

Circuit Court for Montgomery County
Case No. 131193C

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2469

September Term, 2017

CARLOS YUVINI TICAS-CRUZ

v.

STATE OF MARYLAND

Fader, C.J.,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 31, 2018

*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 a jury trial in the Circuit Court for Montgomery County, Carlos Yuvini Ticas-Cruz, appellant, was convicted of robbery with a dangerous weapon and conspiracy to commit robbery with a dangerous weapon. His sole contention on appeal is that the trial court plainly erred in allowing the prosecutor to make an improper argument during closing. We decline to exercise our discretion to engage in plain error review of this issue and affirm Mr. Ticas-Cruz's convictions.

At trial, the State presented evidence that the victim was walking home from work and noticed a man in a blue jacket walking behind her. When she crossed the street another man, later identified as Mr. Ticas-Cruz, got in front of her and blocked her way. The man in the blue jacket told the victim to give them her phone and instructed Mr. Ticas-Cruz to pull out a knife. Mr. Ticas-Cruz then pulled out a knife and jabbed it toward the victim's stomach to threaten her. The man in the blue jacket then took the victim's phone and the two men walked away.

The victim immediately called the police. The responding officers observed Mr. Ticas-Cruz and another man walking in the vicinity of the robbery; however, the two men immediately split up when the officers shined a spotlight on them. One of the officers told Mr. Ticas-Cruz to stop and put his hands in the air, at which point, Mr. Ticas-Cruz reached into his pocket and tossed a small metallic object on the ground. The officers went to the area where Mr. Ticas-Cruz threw the object and recovered the victim's phone.

During closing, the State made the following argument when discussing the charge of conspiracy to commit robbery with a dangerous weapon:

Count 5 is conspiracy to commit robbery with a dangerous weapon. What is conspiracy? One, that the defendant agreed with [the co-conspirator] Gilberto Graciano-Rivas to commit the crime of robbery with a dangerous weapon. And two, that the defendant entered into the agreement with the intent of the crime of robbery with a dangerous weapon be committed. In a conspiracy the crime is in the agreement. Now, it doesn't necessarily need to be spoken. There doesn't need to be a handshake. There doesn't need to be a written contract.

You have the instruction about intent. A person intends the natural and probable consequences of the crime. *So when Graciano-Rivas approaches [the victim] from behind and the defendant boxes her in from the front they are in agreement with the two to do something to her. And then Graciano-Rivas grabs her hand and demands her phone. Right there. That's a robbery. There is force. There is the demand for her property. She denies.*

He then takes out the knife. The defendant takes out the knife and the demand is made again. *That is the robbery with the dangerous weapon and the two acting in concert. One gives the instructions to the other. The other following through. They had this plan all along.*

On appeal, Mr. Ticas-Cruz contends that the highlighted sections of the prosecutor's argument "mischaracterized the law of robbery to the jury" because it suggested the jury could convict him of robbery even if they believed that he did not take the victim's property. Mr. Ticas-Cruz acknowledges that this claim is not preserved because he did not object at trial. He therefore requests that we engage in plain error review.

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).

**JUDGMENTS OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**