UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0413

September Term, 2014

CHARLES DENNIS

v.

STATE OF MARYLAND

Berger,
Nazarian,
Leahy,

JJ.

Opinion by Leahy, J.

Filed: September 29, 2015

In this appeal, we address whether the circuit court erred in denying a criminal defendant's motion to suppress evidence recovered during a traffic stop. In 2010, Charles Dennis ("Appellant") was a passenger in a pickup truck with tinted windows that was pulled over by police after the driver committed a traffic violation, crossing the center line of a motorway. Police had received a tip that "stickup boys" operating in the area were driving a vehicle matching the description of the vehicle pulled over. Officer Nagovich, one of the officers involved in the traffic stop, saw Appellant, the right, rear passenger, pass a red object to the right, front passenger. The police recovered this object and discovered it to be a bag of heroin.

Appellant was indicted in the Circuit Court for Baltimore City and charged with possession of heroin, possession with intent to distribute, conspiracy to distribute heroin, conspiracy to possess heroin with the intent to distribute it, and conspiracy to possess heroin. After his motion to suppress was denied, a jury convicted him of conspiracy to possess heroin, a controlled dangerous substance. After Appellant was sentenced to three years' incarceration, with credit for time served, he filed an untimely notice of appeal that was dismissed by this Court in an unreported opinion. *Dennis v. State*, No. 2507, Sept. Term, 2011 (mandate issued July 5, 2013). Subsequently, Appellant filed a petition for writ of error *coram nobis*, alleging ineffective assistance of counsel for filing an untimely notice of appeal.[1] After a hearing, the circuit court granted Appellant the opportunity to file a belated appeal. Appellant now asks this Court the following questions:

[1] The petition is not included with the record on appeal. At the *coram nobis* hearing, appellant's counsel proffered that, although appellant's sentence in this case (continued…)

1. Did the circuit court err in denying appellant's motion to suppress evidence?

2. Was the evidence sufficient to support appellant's conviction?

3. Did the circuit court commit plain error in permitting the prosecutor to make improper remarks during closing arguments?

For the following reasons, we shall affirm.

BACKGROUND

Suppression Hearing

On August 29, 2011, Appellant filed a motion to suppress evidence. On November 4, 2011, the court held a hearing on the motion to suppress during which the following evidence was presented.

At approximately 4:10 p.m. on March 2, 2010, police officers with the Baltimore City Police Department observed a red truck in the 2400 block of Lakeview Avenue. According to Sergeant Joseph Donato, that vehicle, a two door Dodge Ram with a rear seat, matched the description of a vehicle that was suspected in a number of robberies in the nearby area.[2]

had "expired," appellant had a pending violation of probation in an unrelated case in the circuit court based on the underlying conviction herein. The State neither opposed appellant's petition at the hearing in the circuit court nor does it contest the circuit court's order granting appellant a belated appeal to this Court.

[2] Sergeant Donato explained that he received information from other officers that the occupants of the truck "were stickup boys and were using a revolver." Sergeant Donato agreed that he knew nothing about the source of this information, other than the information came from a citizen-informer. Officer Valentine Nagovich's information, received earlier that same day, was that the occupants were robbing drug dealers in the area.

Sergeant Donato was following the truck in a marked police vehicle along with Officer Robert Bonomo. At some point while the truck was on southbound Lakeview Avenue, the truck "drifted over across in the middle area of the road . . . ." Because of this traffic violation, as well as the fact that the truck's windows appeared to be tinted beyond what was permitted under Maryland law, Sergeant Donato initiated a traffic stop. Sergeant Donato maintained that he ordered the stop based on "the illegal tint and the one infraction."

Sergeant Donato and Officer Bonomo pulled in behind the truck. Officer Valentine Nagovich and Officer Hood were driving a separate car, and pulled in front of the stopped truck. As he approached the stopped vehicle, Sergeant Donato could see that there were multiple occupants inside. He discerned "a lot of movement in the vehicle," although the movement was not entirely clear because of the tinting.

During his initial approach to the truck, Officer Nagovich looked through the windshield and saw the right, rear passenger hand a red object to the front, right passenger, and then saw the front right passenger place an object near the door panel. Appellant was the right, rear passenger in the truck. Officer Nagovich conveyed this information to Officer Bonomo.

Once Officer Nagovich got closer to the truck, he saw "like a sword, like one of them Ninja swords," on the floor in the rear of the truck. Officer Bonomo and Sergeant Donato both confirmed that they saw swords in the vehicle, with Bonomo explaining that, before the occupants exited the truck, he shined a flashlight through the truck's tinted windows and saw the swords. Following these observations, the occupants were directed

to exit the vehicle and sit on the curb. Officer Bonomo testified that he then saw a red object, which he immediately believed to be a controlled dangerous substance, on the inside door panel of the truck. Officer Bonomo explained that the area where the red object was stored was not a normal compartment, like a cup or map holder, but was underneath a piece of plastic that had been pried away from the door panel. Upon retrieving the red object, Officer Bonomo saw that the object contained "23 red, reddish-pink Ziploc baggies containing a rocky, powdered substance." Officer Bonomo, accepted as an expert in narcotic packaging and street level identification, opined that the heroin seized in this case was for purposes of distribution and not personal use. The police also recovered $1,163.00 in U.S. currency from Appellant's person. The occupants of the truck were placed under arrest.

On cross-examination, Sergeant Donato was asked about the window tinting. He testified that, based on his training at the police academy in 1994, the gauge of a proper window tinting was based on "officer safety," what was "reasonable," and "what I can reasonably see." He further testified that "this tint was dark enough that I couldn't see specifically enough what people were doing inside." Sergeant Donato agreed that he had heard of a device called a tint meter, used to measure the allowed percentage of tinting of a vehicle's window, but that the Baltimore City Police Department had refused his requests to issue him such a device. Donato was not familiar with the precise percentage of tinting that was allowed and not allowed on vehicle windows. On redirect examination, Donato testified that, if he had a tint meter, he would have used it after the traffic stop in this case was complete and after the occupants were arrested.

After hearing argument, in which the State argued that the traffic stop was valid under *Edwards v. State*, 143 Md. App. 157 (2002), discussed *infra*, and Appellant argued that the circumstances of this traffic stop made the traffic stop invalid, the court denied the motion to suppress as follows:

> I thank you all for your arguments. I think they were well thought out and well argued. I'm going to deny the motions. I do find that the – there were pretextual, but there were valid reasons for the stop. The officer did testify and the court finds credible that he did observe the vehicle crossing the solid, center line.
>
> The court does find that it's more in keeping with the case of Edwards versus State than it is with the Roe [sic] case because it was a solid line. It wasn't – well, in any event, not as comfortable with the tinting issue, but there doesn't have to be both. There simply has to be a legitimate reason and the court finds there is one.

The court continued:

> That once the vehicles were legitimately stopped the police had the right to have the occupants out of the vehicle, exit the vehicle. And the court also finds that there was concern for officer safety. And that views the totality of the circumstances which would also take into consideration the information. Although this court would not find probable cause based upon the information from the anonymous source, be it a confidential informant or a citizen or what-ever. There simply was not enough there. But viewing the totality of the circumstances means taking into consideration everything for the officers to have some concern for officer safety. Under the circumstances the court finds there was . . . certainly a legitimate basis for that. And the court finds credible and the only testimony that – that I got anyway was – and I listened for it – was that the arrest was made after the drugs were recovered. And for that reason I'm going to deny the motions.

The Trial

Officer Nagovich, accepted as an expert in drug identification, packaging, and street level distribution, testified that he was working plain clothes in an unmarked vehicle on March 2, 2010, at approximately 4:00 p.m. Around that time, he participated in a traffic

stop of a red pickup truck with tinted windows, in the 2400 block of Lakeview Avenue. Another vehicle, operated by Sergeant Donato, initiated the stop with its emergency equipment, and Nagovich's vehicle responded to the scene and parked in front of the truck.

As he approached the truck from the front, Officer Nagovich saw a lot of movement inside. Nagovich saw the right, rear passenger, identified as Appellant, hand a red object to the front, right passenger. The front, right passenger then took the object and put it in what appeared to be the "side panel of the window of the door." This exchange lasted only a few seconds.

As he and Officer Bonomo approached the passenger side of the truck, Nagovich could see a ninja sword in the vehicle through a now-open window. The occupants were then ordered out of the vehicle and placed on the curb. Officer Nagovich then advised Officer Bonomo that he saw the front passenger place an object in the door panel, and Officer Bonomo then retrieved a "clear, plastic bag containing 23 Zips – red Ziplocs containing suspected heroin." The narcotics tested positive for the presence of 6.63 grams of heroin. After the occupants were placed under arrest, police recovered $1,163.00 in U.S. currency from Appellant. Officer Nagovich opined that, based on his training and experience, the manner in which the narcotics were packaged suggested that they were intended for distribution, as opposed to personal use. After this testimony, Officer Bonomo's recorded testimony from the suppression hearing was then played for the jury.

After deliberation, the jury found Appellant guilty of conspiracy to possess heroin, but found him not guilty of possession with intent to distribute heroin, possession of heroin, conspiracy to distribute heroin, and conspiracy to possess heroin.

We include additional facts in the following discussion.

DISCUSSION

I.

Appellant first contends that the suppression court erred because there was no valid reason for the traffic stop. The State responds that this argument was not properly preserved and that, in any event, the stop was justified by the moving traffic violation and the improper tinting on the truck's windows. We conclude that the issue is preserved, but, because Appellant's argument is without merit, the suppression court properly denied the motion to suppress.[3]

We first address the State's preservation argument. The State contends that, at the suppression hearing, Appellant raised different grounds for the motion than are being raised in this Court. In this context, "the failure to argue a specific theory in support of a motion to suppress evidence constitutes waiver of that argument on appeal." *Evans v. State*, 174 Md. App. 549, 557, *cert. denied*, 400 Md. 648 (2007) (citing *Johnson v. State*, 138 Md. App. 539, 560 (2001)); *accord Turkes v. State*, 199 Md. App. 96, 114 (2011).

During argument at the suppression hearing, the State contended that the truck was stopped because of the tinting of the windows as well as the moving violation for crossing

[3] We note that Appellant also asserts in his reply brief that the State disputes standing in this case. Contrary to this assertion, we cannot find such an argument in the State's brief. Because the State does not challenge standing in this Court, we need not consider this issue any further. *See Albertson v. State*, 212 Md. App. 531, 570-71 ("The failure to properly argue the question precludes appellate review."), *cert. denied*, 435 Md. 267 (2013).

over the center line. Appellant's counsel responded that the traffic stop was pretextual, and that there was no evidence that the purpose of the stop, *i.e.*, for the moving violation, was ultimately confirmed by the issuance of actual citations. Further, Appellant's co-defendant, who was also before the court in the suppression hearing, argued that Sergeant Donato was not credible in his assertion that the truck swerved over the center line. The State responded that Sergeant Donato was credible and that there was evidence that he "saw the vehicle cross the center line." The court, in denying the motion, found that the stop was legitimate because it accepted Donato's testimony that the stop was for crossing the solid, center line.

We conclude that the issue presented, whether there was probable cause for the traffic stop based on the crossing of the center line of the roadway, was properly before the suppression court. Accordingly, we disagree with the State and conclude the issue was properly preserved for our review.

As for the merits of Appellant's argument, the Court of Appeals has described the standard to be applied when reviewing a court's decision on a motion to suppress:

> When we review a trial court's grant or denial of a motion to suppress evidence alleged to have been seized in contravention of the Fourth Amendment, we view the evidence adduced at the suppression hearing, and the inferences fairly deducible therefrom, in the light most favorable to the party that prevailed on the motion. We defer to the trial court's fact-finding at the suppression hearing, unless the trial court's findings were clearly erroneous. Nevertheless, we review the ultimate question of constitutionality de novo and must make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case.

Corbin v. State, 428 Md. 488, 497-98 (2012) (citation and internal quotation omitted).

The Court of Appeals has also explained what should be considered in evaluating whether a traffic stop is permissible under the Fourth Amendment of the United States Constitution:

> Where the police have probable cause to believe that a traffic violation has occurred, a traffic stop and the resultant temporary detention may be reasonable. *See Whren v. United States*, 517 U.S. 806, 810, 116 S.Ct. 1769, 1772, 135 L.Ed.2d 89, 95 (1996). A traffic stop may also be constitutionally permissible where the officer has a reasonable belief that "criminal activity is afoot." *Terry v. Ohio*, 392 U.S. 1, 30, 88 S.Ct. 1868, 20 L.Ed.2d 889, 911 (1968). Whether probable cause or a reasonable articulable suspicion exists to justify a stop depends on the totality of the circumstances. *See United States v. Cortez*, 449 U.S. 411, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981).

Rowe v. State, 363 Md. 424, 433 (2001); *see also State v. Williams*, 401 Md. 676, 687 (2007) (a traffic stop may be justified under reasonable articulable suspicion standard); *Pryor v. State*, 122 Md. App. 671, 679 ("the forcible stop of a motorist may be based on reasonable articulable suspicion that is insufficient to establish probable cause" (citing *Goode v. State*, 41 Md. App. 623, 629-30 (1979)), *cert. denied*, 352 Md. 312 (1998).

In addition, the Supreme Court has recently reaffirmed that the Fourth Amendment permits brief investigative stops when a police officer possesses "'a particularized and objective basis for suspecting the particular person stopped of criminal activity.'" *Navarette v. California*, 572 U.S. __, 134 S. Ct. 1683, 1687 (2014) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981)). In such a situation, "[t]he 'reasonable suspicion' necessary to justify such a stop 'is dependent upon both the content of information possessed by police and its degree of reliability.'" *Id.* (quoting *Alabama v. White*, 496 U.S. 325, 330, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990)). The reasonable suspicion standard encompasses "the totality of the circumstances – the whole

picture," and, while a police officer's hunch would not qualify as reasonable suspicion, the standard is less than a preponderance of the evidence and probable cause. *Id.* (internal quotation marks and citations omitted).[4]

Here, Appellant relies primarily on the decision of the Court of Appeals in *Rowe*. In that case, the trooper observed the defendant's van, which was the only van in the area, driving slower in the slow lane slower than the speed limit. *Rowe*, 363 Md. at 427. The trooper followed the vehicle for 1.2 miles, whereupon he observed the van cross the white-edge line onto the shoulder and rumble strips. *Id.* He then saw the van cross the shoulder edge again and made a traffic stop, stating that he did so because he was concerned about the driver's potential intoxication or tiredness. *Id.* at 428.

The primary issue in *Rowe* was one of statutory interpretation, *i.e.*, whether, in the facts of that case, the petitioner had violated Section 21-309(b) of the Transportation Article in such a manner as to warrant the traffic stop. *Id.* at 433. That statute provides, in pertinent part:

> (b) *Driving in single lane required*. – A vehicle shall be driven as nearly as practicable entirely within a single lane and may not be moved from that lane or moved from a shoulder or bikeway into a lane until the driver has determined that it is safe to do so.

Md. Code Ann. (1977, 2012 Repl. Vol.) § 21-309 of the Transportation Article ("T.A.").

[4] We note that there was some discussion before the motions court whether the stop in this case was pretextual. The Supreme Court has made clear that whether a traffic stop is a pretext for some other purpose is irrelevant so long as the stop is otherwise lawful under the Fourth Amendment. *See Whren,* 517 U.S. at 813 ("Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis").

The Court looked to the plain language of the statute and stated:

> [T]o be in compliance, a vehicle must be driven as much as possible in a single lane and movement into that lane from the shoulder or from that lane to another one cannot be made until the driver has determined that it can be done safely. Thus, more than the integrity of the lane markings, the purpose of the statute is to promote safety on laned roadways.

Rowe, 363 Md. at 434.

The Court of Appeals ultimately held:

> that the petitioner's momentary crossing of the edge line of the roadway and later touching of that line did not amount to an unsafe lane change or unsafe entry onto the roadway, conduct prohibited by § 21-309, and, thus, cannot support the traffic stop in this case.

Id. at 441.

This Court first distinguished *Rowe* in *Edwards, supra*. There, the appellant was also stopped pursuant to Section 21-309(b) of the Transportation Article. *Edwards*, 143 Md. App. at 157. This Court was asked to consider the application of *Rowe* to somewhat similar facts. In *Edwards*, a State Trooper observed a vehicle traveling on a "two-lane highway divided by a center line, with one travel lane in each direction." *Id.* The trooper followed the vehicle for approximately a mile, whereupon he observed the vehicle cross the center dividing line of the road. *Id.* at 157-58. The officer "recalled that the 'distance that the vehicle traveled in which it crossed the center line was approximately a quarter mile.'" *Id.* at 158.

Edwards argued that the lower court should have granted his motion to suppress based entirely on the opinion of the Court of Appeals in *Rowe*. *Edwards*, 143 Md. App. at

163-64. This Court disagreed and affirmed the lower court's denial of the motion to suppress, concluding:

> that the circuit court properly determined that, under the circumstances of this case, crossing the center line of an undivided, two lane road by as much as a foot, on at least one occasion, provided a legally sufficient basis to justify the traffic stop. To be sure, *Rowe* did not establish a bright line rule that bars a traffic stop when the officer witnesses a driver briefly cross a center line marking the boundary of opposing traffic lanes. Although there are occasions when a driver on a two lane road may use the opposing lane to overtake or pass another vehicle traveling in the same lane, that circumstance was not presented in this case. Nor was there any indication that the trooper was aware of other legitimate factors or phenomena to explain the line crossing, such as weather, terrain, or road conditions.
>
> Unlike in *Rowe*, which involved a brief crossing of an edge line separating the slow lane from a shoulder area, the driver here entered the lane designated for oncoming traffic. Given the danger associated with veering into an opposing lane of traffic, even briefly, we agree with the circuit court that the traffic stop was valid.

Edwards, 143 Md. App. at 171.

In this case, Sergeant Donato testified that a reason for the traffic stop was because the truck "drifted over across in the middle area of the road . . . ." As the suppression court found, crossing the center line of traffic makes this case closer to *Edwards* than to *Rowe*. Accordingly, we agree that the traffic stop was lawful under the Fourth Amendment and hold that the court properly denied the motion to suppress for this reason.[5]

[5] Because we hold that the stop was lawful based on the moving traffic violation, we need not address the State's alternative argument that the stop was also justified for the alleged window tinting violation.

II.

Appellant next asserts that the evidence was insufficient to sustain his conviction for conspiracy to possess heroin. The State responds that this issue is not preserved and is without merit in any event. We agree with the State.

At the conclusion of the State's case-in-chief, Appellant moved for a judgment of acquittal but expressly stated, "no argument." The court denied the motion. After Appellant decided not to testify, the defense rested and renewed the motion, again stating "[n]o argument."

A criminal defendant who moves for judgment of acquittal is required by Md. Rule 4-324(a) to "'state with particularity all reasons why the motion should be granted[,]' and is not entitled to appellate review of reasons stated for the first time on appeal." *Starr v. State*, 405 Md. 293, 302 (2008) (quoting *State v. Lyles*, 308 Md. 129, 135-36 (1986)). "It is a well established principle that our review of claims regarding the sufficiency of evidence is limited to the reasons which are stated with particularity in an appellant's motion for judgment of acquittal." *Claybourne v. State*, 209 Md. App. 706, 750 (citing *Taylor v. State*, 175 Md. App. 153, 159 (2007)), *cert. denied*, 432 Md. 212 (2013); *see also Montgomery v. State*, 206 Md. App. 357, 385 ("[A] motion which merely asserts that the evidence is insufficient to support a conviction, without specifying the deficiency, does not comply with [Maryland] Rule [4-324(a),] and thus does not preserve the issue of sufficiency for appellate review.") (citation omitted), *cert. denied*, 429 Md. 83 (2012).

We agree with the State that Appellant's challenge to the sufficiency question is not preserved for appellate review.

Moreover, even were we to consider the issue, we conclude the evidence was sufficient to sustain the conviction. This Court has stated the appropriate standard of review for reviewing a sufficiency challenge is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Wallace v. State*, 219 Md. App. 234, 247-48 (2014) (internal quotations and citations omitted).

The Court of Appeals set forth the elements of the crime of conspiracy in *Carroll v. State*, 428 Md. 679, 696-97 (2012), explaining as follows:

> A criminal conspiracy consists of the combination of two or more persons to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means. The agreement at the heart of a conspiracy need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design. The crime is complete when the agreement is formed, and no overt acts are necessary to prove a conspiracy.

(internal citations and quotation marks omitted).

The conspiracy alleged in this case was to possess heroin. This Court has explained that "possession is defined as to exercise actual or constructive dominion or control over a thing by one or more persons." *Kamara v. State*, 205 Md. App. 607, 632-33 (2012) (internal citations and quotations omitted). To prove such dominion or control, this evidence must demonstrate directly or support a rational inference that the defendant exercised a directing or restraining influence upon the substance. *Id.* Knowledge of the contraband "is required to exercise dominion or control," and knowledge of contraband may be proven directly or circumstantially. *Id.*

"'[P]ossession may be constructive or actual, exclusive or joint.'" *Id.* at 633 (quoting *Belote v. State*, 199 Md. App. 46, 55 (2011)). The factors for determining whether constructive possession existed are:

> [(1)] the defendant's proximity to the drugs, [(2)] whether the drugs were in plain view of and/or accessible to the defendant, [(3)] whether there was indicia of mutual use and enjoyment of the drugs, and [(4)] whether the defendant has an ownership or possessory interest in the location where the police discovered the drugs. None of these factors are, in and of themselves, conclusive evidence of possession.

Id. (emphasis omitted) (quoting *Smith v. State*, 415 Md. 174, 198 (2010)).

The facts in this case, considered in the light most favorable to the State, establish that Appellant was seen handing a red object to the front seat passenger. The passenger then apparently placed that object in a semi-concealed location in the door panel. The red object was retrieved and determined to contain baggies of heroin. This establishes that Appellant, at one point, had direct possession of the narcotics when he handed the object to the front seat passenger, establishing proximity, plain view, and accessibility. One could also infer from this transfer from one passenger to another that there was mutual use and enjoyment of the drugs. Although there was no evidence that Appellant owned the truck, the rational inferences from the evidence suggests a meeting of the minds reflecting a unity of purpose and design. Therefore, even if this argument were preserved, we conclude that the evidence was sufficient to sustain Appellant's conviction.

III.

Finally, Appellant contends the trial court erred in admitting improper closing argument. During closing argument in this case, the State conceded that Officer Nagovich

was the only officer who saw the red object being passed from Appellant to the passenger in the front seat and that no other officers witnessed this transfer. Appellant specifically takes issue with the fact the prosecutor then stated, "I would submit to you, ladies and gentlemen, that if the officers had wanted to lie they could have said, oh, yeah, we all saw it. But, ladies and gentlemen, they didn't do it." Appellant contends that this argument improperly vouched for the credibility of the police officers.

Recognizing that the issue is not preserved, Appellant asks this Court to exercise its plain error review of the remarks. The State argues that plain error review is unwarranted in this case. We concur.

"We have repeatedly held that pursuant to Rule 8-131(a), a defendant must object during closing argument to a prosecutor's improper statements to preserve the issue for appeal." *Shelton v. State*, 207 Md. App. 363, 385 (2012); *accord Warren v. State*, 205 Md. App. 93, 132-33, *cert. denied*, 427 Md. 611 (2012). Appellant concedes non-preservation but asks for plain error review. This Court has stated when such review is warranted generally:

> Plain error review "is reserved for those errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant of a fair trial." *Robinson v. State*, 410 Md. 91, 111, 976 A.2d 1072, 1084 (2009). It involves four prongs: (1) the error must not have been "intentionally relinquished or abandoned"; (2) the error must be clear or obvious, not subject to reasonable dispute; (3) the error affected appellant's substantial rights, which means he must demonstrate that it affected the outcome of the court proceeding; (4) the appellate court has discretion to remedy the error, but this ought to be exercised only if the error affects the fairness, integrity, or public reputation of judicial proceedings. *State v. Rich*, 415 Md. 567, 578, 3 A.3d 1210, 1216 (2010).

Savoy v. State, 218 Md. App. 130, 145 (2014).

In a case challenging counsel's closing argument, certain principles are instructive. "Closing arguments serve an important purpose at trial. Counsel use that portion of the trial to 'sharpen and clarify the issues for resolution by the trier of fact in a criminal case' and 'present their respective versions of the case as a whole.'" *Whack v. State*, 433 Md. 728, 742 (2013) (quoting *Lee v. State*, 405 Md. 148, 161 (2008)). Therefore, "we grant attorneys, including prosecutors, a great deal of leeway in making closing arguments. 'The prosecutor is allowed liberal freedom of speech and may make any comment that is warranted by the evidence or inferences reasonably drawn therefrom.'" *Id.* (quoting *Spain v. State*, 386 Md. 145, 152 (2005)); *accord Ingram v. State*, 427 Md. 717, 727 (2012). Although there are limits to this freedom, "'not every ill-considered remark made by counsel . . . is cause for challenge or mistrial.'" *Id.* (quoting *Wilhelm v. State*, 272 Md. 404, 415 (1974)). "Only where there has been 'prejudice to the defendant' will we reverse a conviction." *Id.* (quoting *Rainville v. State*, 328 Md. 398, 408 (1992)).

A prosecutor may not "'vouch[]' for (or against) the credibility of a witness." *Spain*, 386 Md. at 153 (quoting *U.S. v. Daas*, 198 F.3d 1167, 1178 (9th Cir. 1999)); *accord Donaldson v. State*, 416 Md. 467, 489 (2010). "Vouching typically occurs when a prosecutor 'place[s] the prestige of the government behind a witness through personal assurances of the witness's veracity . . . or suggest[s] that information not presented to the jury supports the witness's testimony.'" *Spain*, 386 Md. at 153. (citation omitted); *accord Donaldson*, 416 Md. at 489-90; *Sivells v. State*, 196 Md. App. 254, 277 (2010), *cert. dismissed*, 421 Md. 659 (2011); *see also Walker v. State*, 373 Md. 360, 396 (2003)

(characterizing the making of "suggestions, insinuations, and assertions of personal knowledge" as to a witness' credibility improper prosecutorial vouching).

However, mere commentary about a witness's credibility, without some assertion of outside personal knowledge about the witness does not constitute improper prosecutorial vouching. *See Stone v. State*, 178 Md. App. 428, 450-51 (2008) (rejecting appellant's assertion of plain error regarding prosecutor's remark that the witness "in my estimation was a very credible witness"; the prosecutor did not assert any personal knowledge such as "'I know [the witness]. We went to the same high school. [The witness] would never lie."); *U.S. v. Walker*, 155 F.3d 180, 187 (3rd Cir. 1998) (stating that "where a prosecutor argues that a witness is being truthful based on testimony given at trial, and does not assure the jury that the credibility of the witness [is] based on his own personal knowledge, the prosecutor is engaging in proper argument and is not vouching"); *see also Sivells*, 196 Md. App. at 278 ("The credibility of witnesses in a criminal trial often is . . . a critical issue for the jury to consider").

Having reviewed the prosecutor's remarks and the standards set forth above, we conclude that the prosecutor did not engage in improper prosecutorial vouching. As the Court of Appeals recognized in *Spain*:

> When a prosecutor argues that a particular police officer lacks a motive to testify falsely, such comments do not bear directly on a defendant's guilt or innocence, but are merely an allusion to a lack of evidence presented by the defendant that the officer in this case possessed any motive to lie or devise a story implicating the defendant in criminal conduct.

Spain, 386 Md. at 155.

Further, the prosecutor was not asserting personal knowledge of the officers' lack of veracity or credibility. Accordingly, as the argument was not improper and not of the type that would require reversal, we are persuaded that, even if preserved, there was no plain error requiring further review.

Appellant's next challenge relates to the following sequence of arguments that began during the Appellant's closing argument. Defense counsel asked the jury to question the credibility of Officer Nagovich's testimony that he saw Appellant hand a red object to the front seat passenger during the traffic stop. Counsel argued "what person in their right mind when they see the policeman in front of them is going to hand somebody some drugs." Elaborating on the defense theory that the officer did not see Appellant hand an object to the front passenger, counsel also argued "[a]ll we know is a man was in a backseat of a car, drugs were found in the car. There's no – nothing connecting my client as far as DNA or fingerprints or anything like that to these drugs except this one magical officer that saw everything that nobody else could see."

In rebuttal, the State argued as follows:

> It happened quickly. Now that very quick hand up, that is the case, ladies and gentlemen, against Mr. Dennis. Mr. Dennis was in the backseat. Mr. Dennis handed up the red object. Everybody gets taken out of the car.
>
> And I would submit to you, ladies and gentlemen, that the occupants of this car, all four people probably have some everyday experiences of their own and they know that when their car gets surrounded by the police they're probably coming out of that car and they're probably going to get searched.
>
> And, ladies and gentlemen, I would submit to you, if you had something that you didn't want to be associated with, you would probably try and get it as far away from you as you could at that time. You wouldn't just leave it on the seat or try and hide it on your person. You would try and

> get it – it was up in the front seat, it wasn't mine, I'm in the backseat. Does that make sense, ladies and gentlemen?

Appellant asserts that this argument was "an improper golden rule argument," and that it implied that the Appellant and the other occupants had prior criminal records or had committed bad acts. Initially, we disagree with Appellant's characterization of the argument as a "golden rule" argument. Typically, such an argument "asks the jury to put themselves in the shoes of the victim." *Donaldson*, 416 Md. at 489 (citing *Lee*, 405 Md. at 171). In such a case, "the attorney improperly appeals to their prejudices and asks them to abandon their neutral fact finding role." *Lawson v. State*, 389 Md. 570, 594 (2005). We conclude the prosecutor's rebuttal argument, cited by Appellant, was not an improper golden rule argument.

We also disagree with Appellant's remaining contentions, notably raised for the first time only on appeal, to the prosecutor's rebuttal argument. Indeed, given the context, it is apparent that the prosecutor was suggesting that Appellant's actions of getting rid of the red bag of narcotics suggested a consciousness of guilt. *See Wagner v. State*, 213 Md. App. 419, 465 (2013) (a "desire to conceal evidence is consistent with consciousness of guilt regarding his actions, as well as actual guilt"); *see also Hines v. State*, 58 Md. App. 637, 668 ("Indeed, not only flight from the scene but any flight from justice, escape from custody, resistance to arrest, concealment, assumption of a false name and related conduct are admissible as evidence of consciousness of guilt and thus of guilt itself"), *cert. denied*, 300 Md. 794 (1984). And, considering that the prosecution made the disputed arguments in rebuttal, we are also persuaded that these remarks were not so extraordinary as to warrant

reversal under the doctrine of plain error review. *See DeGren v. State*, 352 Md. 400, 431-32 (1999) (finding comments by the prosecution during closing argument, though "unprofessional and injudicious," to be nonetheless acceptable when "made in response to the defense counsel's comments during closing argument that the jury should not believe the State's witnesses because they had various motives to lie"); *see also Brown v. State*, 339 Md. 385, 394 (1995) (stating that a State's rebuttal closing argument is proper if it is "nothing more than a reasonable reply to the arguments made by defense counsel").

Indeed, we note that Appellant's argument challenging this closing argument turns on his contention that "[t]he State's entire case came down to the credibility of the police officers – did the jury believe the police officer saw Appellant hand an object to someone else." This ignores the law of possession, set forth above, which permits a rational conclusion of dominion of control even when circumstances suggest the possession was constructive and/or indirect. And in this case, the jury was instructed that possession could be actual or indirect, and that the "[d]efendant does not have to be the only person in possession of the substance." The court also informed the jury that a person could have indirect possession of a substance under "all the surrounding circumstances." We are unable to conclude that Appellant was prejudiced, especially when narcotics were found in the same truck in which he was a passenger. *See generally Maryland v. Pringle*, 540 U.S. 366, 373 (1993) ("'[A] car passenger . . . will often be engaged in a common enterprise with the driver, and have the same interest in concealing the fruits or the evidence of their wrongdoing.'" (quoting *Wyoming v. Houghton*, 526 U.S. 295, 304-05 (1999)).

Finally, we also find support for our conclusion that Appellant was not prejudiced based on the court's instructions. In this case, the jury was instructed that Appellant was presumed innocent and that the State had the burden of proving his guilt beyond a reasonable doubt. They were also advised to decide the case "fairly and impartially," without being swayed by "sympathy, prejudice or public opinion." And, they were reminded that closing arguments are not evidence and were "intended only to try to help you understand the evidence and apply the law." Accordingly, plain error review of the prosecutor's closing argument is unwarranted.

Pursuant to this analysis, we conclude that the traffic stop was lawful under the Fourth Amendment and *Edwards*, *supra*. Additionally, we conclude that Appellant's insufficient evidence argument was not preserved on appeal, and, even if it were, there was sufficient evidence to sustain Appellant's conviction. Finally, we conclude that plain error review of the State's closing argument is unwarranted.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.