Circuit Court for Baltimore City
Case No. 122354001

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2462

September Term, 2023

KANISHA SPENCE

v.

STATE OF MARYLAND

Arthur
Ripken,
Kehoe, Christopher B.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: December 30, 2025

*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).

Following a jury trial in the Circuit Court for Baltimore City, Kanisha Spence ("Appellant") was convicted of second-degree murder of Marquise Powell ("Powell") and use of a firearm in a crime of violence. The trial court sentenced Appellant to sixty years' incarceration—forty years for the murder conviction, and a consecutive twenty years for the use of a firearm conviction. Appellant filed this timely appeal. The following is the sole issue submitted by Appellant for our review:[1]

> Whether the Court should exercise plain error review of a jury instruction on voluntary manslaughter.

For the reasons to follow, we decline to exercise plain error review and thus affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Facts Elicited at Trial

On October 30, 2022, at approximately 2:30 a.m., Appellant arrived at a Royal Farms[2] in Baltimore City as part of her scheduled shift doing rounds as an armed security guard. She was equipped with several items, including a handgun, pepper spray, and handcuffs.[3] At approximately 3:00 a.m., Powell arrived at the same location accompanied

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[1] Rephrased from:

> Did the circuit court commit plain error by propounding an incorrect and unfairly prejudicial jury instruction on voluntary manslaughter?

[2] Royal Farms comprises a chain of stores in the mid-Atlantic region that sells convenience items, food, and fuel. *Our History*, ROYAL FARMS, https://royalfarms.com/about/, archived at https://perma.cc/P2MS-VDX6 (last visited Dec. 29, 2025).

by his two sisters, Tonuela Hill ("Hill") and Mariah,[4] and Nikita Shaw ("Shaw"), his longtime partner and the mother of his child.[5]

Powell and Hill entered the Royal Farms and purchased food and gas. Powell left the store to pump the gas. Hill remained in the store to use the store restroom; however, she was unable to do so as the door to the restroom was locked. Hill went to the cashier to inquire about the restroom, and Appellant intervened, stating, "[N]o, it's locked." Hill then left the store and entered the vehicle, explaining to Powell that she was unable to use the restroom. Powell re-entered the Royal Farms alone, having forgotten to purchase drinks for some members of the group.

According to Myles Burden ("Burden"), the cashier working that night, Powell was pleasant when he and Shaw initially entered the store, although he showed signs of intoxication;[6] per Burden, Powell became upset and angry only after Appellant provoked him when he re-entered the store.[7] Thereafter, an argument regarding the restroom ensued between Powell and Appellant. According to Appellant, Powell began swearing at her

[3] At the time of this incident, Appellant had a total of seven years' experience as a security guard. She was approved to carry a handgun in 2021 after two weeks of training that included learning protocols about using a weapon.

[4] The record does not indicate Mariah's last name.

[5] At oral argument, counsel for Appellant referred to Shaw as Powell's fiancée.

[6] According to Burden, Powell slurred his words as he spoke to Burden.

[7] During his testimony, Burden could not recall what Appellant first said that made Powell angry; however, he recalled that Appellant instructed Powell to leave the store.

when she told him that the bathroom was closed per store policy, and she thereafter told him to leave the store.

Shaw observed Powell and Appellant arguing through the storefront window and went inside to attempt to mediate. After Shaw entered the store, Appellant unholstered her duty weapon, and Appellant pointed the weapon at Shaw and Powell. Neither Shaw nor Powell had a weapon in his or her hand. At one point, Powell stood still and crossed his arms as he and Appellant continued arguing, while Appellant was holding her gun unholstered at her side. Shaw attempted to separate Powell and Appellant; however, she was unable to do so.

Hill, having observed the commotion, re-entered the store, and Appellant, who already had her gun out, pointed it again in the direction of Powell's head. Hill and Shaw were then successful in separating Powell and Appellant by physically moving Powell into the store vestibule.[8] Appellant followed the trio to the store entrance as they exited and continued arguing with Powell and pointing her firearm in the direction of the group through the store's glass door.[9] Appellant continued to argue and point her gun in the direction of the trio and, at one point, in the direction of an apparent bystander who appears to have attempted to intervene.

[8] A vestibule is "a passage . . . between the outer door and interior of a building." *Vestibule*, Merriam-Webster, www.merriam-webster.com/dictionary/vestibule, archived at https://perma.cc/Z3CU-YLUD (last visited Dec. 29, 2025).

[9] The door that separated the vestibule from the main store—and thus, Powell from Appellant—opened several times as other patrons entered and left the store; however, Appellant kept her weapon pointed at the trio.

Powell attempted to re-enter the store several times, and at one point, according to Hill's testimony, Powell spat on the glass that separated him from Appellant. However, Hill appears to have stopped him from entering the store by moving him into the vestibule; at several points Hill stood at the store's entrance which blocked Powell from entering the store. Appellant continued engaging with and pointing at Powell, even after Powell had exited from the store.

Powell fully exited the store and the vestibule twice during the ordeal, during which time Appellant holstered her weapon; she re-drew her weapon when Powell re-entered the vestibule. During the first exit, Hill took a picture of Appellant through the store's front door and told Appellant that she would call the police. In response, Appellant made a "peace sign" with her hand and told Hill, "[F]*** you."

During the second exit, when Powell left the store for a longer period, Appellant took a bite of her food, then continued arguing with Powell through the door. Appellant also approached the door several times, bringing her closer to the group, and continued making "peace signs" and "gun gestures" toward the group as they stood in the parking lot.

At approximately 3:23 a.m., Powell re-entered the store's vestibule through the right vestibule door, at which point Appellant again drew her firearm. Powell opened one of the doors to the store; however, Hill simultaneously re-entered the vestibule from the left vestibule door and physically blocked Powell from entering the store. The store's front door remained open; however, Hill moved Powell away from the store's entrance and toward the vestibule door. Then, Appellant approached the door, paused, stepped forward and raised her firearm, and fired one shot, striking Powell in the head as Hill held him back

in the vestibule, what appeared to be a full door length from Appellant.[10] Hill ran towards the opposite side of the vestibule, and Powell immediately collapsed, his body propping open the door that separated the store from the vestibule.[11] Appellant then placed her weapon on the counter at the cash register and called 911 to report the shooting.[12]

Appellant informed the 911 operator that Powell came towards her, was threatening her life, and that she had to shoot Powell because he tried to "test" her. In addition, on a recording of the 911 call, Appellant can be heard to be eating, chewing and speaking simultaneously, as she answered the operator's questions about Powell's state of consciousness and breathing. Appellant did not render aid to Powell, stating that, "[h]e's got his girlfriend" and that "[h]e's going to be alright." Appellant subsequently returned to eating her dinner which she had obtained earlier in the night, while emergency crews responded to the scene. An ambulance transported Powell to the hospital, where he underwent surgery but died several days later of complications related to the gunshot wound. Investigators found no weapon on Powell's person,[13] and Appellant had no injuries resulting from these events. An autopsy of Powell revealed that based on the absence of

[10] We note that when Appellant shot Powell, Hill was in direct physical contact with Powell and in the immediate vicinity of Appellant's firearm.

[11] Only Powell's head crossed the door threshold into the store at that point.

[12] Appellant also called her supervisor after the shooting.

[13] At trial, defense counsel suggested that Powell's family may have hidden any weapon he had on his person; however, no evidence was proffered to support those claims, and there was no evidence in the record of crime-scene tampering.

indicia of a close-range shooting, he was more than two feet from Appellant when she shot him.

Procedural History

Appellant was charged with first and second-degree murder. The jury found Appellant guilty of second-degree murder and use of a firearm in the commission of a crime of violence. The circuit court imposed a sentence of sixty years' incarceration, consisting of forty years for murder, and twenty years—the first five of which were to be served without parole—for the use of a firearm, to be served consecutively. This timely appeal followed.

Additional facts will be incorporated as needed.

DISCUSSION

WE DECLINE TO EXERCISE PLAIN ERROR REVIEW IN THIS CASE.

A. Additional Facts

At the conclusion of the defense's case-in-chief, the trial court addressed the issue of jury instructions, and the following colloquy ensued:

> THE COURT: All right. Thank you, and then just -- you all received the copy of the jury instructions. I -- let me note for the record that the Defendant has not yet arrived to the courtroom, and two things. One is that I did slightly modify the requested instruction on punishment, and then secondly, the -- there was a lot of repetitiveness between the voluntary manslaughter and the self-defense, so what I did was I just took the one part that was in self-defense and not in voluntary manslaughter and added it to voluntary manslaughter, so then I won't be reading the same thing twice, and [defense counsel], you can let me know if you have any problem with that.
> (Pause)
>
> DEPUTY: Ready, Your Honor.
>
> THE COURT: Thank you. All right. Okay. Thank you.

The circuit court then verbally gave instructions to the jury. No exceptions to the instructions as given were noted by Appellant. Related to the murder charges and self-defense, the circuit court provided the following instructions:

> THE COURT: Complete self-defense, sometimes called perfect self-defense, is a total defense, and you are not -- you are required to find the Defendant not guilty if all of the following four factors are present: the Defendant was not the aggressor or, although the Defendant was the aggressor, she did not raise the fight to the deadly force level; the Defendant actually believed that she was in immediate or imminent danger of death or serious bodily harm; the Defendant's belief was reasonable, and the Defendant used no more force than was reasonably necessary to defend herself in light of the threatened or actual force.
>
> This limit on the Defendant's use of deadly force requires the Defendant to make a reasonable effort to retreat. The Defendant does not have to retreat if retreat was unsafe, or the avenue of retreat was unknown to the Defendant. You must find the Defendant not guilty unless the State has persuaded you beyond a reasonable doubt that at least one of those four factors of complete self-defense was absent. Even if you find that the Defendant did not act in complete self-defense, she may still have acted in partial self-defense.
>
> For partial self-defense to apply, you must find that the Defendant actually believed that she was in immediate or imminent danger of death or serious bodily harm, and that the Defendant was not the initial aggressor or was the initial aggressor but did not raise the degree of force used to the deadly level.
>
> If the Defendant actually believed she was in immediate or imminent danger of death or serious bodily harm, even though a reasonable person would not have so believed, this is partial self-defense, and your verdict should be guilty of manslaughter and not guilty of murder. If the Defendant used greater force to defend herself in light of the threatened or actual force than a reasonable person would have used, but the Defendant actually believed the force used was necessary and the Defendant made a reasonable effort to retreat, that is partial self-defense, and your verdict should be guilty of manslaughter and not guilty of murder.
>
> **Deadly force is the amount of force reasonably calculated to cause death or serious bodily harm. If you find that the Defendant used deadly force, you must decide whether the use of deadly force was reasonable. Deadly force is reasonable if the Defendant actually had a reasonable belief that**

> **the aggressor's force posed an immediate or imminent threat of death or serious bodily harm.**
>
> The Defendant does not have to retreat if retreat was unsafe, if the avenue of retreat was unknown to the Defendant, the Defendant actually believed that she could not safely retreat, even though a reasonable person would not have believed so, the Defendant was being robbed, the Defendant -- or the Defendant was lawfully arresting the victim.
>
> In order to convict the Defendant of murder, the State must prove beyond a reasonable doubt that the Defendant did not act in complete self-defense or partial self-defense. If the Defendant acted in complete self-defense, your verdict must be not guilty. If the Defendant did not act in complete self-defense, but acted in partial self-defense, your verdict should be guilty of manslaughter and not guilty of murder.

(Emphasis added).

B. Party Contentions

Appellant asserts that the trial court erred when instructing the jury on imperfect self-defense by including in that instruction that the jury must determine whether Appellant's use of deadly force was "reasonable." According to Appellant, because there was no dispute on the facts of the case that the use of deadly force occurred, the trial court should have limited its instruction to: "Deadly force is that amount of force reasonably calculated to cause death or serious bodily harm."

Appellant concedes that defense counsel did not object to the instruction at trial; however, she contends that she did not affirmatively waive her right to challenge the error on appeal. Appellant further asserts that the trial court deviated from the law, that the error is clear or obvious, and that the alleged error affected her substantial right to present her defense and have the jury instructed on the correct law. Per Appellant, but for the alleged

error, the jury may have found her guilty of the lesser offense of voluntary manslaughter in lieu of second-degree murder.

In response, the State urges us to decline review of Appellant's claim because it is unpreserved and is not appropriate for plain error review. The State notes that had this issue been raised at trial, the court could have easily corrected the instruction if necessary. The State further contends that, to the extent an error exists, plain error review is not warranted because the alleged error was not clear or obvious based on the parties' failure to object. However, the State does maintain that the instruction as to second-degree murder was proper and in addition, that there was no effect on the case outcome because there was sufficient evidence to convict Appellant of second-degree murder.

C. Standard of Review

"Ordinarily, an appellate court will not decide . . . issue[s] unless [they] plainly appear[] by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131(a); *see also Myers v. State*, 243 Md. App. 154, 185 (2019) ("The failure to object before the trial court generally precludes appellate review[.]") (quoting *Martin v. State*, 165 Md. App. 189, 195 (2005)). This preservation requirement "is a matter of basic fairness to the trial court and to opposing counsel," and is "fundamental to the proper administration of justice." *In re Kaleb K.*, 390 Md. 502, 513 (2006) (quoting *Medley v. State*, 52 Md. App. 225, 231 (1982)). Indeed, "[w]ithout a contemporaneous objection . . . , the trial court is unable to correct, and the opposing party is unable to respond to, any alleged error" resulting from the trial court's action. *Lopez-Villa v. State*, 478 Md. 1, 13 (2022).

The plain error doctrine provides a rare, discretionary exception to the above-mentioned preservation requirement. *See* Md. Rule 4-325(f) (stating that an appellate court may recognize any plain error in jury instructions "despite a failure to object"); *Malaska v. State*, 216 Md. App. 492, 524 (2014) ("Plain error review is a rarely used and tightly circumscribed method by which appellate courts can, at their discretion, address unpreserved errors[.]"); *Martin-Dorm v. State*, 259 Md. App. 676, 704 (2023) (quoting *Morris v. State*, 153 Md. App. 480, 507 (2003)) ("[T]he plain error doctrine 1) always has been, 2) still is, and 3) will continue to be a rare, rare phenomenon."). "Plain error review is 'reserved for those errors that are compelling, extraordinary, exceptional[,] or fundamental to assure the defendant of a fair trial.'" *Newton v. State*, 455 Md. 341, 364 (2017) (quoting *Robinson v. State*, 410 Md. 91, 111 (2009)). *Accord Diggs v. State*, 409 Md. 260, 286 (2009).

This "hurdle, high in all events, nowhere looms larger than in the context of alleged instructional errors." *Peterson v. State*, 196 Md. App. 563, 589 (2010) (citation and quotation marks omitted). *Accord Conyers v. State*, 354 Md. 132, 171 (1999). The Supreme Court of Maryland "has been as rigorous as this Court in adhering steadfastly to the preservation requirement." *Morris*, 153 Md. App. at 508. To undertake "the extraordinary step" of reviewing an alleged instructional error under the plain error doctrine, *Austin v. State*, 90 Md. App. 254, 261 (1992), the Maryland Supreme Court in *State v. Rich* identified four factors that must be met before an appellate court may exercise discretionary review:

> [(1)] there must be an error or defect—some sort of deviation from a legal rule—that has not been intentionally relinquished or abandoned, i.e., affirmatively waived, by the appellant; [(2)] the legal error must be clear or

> obvious, rather than subject to reasonable dispute; [(3)] the error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the [trial] proceedings; . . . [and (4)] . . . if the above three prongs are satisfied, the [reviewing court] has the discretion to remedy the error—discretion which ought to be exercised on if the error seriously affects the fairness, integrity[,] or public reputation of judicial proceedings.

415 Md. 567, 578 (2010) (quoting *Puckett v. United States*, 556 U.S. 129, 135 (2009)) (further citations and quotation marks omitted). "Meeting all four conditions is, and should be, difficult." *Winston v. State*, 235 Md. App. 540, 568 (2018) (citing *Givens v. State*, 449 Md. 433, 469 (2016)). Moreover, even if a trial judge committed an error, "that would by no means require that we take notice of it." *Myers*, 243 Md. App. at 186. *See also Morris*, 153 Md. App. at 512. The "touchstone remains, as it always has been, ultimate and unfettered discretion." *Herring v. State*, 198 Md. App. 60, 84 (2011) (quoting *Austin*, 90 Md. App. at 268).

D. Analysis

We agree with the parties that the argument now made by Appellant on appeal was not raised before the trial court; therefore, it is unpreserved for our review. *See Savoy v. State*, 420 Md. 232, 238 (2011) (noting that an instructional error was unpreserved because the defendant's attorney had not objected at trial). *Accord Conyers*, 354 Md. at 171. In reviewing this appeal, the "[C]ourt's analysis need not proceed sequentially through the four conditions; instead, [we] may begin with any of the four and may end [the] analysis" if we conclude that the condition is unsatisfied. *Winston*, 235 Md. App. at 568. In this instance, our analysis begins and ends at prong three—whether Appellant's substantial

rights were affected such that the outcome at trial would have been different—as we find that condition unsatisfied.[14] *See Rich*, 415 Md. at 578 (citing *Puckett*, 556 U.S. at 135).

Appellant's substantial rights were not affected. The Supreme Court of Maryland recognized plain error where a petitioner asserted that a jury instruction regarding reasonable doubt was deficient and thereby undermined his Sixth and Fourteenth Amendment rights under the U.S. Constitution.[15] *Savoy*, 420 Md. at 238, 254. We have likewise recognized plain error where a petitioner averred that the trial court incorrectly decided a question of fact within its jury charge and thereby "indisputably" affected the defendant's material rights. *Walker v. State*, 192 Md. App. 678, 680, 683, 691–93 (2010).[16]

[14] As per our analysis here, though we need not address the first element of the plain error analysis—whether Appellant waived her right to challenge the alleged error—we nonetheless note that Appellant's challenge to the alleged error is not procedurally barred, as she did not request the alleged instructional error or affirmatively acquiesce to its provision to the jury. *See Rich*, 415 Md. at 576–77, 581 (holding that a party that requests a particular jury instruction cannot subsequently challenge it as an alleged error); *Brice v. State*, 225 Md. App. 666, 679 (2015) (citing *Booth v. State*, 327 Md. 142, 180 (1992) for the proposition that affirmative acquiescence to a jury instruction procedurally bars the party that acquiesced from later challenging the instruction).

[15] The trial court in *Savoy* advised the jury that it could convict the defendant of the crime if it was convinced "to a moral certainty"; the Supreme Court of Maryland found that instruction to be "constitutionally deficient." *See Savoy*, 420 Md. at 236–37, 253.

[16] In recognizing the plain error in *Walker*, we acknowledged that:

> [T]he trial judge erred when he told the jury, without qualification, that a starter pistol was a firearm. He should have told the jurors that if they believed appellant's testimony that the weapon he displayed was a starter pistol, the defendant should be acquitted of the charge of possession of a regulated firearm after having been convicted of a felony.
> . . .

Absent such "compelling" circumstances, Maryland appellate courts have generally declined to recognize plain error in cases involving unpreserved issues regarding jury instructions. *Newton*, 455 Md. at 364 (citation omitted); *Brown v. State*, 169 Md. App. 442, 456–61 (2006) (recognizing that the trial court erred in instructing the jury on imperfect self-defense but declining to exercise plain error review where there was "only a remote possibility" that the jury believed imperfect self-defense was applicable). Appellant bears the burden of proving that the alleged error affected the verdict, which she has failed to do here. *See Pietruszewski v. State*, 245 Md. App. 292, 323–24, *cert. denied*, 471 Md. 127 (2020).

Appellant's claims do not rise to the "compelling, extraordinary" instances such as in *Savoy* and *Walker,* where we exercised plain error review. *See Cousar v. State*, 198 Md. App. 486, 520–21 (2011). Appellant asserts that "[t]he outcome of the trial may well have been affected by the erroneous instruction" and that the jury "may have" convicted her of voluntary manslaughter in lieu of second-degree murder but for the alleged error. However, a party alleging plain error bears the burden of proving that the error affected the trial outcome. *Steward v. State*, 218 Md. App. 550, 566 (2014). Appellant's assertions amount to no more than speculation.

> The instructional error in this case was indisputably "material to the rights" of appellant. If the jury had been correctly instructed and if the jurors believed appellant's testimony that he was in possession of the starter pistol found in his house, the jury would have been obliged to acquit him of the firearm charge.

Walker, 192 Md. App. at 691–92.

Here, the record reflects that the jury had ample evidence to convict Appellant of second-degree murder on which the jury was properly instructed. Appellant was the only individual with a weapon; Appellant instigated the heated, verbal exchange; Appellant made verbal threats directed at Powell;[17] Appellant followed Powell to the store's front door; Appellant continuously pointed her firearm in the direction of Powell and his family members; Appellant demonstrated no apparent fear as she ate during the exchange and continued to taunt Powell, making gestures towards him with her hands and approaching the door even after he had departed from the store on two separate occasions, instead of calling the police; and although Powell was separated from Appellant by his family members, Appellant, who was standing inside the store, stepped toward Powell and shot him in the head from minimally two feet away as Powell stood in the vestibule. Thus, the jury had sufficient evidence to convict Appellant of second-degree murder. Given the facts of this case, we find this not to be a case that warrants us to exercise our "plenary discretion" under plain error review. *See Steward*, 218 Md. App. at 565. Notably, if there was an instructional error, "this is not a case of outraged innocence qualifying for acts of grace." *Brown*, 169 Md. App. at 460 (quoting *Morris*, 153 Md. App. at 523).[18]

[17] Multiple accounts of the incident indicate that Powell and Appellant exchanged curse words and what could be perceived as threats of violence. For example, Powell told Appellant, "The next time I see you," and Appellant told Powell, "You don't want this[.]" Appellant also used racially charged language and told Powell that, "[H]e don't know who the F she is[.]"

[18] Appellant additionally contends that this Court should use its discretion to exercise plain error review in the interest of judicial efficiency. That assertion falls under the fourth prong in the plain error analysis, which is only to be reached if the first three prongs are met. *See*

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Rich, 419 Md. at 578. We need not address that argument as it is unnecessary because Appellant's arguments fail for the reasons stated above. *See Winston*, 235 Md. App. at 568.