

Circuit Court for Baltimore City  
Case No. 123240001

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 2064

September Term, 2024

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KHAROD O'NEILL

v.

STATE OF MARYLAND

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Wells, C.J.,  
Nazarian,  
Harrell, Glenn T., Jr.,  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Nazarian, J.

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Filed: July 7, 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 persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

In 2023, a Baltimore City grand jury indicted Kharod O’Neill on multiple charges related to the killing of Jriley Downs. The State tried Mr. O’Neill before a jury in the Circuit Court for Baltimore City. During deliberations, one of the jurors sent a note to the trial judge stating that “violence is in the jury room” and that the jury could not reach a verdict. Defense counsel moved for a mistrial and the court deferred its ruling on the motion, opting first to poll the jurors to gain a better understanding of the situation. After asking each juror individually if they feared for their safety or that of anyone else in the deliberation room and if they believed further deliberations could lead to a verdict, the court, having received mixed responses, gave the jury an *Allen*-type charge<sup>1</sup> and sent them back to the deliberation room over defense counsel’s objection. Two different jurors sent notes to the court asking for clarification of the charges; the court read the notes to the parties but didn’t address them further.

Thirty-six minutes after resuming deliberations, the jury returned verdicts acquitting Mr. O’Neill of first-degree murder and use of a firearm in the commission of a crime of

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<sup>1</sup> In *Allen v. United States*, 164 U.S. 492 (1896), the United States Supreme Court affirmed a trial court’s decision to administer a charge reminding the jury that their verdict needed to be unanimous and requesting that each juror, without surrendering their convictions, remain open to persuasion by the others. *Id.* at 501. This instruction became known as the “*Allen* charge.” See *Kelly v. State*, 270 Md. 139, 140 n.1 (1973). Later, in *Kelly*, the Supreme Court of Maryland noted that the *Allen* charge had “come under considerable criticism” from courts and legal scholars alike and thus approved instead a modified “*Allen*-type” charge developed by the American Bar Association. *Id.* at 140–43, 140 n.3. Maryland Criminal Pattern Jury Instruction (“MPJI-Cr”) 2:01 contains the language of the approved *Allen*-type charge. Mr. O’Neill takes no issue with the language of the *Allen*-type charge administered in this case because the circuit court read MPJI-Cr 2:01 *verbatim*.

violence or a felony, and convicting him of second-degree murder and wearing, carrying, or transporting a loaded handgun both in a vehicle and on his person. On appeal, Mr. O’Neill argues that the circuit court abused its discretion when it denied his motion for mistrial and asks this Court to reverse his convictions on that basis. In addition, he contends that the jury’s verdicts convicting him of second-degree murder and wearing, carrying, or transporting a loaded handgun in a vehicle and on his person, but acquitting him of using a firearm in the commission of the murder, were legally inconsistent and thus impermissible. While conceding that this second issue is unpreserved, Mr. O’Neill asks us to exercise our discretion to recognize that the circuit court committed plain error by allowing the jury to return legally inconsistent verdicts. We affirm.

## **I. BACKGROUND**

On July 3, 2023, Baltimore City police responded to a report of a shooting in an alleyway and found Mr. Downs, who had sustained multiple gunshot wounds, at the scene. Emergency personnel transported Mr. Downs to the hospital, where he was pronounced dead. The next day, while performing an autopsy on Mr. Downs, the medical examiner recovered bullets from gunshot wounds to his head, neck, and shoulder. Eight days later, on July 12, police arrested Mr. O’Neill for offenses unrelated to the shooting of Mr. Downs and recovered a set of car keys from his person. Officers found the car associated with the keys about a block-and-a-half away from the scene of Mr. O’Neill’s arrest, ran its plates, discovered it was stolen, and had it towed to a secure location where they executed a search and seizure warrant on the vehicle and its contents. During the search, police recovered a

handgun. A firearms examiner determined later that the markings on cartridges test-fired from that handgun were consistent with the markings on the bullets recovered from Mr. Downs's body. Based on the evidence obtained by police during their investigation into Mr. Downs's killing, a Baltimore City grand jury indicted Mr. O'Neill on charges of first- and second-degree murder, using a firearm in the commission of a violent crime or felony, wearing, carrying, or transporting a loaded handgun in a vehicle, and wearing, carrying, or transporting a loaded handgun on his person.

The circuit court held a four-day trial in September 2024. On day four, after the close of evidence, the court instructed the jury on the charged offenses, starting with the murder charges. The court explained that to convict Mr. O'Neill of second-degree murder, the jury needed to find that he (1) killed Mr. Downs and (2) either intended to kill Mr. Downs or to cause him bodily harm so serious that his death was likely to result:

THE COURT: In order to convict the Defendant of second degree murder, the State must prove; one, that the Defendant caused the death of Jriley Downs; and, two, that the Defendant engaged in the deadly conduct either with the intent to kill, or with the intent to inflict such serious bodily harm that death would be the likely result.

As to the charge of use of a firearm in the commission of a crime of violence or a felony, the court instructed the jurors that to find Mr. O'Neill guilty of that crime in this case, they needed to find that he (1) committed either first- or second-degree murder and (2) used a firearm in the commission of the murder:

THE COURT: The Defendant is charged with the crime of use of a firearm in the commission of a crime of violence. The crime of violence in this case is murder in the first degree, or

second degree.

In order to convict the Defendant, the State must prove; one, that the Defendant committed the crime of murder in the first degree, or murder in the second degree; and, two, that the Defendant used a firearm in the commission of murder in the first degree, or murder in the second degree.

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And use of a firearm includes brandishing, displaying, striking with, firing, or attempting to fire a firearm in furtherance of murder in the first degree or second degree.

A person uses a firearm when he uses it to create fear of harm. The Defendant need not injure anyone with a firearm, mere possession of a firearm at or near the crime scene is not sufficient.

After closing arguments, the jury retired to deliberate from 11:42 a.m. until about 12:47 p.m., when they broke for lunch. The jury resumed deliberating after the lunch recess. Around 3:33 p.m., the court recalled the case after hearing raised voices in the jury deliberation room and receiving a note from Juror No. 1 that stated: “Jury Hung. No possible way to reach decisions. Violence is in the jury room. Need to be dismissed.” After the court read the note for the record, defense counsel brought up the idea of an *Allen*-type charge informally but instead moved for mistrial. Counsel argued that the indication of violence in the deliberation room created a “manifest necessity” for the court to declare a mistrial because any verdict that the jury rendered “would be suspect.” Without ruling on the motion, the court proposed that it would question the jurors individually to determine whether Juror No. 1’s note portrayed the situation in the deliberation room accurately. Neither party objected to the proposal, but defense counsel expressed concerns again about

the note’s reference to violence and about potential coercion in the deliberation room.

With the agreement of the parties, the court called the jurors into the courtroom one-by-one and asked each of them two questions: (1) “[A]re you concerned about your safety or the safety of anybody else in the jury deliberation room?” and (2) “[D]o you believe that there is any possibility that further deliberations might lead to a verdict[?]” To the first question about safety, Juror No. 1, the author of the note, answered in the affirmative, stating, “I’m concerned about the safety of everybody in that room.” To the second question, though, after extensive back and forth with the court, the juror responded eventually that they believed further deliberations could lead to a verdict. Juror No. 1 explained that although certain undisclosed jurors had been threatening other jurors before they sent their note to the court, the jurors had started working through their “personal feelings” after the note left the deliberation room:

JUROR NO. 1: . . . [T]here were threats made to other jurors. There were threats made. And this is like the second time since we’ve been back there.

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So once I sent the note, [the other jurors were] like, “Oh, okay, well, we need to get out your personal feelings.” Once they saw that, then they said, “Well, let’s start going through it.” They started getting . . . out personal feelings.

After, Juror Nos. 2, 3, 7, and 9 each said that they weren’t concerned for anyone’s safety and that they believed further deliberations could lead to a verdict. Meanwhile, Juror Nos. 4 and 6 both said they had safety concerns; Juror No. 6 elaborated that they were concerned because “loud voices can be intimidating and threatening to some people” and

that some jurors “[didn’t] feel able to stand up and make their voice[s] known because other [jurors were] punching them down verbally for objecting, or raising questions.” Juror No. 4 stated that they didn’t believe further deliberations could lead to a verdict, and when asked the same question, Juror No. 6 responded twice, “I really don’t know.”

Juror No. 5 identified themselves as the person threatened by another juror, who had told them, “You’ll be dead.” They stated that they were “[n]ot really” concerned about their safety and they were “comfortable” being in the deliberation room with the juror who threatened them because they were sitting “on the other side” of the room and “not near” that person. They said that they believed further deliberations could lead to a verdict.

Juror Nos. 8 and 10 indicated that they were concerned about safety previously but were no longer concerned. Juror No. 10 stated that “[e]verybody seem[ed] to have calmed down since [they] got pulled out into the courtroom.” Both Juror No. 8 and No. 10 believed further deliberations could lead to a verdict. When Juror No. 11 approached the bench, they handed the court a note that they said they had written before the court started to call the jurors into the courtroom for questioning. The note indicated that some jurors were not allowing others to express their opinions and requested a second explanation of the charges:

There is a lack of respect when attempting to discuss the evidence. There are individuals using profanity toward one another and not allowing others voices/opinions [to] be expressed. It seems there is a misunderstanding in the meaning of the charges. If the charges can be explained once more, that would be helpful.

Juror No. 11 stated, though, that they weren’t concerned about the safety of anyone in the deliberation room and believed further deliberations could lead to a verdict. Finally, Juror

No. 12 responded that they felt safe personally but were “not really sure” if they were concerned for the safety of others due to “emotions get[ting] flared” in the deliberation room. When asked if they believed further deliberations could lead to a verdict, they replied, “I think so, but—I think so.”

All told, in response to the court’s *first* question about safety, eight jurors—Nos. 2, 3, 5, 7, 8, 9, 10, and 11—said they had no present concerns, including the juror who was threatened. Three jurors—Nos. 1, 4, and 6—were concerned about safety presently, and one juror—No. 12—was “not really sure.” In response to the court’s second question, ten jurors—Nos. 1, 2, 3, 5, 7, 8, 9, 10, 11, and 12—stated that they thought further deliberations could lead to a verdict. One juror—No. 4—said they didn’t believe further deliberations could lead to a verdict, and one juror—No. 6—said they “really [did]n’t know.”

Based on the jurors’ responses, the court, over defense counsel’s objection, decided to give the jury an *Allen*-type charge and send them back to resume deliberations. For the *Allen*-type instruction, the court read verbatim Maryland Criminal Pattern Jury Instruction 2:01, which reminds the jurors that their verdict must be unanimous and that although they should “not hesitate” to reexamine their views, they shouldn’t “surrender [their] honest belief” just to reach a unanimous verdict:

The verdict must be the considered judgment of each of you. In order to reach a verdict, all of you must agree. In other words, your verdict must be unanimous. You must consult with one another and deliberate with a view to reaching an agreement if you can do so without violence to your individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors.

During deliberations, do not hesitate to reexamine your own views. You should change your opinion if convinced you are wrong, but do not surrender your honest belief as to the weight and effect of the evidence only because of the opinion of your fellow jurors, or for the mere purpose of reaching a verdict.

So I ask you to try again. Please be respectful of each other and if there's a problem, please give us a note . . . .

The court didn't respond to Juror No. 11's note asking for clarification of the charges, and the jury resumed deliberations at 4:05 p.m.

Twenty-five minutes later, the jury sent another note asking for "[c]larification of the charge with carrying a handgun." The note asked specifically "What charge of 1 & 2 is guilty does #3 have to find guilty of the gun charge[?]" At 4:34 p.m., however, before the court could respond to the note, the jury indicated it had reached its verdict. The jury convicted Mr. O'Neill of second-degree murder and wearing, carrying, or transporting a loaded handgun both in a vehicle and on his person and acquitted him of first-degree murder and using a firearm in the commission of a violent crime or felony. After the reading of the verdict, the court polled the jurors, each of whom confirmed that the foreperson's verdict was their own. Mr. O'Neill raised no objections relating to the verdict.

On December 16, 2024, the circuit court sentenced Mr. O'Neill to forty years of imprisonment for Count Two, second-degree murder; three consecutive years of imprisonment for Count Four, wearing, carrying, or transporting a loaded handgun on his person; and, to the extent that it didn't merge with Count Four, three concurrent years of imprisonment for Count Five, wearing, carrying, or transporting a loaded handgun in a vehicle. Mr. O'Neill filed a timely appeal from his conviction and sentence.

## II. DISCUSSION

Mr. O’Neill presents two questions for review, which we rephrase:

1. Did the circuit court abuse its discretion in denying his motion for mistrial?
2. Did the circuit court err by accepting legally inconsistent verdicts?<sup>2</sup>

As to the *first* question, we hold that the circuit court didn’t abuse its discretion when it denied Mr. O’Neill’s motion for mistrial. The court considered the concerns of each individual juror and took the time to gain a complete picture of the situation in the deliberation room before deciding that it would be appropriate to administer the *Allen*-type charge instead of declaring a mistrial. As to the *second* issue, which the parties agree wasn’t preserved, we decline to exercise our discretion to consider whether the circuit court’s acceptance of the jury’s alleged inconsistent verdicts was plain error.

**A. The Circuit Court Didn’t Abuse Its Discretion When It Denied Mr. O’Neill’s Motion For Mistrial And Administered An *Allen*-Type Charge Because The Court’s Decision To Require Further Deliberations Did Not Force A Coerced Verdict.**

*First*, Mr. O’Neill argues that the circuit court erred when it denied his motion for mistrial and opted instead to administer an *Allen*-type charge to the jury. We review both

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<sup>2</sup> Mr. O’Neill phrases his Questions Presented as follows:

1. Did the circuit court abuse its discretion in failing to grant the motion for a mistrial after some jurors indicated that they were concerned for their safety and unable to reach a verdict?
2. Did the circuit court err by permitting the jury to return an inconsistent verdict?

The State phrases its Questions Presented as follows:

1. Did the trial court properly deny Mr. O’Neill’s motion for mistrial after some jurors expressed concern about their deliberations?
2. If preserved, did the court correctly permit the jury to return a factually inconsistent verdict?

a circuit court’s denial of a motion for mistrial and its decision to administer an *Allen*-type charge under the abuse of discretion standard. *Nash v. State*, 439 Md. 53, 66–67, 90 (2014) (reviewing disposition of a motion for mistrial for abuse of discretion); see *Kelly v. State*, 270 Md. 139, 143 (1973) (“[T]he decision[] as to whether to utilize an *Allen*-type charge . . . [is] best left to the sound discretion of the trial judge.”). We will not reverse a ruling of the circuit court under the abuse of discretion standard “simply because [we] would not have made the same ruling.” *Nash*, 439 Md. at 67. Rather, an appellate court will reverse a decision committed to the trial court’s discretion only when the trial court exercises that discretion in a manner that “is ‘well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable.’” *Id.* ((cleaned up) quoting *Alexis v. State*, 437 Md. 457, 477 (2014)).

When faced with an apparently deadlocked jury, the trial court has the discretion “whether to have the jury continue deliberating, with or without an . . . *Allen*-type charge, or whether to declare a mistrial.” *Mayfield v. State*, 302 Md. 624, 632 (1985). A trial court abuses its discretion by administering an *Allen*-type charge to an apparently deadlocked jury when “resort to the instruction forced or helped to force an agreement which would not otherwise have been reached except for the intimidating or coercive effect of the charge upon some jurors.” *Kelly v. State*, 16 Md. App. 533, 541 (1973) (quoting *Fletcher v. State*, 8 Md. App. 153, 155 (1969)), *aff’d*, 270 Md. 139 (1973). It is not an abuse of discretion to administer the charge, though, when “it merely initiate[s] a new train of real deliberation

which end[s] the disagreement and enable[s] each juror conscientiously and freely to subscribe to the unanimous verdict.” *Id.* (quoting *Fletcher*, 8 Md. App. at 155–56).

Mr. O’Neill argues that the circuit court abused its discretion in administering an *Allen*-type charge after some of the jurors, during individual questioning, said that they feared for their safety or the safety of other jurors and that they didn’t believe that further deliberations could lead to a verdict. He contends that these circumstances “gave rise to a manifest necessity to declare a mistrial” and that by choosing to administer an *Allen*-type charge, the trial court “signaled to the jurors who were afraid for their safety . . . that they would be subjected to [a] threatening environment until a verdict was reached” and forced a genuinely deadlocked jury into an agreement that it wouldn’t have reached “but for the intimidating effect of the court’s charge.” The State counters that the court’s decision to administer the *Allen*-type charge wasn’t an abuse of discretion and that after the jury sent their first note indicating that they were at an impasse, the court “took reasonable and sufficient steps to ensure that the jurors could continue to deliberate without coercion.” We agree with the State.

“A genuinely deadlocked jury is considered the prototypical example of manifest necessity for a mistrial.” *State v. Fennell*, 431 Md. 500, 516 (2013). A “genuine deadlock” is “more than an impasse;” it is “a moment where, if deliberations were to continue, there exists a significant risk that a verdict may result from pressures inherent in the situation rather than the considered judgment of all the jurors.” *Id.* (cleaned up) (quoting *Arizona v. Washington*, 434 U.S. 497, 509 (1978)). On the other hand, declaring a mistrial when a

jury is not genuinely and hopelessly deadlocked undermines judicial efficiency, so it is essential that jurors at an impasse be allowed to continue deliberating when the apparent deadlock is likely to be broken properly—that is, without “coercion of a holdout juror (or more than one holdout jurors).” *Browne v. State*, 215 Md. App. 51, 73–76 (2013) (holding that the circuit court abused its discretion and “created an extremely high inherent potential for coercion of the verdict” when, after the jury indicated that it was deadlocked and the single holdout juror identified himself, the court, instead of declaring a mistrial, instructed the holdout juror individually “to listen to his fellow jurors” and required further deliberations).

In this case, the circuit court didn’t abuse its discretion when it concluded that the situation in the jury deliberation room didn’t give rise to manifest necessity to declare a mistrial and decided to administer an *Allen*-type charge and require further deliberations. This was not a case, like *Browne*, where the court “created an extremely high inherent potential for coercion of the verdict” by instructing a known holdout juror (albeit in not so many words) to change their mind so that the jury could reach a unanimous verdict. 215 Md. App. at 73–76. The trial court in this case wasn’t aware of the jury’s numerical split or whether there were any holdout jurors, and it in fact made clear to each of the jurors when they approached the bench for individual questioning that it didn’t want to know anything about the deliberations beyond simple answers to its two questions.

Moreover, it isn’t obvious from the record that the jury was “genuinely deadlocked.” *Fennell*, 431 Md. at 516. True, Juror No. 1’s note stated that the jury was “hung” and that

there was “violence” in the deliberation room; Juror No. 11’s note indicated that “individuals [were] using profanity toward one another,” yelling, and “not allowing others [sic] voices/opinions to be expressed”; and, during questioning by the court, several jurors stated that undisclosed jurors had made threats or acted in a way that could be intimidating to others. But the court investigated for itself, and the general consensus among the venire—and the most accurate description of the situation—seems to have been captured by Juror No. 1’s statement that the jurors had started to “get out [their] personal feelings” after Juror No. 1 sent their note and by Juror No. 10’s statement that “[e]verybody seem[ed] to have calmed down since [they] got pulled out into the courtroom.” During individual questioning by the court, eight of the twelve jurors—including the original juror who said they were threatened—felt they had no present safety concerns, and ten of the twelve jurors said they thought further deliberations could lead to a verdict. Under these circumstances, it wasn’t “beyond the fringe of what [this Court] deems minimally acceptable” for the trial court to conclude that administering an *Allen*-type charge would not “force[] or help[] to force an agreement” the jury would not reach “except for the intimidating or coercive effect of the charge” and would instead “initiate[] a new train of real deliberation” that would “end[] the disagreement and enable[] each juror conscientiously and freely to subscribe to the unanimous verdict.” *Nash*, 439 Md. at 67 (cleaned up) (*quoting Alexis*, 437 Md. at 477); *Kelly*, 16 Md. App. at 541 (*quoting Fletcher*, 8 Md. App. at 155–56).

That isn’t to say we believe that threats of violence in the jury deliberation room are—or should be—the norm, even if, as the State asserts, “one might expect [heated]

deliberations when [twelve] strangers” with different personalities “are sequestered together and asked to unanimously decide a life-altering question.” Nor do we believe it was inconsequential that multiple jurors expressed concerns or uncertainty about safety and about the jury’s ability to reach a verdict with further deliberations. We merely recognize, as we have before, that the trial court was “in the best position to weigh the[] ‘facts and circumstances’” in this case to determine whether an *Allen*-type charge was appropriate and could lead the jury to reach a verdict that wasn’t the product of coercion or situational pressures. *Kelly*, 270 Md. at 142–43 (quoting *Leupen v. Lackey*, 248 Md. 19, 25 (1967)). Because the trial court took the time to question each juror individually, consider each juror’s concerns, and to gain a complete picture of the situation in the deliberation room before determining that administration of the *Allen*-type charge was appropriate, its decision to deny a mistrial, give the charge, and have the jurors resume deliberations wasn’t an abuse of discretion.

**B. We Decline To Exercise Our Discretion To Review The Circuit Court Accepting The Jury’s Alleged Inconsistent Verdicts For Plain Error.**

Mr. O’Neill contends *also* that the jury’s verdicts convicting him of second-degree murder and of wearing, carrying, or transporting a loaded handgun both in a vehicle and on his person but acquitting him of using a firearm in the commission of a crime of violence or felony were legally inconsistent and thus impermissible. Conceding that this issue is unpreserved, Mr. O’Neill argues that this Court should exercise its discretion to review the circuit court’s acceptance of the alleged inconsistent verdicts for plain error. The State

argues that plain error review is inappropriate in this case. The State is right in this instance.

Although not subject to a formal balancing test, we have considered combinations of four steps often when determining whether to exercise our discretion and undertake plain error review of an unpreserved error. *State v. Rich*, 415 Md. 567, 578 (2010) (quoting *Puckett v. United States*, 556 U.S. 129, 135 (2009)). *First*, we have considered whether there is in fact a legal error or defect that the appellant has not relinquished intentionally or waived affirmatively. *Id.* We have been reluctant to recognize plain error “[w]hen defense counsel’s trial tactics may have been the reason that [they] failed to correct an error by the trial judge.” *Brown v. State*, 169 Md. App. 442, 460 (2006) (noting that “absent such reluctance, defendants would be in a ‘heads I win, tails you lose’ position and would benefit by intentionally failing to object,” which “would create judicial inefficiency and reward lawyerly non-diligence”). *Second*, “the legal error must be clear or obvious, rather than subject to reasonable dispute.” *Rich*, 415 Md. at 578 (quoting *Puckett*, 556 U.S. at 135). *Third*, the error must have “affected the appellant’s substantial rights”; in other words, it must have “affected the outcome of the [trial] court proceedings.” *Id.* And under the *fourth* prong, an appellate court should only exercise this discretion “if the error seriously affects the fairness, integrity or public reputation of judicial proceedings.” *Id.* (cleaned up).

This is not a case that merits plain error review. *First*, Mr. O’Neill “has not argued that [his] failure to raise the issue [of the jury’s alleged inconsistent verdict] before [it] became final and the circuit court discharged the jury was not a matter of trial tactics.” *Givens v. State*, 449 Md. 433, 481 (2016). “The choice of whether to object to inconsistent

verdicts belongs to the defendant alone.” *Id.* at 476; *Price v. State*, 405 Md. 10, 41 n.10 (Harrell, J., concurring) (2008) (“Because the rule against legally inconsistent verdicts is intended to protect the criminal defendant, the State may not object to the inconsistent verdicts. The option belongs only to the defendant.”), *abrogated on other grounds as recognized in*, *State v. Sayles*, 472 Md. 207 (2021). Indeed, “[t]he jury may render a[n] . . . inconsistent verdict to show lenity to the defendant.” *Tate v. State*, 182 Md. App. 114, 132 (2008) (*quoting Price*, 405 Md. at 40). In such a case, defense counsel’s decision not to object and to “accept[] the jury’s boon of . . . lenity” instead would be the product of sound trial strategy. *Id.* Thus, to exercise plain error review here, where Mr. O’Neill’s failure to object to the jury’s verdicts may have been a matter of trial tactics, would facilitate the exact “heads I win, tails you lose” situation that Maryland’s appellate courts have sought to prevent by requiring a criminal defendant to object to an alleged inconsistent verdict before the trial court discharges the jury in order to preserve the issue for appellate review. *Brown*, 169 Md. App. at 460; *see Tate*, 182 Md. App. at 132 (“[W]e should not permit the defendant to accept the jury’s lenity in the trial court, only to seek a windfall reversal on appeal by arguing that the jury’s verdicts are inconsistent. Accordingly, a defendant must note [their] objection to allegedly inconsistent verdicts prior to the verdicts becoming final and the discharge of the jury. Otherwise, the claim is waived.” (emphasis omitted) (*quoting Price*, 405 Md. at 40)); *Givens*, 449 Md. at 472–73 (“[T]o preserve for review any issue as to allegedly inconsistent verdicts, a defendant in a criminal trial by jury must object to the allegedly inconsistent verdicts . . . before the verdicts become final and

the trial court discharges the jury.”).

*Second*, it isn’t “clear and obvious” that the circuit court committed legal error when it accepted the jury’s verdicts. *Rich*, 415 Md. at 578 (quoting *Puckett*, 556 U.S. at 135). “The choice of whether to object to inconsistent verdicts belongs to the defendant alone.” *Givens*, 449 Md. at 481. Without an objection by the defendant, “the judge may not, *sua sponte*, send the jury back to resolve the inconsistency, because it is the defendant who is entitled, should he so wish, to accept the benefit of the inconsistent acquittal.” *Tate*, 182 Md. App. at 135. True, as Mr. O’Neill points out, the circuit court did not respond to either of the jury’s requests for clarification of the charges before the jurors returned their verdicts. But Mr. O’Neill was aware that the court hadn’t done so when the jury gave its verdicts and had the opportunity to object at that time. Instead, “in failing to raise the issue before the verdicts became final and the circuit court discharged the jury, [Mr. O’Neill] deprived the circuit court of an opportunity to have the jury resolve the alleged inconsistency.” *Givens*, 449 Md. at 483. As the Supreme Court recognized in *Givens*, “[u]nder these circumstances, the error is not clear and obvious.” *Id.*

In addition, we are unconvinced that the jury’s verdicts were legally—rather than factually—inconsistent. Verdicts that convict the defendant of one charge but acquit them of another may be either legally or factually inconsistent. Verdicts are legally inconsistent “where a defendant is convicted of an offense but acquitted of another offense that has the same elements as the offense of which the defendant was convicted,” such as a lesser

included offense.<sup>3</sup> *Williams v. State*, 478 Md. 99, 105 (2022) (citing *McNeal v. State*, 426 Md. 455, 458 (2012)). Because they “involve a jury acting ‘contrary to the instructions of the trial judge with regard to proper application of the law,’” legally inconsistent verdicts are impermissible under Maryland law. *Sayles*, 472 Md. at 250 (quoting *McNeal*, 426 Md. at 458). Factually inconsistent jury verdicts arise when (1) a criminal defendant is charged with multiple offenses, (2) “proof of the charged offenses involves establishing the same facts and the offenses have different legal elements,” and (3) “a trier of fact acquits the defendant of one offense but convicts of the other.” *Williams*, 478 Md. at 105 (“For instance, a guilty verdict as to possession of a regulated firearm by a disqualified person might be factually inconsistent with a not-guilty verdict as to wearing, carrying, or transporting a handgun, if there were a single set of facts in which the defendant possessed or carried a handgun after being convicted of a disqualifying crime.”). Unlike legally inconsistent verdicts, Maryland law permits factually inconsistent verdicts in criminal jury trials. *Id.* at 127.

In *Williams*, as in this case, a jury convicted the defendant of second-degree murder and acquitted him of use of a firearm in the commission of a crime of violence. *Id.* at 122.

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<sup>3</sup>One crime (Crime A) is a lesser-included offense of another (Crime B) if all of the elements of Crime A are included in the elements of Crime B, such that only Crime B contains a distinct element or elements. *Williams v. State*, 478 Md. 99, 126–127 (2022) (quoting *State v. Wilson*, 471 Md. 136, 178 (2020)). In such case, the jury’s verdicts are legally inconsistent if they convict the defendant of Crime B but not Crime A. See *Savage v. State*, 226 Md. App. 166, 172–73 (2015) (explaining that legally inconsistent verdicts occur “when ‘an acquittal on one charge is conclusive as to an element which is necessary to, and inherent in, a charge on which conviction has occurred’” (cleaned up) (quoting *Price*, 405 Md. at 37)).

Our Supreme Court held that these verdicts, while factually inconsistent, were not legally inconsistent because the trial court instructed the jury properly on the charged offenses and because use of a firearm in the commission of a crime of violence isn't a lesser-included offense of second-degree murder. *Id.* at 122, 128. Mr. O'Neill doesn't argue that the Supreme Court's holding in *Williams* was incorrect legally, nor does he contend that use of a firearm in the commission of a violent crime or felony is a lesser-included offense of wearing, transporting, or carrying a loaded handgun in a vehicle or on one's person—the other charges of which the jury convicted him. And he concedes that the trial court gave the correct jury instructions. It is not “clear and obvious” that the court erred in accepting the jury's verdicts in this case, *Rich*, 415 Md. at 578 (*quoting Puckett*, 556 U.S. at 135), and we decline to exercise plain error review.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE CITY AFFIRMED.  
APPELLANT TO PAY COSTS.**