Circuit Court for Prince George's County
Case No. CT160734X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 158

September Term, 2017

ERIC PARKER

v.

STATE OF MARYLAND

Woodward, C.J.,
Friedman,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 6, 2018

Following a jury trial in the Circuit Court for Prince George's County, Eric Parker, appellant, was convicted of robbery with a dangerous weapon, second-degree assault, and theft. Parker's sole contention on appeal is that the trial court plainly erred in allowing the prosecutor to make improper arguments during closing. For the reasons that follow, we affirm.

At trial, the State presented evidence that Rekwahn Hopkins was walking home around 1:45 a.m. when he observed Parker walking on the other side of the street. Parker followed Hopkins for several blocks and then "disappeared." As Hopkins made a left onto another street, Parker "popped out," pointed a gun at Hopkins, and told Hopkins to "give him everything." Hopkins dropped his phone on the ground, ran, and hid behind some nearby houses.

Hopkins then went to the police and identified Parker from a book of photographs known as a "beat book." Hopkins testified that he was familiar with Parker because he had seen him around the neighborhood on several occasions prior to the robbery. The police obtained a search warrant for Parker's apartment and recovered Hopkins's phone and a "replica BB gun," which Hopkins testified looked like the gun that was used in the robbery. In a separate plastic bag, the officers recovered the SIM card from Hopkins's phone and a "tool [that had been] created to remove the SIM card out of the phone." Detective Washington testified that "[u]sually when we have robberies . . . the phone card, SIM card is removed."

During closing, the prosecutor argued that Parker might have been familiar with the route that Hopkins was taking to get home, stating:

> But [he] sees the defendant when he gets off of work. The defendant may see him take that route. *Knows which route he's going to take to get to his location.* He's a great victim at the wrong time in the wrong place.

The prosecutor later made the following argument regarding why the SIM card had been removed from Hopkins's phone:

> If you look at the exhibit with the defendant's room you can see . . . cell phones everywhere and only one of them needs a charge. *One of them needs to a have a SIM card taken out right away. Why? In order for them to use it. The exigent stuff they try to track the phone.* They got the cell phone charged, SIM card taken out, tool right then and there. *All that requires is a new SIM card and you have a brand-new phone*.

On appeal, Parker contends that both of these arguments were improper because they referenced facts that were not in evidence. Parker acknowledges, however, that these claims are not preserved because he did not object at trial. He therefore requests that we engage in plain error review.

Although this Court has discretion to review unpreserved errors pursuant to Maryland Rule 8-131(a), the Court of Appeals 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) (citation omitted). Therefore, plain error review "is reserved for those errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant of [a] fair trial." *Savoy v. State,* 218 Md. App. 130, 145 (2014) (quotation marks and citation omitted). Under the circumstances presented, we decline to overlook the lack

of preservation and exercise our discretion to engage in plain error review. *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.") (emphasis and footnote omitted).

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.