

Circuit Court for Allegany County
Case No. K-16-17936

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 399

September Term, 2017

ANDREW COUSER

v.

STATE OF MARYLAND

Woodward, C.J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 7, 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 bench trial in the Circuit Court for Allegany County, Andrew Couser, appellant, was convicted of possession of a controlled dangerous substance (CDS) with intent to distribute, possession of CDS paraphernalia, and two counts of possession of CDS. Couser raises two issues on appeal: (1) whether the trial court erred in allowing him to waive his right to a jury trial without first making an on-the-record determination that his waiver was knowing and voluntary which, he claims, violated Maryland Rule 4-246(b), and (2) whether the trial court erred in considering his out-of-county residency as a sentencing factor. Couser acknowledges that neither of these claims are preserved for appellate review because he did not object at trial. He therefore requests that we exercise our discretion to engage in “plain error” review of these issues pursuant to Maryland Rule 8-131(a).

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 of preservation and exercise our discretion to engage in plain error review of these issues. *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 ALLEGANY COUNTY
AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**