

Circuit Court for Carroll County
Case No. 06-K-17-048225

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2543

September Term, 2017

YANBIN LIN

v.

STATE OF MARYLAND

Fader, C.J.,
Shaw Geter,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: January 15, 2019

* 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.

Appellant Yanbin Lin appeals from her convictions for prostitution and operating as a massage therapist without a license. Ms. Lin contends that the Circuit Court for Carroll County committed plain error when it did not declare a mistrial on its own initiative after a State’s witness testified that Ms. Lin was known to police as “a worker providing massage and sexual services.” Ms. Lin acknowledges that she did not object to the testimony at the time, but asks us to engage in plain error review. We decline and so affirm her convictions.

BACKGROUND

Detective Chad Lettau, a member of the Baltimore County Police Vice Unit, suspected a massage parlor in Hampstead, Maryland of providing prostitution and illegal massage services. He and officers from the Hampstead Police Department in Carroll County obtained a search and seizure warrant and set up a sting operation during which Detective Lettau posed as a prospective customer. According to the detective’s trial testimony, Ms. Lin was the sole individual he encountered at the massage parlor: she let him into the building, showed him to a room, began giving him a massage, and then agreed to perform sexual favors in exchange for money. Ms. Lin was also the only person on the premises when police executed a search warrant later that day. Officers arrested Ms. Lin and charged her with several prostitution-related offenses.

Ms. Lin’s defense at trial was mistaken identity. The testimony giving rise to her contention on appeal occurred during her counsel’s cross-examination of Detective Lettau after the detective testified that he had been aware of who the owner or lessee of the property was before the sting operation:

[DEFENSE COUNSEL]: You knew that a head [sic] of time?

[DETECTIVE LETTAU]: Yes but I couldn't recall what she looked like. We actually encountered the Defendant in 2015 at a massage parlor on BelAir [sic] Road where she was identified as a worker providing massage and sexual services to clients so we had prior knowledge of her being in the area and conducting this type of activity before.

[DEFENSE COUNSEL]: Understood. So at this point you were not the one that detained her once everybody was—

[DETECTIVE LETTAU]: Correct, I was not.

Defense counsel did not make a contemporaneous objection to any portion of this testimony. A jury convicted Ms. Lin of prostitution and operating as a massage therapist without a license.¹ Ms. Lin appeals.

DISCUSSION

“Plain error review is ‘reserved for those errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant of a fair trial.’” *Newton v. State*, 455 Md. 341, 364 (2017) (quoting *Robinson v. State*, 410 Md. 91, 111 (2009)). Addressing an unpreserved issue “is a discretion that appellate courts should rarely exercise” because it has the potential of undermining “considerations of both fairness and judicial efficiency.” *Chaney v. State*, 397 Md. 460, 468 (2007). “This Court has stated that ‘appellate review under the plain error doctrine always has been, still is, and will continue to be a rare, rare phenomenon.’” *Yates v. State*, 202 Md. App. 700, 720-21 (2011) (formatting removed) (quoting *Kelly v. State*, 195 Md. App. 403, 432 (2010)).

¹ The jury also convicted Ms. Lin of receiving earnings of a prostitute in violation of § 11-304 of the Criminal Law Article, but the court subsequently entered judgment in her favor on that count because, it found, “one cannot be guilty of the substantive offense of receiving earnings of a prostitute if that person is also the one engaged in prostitution.”

A four-pronged test must be satisfied before we grant relief based on plain error: (1) “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”; (2) “the legal error must be clear or obvious, rather than subject to reasonable dispute”; (3) “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 . . . proceedings”; and (4) “if the above three prongs are satisfied,” we have “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.’” *State v. Rich*, 415 Md. 567, 578 (2010) (quoting *Puckett v. United States*, 556 U.S. 129, 135 (2009)).

Here, Ms. Lin argues that the circuit court erred in not declaring a mistrial on its own initiative in light of Detective Lettau’s testimony. “[D]eclaring a mistrial is an extreme remedy not to be ordered lightly.” *Nash v. State*, 439 Md. 53, 69 (2014). A mistrial should only “be resorted to when such overwhelming prejudice has occurred that no other remedy will suffice to cure the prejudice.” *Burks v. State*, 96 Md. App. 173, 187 (1993). Notably, determining when prejudice has occurred is left “to the sound discretion of the trial judge” because “that judge is in the best position to evaluate it.” *State v. Hawkins*, 326 Md. 270, 278 (1992). This is because the trial “judge is physically on the scene, able to observe matters not usually reflected in a cold record.” *Id.* Put another way, “the judge has his finger on the pulse of the trial” and can best assess whether a mistrial is warranted. *Id.* We therefore afford great deference to a trial court’s decision to grant or

deny a mistrial even in circumstances in which a motion for mistrial is actually made. Where no such motion is made, the trial court is deprived of the opportunity to consider the request and we are deprived of the benefit of the trial court's reasoning and considered judgment. It would only be the truly exceptional case in which we could even consider error in such a circumstance.

This is not such a case. Detective Lettau identified Ms. Lin as the woman who offered sexual services to him and as the only person he saw in the massage parlor the entire time he was there. Ms. Lin, the lessee of the property and the person who signed the lease, was also the only person on the premises when police later executed the search warrant. Moreover, there was uncontradicted evidence that (1) the woman Ms. Lin claimed Detective Lettau mistook for her left the premises by 10:30am and (2) Detective Lettau did not arrive on the premises until around 11:19am. Thus, even if Detective Lettau's comment about his previous knowledge of Ms. Lin was improper, it did not "seriously affect[] the fairness, integrity or public reputation of judicial proceedings." *Rich*, 415 Md. at 578 (quoting *Puckett*, 556 U.S. at 135) (citation omitted).

Ms. Lin asks us to take the exceptional step of recognizing plain error based on the circuit court's failure to take the extraordinary step of declaring a mistrial that Ms. Lin never requested. We decline to do so.

**JUDGMENT OF THE CIRCUIT COURT
FOR CARROLL COUNTY AFFIRMED;
COSTS ASSESSED TO APPELLANT.**