

Circuit Court for Harford County
Case No. K-15-1602

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2145

September Term, 2016

THOMAS WARREN BUTLER

v.

STATE OF MARYLAND

Woodward, C.J.,
Eyler, Deborah S.,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 6, 2018

*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 Harford County, Thomas Warren Butler, appellant, was convicted of possession of heroin, possession of cocaine, and theft over \$1,000. Butler’s sole contention on appeal is that the trial court erred in allowing the prosecutor to make improper arguments during closing. For the reasons that follow, we affirm.

At trial, the State presented evidence that Butler stole tools and guns from the home of his close friend, Sean Maughan. When the police arrested Butler, they recovered thirty-nine individually wrapped bags of heroin, 2 bags of cocaine, syringes, a spoon and a lighter. The State also introduced Butler’s videotaped interview with the police following his arrest, wherein he admitted stealing the items from Maughan and pawning them in order to pay off a debt to the “Bloods” gang.

Butler testified, however, that he had lied to the police during that interview and that Maughan had actually given him permission to pawn the items so that they could obtain money to buy drugs. He also indicated that the drugs recovered from his person were for personal use and that he had previously taken seventeen baggies of heroin in one dose. In support of his defense, Butler also called Maughan’s wife, who testified that Maughan previously had a drug and alcohol problem and that, as a result, he had to go to a drug rehabilitation facility.

During closing, the prosecutor argued that Butler was not telling the truth about the drugs being for personal use, stating:

Seventeen baggies of heroin . . . is not one dose. And Corporal Gentile told you that you need one [baggie] to get high. *And quite frankly, 17 [baggies] would kill him. 17 in one setting would kill him.*

During rebuttal, the prosecutor also made the following argument regarding the testimony of Maughan’s wife:

[Mrs.] Maughan saw something in her husband that maybe he didn’t see. But he addressed it. They addressed it as a couple and as a family when he went to rehab in February. Somehow now the Defendant wants you to use that information so that he can get away with what he did to them, so that they can get away with the theft that he admitted, so that they can get away with stealing those tools and stealing the guns and selling them without permission. *He wants you to use that private, personal information that he knew about and he dragged her into court and made her tell you about it.*

On appeal, Butler contends that both of these arguments were improper because they referenced facts that were not in evidence.¹ Butler acknowledges that these claims are 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) (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

¹ We note that the jury acquitted Butler of possession with intent to distribute.

of preservation and 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 HARFORD COUNTY
AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**