Circuit Court for Worcester County
Case No.: C-23-CR-21-000358

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1066

September Term, 2022

EARLEST MARLON SATCHELL, JR.

v.

STATE OF MARYLAND

Beachley,
Shaw,
Killough, Peter K.
(Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: September 26, 2023

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

On October 26, 2021, the State of Maryland charged Earlest Marlon Satchell, Jr., with three counts of distribution of cocaine. After the Circuit Court for Worcester County determined that Satchell had waived his right to counsel, Satchell represented himself at trial, and a jury convicted him of all three charges. Satchell appeals and asks this Court the following two questions:

> 1. Did the court err by ruling that [Satchell] waived his right to counsel by inaction and by denying [Satchell]'s request to postpone trial so that he could retain counsel?
>
> 2. Should [Satchell]'s convictions be reversed because the prosecutor repeatedly urged the jury in closing argument to consider the "plague" of drugs that "rips apart our community?"

We shall answer both questions in the negative and affirm the convictions.

BACKGROUND

A. Factual Background and Prior Indictment

On October 2, 2019, Sergeant Andrea Lewis, working in an undercover capacity, contacted Satchell regarding purchasing cocaine. Specifically, Sgt. Lewis called Satchell and asked to purchase $100 worth of "powder[.]" Satchell advised Sgt. Lewis to meet him outside an apartment complex in Berlin, Maryland. At trial, Sgt. Lewis testified that:

> As I arrived to the area, the set of apartments, there's a gravel driveway. I came into the gravel driveway, and I observed Mr. Satchell standing in the driveway.
>
> As I pulled in, I stopped and he walked to the passenger's side of my car. My window was already down. So he reached in the window of my vehicle and I gave him a hundred dollars, and he gave me a baggie that had an off-white powdery substance which I recognized through my training, knowledge and experience to be cocaine.

Two days later, Sgt. Lewis again contacted Satchell seeking to purchase cocaine. This time, she asked for her purchase to be "split in half"—$50 for powdered cocaine and $50 for crack cocaine. Satchell told her to meet him at the same place as before. Of this transaction, Sgt. Lewis testified as follows:

> So on this day as I arrived, I pulled into the gravel driveway. I saw Mr. Satchell standing there in the driveway. He directed me to park near a big tree right in front of the set of apartments. So he was pointing that way directing me to park over there which I did.
>
> I pulled in. My driver's side window was down. He approached the driver's side of my vehicle, told me to drop the money on the ground and go to the mailboxes which was across from the drive, specifically mailbox number six, so I did. I dropped the money outside of my window on the ground, put my vehicle in reverse, started to drive out of the driveway. As I was driving out I saw Mr. Satchell reach down and pick up the money off the ground.
>
> I proceeded to mailbox number six. I opened the mailbox. I observed a small baggie with white powder as well as several white rock[-]like substances. I retrieved those. Viewing them I recognized them to be powdered cocaine and crack cocaine.

Five days later, on October 9, 2019, Sgt. Lewis contacted Satchell once more. This time, Satchell told her to meet him at a McDonald's in Berlin. Sgt. Lewis testified that when she got there:

> I walked inside, and about ten feet into the door of McDonald's he was standing there. I approached him, stood right by his side. He was wearing a hoodie, and he said, put the money in the hoodie pocket and grab the white envelope, so I did.
>
> I placed the money in his hoodie pocket, grabbed the envelope and left the area, went back to my vehicle. When I got in my vehicle, I analyzed the -- I reviewed the items that were in the envelope, and I knew them to be cocaine.

On October 22, 2019, Satchell was charged by indictment in the original case in the Circuit Court for Worcester County, Case No. C-23-CR-19-000261 ("the 2019 case"), for three counts of distribution and three counts of possession of cocaine.[1] In that case, for reasons unclear from the record before us, Satchell retained and later discharged the public defender's office.[2] However, on April 1, 2021, the State filed a nolle prosequi, thus ending the charges in that case.

[1] We take judicial notice of the prior action pursuant to Md. Rule 5-201(c). *See Stovall v. State*, 144 Md. App. 711, 717 n.2 (2002) ("tak[ing] judicial notice of the official entries in circuit court records" (citing *Campbell v. State*, 37 Md. App. 89, 97 n.5 (1977))).

[2] Judge Oglesby, who presided over the 2019 case and six of Satchell's seven appearances before the court in this case, noted that in the 2019 case, Satchell had discharged the public defender without good cause:

> JUDGE OGLESBY: Regardless, the charging document was dismissed, but it was during that case, whatever that case number was, you were represented by the Public Defender's Office. And you had an issue with the attorney, and you wanted to discharge -- I believe it was Ms. Watkowski.
>
> MR. SATCHELL: Uh-huh.
>
> JUDGE OGLESBY: I went through a hearing on that issue and found that you could discharge Ms. Watkowski, but I did not find good cause to discharge her. So you have the right to be represented by whomever you want, but you don't get to pick your Public Defender. So I allowed you to discharge Ms. Watkowski but did not find good cause. And under those circumstances, as I understand it at least -- there's no one from the Public Defender's Office here today -- but as I understand it, when you discharge the Office of the Public Defender and there's no good cause to do so, that they within their discretion can determine that they're not going to represent you anymore[.]

B. Procedural Background In This Case

On October 26, 2021, Satchell was charged with the three counts of distribution of cocaine in the matter before us. On November 24, 2021, Satchell appeared as self-represented at his initial appearance. The court read Satchell his initial appearance rights, advised him of his right to an attorney, and warned that failure to obtain an attorney may result in the determination that his right to an attorney had been waived:

> THE COURT: Alright. So Mr. Satchell, not unlike the last case, if you were to appear at trial without a lawyer and the [c]ourt finds that you have -- the [c]ourt could determine that you had waived your right to an attorney if it finds that you haven't made reasonable efforts to get a private attorney or if it finds that you haven't made a timely application to the Office of the Public Defender. Under those circumstances your matter would proceed to trial even though you were unrepresented; do you understand that?
>
> [SATCHELL]: Yes.

The court suggested that Satchell contact the public defender's office. The State noted that Satchell had previously discharged the public defender in the 2019 case. Nonetheless, the court explained to Satchell that "[i]f for some reason the Office of the Public Defender refuses to provide a lawyer for you and you still desire to have a lawyer, there is a process by which you could ask the [c]ourt to appoint a lawyer for you[.]" Specifically, the court stated that:

> Issues with the Office of the Public Defender, if for some reason they're not going to represent you, they might be able to panel the case out, those will be -- those are questions I can't answer today because we don't have someone from the Public Defender's Office present, they haven't received your application, whatever. So -- so I can't answer those questions for you today, but I would suggest that if you're interested in their representation, you should apply and then they can voice an objection, we can have a hearing on

> that issue if we need to and we can explore what's going to happen in that situation.

A motions hearing was scheduled for January 13, 2022, and trial was set for February 10, 2022.

On January 13, 2022, Satchell appeared for the motions hearing without an attorney. The court asked Satchell about his efforts to obtain counsel:

> [THE COURT]: But, Mr. Satchell, how are things going obtaining counsel?
>
> MR. SATCHELL: I'm trying.
>
> [THE COURT]: Okay. So what are you doing? What efforts have you made?
>
> MR. SATCHELL: I got Freedom Fighters.
>
> [THE COURT]: I'm sorry?
>
> MR. SATCHELL: I said a group called Freedom Fighters. But they have yet to get back with me. I thought they were going to be here today when I came.

Satchell indicated that he was not working at that time. The court reiterated that trial was set for February 10, 2022, and that the court may determine that he had waived his right to counsel if he appeared for trial without an attorney. The following exchange occurred:

> [THE COURT]: What I can tell you with certainty is that you have a trial date scheduled for February 10th of 2022, at 9:30, I think in this courtroom.
>
> As I told you before when I advised you of your initial appearance rights, if you appear at trial without counsel and the [c]ourt finds that either you haven't made reasonable efforts to get an attorney or you didn't make a timely application to the Office of the Public Defender, if I make those findings I could determine that you have therefore waived your right to an attorney, and the case would proceed to trial even though you were unrepresented. Do you still understand that, sir?
>
> MR. SATCHELL: Yes, Your Honor.

On February 10, 2022, the date originally set for trial, Satchell again appeared without counsel. However, trial was postponed on that day for reasons related to COVID.[3] The court again inquired into Satchell's efforts to obtain an attorney. Satchell told the court that he was making "progress" in his pursuit to hire a lawyer, but that he was still looking for a job. The court rescheduled trial for May 5, 2022, warning Satchell that whether "represented or unrepresented[,] we're going to go forward on that date." The court stated that:

> What I'm going to do, Mr. Satchell, is I'm going to postpone today's date until May 5th of 2022. That's the trial date. Unless something incredibly crazy happens, Mr. Satchell, you can expect that that's going to be your trial date, and represented or unrepresented we're going to go forward on that date.
>
> You're entitled to your day in court. And you're entitled to be represented, but there comes a point where I have to say, we can't just wait any longer for Mr. Satchell to get the perfect job or to get the money he needs to obtain the perfect attorney. We've got a -- we've got cases, and there's a business perspective in getting things done and completed. And so -- but I'm going to push this out as late as I can which is that May 5th date. So that gives you all of March, all of April, so a good 60 plus days, probably 70 to 80 days to identify an attorney and have that attorney get up to speed.

On April 6, 2022, Satchell appeared without counsel for a status conference. The court asked Satchell about his efforts to hire an attorney. Satchell replied that a "legal group" was "going to accept [his] case[,]" and that he "will have a lawyer on [his] trial

[3] The court explained that, "Annapolis kind of put us back in the same position we were half a year ago or maybe a little bit more than half a year ago. They decided that we cannot have jury trials until at the earliest the 7th of March . . . . So there is an absolute need to postpone your trial date today[.]"

date." Despite Satchell's assurances, the court again warned Satchell that he may forfeit his right to counsel if he appeared without an attorney at trial:

> Now, when you appear on May the 5th, I don't know whether this case is before me or if it's before another judge, but one of the judges, whoever the judge is, if you appear without an attorney will make a determination as to whether or not you've waived your right to an attorney through inaction. And if that finding is made, you need to be prepared to proceed to trial without an attorney. I suggest that if the urgency wasn't clear before, it is now clear.

On May 4, 2022, after a request from the State to postpone trial, trial was postponed to June 9, 2022.[4]

C. Trial: Waiver of Counsel

On June 9, 2022, Satchell appeared in court for trial without counsel. The following exchange occurred:

> [THE COURT]: Mr. Satchell, your case is scheduled for trial today. In preparation I did review the docket to see if an attorney had entered their appearance on your behalf. I do not see the entry of an appearance by an attorney. Are you represented?
>
> MR. SATCHELL: Yes. I'm going to be represented by -- he's not here today.
>
> [THE COURT]: The question to be clear is, are you represented today?
>
> MR. SATCHELL: No. I'm not represented today.
>
> [THE COURT]: Okay. So what efforts have you made to obtain counsel since the last time you were here which was a status conference in front of Judge Shockley?

[4] The State explained the reason for its requested postponement: "Sgt. Lewis received orders from the Secretary of the Air Force approved on April 7, 2022 and sent on April 22, 2022 [sic] that she will be in required training through May 15, 2022[.]"

MR. SATCHELL: Well, I've been working and -- working two jobs to try to pay for this lawyer. And now I finally have him, so he's going to put in for his appearance or put in for whatever --

[THE COURT]: Enter his appearance on your behalf?

MR. SATCHELL: Yes, on my behalf.

[THE COURT]: Who is the attorney?

MR. SATCHELL: His name is Mr. Joshua Hatch.

[THE COURT]: And where is Mr. Hatch located?

MR. SATCHELL: He's located --

***

MR. SATCHELL: -- in Baltimore.

[THE COURT]: Okay. And when did you secure or when did you reach an agreement for his representation of you?

MR. SATCHELL: This week. I'm actually supposed to call him back after the hearing today to let him know the update of what happened today.

[THE COURT]: Was there a reason that you were not able to secure Mr. Hatch's representation closer to the status date? Why did it take so long?

MR. SATCHELL: Because at that time I was only working one job. And the job that I work is also taking child support out. So it's -- I'm in -- it's only paying almost minimum wage. That's why I picked up a second job.

[THE COURT]: Why didn't you pick up a second job sooner?

MR. SATCHELL: I mean, I don't -- I really don't know why I didn't. But I just thought that that job would handle the situation. I didn't expect for child support to be taken out of my check after I had already started the job and been working the job.

[THE COURT]: Okay. Is there any other explanation for you not having an attorney this morning?

> I understand that you've made efforts. You spoke to Mr. Hatch and reached an agreement within the past week for his representation. Is there any other difficulties or anything else that you want to offer as explanation for not having an attorney this morning?
>
> MR. SATCHELL: No, Your Honor.

The court also asked about Satchell's efforts in securing counsel through the public defender's office. Satchell responded that the public defender's office had declined to represent him two months prior.[5] The State challenged Satchell's contention that he had attempted to re-engage the public defender, asserting that there was not a "certificate of ineligibility" within Satchell's file.

[5] Prior to the beginning of trial, the following colloquy ensued:

> [THE COURT]: So you made -- you referenced earlier this morning that you did go to the Public Defender's Office.
>
> MR. SATCHELL: Yes, I did.
>
> [THE COURT]: When was that?
>
> MR. SATCHELL: I made the telephone call I want to say two months ago.
>
> [THE COURT]: Okay. And who did you speak with?
>
> MR. SATCHELL: I talked to -- I can't recall. Beck I think. Charlotte Beck I think.
>
> [THE COURT]: So a female?
>
> MR. SATCHELL: It was a female I talked to.
>
> [THE COURT]: Okay. And --
>
> MR. SATCHELL: And I asked about being represented, and they called me back and told me that I couldn't, they wouldn't take my case.

Ultimately, the court concluded that Satchell had waived his right to an attorney:

> Mr. Satchell, I do not find a meritorious reason for you appearing without counsel. This case has been pending since October of 2021. Your first appearance before this court was November of 2021. And I personally have made sure that the significance and importance of an attorney was stressed to you because only one of these appearances was in front of Judge Shockley. And I've reviewed also his comments. And so between Judge Shockley and myself, it's been abundantly clear that if not the most important thing in your life, nothing is more important than retaining an attorney as it relates to this case. Because while being a father might be the most important thing in your life, you can't be a father if you're in prison. If being a great employee or being gainfully employed at a job that you love is right up there at the top. Well, you can't do that either. So representation -- good representation so that your rights are protected is right up there and is not [sic] more important than anything else from my perspective. And that was conveyed to you.
>
> The fact that it wasn't until you called the PD's Office and found out that they weren't going to represent you which was two months ago. Again, your first appearance was in November. So two months ago would have been March or April of 2022, and it was at that time you determined that you needed a second job in order to retain counsel. That is -- you know, in a perfect world, sir, we would go back to [sic] time. We would go back to November and you would say in your mind, I need two jobs to afford a private attorney. And the Public Defender's Office isn't going to represent me. So you could have made those decisions and determinations well in advance of when you did. And had you done that I imagine that that second job would have provided enough financial compensation that you would be able to retain Mr. Hatch or some other attorney. But that decision wasn't made until the recent past.

The court noted that 54 potential jurors were in the courthouse in contemplation of Satchell's jury trial. The court added that, "based on [its] review of the case in its total[,]" including "the history of this case" and the "arguments that [Satchell] made," that it did not find a meritorious reason for Satchell's appearance without counsel. The matter proceeded to a trial by jury, where the State introduced, among other things, audio and

video recordings of Sgt. Lewis' undercover interactions with Satchell on October 2 and 4, 2019.

D. Trial: Assertions Challenged by Satchell

Satchell challenges two statements made by the prosecutor at trial. First, Satchell focuses on the State's response to his challenge to the video footage, where Satchell asserted that the "videotape isn't professional[,]" and that "the camera's all on the floor, all on [Sgt. Lewis'] leg, and everywhere but where it needs to be." The State responded:

> So Mr. Satchell indicates the videos, they're not professionally done. Well, as my very silly example said, what is this, a movie production? It's not. Mr. Satchell is not going to stand there. Mr. Satchell is going to become very confused, very angry, very defensive if Sergeant Lewis suddenly goes, hold on a second. I want to take a picture of you. Hold on a second. Look at my phone. Look at my camera. It doesn't happen. It's not TV. This is the real world. This is what happens every day in our county unfortunately.

Additionally, Satchell challenges the State's closing argument, wherein the prosecutor stated:[6]

> Ladies and gentlemen, Mr. Satchell is correct. It was 2019. What did we have going on? The pandemic. Things have been backed up.
>
> Our community, just like the United States, is plagued by drugs. I'm not here prosecuting Mr. Satchell saying he's a bad individual, saying that he needs to be locked up and throw away the key. That's not for your consideration. Your consideration is to observe what the facts are, observe the testimony, and to look at the evidence.
>
> Ladies and gentlemen, the evidence completely shows that Mr. Satchell committed three hand-to-hand transactions with Detective Lewis on October 2nd, 4th and 9th. That is what's for your consideration.

[6] Satchell's challenges to the prosecutor's statements are discussed in section II, *infra*.

> You need to take emotion out of it. Any other punishment, anything else is for the [c]ourt to decide.
>
> Mr. Satchell engaged in criminal activity on those three dates. It occurs every day in our community, and it rips apart our community. The evidence shows he is guilty of the three offenses that he faces.
>
> I'm not going to play the videos again. If you wish to watch the videos, as Judge Oglesby instructed, you can watch. I have the still images that show exactly, as Mr. Satchell has himself, agreed he's in the video. He's the one who's interacting with Sergeant Lewis. Thank you.

Ultimately, the jury convicted Satchell of all three charges of distribution of cocaine. Satchell was sentenced to twenty years in prison, with all but ten years suspended. This appeal followed.

DISCUSSION

Satchell contends that this Court should reverse his convictions for two reasons. First, he asserts that the court erred in determining that he had waived his right to counsel, explaining that "[t]he court should not have allowed trial to go forward, at least without making further inquiry necessary to determine that Mr. Satchell's reason for appearing without counsel was not meritorious." Second, Satchell contends that although he did not object to the State's assertions at trial, this Court should engage in plain error review of the prosecutor's statements because they "had the clear capacity to prejudice Mr. Satchell's right to a fair trial and thus require reversal."

The State responds that the court "was not required to solicit[] additional information" before determining that Satchell had waived his right to counsel, noting that Satchell was permitted to explain his appearance without counsel and was "repeatedly advised of his right to counsel, of the importance of assistance of counsel, and the

consequences of appearing without counsel on the day of trial." Further, the State maintains that this Court should decline to engage in plain error review because Satchell has failed to demonstrate that the court erred—and that "[e]ven if . . . Satchell could demonstrate that the trial court plainly erred by not intervening, plain error review would still not be warranted because Satchell fails to demonstrate that the error was material—*i.e.*, that it 'affected the outcome of the court proceedings[.]'" (Quoting *State v. Rich*, 415 Md. 567, 578 (2010)).

As we shall explain, we agree with the State.

I. The court did not err or abuse its discretion in determining that Satchell waived his right to counsel.

As this Court has previously noted, "[a] defendant's right to counsel in a criminal case is guaranteed by the Sixth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, and [by] Article 21 of the Maryland Declaration of Rights." *Turner v. State*, 192 Md. App. 45, 68–69 (2010) (footnote omitted); *see* U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defence."); Md. Const. Decl. of Rts. art. 21 ("That in all criminal prosecutions, every man hath a right . . . to be allowed counsel[.]").

The Supreme Court of Maryland has noted that, "[a]s part of the implementation and protection of this fundamental right to counsel, we adopted Maryland Rule 4-215," which, in part, enumerates "the modalities by which a trial judge may find that a criminal defendant waived implicitly his or her right to counsel, either by failure or refusal to obtain

counsel[.]" *Broadwater v. State*, 401 Md. 175, 180 (2007) (footnotes omitted). Indeed, one way a defendant may waive his or her right to counsel is through inaction. *Id*. at 181.

Specifically, Md. Rule 4-215(d) provides that a defendant who appears before the court and indicates a desire to have counsel must be permitted "to explain the appearance without counsel." *Id*. at 180 n.4 (quoting Md. Rule 4-215(d)). If, after considering the defendant's explanation, "the court finds that there is a meritorious reason for the defendant's appearance without counsel, the court shall continue the action to a later time and advise the defendant that if counsel does not enter an appearance by that time, the action will proceed to trial with the defendant unrepresented by counsel." *Id*. (quoting Md. Rule 4-215(d)). If, however, "the court finds that there is no meritorious reason for the defendant's appearance without counsel, the court may determine that the defendant has waived counsel by failing or refusing to obtain counsel and may proceed with the hearing or trial." *Id*. (quoting Md. Rule 4-215(d)).

This Court has noted that "there is no set inquiry that must precede a trial court's finding of waiver of counsel by inaction[.]" *Peterson v. State*, 196 Md. App. 563, 573 (2010) (citing *Grant v. State*, 414 Md. 483, 490 (2010)). Instead, the court's examination must: (1) "be sufficient to permit it to exercise its discretion[,]" (2) "not ignore information relevant to whether the defendant's inaction constitutes waiver[,]" and (3) "reflect that the court actually considered the defendant's reasons for appearing without counsel[.]" *Id*. (quoting *Broadwater*, 401 Md. at 204).

Finally, "[w]e review a trial court's finding of waiver under Rule 4-215(d) only for an abuse of discretion." *Grant*, 414 Md. at 491. An abuse of discretion occurs "where no reasonable person would take the view adopted by the [trial] court[.]" *North v. North*, 102 Md. App. 1, 13 (1994) (alteration in original) (quoting *In re Marriage of Morse*, 240 Ill. App. 3d 296, 307 (1993)). An abuse of discretion is that which is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Id*. at 14.

Here, Satchell maintains that the court should have sought additional information before determining that he had waived his right to counsel, such as "additional details about what jobs [he] had applied for, how much he was making, and whether the attorney [he] was able to retain would be available soon for trial." In support, he relies upon the Supreme Court of Maryland's decisions in *Moore v. State*, 331 Md. 179 (1993), and *Gray v. State*, 338 Md. 106 (1995), stating that as in those cases, here he "provided a facially meritorious reason for appearing without counsel, and the court, without further inquiry, erred in deeming it non-meritorious." We disagree.

In *Moore*, the defendant appeared at trial without his attorney, stated that he was represented but had not finished paying the fee, and, "[w]ithout even a hint of further inquiry" the court insisted "that the case go to trial." 331 Md. at 181–82, 186. The Supreme Court of Maryland reversed and held that when a defendant provides an explanation for appearing without counsel, that "the record must . . . be sufficient to reflect that the court actually considered those reasons." *Id*. at 186. The Court noted that the circuit court "is

not relieved of the obligation to make such inquiry as is required to permit it to exercise discretion required by the rule." *Id*. at 187.

In this case, however, the record reflects that the court did inquire into and consider Satchell's reasons for appearing without counsel. The court asked about "what efforts" Satchell had made to obtain counsel, inquired as to the name and location of the attorney Satchell attempted to retain, asked when Satchell "reach[ed] an agreement for his representation" and if there "was . . . a reason" Satchell was not able to secure representation earlier. When Satchell explained that he needed to pick up a second job, the court questioned why he hadn't done so sooner. The court asked about whether and when Satchell attempted to contact the public defender's office, and who he spoke to from that office. Finally, the court asked if there was "any other explanation for . . . not having an attorney[,]" or "any other difficulties" for the court's consideration before making its determination. Thus, the record reflects that the court considered Satchell's reasons for appearing without counsel and found them, under the facts before it and the "history of this case[,]" to be without merit. We cannot say that the court's decision to proceed with trial was "well removed from any center mark imagined" by this Court. *North*, 102 Md. App. at 14.

In *Gray*, the defendant "was refused representation because, under th[e public defender's] office's policy, he was a day late getting there." 338 Md. at 112–13. There, the defendant explained that he was unaware of the deadline, and that he had attempted to hire a private attorney first, but was unable to pay the fee. *Id*. The Supreme Court of

Maryland determined that the defendant's explanation was "plausible" and "not, as a matter of law, non meritorious." *Id*. at 113. The Court held that, "we cannot say that contacting the public defender almost two weeks before the trial date dispositively demonstrates neglect or refusal to obtain counsel." *Id.* at 113.

Here, there are no allegations regarding ignorance of a deadline or denial of representation from the public defender's office just weeks before trial. Instead, Satchell testified that the public defender's office declined to represent him two months before trial. Further, Satchell was well-aware of impending deadlines; he was advised repeatedly—four separate times in this case alone—that the court could determine that he had waived his right to an attorney if he appeared for trial without counsel. As we have noted in similar circumstances involving repeated warnings of waiver of the right to counsel, "'[t]o reverse the trial judge in this case would be to tell judges generally that their stern words are, when push comes to shove, a meaningless bluff.'" *Broadwater v. State*, 171 Md. App. 297, 327 (2006) (quoting *Felder v. State*, 106 Md. App. 642, 651 (1995)), *aff'd*, 401 Md. 175 (2007). We decline to do so here.

The facts before us indicate that Satchell had over six months from the date of his initial appearance to obtain counsel. When Satchell appeared at trial unrepresented, the court permitted him to explain the reasons for appearing without counsel pursuant to Md. Rule 4-215(d). After hearing Satchell's explanations, the court determined that Satchell did not have a meritorious reason for appearing without counsel and decided to proceed with trial pursuant to Md. Rule 4-215(d).

The record reflects that the court did so after considering the "arguments that [Satchell] made," and a "review of the case in its total[,]" including that Satchell had received four separate warnings that his right to counsel may be waived (indeed, three from the same judge Satchell appeared before at trial). The record confirms that Satchell understood each warning concerning his right to counsel. Further, the court's determination reflects not only consideration of Satchell's explanations, but considerable familiarity with Satchell's circumstances, as the trial judge noted that he and Satchell "had many conversations over the course of the life of this case[.]" *See McCracken v. State*, 150 Md. App. 330, 359 (2003) (noting that where the defendant had previously appeared before the trial judge, that "[t]he court's statements demonstrate its familiarity with appellant's repeated discharges of counsel and appearances without counsel and its careful consideration of appellant's reason for appearing without counsel on the morning of trial"). Moreover, as the State notes, Satchell never advised the court prior to the June 9, 2022 trial that he needed more time to retain counsel.

Lastly, Satchell asserts that although he did not request the postponements previously granted by the court, the court nonetheless "faulted" him for them. This claim is unsupported by the record. The court specifically noted the reasons for both postponements—one due to COVID-related issues, and the other resulting from the State's request.[7] We are not persuaded that the court's consideration of the previous

[7] Of the postponement request from the State, the court explained:

(continued)

postponements, and the additional time afforded to Satchell as a result, was an abuse of discretion. The record indicates that although Satchell was aware of the critical importance of timely retaining counsel, he failed to do so. In sum, we cannot say the court abused its discretion in determining that Satchell waived his right to counsel under these facts.

II. We decline to engage in plain error review of the prosecutor's assertions at trial.

Our appellate courts will not decide an issue "unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131(a). An exception to this rule—the so-called "plain error" exception—gives appellate courts the discretion to review issues not raised at trial. *Chaney v. State*, 397 Md. 460, 468 (2007). However, the Supreme Court of Maryland has made clear that the discretion is one that appellate courts "should rarely exercise[.]" *Id*.; *see also Yates v. State*, 202 Md. App. 700, 720 (2011) ("The Maryland appellate courts have made clear, however, that plain error review rarely should be exercised."), *aff'd*, 429 Md. 112 (2012).

Indeed, "[p]lain error review is reserved for errors that are 'compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial.'" *Yates v.*

> My recollection of the last motion was that a necessary witness had a military obligation. So she was serving our country, and I in review of that motion considered that to be good cause.
>
> And, Mr. Satchell, I also looked at the docket, saw that you still didn't have an attorney and thought to myself, if I give him another month, because the State's asking for a postponement, that's another month for Mr. Satchell to get an attorney. I thought that would be helpful for you as opposed to you being unrepresented.

State, 429 Md. 112, 130 (2012) (quoting *Savoy v. State*, 420 Md. 232, 243 (2011)). It is for errors "that [are] 'so material to the rights of the accused as to amount to the kind of prejudice which precluded an impartial trial.'" *Steward v. State*, 218 Md. App. 550, 565 (2014) (quoting *Diggs v. State*, 409 Md. 260, 286 (2009)); *see also State v. Daughton*, 321 Md. 206, 211 (1990) (holding that plain error review is reserved for errors "which vitally affect[] a defendant's right to a fair and impartial trial." (citing *State v. Hutchinson*, 287 Md. 198, 202 (1980))).

> Four conditions must be met before we may engage in plain error review:
>
> 1. There must be a legal error that has not been intentionally relinquished or abandoned by the appellant.
>
> 2. The error must be clear or obvious, and not subject to reasonable dispute.
>
> 3. The error must have affected the appellant's substantial rights, which in the ordinary case means that it affected the outcome of the proceedings.
>
> 4. If the previous three parts are satisfied, the appellate court has discretion to remedy the error, but it should exercise that discretion only if the error affects the fairness, integrity or reputation of judicial proceedings.

Winston v. State, 235 Md. App. 540, 567 (2018) (quoting *Newton v. State*, 455 Md. 341, 364 (2017)).

As we have previously stated, "[m]eeting all four conditions is, and should be, difficult." *Id.* at 568. Moreover, "[b]ecause each one of the four conditions is, in itself, a necessary condition for plain error review, the appellate court may not review the unpreserved error if any one of the four has not been met." *Id*. Thus, "[e]ven if an appellant is able to satisfy the threshold burden of proving a plain and material error, the Court need not recognize the error." *Steward*, 218 Md. App. at 566 (citing *Sine v. State*, 40 Md. App.

628, 632 (1978)); *see also Sine*, 40 Md. App. at 632 ("The discretion conferred upon us by th[e plain error] rule will not be exercised as a matter of course, even where the error complained of is clear."). Indeed, we have observed that, "[b]ecause of the difficulty of demonstrating facts that are sufficiently compelling to invoke plain error review, it remains 'a rare, rare, phenomenon[.]'" *Steward*, 218 Md. App. at 566 (quoting *Morris v. State*, 153 Md. App. 480, 507 (2003)).

It is a "fundamental tenet[] of appellate review" that "[o]nly a judge can commit error." *DeLuca v. State*, 78 Md. App. 395, 397 (1989). Accordingly, we do not "review conduct of counsel, the parties, or witnesses for error." *Walls v. State*, 228 Md. App. 646, 668 (2016); *see also Myers v. State*, 243 Md. App. 154, 184 n.2 (2019) ("The appellant should note that the State cannot commit error. The State, of course, may be guilty of improper conduct, but that is not 'error.'"). Instead, "our function as an appellate court is to review the rulings of *the trial court* for error." *Walls*, 228 Md. App. at 668 (citing *Cason v. State*, 140 Md. App. 379, 400 (2001)).

Here, Satchell has failed meet his "threshold burden" of demonstrating "a plain and material error" in the record before us. *Steward*, 218 Md. App. at 566. Critically, Satchell does not allege any error by the trial judge. Instead, he asserts that, "[a]s a result of the prosecutor's improper appeals to protect the community from a plague that was ripping it apart," that "there is a reasonable possibility that the jury convicted Mr. Satchell even if the jurors were otherwise not convinced of his guilt." This allegation does little to demonstrate reversible error appropriate for plain error review by this Court. *See Apenyo*

v. Apenyo, 202 Md. App. 401, 424–25 (2011) ("The trial judge played no part in this, and it is, of course, only the trial judge who can commit reversible error."). Even if Satchell demonstrated plain error, we would not exercise our discretion to remedy the error because the prosecutor's comments did not undermine Satchell's right to a fair and impartial trial. As the State correctly points out, "the evidence of [Satchell's] guilt was overwhelming, consisting of the first-hand testimony of an eyewitness/participant in the three drug transactions at issue, which was corroborated by real evidence in the form of audio/video recordings, cell phone records, and the drugs themselves."

We therefore affirm Satchell's convictions.

JUDGMENTS OF THE CIRCUIT COURT FOR WORCESTER COUNTY ARE AFFIRMED. COSTS TO BE PAID BY APPELLANT.