Circuit Court for Baltimore City
Case No.: 117317019

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND**

No. 1079

September Term, 2020

ANITA NICOLE JONES

v.

STATE OF MARYLAND

Graeff,
Leahy,
Ripken,

JJ.

Opinion by Leahy, J.

Filed: April 13, 2023

*In the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Anita Nicole Jones, ("Appellant"), was indicted in the Circuit Court for Baltimore City, Maryland, and charged with first-degree murder, second-degree murder, manslaughter, and wearing or carrying a dangerous weapon openly with the intent to injure. Following a jury trial, Appellant was acquitted of first and second-degree murder, but convicted of manslaughter and wearing or carrying a dangerous weapon openly with intent to injure.[1] After she was sentenced to ten years' incarceration for manslaughter and a consecutive three years for wearing or carrying a dangerous weapon openly, she timely appealed and asks this Court to address the following, slightly modified, questions:

> 1. Was the evidence insufficient to support Appellant's conviction of wearing or carrying a dangerous weapon openly with intent to injure?
>
> 2. Did the trial court err in granting the prosecution's challenge to the defense's strike of a single white venireman under *Batson v. Kentucky*, 476 U.S. 79 (1986), and seating that struck juror on Mrs. Jones' jury?
>
> 3. Did the trial court err in not asking the jury panel on voir dire whether they were able and willing to uphold a defendant's constitutional right to remain silent and not consider their silence in any way in determining whether they were guilty or not guilty as required by *Kazadi v. State*, 467 Md. 1 (2020)?

For the following reasons, we shall reverse Appellant's conviction for wearing or carrying a dangerous weapon with intent to injure and otherwise affirm.

BACKGROUND

Numerous witnesses testified at trial. Our summary of the trial record provides "only the portions of the trial evidence necessary to provide a context for our discussion of

[1] The docket entries indicate that Appellant's first trial on these charges ended in a mistrial on September 25, 2019.

the issues presented[,]" *Washington v. State*, 180 Md. App. 458, 461 n.2 (2008); *accord Kennedy v. State*, 436 Md. 686, 688 (2014), rather than a comprehensive review of the evidence presented.

On October 13, 2017, Appellant was at the Children's Center at Johns Hopkins Hospital because her teenage son, Christopher Yancey, Jr., had been admitted for treatment of pulmonary complications following a prior cardiac surgery. At around 11:52. a.m., while Christopher, Jr. was in surgery, his father, Christopher Yancey, Sr., arrived and was present alone in the hospital room with Appellant.

Thereafter, according to Rachel Vann, a pediatric nurse on duty at a nearby nurse station, Appellant "ran out of the room screaming help, screaming for help." Another nurse, Sapana Edwards, testified that Appellant came out of the room, "kind of hyperventilating" and stated, "He cut himself." When the nurses entered the room they saw Yancey, Sr. laying on his back, holding his neck and making a "moaning, gurgling sound." After seeing blood, Vann hit the code bell and, at around 12:47 p.m., the Rapid Response Team began treating Yancey, Sr. but that treatment ultimately proved unsuccessful.

Christopher Yancey died as a result of two stab wounds to his chest. One wound was one and a half inches deep and the other was approximately two inches deep. The latter wound was rapidly fatal, having penetrated the subclavian artery, a major artery in the body. The wounds both exhibited a sharp edge on one side and a blunt edge on the other. The medical examiner opined that the manner of death was by homicide. Yancey, Sr. was pronounced dead at 1:42 p.m.

Numerous video clips were admitted from hospital surveillance cameras during trial. The custodian for the video recordings agreed that, in one image, where it was alleged that Appellant discarded the knife into a trashcan outside the hospital, that "whatever [the] item was, it was small enough that it could fit in [Appellant's] palm[.]" Other footage showed that Appellant left the hospital at around 2:32 p.m., or around an hour after Yancey was pronounced dead. After further investigation, Appellant was arrested later that evening, at around 11:30 to 11:45 p.m.

Part of the evidence admitted for the jury's consideration included a recorded phone call made between Appellant and a prison inmate, Shawn Cartier, at around 12:03 p.m. on the day of the incident, and before Yancey, Sr. was stabbed. During that transcribed call, purportedly about Yancey, Sr., Appellant stated, among other things, that "he's pushing me to the point where I really want to hurt him and like real sh*t, really want to hurt him now."

The jury also heard from Miranda Yancey, the victim's sister, who testified that Appellant called her after Yancey, Sr. was injured and told her that Yancey "stabbed hi[m]self and fell" and also, that he tried to commit suicide. Miranda Yancey also testified that she lived with Appellant for a time, and during that time, she saw her in possession of a knife. In fact, Ms. Yancey saw Appellant with that knife on the very morning of the incident. She described the knife as "one of the knives you could hook to your pocket, like the white little Skoal things on it," and as a "flip knife." Another witness, Dellaree Howard-Ginyard, Appellant's foster mother, testified that Appellant told her that she carried a pocketknife for protection. The knife was never found.

Appellant testified on her own behalf. Pertinent to the issues raised, she admitted that she and the victim, Yancey, Sr., got into an argument when they were alone in their son's hospital room, waiting for their son to get out of surgery. While they were both seated, Yancey, Sr. got up to leave and Appellant said "that's what you always do, you just leave, but if it was that baby, you would stay" referring to a child he had with another woman. Appellant then added, "f*ck your b*tch. I hope your baby dies." Yancey, Sr. then told her not to say that again, and, after Appellant again referred to his other child, he said "b*tch, I'm tired of you playing with my baby," and he grabbed her up out of her chair by her shoulders.

Appellant was "scared" and worried that the hospital staff would remove her for fighting with Yancey, Sr. Around that same moment, she testified that Yancey started choking her. According to Appellant, "he was choking me and it felt like I couldn't breath[e]." She explained that "[h]e looked different, it's just he never been that mad before, I've never pissed him off that bad." Appellant hit back, to try to get away, but to no avail. Appellant related that she was "terrified" and that, during the continued struggle, she "reach[ed] out for [her] blade" in her pocket.

After she took the knife out, Yancey, Sr. said "so you going to stab me?" Appellant maintained at trial that that was not her original intention and that she was attempting to force Yancey, Sr. to "back off." However, after he would not let her go, she testified she swung the knife and admitted that "I stabbed him." Despite this, Yancey, Sr. kept choking her, so she stabbed him a second time. She claimed she did not intend to hurt him and just wanted to "get him off of me." Appellant related that he said "b*tch you stabbed me," and

that he needed stitches. He then said "yo, it's bad," before collapsing on the floor.

Appellant testified that she tried to stop the bleeding, but then screamed for help and went out the door. After hospital staff responded, Appellant then called a few people, went outside the hospital with the knife in the pocket of her hoodie, and then threw the knife in the trash. Appellant admitted that she carried the knife with her all the time and had been doing so since February 12, 2016, the day she was assaulted in an unrelated incident. Asked what type of knife it was, Appellant testified that it was a "[p]ocketknife."

In raising her claim of self-defense, Appellant also testified to an extensive history of abuse that she suffered at the hands of Yancey, Sr. She explained that she met Yancey, Sr. at the age of thirteen, became pregnant with his child at fourteen, and was struck by him for the first time when she was six months pregnant. Nonetheless, Appellant moved into the same apartment with Yancey, Sr. Once they moved in, Appellant explained that the physical abuse got "worse" and that Yancey, Sr. would slap her, choke her, give her black eyes, and even cut her. In one particular incident, Appellant recalled that Yancey, Sr. choked her to the point of passing out and then told her "b*tch, I could have kil[lled] you" after she regained consciousness.

Appellant also noted that Yancey, Sr. frequently called her demeaning names and coerced her into having sexual relations. When she would try to leave, Appellant explained that Yancey, Sr. would tell her "[b]*tch, you ain't going away, don't nobody want you but me." Despite the parties' turbulent circumstances, Appellant and Yancey, Sr. married and had six children together. Appellant stated that she continued to stay with Yancey, Sr. for the sake of their children and because "[h]e made me feel like he loved me" despite the

physical and emotional abuse.

Dr. Joanna Brandt, a physician specializing in forensic psychiatry, testified as an expert regarding the effect of the abuse on Appellant. In Dr. Brandt's expert opinion, Appellant suffered from several mental illnesses, including "Major Depressive Disorder with anxious distress, Post-Traumatic Stre[ss] Disorder . . . a number of substance use disorders . . . [and] Battered Woman Syndrome." Dr. Brandt explained that Battered Woman Syndrome is defined by "a recognized pattern of interaction between the batterer and the woman . . . known as the Cycle of Violence[.]" She noted that the cycle consists of several distinct phases, including the tension building phase—"where the batterer starts with . . . words and acts including belittling, cursing and hostility"—as well as acute episodes of aggression and periods of calm following acts of violence.

In the course of her testimony, Dr. Brandt traced how Appellant and Yancey, Sr.'s relationship lined up with each of those three phases. After discussing the ways in which Appellant had manifested symptoms of PTSD, Dr. Brandt offered her expert opinion that:

> . . . .[A]n individual with [Appellant's] psychological profile would view the interactions with Christopher Yancey on the date we're talking about through the lens of Battered Woman Syndrome, Complex Post-Traumatic Stress Disorder symptoms and depression. In a situation like the offense, this view would lead an individual with this psychological profile to perceive she was in imminent or immediate danger of death or serious bodily harm and that her actions to protect herself were necessary and reasonable.

With reference to the events on the day in question, Dr. Brandt explained how Appellant's mental afflictions would have colored her view of what transpired in the following colloquy with counsel:

[DEFENSE COUNSEL]: Now, why would having Battered Woman

> Syndrome lead Ms. Jones to perceive she was in imminent or immediate danger of death or serious bodily injury?
>
> [DR. BRANDT]: So it fit with her understanding of how their interactions went, their pattern of interactions followed through the cycle of violence and when he was belittling her and the tension was building in the room and they're arguing back and forth, she would have had a heightened awareness about his moods and what was going on between the two of them. It frequently in the past had led to an assault, to him putting his hands on her and when he put his hands on her neck, that's when she perceived that she was in physical danger and in serious danger of being harmed. You heard her testify she thought she was going to pass out.

On January 9, 2020, the jury reached a verdict, finding Appellant not guilty of first and second-degree murder, but guilty of manslaughter and carrying a dangerous weapon openly with intent to injure. On November 19, 2020, Appellant was sentenced to ten years' incarceration on the manslaughter count as well as a consecutive three-year sentence on the weapons offense. Appellant noted a timely appeal to this Court that same day, which we twice stayed, on August 6, 2021, and May 2, 2022, pending the resolution of *Kumar v. State*, 477 Md. 45 (2021), and *State v. Jordan*, 480 Md. 490 (2022), respectively.

We shall include additional detail in the following discussion as pertinent to the issues raised.

DISCUSSION

I.

Sufficiency of the Evidence

Standard of Review

"The sufficiency of the evidence is viewed in the light most favorable to the prosecution." *State v. Morrison*, 470 Md. 86, 105 (2020). Accordingly, "we examine the

record solely to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Wilson*, 471 Md. 136, 159 (2020) (quoting *Fuentes v. State*, 454 Md. 296, 307 (2017)). Moreover, we do not "'re-weigh' the credibility of witnesses or attempt to resolve any conflicts in the evidence[,]" *Morrison*, 470 Md. at 105 (quoting *Fuentes*, 454 Md. at 307–08), but rather, we "assess 'whether the verdict was supported by sufficient evidence, direct or circumstantial, which could convince a rational trier of fact of the defendant's guilt of the offenses charged[.]'" *Id*. (quoting *White v. State*, 363 Md. 150, 162 (2001)).

A. *Parties' Contentions*

Appellant first contends the evidence was insufficient to sustain her conviction for wearing or carrying a dangerous weapon openly with intent to injure on the ground that the State failed to negate the evidence that the weapon was a pocketknife and, therefore, exempt under the penknife exemption. The State does not address the merits but argues that Appellant failed to particularly raise this ground in her motion for judgment of acquittal and, for that reason, asserts that the issue is unpreserved for our review. Appellant replies that she did challenge the evidence on this count in her motion and that the argument was sufficient to preserve the issue of whether her pocketknife qualified as a dangerous weapon within the meaning of the statute.

B. *Preservation*

Pertinent to the State's preservation argument, a motion for judgment of acquittal made at the close of all the evidence is a prerequisite to a claim of evidentiary insufficiency on appeal. *Haile v. State*, 431 Md. 448, 464 (2013); *see also* Md. Code (2001, 2018 Repl.

Vol.), Criminal Procedure Article ("CP"), section 6-104; Md. Rule 4-324. Rule 4-324(a) provides, in pertinent part, that "[a] defendant may move for judgment of acquittal . . . at the close of the evidence offered by the State and, in a jury trial, at the close of all the evidence. The defendant *shall* state with particularity all reasons why the motion should be granted." (Emphasis added). Because "[t]he language of [Rule 4-324(a)] is mandatory," *Wallace v. State*, 237 Md. App. 415, 432 (2018) (quoting *State v. Lyles*, 308 Md. 129, 135 (1986)), "a defendant must 'argue precisely the ways in which the evidence should be found wanting and the particular elements of the crime as to which the evidence is deficient[.]'" *Arthur v. State*, 420 Md. 512, 522 (2011) (quoting *Starr v. State*, 405 Md. 293, 303 (2008)). "Rule 4-324(a) is not satisfied by merely reciting a conclusory statement and proclaiming that the State failed to prove its case." *Arthur*, 420 Md. at 524. "Accordingly, a defendant 'is not entitled to appellate review of reasons stated for the first time on appeal.'" *Id*. at 523 (quoting *Starr*, 405 Md. at 302).

"We have recognized, however, that a motion for judgment of acquittal may be sufficient to preserve an issue where the acquittal argument generally includes the issue raised on appeal." *Redkovsky v. State*, 240 Md. App. 252, 261-62 (2019) (citations omitted). In *Williams v. State*, for example, we concluded that counsel had sufficiently preserved a challenge to the sufficiency of the evidence on the *mens rea* element of the charged offense because although "counsel did not specifically mention intent or *mens rea*, the argument, in context, appears to relate to appellant's intent or state of mind." *Williams v. State*, 173 Md. App. 161, 167-68 (2007). Nonetheless, "[w]hen ruling on a motion for judgment of acquittal, the trial court is not required to imagine all reasonable

offshoots of the argument actually presented[,]" *Starr*, 405 Md. at 304, as the burden lies with defense counsel to raise "all reasons why the motion should be granted." Md. Rule 4-324(a).

Here, at the end of the State's case-in-chief, Appellant moved for judgment of acquittal on the carrying a dangerous weapon openly count and asserted that there was no evidence Appellant had any intent to injure nor evidence that she was carrying any weapon at the time. The motion was denied and Appellant presented evidence on her behalf, including her own testimony.

At the end of all the evidence, Appellant again moved for judgment of acquittal. With respect to carrying a dangerous weapon openly count, defense counsel argued as follows:

> For deadly weapon, I do not believe they have met their burden to show that she carried the weapon with any intent to injure. And in fact, their own witness testified that it was a pocketknife she owned. And then a defense witness testified that it was carried due to an attack in 2012 --- not just Ms. Jones but also Ms. Della Ginyard and that she carried it for protection and had carried it for protection since then. So there's –it's an undisputed fact.[2]

We are persuaded that, as Appellant contends in her reply brief, "the defense preserved for appellate review its argument that there was no proof that Ms. Jones carried an object which would qualify as a weapon . . ." Although we recognize that defense counsel neither precisely cited the statutory authority nor asserted that the "penknife exception" applied, counsel did contend (1) in the first motion, that the evidence did not show that Appellant had carried a weapon and (2) in the second motion, that the evidence

[2] The court denied the motion.

only showed the weapon was a pocketknife. We conclude this was sufficiently particularized under the circumstances and shall address the issue on the merits. *See* Md. Rule 8-131 (a) (providing that "[o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal").

C. *The Evidence Was Insufficient*

Turning to the merits, we start with Section 4-101 of the Criminal Law Article, which prohibits a person from wearing or carrying a dangerous weapon openly with intent to injure:

> (2) A person may not wear or carry a dangerous weapon, chemical mace, pepper mace, or a tear gas device openly with the intent or purpose of injuring an individual in an unlawful manner.

Maryland Code (2002, 2021 Repl. Vol.), Criminal Law Article ("CL"), section 4-101(c)(2). "Weapon" is defined in this statute as follows:

> (5)(i) "Weapon" includes a dirk knife, bowie knife, switchblade knife, star knife, sandclub, metal knuckles, razor, and nunchaku.
>
> (ii) "Weapon" does not include:
>
> 1. a handgun; or
>
> 2. a penknife without a switchblade.

CL § 4-101 (a)(5).

In order to convict a person for wearing or carrying a dangerous weapon pursuant to CL § 4-101, the State must prove, beyond a reasonable doubt, that the purported

dangerous weapon did not fall within the exception for a penknife. *See Biggus v. State*, 323 Md. 339, 353 n.6 (1991) ("In order to obtain a conviction under [the dangerous weapon statute], the State must establish that the dangerous or deadly weapon did not fall within the exception for penknives without switchblades or handguns."); *Johnson v. State*, 90 Md. App. 638, 648-49 (1992) (holding that State carries burden to show that knife does not fall into penknife exception in the dangerous weapon statute). A penknife is defined as "any knife with the blade folding into the handle." *Thornton v. State*, 162 Md. App. 719, 736 (2005), *rev'd on other grounds*, 397 Md. 704 (2007). While a penknife originally was considered to be a small pocketknife used to make or sharpen quill pens, modern penknives are "commonly considered to encompass any knife with the blade folding into the handle, some very large." *Mackall v. State*, 283 Md. 100, 113 n.13 (1978).

In *Mackall*, the Supreme Court of Maryland[3] held there was insufficient evidence to prove the weapon was not a penknife where the witnesses merely described it as a "knife," with no elaboration. *Mackall*, 283 Md. at 108 n.8, 113 ("The various witnesses who testified that a knife was used, referred to the weapon only as a 'knife.' There was no description of it whatsoever, and no attempt was made by Mackall or the State to elicit a description"). Likewise, the Court reversed the conviction in *Washington v. State*, 293 Md. 465 (1982), where the "testimony described the knife only as a 'long silver knife' and a 'sharp pointed object'" because there was a "total absence of evidence tending to show that

[3] We note here that, in the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

the knife was not a penknife." *Id.* at 475.

Here, Appellant admitted she stabbed Yancey with a pocketknife. Other witnesses testified that Appellant was known to carry a small "flip knife" in her pocket. Appellant further testified that she carried the knife in her pocket outside after the stabbing and threw it away in the trash. The autopsy revealed that Yancey died as a result of two small stab wounds to his chest, one of which was only one and a half inches deep and the other, rapidly fatal wound, was approximately two inches deep. Given this evidence, we concur with Appellant's argument that the State failed to establish beyond a reasonable doubt that the dangerous weapon in this case was *not* a penknife and Appellant's conviction on the wearing or carrying count must be reversed.

II.

Batson Challenge

Standard of Review

Because the trial court's resolution of a *Batson* challenge is essentially a factual determination, the court's decision is afforded great deference and will not be reversed unless it is clearly erroneous. *Ray-Simmons v. State*, 446 Md. 429, 437 (2016); *see also Khan v. State*, 213 Md. App. 554, 568 (2013) ("In reviewing [a] trial judge's [*Batson*] decision, appellate courts do not presume to second-guess the call by the 'umpire on the field' either by way of *de novo* fact finding or by way of independent constitutional judgment.") (quoting *Bailey v. State*, 84 Md. App. 323, 328 (1990)). "[I]f any competent material evidence exists in support of the trial court's factual findings, those findings cannot be held to be clearly erroneous[.]" *Spencer v. State*, 450 Md. 530, 548 (2016)

(quoting *Webb v. Nowak*, 433 Md. 666, 678 (2013)). It is "generally[] for the trial court -- not an appellate court -- to determine" the "credibility of the proponent offering the reasons" for the strikes. *Ball v. Martin*, 108 Md. App. 435, 456 (1996).

A. *Parties' Contentions*

Appellant asserts that the trial court erred in granting the State's challenge to her striking a white venireman under *Batson v. Kentucky*, 476 U.S. 79 (1986), and seating that struck juror on her jury. Specifically, Appellant argues that the court bypassed the *Batson* review process by simply relying on a "consistent pattern" of striking white jurors and in not permitting defense counsel to proffer a race neutral reason for the strikes. The State responds that the record shows that the trial court did not deny defense counsel the opportunity to explain her reasons for the strikes and that also, under the circumstances, the court did not err in seating the struck juror.[4]

[4] At the conclusion of voir dire, and prior to jury selection, there is a fifteen (15) minute gap in the transcript. The transcript indicates "the video and audio was off the record because the camera was switched to chambers from 12:03:34 p.m. to 12:18:38 p.m." Immediately after that gap, defense counsel made a *Batson* challenge contending that the prosecutor had "struck" three black female prospective jurors. After hearing from the prosecutor, the court denied the motion. Evident from this exchange is that some juror selection occurred during the recording gap. Jury selection then continued. To the extent that the issue presented depends upon facts that may or may not have transpired during that gap in the record, we note that it was the Appellant's responsibility to make sure that the appellate record was complete. *See* Md. Rule 8-411 (providing that it is the appellant's responsibility to order transcripts of testimony, and any portions of the proceedings relevant to the appeal); *see also Black v. State*, 426 Md. 328, 337 (2012) ("To overcome the presumption of regularity or correctness, the appellant or petitioner has the burden of producing a 'sufficient factual record for the appellate court to determine whether error was committed[.]'") (cleaned up).

B. *Background*

Pertinent to the issue raised on appeal, an initial *Batson* challenge was raised during jury selection by the State as follows:

> [DEFENSE COUNSEL]: Please thank and excuse juror seated in seat three, Juror 6009.
>
> MR. CLERK: Juror 6009 seated in juror seat number three, you may have a seat in the gallery.
>
> Juror 6127 – oh, excuse me, the following jurors please come forward and bring all of your belongings when I call your juror number, Juror 6127, 6132, 6138, 6144.
>
> [PROSECUTOR]: May we approach, Your Honor?
>
> (Whereupon, counsel and the defendant approached the bench, and the following ensued:)
>
> [PROSECUTOR]: Your Honor, as the State has it, that was the seventh strike executed by defense. The State is concerned and making a Batson challenge as it pertains to that juror. The State is concerned because there were two other jurors who did not stand for anything much like the juror that was just struck, the same race, ethnicity. The State would be making a Batson challenge as to that juror that was recently struck.
>
> [DEFENSE COUNSEL]: Your Honor, I don't think the State's met their burden to even make that challenge. I have struck both men, women and someone who wasn't white so far, so just as to this particularized challenge, but you'd like me to give me reasoning for the particular jur[or] –
>
> THE COURT: I would.
>
> [DEFENSE COUNSEL]: -- juror, that is Juror 6009 that the State's challenging. The reason for that strike, Your Honor, is that that juror is a casino supervisor so would be intimately familiar with security, security personnel, and what their protocols might be. There's a security person from Johns Hopkins who is coming in to testify, there's going to be video shown, it's probably the most important part of the State's case and that is why we struck that juror.

THE COURT: Thank you. I'm going to deny your request, counsel, thank you.

[PROSECUTOR]: Thank you, Your Honor.

After denying the State's first *Batson* challenge, jury selection continued. Soon thereafter, this issue arose again. Specifically, the exchange at issue ensued as follows:

[DEFENSE COUNSEL]: Please thank and excuse Juror 6138.

MR. CLERK: Juror 6138, you may have a seat in the gallery.

[PROSECUTOR]: May we approach, Your Honor?

THE COURT: Yes.

(Whereupon, counsel and the defendant approached the bench, and the following ensued:)

[PROSECUTOR]: Your Honor, as to defense's latest strike which the State has as strike number 10, again, this is a white male who did not stand up, did not answer any questions, the State would be making a Batson challenge as to 6138.

[DEFENSE COUNSEL]: Okay. So the last one you mean?

[PROSECUTOR]: Yes.

[DEFENSE COUNSEL]: Okay. Your Honor, the reason that we struck Juror 6138 and again, I don't believe that the State has met the threshold is because –

THE COURT: It has.

[DEFENSE COUNSEL]: -- we were concerned with a number of different things but mainly actually the eye contact and the looks that we were getting as he was standing that close to us and specifically the looks that he was giving Ms. Jones.

THE COURT: I'm going to grant your motion and ask that he be seated in seat three.

[PROSECUTOR]: Thank you, Your Honor.

[DEFENSE COUNSEL]: Your Honor, I do have strong objections because I do believe that –

THE COURT: So noted.

[DEFENSE COUNSEL]: -- it's calling into my question my credibility with this Court that –

THE COURT: No, I'm just – there's a consistent pattern of all the white men have been stricken off of the jury, there's been one and that was it and the other ones I have given you great leeway with respect to that.

[DEFENSE COUNSEL]: Well, I just want to make sure I'm making my record clear, Your Honor, because I struck, first off there was an Asian man who was not white, there were females as well. There were reasons for each one of those jurors including this one and the standard, of course, is if there is a race [sic] reason and not agreeing that that's what I'm giving, Your Honor, by my description it's questioning my credibility so I just want to make the record clear about that and I am objecting to this juror being seated.

THE COURT: So noted.

(Whereupon, counsel and the defendant returned to the trial tables, and the following ensued:)

MR. CLERK: Juror 6138? Juror 6138, juror seat three.

Is the panel acceptable to the State?

[PROSECUTOR]: Acceptable.

MR. CLERK: Is the panel acceptable to the defense?

[DEFENSE COUNSEL]: Court's indulgence.

(Brief pause.)

[DEFENSE COUNSEL]: Subject to previous objections, yes.[5]

[5] Defense counsel later made another *Batson* challenge to one of the State's strikes concerning an alternate, on the grounds that the State was striking black females. That motion was denied.

C. *The Three-Step Batson Framework*

In *Batson v. Kentucky*, the United States Supreme Court held that "[p]urposeful racial discrimination in selection of the venire violates a defendant's right to equal protection because it denies him the protection that a trial by jury is intended to secure." 476 U.S. 79, 86 (1986). The decision in *Batson* establishes a three-step process for determining when a strike is discriminatory. *See id*. at 96-98. The first step requires that the party raising the challenge make a prima facie showing that the peremptory challenge was made on "one or more of the constitutionally prohibited bases," including race. *Ray-Simmons v. State*, 446 Md. 429, 436 (2016). For instance, step one may be satisfied by showing a "pattern" of strikes against jurors of a particular race in the venire. *Batson*, 476 U.S. at 97.

If the requisite showing is made under step one, "'the burden of production shifts to the proponent of the strike to come forward with' an explanation for the strike that is neutral as to race, gender, and ethnicity." *Ray-Simmons*, 446 Md. at 436 (quoting *Purkett v. Elem*, 514 U.S. 765, 767 (1995)). Any tendered explanation will be considered "race-neutral unless a discriminatory intent is inherent in the explanation." *Id.* (quoting *Edmonds v. State*, 372 Md. 314, 330 (2002)). In assessing the "facial validity" of the explanation, the persuasiveness of the reason given is not a factor. *Edmonds*, 372 Md. at 332.

In the third and final step, the trial court must decide whether the complaining party has met the burden of proving "purposeful racial discrimination." *Ray-Simmons*, 446 Md. at 437 (quoting *Purkett*, 514 U.S. at 767). "[T]he decisive question will be whether counsel's race-neutral explanation for a peremptory challenge should be believed."

Hernandez v. New York, 500 U.S. 352, 365 (1991) (plurality opinion). This determination rests largely on the court's assessment of the credibility of the striking party. *Id.* On the whole, however, a "discriminatory purpose may be inferred from the totality of the circumstances and relevant facts" and courts may consider, *inter alia*, "the disparate impact of the prima facie discriminatory strikes on any one race; the racial make up of the jury; the persuasiveness of the explanations for the strikes; the demeanor of the attorney exercising the challenge; and the consistent application of any stated policy for peremptory challenges." *Edmonds*, 372 Md. at 330.

D. *Analysis*

Here, looking to the colloquy between the parties and the court, and applying the *Batson* steps, the State met its prima facie burden by suggesting that Defense Counsel was striking white individuals from the jury. As has been explained, "[t]he step one determination of a prima facie case is not a high threshold . . . [I]f a party gives the outward appearance of discriminating in the exercise of preemptory challenges, then an explanation of the seemingly discriminatory strikes ought to be required." *Gilchrist v. State*, 340 Md. 606, 639 (1995) (Chasanow, J., concurring). Considering that low threshold, the State certainly satisfied its burden in explaining that the challenged strike was at least the fourth strike of a white venireman "who did not stand up, did not answer any questions[.]"

Turning to step two, Defense Counsel's stated reason for striking this prospective juror was "the eye contact and the looks that we were getting as he was standing that close to us and specifically the looks that he was giving Ms. Jones." This explanation discharged Appellant's burden of production as this Court has recognized that such reasons may be

race-neutral. *See Stanley v. State*, 85 Md. App. 92, 104 (1990) ("The appearance and demeanor of a prospective juror has long been the actual basis for racially neutral peremptory challenges by attorneys in both civil and criminal cases"); *Chew v. State*, 317 Md. 233, 247 (1989) ("the appearance and demeanor of a prospective juror has, long before *Batson,* been the actual basis for racially neutral peremptory challenges by attorneys in both civil and criminal cases");[6] *see also United States v. Bentley-Smith*, 2 F.3d 1368, 1374 (5th Cir. 1993) ("[W]e specifically have approved of such subjective manifestations as eye contact (or absence of the same) as justifications for rejecting a potential juror").

Finally, on *Batson* step three, the trial court stated that it was granting the State's motion and ordered that the stricken white prospective juror be seated in seat three after assessing defense counsel's race-neutral explanation. This exchange suggests that the court acknowledged counsel's reason as a legitimate one, but that it was not a credible one under the circumstances present in the courtroom. *See United States v. Jenkins*, 52 F.3d 743, 746 (8th Cir. 1995) ("When peremptory strikes are challenged, neutral explanations that are based on subjective assessments, such as a juror's demeanor or appearance, must

[6] We note that the analysis in *Chew* was based on an earlier understanding that the proponent of a strike bears the burden of proof to show both that a reason other than race existed and that the reason "has some reasonable nexus to the case and was in fact the motivating factor in the exercise of the challenge." *Chew*, 317 Md. at 247. In *Purkett*, the Supreme Court clarified that a proponent's burden at *Batson* step two is that of production only. *Purkett v. Elem*, 514 U.S. 765, 767 (1995). Moreover, the proponent's burden at step two "does not demand an explanation that is persuasive, or even plausible." *Id*. at 767-68. That is because "the ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the opponent of the strike." *Id*. at 768.

be carefully scrutinized"). In particular, the court noted that "there's a consistent pattern of all the white men have been stricken off of the jury[.]"

Appellant strenuously objects to the court's rejection of defense counsel's race-neutral explanation, asserting that "a pattern of striking jurors of one race is not an accepted reason for disbelieving a proffered race neutral reason for a strike[.]" We disagree. At the very least, because a "discriminatory purpose may be inferred from the totality of the circumstances and relevant facts[,]" a consistent pattern of strikes against one racial group is surely relevant to several of the considerations identified in *Edmonds* as appropriately considered on *Batson* step three, including "the disparate impact of the prima facie discriminatory strikes on any one race; the racial make up of the jury; [and] the persuasiveness of the explanations for the strikes[.]" *Edmonds*, 372 Md. at 330.

Moreover, it is clear from the record that, in addition to considering the pattern of strikes, the court simply found defense counsel's explanation to not be credible. While the court stated "no," after defense counsel suggested the court was questioning her credibility, it is apparent that the trial court was not assessing the credibility *of counsel*, personally or professionally, but instead, her stated reason for striking the prospective juror. As the Fifth Circuit has explained:

> This is no different from the credibility choices that finders of fact -- whether judges or juries -- are called upon constantly to make. An attorney who claims that he or she struck a potential juror because of intuition alone, without articulating a specific factual basis such as occupation[,] family background, or even eye contact or attentiveness, is more vulnerable to the inference that the reason proffered is a proxy for race. That is not to say, however, that the reason should be rejected out of hand; that is a call for the judge to make, based upon his or her evaluation of such things as the

> demeanor of counsel, the reasonableness of the justifications given, and even the court's personal observation of the venireman.
>
> We explained this process carefully in [*Thomas v. Moore*, 866 F.2d 803 (5th Cir. 1989)]:
>
> > The decision to exercise a peremptory challenge, in contrast to a challenge for cause, is subjective; and, often, *the reasons behind that decision cannot be easily articulated*. Determining whether [an attorney] has acted discriminatorily in his use of a peremptory challenge depends greatly upon the observations of the presiding judge.... This firsthand review by the trial court is vital to the balance struck between the historical role and practice of peremptory challenges and the demands of equal protection.

United States v. Bentley-Smith, 2 F.3d at 1375 (emphasis in original) (cleaned up).

Finally, we note that our role in assessing a *Batson* challenge under step three is highly deferential. *See Edmonds*, 372 Md. at 331 ("The trial judge's findings in evaluating a *Batson* challenge are essentially factual and accorded great deference on appeal."). Indeed, the "trial judge is in the best position to assess credibility and whether a challenger has met his burden." *Id.*; s*ee also Jeffries v. State*, 113 Md. App. 322, 346 (1997) ("[A]ppellate courts must be highly deferential and will not presume to overturn a trial judge's findings on [a *Batson*] issue unless they are clearly erroneous"). We hold that the trial court properly exercised its discretion in this case.

III.

Kazadi Challenge

A. *Parties' Contentions*

Finally, Appellant relies on *Kazadi v. State*, 467 Md. 1 (2020), and avers the court erred in not asking the venire whether they would honor her constitutional right not to

testify and not hold it against her. The State responds that any error in not asking the question was harmless beyond a reasonable doubt because Appellant testified on her own behalf. Foreseeing that line of argument, Appellant counters that the court's failure to ask the proposed voir dire question "constitutes reversible error" because "it cannot be said that her decision to forgo her right to remain silent was not affected by the court's failure to voir dire the jury in this regard."

B. *Background*

Prior to jury selection on the morning set for trial, defense counsel objected to the trial court's proposed voir dire, and asked "the Court to ask the questions proposed in our request for voir dire at this time[,]" and admitted a copy of the proposed questions. There was no discussion about the question at issue, but a review of Defendant's Motions Exhibit 1, included in an envelope with the record provides as follows:

> 49. Every person accused of a crime has an absolute constitutional right to remain silent and not testify. If a defendant chooses not to testify the jury may not consider his/her silence in any way in determining whether he/she is guilty or not guilty. Would you be unable or unwilling to uphold and abide by this rule of law?

Jury selection proceeded and defense counsel renewed her general objection to the court's failure to ask her requested voir dire question both at the end of voir dire and when the court asked if the jury panel ultimately selected was acceptable. Due to those timely objections, despite the lack of specificity with regard to the precise question at issue, the State does not claim, and we do not conclude, that the issue is unpreserved. *See State v. Ablonczy*, 474 Md. 149, 166 (2021) ("[W]e hold that the objection to the denial of the request to ask the voir dire question was not waived by the later unqualified acceptance of

the jury as empaneled"); *see also Lopez-Villa v. State*, 478 Md. 1, 16-18 (2022) (finding that defense counsel's failure to object to the court's omission of proposed voir dire questions at the end of voir dire constituted a waiver which rendered petitioner's *Kazadi* challenge unpreserved).[7]

As set forth previously, Appellant was found guilty of voluntary manslaughter and wearing or carrying a dangerous weapon openly with the intent to injure. Less than a month after trial, the Supreme Court of Maryland held in *Kazadi v. State*, 467 Md. 1 (2020), that, if requested, "a trial court must ask whether any prospective jurors are unwilling or unable to comply with the jury instructions on the fundamental principles of presumption of innocence, the State's burden of proof, and the defendant's right not to testify." *Kazadi*, 467 Md. at 9.[8] This holding applies to "any other cases that are pending on direct appeal when this opinion is filed, where the relevant question has been preserved for appellate review." *Id*. at 47; *accord Kumar v. State*, 477 Md. 45, 55 (2021) ("our holding in *Kazadi* applies to cases in which there had not yet been a final disposition, regardless of whether a notice of appeal had been filed at the time the opinion in *Kazadi* was issued, and in which the issue had been preserved for appellate review."). Under this reasoning, the State concedes that the trial court erred by not giving the requested instruction on a

[7] We also note that there are two different versions of the right not to testify question included in the record and filed before Appellant's first and second trials. As the alternate version is substantially similar to the one set forth in our discussion, we shall rely on the language accompanying the admitted exhibit.

[8] Jury selection occurred in this case on January 2, 2020. The reported opinion in *Kazadi* was filed on January 24, 2020.

defendant's right not to testify. Notwithstanding the error, the State suggests any error was harmless beyond a reasonable doubt and directs our attention to the recent case of *State v. Jordan*, 480 Md. 490 (2022), a case decided after the briefs were filed herein.

C. *State v. Jordan*

In *Jordan*, in a trial that also occurred prior to *Kazadi*, the trial court denied Latoya Jordan's request for a voir dire question concerning a defendant's right not to testify. *Jordan*, 480 Md. at 493. Although the *Kazadi* Court would later decide that such a question was required upon request, at the time of Jordan's trial such a question was not mandated. *See Twining v. State*, 234 Md. 97, 100 (1964). Thereafter, during trial, Ms. Jordan testified in her own defense and was acquitted of one count of second-degree assault but convicted of another. *Jordan*, 480 Md. at 493.

On appeal, and post-*Kazadi*, there was no dispute that the trial court erred by failing to ask the requested question during voir dire. *Id.* at 493-94. The issues presented were (1) whether harmless error analysis applied to the trial court's error under *Kazadi* and, if so, (2) whether by testifying in her defense, Ms. Jordan rendered that error harmless beyond a reasonable doubt. *Id.* at 494. The Supreme Court of Maryland concluded that harmless error analysis was applicable and held the error was harmless under the facts of that case. *Id*.

Ms. Jordan argued that the failure to ask the required voir dire question about a defendant's right not to testify amounted to structural error because (1) the failure did not ensure the jury was unbiased and (2) it implicated fundamental rights. *Id*. at 508. In explaining its reasoning, the Court distinguished between structural errors, which are not

subject to harmless error analysis, and trial errors, which are. *Jordan*, 480 Md. at 505-08. The Court reasoned that, unlike cases where the jury was never properly sworn or not properly instructed on the defendant's fundamental rights later at trial, there was no such claim in the case presented and "the jury verdict here was not inherently infirm from a constitutional standpoint." *Id*. After considering applicable case law, the Court concluded that "the error here falls on the trial error side of the ledger." *Id*. at 511.

In addition, the Court was able to assess the error in not asking the question concerning a defendant's right not to testify "for its impact or influence on the jury verdict." *Jordan*, 480 Md. at 512. In particular, the *Jordan* Court compared the case presented favorably to *United States v. Hasting*, 461 U.S. 499 (1983), where the United States Supreme Court found harmless error in a prosecutor's comments concerning a defendant's silence during trial. *Hasting*, 461 U.S. at 512. As explained by the *Jordan* Court:

> The danger in such an error was that one or more jurors could have been persuaded by the prosecution to infer guilt from the defendant's failure to testify. That is akin to the risk presented by the failure to ask the *Kazadi* question about the right to remain silent—namely, that an individual who would view the defendant's failure to testify as evidence of guilt would make it on to the jury. As in *Hasting*, we too conclude that the error here was a trial error subject to the harmless error doctrine.

Jordan, 480 Md. at 512.

Turning to the facts of the case, the issue came down to whether the State demonstrated that the failure to ask the voir dire question about a defendant's right not to testify adversely affected the verdict. *Id.* at 512-13. As summarized by the Court:

> The court's refusal to ask the question deprived Ms. Jordan of a tool for identifying individuals who should have been stricken for cause for their unwillingness or inability to comply with the court's instruction on the

> defendant's right to remain silent. We perceive two ways in which a refusal of this nature could conceivably contribute to a guilty verdict. First, a possible consequence of not asking the *Kazadi* question is that a juror who is unwilling or unable to comply with the right to silence instruction could have been empaneled on the jury. Second, the refusal could have been the deciding factor in the defendant's decision to testify.

Id. at 513.

Given that Ms. Jordan testified, the first possibility concerning a juror failing to comply with the right to silence instruction was not at issue. *Id.* As for the second possibility, the Court recognized the failure to ask the question during voir dire could have affected Ms. Jordan's decision whether to testify:

> Testifying can be risky for some defendants for a variety of different reasons. For example, if a defendant knows that he will be impeached with a prior conviction if he testifies, but is more concerned the jury would see his failure to testify as evidence of guilt, it's possible the defendant will choose to testify when he otherwise would have chosen not to. In that case, the refusal to ask the *Kazadi* question could conceivably contribute to the guilty verdict.

Id. at 513.

Based on a recognition that the failure to ask the question might have caused Ms. Jordan to testify, the Court considered the evidentiary record. Noting that there was no dispute in that case that some sort of altercation occurred between Ms. Jordan and two others, namely, Ms. Alexander and Mr. Harried, the Court observed that it was "a classic credibility contest" between the parties. *State v. Jordan*, 480 Md. at 513-16. The Court continued that, under these facts, and "[a]s a practical matter . . . Ms. Jordan was all but required to put on a defense" and "it is not surprising that Ms. Jordan decided that the jury should hear her side of the story directly from herself." *Id*. at 514. From this, the Court concluded any error was harmless beyond a reasonable doubt:

> It is likely that Ms. Jordan's testimony had a positive effect on the jury, as evidenced by the jury's acquittal of her on the charge of assaulting Ms. Alexander. But to find harmless error, we need not engage in such speculation - we need only determine beyond a reasonable doubt that her testimony did not contribute to the guilty verdict on the charge of assaulting Mr. Harried. We have no such difficulty here. As shown above, Ms. Jordan's testimony was limited to denying the allegation that she struck Mr. Harried. And although her denial clearly did not provide the jury with reasonable doubt that she struck Mr. Harried, her testimony provided no evidence that she did assault him. At worst, therefore, the jury declined to credit her denial of hitting Mr. Harried, which is a far cry from providing evidence tending to establish her guilt.

Id. at 515 (cleaned up).

D. *Analysis*

Applying the lessons from *State v. Jordan* here, we conclude that the circuit court's failure to ask the proposed voir dire question concerning Appellant's right to not testify at trial amounted to harmless error. Due to both the nature of the defenses raised by Appellant and the lack of eyewitnesses to the fatal struggle, as in *Jordan*, it was a practical necessity for Appellant to tell the jury her version of what transpired in the hospital room with Yancey, Sr.

Here, as in *Jordan*, we note at the outset that because Appellant testified in her own defense, we are not concerned with the first possible source of error stemming from a refusal to propound a requested *Kazadi*-type question—*i.e.*, whether the failure to ask the proposed voir dire question led to a juror failing to comply with the right to silence instruction. *Jordan*, 480 Md. at 513. Instead, we engage in the same inquiry as the *Jordan* Court and look to determine (1) whether the circuit court's refusal to ask Appellant's

proposed voir dire question affected her decision to testify and (2) whether Appellant's testimony contributed to the guilty verdict. We answer each inquiry in the negative.

With respect to the first point, we observe that, among other offenses, Appellant was charged with first and second-degree murder. In defending against those charges, Appellant raised the defenses of perfect and imperfect self-defense, particularly relying on her testimony concerning her heightened sense of imminent danger stemming from years of abuse at the hands of Yancey, Sr. Additionally, Appellant had the benefit of Dr. Brandt's expert opinion that due to her psychological profile, which included Battered Woman Syndrome and PTSD, Appellant was more likely to "perceive she was in imminent or immediate danger of death or serious bodily harm and that her actions to protect herself were necessary and reasonable." Yet, untethered to an account of what transpired in the hospital room preceding the stabbing, Dr. Brandt's testimony could only carry Appellant so far. To fully set forth her claim of self-defense, Appellant needed to demonstrate (1) she "had reasonable grounds to believe [her]self in apparent imminent or immediate danger of death or serious bodily harm[,]" (2) she "in fact believed [her]self in this danger[,]" (3) she was not "the aggressor" and had not "provoked the conflict[,]" and (4) the force used was not more "than the exigency demanded." *Prince v. State*, 255 Md. App. 640, 657-58 (2022) (quoting *Porter v. State*, 455 Md. 220, 234-35 (2017)).[9] Without any other

[9] In *Prince*, we noted that imperfect self-defense requires a showing of the same four elements, subject to "three key differences" from perfect self-defense:

> *First*, for an imperfect self-defense, the defendant need "only show that he actually believed that he was in danger, even if that belief was
>
> (continued)

eyewitness—or even surveillance footage of her encounter with Yancey, Sr.—Appellant was essentially required, "as a practical matter[,]" to provide the jury with her account of how Yancey, Sr. grabbed her and began to choke her following their argument. *Jordan*, 480 Md. at 514. There was simply no other method by which Appellant could have established the imminence of the danger, her status as the non-aggressor, and the necessity of using deadly force.

To be sure, Dr. Brandt addressed several of those points in the course of her testimony as she opined, for example, that "when [Yancey, Sr.] put his hands on [Appellant's] neck, that's when she perceived that she was in physical danger and in serious danger of being harmed" and "she had to display a weapon to make him stop and that was part of their particular pattern of interacting[,] the cycle of violence that was familiar to her." Dr. Brandt was only permitted to testify as such, however, *precisely because* Appellant took the stand herself to put the necessary supporting facts in evidence. Had Appellant not testified, then her account of the parties' interactions preceding the stabbing, as relayed to and recounted by Dr. Brandt, would have constituted inadmissible hearsay.

> unreasonable." [*Porter*, 455 Md.] at 235, 166 A.3d 1044. *Next*, the defendant is required only to prove that "he actually believed the amount of forced used was necessary," and his belief doesn't have to be reasonable. *Id. Finally*, "a defendant must have only 'subjectively believe[d] that retreat was not safe'—that belief need not be reasonable." *Id.* (*quoting Burch v. State*, 346 Md. 253, 284, 696 A.2d 443 (1997)). Imperfect self-defense is not a complete defense against criminal charges, though—an imperfect defense negates the malice requirement and mitigates murder to voluntary manslaughter. *State v. Faulkner*, 301 Md. 482, 486, 483 A.2d 759 (1984).

Prince, 255 Md. App. at 658.

Md. Rule 5-801(c) ("'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."). Although, under Maryland Rule 5-703(b), expert witnesses are sometimes permitted to disclose inadmissible facts upon which their opinions are based—subject to balancing the probative value against the prejudicial effect of such testimony—our jurisprudence has previously rejected the type of bootstrapping which would have been necessitated by Appellant remaining silent at trial.[10] Without admissible facts in evidence to support Dr. Brandt's opinions, Dr. Brandt's testimony, standing alone, would have been limited to general observations regarding Battered Woman Syndrome and the effect that affliction *may* have had on Appellant.

Accordingly, we are satisfied that under the unique circumstances of this case, Appellant was, "as a practical matter[,]" all but guaranteed to have testified at trial. *Jordan*, 480 Md. at 514. We emphasize, though, that our conclusion stems from the fact that

[10] In *Hartless v. State*, the Supreme Court of Maryland held that the petitioner's expert was properly excluded from testifying as to the petitioner's state of mind because "the psychological testimony, standing alone, had little or no rational nexus to the issues of premeditation and intent" due to "the absence of an adequate evidentiary foundation." 327 Md. 558, 577 (1992). The Court reasoned that the petitioner "failed to produce admissible evidence of some facts that [the expert] wished to rely on in determining the [petitioner's] psychological background, and failed to produce evidence of particular facts relating to the occurrence of the criminal event, *i.e.*, the [petitioner's] version of what happened, that were essential, not only to the formation of the expert's opinion but to the relevance of that opinion to the issues in the case." *Id.* Thus, the Court explained that it would have been impermissible bootstrapping for the petitioner to "create an entire scenario of what took place at the time of the murder by evidence not admissible for any reason other than to explain an opinion which was based upon that scenario." *Id.* at 580-81. The Court therefore concluded that "[i]f the evidence is inadmissible for substantive purposes, it cannot be used to create the foundation of basic facts upon which the opinion necessarily turns." *Id.* at 581.

Appellant was the sole individual able to provide an explanation of what occurred inside the hospital room in the moments before the stabbing.

Further, on the second *Jordan* inquiry, we observe that, as in *Jordan*, Appellant's testimony likely had a positive effect on the jury considering that she was acquitted of first and second-degree murder. Indeed, the jury's guilty verdict with respect to manslaughter implicitly must have credited Appellant's claim of imperfect self-defense. *See Prince*, 255 Md. App. at 658 ("an imperfect defense negates the malice requirement and mitigates murder to voluntary manslaughter."). Although the jury presumably rejected Appellant's claim of perfect self-defense, as we have explained, it would have been nearly impossible for Appellant to establish the elements of that defense without taking the stand. Her decision to testify, then, left her in no worse a position and could not have ultimately contributed to the guilty verdict against her.

In sum, we hold that given the factual posture of this case the circuit court's error in refusing to ask Appellant's proposed voir dire question was harmless beyond a reasonable doubt and therefore affirm Appellant's conviction for manslaughter.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AS TO CONVICTION FOR WEARING OR CARRYING A DANGEROUS WEAPON OPENLY REVERSED. JUDGMENT AS TO CONVICTION FOR MANSLAUGHTER AFFIRMED. COSTS TO BE EVENLY SPLIT.