

Circuit Court for Baltimore City
Case No. 122146012

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 247

September Term, 2023

VANN AUGUSTUS FELTON

v.

STATE OF MARYLAND

Graeff,
Berger,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 1, 2023

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

Following a jury trial in the Circuit Court for Baltimore City, Vann Augustus Felton, appellant, was convicted of second-degree assault and third-degree sexual offense. His sole claim on appeal is that the trial court plainly erred by allowing the prosecutor to make improper comments during opening statement and closing argument. For the reasons that follow, we shall affirm the judgments of the circuit court.

During opening, the prosecutor made the following statement:

Now, I'll sit down in a moment, and when I do sit down, the Defense attorney will get up, and it is her job and her absolute requirement to defend her client, but sometimes, when there's no defense, you come up with any defense, and sometimes that defense is, "You shouldn't believe this child." I'm asking you to weigh the credibility of this child, look at her, listen to her, listen to her parents, and then you make the decision.

I want you to understand that this is not Law and Order. This is not CSI. I don't have any theme music for you, catchy – a catchy saying or phrase, I don't have that. What I do have is the testimony of a young girl who's going to come in here and tell you what this Defendant did to her, and *when you're done hearing all of the evidence and not being distracted by smoke and mirrors that the Defense attorney may try to put up toward you to distract you* from what A. will tell you, her mother will tell you, and her father will tell you, I'm asking you to return two verdicts of guilty for third-degree sex offense and assault in the second degree. Thank you.

During closing, the prosecutor also made the following argument:

Ladies and gentlemen, when I stood here an hour or two hours ago, I told you to *watch out for smoke and mirrors, and that's pretty much all the Defense could give you, smoke and mirrors.* They really didn't say anything that was contradictory to what the L[.] family told you.

Appellant contends that the italicized sections of the prosecutor's statements improperly denigrated defense counsel. He acknowledges, however, that this claim is 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 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) (quotation marks and 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 thus do not 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)). Consequently, we affirm the judgments of the circuit court.

**JUDGMENTS OF THE CIRCUIT
COURT FOR BALTIMORE CITY
AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**