Circuit Court for Baltimore City
Case No. 118261015

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 902

September Term, 2023

BOBIE BARNCORD

v.

STATE OF MARYLAND

Shaw,
Tang,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: October 30, 2024

*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).

Following a jury trial in the Circuit Court for Baltimore City, Bobie Barncord, the appellant, was convicted of the murder of Tiffany Jones, among related offenses. The court sentenced the appellant to life imprisonment plus fifty years. On appeal, the appellant raises the following questions:

I. Did the trial court's method of *voir dire* deprive the appellant of a fair and impartial jury?

II. Did the trial court err in considering counsel's theory of defense in sentencing?

For the reasons that follow, we shall affirm the convictions.

BACKGROUND

On the afternoon of August 21, 2018, Tiffany Jones ("Tiffany"), her husband (Tim Jones),[1] and their daughter were walking to the Family Dollar store in the Brooklyn Park neighborhood of Baltimore City. Tiffany's husband heard their daughter call for "Mommy," at which point he turned around to see a man he knew as "Philly" and two unknown men. Philly was holding Tiffany around the neck with a knife while another man had a gun to her head. Tiffany yelled, "What are you doing?" and Philly told her to "[s]hut up." A few moments later, a Ford pickup truck pulled up. Philly forced Tiffany into the truck, and the driver drove away with them. Later, the husband identified the appellant as the driver. He knew the appellant from the neighborhood and described her as Philly's girlfriend and an acquaintance of Tiffany's.

[1] Mr. Jones variously referred to Tiffany as his wife and girlfriend. We refer to Mr. Jones as Tiffany's husband for ease and consistency.

The husband called 911, reported that Tiffany had been abducted, and provided the truck's license plate number. An officer with the Baltimore City Police Department responded and entered the reported information into the department's citywide notification system. A detective interviewed the husband about the abduction and the identities of Philly and the appellant to determine Tiffany's whereabouts.

The following day, police responded to a call for a fire at an abandoned rowhouse about a mile from the Family Dollar. The structure itself was not on fire but a body found in the basement was. The body was later identified as Tiffany's. She was unclothed with a bag over her head, a cord wrapped around her neck, and her hands bound behind her back. The investigation revealed that the fire was started with the use of lighter fluid. An autopsy showed that Tiffany's death was caused by blunt force trauma to the head, asphyxia, and thermal injuries. The medical examiner was unable to determine whether Tiffany was alive when the fire was started.

The police found the Ford pickup truck about half a mile from the abandoned rowhouse. Inside, police recovered Tiffany's shoes and a knife. The police located the appellant and took her in for questioning. After waiving her *Miranda* rights, the appellant told investigators what had happened to Tiffany. She also testified about it at trial. The general account of the events was as follows.

Before she was kidnapped, Tiffany stole various items from the appellant while the appellant had nodded off in the truck. These items included drugs, money, a phone, and Philly's gun. On August 21, Philly received a call from someone who claimed that Tiffany's

husband had stolen and pawned the appellant's phone. Philly learned that Tiffany was at the Family Dollar, and he asked the appellant to drive him there so he could retrieve the phone.

The appellant dropped Philly off near the Family Dollar and parked nearby. A few minutes later, Philly called and told her to pick him up. When the appellant pulled up, Philly pushed Tiffany into the truck. The appellant looked back and saw that Philly had a knife to Tiffany's neck "[p]retty much holding her down." The appellant and Tiffany screamed at each other about the stolen items. Philly asked Tiffany about them, and Tiffany admitted to stealing the drugs, phone, and money but claimed that someone else stole the gun.

The appellant dropped Philly and Tiffany off at the abandoned rowhouse. The appellant left and later returned to the rowhouse. She met Philly in the basement at which point Tiffany was alive. Philly left Tiffany bound up while the appellant kept watch.

When Philly returned, he instructed the appellant and another individual ("Ace") to get duct tape, but the appellant could not find any. When the appellant returned, Tiffany was naked, her hands and legs were bound, and she had something in her mouth and something covering her head. At some point, Philly punched Tiffany in the face, causing her to hit the floor. The appellant later thought Tiffany was dead because she was not moving.

The next day, the appellant returned to the rowhouse. Philly sent the appellant and another individual ("Q" or "Slick") to get lighter fluid and light Tiffany's body on fire.

Believing Tiffany was dead, the appellant and Q/Slick obtained lighter fluid, poured it on Tiffany's body, and lit the body on fire.

After a six-day jury trial, the jury found the appellant guilty of first-degree murder, kidnapping, conspiracy to commit kidnapping, second-degree arson, false imprisonment, and conspiracy to commit false imprisonment. The court sentenced the appellant as follows: for first-degree murder, life imprisonment; for conspiracy to commit kidnapping, thirty consecutive years' imprisonment; and for second-degree arson, twenty consecutive years' imprisonment. The sentences for the remaining convictions were merged.

This appeal followed. We supply additional facts below as necessary.

DISCUSSION

I.

JURY SELECTION

The appellant argues that the trial court's method of conducting jury selection deprived her of a fair and impartial jury. Among the thirty *voir dire* questions asked of about 120 veniremembers, the appellant claims that the court erred in grouping some of these questions into two rosters as follows.

At the beginning of *voir dire*, the court asked the following seven questions at one time:

> The first question has a number of parts. Wait until you've heard all of those parts before you respond. [1] Is any member of the jury panel not 18 years old or older? [2] Is any member of the jury panel not a citizen of the United States of America? [3] Is any member of the jury panel not a resident of Baltimore City? [4] Is any member of the jury panel suffering from a medical

> problem or disability for which you have brought with you written documentation from a treating doctor or other health care provider?
>
> [5] Has any member of the jury panel been convicted of a crime for which a sentence of one year or more was imposed? [6] Does any member of the jury panel have a criminal charge or criminal charges pending against them for which a sentence of one year or more could be imposed upon conviction?
>
> [7] Is there any member of the jury panel [who] cannot comprehend spoken English, cannot speak English, cannot read English or cannot comprehend written English?
>
> Two veniremembers responded affirmatively.
>
> Later, the court asked the following four questions at one time:
>
> The next question has four parts. Wait until you have heard all the parts before you respond. You will understand why they're asked as a group when you hear them.
>
> [1] Would anyone on the panel be inclined to give greater or lesser weight to the testimony of a police officer than to another witness merely because the witness is a police officer?
>
> [2] Would anyone on the panel be inclined to give greater or lesser weight to the testimony of a witness called by the State than to another witness merely because the witness was called by the State?
>
> [3] Would anyone on the panel be inclined to give greater or lesser weight to the testimony of a witness called by the Defense than to another witness merely because the witness was called by the Defense?
>
> [4] And would anyone on the panel be inclined to give greater or lesser weight to the testimony of a witness because of a witness's ethnicity, race or gender?

After these questions were posed, just over twenty veniremembers responded affirmatively.

Defense counsel objected to the method of *voir dire*, arguing that asking multiple questions at one time could be confusing for the venire.[2] The court overruled the objection. After all questions had been posed to the venire, defense counsel again objected to the method of *voir dire*, and the court noted the objection.

A.

Analysis

The trial judge has broad discretion in "determin[ing] the content and scope of the questions on voir dire [and] how voir dire will be conducted." *Dingle v. State*, 361 Md. 1, 14 (2000). "Ultimately, the scope of *voir dire* rests within the trial judge's discretion, and we evaluate the judge's *voir dire* methodology to determine whether that discretion has been abused." *Williams v. State*, 246 Md. App. 308, 341 (2020) (citations omitted).

The appellant argues the method of *voir dire* employed by the trial court was ruled unconstitutional by the Supreme Court of Maryland in *Wright v. State*, 411 Md. 503 (2009), and later by the Appellate Court in *Height v. State*, 190 Md. App. 322 (2010). In *Wright*, the jury venire was asked a list of seventeen questions at one time before the venire was allowed to respond. *See* 411 Md. at 506, 509–11. Similarly, in *Height*, the venire was asked a list of fifteen questions at one time before the venire responded. 190 Md. App. at 325–26. The questions in both cases covered a variety of topics, including whether the potential

[2] The court also asked a separate pair of questions at one time: (1) about the criminal and legal histories of potential jurors and their close family members, and (2) whether the potential juror or a member of their family had been a victim of a crime. The appellant, however, does not take issue with these two questions being asked at once.

jurors knew the defendant, lawyers, and potential witnesses; whether they knew anything about the case; the criminal and legal histories of potential jurors (and their close family members); whether the potential juror or a member of their family had been a victim of a crime, had been convicted of a crime, had been incarcerated, or had a pending case; whether potential jurors had a strong religious or moral belief; whether potential jurors had connections with members of a law enforcement agency; whether they would tend to believe or disbelieve the testimony of a police officer over that of a lay witness; whether the length of the trial would present scheduling challenges for them; and whether there was any other reason that they could not render a fair and impartial verdict in the case. *See Wright*, 411 Md. at 509–11; *Height*, 190 Md. App. at 325–26. After all questions had been posed in each case, the court called veniremembers to the bench and asked them if they had any responses. *See Wright*, 411 Md. at 506; *Height*, 190 Md. App. at 326.

The Supreme Court in *Wright* held that the *voir dire* method "strayed too close to the 'cursory' and 'unduly limited' techniques that [the Court has] proscribed." 411 Md. at 508 (quoting *White v. State*, 374 Md. 232, 241 (2003)). The trial court's questioning did not properly engage at least some members of the jury venire. *Id*. at 508. For example, one only heard "some" of the questions posed to the venire, to which the court responded, "Okay." *Id.* at 508–09. The Court explained that "[t]he presentation of a lengthy roster of questions to the venire, without providing the opportunity to answer each question as it was posed, required each venireperson to comprehend and retain far too much information to guarantee that the questions were answered properly." *Id.* at 509. As a result, the *voir*

dire method "may have obscured relevant information from the trial court's view by failing to ensure that the jurors on the venire made reasonably full disclosures." *Id.* at 513. "The trial court was therefore working with an incomplete understanding of the jury pool." *Id.*

Following the precedent in *Wright*, this Court in *Height* concluded that the jury selection process in Height's trial was also not constitutional. 190 Md. App. at 331. Although the *voir dire* questioning in *Height* was thorough and not rushed, this Court explained that the applicable standard of review does not probe for actual prejudice. *Id.* at 330. The standard presumes, when jury selection has been conducted by the method employed in *Wright*, that there was prejudice. *Id.* In other words, we assumed that "at least one person ultimately selected to sit as a regular juror was not able to digest, recall, and answer the 15 questions posed by the judge so as to impart to the defense, during the interview at the bench, the information needed to make an informed jury selection." *Id.* Accordingly, we concluded that the jury selection process employed in *Height* was not constitutional. *Id.* at 331.

Significantly, the Court in *Wright* did not suggest that asking questions to a jury venire en masse is an inherently flawed procedure. 411 Md. at 514. Indeed, sometimes bundling *voir dire* questions is appropriate. *See, e.g.*, *Hayes v. State*, 217 Md. App. 159, 170 (2014) ("[T]he trial judge can bundle those questions [about racial bias] with routine questions, so a 'yes' response by a venire member in front of the entire venire will not be revealing to the other potential jurors or anyone else present in the courtroom."). As the Court explained, "[t]he key to an effective voir dire is allowing venirepersons the

meaningful opportunity to digest the individual questions posed to them and to respond fully to each one while the question is at the forefront of their minds." *Wright*, 411 Md. at 514.

The method of *voir dire* used in this case is distinguishable from that in *Wright* and *Height*. In *Wright* (and *Height*), the "multiplicity of the questions" was "problematic." *Wright*, 411 Md. at 514. In addition, the jury had to wait for seventeen questions in *Wright* and fifteen questions in *Height* to be asked before the jury could respond. *Wright*, 411 Md. at 506; *Height*, 190 Md. App. at 325. By contrast, the court in this case asked significantly fewer questions at once, grouping them thematically. There were seven questions about whether the veniremember was qualified to serve as a juror. *See* Md. Code Ann., Cts. & Jud. Proc. ("CJP") § 8-103 (providing for juror qualifications and disqualifying factors).[3]

[3] CJP § 8-103 provides:

> (a) Notwithstanding § 8-102 of this subtitle, an individual qualifies for jury service for a county only if the individual: (1) Is an adult as of the day selected as a prospective juror; (2) Is a citizen of the United States; and (3) Resides in the county as of the day sworn as a juror.
>
> (b) Notwithstanding subsection (a) of this section and subject to the federal Americans with Disabilities Act, an individual is not qualified for jury service if the individual: (1) Cannot comprehend spoken English or speak English; (2) Cannot comprehend written English, read English, or write English proficiently enough to complete a juror qualification form satisfactorily; (3) Has a disability that, as documented by a health care provider's certification, prevents the individual from providing satisfactory jury service; (4) Has been convicted, in a federal or State court of record, of a crime punishable by imprisonment exceeding 1 year and received a sentence of imprisonment for more than 1 year; or (5) Has a charge pending, in a federal or State court of record, for a crime punishable by imprisonment exceeding 1 year.

Another group of four questions related to whether the veniremember would "be inclined to give greater or lesser weight" to the testimony of specific categories of potential witnesses, such as police officers, State witnesses, defense witnesses, and those of a particular ethnicity, race, and/or gender. In addition, the trial judge allowed the venire to respond after posing each series of questions. The method here did not suffer from the same multiplicity problem in *Wright* and *Height*; it "did not impose upon the prospective jurors a challenge to memory and understanding that most, if not all, people cannot reasonably be expected to meet." *Collins v. State*, 452 Md. 614, 625 (2017). Instead, it allowed veniremembers "the meaningful opportunity to digest the individual questions posed to them and to respond fully to each one while the question is at the forefront of their minds." *Wright*, 411 Md. at 514.

Moreover, the *voir dire* method did not stray too close to *Wright*'s cursory and unduly limited techniques. After asking the venire all thirty questions, the court individually called the veniremembers, who responded.[4] At the bench, the judge repeated the questions for each responding member. Each veniremember identified the question they were answering, and the court properly engaged them with follow-up inquiries or clarifying

> (c) An individual qualifies for jury service notwithstanding a disqualifying conviction under subsection (b)(4) of this section if the individual is pardoned.

(footnote omitted).

[4] The individual questioning of members ceased after the court was satisfied that, after striking several members, it had over fifty remaining prospective jurors to begin seating and striking from the jury box.

questions. Contrary to the appellant's view, the *voir dire* method employed here effectively probed juror biases. *See, e.g.*, *White v. State*, 374 Md. 232, 242–44 (2003) (holding that it was not an abuse of discretion for the trial court to pose compound *voir dire* questions to the venire as a whole, followed by extensive individual *voir dire*).

The appellant cites examples in the record that she believes demonstrate that potential jurors were confused by the court's method of questioning. We disagree with the appellant's characterization. As detailed below, the veniremembers' uncertainty about the *voir dire* questions raised in this appeal does not show that the *voir dire* method required them to retain too much information to guarantee that the questions were answered properly.

The appellant highlighted an example where a veniremember initially responded affirmatively to questions about juror qualifications but later, during the bench discussion, clarified that she had misunderstood one of the questions. She thought it related to a "domestic situation," but after the judge explained, she confirmed that her past domestic situation did not result in a conviction. This example does not show that the juror could not remember the questions but that she misunderstood one.[5]

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[5] In her reply brief, the appellant notes that this potential juror struggled with English, suggesting that the seven-part screening question was not effective in identifying a veniremember who did not speak English. However, in discussions with the court, the court recapped the seven questions, the member responded that she spoke English, and she proceeded to converse with the court in English. The member's struggle seemed to be specifically with the legal terminology related to her case involving the "domestic situation."

The appellant presents another example of a veniremember who responded to the questions about juror qualifications. During questioning at the bench, the veniremember confirmed that she had a disability and explained, "I didn't quite follow (unintelligible). I got this [document] from the doctor, and they didn't list everything that was my problem." The appellant relies on the phrase "I didn't quite follow" to mean that the veniremember could not follow the questions. But that is unclear based on the unintelligible part that was not transcribed. The record confirms that the veniremember identified and responded to the question about disability. She explained her health condition and provided documentation from her doctor advising her not to sit and stand for long periods. This example does not show that the method of questioning the jury venire required members to comprehend and retain too much information to guarantee that the questions were answered properly.

The appellant mentions another example where a veniremember initially responded affirmatively to the four-part question about bias toward witnesses. However, when the court repeated the questions at the bench, the veniremember said they mistakenly responded. This example also does not demonstrate that the veniremembers could not retain the series of questions posed by the court.[6]

[6] The appellant mentioned two other examples involving members who had answered the pair of questions about the criminal and legal histories of potential jurors (and their close family members) and whether the potential juror (or a member of their family) had been a victim of a crime. *See supra* note 2. But these examples do not pertain to the two groups of questions raised by the appellant on appeal.

Finally, the appellant claims that the judge sometimes could not track which veniremembers responded to specific questions. She contends that this further indicates that the questioning method was confusing. But the analysis under *Wright* focuses on *the veniremembers'* ability to digest the questions, not the judge's ability to track their responses. In other words, the examples highlighted by the appellant do not show that the presentation of the questions at issue made it too difficult for *the veniremembers* to understand and answer them properly. For the reasons stated, the trial court did not abuse its discretion in its choice of *voir dire* method.

II.

SENTENCING

The appellant argues that her sentence was based on impermissible considerations. Specifically, she claims that the court improperly considered defense counsel's closing argument at trial, in which counsel stated that Tiffany may have lived if the police had "truly investigated the case" with "thoroughness" and "urgency."

At sentencing, the State requested the maximum penalties of a life sentence for the felony murder, thirty years consecutive for conspiracy to commit kidnapping, and twenty years consecutive for second-degree assault. Defense counsel acknowledged that because of the "heinousness of this crime, [the appellant] and I are both fully aware that the reality is that the [c]ourt is going to give [the maximum of] life plus 50 [years]." Nevertheless, defense counsel asked the court to consider suspending all but forty years and giving the appellant a chance to rehabilitate herself. Defense counsel continued, "Understanding that

this is an impossibility that the [c]ourt would go that way based on the facts and where we are, I am asking the [c]ourt to recommend Patuxent, the Eligible Offenders Program."

After allocution, the court made the following comments:

> In the nearly 17 years that I have been a judge, I have been involved in trials that shock the conscious [*sic*], essentially shake me to my soul in terms of people's inhumanity to other people.
>
> * * * *
>
> This scenario reminds me somewhat of Shakespeare's Macbeth, and in particular Lady Macbeth. When King Duncan was killed, at her urging, to benefit her husband and herself, she felt no remorse, but she tried to scrub the imaginary blood from her hands.
>
> In the case before me today, [the appellant] did not just urge, at least by her presence, [Philly] to take actions he did, but [she] herself was a participant in the kidnapping of Tiffany Jones, the transport of Tiffany Jones to the abandoned house . . . where, over the course of time, encompassing two days, Tiffany Jones was tortured and burned.
>
> [The appellant] was a participant in some of these activities. [Tiffany] was at least an acquaintance, if not a friend of [the appellant], and [the appellant], at various times was at places other than where [Tiffany] or [Philly] were. She had more than ample opportunity, once this process began, to assist in ending it before [Tiffany] died.
>
> Why did this happen? Allegedly because of the theft by [Tiffany] of an iPhone, drugs and a gun from a vehicle in which [the appellant] was passed out.
>
> In argument Counsel for [the appellant] suggested the cause of [Tiffany's] death was the action or lack of action of the police, because they knew the identity of the kidnappers, or some of them, in particular [the appellant] and [Philly]. As a result of that knowledge, as the theory was presented to the jury, had the police acted differently, [Tiffany] would still be alive. Defense counsel occasionally invents factual scenarios out of whole cloth during

> closings. It is hoped that in the future such ridiculous theories will not be asserted without some facts to support them.
>
> That [the appellant] and [Philly] were not found until after the death of [Tiffany] does not mean in any demonstrable way that had either [the appellant] or [Philly] been found by the police before [Tiffany] died, that either would have disclosed [Tiffany's] location in sufficient time to save her, but this was argued to the jury.
>
> The Defense theory likely would only work if either [the appellant] or [Philly] was found at a place and location where [Tiffany] died. If they had gotten there and those people were there, they might well have been able to save her, but it's certainly not the fault of the police, and the suggestion that it was a failure of the police that in part caused the death of [Tiffany], I find absolutely abhorrent.
>
> And I thought about that numerous times since I heard that argument. . . . [T]hrough various means, iPhones can be tracked by the owners thereof and the police. Other than kidnapping [Tiffany] from the Family Dollar Store parking lot, no other effort appears to have been made by either [the appellant] or her coconspirator to locate the victim or the lost property.
>
> In . . . the Presentence Investigation Report, [the appellant] absolves herself of any responsibility, in spite of the overwhelming evidence of her guilt. Unlike [*sic*] Lady Macbeth, [the appellant] cleansed her hands and her minute [*sic*] of culpability in speaking with [the presentence investigator].
>
> It is correct that there are three functions to a sentencing decision, punishment, deterrence and rehabilitation. I cannot conceive of a more appropriate punishment under Maryland law as it currently exists, in imposing the sentence that has been requested by the State.

The court proceeded to impose the sentence requested by the State. It stated that it would "not at the present time recommend Patuxent." The court, however, recognized its revisory power over a sentence and stated:

> I would dare say that the [c]ourt might, depending on the conduct of [the appellant] in the future during the next five years, possibly then recommend

> Patuxent. But based on the facts and the manner in which [Tiffany] was treated, at the present time the sentence that has been imposed is all that [the appellant] deserves.

Defense counsel did not object to any of the comments made by the court before or after the sentence was imposed.

A.

Analysis

The appellant focuses on the court's side remarks about defense counsel's closing argument and argues that her sentence should not have been based on defense counsel's theory of defense. The appellant acknowledges that defense counsel did not object to the court's remarks during sentencing. Nevertheless, she asks this Court to exercise our discretion to consider her claim under plain-error review.

i.

Preservation

Maryland Rule 8-131(a) provides that "[o]rdinarily, an 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[.]" When exercising this discretion under Rule 8-131, consideration should be given to whether the exercise of discretion will work unfair prejudice to either of the parties and whether the exercise of discretion will promote the orderly administration of justice. *Abdul-Maleek v. State*, 426 Md. 59, 70 (2012).

The appellant relies on *Abdul-Maleek* to urge this Court to exercise its discretion and overlook the preservation requirement of Rule 8-131. In *Abdul-Maleek*, the petitioner alleged that the sentencing judge imposed a harsher sentence after his conviction because he had taken a *de novo* appeal from his conviction on the same charges in the district court. *Id.* at 63. In that case, as in this case, the petitioner did not object at sentencing. *Id.* at 68. The Supreme Court of Maryland held that the petitioner had not properly preserved his objection about improper sentencing considerations. *Id.* at 69.

Despite the requirement that objections to improper sentencing considerations be raised in the circuit court, the Court exercised its discretion to review the petitioner's unpreserved claim on appeal. *Id.* at 69–70. The Court explained that there would be no prejudice to either party if it remanded for resentencing and that reviewing the petitioner's claim would give the Court an opportunity "to comment on the sentencing issue in the context of de novo appeals and thereby promote the 'orderly administration of justice.'" *Id.* at 70 (citation omitted).

In contrast to *Abdul-Maleek*, which involved a novel procedural inquiry involving sentencing after *de novo* appeals, the case here does not present an analogous situation that moves us to exercise our discretion to excuse the appellant's failure to object to the sentencing judge's comments. *Horton v. State*, 226 Md. App. 382 (2016), is instructive. In that case, we declined to exercise discretion to review an impermissible sentencing consideration based on Horton's reliance on *Abdul-Maleek*. *Id.* at 420. In *Horton*, the sentencing judge made remarks about her relative, who, like the victim in that case, had

been shot in the head. *Id.* at 415–16. The judge's comments included Biblical references and references to faith and God. *Id.* On appeal, Horton argued that such comments suggested that the judge was motivated by impermissible considerations. *Id.* Acknowledging that he did not object at the time the sentence was imposed, Horton urged this Court to consider his claim under the doctrine of plain-error review. *Id.* at 418.

We explained that unlike in *Abdul-Maleek*, where there would be no prejudice to either party if the Court remanded for sentencing, and reviewing Abdul-Maleek's claim would allow the Court to comment on a sentencing issue in the context of *de novo* appeals, thereby promoting the orderly administration of justice, this Court was not similarly moved to exercise discretion to excuse Horton's failure to raise any objection in the circuit court in response to the sentencing judge's comments. *Id.* at 419. We observed that "such objections should be brought to the attention of the sentencing judge while there is an opportunity to clarify the court's motivations." *Id.* This is because a timely objection in the sentencing context allows the court to reconsider the sentence given the defendant's complaint that it is based on improper factors or otherwise to clarify the reasons for the sentence to alleviate such concerns. *See Reiger v. State*, 170 Md. App. 693, 701 (2006). "Simply stated, when there is time to object, there is opportunity to correct." *Id.* For the same reasons, we decline to exercise our discretion to excuse the appellant's failure to object to the sentencing judge's comments.

The appellant contends that it would have been unreasonable to expect defense counsel, when faced with "a sharp personal rebuke" by the trial judge, to risk the imposition

of an even harsher sentence by objecting. As we explained in *Horton*, we do not accept fear of reprisal as a sufficient excuse for counsel failing to raise a timely objection. *See* 226 Md. App. at 419–20. "In the overwhelming majority of instances, a professionally lodged objection will not be met with hostility. We see no reason to conclude that this case would be one of the rare exceptions to that." *Id.* at 420.[7]

ii.

Plain-Error Review

Plain-error review is not warranted in this case.[8] The plain-error doctrine provides appellate courts with the discretion to review unpreserved issues on rare and extraordinary occasions. *See Garner v. State*, 183 Md. App. 122, 152 (2008). Indeed, "[i]f every material (prejudicial) error were *ipso facto* entitled to notice under the 'plain error doctrine,' the preservation requirement would be rendered utterly meaningless." *Morris v. State*, 153 Md. App. 480, 511 (2003). In deciding whether to exercise our discretion to review for plain

[7] The appellant relies on the concurrence in *Abdul-Maleek*, in which a minority of judges rejected the majority's analysis of the preservation issue. Chief Judge Bell explained that lodging an objection would have been a "useless gesture" and "could antagonize the court and make it even more displeased, thus, subjecting the defendant to yet another, perhaps greater, risk." *Abdul-Maleek*, 426 Md. at 77 (Bell, C.J., concurring). But, as the State notes, the fact that the minority viewed the preservation issue differently is of less doctrinal weight than the majority's view.

[8] The appellant urges us to exercise plain-error review as the Supreme Court did in *Abdul-Maleek*. But the fact that an appellate court has previously found a similar error to be plain does not create a binding precedent for future cases. *See Morris v. State*, 153 Md. App. 480, 517–18 (2003) ("[T]he discretionary decision of an appellate panel to notice plain error is totally *ad hoc* and . . . is by no means precedentially binding on subsequent panels on subsequent occasions, even when similar subject matter seems to be involved.").

error, this Court may consider the egregiousness of the error, the impact on the defendant, the degree of lawyerly diligence or dereliction, and whether the case could serve as a vehicle to illuminate the law. *See Austin v. State*, 90 Md. App. 254, 268–72 (1992).

In this case, we are unpersuaded that the appellant raised an error that rises to the rare and extraordinary occasion. *See, e.g.*, *Horton*, 226 Md. App. at 420 (declining to exercise plain-error review because the error alleged about the sentencing judge's comments was not "compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial") (citation omitted). The sentencing judge's comments about the defense counsel's closing argument do not reflect an obvious error. When considered alongside the judge's other comments before imposing the sentence, the side remarks were a lead-up to what the appellant told the presentence investigator. Essentially, the appellant attempted to absolve herself of responsibility for what happened to Tiffany.

We are also not persuaded that the judge's remarks about defense counsel's closing argument resulted in the imposition of a harsher sentence. During allocution, defense counsel expressly acknowledged that she and the appellant knew the judge would impose the maximum penalties due to the heinousness of the crimes. Indeed, the court emphasized the egregiousness of the offenses—the torture Tiffany endured and the burning of her body—and explained that it could not "conceive of a more appropriate punishment . . . [than] imposing the [maximum] sentence that has been requested by the State." Although the judge could have left it there, he stated a willingness to consider recommending that the appellant be placed in Patuxent "depending on [the appellant's] conduct during the next

five years." But based on how Tiffany was treated (rather than defense counsel's closing argument), the judge was not inclined to recommend placement in Patuxent immediately. For the reasons stated, we decline to exercise our discretion to review the appellant's unpreserved contention that the trial judge made an impermissible sentencing consideration.

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