

Circuit Court for Baltimore City
Case No. 123234006

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 236

September Term, 2024

DANTE DUNSTON

v.

STATE OF MARYLAND

Berger,
Tang,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 28, 2025

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Convicted by a jury in the Circuit Court for Baltimore City of possession of a firearm by a prohibited person, Dante Dunston, appellant, presents for our review two issues: whether the court “plainly erred in failing to take curative action,” and whether the evidence is insufficient to sustain the conviction. For the reasons that follow, we shall affirm the judgment of the circuit court.

At trial, the State called Baltimore City Police Detective Jacob Dahl, who testified that at approximately 7:00 p.m. on July 25, 2023, he and other officers were “conducting . . . a routine foot patrol in the area of the 1800 block of Wilhelm Street,” when he “heard . . . noises coming from 1805 Wilhelm Street,” which was “[c]learly marked on [its] front façade” as “vacant” and “unsafe for habitation.” Detective Dahl “pushed on the front door” and “saw two individuals standing on . . . like the kitchen area towards the rear of the first floor of the house.” The individuals were a “[w]hite female” and “a [b]lack male” that the detective identified at trial as Mr. Dunston. Detective Dahl “shined [his] flashlight[,] identified [him]self as a police officer[,] and gave [a] verbal command for them [to come] towards” the detective “so [he] could investigate.” Mr. Dunston “started backing away in the opposite direction of [Detective Dahl] towards the back door,” then “abruptly took off and ran.” The detective “gave chase” and “apprehended Mr. Dunston just around the corner.”

After Mr. Dunston was “placed . . . in handcuffs,” Detective Dahl “responded back to 1805 Wilhelm Street to secure the location.” The detective “went back . . . through the same front door that [he] had entered from” and “went to the kitchen area where Mr. Dunston and the unidentified [w]hite female had been when [the detective] first opened

that front door.” “[I]mmediately to where Mr. Dunston had been standing, to his right was a backpack on a table.” Detective Dahl picked the backpack up, “immediately noted how heavy it was,” opened it, and discovered a loaded “20-gauge break action shotgun with a sawed-off barrel.”

Detective Dahl subsequently reviewed video recordings made by “Citiwatch . . . cameras,” which are “cameras you see typically with the blue blinking lights on . . . street corners . . . in the city.” The State played for the jury a video recording made by one of the cameras, in which, the detective testified, “Mr. Dunston can be seen walking with a bicycle northbound on the street” and “wearing a backpack.” The recording also depicts Mr. Dunston “holding what appears to be some type of food item on a white paper plate.” Detective Dahl testified that the recording depicts Mr. Dunston wearing the “[s]ame hat, same clothing that [he] was wearing when [the detective] arrested him just a . . . short time later,” and that the backpack “is the same one that [the detective] recovered out of the house.” Detective Dahl recognized the “white stripes on the back” of the backpack and its “white emblem.” The State also played for the jury a video recording made by Detective Dahl’s body-worn camera inside the Wilhelm Street address. The detective testified that in the recording, “the backpack that [he] described earlier on the CitiWatch camera footage is laying behind [a] table, as well as the white paper plate with what appears to be a grease stain.” Detective Dahl further testified that the recording depicted him “pull[ing] out a can of cat food from the bag.”

The State also called Baltimore City Police Detective Justin Oliva, who testified that he assisted Detective Dahl in apprehending Mr. Dunston. The State played for the jury

a video recording made by Detective Oliva’s body-worn camera. The detective testified that the recording depicts Mr. Dunston asking a man wearing a yellow shirt “to feed his cats.” The parties stipulated that Mr. Dunston “is legally prohibited from possessing a regulated firearm and/or ammunition under the laws of this State under Public Safety Article 5-133, due to a disqualifying conviction.”

Mr. Dunston first contends that the court “erred in failing to take curative action when a juror provided an ambiguous response to the polling of the jury.” Following deliberations, the foreperson announced that the jury had found Mr. Dunston guilty of possession of a firearm by a prohibited person. Defense counsel subsequently asked that the jury be polled. When the court clerk asked Juror Number 6 whether the juror’s verdict was the same as that read by the foreperson, the juror replied: “Sorry. Does that mean that we agree with the verdicts that she’s read, or that it’s accurate for what we – ?” The court replied: “It’s accurate.” The juror stated: “Okay. I agree.”

Mr. Dunston contends that the “court should have taken corrective action to determine whether Juror [Number] 6 agreed with the verdict,” because “the record suggests that the juror may not have agreed with the verdict.” Acknowledging that “defense counsel did not object to [the] response to the polling,” Mr. Dunston requests that we “review the issue for plain error.” We decline to do so. Although this Court has discretion to review unpreserved errors pursuant to Rule 8-131(a) (“[o]rdinarily, an appellate court will not decide any . . . 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”), the Supreme Court of

Maryland 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) (internal 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) (internal citation and quotations omitted). Under the circumstances presented here, we decline to overlook the lack of preservation, and do not exercise our discretion to engage in plain error review. *See Morris v. State*, 153 Md. App. 480, 506-07 (2003) (noting that the 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)).

Mr. Dunston next contends that, for numerous reasons, “the evidence is insufficient to prove that he had knowledge of the presence of the firearm,” that “he was in actual or direct possession of the backpack or the firearm within it,” or that “he jointly, constructively[,] or indirectly possessed the firearm.” We disagree. We have stated “that the controlled set of guidelines for determining constructive possession is as follows:

1) proximity between the defendant and the contraband, 2) the fact that the contraband was within the view or otherwise within the knowledge of the defendant, 3) ownership or some possessory right in the premises . . . in which the contraband is found, or 4) the presence of circumstances from which a reasonable inference could be drawn that the defendant was participating with others in the mutual use and enjoyment of the contraband.”

White v. State, 250 Md. App. 604, 651 (2021) (internal citations and quotations omitted).

Here, Detective Dahl testified that the video recording made by the Citiwatch cameras depicted Mr. Dunston wearing a backpack and carrying food on a white paper plate. The detective later discovered Mr. Dunston, who was accompanied by a female, inside a residence that was clearly marked as vacant and unsafe for habitation. Mr. Dunston was wearing the same clothing as depicted in the video recording, and was standing next to a table behind which Detective Dahl discovered the backpack and plate. Noting “how heavy [the backpack] was,” the detective searched the backpack and discovered the firearm. Detective Dahl also discovered inside the backpack a can of cat food, after which Mr. Dunston asked an individual to “feed his cats.” From this evidence, a rational trier of fact could conclude beyond a reasonable doubt that Mr. Dunston constructively possessed the firearm, and hence, the evidence is sufficient to sustain the conviction.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**