Circuit Court for Baltimore City
Case No. 121117008

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 399

September Term, 2023

DOMINIC SPENCER

v.

STATE OF MARYLAND

Friedman,
Shaw,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: September 19, 2024

A jury sitting in the Circuit Court for Baltimore City found Dominic Spencer, Appellant, guilty of possession of a regulated firearm by a person previously convicted of a disqualifying offense; wearing, carrying, or transporting a loaded handgun; wearing, carrying, or knowingly transporting a loaded handgun in a vehicle; and possession of ammunition by a person previously convicted of a disqualifying offense. The court sentenced Appellant to ten years' imprisonment, the first five years without the possibility of parole for illegal possession of a regulated firearm; a concurrent term of three years' imprisonment for wearing, carrying, or transporting a loaded handgun; a concurrent term of three years' imprisonment for wearing, carrying, or knowingly transporting a loaded handgun in a vehicle; and a concurrent term of one year of imprisonment for illegal possession of ammunition. Appellant noted this appeal, raising five questions for our review:

> I. Is the conviction for wearing, carrying, or transporting a loaded handgun in a vehicle illegal because the jury was not instructed on a key element of that offense?
>
> II. In the alternative, did the trial court commit plain error in its instruction to the jury as to the offense of wearing, carrying, or transporting a loaded handgun in a vehicle?
>
> III. Is the evidence sufficient to sustain the conviction for wearing, carrying, or transporting a loaded handgun in a vehicle?
>
> IV. Under the rule of lenity, must the sentences for wearing, carrying, or transporting a loaded handgun [on Appellant's person] and wearing, carrying, or transporting a loaded handgun in a vehicle merge?
>
> V. Did the trial court commit plain error in permitting Sergeant Twigg [a prosecution witness] to give expert opinion testimony [even though he was never qualified as an expert]?

We remand with directions to vacate Appellant's sentence for wearing, carrying, or transporting a loaded handgun on his person and otherwise affirm the judgments.

BACKGROUND

On April 6, 2021, while monitoring CitiWatch cameras, Sergeant Gregory Twigg of the Baltimore City Police Department, Central District Action Team,[1] who was focused on a camera that was recording activity in the 400 block of West Saratoga Street, observed a man, later identified as Appellant, exit a parked vehicle from the passenger side. The man approached another person, and engaged in what Sergeant Twigg believed to be a hand-to-hand drug transaction. He then "[n]otified the arrest team" that they should apprehend the suspect he had just observed.

Detective Jonathan Boyer was part of that arrest team. After Sergeant Twigg "radioed" the arrest team, he drove in an unmarked vehicle to the 400 block of West Saratoga Street, exited his vehicle, and arrested Appellant following a brief foot chase. Detective Boyer administered *Miranda* advisements and then searched Appellant's person and the car he exited. Those searches yielded "[s]uspected marijuana, suspected crack cocaine, and a firearm," all found in the vehicle. The firearm was fully loaded.

A seven-count indictment was filed in the Circuit Court for Baltimore City, charging Appellant with: possession of a regulated firearm after having been previously convicted

[1] Baltimore City Police Detective Jonathan Boyer, a member of the Central District Action Team, explained that the function of the District Action Team is to target "violent offenders" suspected of engaging in illegal narcotics transactions or unlawful possession of handguns.

of a disqualifying offense (Count One); possession of a regulated firearm after having been previously convicted of a disqualifying offense (Count Two); wearing, carrying, or transporting a handgun on his person (Count Three); wearing, carrying, or knowingly transporting a handgun in a vehicle traveling on a road, highway, waterway, airway, or parking lot generally used by the public (Count Four); wearing, carrying, or transporting a loaded handgun on his person (Count Five); wearing, carrying, or knowingly transporting a loaded handgun in a vehicle traveling on a road, highway, waterway, airway, or parking lot generally used by the public (Count Six); and possession of ammunition by a person prohibited from possession of a regulated firearm (Count Seven).[2]

A two-day jury trial was held[3] and the State called three witnesses: Sergeant Twigg, Detective Boyer, and Zoe Krohn, a forensic scientist with the Baltimore City Police Department. Appellant elected not to testify. The defense called no other witnesses.

Sergeant Twigg and Detective Boyer testified as previously summarized. Through Sergeant Twigg's testimony, footage from the CitiWatch camera, depicting Appellant's activities in and around his vehicle on the day of the crimes, was admitted into evidence

[2] Appellant was not charged with possession or distribution of any controlled dangerous substance, even though probable cause to believe he had done so was the basis for his warrantless arrest.

[3] Appellant filed two different omnibus motions under Maryland Rule 4-252, which included boilerplate motions to suppress evidence. (At various times prior to trial, Appellant was represented by two different private attorneys, each of whom filed an omnibus motion.) Trial counsel did not further pursue the matter, and no suppression hearing was held. The legality of the searches is not at issue in this appeal.

and shown to the jury. Through Detective Boyer's testimony, the body-worn camera video he recorded that day was admitted into evidence and shown to the jury.

Ms. Krohn was "qualified as an expert to testify about operability and use of firearms." She was present while another firearms examiner tested the recovered handgun for operability. Ms. Krohn testified that the handgun was operable and that its barrel length was 3-15/16 inches.[4]

Four counts were submitted to the jury: possession of a regulated firearm after having been previously convicted of a disqualifying offense (Count One); wearing, carrying, or transporting a loaded handgun on the person (Count Five); wearing, carrying, or knowingly transporting a loaded handgun in a vehicle traveling on a road, highway, waterway, airway, or parking lot generally used by the public (Count Six); and possession of ammunition by a person prohibited from possession of a regulated firearm (Count Seven). After deliberating approximately two-and-one-half hours, the jury found Appellant guilty of all four charges.

The court sentenced Appellant to ten years' imprisonment, the first five years without the possibility of parole, for illegal possession of a regulated firearm (Count One); concurrent terms of three years' imprisonment for wearing, carrying, or transporting a loaded handgun on his person (Count Five) and wearing, carrying, or knowingly transporting a loaded handgun in a vehicle (Count Six); and a concurrent term of one year

[4] The Public Safety Article defines a "handgun" as "a firearm with a barrel less than 16 inches in length." Md. Code (2003, 2018 Repl. Vol.), Public Safety Article, § 5-101(n)(1).

of imprisonment for illegal possession of ammunition (Count Seven). He noted this timely appeal.

Additional facts are set forth where pertinent to the discussion of the issues.

DISCUSSION

I. & II.

Appellant's first two claims are interrelated, and we consider them together. He argues, relying primarily upon *Johnson v. State*, 427 Md. 356 (2012), that his conviction for wearing, carrying, or transporting a loaded handgun in a vehicle is illegal because the jury was not instructed on a key element of that offense, i.e. whether the vehicle was traveling on a public road. Invoking the narrow exception to the preservation requirement afforded by *Johnson* and Maryland Rule 4-345(a), Appellant maintains that we should vacate the purportedly illegal conviction despite trial counsel's failure to object to the jury instruction.

In the alternative, Appellant asks that we notice plain error in the trial court's jury instruction. According to Appellant, this case satisfies all four prongs of the test adopted in *State v. Rich*, 415 Md. 567, 578 (2010), and its progeny and, therefore, we should vacate the conviction for wearing, carrying, or transporting a loaded handgun in a vehicle.

The State counters that Appellant's conviction and sentence are entirely legal and that he seeks to transform an unpreserved claim of instructional error into a claim that the circuit court lacked the power to impose a sentence on him for the contested charge. The State contends that Rule 4-345(a) does not sweep so broadly as Appellant suggests and that the present case more closely resembles *Rainey v. State*, 236 Md. App. 368, 381–82 (2018)

(rejecting an attempt to extend the holding of *Johnson* where there was an alleged "constitutional violation" that did not "deprive[] the court of power or authority to convict"), than it does *Johnson*.

The State further contends that we should decline to engage in plain error review of Appellant's unpreserved claim of instructional error. According to the State, the error in the instruction given "was not clear or obvious." Furthermore, the error did not affect Appellant's substantial rights because there is "no reasonable probability" that it affected the verdict. According to the State, there was "ample circumstantial evidence from which the jury could infer that [Appellant] traveled in the vehicle with the handgun."

Additional Facts Pertaining to the Claims

The parties agreed to submit four of the seven counts in the indictment to the jury. Although it was agreed, and the trial court declared its intention to instruct on the offense of "transporting a loaded handgun in a vehicle," the court instead gave the following jury instruction for wearing, carrying, or transporting a handgun in a vehicle:

> The defendant is charged with the crime of carrying or transporting a handgun in a vehicle. In order to convict the defendant, the [State] must prove that the defendant wore, carried or knowingly transported a handgun in a vehicle. A handgun is a pistol, revolver or other firearm capable of being concealed on or about the person and which is designed to fire a bullet by the explosion of gunpowder.

The court further instructed the jury on wearing, carrying, or transporting a handgun on the person, instead of wearing, carrying, or transporting a loaded handgun on the person. The court did, however, instruct the jury on illegal possession of ammunition.[5]

Trial counsel made an entirely different objection to the instructions, not at issue in this appeal,[6] but she did not otherwise object to the instructions. When the jury was sent to deliberate, a written copy of the instructions was provided to them which was substantially similar to the instructions read in open court.

Analysis

To better understand Appellant's illegal sentence claim, we quote the pattern jury instruction, which the trial court attempted to follow, and indicate by strikethrough those parts of the instruction that were omitted. In addition, we have bolded those omitted parts of the instruction that are challenged on appeal:

> The defendant is charged with the crime of carrying or transporting a handgun in a vehicle **~~while on the public roads, highways, waterways, airways, or parking lots~~** ~~loaded with ammunition~~. In order to convict the defendant, the State must prove:
>
> (1) that the defendant wore, carried, or knowingly transported a handgun in a vehicle;
>
> **~~(2) that the defendant did so while traveling on the public roads, highways, waterways, airways, or parking lots;~~** ~~and~~

[5] The only ammunition at issue in this case was recovered from the handgun that had been seized from the glove compartment of the rental car.

[6] Trial counsel requested that the court give jury instructions on identification of the defendant and proof of intent, and the court denied those requests. After the court concluded its instruction, trial counsel renewed her previous objections to preserve the record.

> ~~(5) that the handgun was loaded with ammunition that was within (Appellant's) reach and available for (Appellant's) immediate use.~~
>
> A handgun is a pistol, revolver, or other firearm, capable of being concealed on or about the person, and which is designed to fire a bullet by the explosion of gunpowder.

Maryland Pattern Jury Instruction-Criminal ("MPJI-Cr") 4:35.3 ("Wearing, Carrying, or Transporting a Handgun in a Vehicle") (Maryland State Bar Ass'n 2d ed. 2012). In this appeal, neither party mentions that the court failed to instruct on whether the handgun was loaded, which is an additional element of the offense. Rather, the only issue raised is the court's failure to instruct on whether the vehicle had been traveling on a public road.[7]

Maryland Rule 4-325(f) provides:

> **(f) Objection.** No party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection. Upon request of any party, the court shall receive objections out of the hearing of the jury. An appellate court, on its own initiative or on the suggestion of a party, may however take cognizance of any plain error in the instructions, material to the rights of the defendant, despite a failure to object.

Because trial counsel did not object to the jury instruction, Appellant may not as of right receive appellate review of his claim of instructional error. Appellant attempts to argue his unpreserved claim of instructional error within the friendlier confines of Maryland Rule 4-345(a). That attempt is unavailing.

[7] The trial court similarly omitted the element of whether the handgun was loaded in its instruction on the charge of wearing, carrying, or transporting a loaded handgun on the person (Count Five). Appellant does not raise this issue on appeal.

Under Rule 4-345(a), a circuit court "may correct an illegal sentence at any time." In *Walczak v. State*, 302 Md. 422 (1985), the Supreme Court of Maryland recognized, on the ground of judicial economy, a correlate right to raise such a claim for the first time in a direct appeal. *Id.* at 427. Invoking *Johnson*, *Walczak*, and Rule 4-345(a), Appellant contends that his conviction for wearing, carrying, or transporting a loaded handgun in a vehicle is "illegal."

Johnson was charged with attempted first-degree murder, use of a handgun in the commission of a felony or crime of violence, and related offenses. *Johnson*, 427 Md. at 362. At his trial, the jury was instructed, without objection, on an additional, uncharged offense, the former offense of assault with intent to murder, and assault with intent to murder also was included on the verdict sheet that was given to the jury.[8] *Id.* at 363. Assault with intent to murder, however, was not a lesser included offense of attempted first-degree murder. *State v. Holmes*, 310 Md. 260, 272 (1987).

Johnson was acquitted of attempted first-degree murder but found guilty of assault with intent to murder and use of a handgun in the commission of a felony or crime of

[8] The defense's proposed jury instructions were not in the appellate record (the appeal was from the denial of a motion to correct an illegal sentence, more than fifteen years after trial). *Johnson v. State*, 199 Md. App. 331, 342 (2011), *rev'd*, 427 Md. 356 (2012). We suspected that Johnson "may have affirmatively requested the jury instruction," *id.* at 347, which presumably could have implicated the invited error doctrine. We nonetheless held that the appellate record was adequate to resolve the issues raised, denying the State's motion to dismiss the appeal, *id.* at 342, and the Supreme Court of Maryland agreed. 427 Md. at 364–65. As for whether Johnson's "silence, acquiescence, and perhaps even request for [the] jury instruction" waived his claim, 199 Md. App. at 347, the Supreme Court held that Johnson's claim was "cognizable under Rule 4-345(a)" and therefore "not subject to waiver." 427 Md. at 371.

violence, and the court sentenced him to thirty years' imprisonment for assault with intent to murder and an additional consecutive term of twenty years' imprisonment for the handgun offense. *Johnson*, 427 Md. at 363. Fifteen years later, Johnson filed a motion to correct an illegal sentence. *Id.* Invoking Maryland Rules 4-252(d) and 4-345(a), he claimed that the circuit court lacked subject matter jurisdiction to enter a conviction for assault with intent to murder, an offense not charged in the indictment. *Id.* at 363, 365; *Johnson v. State*, 199 Md. App. 331, 341 (2011), *rev'd*, 427 Md. 356 (2012). The circuit court denied Johnson's motion to correct an illegal sentence, and he appealed. 427 Md. at 363-64.

In a reported opinion, we rejected Johnson's illegal sentence and jurisdictional claims and dismissed his appeal. 199 Md. App. at 351. We reasoned that the instruction on the uncharged offense and its inclusion in the verdict sheet "constructively amended the indictment," and we further held that Johnson's failure to object at trial precluded appellate review of his claim. *Id.* at 348. Regarding Johnson's jurisdictional claim, we held that the circuit court had subject matter jurisdiction over the charges and that Johnson's challenge went to the court's improper exercise of jurisdiction, not its "fundamental" jurisdiction, and that only the latter type of claim may be raised at any time. *Id.* at 344.

The Supreme Court of Maryland, however, reversed. The Court held that, because Johnson had been convicted of an uncharged offense that was not a lesser included offense of any charged offense, his conviction was "illegal" within the narrow meaning of Rule 4-345(a). *Johnson*, 427 Md. at 375–78. The Court held that the remedy was to vacate both the sentence and "illegal" conviction. *Id.* at 378.

Here, unlike in *Johnson*, Count Six of the indictment in this case charged Appellant with wearing, carrying, or knowingly transporting a loaded handgun in a vehicle, and he was convicted of that offense. The conviction and its attendant sentence, thus, are not inherently illegal.

Appellant next argues that although his claim is unpreserved, we should review this issue for plain error. Md. Rule 4-325(f). Plain error review, however, 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 (2009). Whether to recognize plain error is within our discretion. Md. Rule 4-325(f); *Morris v. State*, 153 Md. App. 480, 517–18 (2003), *cert. denied*, 380 Md. 618 (2004). It is a "rare" case in which we exercise that discretion. *Yates v. State*, 429 Md. 112, 131 (2012).

Four conditions must be satisfied before we may exercise our discretion to recognize plain error:

> (1) "there must be an error or defect—some sort of 'deviation from a legal rule'—that has not been intentionally relinquished or abandoned, *i.e.*, affirmatively waived, by the appellant";
>
> (2) "the legal error must be clear or obvious, rather than subject to reasonable dispute";
>
> (3) "the error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it 'affected the outcome of the [trial] proceedings'"; and
>
> (4) the error must "seriously affect the fairness, integrity or public reputation of judicial proceedings."

Newton v. State, 455 Md. 341, 364 (2017) (quoting *State v. Rich*, 415 Md. 567, 578 (2010), quoting, in turn, *Puckett v. United States*, 556 U.S. 129, 135 (2009)) (cleaned up).

We begin with the observation that the first two *Rich* conditions are satisfied. Here, although the jury was instructed on the charged offense, the trial court omitted two elements. The error here is clear and obvious and not subject to reasonable dispute.

The third necessary condition for plain error relief, however, is absent in this case. The erroneous instruction did not affect Appellant's substantial rights. The "loaded-with-ammunition" element of the offense was obvious, however Appellant does not mention it on appeal. The only ammunition at issue was recovered from the handgun found in the glove compartment of the rental car in which Appellant had been sitting. As the trial court remarked, "the jury saw the rounds being unloaded from the weapon." Moreover, the jury found Appellant guilty of illegal possession of that ammunition, and therefore, by implication, it found that the handgun at issue was loaded.

The "traveling" element was satisfied by circumstantial evidence. In that respect, the present case is similar to *Ruffin v. State*, 77 Md. App. 93 (1988), which the State cites in its brief. In *Ruffin*, the defendant had parked a stolen car outside a pool hall. *Id.* at 95. A police officer "on routine patrol" saw a "suspicious person," not Ruffin, entering the car, and the "officer stopped the individual and began inspecting the interior of" the car. *Id.* At that time, Ruffin exited the pool hall and, upon observing the police officer rifling through the contents of the car, "demanded to know what the officer was doing in his car."

Id. That search yielded heroin and a handgun.[9] *Id.* Ruffin was found guilty of (among other charges) transporting a handgun in a vehicle. *Id.*

On appeal, Ruffin claimed that the evidence was insufficient to establish that he had been traveling in the vehicle. *Id.* at 103. According to Ruffin,

> [w]hen the police came upon the automobile that contained the handgun, it was stationary. No eyewitness actually saw the car in motion. Without evidence of motion, . . . there was no proof that the handgun was actually *transported*, rather than simply deposited, in the automobile.

Id.

We rejected that claim, observing that, because there was evidence that Ruffin had been in the pool hall "[a]t 5:30 in the morning" and that the car he had been operating was parked outside, the fact finder could reasonably infer that Ruffin had "transported himself to the pool room in the car." *Id.* That led, in turn, to the additional inference that the handgun found in the car had been "transported there with him." *Id.*

In the present case, Appellant was spotted sitting in the passenger seat of the vehicle at issue, which was parked on a busy public street near the Lexington Market. He was the only person police observed entering and leaving that vehicle, and when Appellant was searched incident to his arrest, police recovered the keys to the vehicle in his jacket pocket and his driver's license in the vehicle. They recovered a loaded handgun in the glove compartment, directly in front of the passenger seat of the car. Under all these

[9] Because "it was indisputably established" at the suppression hearing that the car had been stolen, *Ruffin*, 77 Md. App. at 96, we held that Ruffin had no standing to challenge the reasonableness of the search. *Id.* at 98–103.

circumstances, the jury reasonably could infer, as did the fact finder in *Ruffin*, that Appellant had driven the vehicle to that location and that the loaded handgun was in the glove compartment while he did so, establishing the "traveling" element of the offense. As such, the error did not affect the outcome of the proceedings nor did the error affect the fairness and integrity of the proceedings. In sum, all four conditions were not satisfied and, therefore, we, decline further review.

III.

Analysis

A motion for judgment of acquittal is the procedural vehicle by which a criminal defendant may raise a challenge to the sufficiency of the evidence. "'[A]ppellate review of the sufficiency of the evidence in a criminal case tried by a jury is predicated on the refusal of the trial court to grant a motion for judgment of acquittal.'" *Starr v. State*, 405 Md. 293, 302 (2008) (quoting *Lotharp v. State*, 231 Md. 239, 240 (1963) (per curiam)). Maryland Rule 4-324(a) provides that a defendant, in moving for judgment of acquittal, "shall state with particularity all reasons why the motion should be granted." The failure to comply with the particularity requirement has been construed as precluding a defendant from raising on appeal any grounds for evidentiary insufficiency not raised below. *Starr*, 405 Md. at 302–03.

Here, trial counsel moved for judgment of acquittal following the close of the State's case-in-chief:

> At this time the defense would make a Motion for Judgment of Acquittal, and I would say count number 2 I think merges in this particular case, and so I would make a Motion for Judgment of Acquittal as to that count.

> I would also make a Motion for Judgment of Acquittal as to the ammunition count. I don't think that they have (unintelligible) that it (unintelligible) [meets] the definition of ammunition in this particular case.
>
> They did say generally cartridge casings, but they didn't describe what a bullet is and that it is designed to expel a projectile through an [explosion], which I believe is required under the ammunition statute.
>
> As far as the rest of it, I think that the State has failed to prove that the defendant knew what was in that particular glove compartment and therefore failed to prove knowledge, which is an essential element of possession.

The court denied the motion. Subsequently, after Appellant elected not to testify, trial counsel renewed her motion without making additional argument. The court once again denied it "for the reasons already discussed."

As noted, trial counsel never contended below that the evidence was insufficient to prove that Appellant knowingly transported a loaded handgun in a vehicle because of an absence of evidence "that the vehicle in which the handgun was found was ever mobile while the handgun was in it." As such, this claim is not preserved for review, and we decline to address it further.[10] *Id.*

IV.

Appellant next contends that, under the rule of lenity, his convictions for wearing, carrying, or transporting a loaded handgun on his person and wearing, carrying, or

[10] Even had trial counsel raised this claim below and preserved it for appeal, we would reject it. As we explained previously in declining Appellant's request to review his unpreserved claim of instructional error for plain error, there was ample circumstantial evidence from which the jury could have inferred that Appellant had driven the vehicle, containing the loaded handgun, prior to when police recovered the handgun inside its glove compartment.

transporting a loaded handgun in a vehicle should merge for sentencing purposes. The State agrees. We accept the State's concession[11] and its suggestion that the proper remedy is to remand with directions to vacate Appellant's sentence for wearing, carrying, or transporting a loaded handgun on his person.

V.

Finally, Appellant contends that the trial court erred in permitting Sergeant Twigg to give expert opinion testimony in violation of *Ragland v. State*, 385 Md. 706 (2005). Initially, he asserts that the error was not harmless. He then shifts gears and, recognizing that trial counsel failed to object to Sergeant Twigg's testimony, asks that we review for plain error. In the alternative, Appellant asks that we address this admittedly unpreserved claim under the guise of ineffective assistance of trial counsel.

The State counters that we should decline to address this claim under either the guise of plain error or as a derivative ineffective assistance of counsel claim. But in any event, the State asserts that Appellant was not denied his constitutional right to the effective assistance of counsel.

Sergeant Twigg was not offered by the State as an expert witness. Nonetheless, the prosecutor examined him about his knowledge, skill, experience, and training in

[11] *See Barrett v. State*, 234 Md. App. 653, 673 (2017) (holding that, under the rule of lenity, wearing, carrying, or transporting a handgun on or about the person and wearing, carrying, or transporting a handgun in a vehicle merge), *cert. denied*, 457 Md. 401 (2018); *Clark v. State*, 218 Md. App. 230, 256 (2014) (same).

recognizing drug transactions and, secondarily, in recognizing the characteristics of an armed person.

After laying that foundation, the prosecutor asked Sergeant Twigg about the conclusions he drew when monitoring the CitiWatch cameras on the date of the offense:

> [PROSECUTOR]: On April 6, 2021, what if anything did you observe while observing the City Watch Cameras?
>
> [SERGEANT TWIGG]: I was observing the 400 block of West Saratoga Street. In that block usually there's a high level of CDS trafficking on both sides of the street, and I observed what I believed was a hand to hand transaction for marijuana, suspected.
>
> [PROSECUTOR]: And why did you believe that you observed a hand to hand transaction for suspected marijuana?
>
> [SERGEANT TWIGG]: Because it's packaged in clear plastic tubes in that area, and they were neon yellow tubes, which I know through my training and experience, that marijuana is commonly packaged in such.
>
> [PROSECUTOR]: And is that a way that it is commonly packaged in your experience in the Central District?
>
> [SERGEANT TWIGG]: Yes.
>
> [PROSECUTOR]: How many times have you observed marijuana, or suspected marijuana, to be packaged that way in the Central District?
>
> [SERGEANT TWIGG]: Hundreds.

Trial counsel did not object on the ground now raised on appeal.[12] Thereafter, through Sergeant Twigg's testimony, a video recording captured from the CitiWatch

[12] When the prosecutor asked Sergeant Twigg to "explain how controlled dangerous substances may be package[d] for sale in the Central District," trial counsel objected on the ground of relevance. The court sustained the objection, presumably because Appellant was not charged with any CDS-related offenses.

camera he had observed at the time of the offenses was admitted into evidence and broadcast to the jury.

Analysis

Appellant concedes that trial counsel failed to object to Sergeant Twigg's testimony on the ground that it should have been excluded under *Ragland*. Applying Rule 4-323(a), we conclude that Appellant's *Ragland* claim is unpreserved.

When the prosecutor examined Sergeant Twigg about his knowledge, skill, experience, and training, the overwhelming thrust of that examination was directed toward his expertise in recognizing street-level drug transactions rather than in recognizing the characteristics of an armed person. The objectionable testimony that followed was exclusively about what Sergeant Twigg believed was a hand-to-hand exchange of cannabis for United States currency.

Appellant, however, was not charged with any drug offenses; all the charges in this case centered on the loaded handgun that was found in the glove compartment of the car in which he was sitting. Sergeant Twigg's testimony about the purported drug transaction was peripheral to the case,[13] as the court recognized in sustaining trial counsel's objection, on the ground of relevance, to the prosecutor's question, asking Sergeant Twigg to "explain how controlled dangerous substances may be package[d] for sale in the Central District[.]"

[13] Sergeant Twigg's testimony may have been relevant to whether there was probable cause to arrest Appellant, but the legality of his arrest was not at issue.

Under these circumstances, we decline to review for plain error because Appellant cannot show that this error "affected [his] substantial rights." *Rich*, *supra*, 415 Md. at 578.

Finally, we decline Appellant's request to review his ineffective assistance claim on direct appeal. The trial record rarely discloses the reasons behind trial counsel's tactical decisions, among which are whether to object to the introduction of evidence. *Mosley v. State*, 378 Md. 548, 561–62 (2003). Indeed, trial counsel may have believed that by objecting, she would risk highlighting to the jury evidence of uncharged crimes. It is inappropriate for us to consider this claim on direct appeal because "'the record is [not] sufficiently developed to permit a fair evaluation of the claim[.]'" *Bailey v. State*, 464 Md. 685, 703 (2019) (quoting *In re Parris W.*, 363 Md. 717, 726 (2001)).

CASE REMANDED TO THE CIRCUIT COURT WITH INSTRUCTIONS TO VACATE THE SENTENCE FOR COUNT FIVE (WEARING, CARRYING, OR TRANSPORTING A HANDGUN ON THE PERSON). JUDGMENTS OTHERWISE AFFIRMED. COSTS ASSESSED EIGHTY PERCENT TO APPELLANT AND TWENTY PERCENT TO THE MAYOR AND CITY COUNCIL OF BALTIMORE.