

Circuit Court for Baltimore City
Case No. 124068026

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1457

September Term, 2024

JAMAINE J. BEATHEA

v.

STATE OF MARYLAND

Graeff,
Berger,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 14, 2026

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Convicted by a jury in the Circuit Court for Baltimore City of robbery, conspiracy to commit robbery, and related offenses, Jamaine J. Beathea, appellant, presents for our review two issues: whether the court “erred or abused its discretion in denying counsel’s request for additional time for Mr. Beathea to elect whether or not to waive his right . . . to remain silent,” and whether “the cumulative effect of the State’s improper remarks influenced the jury’s verdict.” For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State called Joseph Gaul, who testified that on January 10, 2024, he “drove up to Baltimore for a concert.” After the concert, Mr. Gaul obtained from his truck a bag containing his “Leica M11 digital camera” and three lenses, and went “to go take pictures.” As Mr. Gaul was walking down Baltimore Street, a “gentleman approached [him] and started cussing at [him], asking [him] why [he] was taking pictures.” When Mr. Gaul “walked away,” the man “went and grabbed some people,” including two men and two women, “from across the street and they proceeded to . . . cut [Mr. Gaul] off.” When Mr. Gaul ran, the group grabbed his shoulder and camera bag. One member of the group kicked Mr. Gaul in his calf, causing him to fall and scrape his elbows and knees. The group “started beating [Mr. Gaul] up and punching . . . and kicking” him, and “grabbed the bag and . . . camera.” Mr. Gaul identified Mr. Beathea in court as one of the men that “beat [Mr. Gaul] up and took [his] camera.” The State subsequently played for the jury a video recording of the assault and robbery made by a surveillance camera. Mr. Gaul identified one of the persons depicted in the recording as Mr. Beathea. The State also presented evidence that following the robbery, Mr. Beathea sold Mr. Gaul’s camera to a pawn shop.

Mr. Beathea first contends that the court “erred and abused its discretion in denying [defense] counsel’s request for additional time for [Mr. Beathea] to decide whether or not to waive his right . . . to remain silent.” On March 25, 2024, defense counsel entered his appearance. On September 3, 2024, trial commenced. At approximately 4:30 p.m., the State concluded its case. Following the denial of defense counsel’s motion for judgment of acquittal, defense counsel and the court, over the course of approximately three and a half pages of transcript, advised Mr. Beathea “of his right to testify or remain silent.” The following colloquy then occurred:

THE COURT: Did you have anything else you wanted to advise him of?

[DEFENSE COUNSEL]: No, Your Honor. I simply ask that – that we – we – address this again in the morning if –

THE COURT: No, no, no, no. He – we’re going to start today –
Do you want to testify or do you want to remain silent?

[MR. BEATHEA]: Like, me, I really would like to – I know that (inaudible . . .) –

THE COURT: Wait, what?

[MR. BEATHEA]: I don’t know nothing about, like, get – having a jury trial or being at trial but – if you – like, I wouldn’t only get in trouble, like –

THE COURT: Okay. But –

[MR. BEATHEA]: Well, so I really don’t know –

THE COURT: You – you requested to have a trial today. The State has put on their case. Now is your opportunity to put on a case if you have it.

And as was just explained to you, you have the right to testify or you can remain silent. Do you want to testify?

[MR. BEATHEA]: Yeah, I want to – yeah, testify. (Nodding head.)

THE COURT: Okay. Well, let’s start with his testimony.

[DEFENSE COUNSEL]: You want me to call him now, Your Honor or –

THE COURT: Yes.

Mr. Beathea subsequently testified that he witnessed, but did not participate in, the assault and robbery.

Mr. Beathea contends that “in denying defense counsel’s request for additional time . . . to decide whether or not to waive [Mr. Beathea’s] right . . . to remain silent,” the court “denied [him] the opportunity [to] knowingly, intelligently, and voluntarily . . . waive [the] right.” The State counters that “Mr. Beathea’s claim is not preserved for appellate review because neither he nor his counsel advised the . . . court that they needed more time to discuss his decision of whether to testify.” Alternatively, the State contends that Mr. Beathea “was thoroughly advised and afforded ample time to consider whether he wished to testify.”

We disagree with the State as to whether Mr. Beathea’s contention is preserved for our review. Rule 4-323(c) states that “[f]or purposes of review . . . on appeal of any . . . ruling or order” other than on an objection to the admission of evidence, “it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court.” Here, defense counsel, at approximately 4:38 p.m., made known to the court his desire that

the court wait to address the issue of whether Mr. Beathea would testify or remain silent until the following morning. Also, the court’s statement that Mr. Beathea was “going to start [his case] today” indicates recognition that defense counsel desired that the court delay resolution of the issue. We conclude that the court knew the action that Mr. Beathea desired the court to take, and hence, his contention is preserved for our review.

Nevertheless, we reject Mr. Beathea’s contention. At the time that trial commenced, defense counsel had represented Mr. Beathea for over five months. Prior to deciding to testify, Mr. Beathea was expressly advised that he had “a Fifth Amendment right to remain silent,” that if he chose to testify, he would “be treated as any other witness and be subject to cross-examination,” and that if he chose “not to testify, the [c]ourt [would] instruct the jury that they cannot consider the fact that [Mr. Beathea] did not testify in any fashion when making a decision in their deliberations.” The court also expressly confirmed that Mr. Beathea could not be impeached with a previous conviction. Mr. Beathea replied that he understood. Finally, Mr. Beathea elected not to remain silent, but to testify, which enabled him to present his defense that he did not assault or rob Mr. Gaul. From these circumstances, we conclude that the court did not err or abuse its discretion in denying defense counsel’s request that Mr. Beathea be given additional time to determine whether to waive his right to remain silent.

Mr. Beathea next contends that the following remarks by the prosecutor during closing argument are “improper,” and the “cumulative effect of the . . . remarks influenced the jury’s verdict:”

So there are two alternative theories you can find the defendant guilty of all those crimes. You personally obviously saw with your own eyes. But in addition to that, he also aided, counseled and encouraged his co-conspirators to commit all three crimes. Therefore you must find the defendant guilty, also under the theory of accomplice liability of robbery, assault in the second degree, and theft.

* * *

These two individuals, ladies and gentlemen, are co-conspirators. You see them attacking the victim together, you see them leaving together with the property. The property that was then pawned by the defendant. Therefore, you must convict and find the defendant guilty of conspiracy to commit robbery, to commit theft. Because that's what the law demands, ladies and gentlemen.

Acknowledging that “no objection was raised,” Mr. Beathea asks us to exercise our “discretion to review unpreserved errors constituting plain error.”

We decline to do so. Although this Court has discretion to review unpreserved errors pursuant to Rule 8-131(a) (“[o]rdinarily, an appellate court will not decide any . . . 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”), the Supreme Court of Maryland 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) (internal 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) (internal citation and quotations omitted). Under

the circumstances presented here, we decline to overlook the lack of preservation, and 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 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)).

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