

Circuit Court for Prince George's County
Case No.: CT171414X

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1739

September Term, 2019

DAYVON MARKEE BYRD

v.

STATE OF MARYLAND

Beachley,
Gould,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 22, 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 Prince George’s County, a jury found Dayvon Markee Byrd, appellant, guilty of armed carjacking, use of a firearm in the commission of a crime of violence, and related lesser offenses. The court sentenced appellant to an aggregate term of fifty years’ imprisonment with all but twenty-five years suspended in favor of five years’ probation.¹

On appeal, appellant contends that the trial court made a plain error during the State’s closing argument. For the reasons explained below, we shall affirm.

BACKGROUND

The victim in this case, Xavier Dozier, an Uber driver, testified that a man, later identified as appellant, approached him in his car in a 7-Eleven parking lot at 2:30 in the morning on August 19, 2017, pointed a pistol at his face, and told him to get out of the car. The victim said that he could see a bullet in the barrel of the gun. He then got out of the car and left his cell phone and his credit cards in the car as appellant instructed him to do. The victim then called 9-1-1 from the 7-Eleven.

Later that day, the police found the victim’s car, and stopped it with appellant in the driver’s seat. The police recovered the victim’s credit cards from appellant’s pocket, the victim’s key fob from around appellant’s neck, and a pistol from the driver’s side door pocket. The victim identified appellant as his assailant, the credit cards and key fob as his own, a shirt as the one appellant was wearing, and the pistol as the one appellant used.

¹ Specifically, the court imposed the following sentences: thirty years with all but twenty years suspended for armed carjacking, and twenty years consecutive with all but five years suspended for use of a firearm in the commission of a felony. The court merged the remaining offenses for sentencing.

Appellant did not testify and called no witnesses.

DISCUSSION

It its closing argument, the State pointed to all of the evidence that had been adduced and matched it to the elements of each of the offenses in urging the jury to find appellant guilty on all counts. During appellant’s closing argument, counsel for appellant admitted appellant’s guilt on all counts except those that involved the use of a weapon. Appellant argued to the jury that the State had not proved beyond a reasonable doubt that the gun found in the victim’s car belonged to appellant. Rather, appellant suggested that the gun belonged to the victim. In rebuttal closing argument, the State said, *inter alia*, the following:

This is a big gun. I do not want to turn it so you can see down the barrel, because I don’t think that’s appropriate. But you can see the top of it. It is a large caliber hole that he was looking right down. From his own testimony it was about six to 12 inches from his face at eye level.

He also stated that he saw the shine of the bullet down that barrel. The bullet is shiny. It is gold. That is what he saw. And, by the way, he said that.

And when the officers found the gun, guess what? It had this bullet in its chamber. He was right. The exact shirt he described for the person that he said robbed him.

All the evidence that you have seen is going back to you. The victim’s key fob hidden underneath his shirt. The officer also said he had to search the vehicle to find his key fob.

He – again he wasn’t even willing [to] stop the vehicle. He tried to get away causing further damage to Mr. Dozier’s car.

We’re beyond the presumption of innocence stage. We’re now – all of the evidence has been presented and it’s closed. We’re now at the time you need to determine whether or not the defendant committed these crimes and whether or not he used a firearm.

Recognizing that he did not object to the foregoing portion of the State’s closing argument, appellant contends that the trial court committed a plain error in allowing the State to make the italicized comment above that “[w]e’re beyond the presumption of innocence stage.”

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 PRINCE GEORGE'S
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**