Circuit Court for Baltimore City
Case No. 116228022

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 258

September Term, 2017

TROY FENWICK

v.

STATE OF MARYLAND

Woodward, C.J.,
Eyler, Deborah S.,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 7, 2018

Following a jury trial in the Circuit Court for Baltimore City, Troy Fenwick, appellant, was convicted of possession of regulated firearm by a prohibited person; wearing, carrying, or transporting a firearm; and making a false statement. On appeal, Fenwick contends that the trial court erred in permitting the State to impeach him with a prior conviction for possession with intent to distribute narcotics. For the reasons that follow, we affirm.

Maryland Rule 5-609 "creates a three-part test for determining whether a conviction is admissible for impeachment purposes." *Jackson v. State*, 340 Md. 705, 712 (1995). For a prior conviction to be admissible: (1) it "must fall within the eligible universe," that is, it must be either an "infamous" crime, or it must be a crime "relevant to the witness's credibility"; (2) "the proponent must establish that the conviction is less than fifteen years old"; and (3) "the trial court must weigh the probative value of the impeaching evidence against the danger of unfair prejudice to the defendant" and determine that the former outweighs the latter. *Id.* at 712-13 (citations omitted). Fenwick concedes that his prior conviction for possession with intent to distribute was less than fifteen years old and that it falls within the "eligible universe" of impeachable crimes. *See State v. Woodland*, 337 Md. 519, 524 (1995). His sole claim on appeal is that the court failed to exercise its discretion to determine whether its probative value outweighed its prejudicial effect.

Prior to trial, the parties stipulated that a true test copy of Fenwick's conviction for possession with intent to distribute a controlled dangerous substance would be admissible to establish that he had a qualifying conviction prohibiting him from owning a firearm. Moreover, Fenwick did not object when the court admitted the true test copy of his

conviction or when the State subsequently cross-examined him about that conviction. Consequently, his claim is not preserved for appellate review. *See* Maryland Rule 4-323(a) (stating a party must object to the admission of evidence "at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived").

Acknowledging that the issue is not preserved, Fenwick requests us to exercise our discretion and review his claim for plain error. 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 BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.