Circuit Court for Baltimore City
Case No. 119155020

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1128

September Term, 2021

CLEVELAND DESHIELDS, SR.

v.

STATE OF MARYLAND

Arthur,
Tang,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 29, 2022

Following a jury trial in the Circuit Court for Baltimore City, Cleveland DeShields, Sr., appellant, was convicted of first-degree murder. Appellant raises a single issue on appeal: whether the trial court plainly erred in giving a limiting instruction regarding the jury's use of a witness's prior inconsistent statement for impeachment that deviated from the pattern jury instruction. We decline to exercise our discretion to engage in plain error review of this issue and shall affirm the judgment of the circuit court.

On November 2, 2018, appellant's wife, Wanda Diggins, was assaulted in the home of Dionne Arrington located at 1717 North Bentalou Street. The injuries that Ms. Diggins sustained as a result of that assault ultimately caused her death. The State presented evidence that, at the time of the assault, there were only four people known to be present in the home: appellant, Ms. Diggins, Ms. Arrington, and Makia Jones. Both Ms. Arrington and Ms. Jones testified at trial.

Specifically, Ms. Jones testified that she did not remember much about the night of the assault because she had been drinking, and that she did not see what happened because she had been asleep. The prosecutor then asked Ms. Jones if she had spoken to Ms. Diggins' family members following the assault and told them what happened. Ms. Jones denied having had such a conversation. The State then called Ms. Diggins' daughter, Ashley Serrio, who testified that she and other members of Ms. Diggins' family had met with Ms. Jones the day after the assault and that Ms. Jones had told them that she had woken up to "the sound of punches" and seen appellant "standing overtop of [Ms.] Diggins

punching her."[1] Following that testimony, the trial court gave the following limiting instruction to the jury:

> Ladies and gentlemen of the jury, I should interject at this point. What this witness is saying is not allowed for your consideration of its truth, *i.e.* the version that's being offered of what Makia Jones allegedly said [sic] not for you to consider the content of it, except to the degree that you're allowed to consider it to be consistent or inconsistent with prior statements that she gave from the stand. All right? I mean, that's a different, it may be a fine line to draw here but it's the difference between accepting what was said as the truth and accepting it as a possible [sic], and that's up to you whether you find it to be consistent or consistent with things she had previously said.

Defense counsel did not object to this limiting instruction or request any additional instructions relating to the use of prior inconsistent statements for the purpose of impeachment.

On appeal, appellant contends that the court's limiting instruction deviated from the pattern instruction, was "rambling and confusing," and "did not accurately instruct the jury on the use of the impeachment evidence provide[d] by Ms. Serrio concerning what Ms. Jones told her." Appellant acknowledges, however, that this claim is not preserved because he did not object at trial. 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

[1] Ms. Jones was also impeached with a 911 call wherein she requested an ambulance and stated that Ms. Diggins' "boyfriend had started beating her . . . [and then] he ran out the back door."

ruling, action, or conduct be presented in the first instance to the trial court[.]" *Ray v. State,* 435 Md. 1, 23 (2013) (quotation marks and 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 of the issue raised by appellant. *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 omitted). Consequently, we shall affirm the judgment of the circuit court.

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