Circuit Court for Baltimore City
Case No. 122286016

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 722

September Term, 2023

SHANTASIA TYRENE JOHNSON

v.

STATE OF MARYLAND

Graeff,
Tang,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: May 24, 2024

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

A jury in the Circuit Court for Baltimore City convicted Shantasia Johnson, appellant, of two counts of first-degree assault and one count of use of a handgun in the commission of a crime of violence. On June 2, 2023, the court sentenced appellant to concurrent sentences of ten years, all but five years suspended on the assault convictions and five years concurrent on the firearm conviction.

On appeal, appellant presents the following questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the circuit court err in granting witness immunity to Shanice Robinson for compulsory process?

2. Did the circuit court err in allowing impermissible hearsay statements into evidence?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On September 24, 2022, a dispute occurred between appellant and Shanice Robinson regarding childcare for Ms. Robinson's child. At that time, appellant was dating the father of Ms. Robinson's child. Appellant and Ms. Robinson had known each other since the birth of Ms. Robinson's child in January 2021.

After several conversations that morning, Ms. Robinson told appellant to "pull up" and come to the location she shared over text message.[1] Appellant then drove to that location, which was Ms. Robinson's workplace, an addiction treatment center in downtown

[1] Ms. Robinson did not explain in her testimony what she meant by the phrase, "pull up."

Baltimore. When appellant arrived, Ms. Robinson and her friend, Mikiyah Leach, who also worked at the treatment facility, were waiting for her. One of Ms. Robinson's clients, James Frank, who worked as a "house manager" at the treatment facility, also was present at the scene.

After appellant exited her vehicle, she walked around the corner of the building with Ms. Robinson and Ms. Leach. Appellant and Ms. Robinson then fought each other.[2] Although Ms. Leach saw the fight, it was not clear at trial whether she participated. The fight ended when Ms. Leach moved Ms. Robinson away from appellant.

After the fight had ended, appellant walked to her vehicle and sat inside for a few seconds. Ms. Robinson then walked toward appellant's vehicle and kicked it several times before walking back to her workplace. Appellant then retrieved a handgun from a brown bag that was on the passenger side floor of her vehicle. She exited her vehicle and walked back to where Ms. Robinson and Ms. Leach were standing. Appellant then pointed the handgun at both Ms. Robinson and Ms. Leach and swore at them.

After some time had passed, appellant walked away from Ms. Robinson and entered her vehicle, driving away from the scene. Soon after, a bystander called the police to report an aggravated assault. Officer Polanco responded to the scene, and another bystander advised him that a woman driving a Nissan vehicle had pointed a gun at another female. A separate bystander yelled to him: "That's the vehicle." Officer Polanco then saw Ms.

[2] There was no indication that either appellant or Ms. Robinson had a weapon at this time.

Robinson, who pointed in the direction of appellant's silver Nissan and stated: "[S]he pointed a firearm."

Officer Polanco followed appellant and pulled her over. He retrieved from the vehicle a firearm, which appellant was legally permitted to carry. Officer Lamon Thompson, along with approximately four other officers, subsequentially responded to the scene.

I.

Trial Day One

A two-day trial began on June 1, 2023. After jury selection and opening statements, the State called Ms. Robinson to testify. The State noted that it had decided to dismiss charges against Ms. Robinson and pursue charges only against appellant. The court advised that statements Ms. Robinson made could be used against her in the future.

The court requested that a Public Defender advise Ms. Robinson of her right against self-incrimination. After discussing the issue with Ms. Robinson, the attorney stated that he would advise Ms. Robinson to "take the Fifth." The court recessed until the next day, and the prosecutor advised that she would "have a course of action plan by tomorrow morning."

II.

Trial Day Two

A.

Motion to Compel Ms. Robinson

Prior to the start of the second day of trial, the State filed a motion to compel Ms. Robinson to testify pursuant to Md. Code Ann., Cts. & Jud. Proc. ("CJP") § 9-123. The State asserted that it was "in the public interest to obtain [Ms. Robinson's] testimony" and she intended "to invoke her Fifth Amendment right against self-[in]crimination." Defense counsel responded that the motion was "belated," noting that Ms. Robinson had "already invoked her Fifth Amendment privilege" in the District Court in January 2023, and it was "patently unfair . . . to force a witness to testify, who does not wish to testify."

The court granted the State's motion. It asserted that none of Ms. Robinson's testimony could be used against her unless it is determined that she "perjured herself or tried to obstruct the proceedings."

B.

Witness Testimony

Ms. Robinson testified that she was 34 years old and had two children. She saw appellant approximately two times a month during drop off or pick up of Ms. Robinson's child from the child's father's (appellant's boyfriend's) house. Until September 24, 2022, Ms. Robinson's relationship with appellant was "really good."

On September 24, 2022, Ms. Robinson was working, and she asked her child's father to pick up their child from her house, but he refused to do so because he thought Ms. Robinson's husband was home. The father then asked appellant, his girlfriend, to pick up his child from Ms. Robinson's house.

At approximately 11 a.m., appellant called Ms. Robinson to tell her that she would pick up Ms. Robinson's child, instead of the child's father. When appellant arrived at Ms. Robinson's house, however, she called Ms. Robinson to tell her that "she didn't feel comfortable going upstairs," and she asked if Ms. Robinson's 13-year-old son could bring the child downstairs instead. Ms. Robinson replied that her son "can't do everything," but appellant refused to go upstairs, hanging up the phone. Ms. Robinson testified that appellant "overstepped" by talking to her like a child and telling her that she "should have [had] stuff ready before."

After appellant hung up the phone on Ms. Robinson, Ms. Robinson texted appellant: "Don't call or text my fucking phone no more." Appellant then called Ms. Robinson back and was "screaming, cursing, [and] yelling." They argued "back and forth" until someone hung up the phone again. Ms. Robinson then told appellant to "pull up." She shared her location with appellant and texted: "This is where I am" . . . "Hurry up and get here." Appellant then called Ms. Robinson back and told her that she was going to drive to that location.

The State showed Ms. Robinson video surveillance footage from a CitiWatch[3] camera that was placed in the front of her work. From the video, she identified Ms. Leach's car, as well as herself speaking on the phone with appellant.

Ms. Robinson testified that both she and appellant wanted to fight each other after arguing over the phone. Ms. Robinson waited for appellant outside of her work for approximately 40 minutes, along with Ms. Leach, who she referred to as her "sister," and Mr. Frank, her client. Ms. Robinson testified that Ms. Leach did not "have nothing to do with nothing," "didn't do anything," and stayed outside because she did not want Ms. Robinson to fight appellant.

From the State's video surveillance footage, Ms. Robinson identified appellant driving up in her child's father's silver Nissan. Appellant exited the car, stating: "We going to do this right here. We going to do this right here." Ms. Robinson told appellant to "[c]ome around the corner" because she did not want to fight in front of the cameras.

Ms. Robinson testified that, after she and appellant walked around the corner of her workplace, they fought and punched each other until Ms. Leach "broke it up" by grabbing Ms. Robinson's waist and moving her out of the way. Appellant lost and was mad. Following the fight, the video showed Ms. Robinson and Ms. Leach speaking to each other. Ms. Robinson "was like 'Ha-ha,' like that, like, 'She got beat up . . .' But it was just a bunch of back-and-forth." After appellant went back to her car, Ms. Robinson kicked the

[3] Officer Polanco later explained that "CitiWatch cameras are a set of cameras that are placed throughout the city, and they're operated by, usually, [detectives] or operators."

vehicle because she was mad at her child's father for letting appellant drive his vehicle to fight her at her workplace.

After kicking appellant's car several times, Ms. Robinson walked back to her workplace. Before Ms. Robinson and Ms. Leach could open their workplace door and enter the building, however, Ms. Leach stated: "Oh, shit, Shanice. She got a gun." Appellant pointed her gun at both Ms. Robinson and Ms. Leach. Ms. Robinson recounted the following facts from the incident:

> [Appellant] gets out of the car and chased us literally to the building. We put the code in. [Ms. Leach] was scared, so she put it in wrong. So we was locked out of my job. We're standing in the vestibule area while she got us hostage for, like, 5 or 10 minutes.

The State showed Ms. Robinson video surveillance footage of the incident, where she identified appellant saying "[f]uck you" to her while she was yelling and "begging for [her] life." Ms. Robinson did not have any weapons during the fight, and she did not know that appellant had a gun in her possession. She admitted that she "teased" appellant about beating her up.

After appellant left the scene, Officer Polanco arrived. He caught appellant after she drove away from the scene and turned a corner.

Officer Polanco testified next. The State showed him his body-worn camera footage from the day of the incident, where a bystander advised him: "Make a right on this first street. There's a girl with a gun out there. Yellow car, yellow Nissan . . . Pointing at another woman." He also identified Ms. Robinson pointing to a Nissan vehicle and stating:

"She just pulled a gun at me, about two feet [] right down the street." The footage included the audio of Officer Polanco pulling over appellant and arresting her outside of her car.

The State showed Officer Polanco a firearm, which he identified as a "Smith & Wesson semiautomatic firearm" registered to appellant. On cross-examination, Officer Polanco confirmed that appellant had a carry permit for her firearm, and it was registered to her properly, with no restrictions. He watched the video surveillance footage from a CitiWatch camera and identified the Nissan vehicle belonging to appellant's boyfriend.

Officer Thompson testified that he was working downtown on patrol when he was called for an aggravated assault. The State showed Officer Thompson body-worn camera footage from September 24, 2022,[4] where he identified himself responding to the scene. At the scene, he saw a handgun inside appellant's purse. The handgun was loaded, but the gun would not "fire unless [the] slide was racked back."[5]

After the State concluded its case, the defense made a motion for judgment of acquittal on the assault charges. The court denied the motion, stating: "An assault along with its intent to frighten and the use of a handgun will survive the motion, in the light most favorable to the State, pursuant to the testimony and the evidence presented."

[4] The body-worn camera footage was not from Officer Thompson's body-worn camera.

[5] Officer Lamont clarified that, "[i]f someone just points the gun, even if they pull the trigger, the gun would not go off," and "[a] round would not come out." He further asserted that "when he put his finger inside the chamber, normally the rounds pop out when you rack the slide, but the round was kind of stuck, so he put his finger inside of there."

Appellant testified that she was 29 years old, did not have a criminal record, and had not been employed for three years. She obtained a permit to own a handgun after going "through a training course and fill[ing] out the application . . . to be processed through the Maryland State Police Department." Appellant learned how to use her handgun during the training course, which included safety measures.

Appellant testified that, on the day of the incident, her boyfriend asked her to pick up his child from Ms. Robinson's house, but she did not want to do so because Ms. Robinson and her boyfriend were fighting. She had helped take care of Ms. Robinson's two children ever since she met Ms. Robinson six months prior. Ms. Robinson and appellant's boyfriend did not get along.

Appellant's intention on the day of the incident was to pick Ms. Robinson up in her boyfriend's car at the location that Ms. Robinson had shared with her and then drive Ms. Robinson back home to dress her child. She never intended to fight Ms. Robinson that day. When appellant arrived at Ms. Robinson's location, however, she saw Ms. Robinson on the phone arguing and standing next to two other people. Appellant asked Ms. Robinson what was wrong, but Ms. Robinson instructed appellant to walk around the corner, stating: "I don't want them to hear this." Appellant then responded: "No. Let's go right here. No. We're going right here. Why we got to go around the corner?"

Defense counsel showed appellant the video surveillance footage from the CitiWatch video, where appellant identified herself speaking with Ms. Robinson prior to the fight. Appellant testified that Ms. Robinson then "lured [her] around the corner" and

attacked her. Ms. Robinson "blocked [appellant] upside [her] head" and hit her while "bear-hugging" her before she "went down."

Appellant testified that the attack lasted "a long time," and it ended when the "girl in the yellow shirt" (Ms. Leach) pulled Ms. Robinson off appellant. Ms. Robinson "continued to try to still get at [her] and fight [her] again," but appellant "just backed up and walked away." The fight caught appellant "off guard," and she was in shock.

After the fight, appellant walked to her vehicle to leave, but she saw a "guy at the corner of the car" (Mr. Frank), who was "clutching in his waistline [and] digging his hands in his pants as if he was getting ready to pull out a gun." She was "too scared to pull off" because she "didn't know if he was going to shoot in the window," and she did not feel safe. Ms. Robinson started banging on appellant's vehicle, stating: "I'm going to kill you, bitch. I'm going to kill you, bitch." She also heard loud sounds and "five bangs" that sounded like gunshots.

Appellant testified that she did not drive away because she could not find her keys or cell phone, and she was "so dizzy from being punched in the head so many times."[6] Her mind was racing, and her head was foggy. Appellant froze and panicked and feared for her life. She retrieved the gun from her brown bag on the passenger side floor of the vehicle before exiting with the gun in her hand. Appellant identified herself from the surveillance video exiting her car with the gun in her hand. When appellant approached Ms. Robinson,

[6] During cross-examination, appellant clarified that she did not have keys and "only had a Kilo." She explained that her vehicle starts by swiping the Kilo across the ignition (which was the size of the court's microphone) and pressing the start button.

her intention was to keep Ms. Robinson away from her and her boyfriend's vehicle. Appellant further identified herself in the video pointing the gun at Ms. Robinson.[7]

When she pointed the gun at Ms. Robinson, there was no round in the chamber of her handgun, her hand was not on the trigger, and the safety was on. She pointed the gun at Ms. Robinson to keep whoever was around her away from her because she feared for her life. She never intended to shoot. She wanted to scare Ms. Robinson and had no intent to kill her.

During cross-examination, the State played the audio from appellant's police interview, where appellant stated: "I already had my gun in my shirt. I carry my gun [] when I got there." During re-direct examination, appellant clarified that she did not have the gun when she and appellant were fighting; she put the handgun in her shirt after she pointed it at Ms. Robinson and then put it back in her bag.

After the court denied the defense motion for judgment of acquittal, the parties made their closing arguments. The State argued that appellant intended to frighten both Ms. Robinson and Ms. Leach because she had a firearm in her hand. It argued that self-defense did not apply because appellant did not retreat when it was safe to do so. Moreover, it would have been reasonable for appellant to stay in her vehicle and drive away if she was scared, but she chose not to because she wanted to scare both Ms. Robinson and Ms. Leach. The State asked the jury to find appellant guilty on all counts.

[7] Appellant testified that she never pointed the gun at Ms. Leach.

In closing argument, defense counsel stated that appellant was "well-intentioned" and was not "expecting to fight" that day; she was driving to Ms. Robinson's location to pick her up and drive her home to get her child dressed. Appellant retrieved her handgun from her vehicle only after she was attacked by Ms. Robinson and Ms. Leach, heard the gunshots, and felt threatened by Mr. Frank standing close to her vehicle. Appellant was licensed to carry her firearm, "[a]nd she pointed it at her attackers in self-defense."

After appellant was convicted and sentenced, this appeal followed.

DISCUSSION

I.

Grant of Immunity to Compel Testimony

Appellant contends that the court erred in granting immunity to Ms. Robinson to compel her testimony at trial. She contends that Ms. Robinson previously had invoked her Fifth Amendment privilege against self-incrimination, and the State's decision to wait until the final day of trial to file the motion to compel denied her the right to a fair trial. Appellant asserts that the State failed to comply with Rule 4-263(h)(1), which provides that the State shall make disclosure pursuant to section (d) of the rule "within 30 days after the earlier appearance of counsel or the first appearance of the defendant before the court."[8]

[8] Appellant cites Md. Rule 4-263(d)(6)(B), which states:

> Without the necessity of a request, the State's Attorney shall provide to the defense: . . . (6) all material or information in any form, whether or not admissible, that tends to impeach State's witness, including: . . . (B) relationship between the State's Attorney and the witness, including the

The State responds in two ways. First, it contends that, to the extent appellant raises a claim of a discovery violation, that claim is not preserved for this Court's review. Second, it contends that appellant's contention is without merit, asserting that the circuit court acted correctly in granting the order and compelling Ms. Robinson's testimony. In that regard, the State argues that the "court lacked discretion to deny the motion to compel, and [CJP § 9-123] does not impose any timing requirements on the State."

A.

Preservation

We address first the State's preservation argument. "[A]n appellate court ordinarily will not consider any point or question 'unless it plainly appears by the record to have been raised in or decided by the trial court.'" *Robinson v. State*, 404 Md. 208, 216 (2008) (quoting Md. Rule 8-131(a)). The Supreme Court of Maryland has explained that the primary purpose of this rule is two-fold:

> (a) to require counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings, and (b) to prevent the trial of cases in a piecemeal fashion, thus accelerating the termination of litigation.

Fitzgerald v. State, 384 Md. 484, 505 (2004) (quoting *Cnty. Council v. Offen*, 334 Md. 499, 509 (1994)). *Accord Martin-Dorm v. State*, 259 Md. App. 676, 704 (2023).

> nature and circumstances of any agreement, understanding, or representation that may constitute an inducement for the cooperation or testimony of the witness.

In objecting to the State's Motion to Compel at trial, counsel argued that the motion was "belated" and "patently unfair."[9] Defense counsel never argued that there had been a violation of Rule 4-263. Accordingly, any contention regarding a discovery violation is not preserved for this Court's review.

B.

Grant of Immunity to Compel Testimony

In *Kastigar v. United States,* 406 U.S. 441, 443-44 (1972), the Supreme Court of the United States "recognized that the power of the State to compel a witness to testify is at the core of the proper functioning of our criminal justice system." *State v. Rice,* 447 Md. 594, 604 (2016). The Fifth Amendment to the United States Constitution and Article 22 of the Maryland Declaration of Rights "is preserved through application of immunity statutes, which balance the witness's privilege against compelled self-incrimination with the legitimate power of government to compel persons to testify." *Id.*; U.S. Const. amend. V ("No person . . . shall be compelled in any criminal case to be a witness against himself."); Md. Decl. of Rts. art. 22 ("That no man ought to be compelled to give evidence

[9] Defense counsel argued:

> Your Honor, this motion is belated. She's already invoked her Fifth Amendment privilege. She invoked her Fifth Amendment privilege in the District Court on January -- in January of this year. She came in intending to invoke her Fifth Amendment privilege again today. And the State, I -- the State, I believe, Your Honor, is -- this situation is *patently unfair* -- to force a witness to testify, who does not wish to testify.

(emphasis added).

against himself in a criminal case."). "[M]any offenses are of such a character that the only persons capable of giving useful testimony are those implicated in the crime," and therefore, immunity statutes have been referred to as "part of our constitutional fabric." *Kastigar,* 406 U.S. at 446-47 (quoting *Ullmann v. United States,* 350 U.S. 422, 438 (1956)).

After the United States Supreme Court decided *Kastigar*, Maryland amended its immunity statute "to resemble the federal immunity statute sanctioned by *Kastigar* and provide for use and derivative use immunity." *Rice*, 447 Md. at 607. Maryland's immunity statute, entitled "Witness immunity for compulsory testimony," provides that a witness may not refuse to testify on the basis of the privilege against self-incrimination if the court issues an order compelling the witness' testimony, CJP § 9-123 (b)(1), and "[n]o testimony or other information compelled under the order, and no information directly or indirectly derived from the testimony or other information, may be used against the witness in any criminal case, except in a prosecution for perjury, obstruction of justice, or otherwise failing to comply with the order." CJP § 9-123(b)(2).

Here, the State sought to compel Ms. Robinson's testimony by filing a motion to compel pursuant to CJP § 9-123(d), which in relevant part, provides:

> (d) If a prosecutor seeks to compel an individual to testify or provide other information, *the prosecutor shall request, by written motion, the court to issue an order* under subsection (c) of this section when the prosecutor determines that:
> (1) The testimony or other information from the individual may be necessary to the public interest; and

> (2) The individual has refused or is likely to refuse to testify or provide other information on the basis of the individual's privilege against self-incrimination.

CJP § 9-123(d) (emphasis added).

Appellant does not contend that the motion was improper. Once a proper motion is filed, CJP § 9-123(c) provides that the court must grant the motion to compel the testimony:

> (c)(1) If an individual has been, or may be, called to testify or provide other information in a criminal prosecution or a proceeding before a grand jury of the State, the court in which the proceeding is or may be held *shall* issue, on the request of the prosecutor made in accordance with subsection (d) of this section, an order requiring the individual to give testimony or provide other information which the individual has refused to give or provide on the basis of the individual's privilege against self-incrimination.
> (2) The order shall have the effect provided under subsection (b) of this subsection.

CJP § 9-123(c)(1)-(2) (emphasis added).

In *Rice*, the Maryland Supreme Court explained that the circuit court is not "empowered" to assess the merits of a motion to compel. 447 Md. at 632. "The use of the phrase 'shall issue' in subsection (c) makes clear that the court is required to issue an order compelling immunized testimony once the court determines that the request was made in accordance with subsection (d)." *Id.* at 624. It has no discretion to deny a properly filed motion to compel. *Id. Accord Perez v. State*, 420 Md. 57, 63 (2011) ("the word 'shall' indicates the intent that a provision is mandatory") (quoting *Dove v. State*, 415 Md. 727, 738 (2010)).

Appellant provides no support for his argument that there are any time limitations in granting a motion to compel pursuant to CJP § 9-123. The circuit court properly granted the State's motion to compel.

II.

Hearsay

Appellant next contends that "the trial court committed reversible error by allowing impermissible hearsay statements at trial." She points to testimony given by Ms. Robinson and Officer Polanco regarding what other individuals said during the incident at issue. Appellant acknowledges that the issue is not preserved for review because there was no objection below to the testimony, but he requests that we review the issue for plain error.

The State contends that this Court "should decline to review for plain error [appellant's] unpreserved claim that certain witness testimony constituted inadmissible hearsay." In the alternative, it asserts that there was no error because "[n]one of the statements are inadmissible hearsay" because each statement "falls within an exception."

Appellant contends the following testimony was hearsay that was improperly admitted into evidence: (1) Ms. Robinson testified: "My sister was like, 'oh, shit Shanice. She got a gun'"; (2) Ms. Robinson testified that Officer Polanco told her "a guy called, and they said there was a woman holding a gun"; (3) Officer Polanco testified that a "bystander advised me, 'Officer, there's – go down the next street,' . . . 'There's an individual there – there's a woman there with – pointing a gun at another female'"; (4) Officer Polanco testified that another bystander yelled "that's the vehicle"; and (5) Officer Polanco testified

that "the victim also claimed [Ms. Johnson] pointed a gun . . . The victim said, 'that is – she pointed a firearm.'" As indicated, the parties agree that defense counsel did not object to any of this testimony.

As indicated, *supra*, "an appellate court ordinarily will not consider any point or question 'unless it plainly appears by the record to have been raised in or decided by the trial court.'" *Robinson*, 404 Md. at 216 (quoting Md. Rule 8-131(a)). *Accord Brown v. State,* 373 Md. 234, 242 (2003) ("failure to object [to the admission of evidence] results in the non-preservation of the issue for appellate review").

Recognizing the preservation problem, appellant asks us to review the hearsay arguments for plain error. We decline to do so. Plain error review is "reserved for those errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant of a fair trial." *Turenne v. State*, 258 Md. App. 224, 257 (2023) (quoting *Newton v. State*, 455 Md. 341, 364 (2017)), *cert. granted*, 486 Md. 147. *Accord Collins v. State*, 164 Md. App. 582, 607 (2005) (the court declined to recognize plain error where the defense did not object to a hearsay statement on confrontation grounds because the error was not "compelling, extraordinary, exceptional, or fundamental"). Appellate review based on plain error is "a rare, rare, phenomenon." *Morris v. State*, 153 Md. App. 480, 507 (2003), *cert. denied*, 380 Md. 618 (2004).

This Court recently articulated the applicable standard that applies when a defendant appeals an error that he or she failed to object to as follows:

> 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 district court proceedings'"; and (4) the error must "seriously affect the fairness, integrity or public reputation of judicial proceedings."

Turenne, 258 Md. App. at 257 (quoting *Newton*, 455 Md. at 364). Meeting all four of these prongs is difficult, "as it should be." *State v. Rich*, 415 Md. 567, 578 (2010) (quoting *United States v. Dominguez Benitez*, 542 U.S. 74, 83 n.9 (2004)).

In *Collins*, 164 Md. App. at 607, this Court noted that taking cognizance of unobjected to error is inappropriate "unless the error occurred in compelling, extraordinary, exceptional or fundamental circumstances which vitally affected the defendant's right to a fair trial." We declined to recognize plain error in that case, where the defense did not object to a hearsay statement on confrontation grounds, explaining that there was other corroborating evidence offered by the State, which was "relevant, under a plain error analysis, to whether unobjected to error should be recognized as compelling, extraordinary, exceptional, or fundamental." *Id. Accord In re Matthew S.*, 199 Md. App. 436, 463 (2011) (the court declined to engage in plain error review "where the testimony at issue merely reiterated the substance of [an accomplice's] written statement, which had been admitted without objection").

Here, there was uncontroverted video evidence showing appellant committing the crime at issue. We are not persuaded to engage in plain error review of the admissibility of the unobjected to alleged hearsay statements.

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