CONSOLIDATED BRIEF FOR APPELLEE

DISTRICT OF COLUMBIA
COURT OF APPEALS

Nos. 24-CF-43 & 24-CF-156

ELLIOTT WALLACE &
ANTOINE LAYNE, Appellants,

v.

UNITED STATES OF AMERICA, Appellee.

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

JEANINE FERRIS PIRRO
United States Attorney

CHRISELLEN R. KOLB
NICHOLAS P. COLEMAN
SARA MATAR
MOLLY SMITH
* MICHAEL E. MCGOVERN
D.C. Bar #1018476
Assistant United States Attorneys

* Counsel for Oral Argument
601 D Street, NW, Room 6.232
Washington, D.C. 20530
Michael.McGovern2@usdoj.gov
(202) 252-6829

Cr. Nos. 2022-CF2-5858 &
2023-CF2-2579

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ISSUES PRESENTED

I. Whether the trial court abused its discretion when it permitted the government's expert in drug distribution to testify about the distribution, packaging, and pricing of a narcotic known on the street as "boot" where the expert was familiar with the drug (which had only recently emerged in the D.C. narcotics trade) based upon his own personal experience and discussions with other law enforcement, arrestees, and confidential sources – sources commonly relied upon by experts in the field.

II. Whether the trial court plainly erred by asking a few short clarifying questions of various government witnesses, where the court's questions sought to clarify testimony already elicited by the prosecution and did not inject new theories into the case or undermine Layne's defense.

III. Whether there was sufficient evidence that appellant Wallace intended to distribute the 13 individually-packaged rocks of crack cocaine found in his possession where the drugs and $405 were recovered from his person; he was not carrying any drug-use paraphernalia; he was riding in a car with an armed co-defendant; and expert testimony

established that the amount of cocaine, packaging, lack of paraphernalia, and presence of a gun, among other factors, were indicative of distribution rather than personal use.

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COUNTERSTATEMENT OF THE CASE

During a traffic stop of a car driven by appellant Elliot Wallace, police saw backseat passenger appellant Antoine Layne playing "footsie" with an object beneath the front passenger seat. When officers removed the men from the car, they found a gun with both Wallace's and Layne's DNA on it under the car's front passenger seat (where Layne had been fidgeting). Officers then found a ziplock bag with two eight-ball-size baggies of a rock substance containing a narcotic with the street name

"boot" on Layne, as well as a plastic bag on Wallace that contained (1) 13 knotted baggies of a rock substance containing crack-cocaine and boot; (2) three knotted baggies of a white powder containing cocaine, fentanyl, and 4-ANPP; and (3) a vial of liquid PCP. Both men had hundreds of dollars of cash in multiple denominations on them.

Wallace and Layne were both charged with possession of narcotics with intent to distribute as well as multiple gun-related crimes (24-CF-43 (Wallace) Record on Appeal (WR.) 158-60 (Superseding Indictment); 24-CF-156 (Layne) Record on Appeal (LR.) 144-46 (Superseding Indictment)).[1] During a jury trial before the Honorable Erik Christian, an expert in the packaging, distribution, and use of narcotics – Officer Scott Brown – testified that the circumstances surrounding Wallace and Layne's possession of the drugs were consistent with their intent to distribute the boot and crack-cocaine rocks. Although Brown had less direct experience with boot than other narcotics (given its more recent introduction into the D.C. drug market), his testimony about the drug was based on the same reliable sources of information drug experts

[1] All page references to the records are to the PDF page numbers.

traditionally consult to understand distribution of a controlled substance – personal experience with investigations and arrests involving the substance and discussions with others in law enforcement, arrestees, and confidential sources.

The jury found Wallace guilty of possession with intent to distribute (PWID) cocaine, possession of cocaine, and possession of liquid PCP (WR. 228-31 (Verdict Form)).[2] It found Layne guilty on all counts: PWID N,N-dimethylpentylone (the narcotic known as boot) while armed, possession of a firearm during a crime of violence, possession of N,N-dimethylpentylone, unlawful possession of a firearm, carrying a pistol without a license, possession of an unregistered firearm, and unlawful possession of ammunition (LR. 178-81 (Verdict Form)). Judge Christian sentenced Wallace to a total of 40 months' incarceration and five years' supervised release (WR. 242-44 (Judgment)). He sentenced Layne to a total of 210 months' incarceration and three years' supervised release

[2] The jury acquitted Wallace of all gun-related charges, including the while armed enhancement for his PWID charge, possession of a firearm during a crime of violence, unlawful possession of a firearm, carrying a pistol without a license, possession of an unregistered firearm, and unlawful possession of ammunition (WR. 228-31).

(LR. 240-45 (Judgment)). Both Wallace and Layne filed timely notices of appeal (WR. 245-46; LR. 246).

The Trial

The Government's Evidence

On October 2, 2022, Metropolitan Police Department (MPD) Sergeant Owais Akhtar was on patrol in his car near 5th and T Streets, NW (9/29/23 Transcript (Tr.) 148). While on Rhode Island Avenue, Sergeant Akhtar saw a four-door BMW that had "heavy tint" on the windows and a "plastic cover on the license plate" that created a glare and was "an equipment violation" (*id.* at 150).[3] Sergeant Akhtar turned on his emergency equipment, but the BMW did not stop (*id.* at 152). Rather, the BMW turned off Rhode Island Avenue onto 5th Street and then came to a stop approximately one minute later (*id.* at 152-53).

After pulling his car parallel to the BMW, Sergeant Akhtar began to speak with Wallace, the driver, from across the street (9/29/23 Tr. 153-54). Sergeant Akhtar then walked to the BMW's driver's-side window,

[3] Sergeant Akhtar explained that plastic license plate covers are illegal because they create a glare when speed cameras attempt to photograph them with a flash, which obscures the license plate number (9/29/23 Tr. 151).

and Wallace showed him a picture of his driver's license on his phone and provided a paper copy of the car's registration (*id.*; Gov't Ex. 201A at 17:10:33 to -11:20 (embedded timestamp)). The BMW was registered to Jawan Plummer, who was sitting in the front-passenger seat of the car (9/29/23 Tr. 153, 155). While Sergeant Akhtar was interacting with Wallace, he saw Plummer reach "underneath the passenger seat with his hand" at least two times (*id.* at 156, 185).

Officer Russell Dawes and his partner arrived in response to a call for assistance with a traffic stop (9/29/23 Tr. 14, 155). While Officer Dawes's partner went to speak with Plummer, Officer Dawes positioned himself at the rear, driver's-side window of the car where – through the open window – he had a clear view of Layne, who was sitting on the passenger-side of the backseat (*id.* at 15-16). Officer Dawes saw Layne "fidgeting around" with his hands and his cellphone, and Layne's left foot was "inching towards the underneath portion of the . . . passenger's front seat" as if here were kicking something in a forward motion (*id.* at 16-17, 34, 63). Layne appeared nervous, and his movements looked as if "he was trying to conceal something" (*id.* at 17). Officer Dawes took out his

flashlight to help him see whether Layne was trying to hide something under the seat (*id.* at 34).

Sergeant Akhtar ordered the three men out of the car (9/29/23 Tr. 18, 156-57). In the backseat, officers found an open bottle of Remy Martin cognac (*id.* at 18, 157; Gov't Exs. 311, 312). In a cupholder on the car's dash there was a blue, plastic Solo cup that contained a brown liquid that smelled of alcohol (9/29/23 Tr. 18-19, 28, 157; Gov't Exs. 309, 310). Under the front passenger's seat, officers found a gun accessible from where Layne had been sitting (9/29/23 Tr. 19-20; Gov't Ex. 301). The gun was "pretty deep" under the seat where the seat was "so low that it hit[] the frame of the vehicle" (9/29/23 Tr. 20; Gov't Exs. 303, 307, 308). Although there was a slight gap between the seat and the floor of the vehicle "it was not big enough to push anything through" (9/29/23 Tr. 20; Gov't Exs. 307, 308).

Officer Dawes, who was wearing gloves, collected the gun, placed it in a brown paper bag, and secured it in his vehicle (9/29/23 Tr. 20-21; Gov't Ex. 202B). The gun was loaded and ready to be fired with twelve bullets in its magazine and an additional bullet in the chamber (9/28/23 Tr. 156-58; Gov't Exs. 345, 346). When Sergeant Akhtar told Layne and

Wallace that officers had found the gun, Layne "looked down toward the ground" with a "defeated look" like "someone was caught" (9/29/23 Tr. 164-65; Gov't Ex. 201B). Layne's DNA was found on both the gun and the magazine, while Wallace's DNA was found only on the gun (9/29/23 Tr. 120-24).[4]

Officers searched Wallace incident to his arrest and found "a bag of suspected drugs in his left front jacket pocket" along with $405 in cash in multiple denominations (9/29/23 Tr. 21-23, 39-41; Gov't Exs. 202C, 204A,

[4] The mixture of DNA found on the gun was determined to have come from three individuals and was (1) 1.47 octillion times more likely to have originated from Layne and two unknown, unrelated individuals than three unknown, unrelated individuals and (2) 1.79 million times more likely if it originated from Wallace and two unknown, unrelated individuals than three unknown, unrelated individuals (9/29/23 Tr. 120-22). Further analysis showed that Layne contributed approximately 91% of the total DNA in the mixture; Wallace contributed approximately 7%; and a third, unknown individual contributed the remaining approximately 3% (*id.* at 120, 137-38). The mixture of DNA found on the magazine was determined to have come from three individuals, and was 96.4 septillion times more likely to have originated from Layne and two unknown, unrelated individuals than three unknown, unrelated individuals (*id.* at 122-24). Wallace was excluded as a contributor to the magazine DNA mixture (*id.* at 123). Front-seat-passenger Plummer was excluded as a contributor to the DNA mixtures found on both the gun and the magazine (*id.* at 120-23).

320, 321, 322, 323, 324, 330, 331). Inside the plastic bag of suspected drugs were:

- 13 separately knotted bags of a white, rock substance weighing approximately 11 grams that tested positive for crack cocaine and N,N-dimethylpentylone (9/29/23 Tr. 176, 181-82; 10/2/23 Tr. 36, 38, 54-55, 58; Gov't Exs. 326, 328);

- three knotted bags of a white, powder substance that tested positive for cocaine, fentanyl, and 4-ANPP (9/29/23 Tr. 177, 182; 10/2/23 Tr. 36, 54-55, 58; Gov't Ex. 329); and

- a vial of yellow liquid that tested positive for PCP (9/29/23 Tr. 177, 182; 10/2/23 Tr. 36, 55, 58; Gov't Ex. 325).

Officers recovered a ziplock bag containing two bundles of a white, rock-like substance along with $284 in cash in multiple denominations from Layne (10/2/23 Tr. 9, 20-21; Gov't Exs. 203A, 204A, 313, 314, 315, 316, 332, 333). The aggregate weight of the white, rock-like substance recovered from Layne was approximately eight grams and it tested positive for N,N-dimethylpentylone (9/29/23 Tr. 176, 182-83; 10/2/23 Tr. 36, 55, 58; Gov't Ex. 327).

Officer Scott Brown, an expert in the packaging, distribution, price, and use of narcotics, testified that crack cocaine is a "rocky hard substance" that is "ingested by smoking" using a "smoking device" such

as a "crack pipe" (10/2/23 Tr. 91). He described "boot" – the street name for N,N-dimethylpentylone – as an "inexpensive or cheap version of crack cocaine" that dealers or users could easily confuse with crack given the similar appearance of the narcotics (*id.* at 94, 108-12). Officer Brown understood that the rock form of boot was consumed in a manner similar to crack, using a "[c]rack pipe or a pipe" (*id.* at 116), and was "being sold . . . . similar to how you would sell cocaine" in D.C. (*id.* at 144).[5]

Officer Brown explained that "drug dealing . . . comes in different levels," with upper-, mid-, and lower-level dealers (10/2/23 Tr. 91). "[U]pper level" dealers typically sell "kilos" of narcotics that would then be broken down and distributed in smaller and smaller amounts, down to three-and-a-half gram increments called eightballs (*id.* at 91-92). In D.C., eightballs of crack cocaine cost approximately $150 to $250,

[5] Officer Brown testified that a rock composed of both crack cocaine *and* boot could be the product of adding boot to a supply of powder cocaine before the mixture was processed into crack in order to "stretch[]" the cocaine and "make more of it" before "packag[ing] it for street sales to increase [the dealer's] profit margin" (10/2/23 Tr. 93-94).

whereas eightballs of boot are approximately half that price (*id.* at 96, 112-13).[6]

At the "street level," dealers break eightball quantities "into ten or $20 bags" to be "sold on the street for users to consume" (10/2/23 Tr. 92). Each eightball produces "approximately 30 to 35 ten-dollar doses," typically sold in "zip-lock bags" "[t]he size of your fingernail" (*id.* at 97-98).[7] Although it was not uncommon for an individual crack user to be in possession of three to five of these smaller bags of crack cocaine at a time, it was uncommon to see crack users "buying in bulk" or carrying a larger amount because "when people are using crack cocaine, it's something that they're going to use fairly quickly" (*id.* at 97-99).

Officer Brown estimated that the 13 individually knotted baggies recovered from Wallace contained an aggregate of approximately seven to eight grams of crack cocaine, which could be purchased wholesale for approximately $400 and had a street value of approximately $1300

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[6] Officer Brown acknowledged his understanding of boot pricing reflected his knowledge from the past six months and that he did not know the price of boot in October 2022 (10/2/23 Tr. 140).

[7] Brown explained that a street-level dealer who broke a $150 eightball into "30 to 35 ten-dollar doses" would effectively double their money, which was the dealer's goal (10/2/23 Tr. 101).

(10/2/23 Tr. 97, 100-02).[8] The two bundles of boot recovered from Layne were each "equivalent to what an eightball looks like" and together could have been purchased for approximately $150 to $300 (*id.* at 112).[9]

Officer Brown testified that the amount of the drugs found on Wallace and Layne was more consistent with distribution than personal use (10/2/23 Tr. 102, 113). Not only was it uncommon to see a crack cocaine user buy any more than three to five ten-dollar bags at a time, smoking the amount of crack contained in some of the larger knotted bags Wallace possessed could potentially cause an overdose (*id.* at 99-100, 102). Additionally, Wallace's crack-cocaine was packaged in a manner that "would be easy for someone to distribute on the street level side" so that the purchaser could "then break it down into a smaller amount" (*id.* at 103-04). Similarly, the amount of boot Layne possessed was equivalent

[8] Officer Brown noted that the knotted baggies differed in size and that the larger of the bags appeared to be "maybe half the size of an eightball" (10/2/23 Tr. 96).

[9] Brown explained that if a buyer believed they were purchasing crack cocaine rather than boot (given the similarities between the drugs), the two bundles possessed by Layne were worth an aggregate of $300 to $600 (10/2/23 Tr. 113).

to 60 to 70 "ten-dollar doses," which was not consistent with personal use (*id.* at 113-16).

Officer Brown's conclusion the drugs were more consistent with distribution than personal use was further supported by the presence of a gun in the car that could be used for protection (10/2/23 Tr. 119-20); the absence of a pipe or other smoking paraphernalia needed to ingest the drugs (*id.* at 103, 115-16); the amount and denominations of the cash Layne was carrying, which was "consistent with . . . street sales" (*id.* at 116-18); and the total amount of cash Wallace was carrying (*id.* at 117-19). Additionally, Wallace's possession of multiple substances was more consistent with distribution than personal use given that "it's not normal for someone to have multiple drug substances if they're not dealing one of the substances" (*id.* at 107-08, 119).[10]

[10] On cross-examination Officer Brown acknowledged that crack users can make makeshift smoking devices out of objects such as aluminum cans or car antennas or mix crack into a cigar or cigarette to smoke it (10/2/23 Tr. 129-31). He also acknowledged that police did not find other possible indicators of drug dealing, such as empty single-dose baggies or a scale (*id.* at 124-25). He nevertheless stood by his opinion that Wallace's possession of the crack-cocaine mixture and Layne's possession of boot was more consistent with distribution than personal use (*id.*).

In contrast to the crack-cocaine mixture found on Wallace and the boot found on Layne, Officer Brown testified that the amount and packaging of the PCP and fentanyl found on Wallace were consistent with personal use (10/2/23 Tr. 105-07).

The parties stipulated that neither Wallace nor Layne had a license to carry a firearm or a valid registration certificate for a firearm (10/2/23 Tr. 148-49). The parties also stipulated that both Wallace and Layne had "previously been convicted of a crime punishable by imprisonment for a term exceeding one year" and knew of that fact (*id.* at 149).

The Defense Evidence

Wallace's neighbor and former employer both testified they had seen him using drugs on multiple occasions (10/2/23 Tr. 155-56, 165-66). Wallace's neighbor saw him putting cocaine into his cigarette or weed every day for the past year (*id.* at 155-56). Wallace's former employer also saw Wallace "getting high or smoking" crack "a few times a day," which led the employer to suggest Wallace seek treatment on at least one occasion (*id.* at 165-66, 168-69). Despite Wallace's drug use, his former employer continued to dispatch Wallace to provide roadside assistance to others when he was not high (*id.* at 164, 168-69).

Myron Smith, a paid consultant employed to "offer expert consultation for trial matters" about "police procedures" and "everything . . . narcotic-related," was qualified as an "expert in the field of use, distribution, packaging, and trends . . . in narcotics in Washington, D.C." (10/2/23 Tr. 172-73, 177). Smith had worked at MPD from 1984 to 1997, at which time he left to become a pastor in North Carolina (*id.* at 188-89). He described North Carolina as his "primary residence," although he insisted that he kept a "good footprint in D.C." (*id.* at 175, 200). While with MPD, Smith worked in an undercover capacity and eventually became "the resident narcotic expert" between 1992 to 1997 (*id.* at 173, 189). After he moved to North Carolina, Smith continued to "[s]tay current by talking with other law enforcement personnel," looking at trend reports and research on narcotics in D.C., and "keeping involved in what's going on in the streets of Washington" by "talking to individuals that are involved . . . or have been involved in the narcotic culture" (*id.* at 175, 196-97).[11]

[11] Smith conceded he had not done any undercover operations or executed any search warrants in Washington, D.C., for the past 25 years (10/2/23 Tr. 198-99).

Smith agreed with Officer Brown's conclusion that the PCP and fentanyl possessed by Wallace was consistent with personal use (10/2/23 Tr. 178). With respect to the crack cocaine Wallace possessed, however, Smith disagreed that the circumstances supported finding it was more consistent with distribution than personal use (*id.*). Smith's conclusion was based on the fact that Wallace's possession was discovered during a traffic stop rather than after observation of a drug transaction or as a part of a "buy-bust" or "long-term investigation" (*id.*). Additionally, Smith's conclusion was supported by the lack of any "empty ziplocks," "scales," rubber bands around the money, or suspicious movements back-and-forth between a "stash" of drugs and buyers (*id.* at 178-79, 181). Smith's opinion discounted (1) the amount of drugs at issue because it was less than "pounds or kilos," (2) the presence of multiple types of drugs in Wallace's possession given that users had different drug preferences, and (3) the presence of a gun given that "firearms are becoming quite commonplace" (*id.* at 179-80).

Smith also testified that "boot" is a stimulant that began appearing on trend reports in about 2014, but that had "recently come in the D.C. area" and had not yet "swept across the DMV area" (10/2/23 Tr. 184; *id.*

(describing boot's introduction into D.C. as "still fresh")). He agreed with Officer's Brown's description of the drug as "a cheaper crack cocaine" (*id.* at 217). Smith did not believe that the quantity of boot possessed by Layne – two eightballs – was sufficient "in and of itself" to indicate distribution absent other indicia of sales (*id.* at 186).

On cross-examination, Smith conceded that, since 1997, he had never once testified for the government (10/2/23 Tr. 193). He was also confronted with his prior testimony in multiple cases in which he opined that amounts of drugs less than those found on Wallace and Layne were inconsistent with personal use. *Id.* at 204-05 (prior testimony 4.306 grams was "a very large quantity of what you would normally have as a street level for crack cocaine"); *id.* at 209 (prior testimony it would be unusual to possess nine or more grams of crack cocaine for personal use); *id.* at 211-12 (prior testimony "a user would not have ten separate zip-locks for their own personal use"); *id.* at 213 (prior testimony five grams in 41 separate rocks led to "almost concrete opinion that individual would have those drugs with the intent to sell or distribute"). Smith was also confronted with his prior testimony that drug users generally seek out only the amount of drugs necessary to "satisfy their particular craving or

their particular high that they're searching for" (*id.* at 207; see also *id.* at 210 (same)). Finally, Brown was confronted with his prior testimony that "oftentimes guns go hand in hand, along with drugs" (*id.* at 218-19).

SUMMARY OF ARGUMENT

The trial court did not abuse its discretion when it permitted Officer Brown, an expert in narcotics distribution in Washington, D.C., to testify regarding the recently emerging drug known as "boot." During voir dire at the outset of his testimony, Officer Brown established the basis for his knowledge about boot, which arose from his own personal experience as a police officer specializing in narcotics cases, discussions with other law enforcement, and discussions with arrestees and confidential sources. The record clearly shows that Officer Brown's knowledge was based upon sources commonly relied upon by experts in narcotics distribution, and the trial court did not clearly err in finding his testimony admissible under this Court's decision in *Motorola Inc. v. Murray*, 147 A.3d 751 (D.C. 2016) (en banc). Even assuming error, admission of Officer Brown's testimony was harmless with respect to each of Wallace's convictions and Layne's convictions for possession of N,N-dimethylpentylone, unlawful

possession of a firearm, carrying a pistol without a license, possession of an unregistered firearm, and unlawful possession of ammunition.

The trial court did not plainly err when it asked clarifying questions in response to the testimony of a few government witnesses. The court's questions sought to clarify testimony already elicited by the prosecution and did not inject new theories into the case or undermine Layne's defense. Even if the trial court's interjections were error that was plain, Layne cannot show prejudice, particularly in light of the trial court's instructions prohibiting the jury from interpreting any of its questions to witnesses as indicative of support for either party.

The evidence was sufficient to permit a reasonable juror to infer that Wallace's possession of 13 individually packaged rocks of crack cocaine was for the purpose of distribution where police recovered the drugs and $405 from his person; he was not carrying any drug-use paraphernalia; he was riding in a car with an armed co-defendant; and expert testimony established that the amount of cocaine, packaging, lack of paraphernalia, and presence of a gun, among other factors, were indicative of distribution rather than personal use.

ARGUMENT

I. The Trial Court Did Not Abuse Its Broad Discretion When It Admitted Officer Brown's Testimony About "Boot".

A. Additional Background

Prior to trial, the government filed notice that it intended to call Officer Brown to testify as an expert in the packaging, distribution, and use of narcotics in the District (WR. 143-48; LR. 117-22). When Layne moved to exclude Officer Brown's testimony based on the absence of any reference to N,N-dimethylpentylone in the notice, the government submitted a supplemental notice addressing Officer Brown's expected testimony regarding the narcotic (LR. 147-53 (Layne Mot. to Exclude Expert); LR. 160-65 (Supplemental Expert Notice)). At trial, Layne conceded that the supplemental notice "negate[d] the vast majority of [his] motion," and asked the court to "hold th[e] motion in abeyance pending a voir dire of th[e] witness" (9/28/23 Tr. 10-11).

On the second day of testimony, the parties discussed objections to Officer Brown's expert testimony, including Layne's request to voir dire Layne on his expertise with N,N-dimethylpentylone (9/29/23 Tr. 6-11). The trial court found that (1) Officer Brown would be permitted to testify

regarding whether the drugs were "consistent either with personal use or with an intent to distribute" but could not opine that Wallace and Layne were "a certain level of a drug dealer" (*id.* at 8-9). It also found that Layne could conduct a voir dire before the jury on Officer Brown's knowledge of N,N-dimethylpentylone (*id.* at 10-11).

The following Monday, Officer Brown testified as an expert for the government (10/2/23 Tr. 66-147). Officer Brown's background included 32 years with MPD, including over 20-years' experience in the Narcotics and Special Investigations Division in which he "conducted buy-bust operations," made "thousands of arrests" for "different types of drugs . . . in D.C.," "applied for search warrants for guns or drugs," and conducted drug investigations, including "Title III investigations where [law enforcement] monitor[s] people's phone calls and . . . conduct[s] [an] investigation to identify . . . the larger supplier of drugs or . . . guns in D.C." (*id.* at 68-70). For the past 13 years, Officer Brown had been assigned to the "FBI Safe Streets Task Force," which was comprised of "FBI agents, Park Police agents, [and] PG County Officers," and conducted short- and long-term drug investigations in D.C. (*id.* at 67). He also taught classes on drug trends for multiple constituencies – including

MPD, universities, as well as government prosecutors – and created an informal drug pricing chart that depicted the weights and prices of various common drugs in D.C. (*id.* at 77-78).[12]

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 (10/2/23 Tr. 71). 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 (*id.* at 71-74, 77). Officer Brown identified the proliferation of sales of N,N-dimethylpentylone – "more commonly known as boot" – as "a new trend we're seeing in D.C." (*id.* at 74-75).[13] Over the past six months, Officer Brown had "see[n] more and more boot on the

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[12] This chart had last been updated in 2020 (10/2/23 Tr. 84).

[13] When Officer Brown first encountered the drug, "everyone was calling it boot" (10/2/23 Tr. 74-75). He learned the chemical name for the narcotic after a sample was sent to the lab to be analyzed (*id.*). Throughout his testimony, Officer Brown pronounced the chemical name for boot as "dimethylon pentylone" (*id.* at 74). When Officer Brown was confronted with the written chemical name and asked to read and spell it, he maintained his pronunciation of the word, noting, "that's how I interpret the spelling of the word" (*id.* at 145-46).

street" (*id.* at 74-75, 80-81). It appeared in approximately a dozen of Officer Brown's own cases and investigations, and he also discussed the new drug trend with "[c]onfidential sources and other law enforcement officers that . . . [were] more familiar with boot" (*id.* at 75-77). Officer Brown understood boot could be purchased as "a hard rock substance or a powder substance," and was smoked or snorted in a manner similar to cocaine (*id.* at 75-76).

During voir dire by defense counsel, Officer Brown acknowledged that his last discussion with other law enforcement about boot occurred approximately a week prior when he had discussed the drug with a "Montgomery County officer" (10/2/23 Tr. 82). He also estimated that his last discussion about the drug with a confidential source occurred approximately three months earlier (*id.* at 82-83). He explained that he had not yet discussed boot during any of his drug trends classes because "it's fairly new" and he was "still educating [him]self" on its use in D.C. (*id.* at 81). While Officer Brown had never previously failed to qualify as an expert in the use and distribution of narcotics, he confirmed he had never previously been qualified as an expert with respect to N,N-dimethylpentylone specifically (*id.* at 79, 84). Wallace's counsel briefly

confirmed that Officer Brown was aware the crack-cocaine/boot mixture had not been tested for purity (*id.* at 84-86).

Layne and Wallace[14] moved to exclude Officer Brown's testimony regarding boot, pointing to his mispronunciation of the narcotic's chemical name and his limited experience with the drug (10/2/23 Tr. 86-87). The trial court rejected the motion, finding that Officer Brown was being offered as an expert on distribution of narcotics and controlled substances in general, a category into which the drugs recovered from appellants fit (*id.* at 87-89). It further found that Officer Brown had "sufficient education and training to testify about these narcotics in general," highlighting his "experience based upon [boot's] new use in the Washington, District of Columbia[,] area along with the neighboring jurisdiction of Montgomery County" (*id.* at 88). The court found that Officer Brown's knowledge of the correct pronunciation of the chemical name and his depth of experience with the drug were proper fodder for cross-examination (*id.* at 87-88).

[14] Wallace adopted Layne's objection to Officer Brown's testimony about boot (10/2/23 Tr. 88).

Wallace further objected to Officer Brown's testimony given his insufficient knowledge of boot and the fact the crack-cocaine/boot mixture found in his possession was never tested for purity (10/2/23 Tr. 88-89). The trial court found that the presence of boot in the crack mixture was "even more of a reason why [it would] permit [Officer Brown] to testify" (*id.* at 89).

B. Standard of Review and Applicable Legal Principles.

"[T]he reliability-based standards of admissibility set forth in Federal Rule of Evidence 702, as interpreted in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), govern the admissibility of expert testimony. *Lewis v. United States*, 263 A.3d 1049, 1058-59 (D.C. 2021). *See Motorola Inc. v. Murray*, 147 A.3d 751 (D.C. 2016) (en banc). Expert testimony is admissible under Rule 702 where "(1) the witness is qualified as an expert; (2) the witness's expertise will help the trier of fact to understand the evidence or to determine a fact in issue; (3) the witness's testimony is based on sufficient facts or data; (4) the testimony is the product of reliable principles and methods; and (5) the expert has reliably applied the principles and methods to the facts of the case."

Lewis, 263 A.3d at 1059 (citations and quotation marks omitted). This inquiry is "a flexible one," *see Daubert*, 509 U.S. at 594, and in appropriate cases "the relevant reliability concerns may focus upon personal knowledge or experience[.]" *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 150 (1999).

"'[T]he opinions of an expert witness may be based in part on hearsay or other inadmissible information as long as the hearsay or other inadmissible information meets minimum standards of reliability and is of a type reasonably (i.e. customarily) relied on in the practice of the expert witness's profession.'" *Ruffin v. United States*, 219 A.3d 997, 1007 (D.C. 2019) (quoting *In re Amey*, 40 A.3d 902, 910 (D.C. 2012)). "While the court may not abdicate its gatekeeping responsibility to ensure the evidentiary reliability of expert testimony, it typically must 'accord an expert wide latitude in choosing the sources on which to base his or her opinions.'" *Id.* (quoting *In re Melton*, 597 A.2d 892, 903 (D.C. 1991)). A trial court's "gatekeeping role" is not intended "to displace the normal tools of the adversary system," in which "'[v]igorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but

admissible evidence.'" *Motorola*, 147 A.3d at 754 (quoting *Daubert*, 509 U.S. at 596)).

This Court reviews "a trial court's admission or exclusion of expert evidence for abuse of discretion and only disturb[s] the lower court's ruling when it is 'manifestly erroneous'." *Dickerson v. District of Columbia*, 182 A.3d 721, 726 (D.C. 2018) (citation omitted). Thus, "[s]ome inconsistency is inevitable." *Motorola*, 147 A.3d at 756. The abuse of discretion "standard applies as much to the trial court's decisions about how to determine reliability as to its ultimate conclusion." *Kumho Tire Co.*, 526 U.S. at 152 (emphasis added).

C. Discussion

Neither Wallace nor Layne dispute that Officer Brown's participation in hundreds of drug investigations and thousands of drug arrests during his multiple decades of service in the Narcotics and Special Investigations Division at MPD (including more than 13 years of service on the FBI Safe Streets Task Force) qualified him as an expert regarding the distribution of common narcotics in Washington, D.C., such as crack cocaine, fentanyl, and PCP. *See Spencer v. United States*, 688 A.2d 412, 417 (D.C. 1997) ("This court has frequently upheld the use

of expert testimony to aid the jury's understanding of drug trafficking in the District. Moreover, it is generally acknowledged that experienced police officers can be helpful in explaining to ordinary citizens the *modus operandi* of persons who commit crimes, and on that basis they have frequently been allowed to testify as expert witnesses.") (cleaned up). That same real-world experience qualified Officer Brown to testify about distribution trends with respect to the emerging narcotic N,N-dimethylpentylone, known on the street as "boot".

Contrary to Layne's assertion (at 15-16, 20-21), before permitting Officer Brown to testify about boot, the trial court fulfilled its obligation to act as a gatekeeper by permitting the parties to voir dire Officer Brown regarding his knowledge of and familiarity with the drug. *See Motorola*, 147 A.3d at 754. Officer Brown explained that as sales of "boot" in D.C. had increased over the past six months, he learned about the drug through his participation in approximately a dozen arrests involving the drug as well as discussions about the drug with multiple confidential sources and other law enforcement practitioners. Officer Brown's reliance on these sources was consistent with the customary practice of other experts in the field of narcotics distribution. *See* 10/2/23 Tr. 172-75, 196-

98 (defense drug-distribution expert's testimony that he relied upon (1) former experience as officer, (2) discussions with other law enforcement, and (3) discussions with individuals "involved in the narcotic culture"). *See also Ruffin*, 219 A.3d at 1007 (expert permitted to base opinion on "otherwise inadmissible facts or data" where "experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject"); *United States v. Lopez*, 880 F.3d 974, 980 (8th Cir. 2018) (drug-distribution expert permissibly relied upon "his 18-year experience interviewing addicts, arrestees, and their family members to formulate his opinion"); *United States v. Estelan*, 156 F. App'x 185, 197-98 (11th Cir. 2005) (not error to admit drug-distribution expert testimony where opinion was based on officer's experience, training, and discussions with persons involved in narcotics distribution).

Based on these sources, Officer Brown was familiar with boot's appearance (similar to crack), its price (half that of crack), and its distribution (similar to crack) (see 10/2/23 Tr. 75-76, 109-11, 113, 139, 144). The trial court therefore correctly found that Officer Brown, an uncontested expert in the distribution of common narcotics in D.C., had sufficient familiarity with boot to permit admission of his testimony

about the recently emerging drug (see *id.* at 88 ("I think he has sufficient education and training to testify about these narcotics in general. He indicated that he had experience based upon its new use in Washington, District of Columbia[,] area along with the neighboring jurisdiction of Montgomery County.")). *See Govan v. Brown*, 228 A.3d 142, 155 (D.C. 2020) (noting expert in internal medicine with a specialty in the study of kidneys could opine on testamentary capacity of an individual with various medical conditions, including kidney disease, where he was a "qualified physician" with "familiarity with the particular subject matter").

Both Wallace and Layne assert that Officer Brown had insufficient experience with "boot" to permit his testimony, highlighting his limited exposure to the drug and his mispronunciation of its chemical name (see Wallace Brief (W.Br.) at 26-29; Layne Brief (L.Br.) at 15-27). These arguments, however, fail to place Officer Brown's testimony and knowledge of boot in context. First, both Officer Brown and the defense's own drug expert testified that distribution of boot in D.C. was a recent phenomenon (see 10/2/23 Tr. 74 (Officer Brown testimony boot was a "new trend" encountered more frequently in the past six months); *id.* at

184 (defense expert testimony that boot was "still fresh" and "ha[d] not swept across the DMV area by no means")). Therefore, Officer Brown's more limited experience with the narcotic was to be expected. As discussed above, however, Officer Brown (who had decades of experience with the distribution of all manner of other common drugs in D.C.) had nevertheless gathered information from sources commonly relied upon by experts in his field about the narcotic.[15] Indeed, Officer Brown's understanding of boot as "a cheaper crack cocaine" was shared by the defense's own expert (*id.* at 217). Second, Officer Brown explained that he did not have a background in forensic chemistry (*id.* at 146), and his consistent pronunciation of the chemical name for the narcotic does not support finding he was not familiar with the drug when he explained it "has a street name" and is "more commonly known as boot" (*id.* at 74). Because Officer Brown was an expert in narcotics distribution, had familiarity with boot, and was subject to cross-examination about the

[15] Wallace incorrectly states (at 27) that Officer Brown did not know of boot until nearly two years after Wallace and Layne's arrest. In fact, Officer Brown testified that his increasing familiarity with boot began approximately six months prior to his October 2023 testimony, placing the beginning of his encounters with the drug only six months after Wallace's October 2022 arrest (see 10/2/23 Tr. 74).

bases for and limits to his knowledge of the new drug, it was not error to admit his expert testimony. *See Motorola*, 147 A.3d at 754 (702 gatekeeping role is not a substitute for "the normal tools of the adversary system" such as "vigorous cross-examination" and "presentation of contrary evidence").

Wallace's citation (at 26-27) to *Johnson v. District of Columbia*, 728 A.2d 70 (D.C. 1999), does not require a different result. First, *Johnson* is no longer binding authority as it was decided before this Court ended this jurisdiction's use of the test for admissibility of expert testimony set forth in *Dyas v. United States*, 376 A.2d 827 (D.C. 1997), in favor of the reliability-based *Daubert* standard set forth in Rule 702. *See Johnson*, 728 A.2d at 74. Second, the proffered expert in *Johnson* was a master plumber with no experience in commercial water heaters whose testimony "showed that he was unfamiliar with, and somewhat misinformed as to regulations governing . . . hot water provided from commercial heaters." *Id.* Unlike the plumber in *Johnson*, Officer Brown had personal knowledge of boot that was based on his actual experience and was consistent with defense's own drug-distribution expert's understanding of the drug.

Similarly, Layne's reliance (at 23-27) on *McClain v. Metabolife International, Inc.*, 401 F.3d 1233 (11th Cir. 2005), is misplaced. In *McClain*, a toxic tort case, the Eleventh Circuit found that the district court had erroneously admitted expert testimony on causation from a witness whose opinion relied upon broad principles of pharmacology but (1) ignored the "hallmark principle" of basic toxicology, (2) relied upon "unsubstantiated analogies" between substances that were not supported by medical literature, (3) drew inferences that were unsupported by the literature cited, and (4) relied upon a withdrawn government report whose basis had been called into question as well as "uncontrolled anecdotal information." *Id.* at 1239-52. Officer Brown's testimony did not suffer from any of these shortcomings. Although Officer Brown's understanding of the use and distribution of boot was based upon an analogy to crack cocaine – "it's described as a cheap version of crack" – that analogy was substantiated by common sources relied upon by drug-distribution experts and was verified by the defense's own expert (see 10/2/23 Tr. 110, 139, 217). Nor is there any basis in the record for Layne's assertion (at 25) that Officer Brown's testimony regarding the pricing for boot was speculative. Rather, he specifically referenced discussions with

arrestees as the source of his information on the cost of boot relative to crack cocaine (see *id.* at 139). He also forthrightly acknowledged that his information on pricing related to the past six-months he had encountered the drug, disclaiming knowledge of the specific price in October 2022 when Layne and Wallace were arrested (*id.* at 140).

Even assuming Officer Brown's testimony about boot was improperly admitted, it was harmless as to Wallace's convictions for possession of cocaine with intent to distribute, possession of cocaine, and possession of liquid PCP. *See Carrington v. District of Columbia*, 77 A.3d 999, 1008 (D.C. 2013) ("This court reviews the admission or denial of expert witness testimony for non-constitutional harmless error . . . ."). Wallace has not challenged the admission of Officer Brown's testimony regarding crack cocaine, PCP, or the distribution of those drugs in D.C. Because Wallace possessed a crack-cocaine/boot mixture in rock form, it is highly probable Officer Brown's testimony about boot as a standalone drug would not have substantially swayed the jury's verdicts against Wallace. *See Howard v. United States*, 867 A.2d 967, 975 (D.C. 2005) (no prejudice in introduction of exert testimony about defendant's mental state under plain error review where "[o]ther evidence was introduced

from which a reasonable juror could infer reasonably that [defendant] possessed marjiana with intent to distribute it"). Similarly, Officer Brown's expert testimony would have had no impact on the jury's convictions of Layne for simple possession of N,N-dimethylpentylone, unlawful possession of a firearm, carrying a pistol without a license, possession of an unregistered firearm, and unlawful possession of ammunition.

II. The Trial Court Did Not Plainly Err or Abuse Its Discretion in Occasionally Posing Clarifying Questions to Witnesses.

A. Additional Background

In its preliminary instructions, the trial court informed the jury of the judge's role "to conduct th[e] trial in a fair, orderly, and efficient manner, to rule on questions of law that come up during the trial, and to tell [the jury] what the law applies in this case" (9/28/23 Tr. 125-26). It contrasted this role with the jury's job as "the judges of the facts" who "alone determine the weight, the effect, and the value of the evidence" (*id.* at 126). The court specifically instructed the jury that any actions it might take during the trial, including "questions to witnesses, perhaps," were "not to be taken by [the jury] as indicating or suggesting any opinion

[it] might have about how [the jury] should decide the facts of this particular case" and that "[w]hat the verdict shall be in this case is [the jury's] sole and exclusive responsibility" (*id.* at 126-27).

Throughout trial, the trial court asked follow-up questions of certain witnesses to clarify their testimony. On the first day of testimony, Officer McCollum repeatedly referred to "PPE" without defining the term for the jury (9/28/23 Tr. 168-69). In response to a question from the trial court, the officer clarified that PPE stands for "personal protective equipment" such as a "mask, gown, [and] gloves" (*id.* at 169). Similarly, after Investigator Paskalis testified about the collection of buccal swabs from Wallace, Layne, and Plummer, the trial court asked a series of questions to clarify for the jury the process of how, physically, the investigator "actually took a swab or would take a swab from an individual" (*id.* at 187-88). Paskalis described that process, and then both Wallace and Layne had the opportunity to cross-examine him (*id.* at 188-98). The next day, when Officer Dawes misspoke about what was depicted in an admitted photograph, the trial court highlighted the officer's slip of the tongue and permitted him to clarify that the photograph depicted the

gun under the *seat* of the car, rather than under the car itself (9/29/23 Tr. 25).

The trial court continued to ask clarifying questioning during the government's direct examination of Sergeant Akhtar. First, after Sergeant Akhtar described stopping the car Wallace was driving, the trial court asked a series of questions to pin down precisely when Sergeant Akhtar observed the traffic infractions that were the subject of his stop (9/29/23 Tr. 150-52). These questions revealed that Sergeant Akhtar had not known that the plastic cover on the car's license plate created a reflective glare – and therefore was an equipment violation – until he turned on his emergency lights to stop the vehicle (*id.*). Second, when Sergeant Akhtar was discussing the moment Wallace, Layne, and Plummer exited the car, the trial court inquired whether the police had requested that the men exit the car or had ordered them to do so (*id.* at 156-57.) Sergeant Akhtar responded, "I don't remember exactly what I said; however, normally we will ask them to step out. If no one complies, then we will order them to exit the vehicle." (*Id.* at 157.) Third, when Sergeant Akhtar identified the object in an admitted photograph as PCP, the trial court probed the basis of Sergeant Akhtar's knowledge, to which

Sergeant Akhtar explained, "it's a yellow liquid inside of a small vial" and "[t]hat day it had odor consistent with PCP" (*id.* at 175).

Finally, on cross-examination, Officer Brown testified that it would be "potentially dangerous" for a drug dealer to let a buyer he did not know get into a car with him (10/2/23 Tr. 142). In response to a question from the trial court, Officer Brown clarified that the risk to the dealer was "that the buyer [could] rob the dealer" (*id.*). Continued cross-examination by Layne elicited that a dealer may, however, let a buyer into his car "if they knew each other decently" (*id.*).

After the close of testimony, the trial court instructed the jury:

> As I also told you before we began, you should not assume from any of my actions that I have an opinion about the facts of this case or these cases, these two cases. My rulings on objections, my comments to lawyers, discussions at the bench, these instructions to you, questions to witnesses, or statements to witnesses perhaps, all are concerned only with legal matters or with clarifying a question and are not to be taken by you as indicating my view about how you should decide the facts. Remember what I told you at the beginning of this trial. I try not to have any opinion as to facts in these cases. And if you think I've slipped and somehow hinted to you at an opinion I might have, you must entirely disregard it. What the verdict shall be is entirely your responsibility and none of my business. (10/3/23 Tr. 24-25.)

B. Standard of Review and Applicable Legal Principles

This Court ordinarily reviews a trial court's decision to question a witness for abuse of discretion. *See Khaalis v. United States*, 408 A.2d 313, 355 (D.C. 1979); *Womack v. United States*, 350 A.2d 381, 383 (D.C. 1976) ("To what extent the court will intervene . . . [to question a witness] is a matter of discretion."). Here, however, the plain-error standard of review applies because Layne's trial counsel did not object that the trial court's inquiries improperly assumed a prosecutorial role, or otherwise argue that the decision to intervene was improper or required a mistrial.[16] *See Jennings v. United 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"). Under plain-error review, Layne must show an error that is "plain," that "affects substantial rights," and that "seriously affect[s] the fairness, integrity, or public

[16] Wallace has neither advanced this argument on appeal nor adopted Layne's argument on the issue. Thus, he has waived this challenge to his convictions. *Rose v. United States*, 629 A.2d 526, 535 (D.C. 1993) ("It is a basic principle of appellate jurisprudence that points not urged on appeal are deemed to be waived.").

reputation of judicial proceedings." *United States v. Olano*, 507 U.S. 725, 734 (1993).

C. Discussion

The trial court did not err at all, much less plainly err, by posing questions to various witnesses to clarify their testimony during trial. Layne argues (at 28-33) that the court "improperly took on the role of a partisan and interfered in the examination of witnesses in a manner that assisted the prosecution." But the trial court "may interrogate a witness in the aid of truth and furtherance of justice," and, in some circumstances, "it is not only the right but the duty of the trial judge to participate directly in the trial." *Womack*, 350 A.2d at 382-83; *see Perry v. United States*, 364 A.2d 617, 620 n.4 (D.C. 1976) ("It has been observed that '[t]he adversary nature of the proceeding does not relieve the trial judge of the obligation of raising on his own initiative . . . matters which may significantly promote a just determination of the trial.'") (quoting ABA Standards, The Function of the Trial Judge, § 1.1 (1972)). A trial court may "'permissibly illuminate the witness's testimony' so long as the questions asked 'in no way jeopardized the appellant's presumption of innocence . . . or improperly suggested to the prosecutor tactics he had

not considered.'" *Hagood v. United States*, 93 A.3d 210, 228 (D.C. 2014) (quoting *Johnson v. United States*, 613 A.2d 888, 895-96 (D.C. 1992)).

Here, the trial court's questions permissibly illuminated the witnesses' testimony. The court's questions sought to clarify prior testimony to ensure the jury had a fulsome picture of what certain abbreviations meant (9/28/23 Tr. 168-69); how buccal swabs were taken (*id.* at 187-88); precisely what observations Sergeant Akhtar made before he decided to stop the men's car (9/29/23 Tr. 150-52); how the police interaction with the men in the car occurred (*id.* at 156-57), and the precise basis for certain assertions made by police officers (*id.* at 175; 10/2/23 Tr. 142). Thus, the court simply sought to clarify testimony that was already elicited by the prosecutor, and in no way injected new theories into the case or undermined the presumption of innocence.

Indeed, in *Hagood*, this Court held that similar questions posed by a trial judge were not an abuse of discretion. 93 A.3d at 227-28. In *Hagood*, the judge questioned a government witness in the midst of direct examination, asking whether the defendant was "inside the apartment or outside the apartment," and exactly how the defendant was holding the apartment door. *Id.* The court also clarified a physical demonstration

about where the defendant was in relation to the apartment's threshold. *Id.* at 228. These questions "did not exceed the proper bounds of the judicial role" because, in each instance, "the trial judge was clarifying for the record demonstrations or actions performed in court pursuant to inquiries the prosecutor had initiated." *Id.* The questions posed by the trial court here similarly sought clarification of prior testimony rather than to advance any particular or new theory of the case.

Even assuming the court erred, Layne fails to show that the error was plain. Although Layne cites (at 28) two cases involving trial court overreach, both are inapposite. In *Davis v. United States*, 567 A.2d 36, 41 (D.C. 1989), the trial court undertook "an off-the-record investigation," and in *Robinson v. United States*, 513 A.2d 218, 222 (D.C. 1986), the trial court "suggested to the prosecutor a tactical course which he had not considered." Both scenarios are a far cry from the court's inquiries in this case. In fact, both *Davis* and *Robinson* reaffirmed that a trial court may properly question a witness to clarify or fill in gaps in testimony. *Davis*, 567 A.2d at 41 (distinguishing between permissible questioning to fill in testimonial gaps and impermissible independent investigation and factual development); *Robinson*, 513 A.2d at 222 ("To the extent that the

court sought to clarify the witness' testimony, appellant has no basis for complaint.").

Finally, Layne cannot satisfy his burden to show that any error affected his substantial rights, or that failure to correct the error would "seriously affect[ ] the fairness, integrity, or public reputation of judicial proceedings." *Olano*, 507 U.S. at 736. The most critical aspects of the government's case against Layne were not impacted by the trial court's questioning; rather, body-worn camera captured the recovery of drugs from Layne as well as the gun from underneath the front passenger seat, DNA testing confirmed Layne's possession of the gun, and a drug expert opined that the circumstances surrounding Layne's possession of the boot were consistent with his possession with an intent to distribute the drug. Layne's claim (at 29-31) that the court's questioning could have buttressed the government's case by highlighting the legality of the traffic stop is undermined by (1) Layne's failure to challenge the legality of the stop as a matter of law, (2) the trial court's explicit response to a jury note instructing the jury that the lawfulness of the traffic stop was "an issue that [wa]s outside of [its] province" (10/3/23 Tr. 118), and (3) the fact the trial court did not know how Sergeant Akhtar would respond

and his answers very well could have weighed in favor of the defense. *See Jennings*, 989 A.2d at 1115 ("[A]ppellant was not prejudiced by the trial court's questioning [of appellant] because, inter alia, his responses could have helped his defense.").[17] Finally, any prejudice that may have potentially accrued from an impression the trial court's questioning favored the prosecution was ameliorated by the fact that the jury was explicitly instructed at both the beginning and end of trial to disregard any such impression (9/28/23 Tr. 126-27; 10/3/23 Tr. 24-25). *See Atkins v. United States*, 290 A.3d 474, 485 (D.C. 2023) ("'We ordinarily presume that the jury understands and obeys the trial judge's instructions.'") (quoting *Holloway v. United States*, 25 A.3d 893, 903 (D.C. 2011)).

[17] Indeed, Sergeant Akhtar's acknowledgment that he only saw the glare reflecting from the license plate cover *after* activating his emergency lights would have helped, not hurt, any defense challenge to the traffic stop, because it meant that the police initiated the stop before learning of that particular infraction.

III. There Was Sufficient Evidence of Wallace's Intent to Distribute Crack Cocaine.

A. Standard of Review and Applicable Legal Principles

This Court reviews a sufficiency claim de novo, "but . . . view[s] the evidence in the light most favorable to the government, drawing all reasonable inferences in the government's favor" and "mak[ing] no distinction between direct and circumstantial evidence, [because] circumstantial evidence is not intrinsically inferior to direct evidence." *Bruce v. United States*, 305 A.3d 381, 392 (D.C. 2023) (quotation marks omitted). "An appellant making a claim of evidentiary insufficiency bears the heavy burden of showing that the prosecution offered no evidence upon which a reasonable mind could find guilt beyond a reasonable doubt." *Id.* The evidence "need not negate every possible inference of innocence to be sufficient"; "[t]he issue is whether the evidence is probative enough to permit the [factfinder] to make the required inference beyond a reasonable doubt." *Brown v. United States*, 146 A.3d 110, 112 (D.C. 2016).

To prove PWID cocaine, the government must show that the defendant "knowingly and intentionally possessed [cocaine] with the

specific intent to distribute it." *Digsby v. United States*, 981 A.2d 598, 604-05 (D.C. 2009) (internal quotation marks omitted). "An intent to distribute can be inferred from expert testimony and the possession of a quantity of drugs that exceeds a reasonable supply." *Id.* Finally, "the government must demonstrate by direct or circumstantial evidence the controlled substance consisted of a measurable amount." *Id.*

B. Discussion

There was sufficient evidence from which a juror could reasonably infer that Wallace intended to distribute the cocaine in his possession.[18] In addition to multiple bags of fentanyl and a vial of PCP, Wallace had on his person 13 separately knotted plastic bags containing crack cocaine as well as $405 in cash while he travelled in a car with an armed individual who possessed two eightballs of boot. The men did not have a crack pipe or other smoking paraphernalia in their possession. Officer Brown opined that the amount of cocaine on Wallace's person, the manner in which it was packaged, the lack of smoking paraphernalia,

[18] Wallace does not challenge the sufficiency of the other elements of PWID cocaine. Layne has not raised a sufficiency challenge on appeal and has thus waived any such claim. *Rose*, 629 A.2d at 535.

and the presence of a gun in the car all suggested an intent to distribute. Accordingly, the jury could reasonably infer intent to distribute. *See, e.g.*, *Toyer v. United States*, 325 A.3d 417, 424 (D.C. 2024) ("An intent to distribute can be inferred from the possession of a quantity of drugs that exceeds supply for personal use or that is packaged in a manner indicative of future distribution.") (quoting *McRae v. United States*, 148 A.3d 269, 273 (D.C. 2016) (internal quotation marks omitted)).

Wallace's argument (at 32) that the evidence was deficient because there was no evidence the police observed Wallace package or sell the drugs and did not recover any drug distribution paraphernalia is meritless. The government's expert testified that the amount of cocaine Wallace possessed was greater than would be expected for personal use, and also found the drug's packaging, the absence of a pipe, and the presence of a gun further indicated the drugs were for distribution rather than personal use. This testimony was sufficient to permit a reasonable juror to infer Wallace's possession was for the purpose of distribution. *See Spriggs v. United States*, 618 A.2d 701, 704 (D.C. 1992) (finding evidence sufficient for PWID where defendant placed small package on the ground and walked away; package contained eight packets of heroin and five

packets of cocaine; and expert testified that amount of narcotics was more consistent with distribution than personal use); *Taylor v. United States*, 662 A.2d 1368, 1369-70, 1372 (D.C. 1995) (sufficient evidence of PWID where defendant had 18 rocks of cocaine but did not have drug paraphernalia, and expert testified that the quantity, packaging, and lack of drug paraphernalia were indicative of distribution as opposed to personal use). Indeed, Officer Brown's testimony defeats Wallace's reliance (at 32-33) on *McRae*. In *McRae*, this Court noted that the evidence was insufficient given that the evidence McRae possessed "a quantity of drugs that 'exceeds supply for personal use' or that [was] packaged in a manner indicative of future distribution" was "strikingly absent." 148 A.3d at 273-74. In contrast, here Officer Brown testified that the 13 baggies of crack cocaine possessed by Wallace contained a greater amount of crack than a drug user would possess at one time and appeared to be packaged for ease of distribution to street-level dealers (10/2/23 Tr. 102-04). Wallace's other arguments (at 34-36) simply view the evidence in the light most favorable to himself in plain contravention of the applicable standard of review. *See Toyer*, 325 A.3d at 424-25 (rejecting

appellant's alternative view of the evidence, noting this Court's "job is to view the evidence in the light most favorable to the government").[19]

CONCLUSION

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

Respectfully submitted,

JEANINE FERRIS PIRRO
United States Attorney

CHRISELLEN R. KOLB
NICHOLAS P. COLEMAN
SARA MATAR
MOLLY SMITH
Assistant United States Attorneys

/s/
MICHAEL E. MCGOVERN
D.C. Bar #1018476
Assistant United States Attorney

[19] Wallace appears to suggest (at 35) that Officer Brown's testimony was deficient because Brown did not know the relative purity of the crack cocaine, i.e., how much of the substance found on Wallace was cocaine and how much was boot. He hypothesizes (see *id.*) that because boot is less expensive, it must be less potent and hence a personal user might need more of it than pure crack cocaine. But this is mere speculation; neither Officer Brown nor the defense drug expert testified that a user of even of pure boot would need a quantity far in excess of crack cocaine to get high. And here, the substance found on Wallace contained crack cocaine in addition to boot.

601 D Street, NW, Room 6.232
Washington, D.C. 20530
Michael.McGovern2@usdoj.gov
(202) 252-6829

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused a copy of the foregoing to be served by electronic means, through the Court's EFS system, upon counsel for appellant Wallace, Michael Bruckheim, Esq., Michael@Brucklaw.com, and counsel for appellant Layne, Anne Keith Walton, Esq., waltonlawdc@gmail.com, on this 5th day of June, 2025.

/s/
MICHAEL E. MCGOVERN
Assistant United States Attorney