Circuit Court for Prince George's County
Case No. C-16-CR-23-001712

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 112

September Term, 2024

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BENCITO ORANDEY NIYAI BRAMBLE

v.

STATE OF MARYLAND

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Shaw,
Albright,
Kehoe, Christopher B.
(Senior Judge, Specially Assigned)

JJ.

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Opinion by Shaw, J.

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Filed: December 11, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant Bencito Orandey Niyai Bramble was convicted in the Circuit Court for Prince George's County, of knowingly transporting a handgun in a vehicle and knowingly transporting a **loaded** handgun in a vehicle. The court merged the two counts and sentenced Appellant to two years imprisonment with all but 126 days suspended, to be followed by one year of supervised probation. Appellant filed this timely appeal.

He presents one question for our review:

1. Did the trial court err in instructing the jury on the offenses of knowingly transporting a **loaded** handgun in a vehicle and knowingly transporting a handgun in a vehicle?

We hold that the circuit court did not err and accordingly, we affirm.

## BACKGROUND

On May 9, 2023, Appellant was arrested after Prince George's County Police Department Officers Terrell Barnes and Matthew Pente conducted a traffic stop for illegal tint on Appellant's vehicle and found that Appellant had a loaded handgun and ammunition in his vehicle.[1] Appellant was charged with knowingly transporting a **loaded** handgun in a vehicle and knowingly transporting a handgun in a vehicle. Appellant later elected to be tried by a jury.

At the October 12, 2023, jury trial, Officer Barnes testified for the State and stated that during the traffic stop, Appellant informed the officers that he had a "handgun qualification license" (HQL) for the handgun found in his vehicle. Officer Barnes

[1] Transcript from October 12, 2023, p. 165 – 221.

explained that an HQL allows a person to legally purchase a handgun and "to transport it in certain areas to and from the range."[2] The State asked Officer Barnes if a person with an HQL is permitted to leave a loaded handgun in a backpack on the passenger seat while they drive. Officer Barnes responded no and emphasized that the gun must be "in the trunk" with the ammunition magazine separated from the weapon.[3] The State then asked if a magazine was in the handgun recovered, and Officer Barnes confirmed that the magazine was in the handgun which meant the handgun was loaded.[4] Officer Pente also testified that an HQL "allows you to buy, rent or purchase a firearm"[5] and allows a person to transport an unloaded handgun "in [a] certain manner."[6] Officer Pente clarified that during transport, the gun must be unloaded, and the ammunition must be separate from the gun, "in a gun safe or locked mechanism"[7], and if a handgun is being transported to a gun range, the gun must be "in a locked compartment, whether that's the trunk or . . . the glove compartment, locked."[8]

Appellant testified that he had the gun in his vehicle because he planned to go to the gun range, but then he became distracted with delivering meals for DoorDash, a food delivery company, and forgot to go to the gun range.[9] On cross-examination, Appellant was asked if he keeps the gun "cocked and loaded" when he goes to the range, and

[2] *Id*. at p. 168, 175.
[3] *Id.*, p. 49, lines 16-17.
[4] *Id*., p. 49, lines 14 -21.
[5] *Id.* at p. 231.
[6] *Id*. at p. 232.
[7] *Id*.
[8] *Id*. at p. 232, 240.
[9] *Id*. at p. 259-260.

Appellant testified that he did not know.[10] The State asked Appellant whether, when he received his handgun qualification license (HQL), he was instructed on how he was supposed to transport that handgun, and if he was instructed that he could "carry it loaded", "carry it cocked", or "carry it in a nonsecure backpack". Appellant answered, "I don't know."[11] Finally, the State asked Appellant if he was instructed, when he received his HQL, on "what part of the car . . . you could carry [the handgun] to and from the range," to which Appellant responded, "I don't know."[12]

> At the conclusion of the evidence, the court instructed the jury as follows:
>
> THE COURT: . . . the Defendant is charged with two offenses. One is transporting a **loaded** handgun; one is transporting a handgun . . . Additionally, the Defendant is charged with the crime of transporting a **loaded** handgun while on the public roads or highways. In order to convict the Defendant, the State must prove the Defendant knowingly transported a **loaded** handgun in a vehicle and the Defendant did so while traveling on the public roads or highways.[13]

(emphasis added).

Defense counsel requested to approach the bench and highlighted to the judge that he "didn't add [that] the gun was loaded as an element of the offense. So, I would just ask that you ensure that the instructions as to the loaded gun include that the gun was loaded as an element . . . I [] believe that when you were going through the elements, Your Honor,

[10] *Id*. at p. 262, line 21-22.
[11] *Id*. at 263, lines 7 – 16.
[12] *Id.*
[13] *Id.* at p. 288 – 289, lines 23 -32.

you only read one and two as opposed to the handgun was loaded as an element."[14] The judge then provided the following, revised instructions:

> THE COURT: the Defendant is charged with transporting a **loaded** handgun, and you must also find that if the Defendant transported it, it was in fact – he is charged with transporting a handgun and is also charged with transporting a **loaded** handgun. You must find that it was **loaded**.[15]

(emphasis added). At the conclusion of the court's full instructions to the jury, counsel for the Defendant "renew[ed] our previous objection as to the loaded element."[16] The Court responded, "Okay, so noted. Thank you."[17]

The jury subsequently returned verdicts of guilty on both handgun counts. Appellant was sentenced to two years' imprisonment, with all but 126 days suspended, to be followed by one year of supervised probation. He filed this timely appeal.

## STANDARD OF REVIEW

"At the request of either party, the trial court shall 'instruct the jury as to the applicable law and the extent to which the instructions are binding[,]' but the trial court need not 'grant a requested instruction if the matter is fairly covered by [other] instructions[.]'" *Jarvis v. State*, 487 Md. 548, 563-64 (2024) (quoting Md. Rule 4-325(c)). A requested jury instruction is required when (1) it "is a correct statement of the law;" (2) it "is applicable under the facts of the case;" and (3) its contents were "not fairly covered

[14] *Id*. at p. 291 - 292, line 22 - 31.
[15] *Id*. at p. 292, lines 9-14.
[16] *Id.* at p. 293, line 9-16.
[17] *Id.* at p. 293, lines 8-17.

elsewhere in the jury instruction[s] actually given." *Rainey v. State*, 480 Md. 230, 255 (2022) (quoting *Ware v. State*, 348 Md. 19, 58 (1997)).

To assign error to a trial court's refusal to give a particular jury instruction, the aggrieved party must lodge an on-the-record objection "promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection." Md. Rule 4-325(f). On appeal, we review the overall decision of the trial court for an abuse of discretion. Whether the instruction is applicable to a case is akin to assessing the sufficiency of the evidence, which requires a *de novo* review. *Rainey*, 480 Md. at 255.

## DISCUSSION

Appellant argues that the trial court erred in instructing the jury on the offenses of knowingly transporting a **loaded** handgun in a vehicle and knowingly transporting a handgun in a vehicle. Appellant asserts that the trial court failed to follow the pattern jury instructions as the instructions did not include that the gun "was within (pronoun) reach and available for (pronoun) immediate use." Appellant contends that the court's failure to properly instruct the jury prejudiced him.

The State argues that neither of Appellant's claims are properly before this Court for appellate review. As to the **loaded** handgun offense, the State argues that Appellant "expressly acquiesced to the judge's re-instruction on this point," and that Appellant, on appeal, is now offering a new argument. Because the trial judge did not have the opportunity to address the new argument, the State contends that the issue was not

preserved. As to the second charge, the State argues that the issue, also, was not preserved and plain error review is not available.

This Court addressed the issue of preservation in *Williams v. State*, 99 Md. App. 711 (1994). There, the appellant was convicted of possession with intent to distribute cocaine and related offenses. *Id*. at 711. On appeal, he contended "that [the circuit court] erroneously permitted a prior conviction to be used to impeach the credibility of a defense witness without engaging in the balancing test required by Maryland Rule 1-502 [.]" *Id.* at 715. This Court held that because the appellant did not make that argument below, it was not preserved for appellate review. *Id*. We noted that the appellant failed to object to the line of questioning that he, on appellate review, argued was improper. This Court stated that since the objection was not immediately made, there was "nothing preserved for appellate review." *Id*. at 718. Appellant filed a petition for writ of certiorari, and the Supreme Court of Maryland affirmed this Court's holding, citing this Court's language stating that "what was preserved is not being pursued; what is being pursued was not preserved." *Williams v. State*, 344 Md. 358 (1996) (quoting *Williams*, 99 Md. App. at 716).

In 2023, this Court again examined the issue of preservation in *Robson v.* State, 257 Md. App. 421 (2023). We reiterated that Md. Rule 8-131(a) "makes ambiguously clear, the appellate courts of this state 'ordinarily will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court.'" *Robson v. State*, 257 Md. App. 421 (2023) (quoting *Small v. State*, 235 Md. App. 648, 696 (2018)). Our Court explained that the "purpose of the preservation requirement is to preserve the

integrity and the efficiency of the trial itself" and that the primary purpose is not to "facilitate or to foreclose appellate review of a trial error," but rather to "eliminate any necessity for appellate review." *Robson* at 460. "A secondary purpose of the preservation requirement is to protect the trial judge from being charged with error without having been alerted to the risk by counsel." *Id*. at 461. The issue in *Robson* revolved around "nuanced prohibitions" regarding compound *voir dire* questions. Our Court emphasized that if the trial attorney had "alerted the judge to the nuanced prohibitions . . . there is every expectation that the judge, with the assistance and concurrence of counsel, would promptly have remedied whatever defect needed remedying and that no error would have occurred." *Id.* At trial, the defense attorney provided the problematic compound *voir dire* question to the judge and the judge read the question verbatim to the prospective jurors. *Id.* On appeal, counsel for the appellant argued the court erred in posing the *voir dire* question that he proposed. We stated, "[F]ar from simply not alerting the judge that the danger of trial error lay ahead, counsel was actually an accessory before the fact to the very error of which he now complains." *Id*. We held that counsel's actions were "an actual express and affirmative waiver of any possible objection." *Id*.

In the present case, Appellant asserts that the judge erred in failing to instruct the jury in accordance with the Maryland Criminal Pattern Jury Instruction on transporting a **loaded** handgun. Appellant argues that the judge's instruction were prejudicial as it was missing key language, in that he failed to state that the gun "was within (pronoun) reach and available for (pronoun) immediate use." MPJI-Cr 4:35.3.

During the October 12th trial, the judge instructed the jury:

> THE COURT: "The Defendant is charged with the crime of carrying a handgun while on public – strike that. The Defendant is charged with the crime of carrying a handgun. The Defendant wore, carried or transported a handgun . . ."[18]
>
> MS. MARTIN: Your Honor, may we approach?
>
> THE COURT: You may.
>
> [. . .]
>
> MS. MARTIN: Your Honor, Mr. Bramble is only charged with knowingly transport on public roads.
>
> THE COURT: Say again?
>
> MS. MARTIN: Mr. Bramble is only charged with knowingly transport, not wear or carry, in both Counts 1 and 2 of the indictment. So I would ask that you - -
>
> THE COURT: The wear and carry?
>
> MR. THOMPSON: No , she is right. It is the transport that is part of it. So rather than wear or carry, just the transport part.
>
> THE COURT: Okay.
>
> MS. MARTIN: The language regarding wearing and carrying should be taken out.
>
> THE COURT: Which part?
>
> [ . . . ]
>
> MS. MARTIN: Your Honor, it should be 4:35.3.
>
> [. . . ]

[18] *Id*. at p. 282, lines 10-13.

> MS. MARTIN: It is .3 as opposed to .2, Your Honor, and I would still take out the language.
>
> THE COURT: Take out which language.
>
> MR. THOMPSON: Just the wore or carried part.
>
> [. . .]
>
> MS. MARTIN: And then Count 1 also requires the element that it was loaded.
>
> [ . . .]
>
> MS. MARTIN: The issue is that for both counts, he is only charged with knowingly transport. So, one should be edited to take out the language of wear or carry, and it should be the Defendant knowingly transported.
>
> THE COURT: Count 2 is wear and transport.
>
> MS. MARTIN: They are both knowingly transport. Count 1 is loaded and Count 2 is unloaded. Other than that, they are the same charge.[19]

At the conclusion of the bench conference, the judge provided the following instruction, stating:

> ". . . as I indicated the Defendant is charged with two offenses. One is transporting a **loaded** handgun; one is transporting a handgun . . . Additionally, the Defendant is charged with the crime of transporting a **loaded** handgun while on the public roads or highways. In order to convict the Defendant, the State must prove the Defendant knowingly transported a **loaded** handgun in a vehicle and the Defendant did so while traveling on the public roads or highways."[20] (emphasis added).

[19] *Id*. at p. 282 - 288, line 14 - 172.
[20] *Id.* at p. 288 – 289, lines 23 -32.

Both counsel approached the bench and Appellant's counsel pointed out that the judge "didn't add [that] the gun was loaded as an element of the offense. So, I would just ask that you ensure that the instructions as to the loaded gun include that the gun was loaded as an element . . . I [] believe that when you were going through the elements, Your Honor, you only read one and two as opposed to the handgun was loaded as an element."[21] The judge then instructed the jury:

> THE COURT: Ladies and gentlemen, I have instructed you that the Defendant is charged with transporting a **loaded** handgun, and you must also find that if the Defendant transported it, it was in fact – he is charged with transporting a handgun and is also charged with transporting a **loaded** handgun. You must find that it was **loaded**.[22] (emphasis added).

At the conclusion of the court's full instructions to the jury, counsel for Appellant "renew[ed] our previous objection as to the loaded element." The Court responded, "Okay, so noted. Thank you."[23]

On appeal, Appellant contends that there was error because the jury instruction did not include language related to proximity or accessibility. However, at trial, Appellant repeatedly objected to the court's failure to use language related to the "**loaded** element;" Counsel did not articulate an objection to the lack of specific language relating to whether the gun ". . . was within (pronoun) reach and available for (pronoun) immediate use." As we see it, Appellant's failure to articulate an objection specifying the language omitted by the trial judge means that the issue is not properly preserved for appellate review. Md.

[21] *Id*. at p. 291 - 292, line 22 - 31.
[22] *Id*. at p. 292, lines 9-16.
[23] *Id.* at p. 293, lines 8-17.

Rule 8-131(a)("Ordinarily, an 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.").

As for the second count, Appellant argues that the trial judge plainly erred in failing to instruct the jury that the State was required to prove that the handgun was within Appellant's reach and available for his immediate use. Appellant concedes that defense counsel did not object, however, he contends that "the error vitally affected Mr. Bramble's right to a fair trial, and this Court should, therefore, exercise its discretion to review his claim as plain error" under Maryland Rule 4-325(f). The State argues that plain error review is not available and cites *Booth v. State*, 327 Md. 142 (1992).

Plain error is "error which vitally affects a defendant's right to a fair and impartial trial." *State v. Daughton*, 321 Md. 206, 211 (1990). An appellate court should "intervene in those circumstances only when the error complained of was so material to the rights of the accused as to amount to the kind of prejudice which precluded an impartial trial." *Robinson v. State*, 410 Md. 91, 111 (2009) (citation omitted). The Supreme Court of Maryland, in *Miller v. State*, 380 Md. 1 (2004), explained under what circumstances the exercise of plain error is justified: "[We] have limited our review under the plain error doctrine to circumstances which are compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial." *Miller* at 29-30 (citations omitted). In *Newton v. State*,

455 Md. 341 (2017), the Supreme Court of Maryland discussed the four conditions that must be met in order for an appellate court to consider the exercise of its discretion.

> Plain error review is reserved for those errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant of a fair trial. Before we can exercise our discretion to find plain error, four conditions must be met: (1) there must be an error or defect-some sort of deviation 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 [trial] court proceedings; and (4) the error must seriously affect the fairness, integrity or public reputation of judicial proceedings.

*Newton*, 455 Md. at 364 (cleaned up) (citing *State v. Rich*, 415 Md. 567, 578 (2010)) (quoting *Pluckett v. United States*, 556 U.S. 129, 135 (2009)).

As to the first condition, Appellant's attorney concedes that he did not object to the jury instructions regarding the transportation of a handgun. We note, further, that the court did not fail to instruct the jury on the elements of the offenses, nor did the court fail to instruct the jury on issues related to Appellant's substantial rights.[24] *Lawrence v. State*, 475

[24] The State and the Defense submitted **MPJI-Cr 4:34.3**, which instructs on the crime of "Wearing, Carrying or Transporting a Handgun *In a Vehicle*. The parties discussed this pattern jury instruction at length with the judge during two bench conferences. That instruction does *not* include the proximity and accessibility language Appellant is now raising as an issue on appeal. The trial court correctly provided the elements of the agreed upon pattern jury instruction – MPJI-Cr 4:35.3.

On appeal, Appellant argues that the trial court failed to provide the jury instruction ". . . was within (pronoun) reach and available for (pronoun) immediate use", but that language is found in **MPJI-Cr §7.82(A)(1)** which instructs on "Wearing, Carrying or Transporting Handgun, Openly or Concealed: *On or About the Person*", which was *not* provided as jury instructions for the court to give, nor did the Defense request it at trial. Appellant 's repeated argument, and objection, was that the court did not properly instruct on the "*loaded* element". However, the court did properly instruct on the loaded element, as seen on pages 282 – 293 of the October 12th Jury Trial Transcript, and within Appellant's Appendix on pages App. 1-11.

Md. 384 (2021). Error, if any, did not seriously affect the fairness, integrity or public reputation of the judicial proceedings. As a result, we decline plain error review, and we affirm the judgment of the circuit court.

**JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.**