

Circuit Court for Baltimore City
Case No. 117164006

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 539

September Term, 2019

QUSEAN SWILLING

v.

STATE OF MARYLAND

Kehoe,
Nazarian,
Gould,

JJ.

PER CURIAM

Filed: April 13, 2020

*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, Qusean Swilling, appellant, was convicted of first-degree murder, second-degree murder, and use of a firearm in the commission of a crime of violence. His sole contention on appeal is that there was insufficient evidence to sustain his convictions. Mr. Swilling concedes that this issue is not preserved because, when making his motion for judgment of acquittal in the trial court, defense counsel submitted on the evidence and did not raise any of the contentions that Mr. Swilling now raises on appeal. *See Peters v. State*, 224 Md. App. 306, 354 (2015) (“[R]eview of a claim of insufficiency is available only for the reasons given by [the defendant] in his motion for judgment of acquittal.” (citation omitted)). He therefore requests that we engage in plain error review.

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 facts of this case, there was no error, plain or otherwise, because there was legally sufficient evidence to support the convictions. At trial, a witness to the shooting identified Mr. Swilling as the perpetrator. And that testimony, if believed, was

sufficient to support a finding of each element of the charged offenses beyond a reasonable doubt. *See Archer v. State*, 383 Md. 329, 372 (2004) (“It is the well-established rule in Maryland that the testimony of a single eyewitness, if believed, is sufficient evidence to support a conviction.”). Although Mr. Swilling contends that the witness was not credible, it is “not a proper sufficiency argument to maintain that the [fact-finder] should have placed less weight on the testimony of certain witnesses or should have disbelieved certain witnesses.” *Correll v. State*, 215 Md. App. 483, 502 (2013). That is because any inconsistencies or weaknesses in the testimony of the State’s witnesses affects the weight of the evidence, and not its sufficiency. *Owens v. State*, 170 Md. App. 35, 103 (2006) (“A witness’s credibility goes to the weight of the evidence, not its sufficiency.”). Consequently, we shall affirm the judgments of the circuit court.

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