

Circuit Court for Allegany County  
Case No. C-01-CR-22-000166

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 1502

September Term, 2022

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DAVON NATHANIEL FIELDS

v.

STATE OF MARYLAND

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Berger,  
Ripken,  
Eyler, James R.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Berger, J.

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Filed: November 14, 2023

\* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms with Rule 1-104(a)(2)(B). Md. Rule 1-104.

On July 28, 2022, a jury sitting in the Circuit Court for Allegany County convicted the appellant, Davon Nathaniel Fields (“Fields”), of possession of fentanyl and possession of fentanyl with intent to distribute. Fields was sentenced to twenty years of imprisonment, with all but five years suspended, followed by a five-year term of supervised probation. On appeal, Fields presents three questions for our review, which we rephrase slightly as follows:<sup>1</sup>

- I. Whether Fields preserved for appellate review his arguments regarding the State’s improper statements during closing arguments and the trial court’s supplemental instruction.
- II. Whether the circuit court erred in denying Fields’s motion to suppress evidence.
- III. Whether the evidence presented at trial was sufficient to convict Fields of possession of fentanyl and possession of fentanyl with intent to distribute.

For the reasons explained herein, we shall affirm.

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<sup>1</sup> Fields’s original questions presented read as follows:

1. Did the trial court abuse its discretion by repeating the State’s closing remarks that disputed Mr. Fields’s constitutionally secured right to the presumption of innocence?
2. Did the motions court err in denying Mr. Fields’s motion to suppress evidence seized pursuant to an unlawful search?
3. Did the trial court commit plain error by permitting insufficient evidence to sustain Mr. Fields’s convictions for possession of fentanyl and possession of fentanyl with intent to distribute?

## FACTS AND PROCEDURAL HISTORY

On February 1, 2022, Davon Nathaniel Fields was traveling in a vehicle with his friend, Terry Harris (“Harris”). Although the vehicle belonged to Fields, Harris was driving while Fields sat in the front passenger seat. Officer Andrew Opel of the Cumberland City Police Department observed the vehicle engaging in unsafe driving patterns and conducted a traffic stop. During the course of the stop, Officer Opel requested a K-9 inspection of the vehicle. The K-9 unit positively alerted to the presence of narcotics, and officers recovered two packages containing a total of 86 suspected fentanyl capsules underneath the front passenger side of the vehicle.

Fields was arrested and charged with possession of fentanyl, volume possession of fentanyl,<sup>2</sup> conspiracy to possess fentanyl in volume amounts, possession of fentanyl with intent to distribute, and conspiracy to possess fentanyl with intent to distribute. On April 4, 2022 and July 2, 2022, Fields filed motions to suppress the evidence seized during the traffic stop, arguing that the stop constituted an unreasonable search and seizure under the Fourth Amendment to the United States Constitution. The circuit court heard arguments on the motions to suppress on June 30, 2022 and issued an order denying Fields’s motion on July 15, 2022.

The two-day trial commenced on July 27, 2022. Prior to the start of proceedings, the State dismissed both conspiracy charges against Fields. Following the conclusion of

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<sup>2</sup> Fields was charged with volume possession under Md. Code (2002, 2021 Repl. Vol.) § 5-612 of the Criminal Law Article (“CR”).

the State’s case, Fields moved for judgment of acquittal solely as to the charge of volume possession. The trial court granted the motion and dismissed that charge. On July 28, 2022, the jury returned a guilty verdict on the remaining charges for possession and possession with intent to distribute.

***Motions Hearing***

At the suppression hearing held on June 30, 2022, now-Deputy Andrew Opel testified that, on February 1, 2022, he observed the driver of Fields’s vehicle engaging in unsafe and evasive driving.<sup>3</sup> This included driving approximately one- to two-vehicle lengths behind a large truck at highway speeds and making a rapid lane change from one lane to another, causing nearby vehicles to abruptly apply their brakes. The vehicle then merged back into the original lane, once again following closely behind a large truck at high speeds. Deputy Opel testified that he believed this behavior violated Maryland traffic laws and seemed designed to “hide the vehicle between two larger vehicles to obstruct the view from uniformed police officers in the area.” Based on these observations, he conducted a traffic stop.

Deputy Opel testified that he proceeded to request the vehicle registration and the occupants’ driver’s licenses. In doing so, he “noticed some suspicious behavior” and requested a K-9 inspection of the vehicle. Sergeant Donald Jenkins of the Cumberland City Police Department testified that he arrived on the scene with his K-9 unit to conduct

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<sup>3</sup> Prior to the suppression hearing, Officer Opel had transferred to the Allegany County Sheriff’s Department, serving as a Deputy assigned to the Department’s patrol division.

the K-9 inspection approximately three minutes after he received the request. The K-9 made a positive alert, indicating the presence of narcotics. Subsequently, officers conducted a search of the vehicle and recovered two bundles of suspected fentanyl capsules, which were located on the ground under the front passenger side of the vehicle. According to the officers' testimony, the bundles were found in the area where Fields had been standing after exiting the vehicle at Deputy Opel's request during the stop. Based on this testimony, the circuit court denied Fields's motion to suppress the evidence uncovered during the traffic stop, finding that "Deputy Opel was justified in his decision to stop the vehicle."

***Closing Arguments at Trial***

Prior to closing arguments at trial, the court instructed the jury asserting, among other things, that the "Defendant is presumed innocent of the charges" and that "[t]his presumption remains throughout every stage of the trial and is not overcome unless you are convinced beyond a reasonable doubt that a Defendant is guilty." At the conclusion of the State's closing argument, the prosecutor told the jury:

As far as the presumption of innocence, ladies and gentlemen, that should be gone. At this point that is over. [Fields] does not enjoy that luxury anymore. The case is yours. I trust that you will find him guilty with intent to distribute, possession.

Following this statement, defense counsel objected to the prosecutor's remarks at a bench conference, which occurred as follows:

[DEFENSE COUNSEL]: Your Honor, I don't want to interrupt the rebuttal closing, but did you say he doesn't enjoy that presumption anymore, because that's wrong.

THE COURT: The case, the case is over.

[DEFENSE COUNSEL]: Yes, but he is presumed innocent until they decide he is guilty.

[PROSECUTOR]: I said the presumption is over, because the case is theirs. If Your Honor . . . wants to instruct them again, that's fine.

THE COURT: Okay, I will do that . . . . [D]o you have any other . . . ?

[DEFENSE COUNSEL]: No, sir.

[PROSECUTOR]: No.

The court then addressed the jury and gave the following instruction:

[J]ust a couple of things before I give the case to you . . . for your deliberations. One of . . . your duties is to make a determination whether the Defendant is guilty beyond a reasonable doubt in this matter. That process begins when you go upstairs, so once you start deliberations and once you start to do that is when you make that determination. I think there may have been a reference to, that he is no longer presumed innocent at this point in time, but whether that is legally factual or not, the question is when you deliberate. That's when you make that determination. So, when you go upstairs. Am I clear on that?

Defense counsel did not respond or otherwise object to this instruction.

## DISCUSSION

On appeal, Fields asserts that the State's improper remarks during closing argument regarding the presumption of innocence and the trial court's failure to issue an adequate

supplemental instruction warrant reversal of Fields’s convictions. Fields also contends that the circuit court erred by rejecting his motion to suppress the evidence seized as a result of the traffic stop and K-9 inspection of his vehicle. He asserts that law enforcement lacked reasonable articulable suspicion to justify the traffic stop and that the K-9 inspection lacked independent grounds for reasonable suspicion of criminal activity. Finally, Fields argues that the circuit court committed plain error by finding that there was sufficient evidence to convict Fields with possession and possession with intent to distribute. As we explain below, we reject these arguments and affirm the judgment of the circuit court.

**I. Fields failed to preserve for appellate review his arguments regarding the State’s improper statements during closing argument and the trial court’s supplemental instruction.**

First, Fields contends that the State infringed upon Fields’s constitutional rights during closing argument by stating that Fields no longer enjoyed the presumption of innocence. Fields argues that this issue is preserved for our review because trial counsel objected to the prosecutor’s statements at the bench during closing arguments. He further asserts that this Court must review the complained-of remarks under an abuse of discretion standard and that that the trial court’s supplemental instruction “compounded” the prejudicial effect of the prosecutor’s remarks.

Fields relies on the Supreme Court of Maryland’s decision in *Donaldson v. State* in arguing that this court should review the prosecutor’s remarks under an abuse of discretion standard. 416 Md. 467 (2010). In *Donaldson*, the appellant contended that the prosecutor made improper statements during closing arguments by improperly vouching for the

credibility of law enforcement testimony and stating that “drug dealers” like the appellant are “the root of all evil.” *Id.* at 477–79. Trial counsel objected to these statements and those objections were overruled. *Id.* The Supreme Court of Maryland concluded that the prosecutor’s comments were improper and held that “[a] reviewing court will not reverse a conviction due to a prosecutor’s improper comment or comments ‘unless there has been an *abuse of discretion* by the trial judge of a character likely to have injured the complaining party.’” *Id.* at 496 (quoting *Henry v. State*, 324 Md. 204, 231 (1991)) (emphasis in original).

Notably, a reviewing court must engage in an “independent review of the record” to determine whether the court is “able to declare . . . beyond a reasonable doubt, that the error in no way influenced the verdict.” *Id.* (quoting *Lee v. State*, 405 Md. 148, 164 (2008)). A verdict is deemed to be influenced if it “appears that the . . . remarks actually misled the jury or were likely to have misled the jury or influenced the jury to the defendant’s prejudice.” *Id.* at 496–97 (quoting *Hill v. State*, 355 Md. 206, 224 (1999)). To make this determination in *Donaldson*, the Supreme Court court considered three factors: (1) the severity of the prosecutor’s remarks, (2) any efforts by the circuit court to prevent potential prejudice, and (3) the weight of the evidence in the case. *Id.* at 497–500.

The Court concluded that the prosecutor’s remarks were sufficiently severe, concluding that neither the vouching nor the “root of all evil” statements were isolated incidents. *Id.* at 497–99. The Supreme Court also noted that the trial court failed to issue a supplemental jury instruction to cure any potential prejudice resulting from the



prosecutor’s remarks. *Id.* at 499. Finally, the Court concluded that it could not “conclude that the evidence against [the appellant] was so overwhelming that the prosecutor’s improper statements could not have influenced the jury’s verdict.” *Id.* at 500. Accordingly, the Court held that it “[was] not persuaded beyond a reasonable doubt that prosecutor’s improper statements failed to influence the jury’s verdict.” *Id.* at 500–01.

In our view, this case is distinguishable from *Donaldson*. In *Donaldson*, trial counsel objected to the prosecutor’s improper remarks and those objections were overruled. By contrast, the circuit court responded to Fields’s objection to the State’s remarks regarding the presumption of innocence by issuing a supplemental instruction to the jury. Fields subsequently did not object to the supplemental instruction or otherwise request additional relief after the supplemental instruction was given. This Court held in *Hairston v. State* that “nothing further is needed to preserve the issue for appellate review where an objection to counsel’s argument is overruled.” 68 Md. App. 230, 237 (1986). However, “[w]here an objection to opening or closing argument is *sustained*, we agree that there is nothing for this Court to review unless a request for specific relief, such as a motion for a mistrial, to strike, or for further cautionary instruction is made.” *Id.* at 236.

This well-established case law is consistent with Maryland Rule 8-131(a), which provides that “[o]rdinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]” The purpose of this rule “is to ensure fairness for all parties in a case and to promote the orderly administration of law.” *Bryant v. State*, 436 Md. 653, 659–60 (2014) (quoting *Robinson v.*

*State*, 410 Md. 91, 103 (2009)). Accordingly, failing to make a timely objection at trial “bars the appellant from obtaining review of the claimed error, as a matter of right.” *Id.*

We applied this principle in *Lamb v. State*, 141 Md. App. 610 (2001). In *Lamb*, the appellant was challenging the propriety of the prosecutor’s statements during closing argument identifying the appellant as a “bully” who “steals people’s cars with deadly weapon[s].” *Id.* at 619. Trial counsel objected to these statements and the judge sustained the objection, instructing the jury “to strike that from [their] memory and not consider that comment in [their] deliberations . . . .” *Id.* On appeal, this Court applied the reasoning from *Hairston* and concluded that appellant failed to preserve the issue of the prosecutor’s statements for appellate review because he failed to object or request further relief after the court issued its supplemental instruction. *Id.* at 644–45 (citing *Hairston*, *supra*, 68 Md. App. at 230; *Cf. Sivells v. State*, 196 Md. App. 254, 269–93 (2010) (reaching the merits on appellant’s argument regarding allegedly improper statements during the State’s closing argument because appellant moved for a new trial after the trial court issued a supplemental instruction)).

Fields’s trial counsel raised concerns about the prosecutor’s remarks at a bench conference after the State’s rebuttal closing argument. In response, the court informed counsel and the State that it would issue a supplemental instruction to the jury and proceeded to do so. Although the words “objection” and “sustained” were never used, the

parties' conduct at the bench conference and the court's subsequent supplemental instruction to the jury constitutes an objection that was sustained by the court.<sup>4</sup>

Like in *Lamb*, the court issued a supplemental instruction and Fields failed to object to that instruction or request further relief. This case is, therefore, distinguishable from *Donaldson* and cases from other jurisdictions that Fields relies upon where there was no objection to the prosecutor's remarks and no supplemental instruction issued to the jury. See *United States v. Starks*, 34 F.4th 1142, 1158–76 (10th Cir. 2022) (finding that the prosecutor's improper statements during closing argument regarding the presumption of innocence contributed to cumulative error warranting reversal, where trial counsel did not object to the prosecutor's statement and no supplemental instruction was issued by the court); *United States v. Smith*, 962 F.2d 923, 933–36 (9th Cir. 1992) (holding that a prosecutor's improper remarks vouching for the credibility of State witnesses constituted plain error, where trial counsel did not object to the statement at trial and no supplemental instruction was issued); *State v. Lawrence*, 386 Mont. 86, 88–93 (2016) (finding that prosecutorial remarks regarding the presumption of innocence constituted plain error, where trial counsel failed to object to the statement and the court did not issue a supplemental instruction to the jury).

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<sup>4</sup> Notably, the prosecutor's argument concerning the presumption of innocence was completely improper. Indeed, nothing in this opinion should be construed that we, in any way, condone or approve of the prosecutor's argument. Nonetheless, Fields's trial counsel failed to object to the trial court's supplemental instruction, thereby precluding us from review absent plain error.

We now turn to whether Fields has preserved for our review his argument that the trial court’s supplemental instruction failed to cure the prosecutor’s improper remarks. Maryland Rule 4-325(e) provides that “[n]o 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.” When a party fails to timely object to a supplemental instruction issued to the jury at trial, “any question regarding the content of the supplemental instruction [is] not properly preserved for appellate review.” *Paige v. State*, 222 Md. App. 190, 200–01 (2015). *See also Hyman v. State*, 158 Md. App. 618, 631 (2004) (holding that the appellant waived appellate review of a supplemental instruction by failing to object at the time it was given, ask the court to strike the statement, or move for a mistrial).

After the trial court issued the supplemental instruction to the jury, Fields did not object to the supplemental instruction. Therefore, Fields failed to properly preserve this issue for appellate review. Fields proposes that, even if defense counsel failed to object to the supplemental instruction and preserve the issue for appellate review, this Court should exercise its discretion to address the issue under plain error review. This Court reserves the undertaking of plain error review only when the circumstances of the case are “compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial.” *Savoy v. State*, 420 Md. 232, 243 (2011) (quoting *State v. Hutchinson*, 287 Md. 198, 203 (1980)). “[A]ppellate review under the plain error doctrine ‘1) always has been, 2) still is, and 3) will continue to be a rare, rare phenomenon.’” *Hammersla v. State*, 184 Md. App.

295, 306 (2009) (quoting *Morris v. State*, 153 Md. App. 480, 507 (2003)). This Court has previously noted that “a consideration of plain error is like a trip to Angkor Wat or Easter Island. It is not a casual stroll down the block to the drugstore or the 7–11.” *Garner v. State*, 183 Md. App. 122, 152 (2008), *aff’d*, 414 Md. 372 (2010).

A threshold requirement for engaging in plain error review is that the error be “clear or obvious, rather than subject to reasonable dispute.” *State v. Rich*, 415 Md. 567, 578 (2010) (quoting *Puckett v. United States*, 556 U.S. 129, 135 (2009)). Fields argues that the trial court’s supplemental instruction was a “rambling” statement that “perpetuated doubts about [Field’s] constitutionally guaranteed presumption of innocence.” Indeed, Fields contends that the trial court’s instruction merely “repeated” the prosecutor’s remarks about the presumption of innocence.” We disagree. In our view, the trial court’s supplemental instruction does not constitute “clear or obvious” error and is subject to reasonable dispute.

This Court acknowledges that the trial court’s supplemental instruction included an unclear and confusing explanation of the prosecutor’s remarks regarding the presumption of innocence.<sup>5</sup> Nevertheless, the instruction did not merely repeat the prosecutor’s

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<sup>5</sup> When a supplemental instruction involves an issue as significant as a defendant’s fundamental right to the presumption of innocence and the State’s burden of proof, “best practices” dictate that the court reread the Maryland pattern jury instruction on the presumption of innocence. The circuit court’s failure to do so resulted in a supplemental instruction that is at best, confusing, and at worst, problematic. Although we conclude *infra* that the circuit court’s supplemental instruction does not constitute plain error warranting reversal, we are disturbed by the confusing and rambling nature of the trial court’s supplemental instruction. Regardless, because there was no objection to the supplemental instruction, we leave this determination to the inevitable post-conviction that will follow this proceeding.

statement, nor did it instruct the jury that that Fields did not enjoy the presumption of innocence. Prior to the start of closing arguments, the court gave the jury clear instructions regarding the presumption of innocence, instructing the jury as follows:

The Defendant is presumed innocent of the charges. This presumption remains throughout every stage of the trial and is not overcome unless you are convinced beyond a reasonable doubt that a Defendant is guilty. The State has the burden of proving the guilt of the Defendant beyond a reasonable doubt. This burden remains with the State throughout the trial. The Defendant is not required to prove his or her innocence . . . .

The trial court properly instructed the jury regarding the presumption of innocence prior to the prosecutor's improper closing remarks. Following the prosecutor's comments, the court's supplemental instruction once again emphasized the jury's duty to "make a determination whether the Defendant is guilty beyond a reasonable doubt in this matter." At no time did the court rescind or reverse its prior instructions regarding Fields's presumption of innocence and the State's burden of proof.

Critically, there are at least two competing interpretations of the court's supplemental instruction that render any error "not so clear or obvious as to be beyond dispute." *Turenne v. State*, 258 Md. App. 224, 259 (2023). As set out *supra*, the supplemental instruction advised the jury:

One of . . . your duties is to make a determination whether [Fields] is guilty beyond a reasonable doubt in this matter. That process begins when you go upstairs, so once you start deliberations and once you start to do that is when you make that determination. I think there may have been a reference to, that he is no longer presumed innocent at this point in time, but whether that is legally factual or not, the question is when you deliberate. *That's when you make that determination.*

Fields argues that the supplemental instruction “shifted the State’s burden of proof” by “indicating that the question of Mr. Field’s presumed innocence was a ‘legally factual’ question committed to the jury’s own whims.” In other words, Fields contends that the court’s instruction mandated that the jury must “make a determination” as to whether Mr. Fields enjoyed the presumption of innocence. By contrast, the State argues that court’s instruction that the jury “make that determination” simply reiterates the jury’s aforementioned duty to “make a determination whether [Fields] is guilty beyond a reasonable doubt.”

We conclude that both interpretations of the court’s confusing supplemental instruction are reasonable. Therefore, whether the circuit court erred in its supplemental instruction is subject to a reasonable dispute and fails to meet the threshold requirement that plain error must be “clear or obvious.” For these reasons, we conclude that the trial court’s confusing and problematic instruction does not constitute “clear or obvious” error that warrants plain error review by this Court. Accordingly, we decline to exercise our discretion to engage in plain error review.

## **II. The circuit court properly denied Fields’s motion to suppress.**

Fields next asserts that the circuit court erred in denying his motion to suppress because (1) there was no reasonable articulable suspicion to support the initial stop, and (2) the K-9 inspection constituted a second stop, for which there was no independent reasonable articulable suspicion. Fields also contends that the K-9 inspection unreasonably prolonged the traffic stop. We disagree. The circuit court properly concluded that Deputy

Opel had a reasonable articulable suspicion to conduct the traffic stop. Furthermore, we reject Fields’s argument that the K-9 inspection qualified as a separate, second stop that required independent justification, and conclude that it did not unduly prolong the seizure.

*A. The trial court did not err in concluding that Deputy Opel was justified in conducting the traffic stop.*

We first address Fields’s argument that Deputy Opel lacked reasonable suspicion to conduct the traffic stop. This Court’s review of a circuit court’s ruling on a motion to suppress evidence is limited to the record developed at the suppression hearing. *Briscoe v. State*, 422 Md. 384, 396 (2011). Furthermore, “[w]e defer to the motions court’s factual findings and uphold them unless they are shown to be clearly erroneous.” *Lee v. State*, 418 Md. 136, 148 (2011) (quoting *State v. Lockett*, 413 Md. 360, 375 n.3 (2010)). We view those facts in the light most favorable to the prevailing party. *Briscoe, supra*, 442 Md. at 396. “[W]e review legal questions *de novo*, and where, as here, a party has raised a constitutional challenge to a search or seizure, we must make an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.” *State v. Wallace*, 372 Md. 137, 144 (2002).

The Fourth Amendment to the United States Constitution confers “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. This provision is applicable to the states through the Due Process Clause of the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 655 (1961). Additionally, the Supreme Court of Maryland “has generally interpreted Article 26 of the Maryland Declaration of Rights to provide the same protections as the



Fourth Amendment.” *Carter v. State*, 236 Md. App. 456, 467 (2018) (citing *Byndloss v. State*, 391 Md. 462, 465 n.1 (2006)).

The temporary detention of passengers during a traffic stop constitutes a seizure under the Fourth Amendment and “is thus subject to the constitutional imperative that it not be ‘unreasonable’ under the circumstances.” *Whren v. United States*, 517 U.S. 806, 809–10 (1996). A traffic stop is valid when it is based on “reasonable articulable suspicion that criminal activity may be afoot, including reasonable articulable suspicion to believe ‘the car is being driven contrary to the laws governing the operation of motor vehicles . . . .’” *Smith v. State*, 182 Md. App. 444, 462 (2008) (quoting *Lewis v. State*, 398 Md. 349, 362 (2007)). Reasonable articulable suspicion is “a less demanding standard than probable cause.” *Holt v. State*, 435 Md. 443, 468 (2013) (citing *Alabama v. White*, 496 U.S. 325, 330 (1990)). The question of whether “probable cause or a reasonable articulable suspicion exists to justify a stop depends on the totality of the circumstances.” *Rowe v. State*, 363 Md. 424, 433 (2001). Furthermore, this Court has held that “an otherwise-valid traffic stop does not become unconstitutional just because the actual purpose of the law enforcement officer making the stop was to investigate potential drug crimes.” *Carter, supra*, 236 Md. App. at 468.

At the suppression hearing, Deputy Opel testified that he observed Fields’s vehicle following behind a large truck at a high rate of speed at only one- or two-car lengths’ distance behind the truck. After making two rapid lane changes, the vehicle once again followed behind another large truck at a high rate of speed and at a close distance. We

conclude that this driving pattern gave rise to reasonable articulable suspicion that the vehicle was in violation of Section 21–310(a) of the Transportation Article of the Maryland Code, which provides:

The driver of a motor vehicle may not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the other vehicle and of the traffic on and the condition of the highway.

Md. Code (2012, 2020 Repl. Vol.), § 21-310(a) of the Transportation Article (“TR”). Deputy Opel also testified, and the circuit court agreed, that these observations provided a reasonable articulable suspicion that Fields’s vehicle was violating Section 21-309(b) of the Transportation Article of the Maryland Code, which provides:

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.

TR § 21-309(b). Fields contends that Deputy Opel’s observations were not sufficient to develop a reasonable articulable suspicion that the vehicle was in violation of Section 21-309(b). Fields looks to the Supreme Court of Maryland’s decision in *Rowe v. State*, which involved the same section of the Transportation Article. *Rowe, supra*, 363 Md. 424.

In *Rowe*, a State Trooper observed Rowe’s vehicle cross over the “white edge line on the right side of the shoulder, about eight inches over that white edge line on to the shoulder,” hit a segment of rumble strips, then “touch the white edge line again. *Id.* at 427–28. The State Trooper pulled the vehicle over for “failing to drive in a single lane.” *Id.* The Supreme Court granted certiorari to determine, in part, whether this conduct gave rise

to reasonable articulable suspicion that Rowe was violating Section 21-309(b). *Id.* at 433–

41. Focusing on the plain language of the statute, the Court concluded:

[T]o be in compliance [with Section 21-309(b) of the Transportation Article], 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.

*Id.* at 434. Based on this interpretation of the statute, the Court concluded that “the petitioner’s momentary crossing of the edge line of the roadway and later touching of that line” did not amount to a violation of Section 21-309(b) and could not provide justification for the traffic stop. *Id.* at 441.

Fields urges us to reach a similar conclusion here, emphasizing that Deputy Opel did not testify whether Harris -- who was driving Fields’s vehicle at the time of the stop -- failed to use his turn signal or was otherwise driving recklessly or negligently. We agree with the State that this case is distinguishable from *Rowe*. In this case, the vehicle’s driving pattern constituted more than just a “momentary crossing of the edge of the line of a roadway.” *Id.* The vehicle performed multiple rapid lane changes, putting other cars in the area at risk and generally jeopardizing the “safety of laned roadways.” *Id.* at 434. Therefore, Deputy Opel’s testimony demonstrated sufficient facts to support a finding of reasonable articulable suspicion that the driver of the vehicle was violating two traffic laws. We, therefore, affirm the circuit court’s conclusion that Deputy Opel had sufficient justification to conduct the traffic stop.

B. *The circuit court did not err in denying Field’s motion to suppress because the original traffic stop was still ongoing when the K-9 positively alerted to the presence of narcotics.*

We similarly reject Fields’s assertion that the K-9 inspection constituted a separate search. It is well-established that, when conducting a traffic stop, “officers may pursue investigations into both the traffic violation and another crime ‘simultaneously, with each pursuit necessarily slowing down the other to some modest extent.’” *Carter, supra*, 236 Md. App. at 468 (quoting *Charity v. State*, 132 Md. App. 598, 614 (2000)). This Court has held that it is “perfectly legitimate” to perform a K-9 inspection during a traffic stop as a “free investigative bonus,” as long as the traffic stop is “still genuinely in progress.” *Steck v. State*, 239 Md. App. 440, 456 (2018) (citing *State v. Ofori*, 170 Md. App. 211, 235 (2006)). Nevertheless, law enforcement “may not prolong an initial stop to effectuate a canine search, especially when the purpose of that stop has been completed (*e.g.*, complete license check and ticket writing).” *Id.* (citing *Florida v. Royer*, 460 U.S. 491, 500 (1983)). “If the officer issuing the citation is diligently and ‘legitimately still working on those citations when the K-9 unit arrives, the traffic stop is still ongoing, and the detention will be considered reasonable for Fourth Amendment purposes.’” *Id.* at 457 (quoting *Partlow v. State*, 199 Md. App. 624, 638 (2011)). In contrast, if law enforcement has completed the purpose of the original traffic stop, “the continued detention of a vehicle and its occupant(s) constitutes a second stop and must be independently justified by reasonable suspicion. *Munafu v. State*, 105 Md. App. 662, 670 (1995)).

In its order denying Fields's motion to suppress, the circuit court concluded that "the original purpose of the stop had not been completed at the time the drugs were detected in the vehicle by Sgt. Jenkins' K-9." We agree with this conclusion. The court's finding was properly supported by testimony provided at the suppression hearing. Deputy Opel testified that he was still waiting to receive results from dispatch regarding the vehicle's registration when he requested a K-9 investigation and when the K-9 unit arrived. Indeed, the vehicle registration results were not received until after the K-9 positively alerted to the presence of narcotics. Despite this, Fields argues that the length of the K-9 stop "lasted far beyond the officer's attempts to address the traffic violations for which he pulled over the vehicle," contesting the reasonableness of the length of Fields's detention.

We have previously noted that, "while not entirely dispositive, time is a consideration" when determining the reasonableness of a traffic stop, and whether officers were diligently working on traffic citations and related tasks at the time of a K-9 scan. *Steck, supra*, 239 Md. App. at 457. We agree with the circuit court's conclusion that "no evidence produced at the hearing [suggests] that the officer intentionally delayed the purpose of the stop." Sergeant Donald Jenkins testified at the suppression hearing that he arrived on the scene to conduct the K-9 inspection approximately three minutes after he received Deputy Opel's request. Additionally, approximately thirteen minutes passed between the time Deputy Opel notified dispatch of the traffic stop and the K-9 positively alerting to the presence of narcotics -- during which time Deputy Opel was still waiting on

results for the vehicle's registration.<sup>6</sup>

In *Byndloss v. State*, we held that there was no Fourth Amendment violation where officers detained the occupants of a vehicle for approximately thirty minutes and conducted a K-9 inspection while waiting on results for licenses, registration, and outstanding warrants. *Byndloss, supra*, 391 Md. at 492. We reach the same conclusion in this case, where the time elapsed was less than 30 minutes. Accordingly, we affirm the circuit court's conclusion that there was no unreasonable delay constituting a Fourth Amendment violation.

For these reasons, we conclude that there was reasonable articulable suspicion to support the initial stop, which was ongoing at the time of the K-9 inspection. We, therefore, affirm the circuit court's denial of Fields's motion to suppress.

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<sup>6</sup> We recognize that Fields identifies some discrepancies between the times reported in automated police records and the times identified by the dispatch operator on radio recordings. For most entries, this consists of a consistent five-minute discrepancy. As the circuit court noted in its order denying Fields's motion to suppress, these discrepancies are immaterial and do not impact our analysis of the duration of the stop itself. For this reason, we give proper deference to and adopt the timeline used by the circuit court:

11:20:05	Deputy advised dispatch of traffic stop
11:20:05	Dispatch notified of stop of vehicle
11:24:15	Soundex Information provided to dispatch
11:25:38	Check for warrant status for defendant
11:27:14	Dispatch advises that Maryland system is down
11:31:22	Sgt. Jenkins arrives at stop with K-9
11:32:58	Sgt. Jenkins advises of positive alert of K-9
11:37:40	Dispatch advises that vehicle registration is valid
11:38:35	Dispatch advised suspected CDS located

**III. Fields failed to preserve the issue of sufficiency of evidence; nevertheless, there was sufficient evidence to convict Fields of possession and possession with intent to distribute.**

The final issue on appeal is whether there was sufficient evidence to sustain Fields’s convictions. Fields asserts that there was insufficient evidence to convict him of possession of fentanyl and possession of fentanyl with intent to distribute. To begin this analysis, we note that an appellant “is not entitled to appellate review of reasons stated for the first time on appeal.” *Starr v. State*, 405 Md. 293, 302 (2008). Appellate review of the sufficiency of evidence “is available only when the defendant moves for judgment of acquittal at the close of all evidence and argues precisely the ways in which the evidence is lacking.” *Anthony v. State*, 117 Md. App. 119, 126 (1997). Fields did not move for judgment of acquittal for the charges of possession and possession with intent to distribute, and therefore failed to preserve the issue of sufficiency of evidence for appellate review.<sup>7</sup>

Even if Fields had properly preserved the sufficiency issue for appeal, we conclude that there was sufficient evidence presented to the jury to return a guilty verdict for

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<sup>7</sup> At the close of the State’s argument, the only remaining charges included volume possession, possession, and possession with intent to distribute. Fields moved for judgment on acquittal only for the volume possession count:

[DEFENSE COUNSEL] So, Your Honor, respectfully I move for judgment of acquittal as to the second count, possession of a large amount, and umm, that’s it.

THE COURT: Okay, so you are proceeding on only the second count?

[DEFENSE COUNSEL]: Correct.

possession and possession with intent to distribute. When reviewing the sufficiency of evidence to support a criminal conviction, we ask “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.” *McClurkin v. State*, 222 Md. App. 461, 486 (2015) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)) (emphasis in original). In doing so, we do not “re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence.” *Smith v. State*, 415 Md. 174, 185 (2010).

This court considers four factors when determining whether there was sufficient evidence at trial to support a conviction for possession of narcotics: (1) the defendant’s proximity to the narcotics, (2) whether the narcotics were in plain view of and/or accessible to the defendant, (3) whether there was “an indicia of mutual use and enjoyment” of the narcotics, and (4) whether the defendant had an ownership or possessory interest in the location where law enforcement discovered the narcotics. *Id.* at 198. Here, the fentanyl capsules were found immediately below a vehicle that belonged to Fields. Additionally, the narcotics were discovered on the passenger’s side of the vehicle, where Fields had been sitting as a passenger, and close to where he had been standing after exiting the vehicle at Deputy Opel’s request. We conclude that, based on the factors listed above, there was sufficient evidence for a reasonable fact finder to find Fields guilty of possession of fentanyl.

Fields argues that, even if the evidence seized suggests personal use, it was not sufficient to support a conviction of possession with intent to distribute. In particular,



Fields suggests that 86 capsules of fentanyl is not a sufficient amount of narcotics to support a conviction for intent to distribute. We disagree. “In Maryland, no specific quantity of drugs has been delineated that distinguishes between a quantity from which one can infer and a quantity from which one cannot” infer an intent to distribute. *Purnell v. State*, 171 Md. App. 582, 612 (2006) (citing *Collins v. State*, 89 Md. App. 273, 279 (1991)). In our view, it is not unreasonable for a jury to find that 86 capsules of fentanyl split into two packages is indicative of an intent to distribute.

Fields also raises concerns with the fact that only three of the 86 capsules were tested -- and came back positive -- for fentanyl.<sup>8</sup> In *Scott v. State*, this Court held that, “[w]here the State introduced evidence that portions of the substances [seized] were shown by analysis to be heroin, cocaine, or marijuana, the jury was entitled to infer, circumstantially, the identity and nature of the remainder of the contraband recovered from the same source at the same time.” 175 Md. App. 130, 149 (2007). Therefore, we conclude that the jury in this case was entitled to infer the nature of the remaining 83 capsules based on the capsules that were tested.

For the reasons stated above, we conclude there was sufficient evidence for a reasonable fact finder to find Fields guilty of possession and possession with intent to

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<sup>8</sup> In making this argument, Fields also contends that any evidence supporting his conviction for possession with intent to distribute was largely circumstantial. Notably, this Court has held that “a valid conviction may be based solely on circumstantial evidence.” *Pinkney v. State*, 151 Md. App. 311, 327 (2003) (citing *Wilson v. State*, 319 Md. 530, 537 (1990)).

distribute. Further, insofar as Fields requests that this Court review the sufficiency of evidence on a plain error basis, we decline to do so. For these reasons, we affirm.

**JUDGMENT OF THE CIRCUIT COURT  
FOR ALLEGANY COUNTY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**