Circuit Court for Baltimore City
Case No.: 122165006

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 50

September Term, 2024

WARDELL RICHARDSON

v.

STATE OF MARYLAND

Leahy,
Albright,
Kehoe, Christopher B.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: May 8, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

The conflict between appellant, Wardell Richardson, and another man, Terrence Marrow, over their relationships with Sierra Martin culminated in a gunfight on March 21, 2022, in the 2000 block of Eutaw Place in Baltimore City. Richardson was indicted in the Circuit Court for Baltimore City and charged with attempted first-degree murder, attempted second-degree murder, first-degree assault, and various firearm offenses. Richardson waived his right to a jury trial and proceeded to a bench trial. At the conclusion of the State's case-in-chief, the court granted a motion for judgment of acquittal as to the charge of attempted first-degree murder. The court found Richardson not guilty of attempted second-degree murder, determining that he was a mutual aggressor in the gunfight and that he had acted in imperfect self-defense.[1] However, the court ruled that imperfect self-defense did not apply to first-degree assault and convicted him of that offense, finding that Richardson both used a firearm and intended to cause serious bodily injury.

Richardson was also convicted of the firearms-related offenses. Thereafter, he was sentenced to concurrent sentences amounting to twelve (12) years in the Division of Correction as follows: eight (8) years for first degree assault, three (3) years concurrent for wearing, carrying and transporting a handgun, twelve (12) years concurrent for use of a firearm in commission of a crime of violence, one (1) year concurrent for discharging a

[1] The court declined to reach a verdict on the uncharged lesser included offense of attempted voluntary manslaughter on the grounds that Appellant was not charged with that offense and "no one asked me to consider the lesser included."

firearm in the City of Baltimore, and twelve (12) years concurrent for illegal possession of a regulated firearm, the first five (5) years without possibility of parole.

In this timely appeal, he presents five questions for our review, which we have reorganized and slightly recast as follows:

1. Was Richardson properly convicted of first-degree assault?

2. Was Richardson's waiver of the right to a jury trial made knowingly, did defense counsel provide ineffective assistance in advising him to waive this right?[2]

The record on appeal supports the trial court's determination that Richardson was a mutual aggressor in the gunfight, that he used a firearm in committing the offense of first-degree assault, and that no valid defense applied in his case. Whether the trial court misapplied the doctrine of imperfect self-defense in its determination to acquit Richardson, that judgment is not before this Court. *See Evans v. Michigan*, 568 U.S. 313, 318-19

[2] Appellant's original questions presented were as follows:

1. Did the trial court misstate and misapply Maryland law regarding self-defense and imperfect self-defense?

2. Having found that Mr. Richardson acted in imperfect self-defense, did the trial court err by convicting Mr. Richardson of first-degree assault instead of attempted manslaughter?

3. Did the trial court err when it held that under Maryland law, imperfect self-defense does not apply to First-Degree Assault?

4. Did defense counsel provide ineffective assistance by neglecting to ascertain whether Mr. Marrow would testify before advising Mr. Richardson to waive his constitutional right to a jury trial?

5. Was Mr. Richardson's waiver of his right to a jury trial knowing and voluntary?

(2013); *Farrell v. State*, 364 Md. 499, 504–05 (2001). Although we affirm Richardson's convictions, we agree with the State that Richardson's sentence for wearing, carrying, and transporting a handgun must be vacated because that sentence should have merged, for sentencing purposes, with his sentence for use of a firearm in the commission of a crime of violence.[3]

BACKGROUND

Richardson was tried before a judge in the Circuit Court for Baltimore City over six days in June of 2023. The following facts are derived from the evidence adduced at trial, viewed in the light most favorable to the State. *O'Sullivan v. State*, 476 Md. 602, 265 A.3d 1015, 1029-30 (2021). We later supplement these facts in our discussion of the issues.

Marrow testified that he and Sierra Martin had been together since they were sixteen years old, through 2020, and that they had four children together. By 2019, however, Marrow had come to believe that Richardson, who lived around the corner at 2004 Eutaw Place, was involved with Martin. He moved out of Martin's residence on Bloom Street in January 2021. By then, the animosity between him and Richardson had turned physical. On January 3, approximately two months before the March 21, 2022 shooting, Richardson

[3] The State commendably raised the issue of the illegal sentence in its brief and concedes that the sentences should merge. *See Wilkins v. State*, 343 Md. 444, 446-47 (1996) (vacating the sentence); *see also Moore v. State*, 198 Md. App. 655, 692 (2011) ("[U]nder the required evidence test, the merger of a conviction for the lesser included offense into the conviction for the greater offense is for *sentencing purposes only* and results in a single sentence for the greater offense. The conviction for the lesser included offense survives the merger") (emphasis in original).

called 911 to report that Marrow had chased him through the neighborhood armed with a gun, but no charges were ever filed.

According to Marrow, on the evening of March 21, 2022, after finishing orientation at a new post office job and helping a girlfriend jump-start her car, Marrow decided to drive to Martin's residence on Bloom Street to see his children. Marrow double-parked in front of Martin's building, left his keys in the car, and retrieved his tan bag from the vehicle before approaching the front door. The bag contained a Glock 26 9-millimeter handgun. Marrow claimed he brought the gun "to protect" himself because he had received word through contacts in the neighborhood that Richardson had been making threats directed at him. (The trial judge admitted this testimony over objection not for its truth but to show Marrow's state of mind.) Marrow acknowledged he was "agitated" when he arrived.

Brandon Saunders, Martin's cousin, whom Marrow had known since elementary school, was outside Martin's residence with his family. Martin was on the stairwell inside the building, and Saunders spoke to her through the door. Marrow testified that Martin agreed to let him see the children, but his four children never came outside during the time he was on the block. After talking with Saunders, Marrow asked him for a cigarette and the two began walking toward Eutaw Place, where Saunders said he knew someone. Saunders turned right onto Eutaw Street toward the gated area near 2004 Eutaw Place. At that point, Marrow saw Richardson armed with a handgun. Saunders and Richardson then "started tussling," apparently over the gun. During that struggle, Richardson dropped his gun momentarily, picked it up, and then fired at Marrow through the gate. Marrow testified that he then jumped behind a parked car, inserted the magazine into his Glock, peeked out,

and shot Richardson. He testified that he knew he hit Richardson with his first shot, that he emptied his magazine, nine rounds, before returning to his vehicle, and that he "thought [he] killed" Richardson.

Marrow explained that after emptying his magazine, he got in his car and left. When asked whether he called 911, Marrow testified: "I didn't call -- I called my lawyer." Marrow was subsequently arrested and charged with attempted murder. Police eventually recovered Marrow's firearms—a Glock 26 9-millimeter and a Glock 21 45-caliber—from the trunk of his girlfriend's car.[4]

Nicole Pulley testified that she lived at 2004 Eutaw Place and had known Richardson for nearly twenty years. Pulley was inside her apartment watching Family Feud when she heard gunshots. When she came out into the hallway, she found Richardson, who had been shot, on the steps. Pulley testified that Richardson told her: "They chased me. They shot me." He handed her his handgun and asked her to put it away because children were coming. Pulley called 911 and turned over the gun to the police that same day. The police initially identified Richardson as the victim in this case.

Thirteen cartridge casings and a loaded, operable Glock 23, 40-caliber handgun were recovered from the scene of the shooting. Items 1 through 9 were 9-millimeter casings (from Marrow's firearm) found on the 300 block of Bloom Street. Although Items 2 through 9 were clustered together further down Bloom Street, Item 1 was separated from

[4] No evidence was introduced at trial that Marrow's firearms were tested or compared to the cartridge casings recovered from the scene. Marrow ultimately pleaded guilty to one count of wearing, carrying, or transporting a loaded handgun and received probation after conviction with time served.

that group, located against the fence at the corner of Bloom and Eutaw. Items 10 through 13 were 40-caliber casings (from Richardson's gun) found on the 2000 block of Eutaw Place, clustered near the entrance of 2004 Eutaw Place, with Item 13 approximately three feet from the front door.[5]

The State introduced two recorded alerts from different "ShotSpotters" into evidence. The ShotSpotter monitoring system uses microphone receptors placed across Baltimore City to capture and triangulate the locations and timing of gunshots. The two recorded alerts were from different ShotSpotters in the area: one recorded alert, at 18:48:19, captured eight shots in the area of Eutaw Place; the other, at 18:48:25, captured five shots on Bloom Street, approximately six seconds later. Detective Timothy Bardzik confirmed that these two alert locations were consistent with the evidence recovered from the scene. The detective also agreed that the 9-millimeter casings at the Bloom/Eutaw intersection corresponded to Marrow's position, and the 40-caliber casings in front of 2004 Eutaw Place corresponded to Richardson's position. Det. Bardzik further explained:

> The ShotSpotter, however, it does pick up the gunshots, it doesn't differentiate -- sorry -- it doesn't tell the difference between two guns. So hypothetically, if you are and I are shooting each other and we both shoot off four rounds, it's going to capture eight rounds. It doesn't differentiate from your and my gun. So it's not going to say four rounds here and four rounds there. So that eight rounds could have been Mr. Marrow and Mr. Wardell shooting at each other.

[5] Defendant's Exhibit 1 shows a sketch of the area with the locations of each gunshot marked. It shows Item 1 and Item 13 closer to each other with a much greater distance between the remaining 9-millimeter casings and the 40-caliber casings. In its ruling, the trial court observed that Defendant's Exhibit 1 "is a very interesting piece of evidence because this piece of evidence really tells the story."

State's Exhibit 10, a certified ShotSpotter report, showed that the Shotspotter recorded the first at 18:48:19.189 and the second .388 seconds later at 18:48:19.577.[6]

Richardson never testified at trial, and his account of the incident was conveyed through his statements to law enforcement. Two days after the shooting, on March 23, 2022—the same day he was released from Shock Trauma following surgery on his leg—Richardson was interviewed by Det. Bardzik. The recorded interview was admitted and played at trial. In the recording, Richardson is heard telling Bardzik that he had been coming from the store when he saw Marrow reach into his bag: "I seen him reaching in the sack, like boom, boom, boom. And then I dropped." When Bardzik asked whether he had shot back, Richardson replied: "I don't — I didn't shoot. … Mm-mm, no." Bardzik testified that at the time of the interview, he "still looked at [Richardson] as the victim." Following further investigation, Bardzik charged both Richardson and Marrow with attempted murder.

At the end of the State's case-in-chief, the court granted Richardson's motion for judgment of acquittal on the charge of attempted first-degree murder. The court found that the State had not presented sufficient evidence of premeditation and deliberation, stating: "I don't think I have enough information presented by the State yet to find in a light most favorable to State that I have enough evidence here for an attempted first-degree murder. I

[6] We note that when making its findings, the trial court referred to State's Exhibit 10 and observed that "shots one and two were fired within .388 seconds of each other. By the way, say one-one thousand out loud. That's one second. This was done in less than half the amount of time it takes for me to say that word. So they are immediately shooting at each other, these two shooters."

don't think I have premeditation and deliberation. That Motion for Judgment of Acquittal will be granted." After the defense rested its case, Richardson's counsel renewed the motion for judgment of acquittal on the remaining counts, and the court denied the motion.

The next day, after hearing the parties' arguments, the court made its findings of fact and rendered its verdict. With respect to the physical evidence, the court found that Evidence Marker 1 and Evidence Marker 13, the two casings it considered the first shots fired, established that both shooters could see each other diagonally through the gated area, and that both shots were fired within .388 seconds of each other.

The judge explained that he did not find Richardson's statement to police to be truthful, especially Richardson's statement that "I didn't shoot." Similarly, the court did not find Marrow's testimony credible, especially his explanation that he wanted to see his children, but then double parked his car in the middle of the road and left the keys inside the car, and rather than bring the children any gifts, he brought a gun. Likewise, the judge didn't believe Morrow's testimony that he "[n]ever been in an shootout before[,]" and found that he "conducted himself in a way as somebody who has been in a shootout before."

Then, after recounting that Richardson was not guilty of attempted first-degree murder and convicting him on some of the firearm-related offenses, the court turned to attempted second-degree murder. The court first discussed the defense of hot-blooded response to adequate provocation, quoting from portions of *Whitehead v. State*, 9 Md. App. 7, 11 (1970), and *Perry v. State*, 234 Md. 48, 52 (1964). Generally, the court summarized the law of provocation, sometimes referring to the doctrine as "mutual combat," and we

note that this defense, like imperfect self-defense, will mitigate murder to manslaughter. *See Roach v. State*, 358 Md. 418, 430-31 (2000) (imperfect self-defense); *State v. Faulkner*, 301 Md. 482, 486 (1984) (provocation); *Carter v. State*, 66 Md. App. 567, 570 (1986) (provocation).[7] After summarizing the law in this area, the court found as follows:

> I've got two men walking around the streets of Baltimore ready to fire. And upon immediately the sight of each other are shooting at each other. I don't need to know who shot first because I know that they shot within .388 seconds of each other. Whoever shot first was somebody that just happened to be slightly quicker. They were both trying to shoot at the exact same time at each other.

The court continued:

> But the law also says that doing such is something called imperfect self-defense. And if I find that there is an imperfect self-defense, which I do, then somebody can't be guilty of attempted second-degree murder. In fact, if I find somebody, if I find imperfect self-defense, then I would have to instead find them guilty of attempted voluntary manslaughter, which you're not charged with and no one asked me to consider the lesser included.
>
> So you're not guilty of attempted second-degree murder. But I do believe that what I have here is an imperfect self-defense case. …

See generally, Smith v. State, 412 Md. 150, 175-76 (2009) (holding that trial court may convict on a lesser included offense where the parties have been afforded the opportunity

[7] Throughout the proceedings, the briefs, and the oral argument, the parties and the court referred to "mutual combat" as if it were a separate mitigation defense. To be clear, "mutual combat" is not an independent defense; it is a recognized form of legally adequate provocation that triggers the mitigation defense of hot-blooded response to adequate provocation. *Sims v. State*, 319 Md. 540, 551-52 (1990) (affirming denial of jury instruction on hot-blooded response to adequate provocation where evidence was insufficient to generate the defense, and recognizing mutual combat as one form of legally adequate provocation). In other words, "mutual combat" is simply a modality of hot-blooded response to adequate provocation.

to argue with respect to that offense); *Dishman v. State*, 352 Md. 279, 288 (1998) (collecting cases holding that manslaughter is a lesser included of murder).

Turning to the charge of first-degree assault, the court observed that the elements constitute all of the elements of second-degree assault plus, "Defendant used a firearm to commit an assault or the Defendant intended to cause serious physical injury of [sic] the assault." The court then considered whether Richardson acted in self-defense, stating:

> Well, one version of a second-degree assault is an attempted battery, an attempt to cause offensive physical contact. So you have to prove that the Defendant actually tried to cause immediate offensive physical contact or physical harm to another person, here Mr. Marrow. The Defendant intended to bring about that offensive physical contact and the Defendant's actions were not consented to or legally justified, which gets us into self-defense.
>
> And Madam State is right, we have to talk about all four elements. But if I don't find one of those elements, then self-defense doesn't apply. **So I'm going to laser focus on element number one, whether or not the Defendant was the aggressor. And as it was initially argued to me, each side wants to say the other guy's the aggressor. <u>And what I'm pointing out to you all is that I think they are mutually aggressors towards each other. And in that situation, you can't have self-defense under the law as it's written as I understand it</u>.**

(Emphasis added). The court continued:

> So for those reasons, all the elements are present for an attempted battery under second-degree assault. **<u>All the remaining elements are present -- and there is no valid defense to it.</u> And all the elements are present for either kind of qualifying first-degree assault. Because there was use of a firearm and when you shoot a gun at somebody, you intend to cause serious bodily injury. So either one applies.** So he's guilty of first-degree assault. We have him using a firearm and we have him committing a first-degree assault. That's use of firearm in the commission of a crime of violence. So he's guilty as to Count 5.
>
> And finally, discharging firearm in Baltimore City, the elements are if any person shall fire or discharge any gun, pistol or firearm within the city, unless it's on some occasion of a military parade, and then by order or some officer

> having the command, every such person shall be guilty of a misdemeanor. The Defendant did that. He fired a firearm in Baltimore City. I have testimony through one witness of the word Baltimore City. So he's guilty of Count 6.
>
> And that's my verdict as to all these counts.

(Emphasis added).

After the verdict, defense counsel pressed the court on whether the mutual combat/aggressor finding undermined the first-degree assault conviction. Defense Counsel argued:

> Right, and I understand that. So if you're in a mutual combat where both parties are essentially, from -- I don't want to put the wrong words into it either -- first-degree assaulting each other or attempting to kill each other, however you phrased it, then the response to -- if Mr. Marrow is a voluntary participant, is essentially what you're saying, which I think then defeats the first-degree assault aspect of it.
>
> Because if he has imperfect self -- they both would have the right to self-defense at that point or imperfect self-defense. I'm not sure he could be guilty of the first-degree assault if the shots that he is firing are in ongoing -- the mutually agreed to combat. Because –

The court responded by concluding that imperfect self-defense was unavailable as a defense to first-degree assault:

> My research is that imperfect self-defense is not a defense to first-degree assault. If I'm wrong, then I'll be overturned on that. But my thinking here is that the only thing available to your client in that moment was imperfect self-defense at best. But this was not perfect self-defense, not on my assessment of the facts. And I researched this. Imperfect self-defense reduces you out of an attempted murder into a, it would reduce a murder to a manslaughter or an attempted murder into an attempted voluntary manslaughter.

(Emphasis added).[8]

We shall include additional detail in the following discussion.

DISCUSSION

I.

FIRST DEGREE ASSAULT CONVICTION

A. Parties Contentions

Richardson first contends that the court misstated and misapplied the law of self-defense in this case. Richardson argues that the court made erroneous factual findings about whether he was the initial aggressor in his encounter with Marrow. Moreover, Richardson asserts that, "[a]s with 'perfect' self-defense, 'imperfect' self-defense is only available where the defendant is *not* the initial aggressor (or mutual combatant)." Thus, Richardson asserts that the trial court's finding that as a mutual combatant he was not guilty of attempted second-degree murder based on imperfect self-defense, "evinced an incorrect understanding of the relevant law." (Quoting *Medley v. State*, 386 Md. 10 (2005)). Next, Richardson asserts that the court, having found that Richardson acted in imperfect self-defense, should have convicted him of the uncharged lesser included offense of attempted manslaughter.

Finally, Richardson argues that the court erred by declaring that "imperfect self-defense is not a defense to first-degree assault," and by convicting him of that offense.

[8] The court then reiterated its earlier finding, identifying the first two shots in the sequence, Evidence Markers 1 and 13, as the mutual combat shots, and stated: "Upon the mere sight of each other, these two are shooting each other, mutual combatants. That's my finding."

Relying on *Christian v. State*, 405 Md. 306, 322-23 (2008), Richardson urges that "the doctrine of imperfect self-defense can apply to mitigate first-degree assault to second-degree assault."

Although the State agrees that the court could have convicted Richardson of attempted voluntary manslaughter, the State disagrees with Richardson's arguments and maintains that the court properly convicted him of first-degree assault. The State asserts that the trial court properly applied the law when it found that Richardson and Marrow were both aggressors in the shooting and that Richardson did not act in perfect self-defense and that imperfect self-defense was not a defense to the first-degree assault count. The State continues that, whereas the court found that Richardson committed the assault with a firearm, regardless of whether the court should have convicted him of attempted voluntary manslaughter, any applicable defense under *Christian, supra*, does not apply.

Ultimately, although the parties have briefed this issue extensively and argued admirably at oral argument before this panel, we conclude that the dispositive question is relatively narrow: Did the trial court properly convict Richardson of first-degree assault?

B. Standard of Review

Maryland Rule 8-131(c) provides the standard for our review:

> When an action has been tried without a jury, an appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

Although we defer to the circuit court's factual findings, we review questions of law *de novo*, giving no deference to the circuit court's legal conclusions. *Scriber v. State*, 236

Md. App. 332, 344-45 (2018). "On review of a criminal bench trial, we review 'the law and the evidence to determine whether in law the evidence is sufficient to sustain the conviction, but the verdict of the trial court shall not be set aside on the evidence, unless clearly erroneous.'" *Hammond v. State*, 257 Md. App. 99, 125 (2023). The legal sufficiency question is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Koushall v. State*, 479 Md. 124, 147 (2022). "The trial court's factual determinations are subject to clear error review." *Peterson v. Evapco, Inc.*, 238 Md. App. 1, 52 (2018).

C. Acquittal of Attempted Second-Degree Murder

Summarizing the arguments before us, Richardson contends that the trial court misapplied the law of imperfect self-defense in acquitting him of attempted second-degree murder, and that the court's erroneous self-defense reasoning should have carried over to require either a conviction of attempted voluntary manslaughter or an acquittal of first-degree assault. We are not persuaded. The acquittal of attempted second-degree murder is not before this Court and cannot be reviewed.

"Perhaps the most fundamental rule in the history of double jeopardy jurisprudence has been that '[a] verdict of acquittal ... could not be reviewed, on error or otherwise, without putting [a defendant] twice in jeopardy, and thereby violating the Constitution.'" *Farrell v. State*, 364 Md. 499, 504–05 (2001); *see also Fong Foo v. United States*, 369 U.S. 141, 143 (1962) ("[A] defendant acquitted at trial may not be retried on the same offense,

even when the acquittal is 'based upon an egregiously erroneous foundation'"). As the United States Supreme Court explained in *Evans v. Michigan*, 568 U.S. 313 (2013):

> It has been half a century since we first recognized that the Double Jeopardy Clause bars retrial following a court-decreed acquittal, even if the acquittal is "based upon an egregiously erroneous foundation." *Fong Foo v. United States*, 369 U.S. 141, 143 (1962) (per curiam). A mistaken acquittal is an acquittal nonetheless, and we have long held that "[a] verdict of acquittal ... could not be reviewed, on error or otherwise, without putting [a defendant] twice in jeopardy, and thereby violating the Constitution." *United States v. Ball*, 163 U.S. 662, 671 (1896). . . . An acquittal precludes retrial even if it is premised upon an erroneous decision to exclude evidence; a mistaken understanding of what evidence would suffice to sustain a conviction; or a "misconstruction of the statute" defining the requirements to convict. In all these circumstances, "*the fact that the acquittal may result from erroneous evidentiary rulings or erroneous interpretations of governing legal principles affects the accuracy of that determination, but it does not alter its essential character*."

Evans v. Michigan, 568 U.S. at 318–19 (emphasis added, citations omitted).

Because the Double Jeopardy Clause bars review of an acquittal regardless of whether it rests on legal error, Richardson's argument that the trial court misapplied imperfect self-defense in acquitting him of attempted second-degree murder is not a cognizable appellate claim; it is an invitation to do precisely what the Constitution forbids. Richardson's acquittal of the attempted second-degree murder charge is not before this Court.[9]

[9] That the court could have convicted Richardson of voluntary manslaughter on the attempted second-degree murder charge is not in dispute. *See generally*, *Dishman*, 352 Md. at 288 (observing that manslaughter is a lesser included offense of murder); *State v. Martin*, 367 Md. 53, 55 (2001) (recognizing that the charging of an offense that includes lesser offenses permits the conviction "of any lesser included offense the evidence supports"). However, the trial court expressly declined to render such a verdict. A fair reading of the pertinent law says that the court "may" convict on a lesser included offense (continued)

D. Conviction for First-Degree Assault

This brings us to the only conviction before us; Richardson's conviction for first-degree assault. Section 3-202 of the Criminal Law Article provides, in pertinent part:

> (b)(1) A person may not intentionally cause or attempt to cause serious physical injury to another.
>
> (2) A person may not commit an assault with a firearm, …

Md. Code (2002, 2021 Repl. Vol.) § 3-202 of the Criminal Law Article ("CR").

i. The firearm modality of first-degree assault independently supports the conviction.

The trial court expressly found that Richardson was guilty under both modalities of first-degree assault:

> And all the elements are present for *either* kind of qualifying first-degree assault. Because there was use of a firearm and when you shoot a gun at somebody, you intend to cause serious bodily injury. So either one applies. So he's guilty of first-degree assault. We have him using a firearm and we have him committing a first-degree assault.

(Emphasis added).

This finding was not clearly erroneous. Multiple shots were fired from two separate locations, and the first shot from each location was separated by a mere .388 seconds, less than half the time it takes to say the word "one-one-thousand." Nevertheless, arguing that the trial court misapplied the law and that the error was not harmless, Richardson relies on

when the parties are afforded an opportunity to argue on that offense prior to the verdict. *See Smith*, *supra*, 412 Md. at 172 ("[A] trial court *may* not convict a defendant of an uncharged lesser included offense unless the parties are given an opportunity to present arguments on that offense in the trial court") (emphasis added). It follows that the court was not required to render a verdict on an uncharged lesser included offense when the parties never argued or presented it for the court's consideration.

Dixon v. State, 364 Md. 209 (2001), and asserts: "if the trial court properly applied the law and found [Richardson] guilty of attempted manslaughter by way of imperfect self-defense, the first-degree assault conviction would have merged into the attempted voluntary manslaughter conviction."

Richardson's argument fails because here, the trial court found him guilty under both modalities of first-degree assault. *Dixon* clearly established that the firearm modality requires proof of an element, use of a firearm, that attempted voluntary manslaughter does not. *Dixon*, 364 Md. at 240-41. Thus, because it was clear that Richardson used a firearm in the incident, his claim that the first-degree assault should have merged is without merit.

ii. No mitigation defense was available on the first-degree assault charge.

We turn next to Richardson's argument that the trial court had to apply a mitigation defense to the first-degree assault charge.[10] Specifically, Richardson argues that "the trial court misapplied Maryland law" by concluding, as a matter of law, that "imperfect self-defense is not a defense to first-degree assault." Richardson argues that this conclusion runs counter to *Christian v. State*, 405 Md. 306 (2008), which has not been expressly overruled by the Maryland Supreme Court and is still good law. The State responds that

[10] The parties agreed at oral argument that determining which defense applies is a question of law. *See, e.g.*, *Lee v. State*, 193 Md. App. 45, 65 ("As defense of others was not generated as a defense at trial, the appellant was not entitled to a jury instruction about it, as a matter of law"), *cert. denied*, 415 Md. 339 (2010); *Street v. State*, 26 Md. App. 336, 339-40 (1975) ("[T]he claim of self-defense was unavailable to the appellant as a matter of law because he was an aggressor engaged in the perpetration of a robbery"); *see also State v. Edwards*, 768 S.E.2d 619, 621 (N.C. Ct. App. 2015) ("Whether evidence is sufficient to warrant an instruction on self-defense is a question of law; therefore, the applicable standard of review is de novo).

Christian is no longer valid because "it has been sapped of its rationale by *State v. Jones*, 451 Md. 680 (2017), which overruled *Roary v. State*, 385 Md. 217 (2005), on which *Christian's* holding entirely relies."

In *Christian*, the Supreme Court of Maryland held that both of the mitigation defenses of imperfect self-defense and hot-blooded response to adequate provocation could apply to mitigate a charge of first-degree assault to second-degree assault. *Christian*, 405 Md. at 333. Generally, and historically, perfect self-defense operates as a complete defense resulting in acquittal. Although imperfect self-defense is not a complete defense, it negates malice and mitigates the offense charged. *State v. Faulkner*, 301 Md. 482, 485-86 (1984). However, neither form of self-defense is available to an initial aggressor. *Holt v. State*, 236 Md. App. 604, 625 (2018); *Thornton v. State*, 162 Md. App. 719, 734 (2005).

In this case, the trial court's finding that both Richardson and Marrow were initial aggressors was not clearly erroneous, and it rested on substantially more than the .388-second interval alone. The court found that both men were "walking around the streets of Baltimore ready to fire" and that, "upon immediately the sight of each other," both were shooting. The court expressly declined to resolve which man fired the first shot, concluding that whoever was microseconds faster "just happened to be slightly quicker" and both men, in the court's assessment, "were both trying to shoot at the exact same time at each other." That finding was grounded in the physical evidence: Richardson's .40-caliber casings clustered at the gate of 2004 Eutaw Place and Marrow's 9-millimeter casings at the Bloom/Eutaw intersection established both shooters' positions, and the ShotSpotter data confirmed the near-simultaneity of fire from those two locations. The

court also discredited Richardson's own account, his statement "I didn't shoot," as untruthful. On this record, we are persuaded that Richardson was not a bystander who reacted to Marrow's aggression; he was, in the trial court's supported finding, an armed participant who came to the confrontation ready to fire.

Despite these findings, Appellant argues the court erred because it failed to recognize that, based on the fact that Marrow previously chased him with a gun, he could arm himself in anticipation of an attack. Appellant primarily relies on *Gunther v. State*, 228 Md. 404, 409 (1962) (reversing second-degree murder conviction and remanding for a new trial because the court "should have advised the jury that if it believed that the defendant was not seeking a fight with his brother-in-law, but on the contrary was apprehensive that he might be attacked by him, then the defendant, under such circumstances, would have a right to arm himself in anticipation of the assault"); *see also Perry v. State*, 234 Md. 48, 52-54 (1964) (recognizing the principle that, when a person has reasonable grounds to anticipate an attack, the person has the right to arm themselves, provided that they are not seeking an encounter "and was not the aggressor"). *Gunther* is readily distinguishable. That case reversed a jury trial conviction because the trial court gave a legally incorrect jury instruction, an error with no analog here, where there was no jury.

Here, the trial court in this bench trial plainly knew the arming-in-anticipation principle, having cited *Perry* and *Gunther* itself during its deliberations, including the critical qualification from *Perry* that the right to arm oneself applies only to one "who is not in any sense seeking an encounter." The court then rejected the principle on the facts

it found: "I've got two men walking around the streets of Baltimore ready to fire. And upon immediately the sight of each other are shooting at each other." That specific factual finding, that both men were mutual aggressors, was not clearly erroneous.

Richardson was therefore an initial aggressor and could not invoke imperfect self-defense. As we explained in *Holt*, "the fight did not come to appellant; appellant went to the fight." *Holt*, 236 Md. App. at 625. The privilege of self-defense is not necessarily forfeited by arming one's self in anticipation of an attack, but that right is qualified by the proviso that it extends only to one "who [was] not in any sense seeking an encounter." *Id.* (citation omitted). Imperfect self-defense does not apply in this case.

We turn next to whether hot-blooded response to adequate provocation should have mitigated Richardson's first-degree assault conviction. Although defense counsel never raised that defense as to the first-degree assault charge below, our *de novo* review of the law under Maryland Rule 8-131(c) compels us to address it. *Christian* held that hot-blooded response to adequate provocation was available to defendants charged with first-degree assault where the assault "could now supply the malice necessary for felony-murder if the victim dies." *Christian*, 405 Md. at 333. Thus, *Christian*'*s* holding was expressly conditioned on that felony-murder malice-supply rationale, a rationale that applies only where the assault modality carries a homicide-equivalent intent structure. *Christian* itself recognized that the firearm modality does not carry that structure, having cited *Dixon's* holding that the firearm modality is not a lesser included offense of attempted voluntary manslaughter. *Christian*, 405 Md. at 321-22 (citing *Dixon*, 364 Md. at 240-41). Accordingly, it appears that *Christian* applies only to the serious physical injury modality

of first-degree assault, as the firearm modality was outside the scope of that opinion. Because the trial court expressly found Richardson guilty under the firearm modality, a modality that *Christian* never expressly addressed, the trial court did not err as a matter of law in declining to apply any mitigation defense to the conviction as it actually rested.

Indeed, this Court's reported opinion in *Johnson v. State*, __ Md. App. __, Nos. 772, 881, Sept. Term, 2024 (filed April 2, 2026), forecloses that possibility. *Johnson*, which was reported after the briefs were filed in this case but before oral argument, held unequivocally that "the mitigation defense of hot-blooded response to adequate provocation does not apply to first-degree assault." *Johnson*, slip op. at 24. We conclude that holding encompasses both modalities. As *Johnson* explained, *State v. Jones*, *supra*, overruled *Roary* and held that "[f]irst-degree assault, either intent to inflict serious physical injury or assault with a firearm, cannot, as a matter of law, serve as the underlying felony to support felony murder." *Jones*, 451 Md. at 708 (quoted in *Johnson*, slip op. at 20). Because *Christian*'*s* holding was expressly premised on *Roary*'*s* felony-murder predicate, *Jones*' elimination of that predicate rendered *Christian* inapplicable to defendants charged with assault. *Johnson*, slip op. at 22. Neither imperfect self-defense nor hot-blooded response to adequate provocation is available to Richardson on the first-degree assault charge.

Ultimately, as explained, Richardson's conviction is independently supported in any event. The trial court found Richardson guilty under both modalities of first-degree assault. As we have already concluded, the firearm modality constitutes a wholly independent basis for the conviction, unaffected by any mitigation-defense analysis. *Dixon*, 364 Md. at 240-

41. We affirm the first-degree assault conviction. The use-of-a-handgun conviction, predicated on the first-degree assault, is affirmed as well.

II.

Jury Trial Waiver

Richardson claims the trial court erred because his jury trial waiver was not knowingly and voluntarily made. Richardson bases this claim, in part, on the argument that trial counsel rendered ineffective assistance by not determining whether the State's primary witness, Marrow, would testify before counsel advised Richardson about whether to waive his right to a jury trial.

A. Pertinent Arguments and Advisement

On the morning of the trial, defense counsel brought to the court's attention that Marrow had been charged with attempted first-degree murder in connection with this case. Those charges were *nol prossed* before the case was presented to a grand jury, and Marrow ultimately pled guilty to one count of wearing, carrying, or transporting a loaded handgun and received probation after conviction with time served. Defense Counsel advised the court that it had not received discovery of the terms or circumstances of that disposition, as required under Maryland Rule 4-263. Counsel had made prior discovery requests for any information concerning deals or promises of leniency extended to Marrow, but those requests had not been satisfied. Counsel therefore filed that morning a "Supplemental Demand for the State to Comply," pursuant to Courts and Judicial Proceedings Article, § 10-924(d), demanding all material and information related to Marrow as an in-custody witness, obligating the State to disclose any benefits an in-custody witness has received or

expects to receive in exchange for providing testimony, the substance of any statements made by the witness to law enforcement implicating the defendant, and the witness's history of testifying in other cases. *See* Md. Code (1973, 2020 Repl. Vol., 2025 Supp.) § 10-924 (d) of the Courts and Judicial Proceedings Article.

The State responded that the prosecutor assigned to this case had not handled Marrow's case, that she was unaware of the basis for the disposition, and that Marrow had received no benefit in exchange for his testimony. Defense Counsel disputed that characterization, noting that notes from the police investigation reflected that Marrow had begun shooting at Richardson, and that two arrest warrants for attempted murder had been filed against Marrow just days after he was interviewed. Counsel argued that the sequence of the investigation was inconsistent with the State's position that further inquiry had established Marrow as the victim rather than the aggressor.

Defense Counsel further advised the court that Marrow, who remained in custody on unrelated matters, was represented by counsel, had a pending violation of probation, and potentially faced federal exposure, all of which provided a legitimate basis for Marrow to assert the privilege and possibly be unavailable to testify if called. Because Marrow was, to defense counsel's knowledge, the only fact witness available to the State on the crimes of violence charges, counsel advised the court that "we would be in a position that if those charges would be addressed, we would be not in necessarily a trial posture at that point, or at least not a jury trial posture[.]"

The State advised the court that it had spoken with Marrow's attorney, that Marrow was scheduled to testify the following day, and that no change to that plan was anticipated.

The court suggested that the State verify whether any plea agreement existed and disclose that information to defense counsel. Defense Counsel noted that even if the State complied with its disclosure obligations, a separate question remained as to whether Marrow would invoke his Fifth Amendment privilege against self-incrimination when called to testify. The following ensued:

> [PROSECUTOR: Your Honor, if I may. At this time, the State believes that counsel is prolonging the process of picking a jury. The State is ready to pick a jury. The State is ready for trial. We could call for a jury panel. Counsel has said over and over again that we may not need to pick a jury.
>
> THE COURT: The only reason I engaged on this is because [defense counsel] said, we might not even need a jury trial.
>
> [PROSECUTOR]: Because he doesn't want to go to trial, that's all.
>
> THE COURT: And it wasn't that. It was because he was saying something we might not need a jury trial, maybe we'll just do a bench trial if certain things worked out the way we're litigating it.
>
> Is that the way I heard it?
>
> [DEFENSE COUNSEL]: That's exactly correct, Your Honor.

The colloquy continued:

> THE COURT: But so, I assume you need an answer on this witness issue first?
>
> [DEFENSE COUNSEL]: We'd certainly like to know what the -- what is going on with this witness, Your Honor. I don't think he's been transported over yet or not.
>
> [PROSECUTOR]: He will be transported tomorrow.
>
> [DEFENSE COUNSEL]: Well, Your Honor, again, if we're to start today, is that –

> THE COURT: Let me ask you this question, [defense counsel], if memory serves, if somebody requests a jury trial, can they change their mind mid-trial into a bench trial?
>
> [DEFENSE COUNSEL]: I don't think that would happen. Then we can excuse the jury. I can look.
>
> THE COURT: Why not?
>
> [DEFENSE COUNSEL]: I think you can dismiss to make a plea. I'm not sure we can go into -- I'm not sure. You would have been not acting as the fact finder necessarily. I'm not sure on that. But –
>
> THE COURT: I think the answer -- I don't know the answer. I'm only asking it because I think the answer might be a yes.[11]

At that point, the transcript indicates that defense counsel spoke to Richardson. After a period of time, in which the court verified that a jury was still available to be called, defense counsel stated the following: "he's going to, we believe, be waiving his request for a jury trial and withdrawing that request and asking to be tried by the Judge, by you."

The court then conducted a thorough colloquy. The court first confirmed that Richardson was 45 years old, had completed the tenth grade, could read and write English, and was not under the influence of any substance affecting his comprehension. The court also confirmed that Richardson had no history of mental hospitalization or psychiatric care, and found him competent to participate in the proceeding.

The court then placed the State's plea offer on the record in full, explaining the charges, maximum penalties, and mandatory minimums count by count. After confirming

[11] Maryland Rule 4-246 (b) provides "A defendant may waive the right to a trial by jury at any time *before* the commencement of trial." (emphasis added). Violation of the rule is subject to waiver and harmless error analysis. *See Boulden v. State*, 414 Md. 284, 296-97, 308 (2010).

that Richardson understood the offer and had discussed it with counsel, the court asked whether Richardson wished to accept or reject it. Richardson rejected the offer. The court found that the rejection was knowing, voluntary, and intelligent.

The court then explained the distinction between a jury trial and a bench trial, describing how each type of proceeding operates and who bears the burden of proof. The court confirmed that Richardson understood the difference. Richardson stated that he wished to proceed with a bench trial and agreed that the trial court would be the finder of fact. The court then stated on the record, "I find Mr. Richardson has knowingly, voluntarily, and intelligently waived his right to a jury trial."

B. Richardson knowingly and voluntarily waived his right to a jury trial.

The Sixth Amendment of the United States, as well as Md. Const. Decl. of Rights, Art. 5 and 21 ensures a criminal defendant a right to a jury trial. *Abeokuto v. State*, 391 Md. 289, 316 (2006).[12] A defendant may elect to waive the right to a jury trial and instead be tried by the court. *Id*. However, a defendant may only properly waive the right to a jury trial if the defendant waives this right knowingly and voluntarily. *Abeokuto*, 391 Md. at 316; *Smith v. State*, 375 Md. 365, 377-80 (2003). According to the Supreme Court of the United States, a waiver constitutes "an intentional relinquishment or abandonment of a known right or privilege." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938); *Accord Winters v. State*, 434 Md. 527, 537 (2013) (citing *Boulden v. State*, 414 Md. 284, 295 (2010));

[12] Maryland Declaration of Rights Articles 21 and 24 also guarantee a party's right to a jury trial in Maryland. Md. Decl. of Rights Art. 21, 24. *See also Kang v. State*, 393 Md. 97, 105 (2006); *Abeokuto v. State*, 391 Md. at 316.

Hammond v. State, 257 Md. App. 99, 121 (2023). Courts have defined knowingly as synonymous with "intelligently" and "having or showing awareness or understanding." *Nalls v. State*, 437 Md. 674, 689 (2014) (citation omitted).

Although the defendant must have knowledge of the jury trial before waiving this right, full knowledge is not required. *State v. Bell*, 351 Md. 709, 720 (1998). As such, the court need not recite "any fixed incantation" to ensure that the defendant knowingly waives their jury trial right. *Martinez v. State*, 309 Md. 124, 134 (1987); *Hammond*, 257 Md. App. at 121. Whether an accused has made an intelligent and knowing waiver of the right to a jury trial depends on the facts and circumstance of each case. *State v. Hall*, 321 Md. 178, 182 (1990) (citations omitted). *Accord Abeokuto*, 391 Md. at 320; *Hammond*, 257 Md. App. at 121. Additionally, the court need not require explicit inquiry into voluntariness of the waiver, absent any triggering facts. *Aguilera v. State*, 193 Md. App. 426, 442 (2010). Nonetheless, the court must ensure that the defendant's waiver is intentional and is not a product of duress or coercion. *State v. Hall*, 321 at 182-83; *see also* Maryland Rule 4-246 (addressing the procedure applicable to jury waivers).

Here, Richardson does not claim that the court's advisements on the right to a jury trial were erroneous. Instead, Richardson contends his waiver was not knowing or voluntary because: (1) prior to the court going through the advisements, the court and defense counsel briefly discussed an interesting legal issue of whether a defendant could waive a jury trial after trial began; and (2) the "trial court did not review Maryland Rule 4-246 (which governs the issue) until after Mr. Richardson waived his right to a jury trial."

Appellant directs our attention to *Winters, supra*. In *Winters*, once the court learned of the defendant's desire to have a bench trial, it conducted a colloquy to examine whether his waiver of a jury trial was knowing and voluntary. *Id*. at 530-31. The court asked numerous questions, but in pertinent part, it asked,

> And do you understand that for such a jury to convict you or to find you either criminally responsible or not criminally responsible, they must unanimously, all together, vote to convict you or find you criminally responsible or not criminally responsible upon which the evidence they feel proves same by a reason—beyond a reasonable doubt? Do you understand that?

Id. at 532.

The Maryland Supreme Court found this advice to be erroneous. *Winters*, 434 Md. at 538. It then held that the defendant's jury trial waiver could not be knowing and voluntary because the court's erroneous advice "may have misled [the defendant] to believe that the task of proving that he was not criminally responsible in a jury trial would be a more difficult task than it actually is under Maryland law." *Id*. It explained that this erroneous advice made "a jury trial appear less attractive and would reasonably influence Winters's decision to waive his right." *Id*. The court also noted that, according to the hearing record, no one corrected the court's erroneous advice. *Id*. at 539-40. The court also explained that the erroneous advice made the waiver unknowing even though "without the erroneous statement, there would have been sufficient information for a knowing waiver[.]" *Id*. at 542.

Thus, the appropriate standard to determine whether a defendant's jury trial waiver was knowing and voluntary despite erroneous advice from a court is whether the erroneous advice may have misled the defendant and influenced the defendant's decision to waive the right to a jury trial, where no one corrected the misstatement before the defendant's

waiver. *See Winters*, 434 Md. at 544. Accordingly, to show that his jury trial waiver was not knowing and voluntary, Richardson must show that 1) the trial court's advice was erroneous, 2) the erroneous advice may have misled him, and 3) the erroneous advice may have influenced his decision to waive a jury trial.

First, we conclude that the court's query about whether a defendant could waive a jury trial after trial commenced was erroneous. *See* Md. Rule 4-246 (b); *Boulden*, 414 Md. at 296-97, 308. Second, we address whether it is possible that the court's remarks, "if somebody requests a jury trial, can they change their mind mid-trial into a bench trial?" and "I don't know the answer. I'm only asking it because I think the answer might be a yes," misled Richardson. Immediately after that query, the following ensued:

> THE COURT: And I can tell you, no matter what I take extensive notes throughout trials whether I'm the fact finder or not. Okay, so -- because I'm listening for every possible objection that might come in. So I operate -- I'm ready to serve as a fact finder at any time. But I think - I think the research might bear out -- but if I'm wrong, I'm wrong, but the research might bear out that it's his right what trial he wants.
>
> [DEFENSE COUNSEL]: Yes.
>
> THE COURT: So I think it would have to be done with an incredible amount of ensuring that he's making a knowing and voluntary intelligent waiver midstream, but I don't know for sure. And I'm not professing to know. I only even say it if I thought I heard it once.
>
> [DEFENSE COUNSEL]: Maybe we can talk to Mr. Richardson.
>
> THE COURT: Sure, and I'm going to look it up myself.

Looking to the entire exchange, we are not persuaded that Richardson was misled by the court's remarks. The court maintained that the decision whether to waive his right to a jury trial remained with Richardson alone. The court also made clear that, before any

such waiver would be accepted, it would need to conduct a thorough knowing and voluntary inquiry. As for the underlying legal question — whether a defendant may waive a jury trial after trial has commenced — the court was openly speculating, acknowledged that it did not know the answer, and committed to researching it. Courts and parties regularly think through novel legal questions out loud in exactly this way, floating a theory, acknowledging uncertainty, and reserving judgment pending research. Nothing in that exchange reasonably could have conveyed to Richardson that the waiver decision had been made for him or that the law required any particular result.

Finally, we consider whether the court's remarks may have influenced his decision to waive a jury trial. To begin, "may have influenced" is a low standard and only requires that there be a possibility that Richardson was influenced in his decision by the erroneous advice. *See generally*, *Winters*, 434 Md. at 534-35, 544 (recognizing that there does not need to be "clear indications of reliance on erroneous advice for those misstatements to render a waiver unknowing") (citation omitted). Initially, there is no express indication that Richardson relied on the court's remarks. Instead, after the brief discussion between defense counsel and the court on this question, defense counsel indicated he wanted to talk to Richardson, and that discussion between attorney and client is not in the record. After that, the transcript appears to show that the court discussed the research issue with the Deputy Clerk, noting that "[t]he question presented is can you start a jury trial and waive your right to a jury trial but continue with a bench trial mid trial. And I can tell you the search has to do with waiver, but I don't know the answer." The record is not clear if defense counsel and Richardson heard these remarks, but they are included in the transcript.

Thereafter, defense counsel informed the court that Richardson was "going to, we believe, be waiving his request for a jury trial and withdrawing that request and asking to be tried by the Judge, by you." So, without additional information, the record on its face is unclear.

In examining whether the court's remark may have influenced Richardson's decision, we note that the primary focus of the hearing when the remark was made concerned the complaining witness, Marrow; specifically, whether the State had properly disclosed any deal extended to him and whether he might invoke his Fifth Amendment privilege if called to testify. The State's understanding was that Marrow was not receiving any benefit in exchange for his testimony, that he was in custody on unrelated charges, and that he was scheduled to testify. The State also indicated that Marrow was going to be transported to court the next day. Although the court did not rule on these issues, it did propose that, after Marrow was transported, the State could interview him to determine whether he would testify that he had been given a deal, and that this information would be disclosed to Richardson. Defense Counsel then reminded the court that the evidentiary question of whether Marrow would invoke the privilege remained unresolved. It was against that backdrop that the court raised the possibility of starting with a jury trial and switching to a bench trial mid-trial.

We agree with Richardson that uncertainty about Marrow's availability and the scope of his testimony could, and most likely would, influence his decision on whether to proceed with a jury or bench trial. That influence, however, flowed from the uncertainty about whether Marrow would testify—not from the court's erroneous remark about mid-trial waiver timing. Those are distinct considerations. The court's speculation about timing

did not bear on what Richardson would be giving up by waiving a jury trial; it bore only on when that waiver could theoretically occur. Notably, the erroneous remark did not misstate or omit any of the substantive rights at stake, *i.e.*, the selection of a jury, the unanimity requirement, the burden of proof beyond a reasonable doubt, or Richardson's right to confront witnesses and to testify or not on his own behalf. Moreover, if Richardson had relied on the court's rumination about whether one can switch to a bench trial in the middle of a jury trial, then Richardson would likely have proceeded with a jury trial. If instead the court had remarked that Richardson could start with a bench trial and then switch to a jury trial mid-trial, that would present a different set of circumstances. But based on the totality of the circumstances and the record in this case, we are not persuaded that Richardson's jury trial waiver was anything but knowing and voluntary.

Finally, as for Richardson's claim that the trial court did not review Maryland Rule 4-246 until after he waived his right, our reading of the record is to the contrary. Following the court's finding that Richardson had knowingly, voluntarily, and intelligently waived his right to a jury trial, the proceedings moved immediately to trial logistics. The court inquired whether the State had witnesses available and, acknowledging that the State had been on notice all day that it would be selecting a jury, indicated that it nonetheless wished to begin testimony that afternoon. The parties agreed to resume at 2:00 p.m. The court then turned to pending motions *in limine*, including the State's motion concerning the admissibility of testimony from three defense witnesses and the relevance of that testimony under Maryland Rules 5-401 through 5-403. As defense counsel returned to the courtroom after briefly stepping out, and as the parties prepared to address those motions, the court

remarked in passing: "Yeah, I just — by the way, I still have to read the rule, but apparently, the waiver of jury trial, it's Maryland Rule 4-246 that's going to answer those questions in the future. It doesn't matter anymore but it was interesting."

Considered in context, including our conclusion that the court fully complied with the requirements of Maryland Rule 4-246, it appears the court's offhand, and notably unobjected-to, remark related to the trial court's earlier research inquiry with counsel concerning whether a defendant could waive a jury trial after the trial commenced. We discern no error.

B. We decline to consider Richardson's ineffective assistance claim.

Richardson also claims that trial counsel rendered ineffective assistance by neglecting to ascertain whether Marrow would testify before advising him about whether to waive his right to a jury trial. The State disagrees on the merits and also asserts that this issue is not properly presented on direct appeal and should be left for collateral review.

Richardson's claim raises the issue of ineffective assistance of counsel. Ineffective assistance of counsel claims are governed by the settled doctrine of *Strickland v. Washington*, 466 U.S. 668 (1984). Pursuant to *Strickland*, a prisoner claiming ineffective assistance of counsel rendered his conviction or sentence invalid must show (1) "counsel's representation fell below an objective standard of reasonableness," and (2) "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." 466 U.S. at 688, 694.

Ordinarily, an ineffective assistance claim is more appropriately resolved in a collateral proceeding initiated under the Uniform Postconviction Procedure Act. *See* Md.

Code (2001, 2025 Repl. Vol.), §§ 7-101 through 7-301 of the Criminal Procedure Article. *See Robinson v. State*, 404 Md. 208, 219 (2008) ("[A] claim of ineffective assistance of counsel should be raised in a post-conviction proceeding, subject to a few exceptions"); *accord Mosley v. State*, 378 Md. 548, 558-59 (2003); *see also Washington v. State*, 191 Md. App. 48, 71 ("[T]he appropriate avenue for the resolution of a claim of ineffective assistance of counsel is a post-conviction proceeding"), *cert. denied*, 415 Md. 43 (2010).

As our Supreme Court has repeatedly pointed out, although it is possible for an appellate court to address a claim of ineffective assistance of counsel on direct appeal, "'[p]ost-conviction proceedings are preferred with respect to ineffective assistance of counsel claims because the trial record rarely reveals why counsel acted or omitted to act, and such proceedings allow for fact-finding and the introduction of testimony and evidence directly related to allegations of the counsel's ineffectiveness.'" *Bailey v. State*, 464 Md. 685, 704 (2019) (quoting *Mosley*, 378 Md. at 560).

In our view, Richardson's claim of ineffective assistance of counsel is best heard within a post-conviction posture. As detailed herein, there is nothing in the record concerning whether defense counsel advised Richardson to waive his right to a jury trial. The consultation between defense counsel and Richardson took place off the record, and defense counsel made no statement on the record as to the substance of his advice or the reasoning behind it. Although defense counsel did advise the court that the defense "would be not in necessarily a trial posture, or at least not a jury trial posture," if the Marrow issues were resolved favorably, that observation concerned the state of the case and not what counsel told his client. To assess whether counsel's advice fell below the *Strickland*

standard, a reviewing court would need testimony from defense counsel himself, as well as from Richardson, about what was communicated and why. That inquiry cannot be conducted on this record. Accordingly, we decline to address the ineffective assistance claim on direct appeal.[13]

APPELLANT'S SENTENCE FOR WEARING, CARRYING, AND TRANSPORTING A HANDGUN VACATED; JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY OTHERWISE AFFIRMED.

COSTS TO BE ASSESSED TO APPELLANT.

[13] We note that the record does not support Appellant's suggestion that defense counsel failed to investigate Marrow. Counsel discovered Marrow's original attempted murder charges, the *nol pros* before grand jury presentation, and his ultimate plea to a reduced handgun charge. Counsel filed a supplemental discovery demand the morning of trial, challenged the State's representation that no benefit had been extended, and advised the court that Marrow had legitimate grounds to invoke his Fifth Amendment privilege given his pending violation of probation and potential federal exposure. The trial court did not rule on any of these issues before the waiver.