Circuit Court for Worcester County
Case No.: C-23-CR-21-000087

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2044

September Term, 2021

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CHANTEE RENAE JOHNSON

v.

STATE OF MARYLAND

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Kehoe,
Beachley,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),
JJ.

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PER CURIAM

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Filed: December 30, 2022

*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.

Following trial in the Circuit Court for Worcester County, a jury found Chantee Renae Johnson, appellant, guilty of three counts of second-degree assault, disorderly conduct, and a noise ordinance violation.[1] Thereafter, the court sentenced her to two years' imprisonment with all but 60 days suspended for each count of second-degree assault, and 60 days' imprisonment for disorderly conduct. The court imposed all sentences to run concurrent with each other.[2]

Appellant noted an appeal. In it, she claims that the trial court made a plain error (1) in allowing the State to question appellant about her probationary status at the time of the incident, and (2) in allowing the State to make allegedly prohibited comments during its closing argument. We disagree and shall affirm.

## BACKGROUND

The charges against appellant in this case arose out of events that transpired on the boardwalk in Ocean City, Maryland, on the evening of June 6, 2020, after the police approached appellant in response to a noise complaint concerning the volume of the music she played from a "radio." The State's and the defense's witnesses portrayed substantially different versions of the ensuing police citizen encounter which culminated in appellant's forcible arrest.

[1]Prior to trial, the State entered a *nolle prosequi* on a count charging second-degree assault on a law enforcement officer and a count charging second-degree assault. During trial, the court granted appellant's motion for judgment of acquittal on a count charging malicious destruction of property.

[2] The court merged, for sentencing purposes, the conviction for the noise ordinance violation with the conviction for disorderly conduct.

At trial, the State presented the testimony of five police officers who were involved in appellant's arrest. In a nutshell, according to their testimony, appellant refused to turn down her music upon request, failed to display her identification upon request, and got up and attempted to walk away from the responding police officers. The police officers then placed her under arrest, handcuffed her, and placed her in a transport van. During that time, appellant refused to cooperate, laid on the ground, and struggled with the police by kicking them, hitting them, and biting at least one of them. One of the police officers eventually "used [his] taser [on appellant]" when appellant was half-way in the police transport van "to prevent any further assaults on [him] and other officers."

The defense witnesses, particularly appellant, painted a much different picture of appellant's interaction with the police that evening. Appellant testified that she complied with the police request for her to turn her music down by turning it completely off. She said that, at that point she attempted to walk away, but a police officer blocked her path with the tire of his bicycle stating "I'm not done with you." Appellant, who felt offended by the police officer's actions, attempted to again walk away, only to again be stopped by the police officer on his bicycle. She said that, after that, a group of police officers surrounded her and she sat down to "protect" herself. She said she did not resist the police officers even after they placed her in handcuffs, but said she was crying and acknowledged that she was "probably" also yelling. According to her, the police dragged her into the transport van by her arms and legs. She recalled that she "blanked out for a second" and when she "came back to" she "felt the taser in [her] right side."

Appellant's two godsons testified, consistent with appellant, that appellant turned her music off when asked by police to turn it down. One of them then left to move his car and did not return until appellant was being placed into the transport van. The other godson testified that, after appellant turned the music off, the police "started messing with her." He said that the police never asked appellant for her identification, never asked her for her name, and never attempted to write her a citation. He said that appellant started to walk away after she turned off the music and that the police were "trying to arrest her, but she wasn't – they tased her, so she fell straight to the ground."

Appellant's wife, who had been with appellant earlier and who had gone back to their hotel room after they left the beach, testified that she had appellant's identification with her. She testified that, after she received a telephone call informing her about appellant's arrest, she went to the scene to provide the police with appellant's identification, but did not get there until appellant had already been placed in the transport van. She said that, at that point, the police were not interested in speaking with her.

## DISCUSSION

### Appellant's Contentions

#### *The Cross Examination of Appellant*

Appellant first contends that the trial court made a plain error in "allowing" the State to question her about whether she was on probation for an unrelated offense at the time of the offense in this case without first laying a foundation establishing that she was, in fact,

on probation at that time.[3] She premises her argument on the following portion of the State's cross-examination of her at trial:

> [THE STATE]: Ms. Johnson, your counsel asked you about a previous conviction that you had in 2011, 2012; is that correct?
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> [APPELLANT]: Yes.
>
> [THE STATE]: At the time that you were stopped here in Ocean City for the noise violation, were you on probation for that offense?
>
> [APPELLANT]: No.
>
> [THE STATE]: Okay. You weren't on probation until April of 2021 roughly?
>
> [APPELLANT]: Not that I was aware of, no.
>
> [THE STATE]: Okay. Ms. Johnson, isn't it true that the reason you did not want to give the officers your name or your identification was because you were on probation from that offense –
>
> [APPELLANT]: No.
>
> [THE STATE]: – and because of the consequences you would have faced for having been arrested?
>
> [APPELLANT]: No. That don't have nothing to do with this.
>
> [THE STATE]: But you would agree that you were – had you violated probation for that offense, you would have been facing a significant period of time as far as a consequence?

[3] During a discussion that took place on the record prior to the commencement of appellant's trial, the State indicated that it believed that appellant had two prior convictions that could be used to impeach her credibility if she elected to testify in her own defense. As to one of the convictions, the State said, without objection or correction, that it believed that appellant, having been sentenced to twenty years' imprisonment with all but four years' suspended for that offense, "is still on probation for that charge." Neither of the parties mention this fact in their briefs in this Court.

[APPELLANT]: I wasn't thinking that far ahead. I don't even think that I was even on probation at that time because I had [satisfactorily] done what I was supposed to do as far as my probation officer was concerned.

[THE STATE]: So there was no wanting to shield your identity so that you didn't get in trouble for violating your probation?

[APPELLANT]: No.

***The State's Closing Argument***

Appellant next contends that the trial court made a plain error in permitting the State to make impermissible comments during its closing argument. First, appellant claims that the State was permitted to impermissibly vouch for the police officer witnesses, and state facts not in evidence, when it argued to the jury that the police officers should be believed because of the consequences they would face if it were discovered that they lied under oath. This argument is premised on the following excerpts of the State's closing argument at trial.[4]

> Again, credibility of witnesses, you, as the Judge said, are the sole determiners of credibility. It's something that you have just built into your common sense. You can look at a witness on the stand and you can determine whether they appear to be telling the truth, whether they have any biases, whether they have any outcomes in the case. And I would put forth to you that it would be extremely ridiculous to suggest that any of these five officers just for no good reason have it out for [appellant] of any other person in the world. *That they would come here, that they would perjure themselves, that they would risk their careers, that they would risk their families, everything that they have simply to lie so that they could convict Ms. Johnson of a few misdemeanor offenses.* That's certainly not reasonable. *Certainly when you're somebody whose career that you've gotten into is reliant upon your ability to testify in court every day, that would be much to risk.* And those are some of the things that you can consider when considering whether someone would tell the truth.

[4] We have included the emphasis supplied by appellant in her Brief of Appellant.

> There were probably hundreds of people on the boardwalk that day. A limited number of officers. You heard them testify about having to set up that perimeter and what that means, and how unusual it is to have somebody there for that long before they transport them. Again, because you're dealing with so many people.
>
> And again, what that speaks to is that it would be I think absolutely ridiculous to presume that all five of these officers would have just conspired together simply to harass [appellant] because she was playing a boom box a little bit too loud. That doesn't sound reasonable because it's not reasonable.
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> ***
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> *That's one of the reasons why the credibility instruction says, has an interest in the outcome of the case. The officers don't. This is one of probably a million cases that they're going to have throughout their careers.* But Ms. Johnson certainly has an outcome in this case. It gives her the reason to come here to minimize, I think to be untruthful, to not tell you exactly everything that happened.

Next, appellant claims that the trial court made a plain error in permitting the State to make "golden rule" arguments which impermissibly ask the jury to put themselves in the place of the victim and/or to consider their own interests during deliberations. This argument is premised on the following excerpts of the State's closing argument at trial.[5]

> For one, being the loud noise is the first charge. And again, the statute is it's unreasonably loud noise. Again, this is a local ordinance. We live in this county, people that live in Ocean City, we have laws that protect peace and comfort. As some people refer to them, these are sort of like the disorderly conduct laws, loud music. These are common sense laws. They're not laws that are designed to, you know, restrict every behavior, but it's common sense. And then, again, the boardwalk is a public place, it's a shared space. These laws benefit everybody in the community including people that come to the community to vacation such as the defendant. It's so that there is a mechanism, otherwise the boardwalk, Ocean City, it could become so unruly, so out of control. *If you can't even control the volume of certain things, it would be almost impossible to have any kind of peace or tranquility*

[5] We have again included the emphasis supplied by appellant in her Brief of Appellant.

*whatsoever. It would be just an unimaginable place to go*. So the unreasonably loud noise.

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We cannot live in a society where officers are given the task of enforcing the law, but then we tell them that there's nothing you can do to enforce the law. Officers have to be able to respond to resistance. If they're not able to respond to resistance, then you might as well throw every statute that we have in the trash because there's then nothing we can do.

So if you go up to somebody and they're violating an ordinance, no matter how minor it is, if the officers seek compliance and they believe you're in violation, if they can't get compliance, then they have protocols that they have to follow to be able to enforce it. First we're going to give you a warning. If you don't comply with the warning, then we have to give you a citation. If you don't comply with the citation, we have to detain you. If you refuse to be detained, we have to arrest you. That's how these things escalate. And it's unfortunate. Nobody wants to see that happen. But what choice do the officers have because if someone says, no, I'm just not going to be arrested today or I'm not going to comply, then the only other choice would be to say, okay, sorry to bother you, and we'll walk away. Have a nice day. We would never be able to enforce any laws. If we can't enforce the least of our laws, we can forget about the major crimes.

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Where you have Ocean City, where it can get quite chaotic in the summertime, *to have your officers taken away from their other duties where they're supposed to be,* to form a perimeter to keep a crowd back just to accommodate that person, I mean, that's above and beyond.

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Again, when we talk about just general enforcement of the law, it's absolutely crucial. *It's crucial because without it our law has no meaning. It has no purpose. Believe it or not, it's you sitting here that gives everything that comes before it effect. So nothing else matters unless people are willing to enforce the law…. And I think at this point now is the time to enforce that law.*

**Plain Error Review**

Appellant acknowledges that she lodged no contemporaneous objections to the court's allegedly improper conduct and has therefore failed to preserve the foregoing issues for appellate review. She asks us to overlook the lack of preservation and review the alleged errors 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).

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 omitted).

Consequently, we affirm the judgments of the circuit court.

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