Circuit Court for Frederick County
Case No. 10-K-15-057361

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1475

September Term, 2020

TROTEZ LEONARD

v.

STATE OF MARYLAND

Arthur,
Leahy,
Reed,
JJ.

Opinion by Leahy, J.

Filed: December 21, 2021

Appellant, Trotez Leonard, was arrested in 2016, along with his girlfriend and his brother, after the police pulled over their car and discovered a gun inside a purse that was lying on the floor of the front passenger compartment next to Mr. Leonard's feet. The purse belonged to the driver, Mr. Leonard's girlfriend. All three occupants of the vehicle were charged in connection with the incident. On July 21, 2016, Mr. Leonard was convicted by a jury in the Circuit Court for Frederick County of possession of a firearm after being convicted of a crime of violence, Maryland Code (2003, 2018 Repl. Vol.), Public Safety Article ("PS"), § 5-133(c), and possession of ammunition after a disqualifying felony conviction, PS § 5-133.1.[1]

At the trial, Mr. Leonard sought to testify on his own behalf, but the State indicated that it intended to impeach his testimony by asking him about prior convictions. Upon learning this, Mr. Leonard told the court that his decision to testify depended on the court's determination of whether the impeachment evidence was admissible. However, the judge decided that it was not "appropriate for the [c]ourt to make a pre-ruling," and indicated that the ruling would be deferred until (and unless) Mr. Leonard took the stand and the State tried to ask him about a prior conviction. He chose not to testify, and so the court never ruled whether the impeachment evidence was admissible.

[1] Section 5-133(c) has been amended since Mr. Leonard's arrest to list additional disqualifying felonies and to clarify a convicted person's eligibility for drug treatment programs, 2018 Md. Laws ch. 143 (S.B. 101), but the changes are not material to Mr. Leonard's case. The text of PS § 5-133.1 has not changed since it was enacted in 2013. 2013 Md. Laws ch. 427 (S.B. 281).

Mr. Leonard directed his attorney to file a notice of appeal. Due to a clerical error, however, his attorney filed the notice of appeal under the wrong case number,[2] and his case did not immediately proceed to an appeal. Because the appeal was foiled through no fault of Mr. Leonard, the circuit court granted Mr. Leonard permission to file a belated appeal in February 2021.[3]

In his appeal to this Court, Mr. Leonard presents the following questions:

> "1. Did the trial court abuse its discretion by refusing to rule in advance upon whether [Mr. Leonard] could be impeached with his prior convictions?"
>
> "2. Is the evidence insufficient to sustain Mr. Leonard's convictions?"

There are two components to the question of whether the circuit court abused its discretion by not making an advance ruling on whether the State could impeach Mr. Leonard with his prior conviction. First, we hold that once Mr. Leonard was granted the right to file a belated appeal, his conviction was no longer final. *Taylor v. State*, 236 Md. App. 397 (2018), *rev'd on other grounds*, 473 Md. 205 (2021); *see also Taylor*, 473 Md. at 239 (Biran, J. concurring) ("My reasoning boils down to the fact that, after Mr. Taylor was granted the right to file a belated appeal, his conviction was no longer final."). Accordingly, the law to be applied in this case is that which existed at the time of his belated appeal, just as it would if his appeal were not belated. *Taylor*, 473 Md. at 232 n.19 ("[A] belated appeal . . . is, in fact, a very delayed direct appeal.").

[2] Mr. Leonard's attorney commented in the proceedings below that this was his first jury trial.

[3] Mr. Leonard's motion for a belated appeal was unopposed by the State.

Second, we hold that, under *Burnside v. State*, 459 Md. 657 (2018) and *Dallas v. State*, 413 Md. 569 (2010), the circuit court failed to exercise its discretion when it declined to make an advance ruling on whether Mr. Leonard could be impeached with his prior convictions.

There are also two components to the question of whether the evidence was sufficient to sustain Mr. Leonard's convictions. First, we hold that Mr. Leonard properly preserved his challenge to the sufficiency of the evidence because he satisfied the requirement in Maryland Rule 4-324(a) that a defendant making a motion for judgment of acquittal must "state with particularity all reasons why the motion should be granted." Although he did not explicitly state the reasons why the motion should be granted at the time he made the motion, he incorporated by reference earlier arguments which *did* state the reasons with particularity, thus satisfying the rule's purpose of "enabl[ing] the trial judge to be aware of the precise basis for the defendant's belief that the evidence is insufficient." *Warfield v. State*, 315 Md. 474, 487 (1989).

Second, we hold that the evidence presented in Mr. Leonard's trial was sufficient to sustain his convictions. Under the factors established by *Folk v. State*, 11 Md. App. 508, 518 (1971), the evidence was sufficient for a rational jury to conclude that Mr. Leonard had both knowledge and dominion and control over the firearm and ammunition—putting him in constructive possession of both items.

Because the circuit court abused its discretion by not making an advance ruling on whether Mr. Leonard could be impeached by his prior convictions, we vacate the judgments of the circuit court and remand for a new trial.

BACKGROUND

A. The Arrest

Mr. Leonard had a one-day jury trial on July 21, 2016. The testimony provided in Mr. Leonard's defense was sparse—Mr. Leonard did not testify in his own defense, and his two witnesses both invoked their Fifth Amendment privilege during their testimony. The background relating to the arrest, therefore, is derived from the trial testimony of two of the officers who responded to the scene—Deputy Ira Redman of the Frederick County Sheriff's Office, and Officer Michael Conover of the Frederick Police Department.

On September 23, 2015, Deputy Redman pulled a car over on the side of the road when he saw it speeding. Mr. Leonard was in the front passenger seat. The car was driven by Amanda Bray, who is Mr. Leonard's girlfriend and was then pregnant with his child. In the back seat was Keith Wright, Mr. Leonard's brother. None of the occupants owned the car; it was owned by Jacoby Simpson, who was not present at the traffic stop and plays no other apparent role in these events.

When Deputy Redman pulled the car over, he noticed that there was a purse on the floor of the car between Mr. Leonard's legs. After observing that Mr. Leonard, Ms. Bray, and Mr. Wright seemed nervous, Deputy Redman requested a K-9 officer to respond. Officer Conover arrived at the scene and performed a scan of the vehicle. After the dog

alerted, Deputy Redman and Officer Conover "pulled all the occupants out of the vehicle to conduct a search of the vehicle."

Deputy Redman and Officer Conover took the purse out of the car and began looking inside. Inside the purse, there was a black plastic bag; inside the black plastic bag was a zippered nylon case; inside the nylon case was something wrapped in cellophane; inside the cellophane was a sock; and inside the sock was a handgun. Deputy Redman testified that neither Officer Conover nor he took the gun out of the sock, and the gun was not visible to Mr. Leonard. The police later conducted a fingerprint test on the gun and DNA tests on a hair found in the plastic wrapping and on a sample taken from the gun, but the results were inconclusive.

After discovering the gun, Deputy Redman decided to speak with the occupants of the vehicle. Deputy Redman first walked Ms. Bray out of earshot from Mr. Leonard and Mr. Wright and asked her questions. The record does not indicate what was said in this conversation.

Deputy Redman then brought Mr. Leonard away from Ms. Bray and Mr. Wright so that Mr. Leonard could be questioned. After he was read his *Miranda* rights, Mr. Leonard "stated that he didn't know why [Deputy Redman] was getting him out of the vehicle because his brother was going to take the charge for the gun." According to Deputy Redman, Mr. Leonard stated that "he couldn't take the charge because . . . he was already on probation," and that "Ms. Bray . . . could not take a charge because she was pregnant

and should not go to jail, so his brother, referring to Mr. Wright, was going to take the charge for the gun."

At this point, according to Deputy Redman, he had not said anything about the gun to Mr. Leonard and the gun had not been made visible to him. Deputy Redman testified at trial that Mr. Leonard had no opportunity to talk to Ms. Bray after the deputy's conversation with her, because he "immediately sat down Ms. Bray and retrieved Mr. Leonard, and then [he] walked away." He also testified, however, that Mr. Leonard was sitting with Mr. Wright alone on the curb for several minutes, and that it is possible that they spoke to each other during that time.

Officer Conover testified that the pair did talk to each other while they were sitting together because he overheard their conversation. He heard Mr. Leonard tell Mr. Wright that "he couldn't take this charge," and that "he needed to take the charge for him." Officer Conover clarified at trial that Mr. Leonard "was speaking of himself to Mr. Wright, that Mr. Wright needed to take the charge, in other words, take ownership of the handgun."

At some point during the stop, Deputy Redman asked Mr. Wright if he could identify the gun. Mr. Wright claimed ownership of the gun, but he was unable to answer a series of questions Deputy Redman asked him about it, including whether it was loaded, what caliber it was, and if he could describe it. Mr. Wright was only able to identify it as a handgun. Because Mr. Wright claimed ownership of the gun, Deputy Redman did not ask either Mr. Leonard or Ms. Bray about it.

The officers arrested all three occupants of the car for possession of a handgun. Mr. Leonard was initially charged with transporting a handgun in a vehicle, Maryland Code (2002, Repl. Vol. 2012, 2017 Supp.), Criminal Law Article ("CR"), § 4-203; illegal possession of ammunition, PS § 5-133.1; possession of a firearm after being convicted of a felony under Title 5 of the Criminal Law Article, CR § 5-622; illegal possession of a regulated firearm, PS § 5-133(b); and possession of a firearm after being convicted of a disqualifying felony, PS § 5-133(c). The charges for transporting a handgun in a vehicle, possession of a firearm after being convicted of a felony under Title 5 of the Criminal Law Article, and illegal possession of a regulated firearm were all dropped, and the case proceeded to trial on the remaining two counts: illegal possession of ammunition, and possession of a firearm after a disqualifying felony conviction. Ms. Bray and Mr. Wright were also charged in connection with the events of this case, but the details of their cases were not presented to the jury in this case.

B. Witnesses for the Defense

The defense called Ms. Bray as its first witness after the close of the State's case. When asked if she recalled where the purse had been in the vehicle, Ms. Bray referred to it as "my purse," and testified that the purse had originally been in the back of the car, but that she brought it to the front passenger seat when they were pulled over so that she could retrieve her ID. After retrieving her ID, Ms. Bray returned her purse to the passenger side on the floor.

Shortly after this testimony, the court brought Ms. Bray and the parties' attorneys forward for a bench conference. The court confirmed with Ms. Bray that she had counsel assisting her in her case, that her counsel had explained to her that she had a right to remain silent and that her testimony could be used against her, and that she was still willing to continue testifying.

Following the bench conference, counsel for Mr. Leonard asked her directly if she knew whose purse the gun was found in. At this point, she invoked her Fifth Amendment privilege and declined to answer the question. She continued to invoke her Fifth Amendment rights for the remainder of her direct examination and for all substantive questions asked in her cross-examination.

Following Ms. Bray's testimony, the defense called Mr. Wright. He invoked his Fifth Amendment privilege against self-incrimination and gave no testimony.

The parties then approached the judge for a bench conference, in which Mr. Leonard's attorney informed the court that his client was considering taking the stand and testifying in his defense. The court confirmed with Mr. Leonard that he understood that he had a right to remain silent and that the State had the ability to cross-examine him. The State then raised the issue of impeachment with prior convictions:

> THE COURT: And when you testify, the State has the ability to cross-examine you, to explain to the jury that what you're saying isn't true or that you're not worthy of belief. That's what we –
>
> MR. LEONARD: Yes, ma'am.
>
> THE COURT: -- call cross-examination.

THE STATE: And impeachment with prior convictions, Your Honor.

THE COURT: Impeachment with prior convictions. I haven't been told, however, of any -- whether they're impeachable or not, you know what I mean, in the -- you know what I'm saying.

* * *

THE COURT: Before you can impeach him with a prior conviction, you got to bring it to me, and I haven't been told of any impeachable offenses.

THE STATE: Well, he does have impeachable offenses, Your Honor.

THE COURT: Then the -- okay.

THE STATE: Okay.

THE COURT: Okay. And I might allow the State to do that.

MR. LEONARD: Yes, ma'am.

* * *

THE STATE: Because there are two priors.

THE COURT: What are those priors?

THE STATE: There's a 2004 or 2 distribution of CDS and then the 2006 or 7 first-degree assault that he was on probation for.

After a brief recess in which Mr. Leonard conferred with his attorney, the bench conference resumed.

THE DEFENSE: **Whether or not he testifies, honestly, is going to depend on if those prior acts are going to be allowed to be used against him.**

THE COURT: **I don't think the Court's permitted to make a -- I mean, the Court** -- I have to make a determination that the probative value of admitting this evidence outweighs the danger of unfair prejudice to the witness or the objecting party.

THE DEFENSE: Yes. I mean -- and we're looking at a gun charge now.

THE COURT: So you always have to -- what?

THE DEFENSE: **We're looking at a gun charge now, and there was a gun in the prior, you know.**

THE COURT: You know, all he can get in is the conviction. He can't get the substantive –

THE DEFENSE: Okay.

THE COURT: -- the substance of it in.

* * *

THE STATE: I mean, unless he made a statement, I've never had a gun, or something like that.

THE COURT: Well, that's different. That's --

THE STATE: That's different, right, but --

THE DEFENSE: Yes.

THE COURT: -- that's impeachment --

THE DEFENSE: Okay.

THE COURT: -- but it's only for the purpose of attacking the credibility of a witness and the crime was an infamous crime or other crime relevant to the witness's credibility. **I don't think it's appropriate for the Court to make a pre-ruling, if you will.**

THE DEFENSE: Okay. Fair enough. Give me one more minute.

The case proceeded to jury deliberations, and the jury found Mr. Leonard guilty of possession of a regulated firearm after a disqualifying conviction, and possession of ammunition after a disqualifying conviction.[4]

On October 7, 2016, the circuit court sentenced him to imprisonment for ten years for possession of a firearm, and one year for possession of ammunition, to be served concurrently.

C. The Belated Appeal

On November 4, 2016, Mr. Leonard's trial attorney filed what would have been a timely notice of appeal. The appeal did not proceed, however, because the attorney identified Mr. Leonard's case with the wrong case number. Then, on December 12, 2016, Mr. Leonard's attorney filed a "Motion to Amend Notice of Appeal" in which he identified the error in the case number and asked the circuit court to correct it. The record does not indicate that the circuit court ever ruled on this motion.

Four years later, on February 16, 2021, Mr. Leonard—represented by new counsel—filed an "Unopposed Motion to Bifurcate Belated Appeal and Petition for Post-Conviction Relief." The motion explained that trial counsel's error with the case number had denied Mr. Leonard a chance to appeal his convictions and requested that the circuit court grant the right to file a belated notice of appeal and to have the appeal proceed before Mr. Leonard moved forward with a petition for post-conviction relief. The circuit court

[4] Additional facts relating to the trial proceedings—specifically, the facts relevant to whether Mr. Leonard preserved his challenge to the sufficiency of the evidence—are introduced later in this opinion.

granted this motion, and Mr. Leonard promptly filed a belated notice of appeal within the 30 days allowed by the court.

DISCUSSION

I.

Impeachment by Prior Convictions

We address the issue of an advance ruling on impeachment by prior conviction in two parts. First, we decide what law applies to Mr. Leonard's case: does the belated nature of his appeal entitle him to the benefit of *Burnside v. State*, 459 Md. 657 (2018)—a nearly identical case, or are we limited to considering only the cases that existed at the time of Mr. Leonard's conviction? Second, we decide whether, under the applicable law, the trial court did in fact abuse its discretion by refusing to make an advance ruling on whether Mr. Leonard could be impeached by his prior conviction.

A. Applicable Law

i. Parties' Contentions

Mr. Leonard contends that "[p]ursuant to *Dallas v. State*, 413 Md. 569 (2010) and its progeny, *Burnside v. State*, 459 Md. 567 (2018), the trial court abused its discretion or, alternatively, failed to exercise its discretion when it ruled it was not 'appropriate for the [c]ourt to make a pre-ruling' after Mr. Leonard requested a ruling[.]" According to Mr. Leonard, even if *Burnside* changed the law from what was established in *Dallas*, he gets the benefit of that change because his case was still pending on appeal when *Burnside* was decided. Drawing support from *Taylor v. State*, 236 Md. App. 397 (2018), he argues that

his "belated appeal was equivalent to a timely direct appeal," and that this Court should apply the law that existed at the time the belated appeal was granted in 2021.

In the State's view, this Court should apply only "the case law in existence at the time of trial." The State does not directly make arguments as to whether a belated appeal is equivalent to a timely direct appeal. Instead, it asserts that "[a] claim that the 2016 trial court erred in not following a 2018 opinion is contrary to a fundamental principle of appellate review – that an appellate court reviews for trial court error." The State argues that *Burnside* "so altered the standards for evaluating trial court decisions to defer a determination regarding admissibility of prior convictions that the trial court's decision, though likely improper now, would have been permissible in 2016." (Internal quotation marks omitted). The State contends that *Dallas* gave trial courts "broad" discretion in this regard, and that *Burnside* changed the law in 2018 by limiting trial courts to "almost no" discretion.[5]

[5] The State also opines in broad terms about how the case law has developed since *Dallas*. The only case it cites to, however, is an unreported case from 2017. The State contends that its brief "does not claim that this unreported opinion has persuasive value," but rather that "it does indirectly support an inference with respect to the scope of the *Dallas* opinion at the time of [Mr.] Leonard's trial." The State also characterizes the outcomes of "eight unreported opinions," although it does not cite to them directly. Per Maryland Rule 1-104, unreported opinions of this Court and the Court of Appeals have no precedential or persuasive value. Because the State clearly presents these, mostly unidentified, unreported cases to us for their alleged persuasive value, we will not consider any of them in our decision.

With the unreported cases eliminated from consideration, the remainder of the State's argument on this point is that there are "three reported opinions besides *Burnside*" which cite *Dallas*, and none of them reverse a trial court for failure to make an advance ruling. The State fails to identify these three opinions, but this Court identified three

(Continued)

ii. Application of Case Law

The "interpretation and application of . . . case law" is a question of law which we review de novo. *State v. Daughtry*, 419 Md. 35, 46 (2011) (quoting *Schisler v. State*, 394 Md. 519, 535 (2006)).

Under the Uniform Postconviction Procedure Act,[6] a defendant has a limited right to seek a belated appeal when his or her attempts at a timely appeal are thwarted by outside circumstances. *Wilson v. State*, 284 Md. 664, 674-76 (1979). "As a matter of Maryland case law, a defendant in a criminal case [who is] denied his right to a desired appeal through no fault of his own, and who has been diligent in attempting to assert his appeal rights, is entitled to a belated appeal, without the necessity of presenting any other evidence of prejudice." *Garrison v. State*, 350 Md. 128, 139 (1998). Belated appeals have been

reported opinions citing to *Dallas* other than *Burnside*. The first citation comes from *Johnson v. State*, a two-sentence per curiam order *vacating a judgment* of this Court for reconsideration in light of the then-recent decision in *Dallas*. 414 Md. 214 (2010). The second comes from *People v. Hall*, a case from the California Court of Appeals which reversed a defendant's conviction when a trial court made an advance ruling on the admissibility of "extremely prejudicial" impeachment evidence, but then reversed the ruling while the defendant was on the stand. 23 Cal. App. 5th 576, 594-95, 599 (Cal. App. 2018). Finally, the third citation comes from *Westley v. State*, a case on different issues which cites *Dallas* only for a statement it makes about the origins of due process rights in criminal cases. 251 Md. App. 365 (2021). None of these opinions aid us in the present case.

[6] The Uniform Postconviction Procedure Act, codified at Maryland Code (2001, 2018 Repl. Vol.), Criminal Procedure Article §§ 7-101–7-301, was enacted "to streamline 'into one simple statute all the remedies, beyond those that are incident to the usual procedures of trial and review, which are . . . present[ly] available for challenging the validity of a sentence.'" *Douglas v. State*, 423 Md. 156, 175 (2011) (alteration in original) (quoting *State v. Zimmerman*, 261 Md. 11, 24 (1971)).

allowed when a defendant attempted to appeal, but the appeal did not proceed, either because of "(1) actions or omissions by State officials; (2) actions or omissions by trial counsel; (3) actions or omissions by appellate counsel; or (4) State laws that violate due process." *Creighton v. State*, 87 Md. App. 736, 738 (1991) (citations omitted).

"[T]he question of whether a new constitutional or statutory decision in the criminal law area should be applied prospectively or retroactively arises only when the decision declares a new principle of law, as distinguished from applying settled principles to new facts." *Allen v. State*, 204 Md. App. 701, 721 (2012). If the decision only applies settled principles to new facts, then it applies to all cases, including those pending on direct review. *Id.* And if the decision declares a new principle of law, then it still applies "to the facts in the case announcing the change and those cases pending on direct review in which the issue was preserved." *Id.*

Taylor v. State

In *Taylor*, this Court considered a belated appeal from a 2008 conviction. 236 Md. App. at 405. The substantive question presented by the case was whether the trial court abused its discretion by "giving preemptively and *sua sponte* . . . an 'anti-CSI effect' instruction to the jury, which had the now asserted effect of relieving the State of meeting its high burden of proof."[7] *Id.* (footnote omitted).

[7] An "anti-CSI" instruction "advises the jury that the prosecution need not prove its case through forensic or scientific techniques often featured in police procedural television shows." *Taylor*, 473 Md. at 209. While this instruction is "a correct statement of the law," it poses a risk of "undermin[ing] the jury's perception of the State's burden of proof." *Id.* at 217, 237.

At the time of Mr. Taylor's trial, the controlling case on anti-CSI instructions was *Evans v. State*, which affirmed a conviction after an anti-CSI instruction was given to the jury but cautioned that the result would be different in a case where there was a greater risk of the instruction misleading the jury on the State's burden of proof. 174 Md. App. 549, 570-71 (2007). After Mr. Taylor was convicted, the Court of Appeals decided a series of cases expanding on this Court's decision in *Evans*. These cases, most notably *Atkins v. State* and *Stabb v. State*, expressed more skepticism than *Evans* had about the viability of anti-CSI instructions but did not rule out their use entirely. *Atkins v. State*, 421 Md. 434, 455 (2011); *Stabb v. State*, 423 Md. 454, 472-73 (2011).

In Mr. Taylor's appeal to this Court, the State contended that Mr. Taylor's belated appeal was not a direct appeal and that Mr. Taylor therefore could not get the benefit of *Atkins* and *Stabb* because his conviction became final three years before those cases were decided. *Taylor*, 236 Md. App. at 410. We disagreed with the State's characterization of belated appeals. *Id.* at 422-23. We noted that belated appeals are intended to allow a defendant to "receive[] a full review of his or her case as if his or her appeal had been pursued timely and properly." *Id.* at 425. This led us to conclude that when a belated appeal is granted, the conviction has no longer reached finality. *Id.* at 425-26. Accordingly, we held that the applicable law in a belated appeal is that existing "at the time [the] belated appeal is granted." *Id.* at 426. Then, although we went on to hold that the trial court had abused its discretion under the law as it existed at the time of his appeal, we affirmed Mr. Taylor's conviction on the theory that the error was harmless. *Id.* at 440.

On appeal from our decision, the Court of Appeals did not reach the issue of whether a defendant in a belated appeal gets the benefit of cases decided after their conviction but before the filing of the belated appeal. *Taylor*, 473 Md. at 235. The Court noted that "[t]his question only matters if we accept the State's premise that *Atkins* and *Stabb* so altered the standards for evaluating anti-CSI effect instructions that the instruction given here, though improper now, would have been permissible in 2008." *Id.* at 233. The Court did not accept this premise and held instead that *Atkins* and *Stabb* were similar enough to *Evans* that the Court would reach the same outcome in Mr. Taylor's case regardless of which law applied. *Id.* at 234-35. Therefore, the Court concluded that the "retroactivity question that the State raises is thus hypothetical, and so we do not reach it." *Id.* Despite this holding, the Court clarified in a footnote that a "belated appeal . . . is, in fact, a very delayed direct appeal." *Id.* at 232 n.19.

Additionally, Judge Biran stated in a concurring opinion that he would have adopted this Court's reasoning, concluding that "after Mr. Taylor was granted the right to file a belated appeal, his conviction was no longer final. Thus, Mr. Taylor's conviction is on direct review in [the Court of Appeals]. As such, we should apply the law as it exists today[.]" *Id.* at 239 (Biran, J., concurring).

Dallas v. State

In *Dallas v. State*, Isaac E. Dallas was charged with possession of marijuana, possession of cocaine, and possession of cocaine with the intent to distribute. 413 Md. 569, 573 (2010). At trial, before presenting his case, Mr. Dallas asked the court for a ruling

"that the State be prohibited from impeaching [Mr. Dallas] with his prior convictions of distribution and possession of cocaine with the intent to distribute[.]" *Id.* at 573. The court denied this request and ruled that the prior convictions were admissible for purposes of impeachment. *Id.* After a short recess, the court rescinded its ruling, opting instead to wait until after the defendant testified:

> I was assuming—I really don't know what he's going to say, and therefore, I should not have indicated. I should not have ruled that the risk of unfair prejudice did not outweigh the probative value. I'm going to reverse my ruling. My ruling was precipitous.
>
> **I think the proper procedure in this case is only to make a ruling after your client testifies and before there's any cross-examination to make the decision and to apply the balanc[ing] test in this case.**
>
> So I'm reversing my ruling. I make no finding at this point as to whether or not the probative value of the prior convictions outweighs any unfair prejudice to your client.
>
> I think you need to, upon that basis, re-qualify your client at this juncture . . . and my prior ruling is no indication of what it may be. **I need to hear what he has to say.**

Id. at 574. After the court made this decision, Mr. Dallas chose not to testify, and he was ultimately convicted of all charges. *Id.* at 575.

On appeal, Mr. Dallas contended that the trial court erred by refusing to rule on the admissibility of his prior convictions before he testified. *Id.*

The Court of Appeals held that the decision of whether to delay a Rule 5-609 ruling is reviewed for abuse of discretion:

> Review for abuse of discretion is appropriate given what the trial court must decide when asked to rule upon the admissibility of prior convictions for impeachment purposes. Maryland Rule 5-609(a), much like Federal Rule of

> Evidence 609(a), requires the trial court, once it determines that a prior conviction meets the Rule 5-609(a) and (b) eligibility requirements, to balance the probative value of prior conviction evidence against the danger of unfair prejudice to the defendant. For this reason, the trial court may deem it necessary in a given case to defer ruling on the admission (or exclusion) of prior crimes impeachment evidence until after the court hears the defendant's testimony.

Id. at 585. The Court then outlined the contours of how a trial court should exercise that discretion:

> That said, trial courts should rule on motions *in limine* as early as practicable, which often is before the defendant elects whether to testify or remain silent. *See United States v. Cook*, 608 F.2d 1175, 1186 (9th Cir.1979) ("remind[ing]" trial courts "that advance planning helps both parties and the court"), *cert. denied,* 444 U.S. 1034, 100 S. Ct. 706, 62 L. Ed. 2d 670 (1980); *United States v. Oakes*, 565 F.2d 170, 171 (1st Cir. 1977) (stating that a trial court "should, when feasible, make reasonable efforts to accommodate a defendant by ruling in advance on the admissibility of a criminal record so that he can make an informed decision whether or not to testify"); *Johnson v. State*, 666 So.2d 499, 502 (Miss. 1995) (stating that early rulings on motions in limine are preferred "unless delay is absolutely necessary to a fair presentation of the issue"); *see also State v. Cole*, 142 N.H. 519, 703 A.2d 658, 660 (N.H. 1997) (noting that, "although not absolutely required, trial courts should rule on the admissibility of prior convictions as impeachment evidence as early as practicable"); *State v. McClure*, 298 Or. 336, 692 P.2d 579, 583 (1984) (commenting that "it is not realistic or necessary for a defendant to have to wait until he is on the stand to find out whether he will be impeached with prior crime evidence," and noting that, although there may be circumstances in which the court may have reason to defer the ruling, "this should be a rare occurrence").
>
> Many are the times when a trial court can and, therefore, should decide a motion *in limine* involving a Rule 5-609 issue before the defendant makes the election. For example, **when it is clear that a prior conviction is ineligible for impeachment under Rule 5-609, the court need not hear the defendant's testimony to know how to rule on a motion to exclude that proposed impeachment evidence. Similarly, the trial court certainly can recognize when the risk of unfair prejudice of the proposed impeachment evidence far outweighs its probative value, no matter how the defendant might testify. Moreover, the court may be satisfied that it**

> **has a sufficient basis upon which to make an *in limine* ruling without hearing the defendant's direct testimony if the court has learned, through other means, how the defendant is likely to testify. For example, a court may hear admissions that the defense makes during the defense's opening statement, or the court may accept a proffer of the defendant's direct testimony. In any of these circumstances, fairness to the defendant augurs in favor of the trial court's ruling on the motion before the defendant elects whether to testify or remain silent.**

Id. at 585-86 (footnote omitted) (emphasis added).

The Court concluded that the trial court did not abuse its discretion in declining to rule on the admissibility of Mr. Dallas's prior convictions before he took the stand. *Id.* at 588. The Court began by addressing the trial court's explanation that "in light of the similarity between the pending charges and prior convictions, it was necessary to await [Mr. Dallas's] testimony before deciding whether the probative value of the proposed impeachment evidence outweighed the danger of unfair prejudice to [Mr. Dallas]." *Id.* at 587. Because the trial court expressed concern about the "plausib[le]" scenario of Mr. Dallas untruthfully testifying that he "had never before distributed illegal drugs," the Court of Appeals held that "the trial court did not abuse its discretion by deferring its ruling on the admissibility of the proposed impeachment evidence until after [Mr. Dallas] testified." *Id.* at 587-88. However, the Court also stated that if Mr. Dallas had "complain[ed] at the time that the [trial] court's delay chilled his right to make an election," then "the trial court might well have opted to provide an *in limine* ruling before [Mr. Dallas] made his election," and the Court of Appeals would have been more willing to find an abuse of discretion. *Id.* at 588.

Burnside v. State

The Court of Appeals revisited the issue of deferred rulings on admissibility of impeachment evidence in *Burnside v. State*, 459 Md. 657 (2018). In that case, Carl Burnside was convicted of possession of cocaine and possession with intent to distribute heroin. *Id.* at 667. Much like in *Taylor*, Mr. Burnside had a prior conviction for possession with intent to distribute a controlled dangerous substance, although the record did not reveal what controlled dangerous substance was involved in his prior conviction. *Id.* at 665, 665 n.4.

As in *Dallas*, the Court of Appeals was asked to consider whether the trial court abused its discretion by delaying a ruling on impeachment by a prior conviction. *Id.* at 676. Distinguishing the case from *Dallas*, the Court noted that Mr. Burnside "was explicit as to his reason not to testify; he did not want to be judged in this case by his past conviction, because to do so would be prejudicial." *Id.* at 679. The Court then stated its interpretation of its prior holding in *Dallas*:

> We pointed out in *Dallas* that there are situations where the trial "court need not hear the defendant's testimony to know how to rule on a motion to exclude . . . proposed impeachment evidence." Notably, we said that a "trial court . . . can recognize when the risk of unfair prejudice of the proposed impeachment evidence far outweighs its probative value, no matter how the defendant might testify." At bottom, we accepted the proposition that it should be a *rare* occurrence that the trial judge defers his or her ruling on the admissibility of prior convictions as impeachment evidence.
>
> * * *
>
> We take no issue with our decision in *Dallas* and see no need to modify it given that our holding today remains consistent with our acknowledgment

> "that, although there may be circumstances in which the court may have reason to defer the ruling, 'this *should* be a rare occurrence.'"

Id. at 679, 682 (citations omitted) (emphasis in original).

The Court, turning to the case before it, concluded that there was "nothing in the record . . . to suggest[] that this was a 'rare' circumstance that required the judge to delay his ruling." *Id.* at 679. The Court also noted that "the trial court had before it three well-established principles that such a ruling was necessary before Mr. Burnside elected to testify or not." *Id.* at 681. First, the trial court was aware of a defendant's constitutional right to testify. *Id.* Second, the trial court understood that the danger of prejudice to a defendant from impeachment by a prior conviction is greater when the prior offense was "identical or similar" to the offense which the defendant is on trial. *Id.* Finally, "the trial court had guidance from [the Court of Appeals] stating [in *Dallas*] that '[m]any are the times when a trial court *can* and, therefore, *should* decide a motion *in limine* involving a Rule 5-609 issue before the defendant makes the election.'" *Id.* at 682 (emphasis in original) (quoting *Dallas*, 413 Md. at 586).

Accordingly, the Court held that "the trial court failed to exercise its discretion when it declined to conduct a Rule 5-609 balancing test prior to Mr. Burnside's election to not testify. The trial court's failure to exercise its discretion constituted an abuse of discretion." *Id.* at 683.

iii. Analysis

The Court of Appeals expressly stated in *Taylor* that a belated appeal "is, in fact, a very delayed direct appeal." *Taylor*, 473 Md. at 232 n.19. Similarly, the Court has

expressed that the Uniform Post-Conviction Procedure Act "entitles the petitioner to a belated appeal as a remedy to insure that the accused obtain as full a review *as if his appeal had been properly pursued*." *Wilson v. State*, 284 Md. 664, 676 (1979) (emphasis added); *see also Taylor*, 236 Md. App. at 425 ("The Act contemplates that belated appeals insure remedially that a defendant receives a full review of his or her case as if his or her appeal had been pursued timely and properly.").

Accordingly, we adopt the conclusion we reached in *Taylor* that "[w]e view the applicability of the law existing at the time a belated appeal is granted (restoring the timeliness of the appeal) no different than if [a] post-conviction court were to grant a new trial."[8] *Taylor*, 236 Md. App. at 426. In Mr. Leonard's case, that means that we apply the law as it existed in February 2021.

We further conclude that the *Burnside* Court, rather than declare a new principle of law, clarified and applied a settled principle of law to new facts. Indeed, the Court specified that it was not deviating from the rule established in *Dallas*. *Burnside*, 459 Md. at 679, 682 ("We take no issue with our decision in *Dallas* and see no need to modify it[.]"). The Court made it clear that this was its intent, and we will not second-guess the Court's characterizations of its own opinions. We conclude, therefore, that because *Burnside* merely applied the principles of *Dallas* to new facts, *Burnside* applies to the present case

[8] We are able to adopt our reasoning on this issue from *Taylor* because although the Court of Appeals reversed our decision, it did so on other grounds. *Taylor*, 473 Md. at 238. The Court expressly declined to address the question of what law applies in a belated appeal. *Id.* at 235.

regardless of the impact that Mr. Leonard's belated appeal had on the finality of his conviction in 2016 before *Burnside* was decided. *Allen v. State*, 204 Md. App. 701, 721 (2012) ("If [a decision] does not declare a new principle, it is fully retroactive and applies to all cases.").

B. Preservation and the Merits

i. Parties' Contentions

Mr. Leonard contends that *Burnside* compels the reversal of his conviction because there were no "rare circumstances" in his case permitting the circuit court to abstain from conducting a Rule 5-609 balancing test. He argues that the trial court failed to exercise her discretion because "it appears that the judge was not familiar with *Dallas* or aware that she had the discretion to rule prior to Mr. Leonard's testimony. By failing to exercise her discretion, the trial judge abused her discretion." Mr. Leonard also contends that "[n]either the trial court nor the State" identified any reason why it would be necessary to hear Mr. Leonard's testimony before making a ruling. He also notes that, like in *Burnside*, defense counsel expressly told the court that Mr. Leonard's decision of whether to testify depended on whether he could be impeached by his prior conviction.

The State puts forward several arguments for why *Burnside* should not apply, but if this Court concludes that *Burnside* does apply—which it has now done—the State only argues that Mr. Leonard failed to preserve the issue for appellate review. The State also concedes that if *Burnside* applies to this case, "reversal would be likely under the particular, specific facts of this case."

ii. Advance Rulings under Maryland Rule 5-609

Rulings on the admissibility of evidence are generally reviewed for abuse of discretion. *Brooks v. State*, 439 Md. 698, 708 (2014). "When a trial judge engages in the balancing test [of Rule 5-609(a)], appellate courts 'accord every reasonable presumption of correctness,' and will not 'disturb that discretion unless it is clearly abused.'" *Burnside*, 459 Md. at 671. However, if the trial court fails to exercise this discretion, that failure constitutes an abuse of discretion. *Id.*

Maryland Rule 5-609(a) states that:

> For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record during examination of the witness, but only if (1) the crime was an infamous crime or other crime relevant to the witness's credibility and (2) the court determines that the probative value of admitting this evidence outweighs the danger of unfair prejudice to the witness or the objecting party.

Generally, the most relevant factors in determining whether the probative value of admitting the evidence outweighs the danger of unfair prejudice are: "(1) the impeachment value of the prior crime; (2) the point in time of the conviction and the defendant's subsequent history; (3) the similarity between the past crime and the charged crime; (4) the importance of the defendant's testimony; and (5) the centrality of the defendant's credibility." *Burnside*, 459 Md. at 671 (quoting *Cure v. State*, 195 Md. App. 557, 576 (2010)).

In *Burnside*, after the defense had put on several witnesses, Mr. Burnside asked the court to determine whether, if he testified, the State would be allowed to impeach him with

his prior conviction. *Id.* at 665-66. When "asked if he wished to testify in light of the potential impeachment," the following conversation ensued:

> BURNSIDE: I just know that if my past is going to be used against me, then I would not like to be testifying because it would be bias, it would be biased me to the charges I'm facing right now.
>
> DEFENSE COUNSEL: You are saying you would be afraid you would be prejudiced?
>
> BURNSIDE: Yes[.]
>
> * * *
>
> THE STATE: Your honor, I do have the case that uh (inaudible) if he takes the stand and he opens the door than he would be subject to impeachment. . . .
>
> THE COURT: That's—It is a balancing test but I don't think I need to make the balancing decision before he testifies. I think it's his decision whether he wants to testify or doesn't want to testify. If he takes the stand and the State attempts to bring up his prior conviction then we will have a determination at that time, but I'm not going to preliminarily make that decision.
>
> BURNSIDE: I choose to exercise my Fifth Amendment right to remain silent and not testify due to his Honor's previous objections for anything I say on our behalf.
>
> DEFENSE COUNSEL: So, it is your decision not to testify.
>
> BURNSIDE: Yes, I don't want to testify. I won't get no justice.

Id. at 666-67 (cleaned up). Notably, Mr. Burnside's attorney never objected to the court's decision not to make an advance ruling.

When *Burnside* reached the Court of Appeals, the Court considered whether, despite the lack of an objection, Mr. Burnside had properly preserved his claim that the trial court abused its discretion by failing to make an advance ruling under Rule 5-609(a). *Id.* at 677. The State contended that the issue was not preserved because "defense counsel never asked the trial court to make an advance ruling." *Id.* In Mr. Burnside's view, however, the issue was preserved because "his counsel's and his own protests put the trial court on notice that the defense wanted a ruling prior to making an election." *Id.* The Court of Appeals agreed with Mr. Burnside, concluding that "defense counsel sought an advanced ruling regarding the admissibility of the prior conviction and that the decision was decided by the trial court." *Id.* The trial court did so "when it denied defense counsel's request stating, 'If he takes the stand and the State attempts to bring up his prior conviction then we will have a determination at that time, but I'm not going to *preliminarily* make that decision." *Id.* (emphasis in original). Accordingly, the Court held that the issue was preserved.[9] *Id.*

Together, *Burnside* and *Dallas* establish a clear rule that deferred rulings on the admissibility of impeachment evidence under Rule 5-609(a) should be "a rare occurrence," that must be avoided unless it is not practicable to do so. *Id.* at 682 (quoting *Dallas*, 413 Md. at 585-86). *Dallas* further states that "[m]any are the times when a trial court *can and, therefore, should* decide a motion *in limine* involving a Rule 5-609 issue before the

[9] *Dallas* reached a similar conclusion, holding that because the case "involve[d] a challenge to the trial court's refusal to issue . . . a ruling before [Mr. Dallas] elected whether to testify or stand silent," his "contention [was] amenable to appellate review, notwithstanding his decision not to testify." *Dallas*, 413 Md. at 584.

defendant makes the election"—implying, it seems, that if the court is reasonably able to make an advance ruling, then it is required to do so. *Id.* at 586 (emphasis added); *see also Burnside*, 459 Md. at 682 (emphasizing the same portion of this quote from *Dallas*). *Burnside* echoed this sentiment, noting that there was nothing in the record "to suggest[] that this was a 'rare' circumstance that *required* the judge to delay his ruling." *Burnside*, 459 Md. at 679 (emphasis added).

Burnside and *Dallas* also identify several specific factors that make an advance ruling particularly appropriate. For example, if the prior conviction was for an offense similar to the one the defendant is now on trial for, and the "theory of defense [is] clear," then "the trial judge [does] not need to wait to hear [the defendant's] testimony before ruling on the Rule 5-609 motion." *Id.* at 683. It is also significant whether the defendant "complain[s] at the time that the court's delay chilled his right to make an election." *Dallas*, 413 Md. at 588.

iii. Analysis

We begin by addressing the State's contention that the issue was not preserved for review, and we conclude that the issue was preserved for the same reasons the Court of Appeals found in *Burnside*. Like in *Burnside*, defense counsel told the circuit court that Mr. Leonard's decision to testify depended on whether he could be impeached by his prior convictions, putting the circuit court "on notice that the defense wanted a ruling prior to making an election." *Id.* Then, the circuit court stated that "I don't think it's appropriate for the [c]ourt to make a *pre-ruling*, if you will." (Emphasis added). This is materially

identical to the trial court's statement in *Burnside* that it was "not going to *preliminarily* made that decision." *Id.* (emphasis added). Because the material facts are essentially indistinguishable from *Burnside*, we follow that case's holding that the issue is preserved for our review.

Turning to the merits of the issue, we agree with Mr. Leonard that there were no circumstances in this case that would make it difficult for the circuit court to make an advance ruling. As in *Burnside*, Mr. Leonard's prior conviction was for an offense related to the charges he faced at trial, and he had a reasonably clear theory of the case. *Id.* at 683. Mr. Leonard's charges were for unlawful possession of a firearm and ammunition, and "there was a gun in the prior." His theory of the case was also laid out in his counsel's opening statement: his goal was to instill doubts in the jury about "who actually owns [the] weapon." Under *Burnside*, in the absence of any other reasons to delay the ruling, these two factors are enough to conclude that "the trial judge did not need to wait to hear [Mr. Leonard's] testimony before ruling on the Rule 5-609 motion." *Id.* Additionally, while Mr. Leonard did not explicitly complain that the delayed ruling chilled his right to make an election, *Dallas*, 413 Md. at 588, his counsel informed the court that his decision of whether to testify depended on the outcome of the court's ruling on the impeachment issue. This, at the very least, put the court on notice that Mr. Leonard wanted an advance ruling so that he could make an informed choice about whether to testify. *Burnside*, 459 Md. at 677.

When the circuit court declined to make an advance ruling on whether Mr. Leonard could be impeached with his prior conviction, it failed to exercise its discretion when it was required to do so.[10] Because the Court of Appeals held in a nearly identical case that the failure to make an advance ruling was a failure to exercise necessary discretion, we hold that here, too, the circuit court abused its discretion. *Id.* at 683. By failing to make an advance ruling on whether Mr. Leonard could be impeached with his prior convictions, the circuit court "trespass[ed] into the domain of [Mr. Leonard's] right to make an informed decision to testify or remain silent," and that was an abuse of discretion. *Id.* at 684.

II.

Sufficiency of the Evidence

A. Preservation

Background

On the day before his trial, Mr. Leonard filed a motion to dismiss his indictment for failure to charge a crime. In that motion, he contended that "[t]he prosecution has failed to gain any evidence that [Mr. Leonard] was ever in possession of either the firearm or the ammo in question." First, Mr. Leonard argued that the State had no evidence of direct possession because he "was not seen holding, touching, moving, hiding or in any way

[10] We also note the trial judge's comment indicating that she mistakenly believed she was not "permitted" to make an advance ruling. This reading of the record is reinforced to some degree by the judge's comment that she did not "think it's appropriate for the [c]ourt to make a pre-ruling, if you will." This is similar to *Burnside*, where it appeared that "the trial judge did not know he had the discretion to rule without hearing Mr. Burnside's direct testimony." *Burnside*, 459 Md. at 680.

directly affecting the firearm or the ammo. Specifically . . . fingerprinting and DNA tests of items at the scene, including the firearm and ammo, have come back negative in relation to [Mr. Leonard]." Second, Mr. Leonard argued that the State failed to establish his constructive possession of the firearm or ammunition because it "offered no evidence of who had knowledge of or who exercised dominion and / or control over the item."

Expanding on his contention that there was no evidence that he exercised dominion or control over the firearm and ammunition, Mr. Leonard set out four factors for the circuit court to consider:

1. Ownership or control of the vehicle
2. Proximity to the contraband or prohibited item
3. If there was evidence of mutual enjoyment or use of the contraband or item
4. If the defendant [was] in exclusive possession of the vehicle or location where the item was allegedly possessed.

He then addressed each factor in turn. First, he stated that he "had neither ownership nor control of the vehicle." Second, as to proximity to the firearm and ammunition, he acknowledged that he was the person in the car closest to the items but noted that "the items were hidden in a purse belonging to the driver." Third, comparing his case to *Taylor v. State*, 346 Md. 452 (1997), Mr. Leonard argued that there was no evidence of mutual enjoyment or use of the firearm and ammunition because it was "unclear whether [he] knew about the items before being stopped," he "wasn't 'in charge of' or responsible for the vehicle," and "[t]here were no indications of the items being in the purse until a trained K-9 unit alerted to them." Finally, Mr. Leonard argued that he was not in exclusive possession

of the vehicle or location where the firearm and ammunition were found because he was neither the driver nor the owner of the vehicle, the owner of the vehicle was not present at the time, and "the items were hidden in the purse of the driver."

In proceedings on the day of trial, Mr. Leonard's counsel made arguments on his motion to dismiss:

> Okay. I filed a motion to dismiss for all -- well, all the charges because there are -- you know, each one of these charges require elements of either possession, either direct or through constructive possession, and you know, in many of these instances, there's plenty of case law that I've quoted in the motion that states that mere, mere proximity to the item is insufficient as a matter of law to be able to prove that anyone has knowledge or that the person's exercised any dominion over the item in question.
>
> Right now we, you know, we have a hearing. We don't -- there w[ere] three people. There's one gun in a car. The gun was found in a purse, and it was -- also, the car was not owned by my client. The purse was not owned by my client. He was not driving the vehicle. So in no way has he exercised any dominion over the item that was found.
>
> You know, I mean -- and I believe the State is going to bring forth an officer that states that he overheard a conversation about -- or had a direct conversation about a weapon with my client. My client knew full well that he has serious consequences over him if anything is found, and the stop was long enough to where he could have had a conversation and found -- and gained knowledge of the weapon after the fact he got into the car, and there's no evidence to suggest otherwise.
>
> So, I mean, I put this forth in good faith, seeing that I don't see where they're hanging their hat on this case. I mean, I know it's a serious charge and he's got a lot of time behind him, but there's a lot of stuff here, and there's no DNA; there's no fingerprints.

The State responded by arguing that "these allegations are not appropriate for a motion to dismiss," and that "this type of determination can be made at a motion for judgment of acquittal."

At trial, once the State rested, Mr. Leonard made a motion for judgment of acquittal:

> THE COURT: Do you have a motion for judgment of acquittal?
>
> [THE DEFENSE]: Yes. I would believe that, you know, there's not enough evidence here to tie him to the weapon in any way. So I would like --
>
> THE COURT: Do you want to respond?
>
> [THE STATE]: I believe the location of the gun and the defendant's statements and behavior clearly, in the light most favorable to the State, establish enough evidence to proceed to the Defense case at this time.
>
> THE COURT: I agree. I will deny the motion for judgment of acquittal. I find that the State has submitted sufficient evidence from which here, the jury, the reasonable trier of fact, could find every element of the offenses, to include the defendant's behavior, to include the statements overheard by Officer Conover at the scene.

Finally, after Mr. Leonard rested his case, he renewed his motion for judgment of acquittal:

> THE COURT: Okay. Anything else you want to talk about? Do you want to renew your motion for judgment of acquittal?
>
> [THE DEFENSE]: Yes, I would.
>
> THE COURT: Okay. Do you want to be heard any more on it?
>
> [THE DEFENSE]: I mean, **it's the same thing I stated in the motion earlier**.
>
> THE COURT: I know. I know. I still find that at this stage of the proceeding --
>
> [THE DEFENSE]: Okay.

THE COURT: -- State has -- the State has produced evidence from which a reasonable trier of fact -- here, the jury -- could be found guilty --

[THE DEFENSE]: Okay.

THE COURT: -- of all the elements of the crime.

(Emphasis added).

i. Parties' Contentions

The State contends that for Mr. Leonard to preserve his challenge to the sufficiency of the evidence, his motion for acquittal had to comply with Maryland Rule 4-324, which requires the motion to "state with particularity all reasons why the motion should be granted." The rule requires a defendant to make the motion "at the close of the evidence offered by the State," or "at the close of all the evidence." In the State's view, the only motion Mr. Leonard made which might have satisfied the particularity requirement was the one made before the trial, which fails to satisfy the timing requirement. Accordingly, the State asserts that Mr. Leonard failed to preserve his challenge to the sufficiency of the evidence because none of his motions satisfied all the requirements of Rule 4-324.

Mr. Leonard, however, contends that he "substantially complied with Rule 4-324." He argues that together, his pretrial motion and his motions for acquittal were enough to put "[a]ll parties involved, including the trial judge, . . . on notice [of] Mr. Leonard's arguments at each stage of trial." In Mr. Leonard's view, this is sufficient to preserve his challenge to the sufficiency of the evidence.

ii. Analysis

In relevant part, Maryland Rule 4-324 states:

> (a) **Generally.** A defendant may move for judgment of acquittal on one or more counts, or on one or more degrees of an offense which by law is divided into degrees, at the close of the evidence offered by the State and, in a jury trial, at the close of all the evidence. The defendant shall state with particularity all reasons why the motion should be granted. No objection to the motion for judgment of acquittal shall be necessary. A defendant does not waive the right to make the motion by introducing evidence during the presentation of the State's case.
>
> * * *
>
> (c) **Effect of denial.** A defendant who moves for judgment of acquittal at the close of evidence offered by the State may offer evidence in the event the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been made. In so doing, the defendant withdraws the motion.

In *Warfield v. State*, the Court of Appeals clarified the requirement found in Rule 4-324(a) that a "defendant shall state with particularity all reasons why [a] motion [for acquittal] should be granted." 315 Md. 474, 484 (1989) (quoting Md. Rule 4-324(a)). In that case, the defendant, Kevin Warfield, was accused of breaking into a garage and stealing approximately $150 in coins which had been stored there.[11] *Id.* at 478-81. At the close of the State's evidence, Mr. Warfield's attorney made a motion for a judgment of acquittal, explaining on the record why it should be granted:

> As to Count I, which is the storehouse breaking, first of all, there hasn't been any proof [of the alleged victim's] ownership [of the coins] . . . . I don't think we know, at this stage, who owned those coins that are allegedly gone. And

[11] The specific charges against Mr. Warfield were storehouse breaking, Maryland Code (1957, 1987 Repl. Vol.), Art. 27, § 33; misdemeanor theft, Art. 27, § 342; and breaking and entering a storehouse, Art. 27, § 31B. *Warfield*, 315 Md. at 481.

> secondly, it's pure conjecture, at this point, if it goes to the jury, that this Defendant took those coins. . . . By her own testimony, she—all she knows is, she thinks she had the coins the night before and they were gone the next day and this Defendant was seen coming out of the garage.
>
> The Officer's testimony says she—quotes her as saying she had them earlier in the week. And a jury would have to speculate . . . to find that this Defendant took them, since there's nothing else to tie him to this. No physical evidence at all. No sign that he had any coins in his pocket or hid them or anything else.

Id. at 486. The trial court denied this motion, and Mr. Warfield went on to present evidence in his defense. *Id.* At the close of all the evidence, his attorney said: "I would renew—renew my Motion for Acquittal on all three Counts." *Id.* at 486-87. The trial court denied this motion as well. *Id.* at 487.

On appeal, this Court held that Mr. Warfield failed to preserve his challenge to the sufficiency of the evidence. *Warfield v. State*, 76 Md. App. 141, 146 (1988). We stated that although "[Mr.] Warfield's initial motion for judgment of acquittal was sufficiently particularized to preserve the sufficiency of the evidence issue," that motion became a "legal nullity" under Rule 4-324(c) when he presented evidence in his defense. *Id.* Accordingly, we held that his initial motion was not renewable—and because Mr. Warfield's motion stated no reasons for why it should be granted beyond indicating a desire to renew the earlier motion, he failed to preserve his challenge to the sufficiency of the evidence. *Id.* at 146-47. This Court saw this result as consistent with "[t]he intent of Rule 4-324," stating that "[i]t would be too great a burden to require a trial judge to make an intelligent and informed ruling on a subsequent motion made at the close of all the evidence

without the benefit of reargument, since, at that point, the trial judge would be required to consider the motion on the basis of *all* the evidence." *Id.* at 147 (emphasis in original).

The Court of Appeals reversed the judgment of this Court. *Warfield*, 315 Md. at 502. In reaching its decision, the Court rejected this Court's characterization of the intent behind Rule 4-324:

> The general purpose of the statute and the rule is patent. It is to implement, by means of a motion for judgment of acquittal, the constitutional authority given an appellate court to pass on the sufficiency of the evidence. The specific purpose of the mandate of the rule to particularize the reasons for the motion is to enable the trial judge to be aware of the precise basis for the defendant's belief that the evidence is insufficient.
>
> * * *
>
> When a defendant offers evidence on his own behalf after his motion for acquittal is denied, the motion is withdrawn and not subject to review. But the reasons given for the motion are still within the ambit of the trial; they are not erased. To strike them from the record so as to preclude their consideration with respect to the second motion is against sound reason, common sense, and the legislative intent. We do not see the "great burden" which the Court of Special Appeals fears this view would impose on the trial judge.
>
> When a party makes anew a motion for judgment at the conclusion of all the evidence and states that the motion is based upon the same reasons given at the time the original motion was made, or when a party "renews" a motion for judgment and thereby implicitly incorporates by reference the reasons previously given, the reasons supporting the motion are before the trial judge.

Id. at 487 (citation omitted). Turning to the facts of Mr. Warfield's case, the Court held that Mr. Warfield's initial motion stated with sufficient particularity the reasons why it should be granted. *Id.* at 484-85. Although he withdrew that initial motion by presenting evidence in his defense, all the reasons stated in support of it were incorporated by

reference into his second motion for judgment of acquittal at the close of all the evidence because he stated that he was renewing the initial motion. *Id.* at 489-90. Accordingly, Mr. Warfield's second motion for judgment of acquittal satisfied the particularity requirement of Rule 4-324, and the Court held that his challenge to the sufficiency of the evidence was therefore preserved for appellate review. *Id.* at 490.

Here, Mr. Leonard expressed his position on the sufficiency of the evidence with at least as much particularity as the statements in *Warfield*, if not more so. In both cases, the defendants identified particular elements of their charges which they believed the State had failed to introduce sufficient evidence to prove. In *Warfield*, Mr. Warfield argued that the State failed to establish the alleged victim's ownership of the coins or that the defendant was the one responsible for taking them, and in the present case, Mr. Leonard argued that the State failed to establish his possession of the firearm and ammunition, whether actual or constructive. *Id.* at 486. Mr. Leonard's motion to dismiss addressed in detail each factor the courts use to determine constructive possession, leaving no doubt as to what his position was on the sufficiency of the evidence.

In *Warfield*, the Court of Appeals determined that Mr. Warfield's initial motion was sufficiently particularized, leaving the Court with the question of whether Mr. Warfield's later motion incorporated his earlier arguments by reference. Here, for much the same reasons, we conclude that Mr. Leonard's motion to dismiss and supporting arguments made in the hearing were sufficiently particularized under Rule 4-324. As in *Warfield*, the question of whether Mr. Leonard preserved his sufficiency of the evidence challenge turns

on whether his motion at the close of all the evidence renewed his earlier motion to dismiss or otherwise incorporated his earlier arguments by reference.

We think that Mr. Leonard's motion at the close of all the evidence properly renewed and incorporated by reference his earlier arguments. First, when he made his first motion for judgment of acquittal at the close of the State's evidence, Mr. Leonard's attorney stated a belief that "there's not enough evidence here to tie [Mr. Leonard] to the weapon in any way," and the trial judge immediately cut him off to hear a response from the State—evidently because she had just heard defense counsel's arguments on the motion to dismiss. If the judge needed more information at that time to better understand why Mr. Leonard believed the evidence was insufficient, then she could have asked for it—but she did not, because Mr. Leonard had already filed a detailed motion explaining that belief, and the court had just heard arguments on that motion on the same day as the trial. At the close of all the evidence, the court asked Mr. Leonard's attorney if he wanted to renew his motion for judgment of acquittal, and Mr. Leonard's attorney said that he did.

We also note that little, if anything, happened between the time Mr. Leonard argued his motion to dismiss, filed pretrial, and the close of all the evidence that would change the parties' positions on the sufficiency of the evidence. We are not aware of any testimony given at Mr. Leonard's trial that would render his earlier arguments no longer helpful to the court, and the trial judge apparently agreed—she accepted Mr. Leonard's attorney's statement that his arguments were "the same thing I stated in the motion earlier," without asking for any clarifications or arguments on new issues.

Because the trial judge was clearly aware of the reasons Mr. Leonard believed the evidence was insufficient—and Mr. Leonard expressly renewed his earlier motion in which he explained his reasoning—Mr. Leonard's motion at the close of all the evidence fulfilled Rule 4-324(a)'s "specific purpose" to "enable the trial judge to be aware of the precise basis for the defendant's belief that the evidence is insufficient." *Warfield*, 315 Md. at 487. Accordingly, we hold that Mr. Leonard properly preserved his challenge to the sufficiency of the evidence. *Id.* at 490.

B. Merits

i. Parties' Contentions

Mr. Leonard argues that the evidence was insufficient to support his convictions because the State failed to prove his possession of the gun and ammo beyond a reasonable doubt. He contends that under the State's theory of constructive possession, the State was required to prove that he "exercised dominion and control" over the gun and ammo. This theory failed, he argues, because there was no evidence tying him to the gun and ammo beyond his proximity to it in the car and his knowledge that it was there. He reminds us that the gun and ammo were wrapped inside a sock; the sock was wrapped in cellophane; the cellophane-wrapped sock was inside a zippered nylon bag; the nylon bag was inside a black garbage bag; the black garbage bag was inside a purse; and Mr. Leonard owned neither the purse nor the car in which it was found. He also notes that the police ran fingerprint and DNA tests on the gun, and a DNA test on a hair taken from the plastic wrap around the gun, but the results were inconclusive.

The State contends that the evidence was sufficient for the jury to conclude beyond a reasonable doubt that Mr. Leonard had constructive possession of the gun and ammo. The State notes the close relationship between Mr. Leonard and Ms. Bray, arguing that there was a strong inference to be made that he was aware that his girlfriend had a gun in her car, at his feet. The State also emphasizes the officer's testimony that before the officer unwrapped the gun or spoke about it, Mr. Leonard was "very quick" to say that "his brother, referring to Mr. Wright, was going to take the charge for the gun." The State further notes the conversation that Mr. Leonard had with Mr. Wright while the police searched the vehicle, in which "Mr. Leonard had said to Mr. Wright that he couldn't take this charge" and that "he needed to take the charge for him."

ii. Standard of Review

When reviewing the sufficiency of the evidence, we consider "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." *Smith v. State*, 415 Md. 174, 184 (2010) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). "Because the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence. We defer to the jury's inferences and determine whether they are supported by the evidence." *Id.* at 185 (citations omitted). Although we do not defer to conclusions that can only be reached through unfounded speculation, *White v.*

State, 363 Md. 150, 162-63 (2001), it is not our role to "second-guess the jury's determination where there are competing rational inferences available," *Smith v. State*, 415 Md. 174, 183 (2010).

iii. Analysis

Under CR § 5-101(v), possession is the "exercise [of] actual or constructive dominion over a thing by one or more persons." "To prove control, the 'evidence must show directly or support a rational inference that the accused did in fact exercise some dominion or control over the prohibited [item] in the sense contemplated by the statute, *i.e.*, that the accused exercised some restraining or directing influence over it." *McDonald v. State*, 347 Md. 452, 474 (1997) (cleaned up). The primary factors that this Court uses to determine constructive or joint possession of contraband—often referred to as the *Folk* factors for the case that first developed them—are as follows:

> 1) proximity between the defendant and the contraband, 2) the fact that the contraband was within the view or otherwise within the knowledge of the defendant, 3) ownership or some possessory right in the premises or the automobile in which the contraband is found, or 4) the presence of circumstances from which a reasonable inference could be drawn that the defendant was participating with others in the mutual use and enjoyment of the contraband.

Moseley v. State, 245 Md. App. 491, 505 (2020) (emphasis omitted) (quoting *Folk v. State*, 11 Md. App. 508, 518 (1971)).

In *McDonald v. State*, the defendant was sitting in the back seat of a car when a police officer stopped the car. 141 Md. App. 371, 374-75 (2001). There were also two people in the front seat. *Id.* at 375. As the officer began speaking to the driver, he noticed

that the defendant in the back seat "had his hands between his legs, as though he was placing something down on the floorboard." *Id.* The officer moved to the side of the car where the defendant was seated, and he saw "part of the butt of a handgun sticking out between [the defendant's] feet." *Id.* The defendant was charged with possession of the handgun. We affirmed his conviction. *Id.* at 380. Because the defendant was seen putting his hands between his legs where the gun was then found—with no one else in the back seat of the car—we held that "the jury reasonably could have concluded that [the defendant] possessed the gun and put it on the floor in an attempt to hide it from the police. *Id.*

Turning to the present case, we consider the *Folk* factors in turn. First, Mr. Leonard was in close proximity to the firearm and ammunition: they were in a purse sitting at his feet. Second, even though the contraband was concealed within multiple containers and wrappings, Officer Conover testified that Mr. Leonard "acknowledged that the gun was in the car, even though [Officer Conover] had not made a statement about the gun being there at all." This testimony gives rise to a rational inference that the firearm and ammunition were "within the knowledge" of Mr. Leonard despite not being within his direct view. *Moseley*, 245 Md. App. at 505. Third, Mr. Leonard had no ownership or possessory interest in the car, nor did he have any ownership interest in Ms. Bray's purse. However, a jury might infer from his proximity to the purse that he had a possessory interest in the purse, which he knew contained the firearm and ammunition, or, that he quickly shoved the gun into the purse when the car was pulled over. Finally, as to mutual enjoyment of the contraband, a jury could rationally infer from Mr. Leonard's comments to Deputy Redman

that the three occupants of the car were on some type of joint venture involving the gun. Mr. Leonard apparently stated that "he couldn't take the charge because . . . he was already on probation," and that Ms. Bray "could not take a charge because she was pregnant," leaving Mr. Wright to "take the charge for the gun." These comments could rationally be interpreted as an indication that the three occupants of the car were all in joint unlawful possession of the firearm, and that Mr. Wright was volunteering as something of a scapegoat for the other two. This is not unlike *McDonald*, where we held that the defendant's apparent attempts to conceal a handgun gave rise to a reasonable inference of guilt. *McDonald*, 141 Md. App. at 380.

Together, the evidence was sufficient for a rational jury to conclude that Mr. Leonard had knowledge, and dominion and control, over the firearm and ammunition—putting him in constructive possession of both items. *McDonald*, 347 Md. at 474. Accordingly, we hold that the evidence was sufficient to sustain Mr. Leonard's convictions.[12]

JUDGMENTS OF THE CIRCUIT COURT FOR FREDERICK COUNTY VACATED; CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY FREDERICK COUNTY.

[12] We note that the circumstantial nature of evidence in this case underscores the significance of Mr. Leonard's right to an advance ruling on whether he could be impeached by his prior convictions. Because the only two witnesses that Mr. Leonard called both asserted their Fifth Amendment privilege against self-incrimination before answering any substantive questions, Mr. Leonard was left without any substantive testimony offered in his defense.