

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1450

September Term, 2022

DARIUS AHMAAD DEAL

v.

STATE OF MARYLAND

Graeff,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 28, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

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

Following a jury trial in the Circuit Court for Wicomico County, Darius Ahmaad Deal, appellant, was convicted of first-degree assault, second-degree assault, and reckless endangerment. His 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.

At trial, appellant’s wife testified that she asked appellant to leave the house because of his infidelity. The couple began arguing and eventually appellant pushed her onto the bed and began choking her with both hands. This continued until appellant’s twelve-year-old stepdaughter came into the room and told appellant to “get the fuck off my mom.” Appellant stopped choking his wife and began screaming at his stepdaughter with his fists balled up. Before he left the house, appellant also threw a dog cage in the direction of his wife and threatened to “shoot everyone in the house.” Appellant’s stepdaughter testified consistently with her mother regarding the incident. The responding officer also testified that when he first encountered the victim, she was “shaking, crying, and very scared” and had red marks on her neck.

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

It’s interesting because typically in a domestic violence case we see, he said, she said. Right? That’s the classic domestic violence situation. We don’t have that here. We have a she said, and she said it, too. You have [the victim] telling you, and you have [the victim’s daughter] telling you the same thing. And it’s a really interesting situation that we are in here.

On appeal, appellant contends that this statement constituted impermissible burden shifting because it “plainly draws attention to the fact that [he] did not testify in his own defense.” He further claims that he was “the only person who could satisfy the ‘he said’ portion of the argument and cannot logically mean anything other than a recommendation that the jury compare the State’s evidence against the lack of evidence by the defense.” 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 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) (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). 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).

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