

Circuit Court for Baltimore City  
Case No. 122097013

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND

No. 576

September Term, 2023

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BRADLEY CLEVINGER

v.

STATE OF MARYLAND

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Leahy,  
Kehoe, S.,  
Eyler, James R.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: August 6, 2024

\*This is a per curiam opinion. Consistent with 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 armed carjacking and related offenses, Bradley Clevenger, appellant, contends that the court erred “in allowing the prosecutor to argue to the jury that they could convict Mr. Clevenger on the basis of accomplice liability,” and “in failing to instruct the jury that they could not convict Mr. Clevenger on the basis of accomplice liability after receiving a note from the jury during deliberations.” Acknowledging that “there was no objection to the prosecutor’s improper comments or to the trial court’s failure to instruct the jury,” Mr. Clevenger requests that we “exercise [our] plain error discretion.” We decline to do so.

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”). However, 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.**