DISTRICT OF COLUMBIA COURT OF APPEALS

Case Number: 24-CF-0156

ANTOINE LANE, Appellant	:
v.	:
UNITED STATES, Appellee	:

Appeal from the Superior Court of the
District of Columbia – Criminal Division
Superior Court Case Number: 2023-CF2-2579

REPLY BRIEF FOR APPELLANT ANTOINE LAYNE

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I. The trial court abused its discretion by allowing Scott Brown to testify as an expert concerning the distribution and use of dimethylpentylone ("boot") based on the trial court's unsupported conclusion that Mr. Brown "has sufficient education and training to testify about these narcotics in general" because general knowledge of narcotics was insufficient to qualify Mr. Brown to testify as an expert in "boot."

The government fails to squarely respond to Mr. Layne's argument that the trial court "abused its discretion by allowing an officer to testify as an expert with respect to the only drug found on Mr. Layne -- dimethylpentylone -- where the officer was unqualified to do so, and where the officer's opinion regarding possession with intent to distribute the drug was speculative and unreliable."[1]

First, the government concedes that Mr. Brown "confirmed *he had never previously been qualified as an expert with respect to N,Ndimethylpentylone* specifically."[2] This is unsurprising, as Mr. Brown had not been a detective in the District for over two decades. While the government claims that "[o]ver the past six months, Officer Brown had 'see[n] more and more boot on the street,'"[3] the government neglects to state in its brief that Mr. Brown has not been a detective for 25 years

[1] Layne Brief at 13.
[2] Government's Brief at 22 (emphasis added).
[33] *Id.* at 21-22.

and has been living in North Carolina for the past 25 years. Tr. 10/2/23 at 187. Namely, Mr. Smith left the MPD "in June of 1997," Tr. 10/2/23 at 189, and explained that:

> [w]hen I left MPD, I left to take a position as a senior pastor of a ministry in Wilson, North Carolina. So I've served as a senior pastor for the last 27 plus years. My expertise or my knowledge was still in demand, so individuals or defense counsel and others were calling me still for trial testimony and consultation. . . .[4]

Second, instead of directly responding to Mr. Layne's claim, the government provides extraneous information about Scott Brown's experiences -- experiences that fail to provide a sufficient basis for him to provide expert testimony about the drug at issue (dimethylpentylone) under *Daubert-Motorola*:

> Officer Brown explained that the "common drugs" he saw in D.C. were marijuana, cocaine (in both its crack and powder form), heroin, PCP, and fentanyl. He also explained that he educated himself on trends in the use, packaging, and sale of drugs in D.C. by speaking with his fellow law enforcement officers (including members of the FBI, DEA, and other police agencies), arrestees, and confidential street informants.[5]

While the government purports to point to Mr. Brown's alleged experiences that provide him with adequate knowledge about "boot" to

[4] Tr. 10/2/23 at 189.
[5] Government's Brief at 21.

provide expert testimony about the drug in the District, these so-called "experiences" were merely collateral, fleeting, and undocumented contacts with "confidential sources" and "law enforcement officers"[6] -- sources that, by their nature, were impossible for Mr. Layne to verify, confront, or contradict.

Thus, the trial court could not have reasonably relied upon Mr. Smith's self-serving and unsupported claims about the alleged experiences that he relied upon to testify as an expert on "boot." As Mr. Layne's trial counsel explained:

> *[t]his is a new drug, Your Honor. It requires an individual that has some actual knowledge of this particular drug*. And to qualify him as an expert on drug distribution *generally* and have him opine on drug distribution for dimethylpentylone, Your Honor, is prejudicial against Mr. Layne because, again, even if he's testifying in regards to other drugs, he's going to be making opinions and making statements regarding drug distribution generally when he has absolutely no knowledge, certainly not to the level of someone with specialized or expert knowledge in regards to this particular drug.
>
> As the Court's certainly aware, different drugs have different distribution mechanisms. They have different potency, different quantities that a person would take. *And this individual simply can't testify with any level of expertise greater than myself or government counsel or any other average person about this particular drug*. . .

[6] *Id.*

> Your Honor, I would at least move the Court to give a -- to instruct the government and instruct the witness not to testify to the specific way or nature dimethylpentylone is distributed or is taken because he's proven no expertise in that. *If he wants to -- if he's going to testify to just general knowledge about drugs, that's one thing. But he has not been -- again, we would object to him being qualified as an expert on those specific areas*.[7]

The trial court's ruling betrays its acknowledgment that Mr. Smith only demonstrated *general knowledge* about street drugs in the District rather than sufficient and current knowledge about "boot" -- a recent arrival to the District that was not known to have existed in the District when Mr. Smith was a detective over 25 years ago:

> THE COURT: I'm going to deny it. I think he has sufficient education and training to testify about these narcotics *in general*. He indicated that he has had experience based upon its new use in the Washington, District of Columbia area along with the neighboring jurisdiction of Montgomery County. So you can pretty much have at it in cross-examination.[8]

The trial court's "gatekeeper role includes a 'preliminary assessment of whether the reasoning or methodology underlying the testimony is . . valid and of whether that reasoning or methodology properly can be applied to the facts in issue.'" *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 592-93 (1993). This "prerequisite to

[7] Tr. 10/2/23 at 86-87 (emphasis added).
[8] Tr. 10/2/23 at 88 (emphasis added).

making the Rule 702 determination that an expert's methods are reliable" requires the district court to "assure that the methods are adequately explained." *United States v. Hermanek*, 289 F.3d 1076, 1094 (9th Cir. 2002); *see also United States v. Vera*, 770 F.3d 1232, 1243, 1247 (9th Cir. 2014) (general law enforcement experience in the FBI and gang task force insufficient to support drug expert testimony not based on reliable methodology).

In *United States v. Valencia-Lopez*, 971 F.3d 891 (9th Cir. 2020), Enrique Valencia-Lopez, a truck driver, was transporting 15,000 kilograms of bell peppers from Mexico to Arizona. *See id.* at 894-95. Customs and Border Protection officers stopped him at the border and found over 6,000 kilograms of marijuana hidden within the pepper packages. *See id.* Valencia-Lopez was convicted of four drug felonies for his transportation and importation of the marijuana and was sentenced to 120 months. *See id.*

Mr. Valencia-Lopez claimed that he acted under duress; that armed gunmen seized his truck in Mexico and held him at gunpoint for several hours. *See id.* "During that time, a confederate (or confederates) of the gunmen drove the truck away and returned it. The gunmen then

told Valencia-Lopez to continue driving and pretend nothing had happened, or they would kill him and his family." *Id.*

During the trial, and over objection, U.S. Immigration and Customs Enforcement ("ICE") Supervisory Special Agent Matthew Hall testified as an expert for the government. "A key part of his testimony was that the likelihood drug trafficking organizations would entrust a large quantity of illegal drugs to the driver of a commercial vehicle who was forced or threatened to comply was '[a]lmost nil, almost none.'" *Id.* at 895. The *Valencia-Lopez* court noted that: "[i]f this was believed by the jury, it would have gutted Valencia Lopez's duress defense." *Id.*

Like Mr. Smith, Agent Hall's knowledge was based, in large part, on knowledge that he had obtained indirectly from others. Moreover, just like Mr. Smith lacked personal knowledge about and experience with "boot," Agent Hall lacked specific knowledge about and experience with Mexican drug cartels:

> Agent Hall testified to his law enforcement background. He explained that he had been working for Homeland Security Investigations (HSI), a branch of ICE, since 2010. Before that he worked as a police officer with the Swinomish Tribe in Washington in 1999-2000, and the Tohono O'dham Tribe in Arizona from around 2002 through 2010. From 2007 to 2010 he was on the HSI task force, assigned from the Tohono O'dham Police Department. Agent Hall then explained his drug

> smuggling training, his undercover work as a police officer and supervisor, and his subsequent work at HSI "working on crimes with a nexus to the [Tohono O'dham] Nation."
>
> *He noted, for example, that working undercover gave him insight into how drug trafficking organizations operate because he "gather[ed] information straight from the horse's mouth" and he successfully went undercover in these organizations "[i]n several instances, on many different levels*." As an HSI agent, he obtained a commercial trucking license from a commercial trucking school while in an undercover capacity.
>
> Agent Hall also generally outlined his experience with setting up undercover drug trafficking deals across the border, *while noting that he did not operate undercover in Mexico*. After Agent Hall testified that he had served as an expert witness in federal drug smuggling cases, the government moved to qualify him as an expert.[9]

The *Valencia-Lopez* court held that the trial court erred by not explicitly finding that Agent Hall's testimony was reliable under *Daubert* and *Kumho Tire*:

> [h]is qualifications and experience are relevant, and indeed necessary. But they cannot establish the reliability and thus the admissibility of the expert testimony at issue. Rather . . . Agent Hall "*failed to explain in any detail the knowledge, investigatory facts and evidence he was drawing from*," to eventually conclude the probability of coercion by drug trafficking organizations was "almost nil." *Crucially, he failed to link his general expertise with his "almost nil" conclusion, and by never explaining how*

[9] *United States v. Valencia-Lopez*, 971 F.3d 891, 895-96 (9th Cir. 2020) (emphasis added).

his expertise lent itself to that conclusion, we cannot sort out what "reliable principles and methods underlie the particular conclusions offered." . .

Even if we were to consider Agent Hall's explanations of his experience after he was qualified as an expert, such as on cross-examination, that evidence still does not explain the methodology by which he reliably concluded that drug trafficking organizations almost never use coerced drivers.

For example, his general testimony about his interviews with cartel members in Mexico is too "vague and generalized" to establish any reliable principles or methods from which to determine the reliability of his almost nil conclusion. Even had he testified that he was familiar with the "right" type of cartels; given his lack of experience within Mexico, and with no explanation of his methodology, "there is simply too great an analytical gap between" his experience and his conclusion.

The government argues that "Special Agent Hall's opinions were based on his personal experiences and knowledge from his drug investigations. The defendant's demand for additional 'reliable methods' and 'sufficient facts or data' cited in Rule 702 are not at issue like [in] *Hermanek* because Special Agent Hall fully explained the background for his opinions." This response is well off the mark. . .

the issue is whether he provided a reliable basis for his opinion that the likelihood of drug cartels using coerced couriers is "[a]lmost nil, almost none." As explained above, he did not. . .

We do not question that expert modus operandi testimony is admissible in drug smuggling cases involving unknowing or coerced couriers. But the government must still establish that its expert opinions are reliable under

> the standards mandated by *Daubert* and *Kumho Tire*. The government failed to do so here.[10]

Similarly, the trial court in the present case abdicated its gatekeeper function under *Motorola* by failing to make a reliability finding regarding Mr. Smith's proposed expert testimony about "boot."

> THE COURT: Yeah. *I think this, however, goes to the weight of his testimony* because I think the government is proffering him as an expert primarily to determine whether the drugs that were in the possession -- or in the possession of the defendants were consistent with personal use or with intent to distribute. *So these are all narcotics or controlled substances, as defined by other experts at least, perhaps by Officer Scott Brown*. So I think he can testify as to those particular areas. And then you can cross-examine him into his knowledge of the correct pronunciation of this particular drug or any other drug.[11]

Nor did the trial court adequately consider and discuss how Mr. Smith's lack of personal knowledge about and experience with "boot" played a significant role in whether he should be allowed to provide expert testimony about the drug in the District based merely on Mr. Smith's *extremely dated knowledge* about *different drugs* in the District coupled with his testimony about the limited contacts that he had with confidential sources and police agencies regarding "boot."

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[10] *Valencia-Lopez*, 971 F.3d at 900-02 (emphasis added).
[11] Tr. 10/2/23 at 87 (emphasis added).

As such, Mr. Smith "failed to explain in any detail the knowledge, investigatory facts and evidence he was drawing from," to conclude that the "boot" possession was consistent with the intent to distribute it. Nor did Mr. Smith "link his general expertise" with drugs to his testimony regarding "boot" -- a distinct drug that was new to the District.

II. The trial court abused its discretion by allowing Scott Brown to testify as an expert concerning the distribution and use of "boot" because, instead of conducting a sufficient *Daubert* analysis, "the court immediately turned to the tools of the adversarial process as the means to make the reliability determination" by stating that trial counsel "can pretty much have at it in cross-examination."

While Mr. Layne's trial counsel asked the trial court to properly conduct its gatekeeping function, the trial court failed to do so and instead erroneously relied upon trial counsel's voir dire and cross-examination to address the deficiencies that trial counsel raised about Mr. Smith's proposed testimony. Namely, trial court objected to Mr. Smith providing testimony about "boot," explaining, inter alia that:

> I would at least move the Court to give a -- to instruct the government and instruct the witness not to testify to the specific way or nature dimethylpentylone is distributed or is taken because he's proven no expertise in that. If he wants to -- if he's going to testify to just general knowledge about drugs, that's one thing. But he has not

> been -- again, we would object to him being qualified as an expert on those specific areas.[12]

In response, the trial court stated:

> THE COURT: I'm going to deny it. I think he has sufficient education and training to testify about these narcotics in general. He indicated that he has had experience based upon its new use in the Washington, District of Columbia area along with the neighboring jurisdiction of Montgomery County. *So you can pretty much have at it in cross-examination*.[13]

The trial court failed to conduct a meaningful and appropriate *Daubert-Motorola* analysis. Instead, the trial court erroneously relied on voir dire and cross-examination to address the deficiencies in Mr. Smith's testimony. In *Willis v. United States*, --- A.3d. ---, 2025 WL 3237300 (D.C. Nov. 20, 2025), this court reversed Mr. Willis' murder convictions and remanded for further proceedings, concluding that the trial court failed to properly exercise its discretion under Federal Rule of Evidence 702 when admitting an FBI CAST agent's testimony about cell site location information ("CSLI"). *Id.* at *1.

Specifically, the *Willis* court held that the trial court failed to fulfill its responsibility under Rule 702(d) (whether the expert had reliably applied the principles and methods to the facts of the case)

[12] Tr. 10/2/23 at 87-89.
[13] Tr. 10/2/23 at 88 (emphasis added).

where, among other things, without holding a hearing, the court relied on "previously heard testimony by similar experts in approximately a dozen other cases and had found the principles underlying the testimony reliable." *Id.* at *3. Although the trial court "clearly understood the standard it was supposed to employ, there [was] no indication in the record that it determined whether Special Agent Shaw reliably applied the methodology used by CAST agents to the facts of this case." *Id.* at *5.

Instead, the trial court repeatedly "*suggested that cross-examination was the means by which to properly assess the reliability of Special Agent Shaw's work*." *Id.* at *3. Namely, in response to trial counsel's *Daubert-Motorola* concerns, the trial court in *Willis* stated:

> [s]o isn't that something that's fair for cross examination. For example, the expert -- assuming that the expert goes beyond what you think is within his knowledge base, wouldn't that be appropriate for you to simply use cross examination to demonstrate . . . It just seems to me to fit right in with what we would use as a tool to test the reliability of the princip[le], but also the reliability of its application to the data.[14]

The *Willis* court held that: "there is no indication in the record that it determined whether Special Agent Shaw reliably applied the

[14] *Willis v. United States*, --- A.3d. ---, 2025 WL 3237300, at *6 (D.C. Nov. 20, 2025).

methodology used by CAST agents to the facts of this case. *Instead, the court immediately turned to the tools of the adversarial process as the means to make the reliability determination. This was improper*." *Id.* at *5 (emphasis added).

The *Willis* court condemned the trial court's reliance on cross-examination to ferret out whether the expert witness' methodology was sufficient. In response to the trial court's statement that: "[s]o isn't that something that's fair for cross examination" the *Willis* court explained:

> *[t]his view is incorrect. It is the court's job to determine up front whether an expert can testify "within the bounds of what can be concluded from a reliable application of the expert's basis and methodology" because "jurors may lack the specialized knowledge to determine whether the conclusions of an expert go beyond what the expert's basis and methodology may reliably support*." Fed. R. Evid. 702 advisory committee's notes to 2023 amendments. This duty continues throughout the expert's testimony because the court remains in a better position to assess whether the expert has strayed beyond a reasonable application of their methods. *See United States v. Garcia*, 752 F.3d 382, 396 (4th Cir. 2014) (holding that the district court fulfilled its gatekeeping role initially but that it failed to do so "throughout [the expert's] testimony" where it was apparent that the expert was not reliably applying their methodology).[15]

[15] *Willis v. United States*, --- A.3d. ---, 2025 WL 3237300, at *6 (D.C. Nov. 20, 2025) (emphasis added).

Similarly, the trial court that presided over Mr. Layne's trial failed to fulfil its gatekeeper role regarding Mr. Smith's proposed testimony about "boot" despite trial counsel's numerous objections. Rather, the trial court relied upon voir dire and cross-examination to address trial counsel's legitimate and well-founded objections to Mr. Smith's proposed testimony. This was error which was not harmless.

III. Expert witnesses (such as Mr. Brown) play an outsized role in the minds of jurors and therefore the trial court's erroneous admission of Mr. Brown's testimony was highly prejudicial, both in terms of the jury's verdict and in terms of sentencing, since the PWID dimethylpentylone conviction provided the basis for the lion's share of Mr. Layne's 17½-year sentence.

This court has long recognized that "the authoritative quality which surrounds expert opinion . . . might be given undue deference by jurors." *Smith v. United States*, 389 A.2d 1356, 1359 (D.C. 1978). The inherent persuasiveness of expert testimony owes in part to a perceived "infallibility" of expert evidence among lay audiences. *See Jones v. United States*, 202 A.3d 1154, 1169 n.44 (D.C. 2019) ("The tendency of testimony on scientific techniques to mislead the jury relates to the fact that, because of the apparent objectivity of opinions with a scientific basis, the jury may cloak such evidence in an aura of mystic infallibility."); *E.I. du Pont de Nemours & Co., Inc. v. Robinson*, 923

S.W.2d 549, 553 (Tex. 1995) (explaining that "a jury more readily accepts the opinion of an expert witness as true simply because of his or her designation as an expert"). As such, that Mr. Smith was designated as an expert witness in the use and distribution of "boot" in the District likely had an undue influence on the jury. When conducting its prejudice analysis, this court should weigh in Mr. Smith's favor that this error involved an expert witness. *See Redmond v. United States*, 339 A.3d 1274, 1281-82 (D.C. 2025) (finding sufficient prejudice to warrant reversal where the government violated *Napue v. Illinois* in presenting a hair fiber expert witness and pointing out that: "an expert's recognition of the scientific limitations of her conclusion does not necessarily make that conclusion less compelling in the eyes of the jury. . . The defense's cross-examination of Ms. Lanning was not powerful enough to undermine the apparent reliability of this conclusion.").

Regarding the practical effect of the error on Mr. Layne, the conviction for possession with the intent to distribute ("PWID") dimethylpentylone provided the basis for the lion's share of Mr. Layne's 17½-year sentence. This is because the conviction on this count, combined with a "while armed" enhancement (that would not have

applied to a simple possession conviction) resulted in a sentence of 90 months. In addition, PWID qualifies as a predicate offense under the possession of a firearm during a crime of violence statute, which resulted in an additional 120 months for Mr. Layne. While these two counts (counts one and two) were sentenced concurrently to one another, Mr. Layne still must serve 12 years of his 17½-year sentence based on Mr. Smith's erroneously-admitted testimony. Thus, the practical effect of the trial court's error is extremely serious for Mr. Layne.

IV. Mr. Layne's claim that the trial court erred by improperly acting as a partisan by interfering in the testimony of multiple witnesses in a manner that assisted the prosecution and denied Mr. Layne the right to an impartial decision-maker is preserved.

"[A] trial judge has enormous influence on the jury and therefore must act with a corresponding responsibility." *United States v. Williams*, 809 F.2d 1072, 1086 (5th Cir. 1987). This court has explained that a trial court "must not take on the role of a partisan. . . Prosecution and judgment are two separate functions in the administration of justice; they must not merge." *Johnson v. United States*, 613 A.2d 888, 895 (D.C. 1992). The trial court's inherent power to participate in the examination of witnesses "should be sparingly exercised, particularly in

a jury trial where the potential for prejudice is greatly enhanced." *Springs v. United States*, 311 A.2d 499, 500 (D.C. 1973); *see also Jackson v. United States*, 329 F.2d 893, 894 (D.C. Cir. 1964) (per curiam) ("in a jury case, a trial judge should exercise restraint and caution because of the possible prejudicial consequences of the presider's intervention").

The trial judge should proceed cautiously in this regard because:

> [i]nterrogation of witnesses tends to assimilate the court's role with the advocate's, and may tread over the line separating the provinces of judge and jury. The presumption of innocence may be jeopardized by an assumption of guilt radiated by overzealous quizzing by the judge, and the right to fair trial may be imperiled by an apparent breach of the atmosphere of judicial evenhandedness that should pervade the courtroom. There is the risk that the questioning may bear "the seeds of tilting the balance against the accused" and place "the judge in the eyes of some jurors, on the side of the prosecution." There is also the danger that the judge may elicit . . . responses hurtful to the accuse -- responses to which the jury may assign peculiar weight because of their ostensible judicial sponsorship.[16]

The government asserts that the plain error standard applies to Mr. Lanye's unwarranted judicial intervention claim. While it is true that this court has reviewed such claims for plain error absent a contemporaneous objection during the trial, *see, e.g., Jennings v. United*

[16] *United States v. Barbour*, 420 F.2d 1319, 1321 (D.C. Cir. 1969).

States, 989 A.2d 1106, 1114-15 (D.C. 2010) (applying plain error review to unpreserved claim that the trial judge unfairly "assumed a prosecutorial role"), an examination of the binding precedent regarding the standard of review for unwarranted judicial intervention claims demonstrates that this court should *not* review for plain error.

Specifically, in *United States v. Barbour*, 420 F.2d 1319 (D.C. Cir. 1969) (a binding precedential case[17] that predates the cases that the government cites), the D.C. Circuit considered the trial attorney's failure to object to the trial court's unwarranted intervention during the trial as a mere factor during its review but did not review for plain error. *See id.* at 1322-23 ("There is to be considered, too, the on-the-spot evaluation of defense counsel who, after completion of the judge's inquiries, submitted no additional questions to the witnesses, nor did he in either instance object to those propounded by the judge. At most, the judge's examination of the two alibi witnesses is not likely to have had more than minimal effect upon the result reached by the jury. Certainly it did not rise to the magnitude of reversible error."). Because a later panel is bound by precedential decisions by a prior panel and the prior

[17] *See M.A.P. v. Ryan*, 285 A.2d 310, 312 (D.C. 1971) (decisions of the D.C. Circuit before February 1, 1971 are binding on the D.C. Court of Appeals).

panel's decision can normally only be overruled by this court sitting en banc,[18] this court's panel opinions rendered subsequent to *Barbour* that applied plain error review to unwarranted judicial intervention claims should not be considered precedential because they could not overrule *Barbour*.

In *Jackson v. United States*, 329 F.2d 893 (D.C. Cir. 1964) (per curiam), the court did not mention whether defense counsel had objected to the trial court's intervention. Nonetheless, the *Jackson* court reviewed the *entire transcript* of the trial in order to ensure that it reviewed the trial court's involvement in context. After reviewing the transcripts from the entire trial, the *Jackson* court reversed, explaining:

> [o]n the whole record we cannot say, with that degree of assurance required in a criminal case, that the activities of the trial judge may not have prejudiced the defendant, notwithstanding the strong evidence presented against him. Accordingly there must be a new trial. Reversed and remanded for a new trial.[19]

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[18] *Ryan*, 285 A.2d at 312 ("[W]e have adopted the rule that no division of this court will overrule a prior decision of this court or a decision the United States Court of Appeals [for the District of Columbia Circuit] rendered prior to February 1, 1971, and [ ] such result can only be accomplished by this court en banc.)." (footnote omitted).

[19] *Jackson v. United States*, 329 F.2d 893, 894 (D.C. Cir. 1964) (per curiam).

Similarly, this court, in *Springs v. United States*, 311 A.2d 499 (D.C. 1973), reviewed the entire trial record to determine whether the trial court's intervention was reversible error even though trial counsel did not object during the trial. *See id.* at 500 ("In the instant case the alleged prejudice occurred throughout the trial providing ample opportunity to object, but no such objection was made. Additionally, the judge's examination of the witness did not prejudice appellant."). Like *Barbour*, the *Springs* court apparently relied on trial counsel's failure to object during the trial as a factor but did not review for plain error because of it.

Barbour, *Jackson*, and *Springs* also set forth a better rule, recognizing that it is best to review the entire trial transcript (including potential trial attorney objections) to enable this court to decide, in context, whether the trial court's actions amounted to reversible error rather than relying on the objection-specific plain error rule, which does not provide proper context. *See, e.g.*, *Haluck v. Ricoh Electronics, Inc.*, 151 Cal. App. 4th 994 (4th Dist. 2007), as modified on other grounds (June 21, 2007). Thus, this court should <u>not</u> review the claim that the trial court inappropriately intervened in the trial for plain error but rather should review the entire transcript to make its determination.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been e-served this 16th day of December 2025 on: Ms. Chrisellen Kolb, Esq., Criminal Appeals Division, the Office of the United States Attorney, 601 D Street, NW, Washington, DC 20004 and Michael Bruckheim (counsel for co-appellant Elliot Wallace) via the D.C. Court of Appeals e-filing system.

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