

Circuit Court for Baltimore City
Case No. 117311017

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 522

September Term, 2018

ERVIN DANTZLER

v.

STATE OF MARYLAND

Meredith,
Graeff,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 30, 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.

Following a jury trial in the Circuit Court for Baltimore City, Ervin Dantzler, appellant, was convicted of wearing, transporting, or carrying a firearm on his person and possession of a regulated firearm after having been convicted of a disqualifying crime. He raises two issues on appeal: (1) whether the court abused its discretion in admitting the video from a body camera worn by Officer Jared Dollard, and (2) whether the trial court abused its discretion in giving the jury a flight instruction. Because the court did not abuse its discretion in admitting body camera footage and Mr. Dantzler’s jury instruction claim is not preserved for appeal, we shall affirm.

Mr. Dantzler first contends that the court abused its discretion in admitting the video from Officer Dollard’s body camera because, he claims, the State failed to authenticate it. We disagree. Ordinarily, “we will ‘not disturb a trial court’s evidentiary ruling unless the evidence is plainly inadmissible under a specific rule or principle of law or there is a clear showing of an abuse of discretion.’” *Bey v. State*, 228 Md. App. 521, 535 (2016). Rule 5-901(a) mandates that a party authenticate evidence for it to be admissible, which requires “evidence sufficient to support a finding that the matter in question is what its proponent claims.” The Court of Appeals has held that a videotape is considered in the same manner as a photograph “for admissibility purposes.” *Washington v. State*, 406 Md. 642, 651 (2008). There are two methods of authenticating photographs and videos. Relevant to this appeal, one of those methods is “the pictorial testimony theory of authentication,” which allows photographic evidence to be authenticated when a “witness testifies from first-hand knowledge that the photograph fairly and accurately

represents the scene or object it purports to depict as it existed at the relevant time.” *Id.* at 652 (citation omitted).

In challenging the admissibility of the video, Mr. Dantzler claims that the State could not authenticate the video because Officer Dollard was unavailable to testify at trial. However, before the State sought to move the video into evidence, Officer John Gossett testified that: (1) he, Officer Dollard, and Officer David Burch had been on patrol in an unmarked police vehicle when they observed Mr. Dantzler walking with two other men; (2) he observed Officer Dollard and Officer Burch exit the vehicle to speak with Mr. Dantzler; (3) he observed Mr. Dantzler immediately flee from Officer Burch and Officer Dollard; and (4) he followed Officer Dollard and Mr. Dantzler in his police vehicle until Mr. Dantzler ran into a nearby residence. The State also introduced video footage from Officer Gossett’s body camera, which depicted Mr. Dantzler’s initial flight and the subsequent chase. Thereafter, the State showed the video from Officer Dollard’s body camera to Officer Gossett, who indicated that he was familiar with the video and that it was a “fair and accurate representation of what [he had] observed on the date and time in question.”

Although it is true that Officer Gossett and Officer Dollard might have had different vantage points, Officer Gossett was present at the scene and observed Mr. Dantzler and Officer Dollard throughout the entire encounter. In fact, Officer Gossett’s police vehicle can be seen multiple times in the video footage from Officer Dollard’s body camera. Therefore, the State laid a sufficient foundation for the jury to conclude that the video from Officer Dollard’s body camera fairly and accurately represented the

scene that it purported to depict. Consequently, we are persuaded that the court did not abuse its discretion in admitting the video.

But even if the court had abused its discretion in admitting the video, any error was harmless beyond a reasonable doubt. First, video footage obtained from the body cameras of the other officers, which was admitted without objection, depicted the same things that were depicted in the video from Officer Dollard’s body camera including: (1) Mr. Dantzler’s initial flight; (2) Mr. Dantzler removing and balling up a maroon windbreaker as he fled; (3) Mr. Dantzler’s entry into the residence; and (4) a maroon windbreaker, which had a handgun wrapped inside it, being thrown from the second-floor of that residence. Moreover, the evidence against Mr. Dantzler was overwhelming because, in addition to the above evidence, he essentially admitted in a jail call that he had possessed the firearm and had thrown it out of the window after he entered the residence.

Mr. Dantzler also asserts that the trial court abused its discretion in instructing the jury on flight because, he claims, there were alternative explanations for his flight other than his commission of the charged crimes. He concedes, however, that this claim is not preserved because he did not object to the flight instruction either at the time the court initially indicated that it was going to give the instruction or after the court instructed the jury. *See* Maryland Rule 4-325(e) (“No party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury[.]”) He nevertheless asks this Court to engage in plain error review of this issue.

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 thus 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 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). Consequently, we affirm the judgments of the circuit court.

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