

Circuit Court for Baltimore City
Case No. 120188007

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 548

September Term, 2024

SEAN BRAXTON-CARTER

v.

STATE OF MARYLAND

Leahy,
Albright,
Kehoe, Christopher B.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 10, 2025

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

Convicted by a jury in the Circuit Court for Baltimore City of first degree murder, use of a handgun in the commission of a crime of violence, and related offenses, Sean Braxton-Carter,¹ appellant, presents for our review two issues: whether the court “commit[ted] plain error in permitting the prosecutor to repeatedly denigrate defense counsel during closing argument,” and whether the court “commit[ted] plain error in permitting the State to rely in sentencing upon alleged misconduct by [Mr. Braxton-Carter] which did not result in convictions.” For the reasons that follow, we shall affirm the judgments of the circuit court.

The victim, Marvin Kosh, died of sixteen gunshot wounds. At trial, the State called Tashonda Childs, who testified pursuant to a plea agreement that she saw Mr. Braxton-Carter repeatedly shoot Mr. Kosh. Mr. Braxton-Carter and Ms. Childs subsequently fled to several locations in Maryland, then to Atlanta. When Mr. Braxton-Carter and Ms. Childs returned to Maryland, Ms. Childs contacted police, told officers that Mr. Braxton-Carter shot Mr. Kosh, and identified Mr. Braxton-Carter in a photo array.

Mr. Braxton-Carter first contends that the following remarks by the prosecutor during rebuttal argument were impermissible:

- “The Defendant’s job is to distract you from the truth, to convince you otherwise, to confuse the issues, to confuse the witness and try to bring up things that are just not relevant to this case.”
- “What the Defense wants to do is to distract you from the truth”

¹Mr. Braxton-Carter is alternatively identified in the record as “Sean Braxton.” For consistency, we shall identify him as “Mr. Braxton-Carter,” as he was so addressed by the trial court.

- “What matters is that the Defendant committed the crime But he just wants to distract from that truth.”
- “Again, just a distraction and an attempt to confuse the issues.”
- “When in fact, ladies and gentlemen, he’s trying to just distract you from the solid truth that Sean Braxton-Carter was responsible for the murder of Marvin Kosh.”
- “Just another distraction. Another way to confuse the issue.”
- “It’s a sad attempt to confuse the issues and to ultimately confuse you as to the truth in this case.”
- “[A]gain, it’s a sad, sad attempt to confuse the issues and ultimately you.”

Acknowledging that “defense counsel did not object” to the remarks, Mr. Braxton-Carter contends that “the repeated nature of the assault more than justifies reaching the merits under the plain error doctrine.” Mr. Braxton-Carter also contends that we have “recognized that repeated resort to improper argument may be so serious as to require the trial judge to intervene *sua sponte* to preserve the opportunity for a fair trial.” *See Holbrook v. State*, 6 Md. App. 265, 271 (1969) (“there is an obligation on the trial court in certain circumstances” to address “highly prejudicial remarks . . . by [a] prosecutor” during argument “even in the absence of objection” (internal citation and quotations omitted)).

We disagree for two reasons. First, we have long stated that when a defendant does not “interpose[] . . . an immediate nor a belated objection[] to any of the State’s closing argument, ask[] for any curative instructions based thereon, or request[] a mistrial because of it,” the “issue is not . . . clearly preserved for appeal.” *Icgoren v. State*, 103 Md. App. 407, 442 (1995) (citations omitted). Second, although this Court has discretion to review unpreserved errors pursuant to Rule 8-131(a) (“[o]rdinarily, an appellate court will not

decide any . . . issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal”), 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) (internal 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) (internal citation and quotations omitted). Under the circumstances presented here, we decline to overlook the lack of preservation, and 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 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)).

Mr. Braxton-Carter next contends that the “record fails to dispel the possibility that the sentencing judge took into consideration alleged misconduct by [Mr. Braxton-Carter] which did not result in convictions.” At sentencing, the prosecutor argued, in pertinent part:

Additional circumstances of the crime and/or the offender do not warrant a sentence within the guidelines. This is another delineated reason for an upward departure. The Defendant’s record is horrific. He has been

given the grace of probation time, and time, and time again for several violent crimes. And, yet, he cannot abide by those conditions of probation. Twice his probation has been closed out as unsatisfactory.

Upon further review of the Defendant's criminal history, the State discovered that the Defendant was also charged with several offenses that either resulted in a dismissal, or placed on the STET docket. Those offense[s] are as follows: The Defendant was charged with assault in the second degree and possession of a dangerous weapon with the intent to injure and malicious destruction of property in Case Number 3D02267401 in the District Court of Baltimore City.

In that case, while he was on probation for a carjacking to Judge Copeland, he was allegedly arguing with his child's mother when he was removing items from their residence. When he tried to reenter, he began cursing and yelling at her, and the victim refused to open the door out of fear. The Defendant then retrieved a brick from the yard and threw it through the window at the victim shattering the glass into the living room.

While pending trial for that case, the Defendant then made a phone call from jail to the victim telling her to recant so that the charges would be dropped. The Defendant told the victim to do whatever she had to do to make the charges go away and that he would make everything better once he beat the charges. He further told her that he could not get convicted of these charges because he was on parole for another case.

The Defendant was subsequently charged with witness tampering and other related charges by way of a criminal information in Baltimore City Circuit Case Number 214261001 Unsurprisingly, at the Defendant's request, the victim then recanted and the State entered a nol pros as to that case. A STET was entered for the witness tampering case.

Although dismissed, this case embodies the Defendant's unwillingness to accept responsibility for his actions and do whatever it takes to get charges dismissed.

Following argument, the court found

that there are reasons to go above the Guidelines as [the prosecutor] said. First of all, Mr. Braxton-Carter's primary role in this matter. Secondly, . . . the viciousness of the crime, shooting the victim eight times while the victim was strapped into his seat in the car. If he had expressed some remorse, the [c]ourt could have decided that perhaps leniency was appropriate, but he

doesn't express any remorse. He doesn't take responsibility for the acts in this case. And the [c]ourt does take that into account.

And, finally, and most importantly, the fact is that the Defendant has been on probation any number of times given a chance to rehabilitate himself
....

The court subsequently imposed a term of life imprisonment for first degree murder, and a consecutive term of imprisonment of twenty years for the use of a handgun in the commission of a crime of violence.

Mr. Braxton-Carter contends that the court's consideration of his "failure to take advantage of opportunities for rehabilitation" could have "incorporate[d] the unadjudicated offenses," and hence, "a new sentencing hearing is mandated." Acknowledging that "there was no objection interposed," Mr. Braxton-Carter again requests that we engage in plain error review. For the reasons previously stated in our resolution of Mr. Braxton-Carter's first contention, we decline to do so.²

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

²For guidance, we note that in listing its reasons for imposing a term of imprisonment "above the Guidelines," the court did not mention any criminal acts alleged to have been committed by Mr. Braxton-Carter and that did not result in a conviction. The court also did not make any statement indicating that but for the alleged acts, it would have imposed a lesser term of imprisonment.