UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 365

September Term, 2016

LISBON COLLER BLAYLOCK

v.

STATE OF MARYLAND

Krauser, C. J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 7, 2017

Convicted of two counts of sexual abuse against a minor and two counts of second degree sex offense, following a jury trial, in the Circuit Court for Prince George's County, Lisbon Coller Blaylock, appellant, contends on appeal that the State made an impermissible "golden rule" argument during rebuttal. Because Blaylock acknowledges that he did not object to the State's argument at trial, he requests us to exercise our discretion and engage in plain error review. We decline to do so and affirm Blaylock's convictions.

During his closing argument, Blaylock asserted that the victim was not credible because of his inability to recall the exact number of times he was abused and his delay in reporting the sexual abuse. In rebuttal, the State then made the following statement:

> How would you be to stand in that chair and tell 14 strangers, a judge, a bailiff, court reporter, the clerks, everybody, about your last consensual sexual relationship? How comfortable would you be? Imagine if it was done by someone you trusted. He's trying to forget what happened.

Blaylock contends that this statement constituted an impermissible "golden rule" argument because it "ask[ed] the jury to put themselves in the shoes of the victim[.]" *Donaldson v. State*, 416 Md. 467, 489 (2010). He further asserts, that despite his failure to object, the trial court plainly erred by not interrupting the prosecutor and either providing a curative instruction or declaring a mistrial.

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). Moreover, it involves four prongs: (1) the error must not have been intentionally relinquished or abandoned; (2) the error must be clear or obvious, not subject to reasonable dispute; (3) the error affected appellant's substantial rights, which means he must demonstrate that it affected the outcome of the court proceeding; (4) the appellate court has discretion to remedy the error, but this ought to be exercised only if the error affects the fairness, integrity, or public reputation of judicial proceedings. *Id*.

Even if we assume that the trial court erred by not, *sua sponte*, addressing the prosecutor's statement, we are persuaded that the error did not affect "appellant's substantial rights" or "the fairness, integrity, or public reputation of judicial proceedings." In support of his request for plain error review, Blaylock relies on *Lawson v. State*, 389 Md. 570 (2005). In that case, the Court of Appeals reversed the appellant's convictions for various sex offenses based on the prosecutor having made numerous improper arguments during closing. Specifically, the prosecutor twice made an improper "golden rule" argument, by asking the jurors to place themselves in the shoes of the victim's mother; accused the defense of not providing a motive for the victim to lie; stated that the defendant was a "monster;" and insinuated that, if the jury acquitted the defendant, he would be able to molest other children. *Id*. at 580. The Court of Appeals noted that, standing alone, each argument might not have warranted reversal, but "*when taken as a whole*, they could have

prejudiced the jury in such a way as to deny the defendant a fair and impartial trial." *Id*. at 604-05 (emphasis added).

In our view, the prosecutor's isolated remark in this case, if improper, did not remotely approach the prejudicial impact of the collective arguments made by the prosecutor in *Lawson*. Moreover, in finding that Lawson was prejudiced by the prosecutor's closing argument, the Court of Appeals noted that his case was "basically a 'she said, he said' case," where the victim's version of events, as related at trial, were inconsistent with her pre-trial statements to her mother and a social worker. *Id.* at 600, 605. However, the evidence against Blaylock was substantially stronger than in *Lawson* because, in addition to the victim's testimony, the State also introduced a recorded telephone call wherein Blaylock told the victim's mother that he had performed oral sex on the victim on at least two separate occasions. In short, when viewed in the context of the entire case, we do not believe that the prosecutor's argument affected Blaylock's substantial rights.

We also note that any improper argument by the State was readily correctable by the trial court upon a timely objection. To permit appellant to refrain from objecting at trial in order to raise the issue for the first time on appeal would run counter to the considerations of fairness and judicial efficiency discussed previously. *See Chaney v. State*, 397 Md. at 468. Consequently, we decline to exercise our discretion to engage in plain error review. *See Martin v. State*, 165 Md. App. 189, 195 (2005) (noting that it is "the extraordinary error

and not the routine error that will cause us to exercise the extraordinary prerogative [of reviewing plain error]").

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BYAPPELLANT.