Circuit Court for Baltimore County
Case No. C-03-CR-20-002550

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1643

September Term, 2021

SHAWN A. PARKS

v.

STATE OF MARYLAND

Well, C.J.,
Tang,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 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.

Following a jury trial in the Circuit Court for Baltimore County, Shawn A. Parks, appellant, was convicted of one count of first-degree murder. He raises two issues on appeal: (1) whether the trial court plainly erred in asking voir dire questions that required prospective jurors to self-assess their ability to be impartial, and (2) whether his trial counsel was ineffective in failing to object to the voir dire questioning format used by the trial court. For the reasons that follow, we shall affirm the judgment.

At the outset of voir dire, the trial court informed the jury:

> First I will pose questions to you as a group. You will understand, come to understand that these questions are very broad in nature. If you think it applies to you, the best thing to do is to stand. So, I'm going to ask you a series of questions. I'm going to ask you to stand. In some situations, with some questions, when you stand, we will go around and get your juror call-in number, but I will ask you to remain standing. Once we have gotten your call-in number for that particular question, I will have a follow-up question. And this is the question that will be asked more often than not throughout this process. So, I would say for whatever reason you responded to the first part of my question, would those circumstances prevent you or substantially impair you from rendering a fair and impartial verdict if selected as a juror in this case? I will say if it would not, have a seat. If you think it might, please remain standing. If you remain standing, we will make a note and bring you back individually.

The court subsequently questioned the jurors in this manner on two separate occasions. On the first occasion the court asked whether any prospective juror had previously served as a petit juror for a trial in state or federal court. Six jurors stood. The court then asked:

> Those who have indicated you have had prior jury service in the state or federal system, the question is would that experience substantially impair you from rendering a fair and impartial verdict if selected as a juror in this case? If it would not, have a seat. If you think it might, please remain standing.

Five of the six prospective jurors sat down. Of those, one was impaneled as a member of the jury.

On the second occasion, the court asked whether any prospective jurors or their immediate family members had ever been employed by a law enforcement agency. Eleven prospective jurors stood. The court then asked:

> So for those of you who either you or a member of your family has ever been involved in law enforcement, would that fact prevent you or substantially impair you from rendering a fair and impartial verdict if selected as a juror in this case? If it would not, have a seat. If it would, please remain standing.

Seven jurors sat down, while four remained standing. Of the seven who sat down, one was impaneled as a member of the jury.

Defense counsel did not object at any point during the voir dire process. Moreover, shortly after the court asked the above questions to the prospective jurors, it asked counsel for appellant and the State if there were "any additions, corrections [or] modifications or exceptions to the voir dire as given." Defense counsel stated, "[n]one." The court then individually questioned certain prospective jurors. After that questioning concluded, the court asked the attorneys a second time to confirm that they had "no objection to the voir dire as given[.]" Defense counsel responded, "That's correct." Later, defense counsel expressed his satisfaction with the jury that was impaneled.

On appeal, appellant contends that the above voir dire questions were impermissible because they allowed potential jurors to self-select with regard to their own potential bias or impartiality, and thus, precluded the circuit court from discerning for itself whether the prospective jurors were capable of impartiality. *See generally Dingle v. State*, 361 Md. 1,

14-15 (2000) (repudiating two-part "compound" questions, which ask jurors to assess their own partiality, because "it is the trial judge that must decide whether, and when, cause for disqualification exists for any particular venire person."). 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) (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 omitted).

Appellant alternatively contends that his trial counsel was ineffective in failing to object to the court's voir dire questions. However, it "is the general rule that a claim of ineffective assistance of counsel is raised most appropriately in a post-conviction

proceeding[.]" *In re Parris W.*, 363 Md. 717, 726 (2001). With respect to ineffective assistance of counsel claims, post-conviction proceedings are preferred 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." *Mosley v. State*, 378 Md. 548, 560 (2003) (citations and footnote omitted). Appellant alleges that the only conceivable reason for his counsel's failure to object was ignorance of the law, which constitutes deficient performance. But we are not persuaded that the record in this case is sufficiently developed to permit a fair evaluation of appellant's claim that his defense counsel was ineffective. Consequently, we will not reach his claim on ineffective assistance of counsel on appeal.

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