Circuit Court for Baltimore City
Case No. 120062030

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1644

September Term, 2021

GREGORY RICHBURG

v.

STATE OF MARYLAND

Leahy,
Tang,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: October 7, 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.

After a jury trial in the Circuit Court for Baltimore City, Gregory Richburg, appellant, was found guilty of attempted second-degree rape. He was sentenced to 20 years of imprisonment, with all but 9 years suspended. This timely appeal followed.

QUESTIONS PRESENTED

Appellant presents the following three questions for our consideration:

> I. Did the [circuit] court abuse its discretion in allowing the State and State's witnesses to refer to the complaining witness as "the victim"?
>
> II. Did the [circuit] court err in admitting inadmissible hearsay?
>
> III. Did the [circuit] court plainly err in admitting multiple instances of inadmissible hearsay?

For the reasons set forth below, we shall affirm.

FACTUAL BACKGROUND

Trisha Richburg and appellant were married in 2000, separated two or three years later, and then divorced. In December 2019, Ms. Richburg and appellant married for a second time. Ms. Richburg has three children, two of whom she shares with appellant. The three children lived with them. In January 2020, Ms. Richburg told appellant she made a mistake in marrying him again and wanted a divorce. On January 29, 2020, Ms. Richburg went to New Jersey to celebrate her birthday with friends. She returned home on the morning of January 30, 2020 and went to bed. At some point, Ms. Richburg got out of bed and went into the kitchen to get something to eat. Appellant followed her, spoke rudely to her, and called her names such as "[y]ou bitch[.]" Appellant accused her of being with another man, whom he threatened to "F" up and kill. Ms. Richburg returned to the bedroom

and appellant followed her. Appellant punched her on the side of her head, jumped on her, and said, "[y]ou bitch, you gonna give me some pussy right now." Appellant proceeded to rip off her clothes. Ms. Richburg attempted to fight off appellant, but he punched her and pulled her hair. Appellant got on top of Ms. Richburg and placed his knees on her chest and neck so that she was unable to breath. Appellant attempted to have sexual intercourse with her. He "dug [her] legs open" and put his hands down his pants to pull out his penis. Ms. Richburg got off of the bed and appellant pinned her between the bed and the wall. Appellant told Ms. Richburg repeatedly that she was going to die.

According to Ms. Richburg, appellant was drinking alcohol. Ms. Richburg did not see appellant use cocaine but testified that he had a history of using it. She believed he was under the influence of cocaine based on the appearance of his pupils and the way he looked and acted. She described him as being "delirious."

At one point, Ms. Richburg attempted to get out the back door, but appellant pulled her by her braids and ripped out a lot of her hair. Appellant got a knife out of the kitchen drawer and told Ms. Richburg to take a bottle of wine out of the freezer and drink it. After Ms. Richburg refused to get the wine, appellant chased her and hit her. At one point, Ms. Richburg was in a reclining chair and appellant was on top of her. Appellant asked, "[b]itch, are you going to give me some pussy"? Appellant's penis was exposed. Ms. Richburg testified that "he was digging between my legs so hard and I was kicking him." When Ms. Richburg was able to get out of the chair, she went back to the bedroom, but appellant followed her. She hit, fought, and scratched him, and tried "to dig his eyes out."

Appellant punched her many times on the side of her head, arm, and back, ripped out her hair, and bit her. He also put his hands on her neck and squeezed it. The fighting continued for "at least over two hours."

When in the bedroom, Ms. Richburg went to a window and was able to get her body halfway out of it. She yelled for help. While her body was halfway out of the window, she held onto "a cable thing," but appellant grabbed her feet and dragged her back inside. Glass from the window shattered on her back. Appellant picked up a piece of glass, stuck it in her back, and told Ms. Richburg that he was going to kill her.

Appellant had Ms. Richburg's phone. Ms. Richburg had a second "backup" phone that could only operate using the WiFi in the house. Ms. Richburg sent text messages in an attempt to get help and she called appellant's parents. At one point, Ms. Richburg's son called and spoke to appellant. As the two were speaking, Ms. Richburg moved to the front door and ran out of the house.

Ms. Richburg, wearing only a t-shirt, ran to the homes of neighbors attempting to get help. Eventually, she banged on the front door of a home shared by Kelly Belk and Pete Canaras. Ms. Belk, who did not previously know Ms. Richburg, described her as "distraught," "terrified," and "hysterical." Ms. Richburg was wearing a t-shirt but no shoes, although it was "very cold outside." She told Ms. Belk that her husband had tried to rape her. After a call to 911 was placed, Ms. Belk tended to Ms. Richburg's injuries and gave her clothes and shoes to wear. Ms. Richburg was taken to a hospital. At a later time, she got tattoos to cover scars from the injuries she sustained.

On the day of the incident, Baltimore City Police Officer Austin Hanson, and another officer he was training, responded to a call about an assault. About a block away from Belk and Canaras's home, Officer Hanson observed appellant who had injuries to his face and "blood on his, I believe it was his face or hands." According to Officer Hanson, appellant was "calm" and "was compliant when we were asking who he was and what he was doing."

Officer Hanson then went to Belk and Canaras's home, the address from which the 911 call was placed, where he observed Ms. Richburg. She "acted like she was in distress," was taking short breaths, and "was very fast in her explanation of" the incident that had occurred. She had scratches and other injuries around her arms and said that "parts of her hair" had been "ripped out." Officer Hanson called for medics. We shall include additional facts as necessary in our discussion of the issues presented.

DISCUSSION

I.

Appellant contends that the circuit court abused its discretion in allowing the State and State's witnesses to refer to Ms. Richburg as "the victim." Appellant maintains that referring to Ms. Richburg as the victim impermissibly bolstered her credibility and strengthened the State's case. This issue was not preserved for appellate review.

During the State's opening statement, the prosecutor referred to Ms. Richburg as "the victim" on three occasions, as follows:

> The State's witnesses are going to testify that Officer Hanson, patrol officer, service[d] a call from a neighbor, Pete Canaras, who is going to

testify. Mr. Canaras [is] not connected to any of this. Doesn't know Ms. Richburg, the victim, doesn't know Mr. Richburg, the Defendant, knows no one.

This woman, the victim, his wife, arrived at Mr. Canaras's house, which is on the same block as where Ms. Richburg lives.

* * *

He hits her, he strangles her and he attempts to murder her and says "You are going to die today." Ms. Richburg, the victim, is able to escape, gets to Mr. Canaras's house and Mr. Canaras does a good thing.

Defense counsel did not object to these three references to Ms. Richburg as the "victim." Thereafter, during Officer Hanson's testimony, Ms. Richburg was referred to as the victim four times:

[PROSECUTOR:] Okay. And did you have – were you looking for someone at that point?

[OFFICER HANSON:] Yes. So, when we got the call, we were looking for our victim, and they – I believe it was in the call for service, or if my trainee called the Complainant, that we were looking for a male that was assaulted or possibly attempted to rape a female.

Q Okay. And when you found the man, and so do you recognize the man that you made contact with to be in this courtroom today?

A Yes, sir.

* * *

Q Okay. And, so, you spoke with – you spoke with [appellant], and what happened next?

A So, what happened next is, I believe it was my trainee that called the Complainant to look at the victim, and I don't recall the house number, but that's where we responded next.

I called for additional units to arrive on scene and to stay with the Defendant.

Q So, how did you know where to go?

A My trainee called. So, we had the call for service. We just called the Complainant back to say where they're located currently.

Q So, are you saying that somebody called?

A Police.

Q The police?

A So, we get the 911 call and then the Dispatch gives us the location of where to respond. While responding, that's when we located the Defendant. We recalled the Complainant to figure out where they currently were, and that's what led us further into Bayonne and actually located the victim.

Q Okay. And so was that person that you called the victim?

A No. I believe that was the homeowner.

Q Okay. And the victim in this case, do you know what her name is?

A I don't recall her name.

Defense counsel did not object to these uses of the word "victim," but immediately following this testimony, defense counsel moved *in limine* to prohibit references to Ms. Richburg as the victim and to require her to be referred to as the complainant or by her name. The court denied the motion, stating that "the State's position is that she's the victim, so I'm not going to tell [the prosecutor] to change how he's referring to the person who he is alleging is the victim."

Thereafter, several references to the "victim" were made without objection. The prosecutor asked Officer Hanson if he remembered the name of the victim and if his recollection of the victim's name was refreshed. Officer Hanson testified that when they

arrived at the neighbor's house, "we met with the homeowner, who stated that she had the victim, Trisha Richburg, in his [sic] house." When Officer Hanson was asked if he investigated the place where the incident occurred, he testified:

> [OFFICER HANSON:] Yes. It was at her, at the home address. I know that it was across the street. I believe the number was 38, like 28. It was across the street.
>
> [PROSECUTOR:] So, and what is that residence?
>
> A That's the home address of the victim.

Officer Hanson testified that he accompanied Ms. Richburg to her own house so that she could get her belongings and that other officers went through her house with the crime lab. He stated, "I had other officers, because I had my victim with me, so I assisted that with taking her don't [sic] to like Sex Offense to get interviewed, so I actually didn't go through the whole entire house." On one occasion during Ms. Richburg's testimony, the prosecutor asked the court for the record to reflect "that the victim had identified the Defendant." Defense counsel did not object to the use of the word "victim."

During closing argument, without objection, the prosecutor referred to Ms. Richburg as the victim on two occasions. First, he stated, "[t]he witness testified, the victim testified to what he did with her, to her back with the glass." Second, in discussing the crimes of attempted first and second-degree rape, the prosecutor stated:

> Difference between attempted rape in the first degree and attempted rape in the second degree is that the Defendant used a dangerous or deadly weapon that she [sic] knew was a deadly weapon (inaudible) that he suffocated, strangled, disfigured or caused serious physical injury to the victim while committing the offense.

Lastly, during rebuttal closing argument, the prosecutor argued, without objection, as follows:

> The victim testified, and you saw it on the screen, that the medics arrived, and they attend to the victim, and the victim said she went to a hospital that she believed was Mercy. She testified to that. She testified to her injuries. That's enough.

Maryland Rule 4-323 makes clear that "[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." Md. Rule 4-323(a). That did not occur here. Nor did appellant request a continuing objection to references to Ms. Richburg as the victim as permitted in Md. Rule 4-323(b) ("At the request of a party . . . , the court may grant a continuing objection to a line of questions by an opposing party."). Appellant moved *in limine* to prohibit such references, but after that motion was denied, he failed to lodge objections to the use of the word victim to describe Ms. Richburg. It is well established that "when a motion *in limine* to exclude evidence is denied, the issue of the admissibility of the evidence that was the subject of the motion is not preserved for appellate review unless a contemporaneous objection is made at the time the evidence is later introduced at trial." *Klauenberg v. State*, 355 Md. 528, 539 (1999). *See also Reed v. State*, 353 Md. 628, 638 (1999) (when evidence that has been contested in a motion *in limine* is admitted at trial, a contemporaneous objection must be made in order for that question of admissibility to be preserved for appellate review); *Wise v. State*, 243 Md. App. 257, 275 (2019) (objection raised in motion *in limine* does not obviate need for a

contemporaneous and timely objection when evidence is elicited at trial), *aff'd,* 471 Md. 431 (2020). Accordingly, this issue was not properly preserved.

Even if the issue had been preserved properly for our consideration, appellant would fare no better because any error in referring to Ms. Richburg as the victim was harmless beyond a reasonable doubt. *Dorsey v. State*, 276 Md. 638, 659 (1976) (error is harmless if a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict). Here, the references to the word "victim" were sporadic. At times, they were used to distinguish Ms. Richburg from the complainant, Mr. Canaras, who, it appears, was the person who initially placed the call to 911. The word "victim" was also used to distinguish the home of Canaras and Belk from that of Ms. Richburg. In addition, it was not used by the court in instructing the jury.[1] The court did, however, instruct the jurors on the presumption of innocence, the State's burden to prove appellant's guilt beyond a reasonable doubt, and that opening statements and closing arguments of the lawyers are not evidence. We presume that the jury followed the instructions given by the trial judge. *Williams v. State*, 137 Md. App. 444, 459 (2001). *Collins v. Nat'l R.R. Passenger Corp.*, 417 Md. 217, 252 (2010) ("Jurors are presumed to have followed the instructions provided to them by the court, '[o]ur legal system necessarily proceeds upon' that presumption." (quoting *State v. Moulden*, 292 Md.

[1] In *Barger v. State*, 235 Md. 556 (1964), after considering jury instructions in their entirety, the Court of Appeals held that a trial court's use of the word "victim" in jury instructions was not prejudicial. 235 Md. at 564. In the instant case, the court did not use the term "victim" in its instructions.

666, 678 (1982))). We conclude that the use of the word "victim" was harmless beyond a reasonable doubt.

II.

Appellant contends that the trial court erred in allowing Officer Hanson to testify about what Ms. Richburg told him. He directs our attention to the following portion of Officer Hanson's direct examination:

> [PROSECUTOR:] And what did you observe when you saw Ms. Richburg?
>
> [OFFICER HANSON:] Ms. Richburg, upon seeing her first, she was – she acted like she was in distress, like short breaths when I was trying to speak to her, like she was very fast in her explanation of what the incident occurred.
>
> But she had scratches and other injuries around her arms. I know that she claimed that one of her, parts of her hair was ripped out.
>
> Q Did you see anything else?
>
> A At this point, this is when I asked her just of the whole incident of what occurred. So, describing her injuries, she said that she was at her house and – do you want me to explain the whole incident?
>
> Okay. So, she was at her house with Mr. Richburg early that morning.
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.
>
> Q You can continue.
>
> A And, according to her, he was drunk and was trying to, asking her, trying to force, you know, sexual intercourse. She didn't want to. She tried – she was sitting in a chair somewhere like in the living room. He tried to force her legs open. She kept refusing.
>
> And then at some point she got assaulted, because she was being asked what she did the night previous, and was hanging out with friends, something to that effect. And then when she was in the room her clothes at some point were ripped off.

> She attempted to jump out the window where, when that actually broke, she was pulled back in. She suffered some scratches and at some point the Defendant turned away and she was able to run out the front door and go to the neighbor's house.

Appellant also points to Officer Hanson's testimony about Ms. Richburg's report that appellant used a piece of glass as a weapon:

> [PROSECUTOR:] Did [Ms. Richburg] mention any weapons, if you remember?
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.
>
> [OFFICER HANSON:] As far as weapons –
>
> THE COURT: If you don't recall, that's –
>
> [OFFICER HANSON:] I believe she said something about using glass, glass almost like a blade.
>
> [PROSECUTOR:] You said glass. I couldn't hear what the last part was?
>
> [OFFICER HANSON:] Using it like a blade.
>
> [PROSECUTOR:] Did she describe anything else about the glass?
>
> [OFFICER HANSON:] Just that that's how he was using it, almost like he was holding it like it was a knife.

Appellant argues that Officer Hanson's testimony constituted inadmissible hearsay. Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). Hearsay is inadmissible unless it falls within an exception to the rule excluding such evidence or is "permitted by applicable constitutional provisions or statutes[.]" Md.

Rule 5-802; *Bernadyn v. State*, 390 Md. 1, 8 (2005) ("Hearsay, under our rules, *must* be excluded as evidence at trial, unless it falls within an exception to the hearsay rule excluding such evidence or is permitted by applicable constitutional provisions or statutes." (internal quotation marks and citation omitted)). "'Whether evidence is hearsay is an issue of law reviewed *de novo*.'" *Paydar v. State*, 243 Md. App. 441, 452 (2019) (quoting *Bernadyn*, 390 Md. at 8). We review factual findings necessary to the trial court's ruling for clear error. *Hailes v. State*, 442 Md. 488, 499 (2015).

Appellant maintains that Officer Hanson's inadmissible hearsay established that (1) appellant was drunk; (2) appellant ripped Ms. Richburg's clothes off of her and tried to force her to have sex with him; (3) appellant hit Ms. Richburg; (4) Ms. Richburg tried to escape out of a window, but appellant pulled her back inside; and, (5) appellant used a piece of glass as a blade to threaten her. He asserts that Officer Hanson's recounting of Ms. Richburg's statements "served to establish the facts underlying several of the charges, including attempted second-degree rape." Appellant also argues that the admission of Officer Hanson's testimony was not harmless because it bolstered Ms. Richburg's testimony. We are not persuaded.

The same out-of-court statements complained of here were admitted in evidence without objection[2] when the State played for the jury video from Officer Hanson's body-worn camera. In addition, the recording of the 911 call was admitted in evidence without

[2] The parties agreed that the voice of Ms. Richburg's neighbor, Mr. Canaras, would be muted when the video was played for the jury.

objection. In the call, a male voice, identified by Ms. Belk as Mr. Canaras's voice, told the 911 operator that Ms. Richburg told him that her husband tried to kill her. Ms. Richburg told the 911 operator that appellant beat her, threatened to kill her, and that he had a knife. Thus, even if the circuit court erred in admitting Officer Hanson's testimony, reversal is not warranted because the same information was admitted without objection, through other evidence. *DeLeon v. State*, 407 Md. 16, 31 (2008) ("Objections are waived if, at another point during the trial, evidence on the same point is admitted without objection."); *Williams v. State*, 131 Md. App. 1, 26 (2000) ("When evidence is received without objection, a defendant may not complain about the same evidence coming in on another occasion even over a then timely objection."). We also reject appellant's argument that the statements admitted were cumulative to, and improperly bolstered, Ms. Richburg's subsequent testimony. Appellant did not lodge any such objection below, nor did he seek a limiting instruction with regard to how the jury should consider the out-of-court statements. Md. Rule 4-323(a).

III.

Appellant asks us to exercise our discretion to grant plain error review with respect to the admission in evidence of three out-of-court statements by Ms. Richburg: (1) her statements recorded on the body-worn camera video; (2) her statements to Ms. Belk that appellant told her she "was going to die that day"; and (3) her statements to the 911 operator. Appellant argues that even if the separate instances of inadmissible hearsay were harmless, when viewed together they impermissibly bolstered Ms. Richburg's credibility,

infringed on appellant's substantial rights, and affected the outcome of the trial. Appellant also asserts that although there was a failure to object to the statements at issue, he did not abandon his objection. Rather, "[t]here was a pervasive and incorrect conclusion by all parties, which went uncorrected by the court throughout trial, that [Ms. Richburg]'s statements in the body-worn camera, to Belk, and in the 911 call were not hearsay."

Maryland Rule 8-131(a) provides that, apart from jurisdictional challenges, "[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[.]" Although we have 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). For that reason, plain error review is reserved for those errors "that are compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial." *Pietruszewski v. State*, 245 Md. App. 292, 323 (2020) (quoting *Yates v. State*, 429 Md. 112, 130-31 (2012)) (quotation marks omitted). In *State v. Rich*, 415 Md. 567 (2010), the Court of Appeals adopted the Supreme Court's formulation of plain error review:

> "First, there must be an error or defect – some sort of [d]eviation from a legal rule – that has not been intentionally relinquished or abandoned, *i.e.*, affirmatively waived, by the appellant. Second, the legal error must be clear or obvious, rather than subject to reasonable dispute. Third, the error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the [court]

> proceedings. Fourth and finally, if the above three prongs are satisfied, the [appellate court] has the discretion to remedy the error – discretion which ought to be exercised only if the error seriously affect[s] the fairness, integrity or public reputation of judicial proceedings."

Rich, 415 Md. at 578 (quoting *Puckett v. United States*, 556 U.S. 129, 135 (2009)) (internal quotation marks and citations omitted); *accord Malaska v. State*, 216 Md. App. 492, 525 (2014) (noting the adoption of the *Puckett* formulation by the Court of Appeals).

With respect to the video from Officer Hanson's body-worn camera, appellant objected only to the out-of-court statements made by Mr. Canaras. As a result of that objection, Mr. Canaras's statements were muted. No other objections to the video were presented to the court. Appellant clearly waived any objections to the out-of-court statements by Ms. Richburg on the video. *Perry v. State*, 229 Md. App. 687, 709 (2016) (when specific ground for objection is stated defendant is deemed to have waived all other grounds on appeal (citing *Klauenberg*, 355 Md. at 541)).

In addition, the second requirement set forth in *Rich* is not met because a legal error in admitting Ms. Richburg's statements on the video was neither clear nor obvious and was subject to reasonable dispute. *Rich*, 415 Md. at 578. Our review of the record convinces us that there was a reasonable dispute as to whether Ms. Richburg's out-of-court statement qualified as an excited utterance. Md. Rule 5-803(b)(2). Ms. Belk testified that the police responded "right away[.]" When Officer Hanson encountered Ms. Richburg she "acted like she was in distress," took short breaths as she spoke, and spoke "very fast" when explaining what occurred. A reasonable argument could be made that she was under the stress of excitement from the event and that her statements on the body-worn camera video

qualified as an excited utterance. A reasonable argument could also have been made that Ms. Richburg's statements were admissible under the present sense impression exception. Md. Rule 5-803(b)(1) ("[a] statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter"). Ms. Richburg's statements were based on her personal perception of events and were made very soon after the incident.

Similarly, appellant did not object to Ms. Belk's testimony that Ms. Richburg "said that her husband tried to rape her and he told her that he [sic] was going to die that day." That testimony fails to meet the second requirement set forth in *Rich*, that "the legal error must be clear or obvious, rather than subject to reasonable dispute." *Rich*, 415 Md. at 578. As we have already noted, there was a reasonable dispute as to whether Ms. Richburg's out-of-court statement qualified as an excited utterance or a statement of present sense impression. The evidence showed that Ms. Richburg banged on the door of a neighbor she did not know wearing only a t-shirt on a cold January morning. The neighbor, Ms. Belk, described Ms. Richburg as distraught and hysterical. A reasonable argument could have been made that she was, at that time, under the stress of the incident. Md. Rule 5-803(b)(2). Alternatively, a reasonable argument could have been made that the statements were admissible under the present sense impression exception. Md. Rule 5-803(b)(1). Ms. Richburg's statements to Ms. Belk were based on her personal perception of those events immediately after escaping from her home. For these reasons, it was not clear and obvious

error for the trial court to admit Ms. Richburg's statements to Ms. Belk and plain error review is not warranted.

Likewise, we decline to grant plain error review of the statements on the recording of the 911 call. Defense counsel affirmatively stated that he had "[n]o objection" to the admission of the recording and, as a result, any objection was affirmatively waived. *Brice v. State*, 225 Md. App. 666, 679 (2015) (addressing waiver), *cert. denied*, 447 Md. 298 (2016). Moreover, a reasonable argument could have been made that Ms. Richburg's statements were admissible under the excited utterance exception to the hearsay rule. Md. Rule 5-803(b)(2). The 911 recording makes clear that Ms. Richburg was still under the stress of excitement caused by the incident at the time she spoke to the 911 operator. Thus, any error by the trial court in admitting the evidence was neither clear nor obvious.

We note that "[e]ven if an appellant is able to satisfy the threshold burden of proving a plain and material error, the Court need not recognize the error." *Steward v. State*, 218 Md. App. 550, 566 (2014). We will grant plain error relief "only when the error was so material to the rights of the accused as to amount to the kind of prejudice [that] precluded an impartial trial." *Newton v. State*, 455 Md. 341, 364 (2017) (quotation marks and citations omitted). That is not the case here. We decline to exercise our discretion to engage in plain error review of the issues raised by appellant.

Lastly, we reject appellant's claim of cumulative error. The phenomenon of cumulative error comes into play "only in the context of multiple findings of harmless error." *Muhammad v. State*, 177 Md. App. 188, 325 (2007). In a case with two or more

findings of harmless error, "the cumulative prejudicial impact of the errors may be harmful even if each error, assessed in a vacuum, would have been deemed harmless." *Id.* In evaluating the cumulative prejudice, it is "the told prejudicial impact that we measure, not the source or sources of the impact." *Jordan v. State*, 246 Md. App. 561, 602 (2020). As we have already determined, appellant's claims of error were either unpreserved or waived and with respect to his request for plain error review, he failed to meet the criteria set forth in *Rich*. Thus, appellant's claim of cumulative error fails.

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