

Circuit Court for Baltimore City
Case No.: 118036002

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 945

September Term, 2019

ALEX J. STANLEY

v.

STATE OF MARYLAND

Nazarian,
Gould,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 28, 2020

*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 trial in the Circuit Court for Baltimore City, a jury found Alex J. Stanley, appellant, guilty of first-degree assault.¹ The court sentenced appellant to twenty-five years' imprisonment. Appellant contends on appeal that the trial court committed plain error when instructing the jury on the elements of first-degree assault, and that he was denied his Sixth Amendment right to effective assistance of counsel when his lawyer failed to object to the faulty instruction. We decline to recognize plain error in this case, and do not reach appellant's claim of ineffective assistance of counsel. We therefore shall affirm.

While appellant and the victim each testified to differing accounts of what occurred between them on the night of December 13, 2015, both of them testified that the two engaged in sexual intercourse, and that appellant beat her. Medical records, photographs, and witness testimony admitted into evidence at trial demonstrated that appellant inflicted serious injuries on the victim during that beating.

The victim, who was fifty-seven years old at the time, claimed that while she was walking home from buying cigarettes appellant approached her and asked for directions and the two began walking together. At a certain point, appellant began beating her with a steel pole and an orange juice bottle. He also choked her until she passed out and then raped her.

Appellant, who was fifteen years old at the time, testified that, as part of a scheme to quickly make ten dollars, he broke up some sheetrock and placed it in a vial to sell as

¹ The jury acquitted appellant of first-degree rape, second-degree rape, third-degree sexual offense, fourth-degree sexual offense, reckless endangerment, carrying a dangerous weapon openly, and theft.

drugs. After appellant offered to sell the “ready rock” to the victim, she explained that, while she did not have any money, she was willing to exchange sexual intercourse for the drugs. After the two then engaged in consensual intercourse, the victim realized that the drugs were fake, and she angrily confronted appellant about it. Appellant then pushed her “too hard” and she fell, sustaining her most significant injuries. After she got back up, she spat on appellant who, in response, “blacked out” and began beating her with his fists.

As noted above, the jury acquitted appellant of all of the sex-related offenses, the weapons offense, and theft, but convicted appellant of first-degree assault. The trial court instructed the jury on the crime of first-degree assault as follows:

The defendant is also charged with the crime of first-degree assault. In order to convict the defendant of first-degree assault, the State must prove all the elements of second-degree assault and also must prove that the defendant **used a dangerous weapon to commit assault** or the defendant intended to cause serious physical injury in the commission of the assault. Serious physical injury means injury that creates a substantial risk of death or causes serious and permanent or serious and protracted -- could be disfigurement, loss of -- impairment of the function of any bodily member organ.

The bolded portion of that instruction is erroneous. Pursuant to Section 3-302(a) of the Criminal Law Article, there are two ways to elevate a second-degree assault to a first-degree assault – by using a firearm, or by intending to cause serious physical injury, when committing a second-degree assault. The trial court incorrectly instructed the jury that one way to elevate a second-degree assault to a first-degree assault is to commit a second-degree assault with a dangerous weapon.

Appellant acknowledges that he lodged no contemporaneous objection to the trial court’s instruction, and that the issue is, therefore, not preserved for appeal. He asks us to

review the error under our authority to review unpreserved errors pursuant to Md. Rule 8-131.

Maryland Rule 8-131(a) provides that, “[o]rdinarily, the appellate court will not decide any other 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.”

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).

Appellant also claims that, he was denied his Sixth Amendment right to effective assistance of counsel when his trial counsel made a prejudicial serious attorney error within

the meaning of *Strickland v. Washington*, 466 U.S. 668 (1984), and its progeny, by failing to object to the trial court’s erroneous jury instruction. As the Court of Appeals has repeatedly pointed out, although it is possible for an appellate court to address a claim of ineffective assistance of counsel on direct appeal, “[p]ost-conviction proceedings are preferred with respect to ineffective assistance of counsel claims because the trial record rarely reveals why counsel acted or omitted to act, and such proceedings allow for fact-finding and the introduction of testimony and evidence directly related to allegations of the counsel’s ineffectiveness.” *Bailey v. State*, 464 Md. 685, 704 (2019) (quoting *Mosley v. State*, 378 Md. 548, 560 (2003)). We think appellant’s claim of ineffective assistance of counsel is best heard within a post-conviction posture.

Consequently, we affirm the judgments of the circuit court.

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