Circuit Court for Baltimore City
Case No. 123248007

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2099

September Term, 2024

DOMINIC MILLER

v.

STATE OF MARYLAND

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

JJ.

Opinion by Kehoe, J.

Filed: June 17, 2026

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In September 2023, Appellant, Dominic Miller ("Mr. Miller"), was indicted in the Circuit Court for Baltimore City, case number 123248007, with possession of a regulated firearm after having been convicted of a disqualifying offense and possession of ammunition by a person prohibited from possessing a regulated firearm. The following November, the State charged Mr. Miller in a separate indictment, case number 123331021, with first-degree murder, use of a firearm in the commission of a crime of violence, and related handgun offenses.[1, 2] The State moved to join the two cases for trial, which the court granted over Mr. Miller's objection.

At the conclusion of a consolidated six-day trial, a jury convicted Mr. Miller of possession of a regulated firearm after a disqualifying conviction and illegal possession of ammunition but acquitted him of the remaining charges.[3] The circuit court subsequently sentenced Mr. Miller to a total term of five years of incarceration without the possibility of

[1] Although the charge of second-degree assault was also submitted to the jury, the indictment does not appear to have *expressly* charged it. Instead, it charged him with "feloniously, willfully and of deliberately premeditated malice aforethought kill and murder Jonathan Williams, in violation of the Common Law and Criminal Law Article, Section 2-201 of the Annotated Code of Maryland[.]"

[2] We take judicial notice of the record in case number 123331021, as it is available on the Maryland Electronic Courts case management system. *See Lewis v. State*, 229 Md. App. 86, 90 n.1 (2016) ("We take judicial notice of the docket entries . . . found on the Maryland Judiciary CaseSearch website, pursuant to Maryland Rule 5-201."), *aff'd*, 452 Md. 663 (2017).

[3] The "six-day trial" included one day devoted exclusively to motions in limine, jury selection, and opening statements (12/5/24), and one day devoted exclusively to jury instructions, closing arguments, and the verdict (12/13/24). Thus, although trial lasted six days, only four of those days entailed the presentation of evidence.

parole. He timely appealed and presents two questions for our review, which we have rephrased slightly as follows:

I. Did the circuit court abuse its discretion in joining Mr. Miller's cases for trial?

II. Did the circuit court commit plain error by permitting the State to make improper remarks regarding Mr. Miller and his attorney during its closing argument?[4]

For the reasons that follow, we affirm the judgment of the circuit court.

BACKGROUND[5]

At approximately 2:40 a.m. on July 11, 2023, Baltimore City police officers responded to a ShotSpotter alert of gunfire in the 1800 block of Pennsylvania Avenue.[6] Officer Louis Rinaldo ("Officer Rinaldo") was the first officer to arrive at the scene. There, he found a parked black Honda Accord with apparent bullet holes in its exterior.[7] As he approached the vehicle, Officer Rinaldo observed a man, later identified as Jonathan

[4] In his brief, Mr. Miller articulated the issues as follows:

1. Did the trial court err in denying Appellant's motion to sever the "disqualified person" counts from the remaining charges?

2. Did the trial court plainly err in permitting the State to engage in improper closing argument?

[5] We will provide only a brief recitation of those underlying facts to provide context for our discussion of the issues presented. *See Kennedy v. State*, 436 Md. 686, 688 (2014); *Teixeira v. State*, 213 Md. App. 664, 666–67 (2013).

[6] "ShotSpotter" is a system that detects gunfire, pinpoints its location, and notifies the police.

[7] Although Officer Rinaldo identified the vehicle only as a "Black Honda" at trial, subsequent testimony specified the model of the vehicle as an Accord.

Williams ("Mr. Williams"), unresponsive in the driver's seat. Mr. Williams had sustained sixteen gunshot wounds and was pronounced dead at the scene.

A preliminary search of the Honda revealed Mr. Williams's cell phone and a .50 caliber handgun under the driver's seat. The police also discovered twelve nine-millimeter shell casings around the vehicle. During an autopsy performed later that day, an assistant medical examiner recovered eleven bullets, as well as "two bullet jackets and one gray metal fragment" from Mr. Williams's body. Although all of the shell casings found at the scene of the shooting were nine-millimeter, two of the bullets recovered during the autopsy were of the .45-caliber class.

After arriving on the scene at around 3:11 a.m., Detective Jessica Scott ("Det. Scott"), the lead homicide detective assigned to the case, obtained surveillance footage depicting the shooting. The footage showed Mr. Williams's Honda parking in the 1800 block of Pennsylvania Avenue at approximately 1:26 a.m.[8] No one entered or exited the Honda before a second vehicle, described at trial as a 2019 or 2020 Hyundai Tucson without a front license plate, pulled up to it. The rear door of the Hyundai then opened, and a muzzle flash emanated from inside the vehicle.

Later that day, Det. Scott learned that a bluish-gray 2020 Hyundai Tucson, which had been reported stolen the preceding month, had just been involved in a collision. Although the driver fled the scene after the accident, patrol officers recovered the vehicle.

[8] At trial, Det. Scott testified that the surveillance camera "was off by one hour and three minutes." Accordingly, although the timestamp on the video evidently indicates that Mr. Williams's Honda parked at 12:23 a.m., "it would . . . really be 1:26 a.m."

During a search of the Hyundai conducted pursuant to a warrant, officers found, *inter alia*, two masks and a "fired projectile" in the rear of the vehicle.

During their investigation, the police interviewed Mr. Williams's family and learned that he had recently taken a trip to North Carolina with Mr. Miller. Det. Scott also obtained call logs for Mr. Williams's cell phone. A review of those records revealed regular communications between that phone and Mr. Miller's cell phone until June 18, 2023, when those communications ceased.

On July 27, 2023, police officers executed a search warrant at a house located at 4120 Ivanhoe Avenue, which Mr. Miller subsequently identified as his home address. During their search of the residence, the police recovered a .45 caliber revolver from inside a bag in the dining room area of the home. Mr. Miller was then transported from the residence to police headquarters, where Det. Scott interviewed him. During that interview, Mr. Miller acknowledged that he had traveled to Charlotte, North Carolina, with "Jon" at some point during the preceding months.[9]

At trial, Det. Scott explained that revolvers, including the .45 caliber handgun found in Mr. Miller's residence, do not eject shell casings when fired. That fact, she testified, provided a possible explanation for the absence of .45 caliber casings at the scene of the shooting despite the presence of .45 caliber class bullets in Mr. Williams's body. Based on

[9] During his taped interview, Mr. Miller was shown a photograph and affirmed the individual depicted in the photo was "Jonathan." However, there does not appear to be any evidence expressly identifying the individual in that photo as Mr. Williams.

that reasoning, Det. Scott decided to conduct another search of the Honda. That search produced multiple bullet fragments, including one from a .45 caliber class round.

In July 2024, swabs taken from the .45 caliber revolver and one of the masks found in the rear of the Hyundai Tucson were submitted to the Baltimore City Police Department's ("BCPD") Forensic Biology Unit for analysis. The resulting DNA profiles from both items matched Mr. Miller's inferred genotype.[10]

Additional facts will be included in the discussion as they become relevant.

DISCUSSION

I.

A. Parties' Contentions

Mr. Miller contends that the circuit court abused its discretion in granting the State's motion to join the criminal cases against him "[b]ecause of the prejudice inherent in labeling a defendant a person disqualified by conviction of a crime[.]" Although Mr. Miller acknowledges that the parties stipulated to his disqualifying conviction without identifying the prior offense, he maintains that the stipulation still posed a danger of unfair prejudice by "leaving . . . the jury to speculate as to the nature and severity of the offense." In his

[10] Michael Lawson, a DNA analyst for the BCPD explained "inferred genotypes":

> Inferred genotypes are the results that TrueAllele gives us. For manual interpretation either someone is included or someone is not included. TrueAllele gives us a probability -- a distribution of probable DNA profiles and so the results are referred to as an inferred genotype.

TrueAllele is a probabilistic genotyping software. *See Harvin v. State*, 263 Md. App. 326, 330 (2024).

view, the stipulation should have established only that he was a disqualified person, without specifying the basis for his disqualification or otherwise informing the jury that he had sustained a prior conviction.

The State responds that Mr. Miller's proposed stipulation would have erroneously omitted an essential element of the criminal-in-possession offenses. According to the State, although the stipulation properly omitted the name and nature of Mr. Miller's predicate conviction, it was required to inform the jury that he had previously been *convicted of a crime* that disqualified him from possessing a regulated firearm. The State further asserts that any error in joining the indictments was harmless beyond a reasonable doubt. It observes that, although Mr. Miller was convicted of the criminal-in-possession counts in the first indictment, he "was acquitted of murder and the related offenses" charged in the second. Those acquittals, the State concludes, demonstrate that the jury did not use the evidence of his prior conviction to infer that he was "'the shooter or one of the shooters[,]'" as Mr. Miller argued it would below.

B. Pertinent Procedural History

On January 29, 2024, the State moved to join the cases against Mr. Miller for trial. Although the record does not reflect that the court addressed the motion during the ensuing ten months, both cases were set for trial on December 5, 2024. At the outset of the proceeding on that date, Mr. Miller rejected plea agreements proposed by the State in both cases, entered pleas of not guilty, and exercised his right to a jury trial.

After Mr. Miller elected to be tried by a jury, defense counsel objected to a joint trial on the two indictments. Specifically, counsel argued that the State could not establish that a .45 caliber handgun had been used in the shooting. He further asserted that joinder would unfairly prejudice Mr. Miller because "inherent in the charge of the second indictment is the fact that he's a prohibited person."

The State acknowledged that its firearms examiner could not attest that "the firearms evidence . . . recovered in the victim's vehicle and in the victim" was "consistent with" the .45 caliber handgun discovered in Mr. Miller's home.[11] It maintained, however, that she could testify that bullets test-fired from that handgun bore similar individual and class characteristics to .45 caliber bullets recovered by the police. The State therefore argued that the firearms evidence would be admissible in both cases and that, because "the exact same witnesses . . . would be called in each case[,]" the evidence would be mutually admissible at separate trials.

Defense counsel responded that, if the cases were joined, the jurors might conclude that Mr. Miller was one of the shooters based on evidence that the .45 caliber handgun was found in his home. Counsel therefore claimed that the resulting danger of unfair prejudice to Mr. Miller weighed against joinder. The State, in turn, replied that, even if the cases

[11] Jennifer Ingbretson, the State's firearm expert testified:

> The bullet evidence Q[uestionable] 01 and Q[uestionable] 11 through Q[uestionable]13 I could not make a determination whether they were fired with this firearm or whether they were excluded from being fired with that firearm.

were tried separately, it would introduce evidence in each trial that the handgun had been found in Mr. Miller's residence.

After hearing argument, the circuit court granted the State's motion to join the two cases, reasoning:

> It appears from the arguments put forth that regardless of whether the actual offenses are joined, the information and the evidence will be presented at trial. It just would not be on the verdict sheet. So[,] in essence[,] we would be trying this matter twice on the same issues.
>
> So[,] balancing the judicial efficiency and probative value against any possible prejudicial effect on the defendant, the court finds that any prejudicial effect would be minimal, if any. So[,] . . . the cases will be joined.

The court's ruling thus rested on a determination that the same evidence would have been introduced in separate trials and that the interest in judicial economy, coupled with the probative value of that evidence, outweighed the danger of prejudice to Mr. Miller.[12]

Shortly before resting its case at trial, the State introduced without objection two joint stipulations, both of which were read to the jury. The stipulations collectively established that Mr. Miller had previously been convicted of a crime that disqualified him from possessing a regulated firearm and ammunition on July 27, 2023, under §§ 5-133(c) and 5-133.1(b) of the Public Safety Article ("PS").[13] The circuit court included the

[12] The court did not, however, specifically address whether evidence of Mr. Miller's disqualifying conviction would have been admissible in a separate trial on the charges arising from the shooting.

[13] The stipulation pertaining to the ammunition stated: "The State and [Mr. Miller] agree and stipulate that, as alleged in the Indictment filed in this case, [Mr. Miller] was

(continued . . .)

stipulations in its jury instructions, explaining that "[t]hese facts are now not in dispute and should be considered proven." As noted above, the jury ultimately convicted Mr. Miller of possession of a regulated firearm and ammunition by a disqualified person but acquitted him of the remaining charges.

C. Offense Joinder in Jury Trials

Maryland Rule 4-253 governs joinder and severance in criminal cases and provides, in pertinent part:

> (b) **Joint Trial of Offenses. —** If a defendant has been charged in two or more charging documents, either party may move for a joint trial of the charges. In ruling on the motion, the court may inquire into the ability of either party to proceed at a joint trial.
>
> (c) **Prejudicial Joinder. —** If it appears that any party will be prejudiced by the joinder for trial of counts, charging documents, or defendants, the court may, on its own initiative or on motion of any party, order separate trials of counts, charging documents, or defendants, or grant any other relief as justice requires.

The purpose of Rule 4-253(b) "is 'to save the time and expense of separate trials under the circumstances named in the Rule, if the trial court, in the exercise of its sound discretion deems a joint trial . . . proper.'" *State v. Hines*, 450 Md. 352, 368 (2016) (quoting *Lewis v. State*, 235 Md. 588, 590 (1964)). Under subsection (c), however, the court must balance this interest in judicial economy against the danger of prejudice to the accused. *See*

previously convicted of a crime that disqualified him from possessing ammunition on July 27, 2023, under Public Safety Article, Section 5-133(c)." Contrary to the language of the stipulation, Mr. Miller was prohibited from possessing ammunition by PS § 5-133.1(b), which provides: "A person may not possess ammunition if the person is prohibited from possessing a regulated firearm under § 5-133 (b) or (c) of this subtitle."

Galloway v. State, 371 Md. 379, 395 (2002) ("In its consideration of joinder (and thus of severance), a trial court weighs the conflicting considerations of the public's interest in preserving judicial economy and efficiency against unduly prejudicing the defendant.").

In *Conyers v. State*, 345 Md. 525, 553 (1997), our Supreme Court set forth the following two-part test for determining whether joinder is appropriate in jury trials:

> (1) is evidence concerning the offenses or defendants mutually admissible; and (2) does the interest in judicial economy outweigh any other arguments favoring severance? If the answer to both questions is yes, then joinder of offenses or defendants is appropriate. . . . If question number one is answered in the negative, then there is no need to address question number two; *McKnight* [*v. State*, 280 Md. 604 (1977),] mandates severance as a matter of law.

Accord Hart v. State, 260 Md. App. 491, 526–27 (2024). We address each prong in turn.

Whether evidence is mutually admissible is a purely legal determination, "which we review without deference to the trial court." *Id*. at 527; *see also Cortez v. State*, 220 Md. App. 688, 694 (2014), *cert. denied*, 442 Md. 516 (2015). "'Mutual admissibility' means that 'evidence of each crime would be admissible in a trial for the other[.]'" *Hart*, 260 Md. App. at 527 (quoting *Bussie v. State*, 115 Md. App. 324, 333 (1997)). Thus, in assessing mutual admissibility, the court must "determine whether the evidence from the 'other crimes' would be admissible if the trials occurred separately[.]" *Garcia-Perlera v. State*, 197 Md. App. 534, 548 (2011).

In assessing the admissibility of "other crimes" evidence, we apply Maryland Rule 5-404(b), which provides:

> (b) **Other Crimes, Wrongs, or Acts. —** Evidence of other crimes, wrongs, or acts . . . is not admissible to prove the character of a person in

> order to show action in the conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident, or in conformity with Rule 5-413.[14]

The permissible uses of other crimes evidence listed in Rule 5-404(b) "are 'neither mutually exclusive nor collectively exhaustive.'" *Page v. State*, 222 Md. App. 648, 661 (quotation marks and citation omitted), *cert. denied*, 445 Md. 6 (2015). Rather, other crimes evidence may be admissible if it "'is substantially relevant to a contested issue in the case, and is not offered merely to prove criminal character.'" *Id.* at 662 (quoting *Terry v. State*, 332 Md. 329, 334 (1993)).

In a jury trial, the presiding judge "is precluded from joining cases when the evidence as to the offenses is not mutually admissible at separate trials." *Reidnauer v. State*, 133 Md. App. 311, 318, *cert. denied*, 361 Md. 233 (2000). This bright-line rule arises from a "'concern that a jury would be unable to set aside the likely prejudice engendered by joinder.'"[15] *Id.* (quoting *Solomon v. State*, 101 Md. App. 331, 341 (1994), *cert. denied*, 337 Md. 90 (1995)).

Only when the mutual-admissibility requirement is met must a court "weigh[] the likely prejudice against the accused in trying the charges together against considerations of

[14] Maryland Rule 5-413 provides: "In prosecutions for sexually assaultive behavior . . . , evidence of other sexually assaultive behavior by the defendant occurring before or after the offense for which the defendant is on trial may be admitted in accordance with § 10-923."

[15] In a bench trial, by contrast, the court may permit joinder "even if there is no mutual admissibility of offenses because it may be presumed that a judge will not transfer evidence of guilt as to one offense to another offense." *Conyers*, 345 Md. at 552–53.

judicial economy and efficiency, including the time and resources of both the court and the witnesses." *Cortez*, 220 Md. App. at 694. "Any judicial economy that may be had will usually suffice to permit joinder unless other non-evidentiary factors weigh against joinder." *Hart*, 260 Md. App. at 531 (quotation marks and citations omitted). The balancing of prejudice and judicial economy is entrusted to the sound discretion of the trial judge and will not be disturbed on appeal absent a clear abuse thereof. *Id.*

D. Analysis

Mr. Miller's joinder challenge focuses on the stipulation advising the jury that he had previously been convicted of a crime that disqualified him from possessing the firearm and ammunition recovered during the July 27, 2023, search of his residence. As the State notes, that stipulation was consistent with *Carter v. State*, 374 Md. 693 (2003), thereby preventing the jury from "hear[ing] the details of the offense of which [Mr. Miller] was previously convicted."[16] Insofar as Mr. Miller challenges the language of the stipulation, moreover, he waived that issue by agreeing to the stipulation and failing to object when it

[16] In *Carter*, our Supreme Court held that, "when . . . the parties stipulate to the previous-conviction element of a charge under [the predecessor to PS § 5-133(c),] the trial judge should inform the jury that the defendant admits that he or she has been convicted of a crime for which he or she is prohibited from possessing a regulated firearm under the law." *Id.* at 722. The Court cautioned, however, that "[t]he judge should not describe the previous conviction with any more particularity or by using the categories of crimes under [the predecessor to PS § 5-133] (such as 'crime of violence' or 'felony')." *Id.* (footnote omitted). A *Carter* stipulation thus "allows the factfinder to make the factual determination of whether the defendant possessed a firearm . . . without importing any potential prejudice from the nature of the underlying disqualifying crime." *Wallace v. State*, 475 Md. 639, 662–63 (2021).

was admitted into evidence. *See State v. Jones*, 138 Md. App. 178, 218 (2001) ("It is well established that a party opposing the admission of evidence 'shall' object 'at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived.'" (quoting Md. Rule 4-323(a))), *aff'd*, 379 Md. 704 (2004).

We are therefore left with Mr. Miller's apparent contention that the circuit court erred in joining the criminal-in-possession charges with those arising from the July 11, 2023, shooting because evidence of his prior disqualifying conviction would not have been admissible in a separate trial on the latter charges. We need not reach the merits of this argument, however. Even assuming, without deciding, that the court erred in joining the cases for the reason Mr. Miller raises, reversal is not warranted.[17]

[17] In *Frazier v. State*, 318 Md. 597 (1990), and *Carter*, *supra*. In those cases, the Court held that the circuit court did not err in denying the petitioners' motions to sever criminal-in-possession charges from the remaining counts. Although the Court acknowledged that "'the fact of the prior conviction[s]'" would be "'additional testimony'" as to the criminal-in-possession charges, the Court nevertheless held that the petitioners had not been improperly prejudiced by the joinder. *Carter*, 374 Md. at 709 (quoting *Frazier*, 318 Md. at 611). Central to the Court's holding in those cases, however, was the fact that the counts were "closely related and *ar[o]se from incidents that occur[red] within the same proximate time and space.*" *Carter*, 374 Md. at 708 (emphasis added). In light of the geographical and temporal proximity of the offenses, the Court "required [the petitioners] to 'show that [they were] improperly prejudiced by the joinder' of the counts." *Id.* (quoting *Frazier*, 318 Md. at 611). In both cases, the Court held that the petitioners failed to meet that burden. In the instant case, although there is a temporal difference between the times of the two sets of charges, the revolver found in the appellant's home was a necessary element as to whether he was in possession of a firearm despite a disqualifying conviction. There was also evidence that, although the revolver could not definitively be tied to the shooting incident, it could not be ruled out. Thus, it would have

(continued . . .)

In *Bussie, supra*, this Court recognized that misjoinder does not necessarily warrant reversal absent "identifiable prejudice" to the defendant. 115 Md. App. at 338. The defendant in that case moved to sever drug possession charges from various assault-related counts. The court denied that motion, and the case proceeded to trial. Bussie was ultimately convicted of "assault with intent to disable, malicious shooting, use of a handgun in a crime of violence, possession of cocaine, and possession of marijuana." *Id.* at 327.

On appeal, we held that "[b]ecause the evidence of the assault and drug charges were not 'mutually admissible', as a matter of law, the trial judge committed error by failing to sever the trials." *Id.* at 338. Notwithstanding that error, we affirmed the drug convictions, reasoning that the improper joinder had not resulted in prejudice with respect to those counts.[18] While acknowledging that, "[u]nder certain circumstances, a finding of prejudice is mandated as a matter of law[,]" *id.*, we explained that the case law to that effect "extends only as far as its underlying rationale and facts will support." *Id.* at 339.

"Despite our prior statement that prejudice is mandated" in *Kearney v. State*, 86 Md. App. 247, 253, *cert. denied*, 323 Md. 34 (1991), we emphasized the limiting principle that "'[t]he remedy for a misjoinder need be no broader than the harm.'" *Bussie*, 115 Md. App. at 339 (quoting *Wieland v. State*, 101 Md. App. 1, 19 (1994)). Rather than automatically

been up to the jury to determine whether the revolver found at the appellant's home tied him to the shooting.

[18] Although we affirmed the narcotics convictions, we reversed those for the remaining counts.

reversing all misjoinder cases, we reasoned that an appellate court should effectively undertake harmless-error review:

> When reviewing an established error in search of prejudice, we must be able to determine beyond a reasonable doubt that the defendant suffered no prejudice. In a jury trial, all reasonable doubts as to the effect of the error on the verdict must be resolved in favor of the defendant.[19]

Id. at 340. Under that standard, we concluded, beyond a reasonable doubt, that Bussie had not been prejudiced with respect to the drug possession convictions. In so doing, we stressed that the State's evidence as to those offenses was both "overwhelming" and "uncontroverted." *Id.* at 342.

Mr. Miller's claim of prejudice is limited to that allegedly "inherent in labeling [him] a person disqualified [from possessing a firearm] by conviction of a crime[.]" That claim concerns the risk that the jury would use the stipulation as propensity evidence in determining whether Mr. Miller was guilty of the charges arising from the July 11, 2023,

[19] In *Bussie*, we identified the following four potential sources of prejudice from misjoinder:

1. The defendant may be prevented from presenting separate, inconsistent defenses.
2. The jury may accumulate evidence of the various crimes charged. The jury may use the aggregate of evidence to find guilt when, if the offenses were considered separately, it would not do so.
3. The misjoinder may produce a latent hostility that, by itself, may cause prejudice to the defendant's case.
4. The jury may infer a criminal disposition on the part of the defendant from which he may also be found guilty of other crimes charged.

Id. at 340.

shooting.[20] The jury, however, acquitted Mr. Miller of each of those counts. It convicted him only of the criminal-in-possession offenses, for which the stipulation was admissible to prove an essential element. Thus, even if evidence of Mr. Miller's disqualifying conviction would not have been admissible in a separate trial on the shooting-related charges, that one-directional inadmissibility would not warrant reversal of the convictions before us. *See Wieland*, 101 Md. App. at 19 ("A one-directional inadmissibility only calls for a one-directional reversal and remand.").

II.

Mr. Miller also contends that the circuit court erred in "permitting improper prosecutorial closing argument denigrating both Appellant and his counsel." Specifically, he challenges the following remarks made by the State during its rebuttal closing argument:

> And we spent eight minutes just now listening to things to try and distract you and deflect from those facts that have been presented in court over the past five, six days.
>
> Ladies and gentlemen, that's exactly what Dominic Miller tried to do. Dominic Miller hired his attorney who must be, you know, distracting, deflecting. They both have that in common.

[20] As the State notes in its brief, "Mr. Miller did not argue below, nor does he argue on appeal that he could have been or ultimately was prejudiced as a result of the jury hearing the details of the homicide such that it made the jury more likely to convict him of the unlawful possession offenses." Accordingly, Mr. Miller has waived any such argument. *See Klauenberg v. State*, 355 Md. 528, 552 (1999) ("[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal").

Mr. Miller claims that this argument was inappropriate because it (i) invited the jury to draw a negative inference from his exercise of the right to counsel, (ii) "called into question [his] character without any basis in the evidence[,]" and (iii) implied that defense counsel "had conducted himself unethically." Recognizing that his trial attorney failed to object to the State's allegedly improper remarks, Mr. Miller asks us to review the issue for plain error.[21]

"Plain error review is a rarely used and tightly circumscribed method by which appellate courts can, at their discretion, address unpreserved errors by a trial court which 'vitally affect[] a defendant's right to a fair and impartial trial.'" *Malaska v. State*, 216 Md. App. 492, 524 (quoting *Diggs v. State*, 409 Md. 260, 286 (2009)), *cert. denied*, 439 Md. 696 (2014). Although we possess discretion to notice plain error, our Supreme Court has cautioned that appellate courts should "rarely exercise" that prerogative 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

[21] In attempting to circumvent the preservation requirement, Mr. Miller also relies on *Holbrook v. State*, 6 Md. App. 265, 271 (1969), for the premise that "in some instances[,] highly prejudicial argument requires the judge to take it upon himself or herself to intervene, even in the absence of objection." Our Supreme Court addressed a similar invocation of *Holbrook* in *Oken v. State*, 327 Md. 628 (1992). In rejecting Oken's reliance on *Holbrook* as "misplaced[,]" the Court observed that while the defendant in that case "preserved his contention that the prosecutor's closing remarks were improper by making a motion for a mistrial at the conclusion of the prosecutor's remarks[,]" "Oken made no objections to the prosecutor's remarks at any time." *Id.* at 675. Like the appellant in *Oken*, Mr. Miller neither objected to the statements at issue nor moved for a mistrial at the conclusion of the State's rebuttal closing argument. Accordingly, Mr. Miller's only potential refuge is plain error review.

first instance to the trial court[.]" *Ray v. State*, 435 Md. 1, 23 (2013) (quotation marks and citation omitted); *see also Morris v. State*, 153 Md. App. 480, 507 (2003) ("Appellate invocation of the 'plain error doctrine' 1) always has been, 2) still is, and 3) will continue to be a rare, rare phenomenon."), *cert. denied*, 380 Md. 618 (2004). Accordingly, "[p]lain error review is 'reserved for those errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant of a fair trial.'" *Newton v. State*, 455 Md. 341, 364 (2017) (quoting *Robinson v. State*, 410 Md. 91, 111 (2009)); *see also Myers v. State*, 243 Md. App. 154, 186 (2019) ("Plain error review tends to afford relief to appellants only for blockbuster errors." (cleaned up)), *cert. denied*, 467 Md. 276 (2020).

Under the circumstances of this case, we are not persuaded that this extraordinary remedy is warranted. Accordingly, we decline to exercise our discretion to undertake plain error review. *See Morris v. State*, 153 Md. App. 480, 506–07 (2003) (explaining 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." (footnote omitted)), *cert. denied*, 380 Md. 618 (2004).

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