Counsel argued that “to put on a portion when he just potentially looks upset, [was] unfair and prejudicial” to Mr. Tucker. The court ruled that because the government was using portions of the video for “the very limited purpose” of impeachment, the defense could put in additional footage under the rule of completeness “to give more context” and could play other portions on redirect, but did not “get to put in the rest.”

Thereafter, the prosecutor played portions of the video which highlighted various inconsistencies in Mr. Tucker’s testimony and his statements to police immediately after the incident. On redirect Mr. Tucker opted to play one portion of the footage, which the government facilitated. Mr. Tucker’s counsel went on to address the impeachment, asking Mr. Tucker questions to explain and rehabilitate him. Mr. Tucker received a copy of the BWC video before trial. He made arguments in his closing addressing the footage and relying on it

In announcing its findings, the trial court confirmed that it had reviewed only those portions of the exhibits that had been played at trial. The court noted the government’s photographic exhibit showing “pretty extensive bruising” of Ms. Tucker’s face. The court credited Ms. Tucker’s testimony (other than her testimony that she was calm on the night in question). The court explicitly recognized that Mr. Tucker had asserted a claim of self-defense that would render him not guilty of assault if the court were to credit his testimony. But, in finding Mr. Tucker’s testimony “not credible,” the court highlighted that Mr. Tucker did not tell the 911 operator that Ms. Tucker had attacked him and likewise did not tell the police that she had hit him or ripped his shirt—even after the police said that “under the domestic violence law, somebody has to go away tonight” and that they were going to arrest him—but did tell the police that Ms. Tucker would say that he “did something violent to her.” The trial court subsequently found Mr. Tucker guilty of simple assault. This timely appeal followed.

II. Discussion

Mr. Tucker asserts as the “Issue Presented” that the evidence presented at trial did not “support the finding by the trial [j]udge that [a]ppellant’s claim of self-defense was insufficient and that he was guilty beyond a reasonable doubt of [s]imple [a]ssault.” But the sole argument actually made in the body of Mr. Tucker’s brief is that the trial judge abused her discretion by refusing to grant the defense

request that the government be required to play the entirety of the BWC footage introduced to impeach Mr. Tucker.

We will only reverse the trial court's denial of a request to introduce the remainder of evidence based on the rule of completeness where there is an abuse of discretion. *Butler v. United States*, 614 A.2d 875, 882 (D.C. 1992). A trial court is well within their discretion where their decision is within the range of permissible alternatives, based on all relevant factors, and supported by substantial reasoning drawn from a firm factual record. *In re D.R.M.*, 570 A.2d 796, 803-04 (D.C. 1990) (quoting *In re D.I.S.*, 494 A.2d 1316, 1323 (D.C. 1985)). Pursuant to the rule of completeness, "once part of a document or recorded statement has been introduced into evidence," the opposing party is entitled "to seek admission of the remainder of the statement." *Henderson v. United States*, 632 A.2d 419, 424 (D.C. 1993). "The rule has its origin in a concern that if only a part of a statement is introduced, the statement may be unfairly removed from its context." *Andrews v. United States*, 922 A.2d 449, 458 (D.C. 2007) (internal quotation marks and citation omitted). As this court explained in *Henderson*, "[t]he principle underlying the rule of completeness is fairness." 632 A.2d at 426. It is designed "to secure for the tribunal a complete understanding of the total tenor and effect of the utterance[s]." *Id.* at 426 (alteration in original) (quoting 7 JOHN HENRY WIGMORE, EVIDENCE IN TRIALS AT COMMON LAW § 2113, at 653).

We have explained that in criminal cases, "[t]he rule of completeness must be applied to ensure that a defendant is not forced to choose between allowing his or her statement to stand distorted as a result of selective introduction and abandoning his or her Fifth Amendment right not to testify in order to clarify that statement." *Andrews*, 922 A.2d at 458 (quoting WIGMORE § 2113, at 653). We have clarified, however, that the rule is not absolute and is restrained if the complete statement will waste time or distract the factfinder's attention. *Samad v. United States*, 812 A.2d 226, 233 (D.C. 2002). The rule's "applicability in criminal cases is limited to situations in which the prosecution introduces only the inculpatory portions of a statement made by the defendant" or "excludes information substantially exculpatory of the declarant." *Andrews*, 922 A.2d at 458-59 (quoting *Butler*, 614 A.2d at 882).

We have further explained that the rule does not entitle a declarant to an automatic right that other parts of the evidence be admitted. *Diggs v. United States*, 28 A.3d 585, 597 (D.C. 2011); *see also id.* at 598 ("[T]he mere fact that the redacted portion of Griffin's statement may have been self-exculpatory is not enough to require its admission under the rule of completeness. The rule of completeness is

not an exception to the rule against hearsay.”) (footnotes omitted). Rather, it “allows a party to introduce only so much of the remainder of a document or statement already received as is germane to an issue in the trial.” *Warren v. United States*, 515 A.2d 208, 210 (D.C. 1986). We discern no abuse of discretion in the trial court’s ruling.

While Mr. Tucker now says that the trial court should have considered the unredacted BWC video in its entirety, at the bench trial, he objected to its wholesale entry into evidence and only asked for additional video footage that would contextualize his statements. The trial court not only permitted Mr. Tucker to introduce additional portions of the BWC footage, it made no restriction on such introduction. Mr. Tucker introduced at least one additional portion of the BWC footage on re-direct, facilitated by the government. As Mr. Tucker’s counsel put it during closing argument, in the video portion counsel played, Mr. Tucker (who counsel said until then had not been aware that Ms. Tucker’s face was bruised and swollen) “showed . . . surprise” when he saw Ms. Tucker’s injuries. Counsel also cited Mr. Tucker’s “calm” voice on portions of the BWC video that were introduced. In light of Mr. Tucker’s objection that the video contained hearsay statements, the trial court also limited its review to the portions of the BWC footage introduced by counsel.

On appeal, Mr. Tucker does not specify what other portion(s) of the BWC video the court should have required to be played. He also has not explained (either to the trial court or this court) how any portions not entered into evidence would have: (1) affected the trial court’s understanding of the “total tenor and effect” of his statements, *Warren*, 515 A.2d at 210; (2) cured a “distorted view of the total tenor and effect” of his statements, *Henderson*, 632 A.2d at 430; or (3) been necessary to avoid misleading the trial court, *Butler*, 614 A.2d at 882. Given that Mr. Tucker did not have “an automatic right to insist that other parts [of the BWC video] be admitted too,” *Diggs*, 28 A.3d at 597, the trial court was well within its discretion. As a result, we have no basis to conclude that the trial court abused its discretion, even if it had declined Mr. Tucker’s request.

III. Conclusion

For the foregoing reasons, the judgment of the Superior Court is affirmed.

So ordered.

ENTERED BY DIRECTION OF THE COURT:

Julio A. Castillo
JULIO A. CASTILLO
Clerk of the Court

Copies emailed to:

Honorable Jennifer M. Anderson

Director, Criminal Division

Copies e-served to:

Joel Robert Davidson, Esquire

Chrisellen R. Kolb, Esquire
Assistant United States Attorney

AL

**District of Columbia
Court of Appeals**

No. 22-CM-0482

DEVON J. TUCKER,

Appellant,

v.

2021-DVM-000867

UNITED STATES,

Appellee.

BEFORE: Blackburne-Rigsby, Chief Judge, and Beckwith, Easterly,* McLeese, Deahl, Howard,* and Shanker, Associate Judges, and Thompson,* Senior Judge.

ORDER

On consideration of appellant's petition for rehearing or rehearing en banc, and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, it is

ORDERED by the merits division* that appellant's petition for rehearing is denied. It is

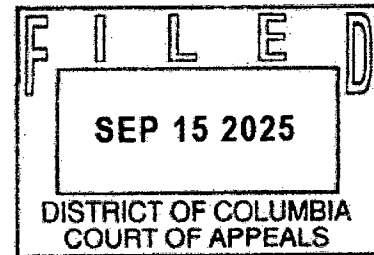
FURTHER ORDERED that appellant's petition for rehearing en banc is denied.

PER CURIAM

Copies emailed to:

Honorable Jennifer M. Anderson

Director, Criminal Division



Appendix B A7

No. 22-CM-0482

Copies e-served to:

Joel Robert Davidson, Esquire

Chrisellen R. Kolb, Esquire
Assistant United States Attorney

pii

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION**

UNITED STATES OF AMERICA, :
 :
 :
v. :
 :
 :
DEVON TUCKER, :
 :
 :
Defendant. :
 :
 :

Case No. 2021 DVM 0867
Hon. Judge Laura E. Crane

ORDER DENYING DEFENDANT’S MOTION FOR NEW TRIAL

This matter comes before the Court on Defendant’s Motion for New Trial Based upon Ineffective Assistance of Counsel, pursuant to D.C. Code § 23-110 (hereinafter “Defendant’s § 23-110 Motion” or “Motion”) (filed March 3, 2023), and the Government’s Opposition thereto (hereinafter the “Opposition”) (filed July 13, 2023). For the reasons set forth below and upon consideration of the Motion, the Opposition thereto, and the entire record, the Court denies Defendant’s § 23-110 Motion.

I. RELEVANT PROCEDURAL AND FACTUAL HISTORY

On August 17, 2021, Defendant Tucker was charged in a single-count Information with Simple Assault (in violation of 22 D.C. Code § 404) based on a physical altercation that had occurred earlier that day between Defendant and Complainant Hillary Tucker, his romantic partner and the mother of his child. A bench trial began before Judge Jennifer Anderson on June 16, 2022 and resumed on June 28, 2022. During the trial, the Court heard testimony from the complaining witness (Hillary Tucker), as well as testimony from Defendant Tucker and his witness, Dexter Kingston. On July 1, 2022, Judge Anderson issued oral findings of fact and found Defendant Tucker guilty of one count of Simple Assault. Judge Anderson sentenced Defendant Tucker to

sixty days of incarceration, execution of sentence suspended as to all and placed Defendant Tucker on twelve months of supervised probation. *See* July 1, 2022, Judgment and Commitment Order.

Defendant's § 23-110 Motion

On March 3, 2023, Defendant Tucker filed the instant § 23-110 Motion. In his Motion, Defendant claims that his trial counsel's conduct was deficient because Defendant made multiple requests of his trial counsel to review the body-worn camera footage from the responding officers prior to trial but his counsel did not take the necessary steps to allow Defendant to review the video. Defendant alleges that the reviewing video would have allowed him to "refresh his memory regarding statements he made to officers that night. Mr. Tucker thus went to trial without having the opportunity to review his prior statements regarding the incident." *See* Defendant's § 23-110 Motion at 1-3. Defendant contends that the Government "repeatedly impeached him with video clips taken from the officers' body camera footage that appeared to show statements inconsistent with his trial testimony." *Id.* at 2. He argues that the inconsistencies were the basis upon which the Court found him not to be credible which led "directly to his conviction in this he said/she said domestic violence scenario." *Id.* at 3.¹ Defendant Tucker contends that his inability to review the body-worn camera footage "stripped Mr. Tucker of the ability to put forth a credible claim of self defense at trial." *Id.* at 3.

Defendant contends that trial counsel "made errors so serious that [he] was not functioning as the 'counsel' guaranteed to him by the Sixth Amendment." *Strickland v. Washington*, 466 US

¹ Defendant does not directly claim that had he been given an opportunity to review the body-worn camera footage before testifying that there would have been fewer inconsistencies and therefore the trial court would have found his testimony to be more credible (or that at least the trial court would not have been able to find beyond a reasonable doubt that he had been the aggressor). Although the Motion does not state this claim, the Court understands this to be his implicit argument. Mr. Tucker does not assert that had he reviewed the footage he would not have testified (which is understandable as had he not testified, there would be no evidence in the record to support his claim that the Complainant was the first aggressor).

668, 687 (1984). Furthermore, Defendant argues that “but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland* at 694. Additionally, Defendant Tucker cites *Lanton v. United States* in claiming that a presumption exists that the trial court should conduct a hearing when presented with a 23-110 motion alleging ineffective assistance of counsel. 779 A.2d 895, 901 (D.C. 2001). *See also Newman v. United States*, 705 A.2d 246 (D.C. 1997); *Long v. United States*, 910 A.2d 292, 308 (D.C. 2006). Defendant further argues that under *Hilliard v. United States*, “in order to uphold the denial of a 23-110 motion without a hearing, we must be satisfied that under no circumstances could the petitioner establish facts warranting relief.” 879 A.2d 669, 671 (D.C. 2005).

Government’s Opposition

On July 13, 2023, the Government filed its Opposition to Defendant’s Motion.² The Government asserts that Defendant’s inability to view the body-worn camera footage was not constitutionally prejudicial because Defendant’s credibility was undermined in other ways, such as Defendant’s statements captured on his 911 call (which he testified he had in fact reviewed prior to trial). According to the Government, Defendant’s trial testimony, wherein he claimed that Complainant was the aggressor, would have been strongly impeached by his statements on the 911 call because nowhere in the 911 call did Defendant Tucker claim that the Complainant was the aggressor or that he was acting in self-defense.

According to the Government, Defendant’s Motion does not satisfy the two-part *Strickland* test. *See* Opposition at 10-17. First, Defendant must show that “counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not

² The Court granted the Government’s (Two) Motions for Extension of Time to Respond filed on April 24, 2023 and July 3, 2023. *See* May 5, 2023, Order & July 12, 2023, Order Granting Extension.

functioning as the ‘counsel’ guaranteed by the Sixth Amendment.” *Id.* at 10 (citing *Strickland* at 687). Second, Defendant must show that “the deficient performance prejudiced the defense. This requires showing that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable” *Id.*

Regarding the first prong, the Government argues that the Court “need not reach this question. Even assuming *arguendo* that defendant has shown constitutionally deficient performance, defendant cannot satisfy *Strickland*’s prejudice prong.” Opposition at 11. The Government’s analysis thus rests solely on the second prong of *Strickland* and the claim that Defendant has not demonstrated prejudice under *Strickland*. The Government argues that at trial, Defendant was confronted not only by the body-worn camera footage but was separately impeached when he was confronted with his statements to the 911 operator. *See* Opposition at 11. The impeachment by the 911 call – which Defendant Tucker does not challenge or address in his Motion – “indisputably undermined defendant’s credibility.” *Id.* The impeachment from the 911 call served to undermine any claim that Complainant was the first aggressor or that Defendant Tucker acted in self-defense; this impeachment, coupled with the “compelling evidence” of his guilt, “means that he cannot show that but for defense counsel’s alleged deficient performance, he would likely have been found not guilty.” *Id.* at 11-12. Because the 911 call was such significant impeachment, any further impeachment from the body-worn camera would have been merely cumulative of the impeachment from the 911 call. *Id.* at 2.

The Government contends that the “Court did not single out the impeachment from the body worn camera as any more or less persuasive than defendant’s other incredulous testimony.” *Id.* at 15. Moreover, the Government asserts that there was sufficient evidence to ground Defendant’s conviction for simple assault. To that end, the Government cites *Parker v. United*

States to argue that Defendant does not suffer prejudice where the outcome would have been the same regardless of the potential deficiencies raised by the defendant. *Id.* at 16 (citing *Parker v. United States*, 249 A.3d 388, 412 (D.C. 2021) and *Dickerson v. United States*, 182 A.3d 721 (D.C. 2018)).

The Government concludes by noting that a hearing is not required because filing a § 23-110 motion attacking a sentence does not automatically require the trial court to conduct a hearing and cites *Jones v. United States*, 918 A.2d 403 (D.C. 2007) for that assertion. Ultimately, the Government claims that Defendant's claims in the § 23-110 motion are belied by the existing record. *See* Opposition at 17.

Additional Briefing

No Reply was filed by Defendant Tucker in response to the Government's Opposition. On June 24, 2024, Judge J. Michael Ryan issued an Order to Show Cause to both the Government and Defendant Tucker as to why the Court should not deny Defendant's § 23-110 Motion as moot given his release status (Defendant Tucker's probation was terminated on March 5, 2024).

On June 28, 2024, the Government filed a Response to Show Cause Order (hereinafter "Government's Response"). The Government argues that Defendant's § 23-110 Motion is not moot and is ripe for adjudication for the following reasons. First, Defendant never filed a Reply to the Government's Opposition to Defendant's §23-110 Motion and no order resolving the Motion has been issued. Government's Response at 1. Second, while Defendant's probation terminated on March 5, 2024, for the purposes of D.C. Code § 23-110, a defendant is considered in custody while "under sentence of the Superior Court." *See Magnus v. United States*, 11 A.3d 237, 245 (D.C. 2011) (citing n.21 *Mitchell v. United States*, 977 A.2d 959, 963 (D.C. 2009), and *Thomas v. United States*, 766 A.2d 50, 51 (D.C. 2001)). Defendant filed his Motion on March 3, 2023, and was

-serving a period of supervised probation at that time. Therefore, Defendant was in custody at the time that the Motion was filed making his Motion not moot despite no longer being in custody at the time that this Court's order was issued. *See* Government's Response at 1-2; *Magnus*, 11 A.3d at 245. Lastly, the Government reiterates that while Defendant's § 23-110 Motion is not moot, they nonetheless ask the Court to deny the Motion on the merits as argued in the Government's Opposition. *See* Government's Response at 2.

On July 22, 2024, Defendant Tucker filed a Response to the Court's Show Cause Order (hereinafter "Defendant's Response"), asserting that his § 23-110 Motion is not moot and remains ripe for adjudication. First, Defendant argues that the Government agrees his Motion is not moot and requires a ruling. Second, he contends that custody status is assessed at the time of filing (March 3, 2023) and that subsequent changes in custody do not render the motion moot, citing *Snell v. United States* for the proposition. 754 A.2d 289, 291 n.3 (D.C. 2000). Third, Defendant highlights his pending gun possession case (2022 CF2 005158), which involve charges of unlawful possession of a firearm and ammunition, arguing that granting the Motion would likely lead to dismissal of the gun case, while denial would uphold the simple assault conviction as a foundational element for the gun charge. Fourth, Defendant asserts that his simple assault conviction has severely impacted his custody arrangement with his daughter, resulting in supervised visitation and loss of custody, which he argues constitutes a legal restraint under D.C. Code § 23-110. Fifth, he emphasizes that he was never appointed counsel for his Motion and was therefore unable to adequately respond to the Government's Opposition. Sixth, Defendant requests an evidentiary hearing on the merits of his Motion as required under *Strickland v. Washington*, 466 U.S. 688 (1984) and concludes by arguing that under *Newman v. United States*, 705 A.2d 246

(D.C. 1997), the Court should conduct a hearing because his ineffective assistance of counsel claims involve facts outside the trial record.

ANALYSIS

A. Relevant Legal Standards

A claim that a lawyer provided ineffective assistance of counsel is evaluated under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). More specifically, the defendant must first show that his attorney's representation fell below an objective standard of reasonableness. *Id.* at 688; accord *Nix v. Whiteside*, 475 U.S. 157, 165 (1986); *Watson v. United States*, 536 A.2d 1056, 1065 (1987) (en banc). In evaluating counsel's performance, the reviewing court "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Strickland*, 466 U.S. at 689.

Second, even if counsel's representation was deficient, defendant must affirmatively prove prejudice that is "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Id.* at 687. To meet this standard, defendant must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.

Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Id.* at 700. Consequently, a court need not even "address both components of the inquiry if the defendant makes an insufficient showing on one." *Id.* at 697. To the contrary, "[i]f it is easier to dispose of an ineffective assistance claim on the ground of lack of sufficient prejudice, which we expect will often be so, that

course should be followed.” *Id.* at 697.

Finally, there is a presumption in favor of a hearing when a defendant files a § 23-110 motion. *See, e.g., Metts v. United States*, 877 A.2d 113, 118-19 (D.C. 2005); *Lopez v. United States*, 801 A.2d 39, 42 (D.C. 2002). However, a hearing is not required when “the motion and files and records of the case conclusively show that the prisoner is entitled to no relief” D.C. Code § 23-110(c). Thus, as the Court of Appeals has repeatedly stated, “no hearing is required where defendant’s motion consists of (1) vague and conclusory allegations, (2) palpably incredible claims, (3) allegations that would not merit relief even if true, or (4) if the issues are capable of resolution on the existing record.” *Strozier v. United States*, 991 A.2d 778, 788 (D.C. 2010) (citations and internal quotation marks omitted).

B. Defendant Tucker Fails to Prove Prejudice under Second Prong of *Strickland*

As noted above, the Government does not address the first prong of *Strickland* and instead urges the Court to deny Defendant’s Motion for a failure to establish prejudice under the second prong. *See* Opposition at 11. Accordingly, the Court will not address the first prong and will focus its analysis solely on the second prong. *Id.* at 697. For the reasons detailed below this Court finds that Defendant’s § 23-110 Motion fails the second prong of the *Strickland* test. 466 U.S. 668 (1984).

Upon review of the entire record and the trial court’s findings of fact, the Court finds that even if counsel had provided Defendant Tucker with the requested body-worn camera footage to reviewed in advance of trial, such review would not have altered the Court’s findings that Defendant was not credible due to the fact that his testimony on the night of the incident was wildly divergent from his testimony at trial. Although a review of the body-worn camera may have minimized impeachment on some minor factual issues, a “refreshed” recollection of the footage

would not have changed the fact that Defendant Tucker made no statements about his wife being the aggressor or that he acted in self defense to the 911 operator or to the responding officers.

The trial court's credibility finding was rooted in the fact that at trial Defendant Tucker claimed that he acted in self-defense at Complainant's initial aggression, , but failed to make any such claims in his 911 call or during any of his interactions with the responding officers. Due to Defendant Tucker's testimony that no such claim was made to the 911 operator or to the officers on scene, it is therefore unclear how an opportunity to review the body-worn camera footage would have altered the trial court's findings about the conflicting accounts provided by Defendant.³

Defendant Tucker fails to prove under the second prong of *Strickland* that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. Defendant alleges that his inability to review the body-worn camera footage from the night of his arrest resulted in inconsistencies in his trial testimony that resulted in the Court finding that he was not a credible witness. Defendant's § 23-110 Motion at 2. However, none of the "inconsistencies" between trial testimony and the body-worn camera footage would have altered the Court's conclusion that the defendant's testimony regarding the altercation was not credible due to the fact that it was an entirely different account than what he provided to the 911 operator and officers.

The specific inconsistencies between the trial testimony and the body-worn camera footage that were elicited at trial include:

- On-scene Mr. Tucker told officers he had paid \$100 for the application

³ Defendant Tucker argues that he could have "refresh[ed] his memory regarding statements he made to officers that night" (Motion at 2) however, he clearly remembered that he purposefully made no statements about his wife acting as the aggressor because he was trying not to get her in trouble. The minor points where he could have been refreshed do not pertain to the core of the impeachment and instead are minor points that would not have altered the trial court's conclusion that his trial testimony was not credible.

used to download Complainant's text messages, whereas at trial he denied telling officers that he had paid for the application.⁴ See Trial Court's Findings of Fact at 9:18-22;

- On scene Mr. Tucker stated that he found out about the Complainant's infidelity that day, which impeached his trial testimony that he had learned of the infidelity days before. Trial Tr. 139:13-149:12;
- On scene Mr. Tucker told officers that he was going to kill the Complainant but instead was going to leave with the baby, whereas he could not recall telling officers this during his trial testimony. *Id.* at 150:7-19;
- Mr. Tucker told officers on scene that Complainant tried to take his phone, which was inconsistent with his trial testimony where he denied that she tried to take his phone that night. *Id.* at 173:7-25;
- That in body-worn camera footage Mr. Tucker explained to officers that the swelling to Complainant's face was because she had been crying (rather than to it being swollen due to the fact that he had struck Complainant in self defense). *Id.* at 181:23-183:14).

In ultimately concluding that Mr. Tucker's account of the events of August 17 was not credible, Judge Anderson noted the following issues with his testimony:⁵

- "when he called 9-1-1-, there's no mention of her doing anything to him. And that is significant, that is significant. He basically, he tells the 9-1-1 operator that ... he basically tells the 9-1-1 operator that, you now, my wife is f**king other people ... and I want to kind of walk out of here with the baby. He doesn't say anything about ... her attacking him. When the police arrive, he says ... she's about to say I did something violent to her [rather than saying that she had assaulted him]." See Trial Court's Findings of Fact at 13:17-14:2 (emphasis added);

⁴ Although there was a minor discrepancy as to payment for the application, the defendant's initial statements and his trial testimony were consistent about the application and that it had been used to download her text message communications, including the texts about her infidelity.

⁵ Judge Anderson also noted the ways in which Defendant's testimony appeared to minimize or downplay the high emotions of the events that led up to the argument. Specifically, she noted that the facts that led up to the incident involved Defendant reviewing Complainant's text messages that revealed his wife's repeated infidelity and lies (which were concerning enough to Defendant Tucker that he lied to Complainant about her phone not being charged so he could use an application to download her text messages without her knowledge. See Trial Court's Findings of Fact at 13:17-14:2. These facts provide the backdrop that "this is a bad situation that's about to get worse." *Id.* at 14:1-2.

- “He doesn’t tell the police that she hit him seven to eight times. ... there’s just a lot of his testimony that I just found not credible.” Trial Court’s Findings of Fact at 14:20-23;
- Although at trial he testified that Complainant was going “100 out of 100” and that she was going to fight him to the death and that she ripped his shirt and scratched him, he doesn’t say any of this to the responding officers about this. Trial Court’s Findings of Fact at 14:25-15:3.

The central issue for the Court was the discrepancy between Defendant Tucker’s statements on the date of the offense with his account of the altercation during his trial testimony. The Court considered Defendant Tucker’s explanation for this – that he did not want to get his wife in trouble – but found his explanation to be undermined by the fact that even after officers advised him of the consequences (that one person would be arrested), he did not supplement his account and explain that she had been the aggressor and had been the one who hit him seven to eight times. *Id.* at 15:9-25. The Court went on to explain that although Mr. Tucker eventually mentioned that Complainant attacked him to officers, he provided no further information or details about what happened even though officers had explained that they would arrest him. *Id.* at 16:11-28.

The trial court’s credibility finding rested on the fact that in both the 911 call and the statements to officers on scene the defendant did not provide an account of Complainant being the first aggressor, even after he was told by officers that one of the parties would be arrested and had a reason to correct the account that he had provided to officers. Although on cross-examination the government impeached the defendant on some additional inconsistencies from the body-worn camera footage, the Court’s credibility determination was rooted in the fact that Defendant Tucker did not tell the 911 operator or officers that Complainant had been the initial aggressor and had assaulted him and that any injuries she sustained were a result of him acting

in self-defense.

The alleged ineffective assistance of counsel claim centers around how the defendant's ability to review body-worn camera footage would have eliminated or reduced the impeachment and altered the Court's credibility assessment; however, the failure of his attorney to provide Mr. Tucker with access to the footage would not have altered this central impeachment that Mr. Tucker did not report that Complainant was the aggressor or that he had acted in self-defense on the night of the arrest.⁶ Had the defendant reviewed the body-worn camera footage and the minor inconsistencies from the body-worn camera had vanished from the record (due to the defendant reviewing the footage and testifying more consistently with those points), no amount of review or preparation would have altered the fact that Defendant Tucker had failed to provide any accounts on the night of the incident that were consistent with his trial testimony about Complainant being the aggressor and his actions being undertaken as self-defense.⁷

Although the body-worn camera footage played a role in undercutting Defendant Tucker's credibility as a witness – including the minor inconsistencies about whether he told the

⁶ In his trial testimony, Defendant Tucker repeatedly testified that he did not provide an account to the responding officers about Complainant assaulting him or him being the aggressor. *See id.* at 162:5-163:1 (testifying that he didn't tell the responding officers that Complainant pushed or shoved him or put her hands on him in any way and that when asked if he had put his hands on her, he said "no, she tried to take away my baby, tried to reach it, and I pushed her away"); *see also id.* at 174:19-175:1 (explaining that he did not tell officers on scene about Complainant assaulting him in order to protect her). He explained that the reason he had left out the claim of Complainant being the aggressor and that he was acting in self-defense was because he "didn't want to get her in trouble," didn't want to "hurt" her, and didn't want to "do anything negative to Hillary." *Id.* at 187:7-24.

⁷ Although Defendant Tucker contends that his inability to review the body-worn camera footage "stripped [him] of the ability to put forth a credible claim of self defense at trial," (Motion at 3) an opportunity to review the body-worn camera would not have changed the fact that the defendant's accounts to the 911 operator and to responding officers never made a claim of self defense or provided a narrative of his wife acting as the aggressor.

officers that he paid for the application to download the messages or not, whether he told officers he was going to kill his wife, or whether he tried to take the phone from his wife or not – these minor inconsistencies were not the basis for the Court’s credibility finding. Instead, the Court’s credibility finding centered around the disparate account of the altercation given at trial from what was reported by the defendant to the 911 operator and to responding officers. Defendant remained steadfast that he purposefully did not report the details of his wife as the first aggressor to officers on scene, so further review of that footage would not have altered the Court’s ultimate findings that his trial testimony that his wife was the first aggressor was not credible. Defendant never claimed that he had in fact reported to officers on scene that his wife was the aggressor nor did he give an account of the assault she inflicted on him; to the contrary, he remained steadfast in his trial testimony that he had purposefully withheld that information from the 911 operator and from responding officers to try to protect his wife and prevent her from getting in trouble.

Furthermore, the trial court relied on Ms. Tucker’s testimony coupled with the photographic evidence of her injuries. While the trial court notes that it did not “totally believe that Ms. Tucker was calm as could be as she described herself when – when [Defendant] took the baby,” the trial court does nonetheless credit Ms. Tucker’s testimony regarding “how this all got started.” *Id.* Findings of Fact at 16:1-10. Defendant cannot show that he was prejudiced by his counsel’s failure to share the body-worn camera with him before his testimony as a review of the footage from the responding officers would not have altered the trial court’s conclusions that the defendant’s trial testimony was not credible in light of the fact that his statements to the 911 operator and his statements to responding officers failed to include any facts that would support that his wife was the first aggressor or that he acted in self-defense. The Court’s

credibility finding hinged on the fact that the account on the night of the arrest was an entirely different account than the version he provided at trial. In contrast, the Complainant's testimony on-scene and at trial was largely consistent and was also consistent with the injuries that were exhibited in the photographs admitted at trial.

This Court further holds that no hearing is necessary because "under no circumstances could the petitioner establish facts warranting relief." *See Hilliard v. United States*, 879 A.2d 669, 671 (D.C. 2005). Thus, Defendant's § 23-110 Motion is denied without a hearing.

IT IS SO ORDERED.

Date: March 27, 2024



**LAURA E. CRANE
ASSOCIATE JUDGE**

Copies to:

Defendant Tucker
1962 Naylor Road SE
Washington, D.C. 20020
By Mail
Defendant

Christopher Macomber
Kacie Weston
Peter Smith
CaseFileXpress
Counsel for Government

**Additional material
from this filing is
available in the
Clerk's Office.**