

Circuit Court for Anne Arundel County
Case No.: C-02-CR-20-001516

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1336

September Term, 2021

MUSAAB ABDUL ALI

v.

STATE OF MARYLAND

Berger,
Reed,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),
JJ.

PER CURIAM

Filed: June 30, 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.

This case arose from a physical altercation between two customers and two employees of an ice cream store. Following trial in the Circuit Court for Anne Arundel County, a jury found one of the customers, Musaab Abdul Ali, appellant, guilty of first-degree assault, second-degree assault, and reckless endangerment as to one of the ice cream store’s employees.¹ The court sentenced him to 8 years’ imprisonment for first-degree assault, with all but 4 years suspended in favor of 5 years’ supervised probation. The court merged the remaining counts for sentencing.

Appellant noted an appeal. In it, he urges this Court to review for plain error the trial court’s failure to *sua sponte* take action during the State’s allegedly improper closing argument. We decline to exercise plain error review in this case. We shall therefore affirm.

BACKGROUND

The pertinent facts adduced at trial revealed that, on November 7, 2020, appellant and his friend, Ibukonuluwa Opanuga, entered a busy ice cream store around 7:00 p.m. where the store’s manager, Nythia Davis, and another employee, McKeniva Mortimer, were working. While the trial testimony provided various and sometimes conflicting versions of the circumstances, it is not disputed that, eventually, the employees told appellant and his friend to leave the store. It is likewise not disputed that an exchange of angry words then followed. Appellant and Opanuga then left the store followed by Davis and Mortimer. Once again, while the trial testimony conflicted on the specifics of what occurred, the disagreement between the two groups became physical. During the fight,

¹ The jury acquitted appellant of trespassing and disorderly conduct. In addition, the jury acquitted appellant of the charges related to the other ice cream store employee.

Davis sustained injuries that included a broken nose and a small fracture to her orbital bone. Appellant claimed he acted in self-defense. As noted above, the jury found appellant guilty of, among other offenses, a first-degree assault on Davis.

DISCUSSION

As noted above, appellant claims that he is entitled to have his convictions vacated owing to allegedly impermissible comments the State made during its closing argument. Specifically, he claims that, during its closing argument, the State impermissibly discussed caselaw on the crime of first-degree assault, urged the jurors to provide justice for the victim, and asked them to put themselves in the place of the victim. He acknowledges that he lodged no contemporaneous objection to the allegedly improper arguments and has therefore failed to preserve the issue for appellate review. He asks us to overlook the lack of preservation and 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, 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)

(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).

We conclude that any presumptive error on the trial court’s part was not so extraordinary or fundamental that it deprived appellant of his right to a fair trial. Thus, under the circumstances presented, we decline to exercise 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 shall affirm the judgments of the circuit court.

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