

Circuit Court for Anne Arundel County
Case No. C-02-CR-22-001425

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 2385

September Term, 2023

DEVIN GREY LINN

v.

STATE OF MARYLAND

Beachley,
Albright,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 7, 2025

*This is a per curiam opinion. Under 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 Anne Arundel County of two counts of threat of mass violence in violation of Md. Code (2002, 2021 Repl. Vol.), § 3-1001(b) of the Criminal Law Article (“CR”),¹ Devin Grey Linn, appellant, presents for our review two issues: whether the evidence is sufficient to sustain the convictions, and whether the court “plainly err[ed] when it failed to instruct the jury on the need to find that [Mr. Linn] made a true threat.” For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State called Angela Egger, who testified that she is a licensed clinical social worker at Baltimore Washington Medical Center in Glen Burnie. On August 24, 2022, Mr. Linn was “admitted on an involuntary basis to” the center’s “adult behavioral health unit.” On August 26, 2022, Ms. Egger went to the unit’s “dayroom,” where she saw Mr. Linn and “heard [him] talking about very gruesome and grotesque things, killing children, dead bodies.” When Ms. Egger “tried to have a private kind of . . . conversation with [Mr. Linn] about appropriate topics,” he “became extremely agitated” and “threatening.” Mr. Linn stated: “[D]o you know what I can do? I am a trained Marine.” Mr. Linn then “escalated to verbal threats.”

Ms. Egger, “[s]ecurity,” and the unit’s “charge nurse” subsequently “tried to meet with [Mr. Linn] as a team.” Mr. Linn “continued to try to really kind of bring other people into it,” “tried to stare you down,” and “really tried to hit you.” Mr. Linn stated that “when

¹CR § 3-1001(b) states that a “person may not knowingly threaten to commit or threaten to cause to be committed a crime of violence . . . that would place five or more people at substantial risk of death or serious physical injury . . . if the threat were carried out.”

he got out . . . he would take [Ms. Egger’s] children from” her. When Mr. Linn “found out he was going to be emergency medicated due to the behaviors,” he “began making threats.” As the staff “were trying to clear the other patients out of the area,” Mr. Linn “began making threats about knowing how to make sarin gas and blowing up stadiums and blowing up the hospital and he couldn’t wait to see us burned in very graphic detail,” and “started to tell [the staff] the recipe for how to make this nerve gas that [they] wouldn’t see coming when he came back with it.” Mr. Linn also “threatened to slit [Ms. Egger’s] throat and watch [her] bleed out on the floor and said that he was a trained Marine and can do it with [a] golf pencil that he had in his hand” at the time.

On August 29, 2022, Ms. Egger had another “interaction” with Mr. Linn, which she described as follows:

Again, very intimidating, very graphic with the details of just grotesque subjects that were – you know, our age ranges in our unit start at 18 and kind of go up. So some of the younger kids, it’s just grotesque to hear.

And again just with the threats and to have to hear that day in and day out of blowing up where these people are stuck, ‘cause we are a locked inpatient unit. So they have no way out. And again about blowing up the hospital and making people pay for what they did. It’s scary.

Ms. Egger testified that Mr. Linn threatened to “[b]low[] up the hospital and the stadium,” told Ms. Egger that she “should just kill” herself, and that “he would love to watch [her] burn while the building blew up.” Ms. Egger testified that approximately “14 other patients” were “housed in that unit at that time,” and over three hundred “people were in the hospital at that time.” Ms. Egger confirmed that in her “interactions with Mr. Linn,” he did not “at any point ask [Ms. Egger] to clarify anything as if he didn’t understand what

[she was] saying,” and was “aware of where he was at the time.” When asked whether Mr. Linn “at any point in time . . . express[ed] confusion to [Ms. Egger] about where he was and any of the protocols or things that [she was] working with him on,” Ms. Egger testified: “No, Mr. Linn was able to articulate himself very clearly.”

The State also called Dr. Thomas Cummings, who testified that he is a psychiatrist at the center. Dr. Cummings testified that on August 25, 2022, he met with Mr. Linn for an “initial meeting and full history and physical.” Dr. Cummings testified:

The primary symptom areas he was displaying to us were agitation. He had symptoms of psychosis with what we believed to be were delusional, delusional beliefs and paranoia. He had high levels of anger and making threats in several ways in, in the hospital environment. Those were his primary presenting symptoms.

* * *

His plan of treatment would be . . . the workup as indicated for all adult patients, the regular safety space on the unit and group programming as appropriate with safety parameters, and then psychiatric medications were recommended. The primary medication that was recommended was an antipsychotic medication. The chemical name is olanzapine.

* * *

He was ordered the medication on a daily basis, but Mr. Linn never, never took the medication. So it was ordered for him and – but he has a – had a right . . . and chose not to take the medication.

When asked to describe his interactions with Mr. Linn on August 26, 2022, Dr. Cummings testified:

. . . I remembered his level of agitation, irritable mood, high anger levels continued. Mr. Linn was very focused on the government. He . . . described that to me, the government, different agencies. I think also his perhaps employer, . . . or ex-employer, who might have been like . . . a government contractor. He also mentioned . . . the president, the U.S. president[.]

* * *

I remember later that afternoon, not in my one-on-one evaluation. The way our psychology unit is, there is an open space. And patients are encouraged to be in that open space, and I remember Mr. Linn was.

And he became more vocal and was describing things about guns, very detailed issues about guns and gun parts. He was talking about bomb-making and details of equipment used in bomb-making. He also was talking about sarin, the poison sarin, and the detailed chemical nature and describing how to make that at home in front of – I, I witnessed it, but many patients and staff were present for that. And of course for safety on the unit we were very focused, focused on the things he was saying.

* * *

I remember talking about different bomb parts which he would need. I don't remember the exact details of what the parts were. It seemed very sophisticated to me. The knowledge seemed very clear, the way he was saying it, as well as with the sarin and then the gun – the gun as well, the gun parts terms, numbers for gun parts, how to assemble a gun, the different things you put together when you make a gun. He seemed to me to have very, very clear, detailed knowledge of that.

* * *

At that time in the afternoon he was talking openly about, you know, using these things. He was expressing homicidal thoughts, focusing at first I remember on some of those governmental figures I, I testified to earlier. Then he also got more agitated towards the staff, including myself, including other staff members, and made statements about wanting to kill us and he wanted to kill me. And it was – it was sort of after that episode.

When asked “approximately how many staff members, including [him]self, was [Mr. Linn] directing these threats towards,” Dr. Cummings testified:

To my best of my memory, at least four. Specifically, he clarified names. We wear nametags, so he clarified some staff members' names. He seemed very focused and very detailed about that, who people were, what their names were, whether it's a nurse or a social worker or myself.

So at least four to my memory. But there's probably in an average moment seven to nine staff, and there might have been even more staff at the time. Because of the level of agitation, there was more of a response to – people were concerned.

Dr. Cummings confirmed that “in the exchanges between [him]self and Mr. Linn and the other staff members,” Mr. Linn did not “express . . . that he didn't understand what was being communicated to him,” did not “express . . . that . . . he didn't know where he was,” “seemed very . . . cognitively clear,” and did not make “any statements . . . about being confused.”

When asked to describe his interactions with Mr. Linn on August 29, 2022, Dr. Cummings testified:

. . . I would have had a one-on-one evaluation with Mr. Linn.

I remember a more detailed discussion of gun parts. He was talking about his military background to me, explaining in a lot of very technical terms about gun parts and attachments of [a] gun. I just remember a lot of numbers used with several digits, and he seemed to have strong knowledge in this area. And again the same themes, some of the paranoid themes about the government and different figures and a lot of anger towards them, that being the dominant part of our one-on-one discussion.

* * *

There was another daytime – I believe in the early afternoon – episode that day where Mr. Linn became more agitated, more angry on the hospital unit. Again, I was present for that and then also needed to be present for that 'cause there's a response when there is concern from the staff about that. And at that time I remember Mr. Linn stating that when he left the hospital, he was gonna come back and blow up the hospital.

Dr. Cummings testified that in the medical center, there are “300-plus beds in the hospital that are nearly full,” and with respect to “staff members,” there were “between 1,000 and

2,000 people at any time.” During redirect examination, Dr. Cummings testified that Mr. Linn “always seemed . . . quite alert and quite clear.”

Mr. Linn contends that for two reasons, the evidence is insufficient to sustain the convictions. Mr. Linn first contends that for numerous reasons, “the State did not prove that [he] acted knowingly.” We disagree. The U.S. Supreme Court has stated that a person who makes a threat of violence “acts knowingly . . . when he knows to a practical certainty that others will take his words as threats.” *Counterman v. Colorado*, 600 U.S. 66, 79 (2023) (citation omitted). Here, Ms. Egger testified that on August 26, 2022, Mr. Linn claimed to have military training, to know how to manufacture sarin and nerve gas, and to know how to kill a person with a golf pencil. Dr. Cummings testified that on that date, Mr. Linn spoke in “very detailed” and “sophisticated” fashion “about guns” and their manufacture, “equipment used in bomb-making,” the “chemical nature and” manufacture of sarin, and “governmental figures” for whom he had “homicidal thoughts.” Ms. Egger testified that on August 29, 2022, Mr. Linn spoke in “very graphic . . . detail[]” about “grotesque subjects.” Dr. Cummings testified that on that date, Mr. Linn spoke in “detailed” fashion about “gun parts” and attachments, “his military background,” and “government . . . figures” against whom he had “a lot of anger.” Ms. Egger and Dr. Cummings further confirmed that during these incidents, Mr. Linn did not “ask . . . to clarify anything as if he didn’t understand,” was “aware of where he was,” did not “express confusion . . . about where he was [or] any of the protocols,” “was able to articulate himself very clearly,” and “seemed very . . . cognitively clear” and “alert.” From this evidence, a rational trier of fact

could conclude beyond a reasonable doubt that Mr. Linn knew to a practical certainty that others would take his words as threats, and hence, that he made the threats knowingly.

Mr. Linn next contends that the State “did not prove that, viewed in the context in which they were made, [his] statements conveyed a true threat to the hospital staff and [his] fellow patients.” Acknowledging that “defense counsel did not preserve [this] argument for review by this [C]ourt,” Mr. Linn requests that we “hold that defense counsel was ineffective.” We decline to do so. The Supreme Court of Maryland has stated that “[p]ost-conviction proceedings are preferred with respect to ineffective assistance of counsel claims because the trial record rarely reveals why counsel . . . omitted to act, and such proceedings allow for fact-finding and the introduction of testimony and evidence directly related to the allegations of the counsel’s ineffectiveness.” *Mosley v. State*, 378 Md. 548, 560 (2003) (citations and footnote omitted). Here, like in *Mosley*, the record does not reveal why defense counsel failed to move for judgment of acquittal on the ground that Mr. Linn now seeks. A post-conviction proceeding will allow for the introduction of testimony and evidence, and fact-finding, directly related to Mr. Linn’s contention, and hence, the contention should be addressed in such a proceeding.

Finally, Mr. Linn contends that the court “erred when it failed to instruct the jury on the need to find that [Mr. Linn] made a true threat.” Acknowledging that defense counsel “fail[ed] to object to the jury instructions on this ground,” Mr. Linn requests that we “hold that this critical omission amounts to 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 ANNE ARUNDEL COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**