

Circuit Court for Montgomery County
Case No. 135042C

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 368

September Term, 2021

DARREN WARNER

v.

STATE OF MARYLAND

Kehoe,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 31, 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 Montgomery County, Darren Warner, appellant, was convicted of robbery with a dangerous weapon, first-degree assault, and conspiracy to commit first-degree assault. Mr. Warner’s sole claim on appeal is that the trial court plainly erred in allowing the prosecutor to make improper arguments during closing. We decline to exercise our discretion to engage in plain error review of this issue and shall affirm the judgments of the circuit court.

After summarizing the evidence introduced at trial, the State made the following argument during closing:

All of this evidence that you have seen, that you have heard shows you that it was Darren Warner that committed the crime. *You actually haven’t heard from anyone up on that stand that told you that it was not Darren Warner that committed this crime.*

It also made the following argument during rebuttal closing:

The person that did this . . . is sitting in this room with you. You can trust that, and you must verify it. You can verify it through the evidence that you’ve heard throughout the course of this entire trial. *No one that took this witness stand suggested to you in any way that is not the person that committed this terrible, terrible crime.* Two people that were in that room told you exactly who did it. And then the police during their investigations corroborated that.

On appeal, Mr. Warner contends that the italicized sections of the prosecutor’s arguments “impermissibly suggest[ed] that [he] should have taken the stand in his own defense” and “impermissibly shift[ed] the burden to [him] to produce some evidence in rebuttal to the State’s case.” 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 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 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); *see also Belton v. State*, ___ Md. App. ___ (2021) No. 0290, Sept. Term, 2020, 2021 WL 6124241, at *25 (Md. Ct. Spec. App. Dec. 28, 2021). Consequently, we affirm the judgments of the circuit court.

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