Circuit Court for Montgomery County
Case No. 130325C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 804

September Term, 2018

JORGE F. ROSSI

v.

STATE OF MARYLAND

Wright,
Graeff,
Nazarian,
JJ.

Opinion by Graeff, J.

Filed: October 1, 2019

On March 1, 2018, a jury sitting in the Circuit Court for Montgomery County convicted appellant, Jorge F. Rossi, of possession with intent to distribute marijuana. The court imposed a sentence of two years' incarceration, all but six months suspended, to be followed by three years' probation.

On appeal, appellant raises the following questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the circuit court abuse its discretion in overruling objections to the prosecutor's comments in closing argument?

2. Did the circuit court err in permitting a detective to speculate that the amount of money found on appellant's person was consistent with him having previously sold a certain quantity of marijuana?

3. Did the circuit court err in permitting a detective and an officer to opine that the offense of possession with intent to distribute had been established?

4. Did the circuit court err in denying a motion to suppress items seized from appellant's person?

For the reasons set forth below, we answer the first question in the affirmative, and therefore, we shall reverse the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Suppression Hearing

Officer Michael Schmidt, a member of the Montgomery County Police Department, testified that, on July 12, 2016, at approximately 11:30 p.m., he was patrolling the downtown Bethesda area in an unmarked car. At the time, he was assigned to the Second District Special Assignment Team, which is a "plain clothes unit" consisting

of approximately eight team members tasked with conducting surveillance and addressing "crime trends."

At the intersection of Arlington Avenue and Bradley Boulevard, Officer Schmidt came up behind a blue Toyota Corolla. As was his habit late at night, Officer Schmidt ran a search of the vehicle's license plates. The search came back with appellant's name, which "sounded familiar" to him.[1]

Officer Schmidt radioed his fellow team members and asked them if they recognized appellant's name. One of the team members responded that he previously had arrested appellant for a drug-related crime.

Officer Schmidt followed the driver, later identified as appellant.[2] He observed appellant driving 40 miles per hour in a 30-mile-per-hour zone and initiated a traffic stop.

Officer Schmidt approached the driver's side of the vehicle, and appellant rolled down his window. Officer Schmidt smelled "a strong odor of fresh marijuana." He asked appellant for his driver's license, and when appellant handed him a Maryland Identification Card instead of a license, Officer Schmidt ordered appellant to exit the vehicle.[3]

[1] Appellant was not listed as the registered owner of the vehicle, but the search showed that appellant was associated with the vehicle based on prior traffic stops. The vehicle was registered to someone with appellant's last name.

[2] Officer Schmidt made an in-court identification of appellant as the driver of the vehicle.

[3] Officer Schmidt testified that the Maryland Identification Card was not a valid substitute for a driver's license.

Appellant, the sole occupant in the vehicle, was "noticeably nervous," more so than most people, and he avoided eye contact with Officer Schmidt. Based on the smell of marijuana, Officer Schmidt placed appellant in handcuffs. He then searched appellant's person and found $761, a sandwich bag containing marijuana, and a baggie with a white powdery substance, which subsequently tested positive for cocaine.[4]

As Officer Schmidt was searching appellant, Officers Bieber and Brubaker, who also worked in the Special Assignment Team, pulled up to the scene.[5] The officers searched the vehicle while Officer Schmidt stood near the curb with appellant.

During a search of the trunk of the vehicle, Officer Bieber found a black backpack that contained a bag of marijuana in its top compartment and a larger amount of marijuana in the main compartment. Although Officer Brubaker did not personally search the backpack, he saw that the marijuana in the main compartment was "all vacuum sealed" in one bag, and "a lot of sandwich baggies of marijuana" were inside that bag.

After assisting with the search of the trunk, Officer Brubaker conducted another search of the passenger side of the vehicle. He did not discover any other contraband in the car.

[4] Officer Schmidt could not tell whether the amount of marijuana removed from the baggie in appellant's pocket was less than 10 grams.

[5] Officer Bieber is referred to elsewhere as "Officer Beaver." For consistency, we will refer to him as Officer Bieber throughout this opinion.

At the January 11, 2018, suppression hearing, the prosecutor argued that, based on appellant's speeding, Officer Schmidt had a reasonable basis to execute a traffic stop, and based on the odor of marijuana in the vehicle, Officer Schmidt had probable cause to search the car. When the court asked the prosecutor how appellant's arrest was lawful, she argued that Officer Schmidt "smelled the odor of marijuana in and about the vehicle," and because appellant was the sole occupant in the vehicle, the marijuana smell could be attributed to him. Finally, the State contended that Officer Schmidt's discovery of marijuana and cocaine on appellant's person permitted officers to search the rest of the vehicle, including the trunk.

Defense counsel argued that the odor of marijuana did not establish probable cause to arrest appellant. He argued that, although the officers had probable cause to search the passenger compartment of the vehicle upon smelling marijuana, they did not have probable cause to search the trunk because appellant had already been "removed from the car" and there was no danger that he would "grab something and harm an officer with it."

The court ultimately denied the motion to suppress. Initially, the court noted that the traffic stop was lawful based on appellant's speeding, even if the speeding was merely a pretext for the stop. After noting that probable cause is a "pretty low standard," the court found that Officer Schmidt had probable cause to arrest appellant, the sole occupant of the vehicle, for possession of marijuana based on the odor of marijuana in the vehicle. The search of appellant's person, which resulted in the discovery of marijuana and cocaine, was done incident to a lawful arrest. And, finally, the court concluded that the discovery

of marijuana and cocaine on defendant's person gave the officers probable cause to search the entire vehicle, including the trunk.

Trial

Trial began on February 28, 2018. Officer Schmidt testified consistent with his testimony during the suppression hearing.

Officer Brubaker testified that, after searching the inside of the vehicle, which did not result in the discovery of any contraband, he assisted Officer Bieber in searching the trunk. Officer Brubaker observed Officer Bieber remove a "torn grocery bag" with a small amount of marijuana from the top compartment of a backpack, and from the main compartment, a vacuum sealed bag containing "four sandwich baggies" with "a lot of marijuana."[6]

Officer Neal Bumgarner, a member of the Special Assignment Team, testified that, on June 12, 2016, Officer Schmidt radioed him requesting backup for a traffic stop. When he arrived on the scene, Officer Schmidt had already stopped appellant's vehicle. After exiting his vehicle, he walked to the driver's side of appellant's car and smelled a very strong odor of fresh marijuana emanating from inside the vehicle.

After appellant was placed in handcuffs, Officer Bumgarner searched the driver's side of the vehicle. He did not find any contraband. Officer Bieber, following his search

[6] At the suppression hearing, Officer Brubaker testified that the bag was sealed, but he testified at trial that the vacuum seal bag was unsealed when they removed it from the backpack.

of the backpack, gave Officer Bumgarner bags of marijuana, which Officer Bumgarner then placed in three evidence bags.[7] He then transported the bags to the police station, sealed them, logged them into evidence, and placed them in a lockbox.

Christine Haddix, a forensic chemist at the Montgomery County Police Department at the time appellant was arrested,[8] testified that the bags recovered from the backpack tested positive for marijuana. They had a combined weight of 100.23 grams.[9]

Detective John King, a member of the Montgomery County Police Department's vice and intelligence unit, was certified as an expert in drug trafficking and street level drug dealing. When the prosecutor asked if he had an opinion whether the marijuana was possessed with the intent to distribute or for personal use, he testified that, based on the absence of personal use instruments, the quantity of marijuana recovered, and the way the drugs were packaged, "it's possession with intent to distribute."

As indicated, the jury convicted appellant of possession with intent to distribute marijuana. This appeal followed.

[7] The three bags included a bag with the marijuana recovered from appellant's pocket, the marijuana recovered from the top compartment of the backpack, and the marijuana recovered from the vacuum sealed bag.

[8] Ms. Haddix began working for the Drug Enforcement Administration about a year prior to appellant's trial.

[9] The weight of marijuana in each bag was as follows: 28.13 grams in bag one, 28.60 grams in bag two, 28.10 grams in bag three, and 15.40 grams in bag four.

DISCUSSION

I.

Appellant first contends that the circuit court abused its discretion in overruling defense counsel's objections to several remarks that the prosecutor made during her closing argument. Specifically, he asserts that the prosecutor engaged in three types of improper argument: (1) she "misstated the law" as it relates to constructive possession; (2) she "improperly expressed personal opinions" regarding appellant's guilt and the qualifications of an expert witness; and (3) she "argued facts not in evidence."

Before responding to these specific contentions, we will briefly discuss the law regarding closing argument. It is well-settled that attorneys are afforded "great leeway in presenting closing arguments to the jury." *Degren v. State*, 352 Md. 400, 429 (1999). The Court of Appeals has explained:

> While arguments of counsel are required to be confined to the issues in the case[] on trial, the evidence and fair and reasonable deductions therefrom, and to arguments of opposing counsel, generally speaking, liberal freedom of speech should be allowed. There are no hard-and-fast limitations within which the argument of earnest counsel must be confined—no well-defined bounds beyond which the eloquence of an advocate shall not soar. He may discuss the facts proved or admitted in the pleadings, assess the conduct of the parties, and attack the credibility of witnesses. He may indulge in oratorical conceit or flourish and in illustrations and metaphorical allusions.

State v. Gutierrez, 446 Md. 221, 242 (2016) (quoting *Donaldson v. State*, 416 Md. 467, 488–89 (2010)).

Nevertheless, there are limitations upon the scope of a proper closing argument. "The prosecutor 'may strike hard blows, [but] he is not at liberty to strike foul ones.'"

Simpson v. State, 442 Md. 446, 463 (2015) (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)). In this regard, the State may not vouch for the credibility of a witness, *Spain v. State*, 386 Md. 145, 153–54 (2005), "appeal to the prejudices or passions of the jurors," *Mitchell v. State*, 408 Md. 368, 381 (2009), or argue facts not in evidence or materially misrepresent the evidence introduced at trial, *Whack v. State*, 433 Md. 728, 748–49 (2013).

What exceeds "'the limits of permissible comment depends on the facts in each case, even where the remarks may fall into the same general classification.'" *Calloway v. State*, 141 Md. App. 114, 120 (2001) (quoting *Wilhelm v. State*, 272 Md. 404, 415 (1974)), *cert. denied*, 367 Md. 722 (2002). "The determination whether counsel's 'remarks in closing were improper and prejudicial, or simply a permissible rhetorical flourish, is within the sound discretion of the trial court to decide.'" *Sivells v. State*, 196 Md. App. 254, 271 (2010) (quoting *Jones-Harris v. State*, 179 Md. App. 72, 105 (2008)), *cert. dismissed*, 421 Md. 659 (2011).

With these principles in mind, we turn to appellant's contentions of error.

A.

Misstatement of Law

Appellant contends that the circuit court erred in permitting the prosecutor to misstate the law of constructive possession in closing argument. The portion of the closing argument in that regard was as follows:

> [PROSECUTOR:] One of the other factors in this case is going to be, and I believe you'll hear defendants argue about this. Well, it was in the backpack so therefore it's not, and it's not his backpack. He didn't possess

it. *However, the law envisions that the driver of the vehicle, all of the items in the vehicle are in your possession and responsible for it.*

[DEFENSE COUNSEL]: Objection, Your Honor. Misstates the law.

[THE COURT]: Overruled.

[PROSECUTOR]: Whether we like it or not that is the law.

(Emphasis added.)

Appellant argues that the prosecutor's statement erroneously implied there was a "categorical rule" that a driver is deemed to possess, and be responsible for, all items found in the vehicle. He asserts that the court, in overruling defense counsel's objection to this misstatement of law, "endorsed the prosecutor's representation that [appellant] was necessarily liable for the items found in the vehicle, relieving the State of its burden of proving" that appellant had knowledge of the drugs in the trunk.

The State concedes that it is improper for the prosecutor to misstate the law in closing argument. It asserts, however, that the "statement that the law 'envisions' that items found in a vehicle are in the possession of the driver was not incorrect[,]" but rather, it was "at worst, imprecise." In any event, it argues that, even if the comments were improper, reversal is not warranted because: (1) the trial court "made clear to the jurors that they were to take the law from the court's instructions, not counsel's arguments"; and (2) the prosecutor's remarks following the controverted statement "indicated that [appellant's] mere status as the driver was not conclusive as to possession[.]"

Maryland Code (2017 Supp.), § 5-101(v) of the Criminal Law Article defines "possession" as "to exercise actual or constructive dominion or control over a thing by

one or more persons." In proving dominion or control, the State must present evidence that shows '"directly or support[s] a rational inference' that the accused 'exercised some restraining or directing influence' over the drugs." *Kamara v. State*, 205 Md. App. 607, 632 (2012) (quoting *Jefferson v. State*, 194 Md. App. 190, 214 (2010)). '"[K]nowledge of the presence of an object is generally a prerequisite to the exercise of dominion and control."' *Williams v. State*, 231 Md. App. 156, 200 (2016) (quoting *Handy v. State*, 175 Md. App. 538, 563 (2007)), *cert. dismissed*, 452 Md. 47 (2017). It may be '"proven by circumstantial evidence and by inferences drawn therefrom."' *Bordley v. State*, 205 Md. App. 692, 718 (2012) (quoting *Smith*, 415 Md. 174, 187 (2010)).

The Court of Appeals has recognized that "'[d]rivers generally have dominion and control over the vehicles they drive.'" *State v. Smith*, 374 Md. 527, 553 (2003) (quoting *United States v. Lochan*, 674 F.2d 960, 966 (1st Cir. 1982)). Accordingly, "the status of a person in a vehicle who is the driver, whether that person actually owns, is merely driving, or is the lessee of the vehicle, permits an inference, by a fact-finder, of knowledge, by that person, of contraband found in that vehicle." *Id.* at 550. *Accord Neal v. State*, 191 Md. App. 297, 317 ("[F]act finder could infer" that driver of the vehicle possessed drugs in the vehicle "simply by virtue of his status as the driver and sole occupant of the vehicle."), *cert. denied*, 415 Md. 42 (2010).

Here, the issue is whether the prosecutor's statement, that "the law envisions" that the driver of the vehicle is in possession of "all of the items in the vehicle," was an accurate statement of the law or whether, as appellant argues, the prosecutor improperly stated "a

generally-applicable legal principle rather than merely urging an inference." The word "envision" means "to picture to oneself." *Merriam Webster Collegiate Dictionary* 418 (11th ed. 2003). We agree with appellant that this statement suggests, or could be interpreted to mean, that the law provides that the driver of a vehicle is deemed to be in possession of the items in the vehicle. As such, the comment was a misstatement of the law.

B.

Prejudicial Error

Our conclusion that the comment was improper, however, is not the end of the inquiry. The Maryland appellate courts have made clear that, when a prosecutor makes an improper argument, "reversal is not automatically mandated." *Sivells*, 196 Md. App. at 288. *Accord Degren*, 352 Md. at 430. Rather, "reversal is only required where it appears that the remarks of the prosecutor actually mislead the jury or were likely to have misled or influenced the jury to the prejudice of the accused." *Id*. (quoting *Jones v. State*, 310 Md. 569, 580 (1987), *vacated on other grounds*, 486 U.S. 1050 (1988)). *Accord Spain v. State*, 386 Md. 145, 158 (2005). In assessing prejudice in this regard, we consider various factors, including "'the severity of the remarks, the measures taken to cure any potential prejudice, and the weight of the evidence against the accused.'" *Warren v. State*, 205 Md. App. 93, 133 (quoting *Spain*, 386 Md. at 159), *cert. denied*, 427 Md. 611 (2012).

Here, we can dispose quickly of the second factor. As indicated, the circuit court summarily overruled defense counsel's objection to the improper comment, and therefore,

it did not take measures to cure the potential prejudice. *See Lee v. State*, 405 Md. 148, 177–78 (2008) ("[T]o be sufficiently curative, the judge must instruct contemporaneously and specifically to address the issue such that the jury understands that the remarks are improper and are not evidence to be considered in reaching a verdict."). *Accord Donaldson v. State*, 416 Md. 467, 499 (2010) (curative effect of general jury instructions given before closing argument are limited because they cannot "'address objectionable remarks' that have 'not yet been made.'") (quoting *Lawson*, 389 Md. at 601–02).

With respect to the weight of the evidence, the State argues that

> this was an open-and-shut case. [Appellant] was arrested with nearly a quarter pound of marijuana, mostly contained in a backpack in the trunk of the car he was driving, as well as over $700 in cash. The marijuana in the trunk was subdivided into packages of suitable size for resale. The vehicle was registered, apparently, to a family member –someone who shared [appellant]'s last name and address. There were no other occupants of the vehicle upon whom suspicion might fall. And the cash and the marijuana that was found on [appellant]'s person tended to negate any suggestion that [appellant] was innocently driving the family car, unaware of another household member's stash in the trunk.

Appellant concedes that there was sufficient evidence for the jury to infer that he possessed the marijuana in the vehicle based on his status as the driver and sole occupant of the vehicle. *See Neal*, 191 Md. App. at 317 ("[A] fact finder could infer that appellant possessed . . . cocaine simply by virtue of his status as the driver and sole occupant of the vehicle[.]"). He asserts, however, that because he "was not the registered owner of the vehicle, and there was no evidence connecting him to the backpack or marijuana other than that he was driving the vehicle," he had "a plausible argument" that he had no knowledge of the drugs in the backpack. Under these circumstances, appellant asserts that

"the State cannot prove that the prosecutor's improper remarks did not influence the verdict in any way."

We agree with the State that there was significant evidence of appellant's guilt. In addition to appellant being the driver and only occupant of the vehicle: (1) the vehicle was registered to someone with appellant's same last name; (2) the address on the registration matched the address on the Maryland Identification Card appellant handed to Officer Schmidt; (3) marijuana was discovered on appellant's person; (4) a large amount of cash was recovered from appellant's wallet in his pocket, which suggested that appellant may have been dealing in larger quantities of marijuana; and (5) there was a strong odor of marijuana in the vehicle. The weight-of-the-evidence factor tilts in the State's favor, but we disagree that this was an "open-and-shut" case. Appellant's counsel argued at trial that it was "not his car, not his backpack, not his marijuana."

With respect to the severity of the remarks, we agree with appellant that the misstatements of law regarding constructive possession went to the central issue in the case, i.e., "whether [appellant] possessed the large quantity of marijuana found in the backpack." Thus, the improper remark was significant.

Given the severity of the comment in closing argument, which went to the critical issue in a strong, but not overwhelming, case, it is difficult to conclude that this argument could not have impacted the jury's verdict. And the potential prejudice was compounded by the court summarily overruling appellant's objection to the prosecutor's misstatement. *See State v. Worth*, 218 P.3d 166, 171 (Or. App. 2009) (Trial court compounded prejudice

caused by prosecutor's misstatement of the law during closing when it overruled defense counsel's objection "in the apparent belief that the prosecutor's argument was permissible."), *petition denied*, 379 P.3d 528 (Or. 2010). Accordingly, we conclude that appellant is entitled to reversal of his conviction.[10]

II.

Although we are reversing appellant's convictions, we still must address appellant's contention that the circuit court erred in denying his "motion to suppress items seized from [his] person." This Court has described the applicable standard of review for a motion to suppress as follows:

> "We review a denial of a motion to suppress evidence seized pursuant to a warrantless search based on the record of the suppression hearing, not the subsequent trial. *State v. Nieves*, 383 Md. 573, 581, 861 A.2d 62 (2004). We consider the evidence in the light most favorable to the prevailing party, here, the State. *Gorman v. State*, 168 Md. App. 412, 421, 897 A.2d 242 (2006) (Quotation omitted). We also 'accept the suppression court's first-level factual findings unless clearly erroneous, and give due regard to the court's opportunity to assess the credibility of witnesses.' *Id.* 'We exercise plenary review of the suppression court's conclusions of law,' and 'make our own constitutional appraisal as to whether an action taken was proper, by reviewing the law and applying it to the facts of the case."' *Id.*

Spell v. State, 239 Md. App. 495, 506–07 (2018) (quoting *Goodwin v. State*, 235 Md. App. 263, 274 (2017)), *cert. denied*, 462 Md. 581 (2019).

[10] We need not address the other claims regarding closing argument and the admissibility of evidence because they may not occur if there is another trial. We caution the State in the event of a new trial, however, to review the other claims of error raised on appeal.

Appellant contends that the circuit court erred in denying his motion to suppress the items seized from his person because the smell of marijuana emanating from a vehicle does not give the police probable cause to arrest the driver. In support, he cites the recent decision by the Court of Appeals, *Pacheco v. State*, __ Md. __, No. 17, Sept. Term 2018 (filed Aug. 12, 2019), a case decided after the circuit court's ruling in this case.

The State concedes that, pursuant to *Pacheco*, the odor of marijuana emanating from a vehicle does not "give rise to probable cause to suspect that the driver ha[s] committed a crime." It asserts, however, that *Pacheco* does not change the outcome of this case. Although the circuit court's rationale for denying the motion to suppress in this regard is no longer tenable, it notes that a circuit court decision can be upheld on a ground different from that relied on by the circuit court. *Yaffe v. Scarlett Place Residential Condo., Inc.*, 205 Md. App. 429, 440 (2012) (Appellate court can affirm when circuit court's decision was "right for the wrong reasons."). *Accord Robeson v. State*, 285 Md. 498, 502 (1979) ("[A] trial court's decision may be correct although for a different reason than relied on by that court."), *cert. denied*, 444 U.S. 1021 (1980).

Here, the State argues that the circuit court properly denied the motion to suppress for two reasons: (1) the inevitable discovery doctrine – because the smell of marijuana gave the police probable cause to search the vehicle, the discovery of the marijuana in the trunk would eventually have led to appellant's arrest and the search of his person; and (2) the police had probable cause to arrest appellant for driving without a license.

Appellant objects to consideration of these two arguments because the State did not raise them in the circuit court. Therefore, he asserts that they are not preserved for appellate review. Additionally, he argues that it would be unfair to allow the State to make these arguments because he did not have the opportunity to rebut the assertions at the suppression hearing or cross-examine the officer.

The Fourth Amendment protects people against unreasonable searches and seizures. U.S. Const. amend. IV. "It is 'made applicable against the States through the Fourteenth Amendment."' *Spell*, 239 Md. App. at 506 (quoting *Smith v. State*, 214 Md. App. 195, 201 (2013)).

Here, the parties do not dispute that Officer Schmidt arrested appellant and searched him incident to arrest. They dispute, however, whether the police had probable cause to make that arrest.

"In order for a warrantless search or arrest to be legal it must be based upon probable cause." *State v. Wallace*, 372 Md. 137, 147 (2002), *cert. denied*, 540 U.S. 1140 (2004). The Court of Appeals has explained the concept of probable cause, as follows:

> The probable cause standard has been described generally as a practical, nontechnical conception' that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. Probable cause, moreover, is a fluid concept, incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances. For that reason, [p]robable cause does not depend on a preponderance of the evidence, but instead depends on a fair probability on which a reasonably prudent person would act. In describing probable cause, the Supreme Court has rejected rigid rules, bright-line tests, and mechanistic inquiries in favor of a more flexible, all-things-considered approach.

Pacheco, slip op. at 9 (internal citations and quotation marks omitted).

As indicated, the circuit court, in finding that Officer Schmidt had probable cause to arrest appellant, relied exclusively on the odor of marijuana in the vehicle. It explained:

> Then he approaches the car and smells marijuana. He's trained, he's done this a thousand times, he knows what he's smelling, so under Robinson and under some of the prior cases, Wilson, that gives probable cause to believe that the [appellant] is in possession of marijuana.
>
> Well, probable cause is probable cause. Probable cause to search. Probable cause to arrest. Probable cause is the same thing. So, if the officer has probable cause to search the car, it's because he has probable cause to believe there's marijuana in the car. Well, if he has probable cause to believe there's marijuana in the car, particularly where there's only one person in the car, then he has probable cause to arrest [appellant] for possession of marijuana.

As indicated, after the circuit court made this ruling, the Court of Appeals issued its decision in *Pacheco*. The Court held that a law enforcement officer did not have probable cause to arrest the defendant, the driver and sole occupant of a vehicle, based on the odor of marijuana emanating from the vehicle. *Pacheco*, slip op. at 17. Under this recent case law, the odor of marijuana, did not give the police probable cause to arrest appellant.

In determining whether to address the State's alternative two arguments, we have considered appellant's argument that he is disadvantaged by the State's raising these issues for the first time on appeal, which prevented him from eliciting testimony on these claims, and the State's argument that the *Pacheco* decision was a significant change in the law, and based on that, they should be permitted to raise the additional arguments. We have concluded that the best course for this Court to take in light of all the circumstances

is to vacate the circuit court's suppression ruling, in part, and affirm it, in part. We affirm the circuit court's order denying the motion to suppress the evidence found in the car, a ruling that is not challenged on appeal. We vacate the portion of the order denying the motion to suppress the items seized from appellant's person and remand for further proceedings in that regard. We leave it to the circuit court to determine the scope of those proceedings.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY CONVICTING APPELLANT OF POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA REVERSED. ORDER DENYING SUPPRESSION OF EVIDENCE AFFIRMED, IN PART, AND VACATED, IN PART. COSTS TO BE PAID BY MONTGOMERY COUNTY.