

Circuit Court for Baltimore City
Case No. 121144012

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND**

No. 1141

September Term, 2022

BLAIR JONES

v.

STATE OF MARYLAND

Leahy,
Albright,
Raker, Irma S.
(Senior Judge, Specially Assigned),

Opinion by Raker, J.

Filed: June 27, 2023

*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.

**At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Appellant Blair Jones was convicted in the Circuit Court for Baltimore City of illegal possession of a regulated firearm, illegal possession of ammunition and reckless endangerment. In this direct appeal, he presents two questions for our review which we have rephrased slightly as follows:

1. Is the evidence sufficient to support the judgment of convictions?
2. Did the trial court erroneously rely upon an impermissible consideration when imposing appellant's sentence?

We shall affirm.

I.

Appellant was charged on a 14-count indictment by the Grand Jury for the Circuit Court for Baltimore City. Appellant was charged with attempted first-degree murder, conspiracy to commit first-degree murder, and other related offenses. After a jury trial, the jury convicted appellant of illegal possession of a regulated firearm, illegal possession of ammunition, and reckless endangerment.¹ The circuit court sentenced appellant to fifteen years' incarceration, without the possibility of parole for the first five years. This timely appeal followed.

The following facts are derived from trial. On May 8, 2021, at around 3:00 a.m., Brian Nesbitt was at a Royal Farms convenience store on Russell Street in downtown Baltimore. During trial, Nesbitt testified that while he was in line, he noticed that there

¹ Appellant was acquitted of attempted first-degree murder, conspiracy to commit first-degree murder, attempted second-degree murder, conspiracy to commit second-degree murder, first-degree assault, conspiracy to commit first-degree assault, second-degree assault, conspiracy to commit second-degree assault, use of a firearm in the commission of a crime of violence, and wearing/carrying, transporting a handgun on his person.

was a man “standing, like, literally right behind me.” He turned around to tell the man, in a brusque manner, to back up. This led to a verbal altercation in the store, with Nesbitt subsequently waiting for appellant outside of the store. Nesbitt testified that he thought he was going to get into a fight with appellant. After a few non-eventful minutes, Nesbitt headed towards Horseshoe Casino. As Nesbitt walked towards the casino, he heard appellant and another man shouting at him in an attempt to get his attention. He ignored them initially, but he could hear them running to catch up with him. Nesbitt turned around to confront the men, he testified that at this moment he witnessed the second man “go for his gun.” Nesbitt began running towards the casino and the second man began to shoot his gun, hitting Nesbitt in the ankle. He called 911 and received medical treatment at a shock trauma center.

The Baltimore Police Department reviewed surveillance from Royal Farms and Horseshoe to develop identification flyers for the suspects. Officer Jose Guzman contacted the investigating officers to tell them that he recognized the men in the flyers. He identified appellant and the second man, the shooter, as Daryl Parker. Appellant was arrested the following day. The surveillance video from both Royal Farms and the Horseshoe Casino was admitted into evidence. The parties also stipulated that appellant was prohibited from possessing a regulated firearm because of a previous conviction.

II.

Before this Court, appellant argues that the evidence was insufficient to support the judgments of convictions because the State did not prove that appellant had either direct or constructive possession of the gun used in the shooting. The State failed to prove that appellant had either dominion or control over the gun possessed and used by Mr. Parker, the shooter. In appellant's view, the State's theory that appellant had constructive possession of the gun was based solely upon appellant's association with Mr. Parker, and the State's assertion that appellant's gesturing towards Mr. Nesbitt, was a command to Mr. Parker to shoot Mr. Nesbitt.

Appellant argues before this Court that the trial court erred by relying on impermissible considerations when imposing sentence. He claims the court erred in holding appellant responsible not only for the one shooting but also for all the incidents of violence in Baltimore City and the impact of that violence on the spirit and economy of the City. He acknowledges that his counsel did not object at the sentencing but argues plain error and the discretion this Court enjoys under Maryland Rule 8-131 to reach the merits of his claim.

In response to the sufficiency of the evidence argument, the State raises waiver and failure to preserve this sufficiency argument because defense counsel never requested or argued insufficiency of the evidence as to the firearm charges or reckless endangerment. In his motion for judgment of acquittal, appellant argued for judgment of acquittal on the conspiracy charge, and attempted murder. He stated to the court "Okay. Well, they are

the ones I wanted you to grant acquittal on.” Based on Maryland Rule 4-324(a) requiring a defendant to state with particularity all reasons why the motion should be granted, and Maryland jurisprudence requiring a defendant to *move* for judgment of acquittal on each count to preserve the issue for appellate review, appellant has waived any review by this Court. In the alternative, on the merits, the State maintains that it presented sufficient evidence to support the judgments and that a reasonable juror could infer that appellant was aware that Mr. Parker possessed a firearm and that he urged him to use it against the victim.

Concerning sentencing, because appellant’s counsel did not object below, the State focuses on plain error review, and argues that plain error does not apply here because there was no clear and obvious error. The State construes the judge’s comments as the judge explaining to appellant that his actions did not “merely affect the victim in the case but the city as a whole.”

III.

Maryland Rule 4-324(a) permits a defendant to “move for judgment of acquittal on one or more counts, or on one or more degrees of an offense which by law is divided into degrees, at the close of the evidence offered by the State and, in a jury trial, at the close of all of the evidence.” The Rule requires that a defendant “state with particularity all reasons why the motion should be granted.” It is black letter law in Maryland that failure to move for judgment of acquittal on any count or failure to state with specificity the grounds

supporting the motion, absent the appellate court exercising its discretion to review an unpreserved claim, is waived. Rule 4-324.

Appellant’s counsel moved for judgment of acquittal on several counts and indicated explicitly to the court that those counts were “the ones I wanted you to grant acquittal on.” The court ruled on the motion as requested by counsel. Without a record before us explicating why counsel failed to move for judgment on all counts, we decline to review the issue and leave the issue for collateral proceedings if elected by appellant.²

IV.

Maryland Rule 8-131(a) provides that “a defendant must object to preserve for appellate review an issue as to a trial court's impermissible considerations during a sentencing proceeding.” *Sharp v. State*, 446 Md. 669, 683 (2016). A timely objection gives the court the opportunity to reconsider the sentence in light of a defendant’s complaint, alerting the court to the claim that the sentence will be or is premised upon improper factors, or to inform the court of the objections and to afford the sentencing court an opportunity to alleviate any concerns. *Reiger v. State*, 170 Md. App. 693, 701 (2006). When a defendant does not object during or after the court’s announcement of the sentence, any claim that the court relied on impermissible considerations is not preserved for appellate review. *Ellis v. State*, 185 Md. App. 522, 550 (2009).

² We note appellant did not argue plain error review on this issue. Even if he had so argued, we would decline to review this issue as plain error.

In the instant case, appellant’s counsel never objected to the court’s reference to the impact of appellant’s conduct on the City, nor did he object or assert at any time that the court relied upon impermissible considerations. Accordingly, appellant’s claim before this Court that the judge was motivated by impermissible considerations is not preserved for our review.

While appellant recognizes that he did not object below, he asks this Court to exercise its discretion and consider the issue as plain error. The State asserts that plain error review is not appropriate here. Pointing out that plain error review is reserved for errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial, this case does not meet the three conditions supporting plain error review. Those three conditions are (1) the error must not have been intentionally relinquished or abandoned, (2) the error must be clear or obvious, and (3) the error must have affected the substantial rights of the defendant. *State v. Rich*, 415 Md. 567, 578 (2010). Finally, quoting Judge Charles E. Moylan, Jr., in *In re Matthew S*, 199 Md. App. 436, 463 (2011), plain error “1) always has been 2) still is, and 3) will continue to be a rare, rare phenomenon.”

We decline to apply plain error review to the sentence proceeding below, primarily because the error, if any, is not clear or obvious. Many courts around the country have held that the impact on the community is a permissible factor for a sentencing court to consider in imposing sentence. *See e.g., Commonwealth v. Ali*, 149 A.3d 29, 38 (Pa. 2016) (holding impact on community proper sentencing factor); *State v. Guerrero-Sanchez*,

2017-Ohio-8185, P6489 (2017) (holding that the impact on the community is a proper factor to consider during sentencing); *State v. Johnson*, 873 P.2d 514, 526 (Wash. 1994) (finding that appellant’s impact on the community could validly justify an aggravated exceptional sentence); *State v. Nicastro*, 383 S.E.2d 521, 527 (W. Va. 1989) (finding that the community problem caused by a controlled substance can be considered in sentencing); *People v. Douglas*, 373 N.E. 2d 1385, 1389 (Ill. App. Ct. 1978) (holding that a consideration of community impact was within the trial court’s sentencing discretion); *State v. Broughton*, 470 S.E.2d 413, 423 (W. Va. 1996) (holding that community impact is a pertinent sentencing consideration); *State v. Sherman*, 390 P.3d 158, 161 (Mont. 2017) (upholding the validity of a sentence based in part on defendant’s community impact). We do not recognize plain error in the circuit court’s consideration of community impact.

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