Circuit Court for Montgomery County
Case No. 138299C

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1467

September Term, 2023

WILLIE ORLANDO MCKINNON

v.

STATE OF MARYLAND

Arthur,
Friedman,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 4, 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 Montgomery County of armed robbery, conspiracy to commit armed robbery, and other offenses, Willie Orlando McKinnon, appellant, presents for our review two issues: whether the court abused its discretion in allowing a witness to identify Mr. McKinnon in surveillance footage, and whether the evidence is sufficient to sustain the convictions for armed robbery and conspiracy to commit armed robbery. For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State called Montgomery County Police Detective Brian Dyer, who confirmed that in January 2021, he was "working on a string of lottery ticket and cigarette thefts and robberies." The first robbery occurred on January 12, 2021, at a 7-Eleven, and "in the days and weeks to come, there were numerous other ones." Detective Dyer subsequently identified Mr. McKinnon and men named Prince Singletary, Emanuel Harried, and Joseph Crenshaw as suspects in the robberies. The detective also "linked to these crimes" a "black Toyota Camry." On January 19, 2021, Detective Dyer went to Prince George's County, where detectives had stopped the Camry and its occupants, Mr. McKinnon and a woman named Tracey Copeland. Mr. McKinnon was wearing "a black . . . down jacket with a GUESS emblem, a triangle GUESS emblem on the shoulder[,] and . . . a fur hood." Police subsequently searched the Camry and discovered two sets of gloves, lottery tickets, "a tire iron and jack," "black and green Newport cigarette boxes," "two green Newport cigarette packs," four "cigar packs," a "white Capri cigarette box, four gold Benson and Hedges cigarette boxes, two green Benson and Hedges cigarette boxes," a "plastic bag containing 12 Newport cigarette boxes." a "plastic bag containing 10 green

Newport cigarette boxes," a "red Redskins T-shirt," a "blue Columbia jacket," and a "plastic bag containing four packs of lottery tickets and 11 Newport cigarette boxes." Detective Dyer noted the blue Columbia jacket as having been "seen in surveillance footage, both at . . . a couple different events and . . . at [a] Dodge Park Sunoco . . . where tickets were allegedly being cashed."

On January 30, 2021, Detective Dyer saw Mr. McKinnon again, after he and Mr. Harried were arrested. At the time of the arrests, Mr. Harried was wearing a "jacket . . . believed to be seen in surveillance videos during some of [the] events." Mr. McKinnon was wearing a "black, puffy jacket with fur around the hood and [a] Guess logo," a "gray sweatshirt," a "pair of black boots," a "pair of blue jeans," and a "black hat." The boots, jacket, and sweatshirt were "believed to be seen in numerous events on surveillance footage that [police] were investigating." On the day of Mr. McKinnon's arrest, he was stopped in a "silver Infiniti SUV" that was "right next to the Dodge Park Sunoco." Police searched the vehicle and discovered a "lottery drawer[] that . . . tickets are stored in," a "plastic bag[] containing multiple cigarette packs of varying brands and lottery tickets," "numerous packs of" Camel and Newport "cigarettes, all unopened," "a roll of coins," "two books of lottery tickets and a single lottery ticket," two "carton[s] of Newport cigarettes," "one carton of Marlboro cigarettes," another "plastic bag containing lottery tickets," a "surgical mask," a "pair of black and gray gloves," thirty to forty unopened packs of Newport, Maverick, Camel, and Marlboro cigarettes, a "black . . . LUXE-T hoodie" that had been "seen in the surveillance footage at one of the events," a "red[] Grubhub bag" that "was . . . seen in one

of the events," a "black bag" that "was believed to be seen in one of the events," and two "metal tray[s] with keys" that "they . . . keep lottery tickets on."

On February 12, 2021, Mr. Singletary was arrested. Detective Dyer subsequently "met with . . . and interviewed" Mr. Singletary. During the interview, the detective showed Mr. Singletary three 7-Eleven "asset protection alerts" containing photographs of individuals. In the photographs, Mr. Singletary identified himself, Mr. Harried, and "Willie." Mr. Singletary "originally referred to him as Orlando and then . . . said it's Willie McKinnon."

The State also called Mr. Singletary, who confirmed that in January 2021, he was "involved in a series of thefts at various 7-Elevens in Montgomery County." Mr. Singletary subsequently "pled guilty in Montgomery County" to theft. Mr. Singletary testified that he would get to Montgomery County in "a black car" that was sometimes driven by Mr. Harried and sometimes driven by Mr. McKinnon. Once the group arrived at a 7-Eleven, Mr. Singletary would go inside and look for "[s]ecurity." Mr. Singletary would then go behind the counter, steal cigarettes, and put them in a bag. Mr. Harried, Mr. McKinnon, or "someone else" would "usually" be with Mr. Singletary. "Sometimes" the other person would be "behind the register with" Mr. Singletary, but "sometimes they'd just watch [Mr. Singletary's] back." Mr. Singletary would then "leave the store" and "get back in the car that [he] came in." Mr. Singletary would subsequently sell the cigarettes to "[w]hoever wanted" them, but he would "go[] to the Dodge Park Sunoco in Landover" to "cash tickets," specifically "[s]cratch offs." The tickets had been obtained from the 7-

Elevens, and Mr. Singletary received some of them from Mr. Harried. Mr. Singletary did not "ever remember wearing gloves," but recalled that Mr. Harried wore them.

The State subsequently submitted into evidence photographs, taken on January 12, 2021, of individuals inside a 7-Eleven on Connecticut Avenue in Kensington. Mr. Singletary identified two of the individuals as himself and Mr. Harried. The State also entered into evidence photographs of the black Toyota Camry, which Mr. Singletary identified as "look[ing] like the car that [he] drove in [or] at least one of the cars that [he] drove in." Mr. Singletary confirmed that when Detective Dyer asked whether Mr. McKinnon was "in the car," Mr. Singletary replied: "[Y]es. Yeah." The State subsequently submitted into evidence an excerpt of a transcript of an interview of Mr. Singletary conducted by Detective Dyer. In the excerpt, Mr. Singletary confirmed that he and Mr. Harried, who carried a tire iron, entered the 7-Eleven while Mr. McKinnon, who drove the black Toyota Camry, was in the vehicle. Mr. Singletary subsequently identified Mr. McKinnon in court.

Following the close of the evidence, the jury convicted Mr. McKinnon of armed robbery, conspiracy to commit armed robbery, and related offenses with respect to the January 12, 2021 robbery. With respect to the other robberies, the jury convicted Mr. McKinnon of numerous counts of theft, conspiracy to commit theft, theft scheme, and conspiracy to commit theft scheme.

Mr. McKinnon first contends that the court "abused its discretion [in] allowing Detective Dyer . . . to identify Mr. McKinnon in surveillance footage." During the detective's testimony, the State played for the jury "surveillance footage" from the "Dodge

Park Sunoco" taken on "[d]ifferent times and dates." Over defense counsel's objections, Detective Dyer testified that in footage taken on January 12, 2021, the detective recognized Mr. McKinnon. Detective Dyer stated: "He seems to have a limp. I think it's with his left foot he seems to favor, the left leg." In footage taken on January 15, 2021, Detective Dyer recognized Mr. McKinnon. In footage taken on January 17, 2021, the detective recognized Mr. McKinnon by his "black, puffy coat with the Guess symbol on the left shoulder and the fur around the hood." In footage taken on January 30, 2021, Detective Dyer recognized Mr. McKinnon by his "black jacket with the fur around the hood and . . . Nike sweatshirt, hood over his head." The detective confirmed that he "actually . . . saw [Mr. McKinnon] in those clothings on January 30th." Detective Dyer further confirmed that "[b]esides watching through all of the surveillance video," he "had a chance to interact with" Mr. McKinnon "on multiple occasions," and "during those occasions," the detective "had a chance to observe [Mr. McKinnon] in person" and "observe the way he walks."

Mr. McKinnon contends that because Detective Dyer "was not a witness to the events and did not have substantial familiarity with Mr. McKinnon," the detective "should not have been allowed to identify Mr. McKinnon in the surveillance footage." We disagree. It is true that "a lay witness [must have] substantial familiarity with [a] defendant [to] properly testify as to the identity of the defendant in a surveillance photograph." *Moreland v. State*, 207 Md. App. 563, 572 (2012) (internal citation omitted). But, "whether [the] lay witness'[s] prior contacts with the defendant are extensive enough to permit a proper identification is a matter of weight for the jury, not admissibility." *Id.* (internal citation omitted). Also, a person "has substantial familiarity with [a] defendant" when that

person "has had numerous contacts with the defendant." *Id.* (internal citation omitted). Here, Detective Dyer testified that on at least two occasions, he interacted with and observed Mr. McKinnon, observed his clothing, and "observe[d] the way he walks." We conclude that Detective Dyer's familiarity with Mr. McKinnon from these occasions was substantial enough to permit the detective to identify Mr. McKinnon in surveillance footage.

Mr. McKinnon next contends that the evidence was insufficient to sustain the convictions for armed robbery and conspiracy to commit armed robbery with respect to the January 12, 2021 robbery, because "the State failed to produce sufficient evidence to permit a rational trier of fact to find that Mr. McKinnon was involved in that incident." Acknowledging that "defense counsel did not move for judgment of acquittal" on this ground, Mr. McKinnon requests that we "exercise [our] discretion to review this claim for 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 MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.