

Circuit Court for Harford County
Case No.: 12-K-18-000207

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1211

September Term, 2019

ROBERT ANTHONY PARKS

v.

STATE OF MARYLAND

Arthur,
Beachley,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 9, 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 trial in the Circuit Court for Harford County, a jury found Robert Anthony Parks, appellant, guilty of second-degree rape. The court sentenced appellant to twenty years' imprisonment with all but eight years suspended in favor of five years' probation.

On appeal, appellant contends that the trial court made a plain error in allowing the State to make allegedly improper comments during closing argument. We decline to exercise our discretion to engage in plain error review of this issue, and therefore shall affirm.

Appellant attended a surprise birthday party held at a brewery which was followed by an after-party at the home of the person who arranged the birthday party. Alcohol was consumed during both functions. At some point, the victim, who also attended the birthday party and the after-party, rather than drive home, went to bed in the guest room and fell asleep. She testified that she woke up confused about where she was and what was going on and then realized that appellant was engaging in vaginal intercourse with her. She asked him to stop, and he did not. Appellant admitted that he was passed out drunk in the bed with the victim, but denied having intercourse with her.

Of relevance to the State's closing argument, on direct examination¹ appellant testified:

Intoxication is never an excuse for rape. Never. Women's attire is not. Women's conduct is not. Intoxication either on the part of the person being attacked or the person doing the attacking. There is no excuse for that. That is not who I am and that is not who I will ever be. I raised my sons ... with the foundational principle and it's the same principle I live by. They know

¹ Appellant represented himself at trial.

and they have the expectation from me that they are to give or take an ass whooping to protect a woman. Any woman. ...

Appellant referred to his sons later, stating that, because he came from a divorced family, he “bent over backwards not to have [his] sons grow up in that same life.” He said “I have a clear conscience ... of how I have conducted myself as a father, as a step-father, as a husband, and as an ex-husband. I have a clear conscience. I deny all of those allegations. Every one of them. Every one of them.”

During rebuttal closing argument, the State said:

...He tells you in his last statements to you, in surrebuttal was that his conscience is clear, that he is a good father, a good stepfather, a good husband, a good ex-husband.

* * *

Again, the Defendant does not have the burden of proof but he put on a defense. He says he is a good father. He taught his sons not to force themselves on women. During his fifty-eight years he has never done that. Based on the testimony of [the victim] and his ex-wife, it is completely not true. I’m sure in the Defendant’s mind he believes that. But that is not the reality of what happened to [the victim]. She was violated by the Defendant. Again, he is putting on a defense. He a good father. He is teaching these things to his sons. **Where are his sons to testify for him? No one was here except for his words** of what he believes he is and what he is not.

Appellant claims on appeal that the bolded portion of the State’s closing argument was improper. Appellant acknowledges that he lodged no contemporaneous objection to the State’s closing argument, and that the issue is, therefore, not preserved for appeal. He thus asks us to review the error under our authority to review unpreserved errors pursuant to Md. Rule 8-131.

Maryland Rule 8-131(a) provides that, “[o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or

decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.”

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 shall affirm the judgment of the circuit court.

**JUDGMENT OF THE CIRCUIT COURT
FOR HARFORD COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**