Circuit Court for Queen Anne's County
Case No. C-17-CR-22-000095

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1574

September Term, 2022

DEVRON LAMONT HYNSON

v.

STATE OF MARYLAND

Reed,
Ripken,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 30, 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.

Following a jury trial in the Circuit Court for Queen Anne's County, at which he represented himself, Devron Lamont Hynson, appellant, was convicted of possession of CDS not marijuana, possession of CDS paraphernalia, identity fraud, making a false statement to an officer, and giving a false or fictitious name to a uniformed police officer attempting to determine the identity of a driver. The court imposed a sentence of one year incarceration on the CDS possession count and a concurrent sentence of six months' imprisonment on the identity fraud count. The remaining counts were merged for sentencing. Appellant raises two issues on appeal: (1) whether the court erred by failing to conduct the requisite 4-215 inquiry before allowing him to waive his right to counsel, and (2) whether the evidence was sufficient to sustain his convictions for identify fraud, false statement to police and giving a false or fictitious name to a law enforcement officer attempting to identify the driver of a vehicle. For the reasons that follow, we shall reverse the judgments of the circuit court and remand the case for a new trial.

Appellant first contends that the circuit court failed to conduct the requisite 4-215 inquiry before allowing him to waive his right to counsel. The State agrees, as do we. Maryland Rule 4-215 was implemented to protect a defendant's fundamental right to counsel. *Broadwater v. State*, 401 Md. 175, 180 (2007). Relevant to this appeal, Rule 4-215(b) requires a trial court to examine a criminal defendant on the record before accepting a waiver of counsel. Specifically, it provides:

> *Express Waiver of Counsel*. If a defendant who is not represented by counsel indicates a desire to waive counsel, the court may not accept the waiver until after an examination of the defendant on the record conducted by the court, the State's Attorney, or both, the court determines and announces on the record that the defendant is

> knowingly and voluntarily waiving the right to counsel. If the file or docket does not reflect compliance with section (a) of this Rule, the court shall comply with that section as part of the waiver inquiry. The court shall ensure that compliance with this section is noted in the file or on the docket. At any subsequent appearance of the defendant before the court, the docket or file notation of compliance shall be prima facie proof of the defendant's express waiver of counsel. After there has been an express waiver, no postponement of a scheduled trial or hearing date will be granted to obtain counsel unless the court finds it is in the interest of justice to do so.

The Court in *Broadwater* underscored the importance of this examination, stating: "[a]ny decision to waive counsel . . . and represent oneself must be accompanied by a waiver inquiry designed to ensure that [the decision] is made with eyes open and that the defendant has undertaken waiver in a knowing and intelligent fashion." *Id*. (internal quotation marks omitted) (quoting *State v. Brown*, 342 Md. 404, 414 (1996)). It further noted that "[b]ecause the right to counsel is a 'basic, fundamental and substantive right,' the requirements of Maryland Rule 4-215 are 'mandatory and must be complied with, irrespective of the gravity of the crime charged, the type of plea entered, or the lack of an affirmative showing of prejudice to the accused.'" *Id*. at 182 (quoting *Taylor v. State*, 20 Md. App. 404, 409 (1974). "[A] trial court's departure from the requirements of Rule 4-215 constitutes reversible error." *Williams v. State*, 435 Md. 474, 486 (2013) (internal quotation marks omitted) (quoting *Pinkney v. State,* 427 Md. 77, 88 (2012)).

Although compliance with Rule 4-215 may be effectuated by the circuit court during different proceedings, the record here clearly shows that the trial court did not examine appellant to ensure that his waiver of counsel was knowing and voluntary. Nor did any

circuit court judge "determine and announce" such a finding. Consequently, appellant's convictions must be reversed.

Appellant next contends that the evidence was insufficient to sustain his convictions for identify fraud, false statement to police and giving a false or fictitious name to a law enforcement officer attempting to identify the driver of a vehicle.[1] Normally, "where this Court reverses a conviction, and a criminal defendant raises the sufficiency of the evidence on appeal, we must address that issue, because a retrial may not occur if the evidence was insufficient to sustain the conviction in the first place." *Benton v. State*, 224, Md. App. 612, 629 (2015). But that rule does not apply if "the appellant has in some way waived his right to appellate review on that issue[.]" *Mitchell v. State*, 44 Md. App. 451, 462 (1979). And here, appellant's claims are not preserved for appellate review as he did not raise them in a motion for judgment of acquittal. *See Peters v. State*, 224 Md. App. 306, 353 (2015) ("[R]eview of a claim of insufficiency is available only for the reasons given by [the defendant] in his motion for judgment of acquittal." (quotation marks and citation omitted)). Acknowledging this lack of preservation, appellant therefore asks this Court to engage in plain error review.

[1] Relying on *Barnes v. State*, 423 Md. 75 (2011), the State asserts that appellant's sufficiency argument is moot because appellant has served his entire sentence for these offenses. But *Barnes* is inapposite as it involved an appeal from the denial of a motion to correct illegal sentence, not a direct appeal raising a challenge to the sufficiency of the evidence. Because appellant still has convictions on his record even though his sentence is served, there is an existing controversy capable of being remedied. Consequently, appellant's claim is not moot.

Although this Court has discretion to review unpreserved errors pursuant to Maryland Rule 8-131(a), the Court of Appeals 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) (quotation marks and 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) (quotation marks and citation omitted). Under the circumstances presented, we decline to overlook the lack of preservation and thus do not exercise our discretion to engage in plain error review of this issue. *See Morris v. State*, 153 Md. App. 480, 506-07 (2003) (noting that the five 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 omitted).[2]

JUDGMENTS OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY REVERSED. COSTS TO BE PAID BY QUEEN ANNE'S COUNTY.

[2] Although we decline to address the merits of appellant's sufficiency claims, this opinion is without prejudice to his raising those claims in a motion for judgment of acquittal in the event the State elects to retry him for these offenses.