

Circuit Court for Baltimore City
Case No. 121201003

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1046

September Term, 2023

TRAYON DOMINIC WATERS

v.

STATE OF MARYLAND

Nazarian,
Reed,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 31, 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 second degree murder and related offenses, Trayon Dominic Waters, appellant, presents for our review two issues: whether the evidence is insufficient to sustain the convictions, and whether the court “plainly err[ed] while instructing the jury on the standard of proof.” For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State produced evidence that on July 8, 2021, Baltimore City Police Detective Sebastian Rosales and his partner responded to the 1600 block of Cliftview Avenue for a reported shooting. Arriving at the location, the detectives discovered an individual, later identified as Anthony Cain, “who apparently had been shot.” After Mr. Cain was transported to a hospital, Baltimore City Police Detective Sharon Diggs responded to the scene to look for witnesses, wait for “Crime Lab,” and look for cameras. Arriving at the scene, Detective Diggs observed broken jewelry, clothing, and shell casings. A crime lab technician later recovered from the scene, among other evidence, six cartridge cases and one projectile.

Detective Diggs subsequently obtained and viewed video recordings made by surveillance cameras at a Citgo gas station, a corner store, and a residence located at 1619 Cliftview Avenue. The detective testified that in the recording made by the camera at 1619 Cliftview Avenue,

[y]ou could see three gentlemen in the street. It wasn't the victim but there was three gentlemen in the street. And then one gentleman[,] he had seemed like he was like, like kind of like a fighting stance, per se, but he was going towards the victim.

And then you heard commotion, you hear three shots, you hear the victim begging for his life, and then you hear three more shots and then you see the three gentlemen walking away.

Detective Diggs observed that one of the “gentlemen” was wearing a white and blue hat, white shirt, blue jeans, and “New Balance” shoes. Baltimore City Police Detective Randolph Hohenstein also viewed the recording and observed “an individual wearing . . . a blue and white hat, light colored top,” “gray pants[,] and gray shoes.” Detective Hohenstein noticed that the “gentleman . . . was walking as if he was putting something into his waistband and then looking to cover it up with his shirt.”

On July 9, 2021, Detective Diggs went to “roll call” at the police department’s Eastern District and passed out flyers containing photographs of two individuals. One of the photographs, taken by a camera at the corner store, depicts a man wearing a white and blue hat, white shirt, blue jeans, and light-colored shoes. Detective Rosales subsequently viewed the video recordings from the corner store and 1619 Cliftview Avenue, and went to the area of the shooting to “canvass” for a possible suspect. Approximately one and one-half blocks away from the site of the shooting, the detective saw Mr. Waters, who “was wearing [the] exact same hat” as a person depicted in the video recordings. Detective Rosales detained Mr. Waters and transported him to the police department’s homicide unit.

Mr. Waters was subsequently interviewed by Detectives Diggs and Hohenstein. Mr. Waters was wearing a blue and white hat, white shirt, blue jeans, and gray “New Balance” shoes, all of which were collected by a crime lab technician. During the interview, Mr. Waters stated that he was “hanging outside” on Cliftview Avenue “on the . . . Har[]ford Road side” when he “heard the shots.” Mr. Waters identified himself in still photographs

taken by the cameras located at 1619 Cliftview Avenue, the corner store, and a residence “around the corner from Cliftview.” On July 12, 2021, Detective Diggs and other officers executed a search and seizure warrant at Mr. Waters’s residence. The officers discovered “the white shirt that [the detective saw] in the video, the jeans, . . . another pair of New Balance[,] and a live 9 millimeter round.”

Following an autopsy, an assistant medical examiner determined that Mr. Cain died of gunshot wounds to his shoulder, back, abdomen, hip, arm, and forearm. At trial, the State played for the jury the video recordings made by the surveillance cameras. The State also entered into evidence clothing obtained from Mr. Waters during his interview, the photographs in which he identified himself, and clothing obtained from his residence.

Mr. Waters first contends that “the evidence is legally insufficient to sustain his convictions,” because for numerous reasons, “the prosecution failed to prove his identity as the gunman who shot and killed [Mr.] Cain.” We disagree. The State played for the jury the video recordings made by the surveillance cameras at the gas station, corner store, and Cliftview Avenue residence, from which the jury could determine for themselves whether they depicted Mr. Waters approaching the victim prior to the gunshots, leaving the scene following the gunshots, and “putting something into his waistband and . . . looking to cover it up with his shirt.” The State also produced clothing seized from Mr. Waters’s person and residence, from which the jury could determine for themselves whether it was the clothing worn by the person depicted in the video recordings and photographs. Detective Rosales testified that the site where he located and detained Mr. Waters was only one and one-half blocks away from the site of the shooting, and at that time, Mr. Waters

was wearing the same hat that the detective observed on the person depicted in the video recordings. During his interview with detectives, Mr. Waters admitted to being on Cliftview Avenue at the time of the shooting, and identified himself in still photographs taken by surveillance cameras in the area. Finally, police discovered in Mr. Waters's residence a "live 9 millimeter round." We conclude that this evidence could convince a rational trier of fact beyond a reasonable doubt that Mr. Waters shot Mr. Cain.

Mr. Waters next contends that the court erred in "instructing the jury on the standard of proof." Following the close of the evidence, the court instructed the jury, in accordance with MPJI-Cr 2:02, that "[p]roof beyond a reasonable doubt requires such proof as would convince you of the truth of a fact to the extent that you would be willing to act upon your belief without reservation in some important matter in your own personal or business affairs." The court then added, *sua sponte*: "[D]ecisions like getting married, buying a home."

Mr. Waters contends that the court erred in adding this language, because it "improperly embellished the vitally important jury instruction on the standard of proof." Acknowledging that defense counsel failed to lodge a contemporaneous objection, Mr. Waters requests that we "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 BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**