BRIEF FOR APPELLEE

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 25-CF-45

DELONTE CLEMONS, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

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

Cr. No. 2024-CF2-000033

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ISSUES PRESENTED

I. Whether the trial court should have suppressed evidence based on the theory that D.C. Code § 25-1001(a)(1), which prohibits possession of an open container of alcohol on "any. . . street, alley, park, sidewalk, or parking area," does not apply to privately owned streets or sidewalks, where (1) such a reading is not supported by the statute's plain text or legislative history, and would lead to absurd results, and (2) the record establishes that the street and sidewalk where the defendant was arrested were accessible to the public.

II. Whether, assuming § 25-1001(a)(1) does not apply to the street and sidewalk at issue, the officers' mistaken belief to the contrary was objectively reasonable and thus suppression was unwarranted under *Heien v. North Carolina*, 574 U.S. 54 (2014).

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COUNTERSTATEMENT OF THE CASE

By indictment filed on April 3, 2024, Clemons was charged with five counts: unlawful possession of a firearm (intrafamily offense), in violation of D.C. Code § 22-4503(a)(6) (Count One); carrying a pistol without a license, in violation of D.C. Code § 22-4504(a)(1) (Count Two); possession of an unregistered firearm, in violation of D.C. Code § 7-2502.01(a) (Count Three); unlawful possession of ammunition, in violation of D.C. Code § 7-2506.01(a)(3) (Count Four); and possession of

an open container of alcohol (POCA), in violation of D.C. Code § 25-1001(a)(1), (d) (Count Five) (Record on Appeal (R) 63-64 (indictment)).[1]

On June 9, 2024, Clemons moved to suppress physical evidence that Metropolitan Police Department (MPD) officers seized after they stopped him for POCA (R65-70 (motion to suppress)). Clemons argued that the officers lacked reasonable suspicion to stop or probable cause to arrest him for POCA because he was on private property, and "[t]he [D.C.] Code does not prohibit possession of an open container of alcohol on private property" (R68). The government opposed (R72-80). On October 23, 2024, the Honorable Robert A. Salerno held an evidentiary hearing and denied Clemons's motion (10/23/24 Transcript (Tr.) 75-76). Clemons then waived his right to a jury trial and entered into a stipulation that established his guilt as to Counts Two through Five of the indictment (R84-88 (stipulation and jury-trial waiver)). Judge Salerno found Clemons guilty on those counts on October 29, 2024 (10/29/24 Tr. 9).

On January 7, 2025, Judge Salerno sentenced Clemons to a total sentence of 12 months of imprisonment, to be followed by six months of

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

supervised release (R91 (judgment)). The execution of the sentence was suspended while Clemons served 18 months of probation (*id.*). Clemons timely filed a notice of appeal on January 15, 2025 (R93-94).

The Motion to Suppress

The Government's Evidence

In the early morning hours of January 1, 2024, Clemons was arrested on the premises of the Woodmont Crossing apartment complex (10/23/24 Tr. 14, 22-25). Woodmont Crossing is a large apartment complex consisting of multiple buildings (*id.* at 10-11, 13, 30; Government Exhibits (Gov. Exs.) 1 & 2). The block where Woodmont Crossing is located had "always been in [MPD's] . . . patrol" because it was a high-crime area, and MPD Investigator Brandon Joseph frequently patrolled the premises of Woodmont Crossing (10/23/24 Tr. 11-12, 31). Investigator Joseph never had to ask for permission from apartment management to patrol that block, nor was he aware of apartment management ever telling MPD they were not welcome there (*id.* at 12-13).

Woodmont Crossing's main thoroughfare is Good Hope Court, SE (10/23/24 Tr. 13-14; Gov. Exs. 1 & 2). At one end, Good Hope Court intersects with Marion Barry Avenue, SE (10/23/24 Tr. 34). Woodmont

Crossing's entrance is not immediately off Marion Barry Avenue; one must travel a short distance on Good Hope Court before reaching the entrance (*id.* at 37). That entrance has a gate that is "always open" (*id.* at 12).[2] At the other end, Good Hope Court connects to another street (*id.* at 49). This location used to serve as a second entrance, but it had been closed at some point (*id.* at 33). Investigator Joseph did not know whether the second entrance was open or closed on the day that Clemons was arrested (*id.* at 33-34).

Around 1:00 a.m. on January 1, 2024, Investigator Joseph and other officers in his unit entered Woodmont Crossing as part of their regular patrol (10/23/24 Tr. 15, 21). As was typical, the gate was open and no other barriers prevented the officers from entering the complex (*id.* at 15). Investigator Joseph saw Clemons walk in front of Investigator Joseph's unmarked police car and "onto a sidewalk area" while "carrying an alcoholic beverage" (*id.* at 15-16, 18). Investigator Joseph and another

[2] On cross-examination, Investigator Joseph was shown a photograph that depicted a "private property" sign at this entrance (10/23/24 Tr. 33). Investigator Joseph testified that he had never noticed the sign before, did not know when the photograph was taken, and could not say whether the sign was there on the date that Clemons was arrested (*id.* at 33, 48-49).

MPD officer then exited the police car and "attempted to stop" Clemons (*id.* at 18). Investigator Joseph asked, "What's going on man? You got a beer." (Gov. Ex. 4 at 2:05–:08; see also 10/23/24 Tr. at 18.) Clemons responded, "I just got out of the car going to my house, bro, I just got this for my woman" (Gov. Ex. 4 at 2:10–:14). As he was walking away from Investigator Joseph, Clemons was "blading his right side and clutching his waist," preventing "the visual of his groin area" (10/23/24 Tr. 19).

Investigator Joseph, along with other officers, stopped and searched Clemons. They recovered a loaded pistol from his "groin area" (10/23/24 Tr. 19-20). The police also recovered an open alcoholic beverage—specifically, a can of Cutwater Espresso Martini—that Clemons had been carrying in his hand (*id.* at 18-19; Gov. Ex. 3).

The Defense Evidence

Through defense investigator Jamel McCaskill, the defense introduced a photograph of Woodmont Crossing's entrance (10/23/24 Tr. 61-62). The photograph depicted three signs that read: "Parking by permit only"; "Caution. Stop. Gate will allow one vehicle at a time. Do not tailgate."; and "Private property. Unauthorized vehicles will be towed at owner's risk and expense." (*Id.* at 62.) McCaskill testified that he took the

photograph on June 23, 2024 (*id.* at 59, 66). He had visited Woodmont Crossing "[a]bout four times" in the several months leading up to the suppression hearing and the signage was present every time he visited (*id.* at 60-61).

The Trial Court's Ruling

The trial court rejected Clemons's argument that the pistol, ammunition, and alcohol should have been suppressed because the police lacked reasonable suspicion to stop or probable cause to arrest Clemons for POCA because he was on private property (10/23/24 Tr. 75). The court reasoned that "[w]hat is material is not whether a property is privately owned," but rather "whether the location is specifically enumerated in the statute" (*id.* at 70). While the statute's title—"Drinking of alcoholic beverage in public place prohibited; intoxication prohibited," D.C. Code § 25-1001—demonstrated a focus on public spaces, "a 'public space' could include both publicly owned property, as well as areas accessible to the public and where the public is invited onto private property" (*id.* at 72). The court found that Clemons was arrested on a "street" within the meaning of the statute because Good Hope Court was accessible to the public and "even has a street name" (*id.* at 73-74). The court found that

"the gate was opened" and "[p]ersons are able to drive into and walk into the complex, just as the police did" (*id.* at 73). Similarly, Clemons was on a "sidewalk" within the meaning of the POCA statute "because this sidewalk was open to the public" (*id.* at 74). The court concluded that the police had probable cause to stop Clemons for POCA because they saw him with an open container of alcohol on a "street" and "sidewalk" as prohibited by the statute (*id.* at 75).[3]

SUMMARY OF ARGUMENT

The trial court correctly found that the police had reasonable suspicion to stop Clemons for POCA on a street and sidewalk inside an apartment complex. Section 25-1001(a)(1)'s plain language makes it unlawful to possess an open container of alcohol in "*any* of the following places: (1) A street, alley, park, sidewalk, or parking area[.]" (emphasis added). Contrary to Clemons's claim that the statute does not apply to private property, the statute's text proscribes possession of an open container in certain enumerated places regardless of whether those

[3] The trial court rejected the government's argument that Clemons was in a "parking area," noting that "parking area" is statutorily defined and does not mean a parking lot (10/23/24 Tr. 74-75).

places are publicly or privately owned, and nothing in the legislative history supports a contrary interpretation. Further, Clemons's overly narrow interpretation of the statute would lead to enforcement difficulties and absurd results. Finally, even if the statute applies only if Clemons were on a public street or sidewalk, Clemons has not shown clear error in the trial court's finding that the street and sidewalk at issue were public because they were open to the public.

Even if Clemons were correct that the POCA statute categorically does not apply to private property, he was not entitled to suppression because it was objectively reasonable for MPD officers to rely on the ordinary meaning of "street" and "sidewalk" in determining that they had reasonable suspicion to believe that Clemons was violating § 25-1001(a)(1).

ARGUMENT

I. Clemons Was Not Entitled to Suppression Because the POCA Statute Is Not Limited to Publicly Owned Property.

A. Standard of Review and Applicable Legal Principles

"In reviewing the trial court's ruling on a motion to suppress, this [C]ourt 'must view the evidence in the light most favorable to the prevailing party.'" *Bennett v. United States,* 26 A.3d 745, 751 (D.C. 2011) (quoting *Barrie v. United States,* 887 A.2d 29, 31 (D.C. 2005)). This Court "defer[s] to the trial court's findings of fact unless they are clearly erroneous, but review[s] its legal conclusions de novo." *Whitefield v. United States*, 99 A.3d 650, 655 (D.C. 2014). "Whether there was reasonable, articulable suspicion to justify a . . . stop under the Fourth Amendment is a legal conclusion." *Id.*

In construing a statute, this Court "first look[s] to see whether the statutory language at issue is plain and admits of no more than one meaning." *Roberts v. United States*, 216 A.3d 870, 876 (D.C. 2019) (internal quotation marks omitted). This Court "will give effect to the plain meaning of a statute when the language is unambiguous and does not produce an absurd result." *Id.* (internal quotation marks omitted).

This Court also considers "statutory context and structure, evident legislative purpose, and the potential consequences of adopting a given interpretation," and may "look to the legislative history to ensure that [the Court's] interpretation is consistent with legislative intent." *Id.* (internal quotation marks omitted).

B. Analysis

Clemons was not entitled to suppression because he possessed an open container of alcohol on a street and a sidewalk, which are locations where open containers are plainly prohibited. The POCA statute makes it unlawful to "drink an alcoholic beverage or possess in an open container an alcoholic beverage in or upon any of the following places: (1) A street, alley, park, sidewalk, or parking area[.]" D.C. Code § 25-1001(a)(1). Although the statute does not define the terms "street" and "sidewalk," dictionary definitions of those terms reveal that Clemons was on a street and sidewalk as those terms are ordinarily understood. *See generally Flowers v. District of Columbia*, No. 24-CT-0276, 2025 WL 2535688, at *4 (D.C. Sept. 4, 2025) ("When the statute does not define the term in question, it is appropriate for us to look to dictionary definitions to determine its ordinary meaning.") (cleaned up). Merriam-Webster

defines "street" to mean "a thoroughfare especially in a city, town, or village that is wider than an alley or lane and that usually includes sidewalks." *Street*, merriam-webster.com (last accessed Sept. 23, 2025). Black's Law Dictionary similarly defines "street" to mean "[a] road or public thoroughfare used for travel in an urban area, including the pavement, shoulders, gutters, curbs, and other areas within the street lines." *Street*, Black's Law Dictionary (12th ed. 2024). And "street" had the same meaning in 1934 when the POCA statute was enacted. *See Street*, Webster's Collegiate Dictionary (4th ed. 1934) (defining "street" to mean "[o]rig., a paved road; public highway; now, commonly, a thoroughfare, esp. in a city town, or village"); *Street*, Black's Law Dictionary (3d ed. 1933) ("An urban way or thoroughfare; a road or public way in a city, town, or village, generally paved, and lined or intended to be lined by houses on each side.").

As to "sidewalk," this Court examined the meaning of that term in *Alvarez v. United States*, in determining whether an earlier version of the POCA statute applied to sidewalks. 576 A.2d 713, 715 (D.C. 1990). The Court looked to Ballantine's Law Dictionary and Black's Legal Dictionary, which respectively defined "sidewalk" as "that part of the

street of a municipality which has been set apart and is used for pedestrians," and "[t]hat part of a public street or highway designed for the use of pedestrians, being exclusively reserved for them, and constructed somewhat differently [from] other portions of the street." *Id.* (quoting Ballantine's Law Dictionary 1178 (3d ed. 1969), and Black's Law Dictionary (5th ed. 1979)). Additionally, the Court noted that Webster's New International Dictionary defined "sidewalk" to mean "a walk for foot passengers at the side of a street or road; a foot pavement." *Id.* at 716 n.6.

None of these definitions of "street" and "sidewalk" require that a street or sidewalk be publicly owned. This comports with common sense—not all streets and sidewalks are publicly owned.[4] Here, running

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[4] To the extent some definitions of "street" or "sidewalk" use the word "public," that term does not mean publicly owned. *See Flowers*, 2025 WL 2535688, at *5 (ordinary meaning of "in public" as used in the indecent-exposure statute does not mean publicly owned property). In 1934, when the POCA statute was originally enacted, the term "public" had two possible meanings, neither of which referred to public ownership. "Public" could mean "[o]pen to the knowledge or view of all; common; notorious." *Public*, Webster's Collegiate Dictionary (4th ed. 1934); *see also Public*, Black's Law Dictionary (3d ed. 1933) ("Open to all; notorious."); *Public Place*, Black's Law Dictionary (3d ed. 1933) ("Any place so situated that what passes there can be seen by any considerable number of persons, if they happen to look."). "Public" could also mean "[o]pen to the use of the public in general for any purpose as business, pleasure, religious worship, etc.; as, a public place or road." *Public*, Webster's

(continued . . .)

through Woodmont Crossing is a road or thoroughfare used for travel, i.e., a street. It bears all the indicia of an ordinary city street. It has a street name—Good Hope Court, SE—is paved, and is used for vehicular traffic (10/23/24 Tr. 13-15; Gov. Ex. 1). And the street is bordered by a paved path set aside for pedestrians, i.e., a sidewalk (10/23/24 Tr. 16; Gov. Ex. 1). This is sufficient to bring the street and sidewalk where Clemons possessed an open container of alcohol within the scope of the POCA statute.

Indeed, Clemons does not dispute that he was on a street and sidewalk as those terms are ordinarily understood. Rather, he argues (at 7-8) that this particular street and sidewalk are exempt from the POCA statute because they are privately owned. Clemons's argument contravenes the statute's plain text. Section 25-1001(a)(1) prohibits open containers on "*any* of the following places: (1) A street . . . [or] sidewalk . . . [.]" (emphasis added). The word "any," "'read naturally . . . has

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Collegiate Dictionary (4th ed. 1934); *see also Public*, Black's Law Dictionary (3d ed. 1933) ("Common to all or many; general; open to common use."); *Public Place*, Black's Law Dictionary (3d ed 1933) ("A place to which the general public has a right to resort; not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighboring public.").

an expansive meaning, that is, one or some indiscriminately of whatever kind.'" *Mazza v. Hollis*, 947 A.2d 1177, 1180 (D.C. 2008) (quoting *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 218 (2008)). Similarly, "[t]he word 'a' is an 'indefinite article' that 'points to a nonspecific object, thing, or person that is not distinguished from the other members of a class.'" *Hewitt v. United States*, 145 S. Ct. 2165, 2183 (2025) (Alito, J., dissenting) (quoting B. Garner, Modern English Usage 1195 (5th ed. 2022)). Furthermore, subsection (a)(1) does not use "public," "private," or similar words to explain or modify the places in which possession of an open container of alcohol is prohibited, even though the Council easily could have included such language. Instead, the statute prohibits open containers in specifically enumerated places. *See Campbell v. United States*, 163 A.3d 790, 798 (D.C. 2017) ("While § 25-1001 seeks to curtail public possession of open containers of alcohol, . . . it does so through prohibition of possession in enumerated places."). And "[t]he lack of any textual support for limiting the scope of [the statute] to conduct on public property is all the more revealing given that the Council has explicitly limited the scope of various statutes to conduct on 'public property.'" *Flowers*, 2025 WL 2535688, at *5 (citing statutes); *see also Taylor v.*

United States, 662 A.2d 1368, 1370 (D.C. 1995) (probable cause existed to arrest defendant for operating a vehicle without a permit in a private lot because the relevant statute did not distinguish between public and private property).

Further undercutting Clemons's proposed public/private dichotomy is that the statute indisputably prohibits possession of open containers in places that are privately owned. In addition to prohibiting open containers in "any . . . street, alley, park, sidewalk, or parking area," the statute prohibits open containers in any unlicensed premises where "food or nonalcoholic beverages are sold or entertainment is provided for compensation"; "[a]ny place to which the public is invited" that lacks a license to sell alcoholic beverages, or is otherwise legally prohibited from selling alcohol; and "[a]ny place licensed under a club license at a time when the consumption of the alcoholic beverages on the premises is prohibited by this title or by regulations promulgated under this title." § 25-1001(a)(3)–(6). Under the principle of noscitur a sociis, "'a word [or phrase] is known by the company it keeps.'" *Lucas v. United States*, 305 A.3d 774, 777 (D.C. 2023) (quoting *Burke v. Groover, Christie & Merritt, P.C.*, 26 A.3d 292, 302 n.8 (D.C. 2011)). Here, the company includes

privately owned places and those that could be either privately or publicly owned, such as "[a]ny place to which the public is invited and for which a license to sell alcoholic beverages has not been issued under this title[.]" D.C. Code § 25-1001(a)(4).

Nor is there anything in the statutory or legislative history to suggest that Congress or the Council intended to limit the statute's application to publicly owned streets or sidewalks. As initially enacted in 1934, the statute provided that "[no] person shall in the District of Columbia drink any alcoholic beverage in any street, alley, park, or parking, or in any vehicle in or upon the same, or in any place to which the public is invited for which a license has not been issued hereunder . . . ." District of Columbia Alcoholic Beverage Control Act, 48 Stat. 333, ch. 4, § 28 (1934). Although the legislative history describes the statute as prohibiting drinking in public places, that did not mean publicly owned places.[5] 78 Cong. Rec. 264 (1934). An early draft of the law defined

[5] The statute's title, "Drinking of alcoholic beverage in public place prohibited; intoxication prohibited," is of limited utility and "'cannot limit the plain meaning of the text.'" *Lucas v. United States*, 305 A.3d 774, 778 (D.C. 2023) (quoting *Mitchell v. United States*, 64 A.3d 154, 156 (D.C. 2013)).

"[p]ublic [p]lace" to mean "any place, building, or conveyance to which the public has, or is permitted to have access, and any highway, street, lane, park, or place of public resort or amusement." 78 Cong. Rec. 278 (1934). Thus, Congress understood that the statute would apply to more than just publicly owned places, including "any highway, street, lane, [or] park." *Id.*

Clemon's overly narrow interpretation would also undermine legislative intent. *See Alvarez*, 576 A.2d at 716 (looking to legislative intent in interpreting the POCA statute). In 1985, the statute was amended to add the prohibition against the "possess[ion] in an open container of any alcoholic beverage." Ban on Possession of Open Alcoholic Beverage Containers Act of 1985, D.C. Law 6-64, § 2, 32 D.C. Reg. 5970 (1985). The Report of the Council's Committee on Consumer and Regulatory Affairs explained that the amendment was intended to eliminate problems associated with drinking in public. D.C. Council, Report on Bill 6-185 at 1 (June 26, 1985). District residents complained that "drinking in public throughout the city" led to littering, noise, and disturbance of the peace in residential areas, but that people could not be prosecuted "unless they are actually observed drinking from the

container." *Id.* at 1-3. These quality-of-life problems are implicated regardless of whether a person with an open container is technically on a privately or publicly owned street or sidewalk.

Clemons's interpretation would also cause workability concerns and lead to absurd results. The propriety of an arrest would turn on an officer's ability to discern whether a street or sidewalk was publicly or privately owned. In a dense urban environment, particularly with respect to sidewalks, the line between the government-owned sidewalk and the property line is often unclear—there is often an expanse of concrete from the curb to the building entrance. This case illustrates the difficulty. After turning onto Good Hope Court from Marion Barry Avenue, the entrance to Woodmont Crossing is partway down the block (10/23/24 Tr. 37). Is the portion of the street and sidewalk before the entrance private property? How is an officer—or the public, for that matter—to know? And to the extent there is a patchwork of publicly and privately owned streets and sidewalks in the District, there is nothing in the statute or legislative history to suggest that the Council intended to allow open containers on a privately owned street, but not on a publicly owned street a few feet away. Accordingly, the police had reasonable suspicion to believe that

Clemons was violating the law when they saw him walking on a street and sidewalk with an open container of alcohol.

Finally, even if the statutory title's reference to "public place" suggests that *some* privately owned streets and sidewalks may not fall within the statute's ambit, Clemons has not demonstrated error in the trial court's finding that the statute applied to the street and sidewalk at issue because they were open to the public (10/23/24 Tr. 73-75). The undisputed testimony was that the entrance to the complex was always open (*id.* at 13). As the trial court found, "[p]ersons are able to drive into and walk into the complex, just as the police did" (*id.* at 73). Moreover, the street has the appearance of an ordinary, public street in that it is named, paved, and bordered by sidewalks. *See Kim v. Commonwealth*, 797 S.E.2d 766, 772 (Va. 2017) ("the lack of a physical barrier in conjunction with evidence that the roads at issue are named, feature traffic signs, curbs, and sidewalks," suggests that the roads are open to the general public).

Clemons points to (at 6) the "private property" sign at the entrance to the complex. But that sign was primarily focused on parking, and did not convey that the streets and sidewalks were not open to the public.

The full sign read, "Private Property. Unauthorized vehicles will be towed at owner's risk and expense." (10/23/24 Tr. 62.) The other signs read, "Parking by permit only" and "Caution. Stop. Gate will allow one vehicle at a time. Do not tailgate." (*Id.*) No sign warned against trespassing or otherwise indicated that the street itself was not open to general vehicular traffic. *See Furman v. Call*, 362 S.E.2d 709, 711 (Va. 1987) (privately owned streets in a condominium complex were "public" where "[a]ccess by the public has never been denied by guards, gates, or any other device," and "[t]he only signs read: 'Private Property, No Soliciting,'" which signaled that soliciting was prohibited, but not that entry by the general public was prohibited); *United States v. Smith*, No. 2:08-cr-306, 2009 WL 3165486, at *1, 8 (D. Nev. Sept. 25, 2009) (parking lot in apartment complex was "public" for purposes of open-container statute where the entrances were unrestricted and the "Private Property No Trespass" sign affixed to an apartment building could be interpreted as applying to the building and not to the streets and parking lots). In short, the trial court did not clearly err in finding that the street and sidewalk at issue were open to the public, which was sufficient to bring them within the POCA statute's coverage. The police thus had reasonable

suspicion to believe that Clemons was violating the POCA statute and did not violate the Fourth Amendment when they seized him to investigate further.

II. Suppression Was Not Warranted Because Any Mistake of Law as to the POCA Statute's Scope Was Objectively Reasonable.

Clemons is not entitled to suppression because, even if the POCA statute does not extend to private property, it would have been objectively reasonable for the officers to think that it did. *See Heien v. North Carolina*, 574 U.S. 54, 60 (2014) ("reasonable suspicion can rest on a mistaken understanding of the scope of a legal prohibition").

As a preliminary matter, although the government did not argue below that any mistake in law was reasonable under *Heien*, this Court should exercise its discretion to consider the argument. This Court "may affirm a judgment on any valid ground" so long as doing so would not be procedurally unfair or disregard the trial court's discretionary authority. *Randolph v. United States*, 882 A.2d 210, 218 (D.C. 2005). Here, affirmance based on *Heien* would not be procedurally unfair because the parties extensively litigated in the trial court whether the POCA statute applied to the street and sidewalk where Clemons possessed an open

container of alcohol. Whether a mistaken understanding of the POCA statute's scope was objectively reasonable turns on the same facts and law addressed by the parties below in litigating the POCA statute's scope. Clemons thus had "a reasonable opportunity to be heard with respect to the reasoning on which the proposed affirmance is to be based." *Id.* An affirmance based on *Heien* also would not usurp the trial court's discretionary authority. *See id.* The objective reasonableness of a mistake in law is a legal question, and in any event, the parties developed a full factual record and the trial court made factual findings as to the nature of the street and sidewalk at issue (10/23/24 Tr. 73-74). *See Evans v. United States*, 122 A.3d 876, 885 (D.C. 2015) (addressing argument, not raised or ruled upon below, that the good-faith exception applied because "that argument raises a pure question of law, and [the defendant] had an opportunity to respond to that argument in this [C]ourt"). In short, this Court should exercise its discretion to consider whether *Heien* compels affirmance.

On the merits, it was objectively reasonable for the police to think that the POCA statute's proscription of open containers on "any" street or sidewalk applied to the street and sidewalk at issue here, which had

all the indicia of an ordinary street and sidewalk, were in open view of the public, and were accessible to anyone who wished to go there. If there was a mistake as to the statute's scope, it was reasonable and Clemons is not entitled to suppression. *See Heien*, 574 U.S. at 67-68 (a traffic stop, initiated upon a police officer's mistaken understanding that state law required two working brake lights, was lawful under the Fourth Amendment because the officer's mistake was reasonable); *Campbell v. United States*, 224 A.3d 205, 211 (D.C. 2020) (suppression was not warranted where police officer mistakenly but reasonably relied on the ordinary meaning of "parking area" in conducting an arrest for POCA).

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused a copy of the foregoing to be served by electronic means, through the Court's EFS system, upon counsel for appellant, Joel Davidson, Esq., jrdnbdty@verizon.net, on this 23rd day of September, 2025.

/s/
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