Circuit Court for Allegany County
Case No. C-01-CR-23-000755

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1853

September Term, 2024

RAESHAUN D. CODY

v.

STATE OF MARYLAND

Zic,
Ripken,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 12, 2025

*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 Allegany County of wearing, carrying, or transporting a loaded handgun on or about his person and a related offense, Raeshaun D. Cody, appellant, presents for our review a single issue: whether the court "plainly err[ed] by failing to take any curative action in response to the prosecutor's numerous improper and unfairly prejudicial remarks in rebuttal closing argument." For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State presented evidence that at approximately 4:00 p.m. on March 24, 2023, school security officer George Kroll "heard a call come over the radio of shots fired on Bowery Street near Guiseppe's Restaurant." Officer Kroll and a school security officer named Grove, who was also Frostburg City Police Commissioner, "responded to that location" and "observed a black male bent over on the sidewalk in front of Guiseppe's bleeding from the mouth." The owner of the restaurant "pointed south on Bowery Street" and stated: "That's the subject there that you are looking for." Officer Kroll and Commissioner Grove "yelled at the subject," whom Officer Kroll identified in court as Mr. Cody, "to get down on the ground." After Mr. Cody complied, Frostburg City Police Officers arrived. Commissioner Grove "remove[d] a 9 mm. handgun from [Mr. Cody's] waist area," "cleared" it, and handed it to an officer. Mr. Cody told one of the officers: "I carry it for protection. He came at me." The handgun was later determined to have been loaded with live rounds.

Mr. Cody contends that the following remarks by the prosecutor during rebuttal argument were impermissible:

- "[T]hat's what happens when you get to sit on a case and you are charged for eighteen months, you start coming up with theories. Theories, I am in a cage, I am in a cage, I got to get out. I am a rat in a cage, I got to make up some lies, and they are hoping that those lies will hit somewhere with you."

- "This type of evidence, this type of testimony, it should offend you. It should offend you. What are they saying? Your brains are mush? Your brains aren't mush, you came in here, you all have jobs, you all work. You pay your bills and they expect you to believe this? Mistake a fact, I thought this was that? I thought this was that? Do I need to get my keychain out? The keychain pepper spray? That's stupid."

- "They are making up stories and hoping you are going to buy them. The only thing that happened here today is that you heard the truth. The officers came in and they testified and they told you what they saw. Okay, no B.S., no, no. They didn't say oh yea, did D.N.A., didn't find it. No, they didn't do D.N.A[.]"

Acknowledging that defense counsel did not object to the remarks, Mr. Cody asks us "to recognize 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 ALLEGANY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.