

Circuit Court for Worcester County
Case No.: C-23-CR-21-000121

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1999

September Term, 2021

RODNEY WILLIAM WOLFE

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: April 4, 2023

*At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

**This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a jury trial in the Circuit Court for Worcester County, Rodney William Wolfe, appellant, was convicted of second-degree assault and disorderly conduct. On appeal, Wolfe raises two issues: (1) whether the evidence was sufficient to sustain his convictions; and (2) whether the State made improper statements during closing argument. For the following reasons, we shall affirm.

At the close of the State’s evidence, Wolfe made “a motion for judgment of acquittal . . . for all the charges[.]” But he only offered argument as to resisting arrest and trespassing. The State offered no opposition as to those charges, so the court dismissed them. At the close of all the evidence, Wolfe again made “a motion for judgment of acquittal[, and] submit[ted] on the testimony[.]” The trial court denied the motion because “[t]here [were] two very different versions” of the events and there was “evidence upon which a reasonable mind could differ[.]”

At trial, Michelle Roxby, the alleged assault victim, testified on Wolfe’s behalf. During cross-examination, the State sought to impeach Roxby with prior inconsistent statements she had allegedly given on the night of the assault. But the State never called a rebuttal witness to introduce any of those prior statements or the police report containing them into evidence. Then, during closing arguments, the State referred to the judge’s instruction to the jury regarding inconsistent statements and identified “a number of [Roxby’s] inconsisten[t]” statements. The State also argued that, even though Roxby did not want to pursue the assault charge against him, the jury should not simply acquit Wolfe because they “should care about what occurs in [their] county.” Wolfe did not object to any of these comments.

Wolfe concedes that he did not preserve his arguments for appellate review because he failed to articulate the particular reasons justifying his motion for judgment of acquittal and did not object at all to the State’s comments during closing argument. Nevertheless, he asks us to exercise our discretion to grant plain error review.

Although we have discretion to review unpreserved errors under Maryland Rule 8-131(a), the Supreme Court of Maryland has emphasized that appellate courts should “rarely exercise” that discretion because “considerations of both fairness and judicial efficiency ordinarily require that all challenges that a party desires to make to a trial court’s ruling, action, or conduct be presented in the first instance to the trial court[.]” *Ray v. State*, 435 Md. 1, 23 (2013) (cleaned up). Plain error review is therefore “reserved for errors that are compelling, extraordinary, exceptional[,], or fundamental to assure the defendant a fair trial.” *Yates v. State*, 429 Md. 112, 130–31 (2012) (cleaned up). This exercise of discretion “(1) always has been, (2) still is, and (3) will continue to be a rare, rare phenomenon.” *White v. State*, 223 Md. App. 353, 403 n. 38 (2015) (cleaned up).

Before we can exercise our discretion, four conditions must be met: (1) there must be an error that the appellant has not affirmatively waived; (2) the error “must be clear or obvious, rather than subject to reasonable dispute;” (3) the error must have “affected the appellant’s substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the [trial] court proceedings;” and (4) the error “must seriously affect[] the fairness, integrity[,], or public reputation of judicial proceedings.” *Newton v. State*, 455 Md. 341, 364 (2017) (cleaned up). “Meeting all four prongs is difficult, as it should be.” *State v. Rich*, 415 Md. 567, 578 (2010) (cleaned up).

Under the circumstances presented, we decline to overlook the lack of preservation and exercise our discretion to engage in plain-error review of this issue. *See Morris v. State*, 153 Md. App. 480, 506–07 (2003) (noting that the five words, “[w]e decline to do so[,]” are “all that need be said, for the exercise of our unfettered discretion in not taking notice of plain error requires neither justification nor explanation.”). Consequently, we will affirm the circuit court’s judgments.

**JUDGMENTS OF THE CIRCUIT
COURT FOR WORCESTER
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**