Circuit Court for Baltimore City
Case Nos.: 119113021 & 119113022

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

CONSOLIDATED

RONALD STEVENS

v.

STATE OF MARYLAND

No. 193, September Term, 2020

BRADY M. LATHAM

v.

STATE OF MARYLAND

No. 249, September Term, 2020

Graeff,
Arthur,
Wells,

JJ.

Opinion by Arthur, J.

Filed: August 30, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On the evening of February 24, 2019, an armed man, Kenny Truxon, entered the Baltimore City house where Ronald Stevens, Brady Latham, and others were living. A struggle ensued, and Mr. Truxon was beaten and stabbed to death. Mr. Stevens buried Mr. Truxon in a nearby wooded area and hid incriminating evidence. The next day, Mr. Stevens and Ms. Latham made statements to the Baltimore City Police Department about their involvement in Mr. Truxon's death.

After a joint trial in the Circuit Court for Baltimore City, the jury found Mr. Stevens and Ms. Latham guilty of voluntary manslaughter and openly wearing and carrying a dangerous weapon with the intent and purpose of injuring an individual in an unlawful manner. The jury also found Mr. Stevens guilty of the improper disposal of a body.

The circuit court sentenced Mr. Stevens to ten years' imprisonment for voluntary manslaughter, three years for wearing and carrying a dangerous weapon, and one year for the improper disposal of a body, all to be served concurrently. The court sentenced Ms. Latham to eight years for voluntary manslaughter and three years for wearing and carrying a dangerous weapon, to be served concurrently.

Mr. Stevens and Ms. Latham filed timely appeals and moved to consolidate the cases for consideration by the same panel. We granted the motion to consolidate. We shall affirm the convictions.

FACTUAL AND PROCEDURAL BACKGROUND

Brady Latham, Ronald Stevens, and others lived in a house on Whistler Avenue in Baltimore City with Ms. Latham's three children, aged six, seven, and 13, and at least two adult men.[1] On February 24, 2019, at approximately 9:30 p.m., Ms. Latham's daughters ran upstairs to tell her that an unidentified man with a gun had taken away their phone. Before Ms. Latham could ascertain what was happening, a man, whom she did not recognize, started up the stairs, startling her dog. The man fired his gun three times, striking Ms. Latham's dog and grazing Ms. Latham's neck. The dog ran down the stairs, towards the man. As the man turned towards the dog, Ms. Latham kicked the man, causing him to fall to the bottom of the stairs. She told her daughters to go into their room and then went downstairs after the man.

Mr. Stevens, who had been walking his dogs, entered the house and heard "a big bang" followed by "two more bangs afterwards." He started towards the stairs, where he saw the bloodied dog and a man holding a gun. The man pointed his gun at Mr. Stevens and asked "[w]here the money at?" Ms. Latham told Mr. Stevens that the man had shot her dog.

Mr. Stevens began fighting with the man and "wrestling over the gun." Mr. Stevens called on the two other men (Michael and "Money") to help, and they joined in the fight. In the struggle, Mr. Stevens was able to gain control of the intruder's arm so

[1] The two men were referred to only as "Michael" and "Money," or "Mike." One of the men, it is unclear which, may have been Mr. Stevens's uncle. Ms. Latham shared a room with Mr. Stevens's cousin.

that the gun was pointed at the intruder, but the intruder continued to hold the gun. As the men fought, Mr. Stevens reached into his pocket, pulled out his pocketknife, and began to stab the intruder with his knife.

Meanwhile, Ms. Latham went into the kitchen, grabbed a "big knife," and stabbed the intruder at least two or three times. The tip of the knife broke off into the intruder on the third stab.

Ms. Latham continued to "bang[] the man with anything that was available." Eventually, he went limp and let go of the gun.

After the intruder had been immobile for five to seven minutes, Mr. Stevens wrapped him in a quilt and put his body into a wheeled trash can. Mr. Stevens rolled the trash can to a wooded area across the street from the house. He dug a hole and buried the intruder approximately 60 feet into the wooded area.

Mr. Stevens then began to dispose of the items used during the fight. He buried the gun in the same wooded area; threw the trash can and quilt into the Patapsco River Extension; tossed his pocketknife out the window while driving down Hollins Ferry Road; and hid his bloodied clothes, including his jeans, coat, and thermal bottoms, in a sewer near his house. He put the big kitchen knife into a garbage bag and put the garbage bag in the trash can outside of the house. After he finished, he returned to the house and found that the house had been cleaned up.

While Mr. Stevens had been disposing of the body, Ms. Latham helped her children get ready to leave the house. After they left, Ms. Latham went upstairs to care

for the injured dog. At 11:00 p.m. or midnight, Ms. Latham went downstairs and found that the body was no longer in the house. She went back upstairs and, at approximately 2:30 a.m., left the house and went to her boyfriend's brother's home.

That same night, at 9:30 p.m., the Baltimore City Police had been dispatched to a trailer parked across the street from Mr. Stevens and Ms. Latham's house. When they arrived, they talked to Michael Finch, who had been living in the trailer. Mr. Finch told the police that he heard "a bunch of gunshots" and that he saw a man standing behind a truck parked up the road. The man pointed his gun towards the trailer when he saw Mr. Finch. Mr. Finch went back inside the trailer, closed the door, and told his children to get onto the floor. The police were on the scene for approximately 45 minutes, but did not enter the Whistler Avenue house and were not contacted by anyone inside the house.

The next day, February 25, 2019, the attorneys for Ms. Latham and Mr. Stevens arranged for them to give statements to the Baltimore City Police. Ms. Latham and Mr. Stevens arrived at police headquarters and were interviewed by two detectives. In their recorded interviews, Ms. Latham and Mr. Stevens recounted the events described above. While giving his statement, Mr. Stevens told the police that he "is known for selling marijuana and speed pills," but that he "only sells drugs to people he knows."

On February 26, 2019, a police technician located the body of the victim, identified as Kenny Truxon, in the wooded area off Whistler Avenue.[2] After the body

[2] Mr. Truxon's name is spelled as both "Truxon" and "Truxton" in the briefs and in the record. "Truxon" appears to be the correct spelling.

was recovered from the gravesite, the medical examiners performed an autopsy and found that Mr. Truxon had suffered 70 sharp-force injuries, including 43 stab wounds and 27 cutting wounds, as well as 20 to 25 blunt-force injuries. One of the stab wounds (probably one of the wounds inflicted by Ms. Latham) had "transected" (cut across) Mr. Truxon's aorta and inferior vena cava, the large blood vessels that transport blood to and from the lower part of the body. The medical examiner concluded that the cause of death was sharp- and blunt-force injury. The medical examiner found that Mr. Truxon had suffered from petechial hemorrhage in the facial area, or a rupture of small blood vessels caused by asphyxiation. She testified that the petechial hemorrhage could have been caused by strangulation, but that a CT scan indicated that Mr. Truxon had sediment in his airway. The medical examiner explained that the sediment in the airway indicated that Mr. Truxon "may have inhaled some sediments when he was being buried . . . meaning that he may have been alive when he was buried."

Mr. Stevens and Ms. Latham were indicted for first-degree murder under Md. Code (2002, 2012 Repl. Vol.), § 2-201 of the Criminal Law Article ("Crim. Law") and openly wearing and carrying a dangerous weapon with the intent to injure an individual under Crim. Law § 4-101. Mr. Stevens was also indicted for the improper disposal of a body in violation of Md. Code (1982, 2019 Repl. Vol.), § 5-514 of the Health General Article ("HG").

A joint jury trial was held in the Circuit Court for Baltimore City in December 2019. At trial, Ms. Latham and Mr. Stevens claimed to have acted in self-defense.

The court granted Ms. Latham's and Mr. Stevens's motion for judgment of acquittal as to the first-degree murder charge. The court denied the motions for judgment of acquittal as to the other charges, including voluntary manslaughter. The jury found Mr. Stevens and Ms. Latham guilty of voluntary manslaughter and openly wearing, carrying, or transporting a dangerous weapon with intent to injure another. The jury also found Mr. Stevens guilty of the improper disposal of a body.

QUESTIONS PRESENTED

Mr. Stevens and Ms. Latham filed this timely appeal. They present the following questions, which we have reordered:

1. Did the trial court err in failing to modify the pattern jury instruction on openly carrying a dangerous weapon with intent to injure?

2. Did the trial court err by propounding a jury instruction on flight or concealment by defendant?

3. Did the trial court err by restricting cross-examination?

Mr. Stevens asks:[3]

4. Did the trial court abuse its discretion by admitting into evidence medical opinions that the expert did not hold to a reasonable degree of medical certainty?

Finally, Mr. Stevens and Ms. Latham both ask:

5. Was the evidence insufficient to sustain the convictions?

[3] Mr. Stevens incorporated Ms. Latham's arguments into his own appellate brief by reference under Maryland Rule 8-503(f).

As we perceive no prejudicial error or abuse of discretion in the circuit court's rulings, we shall affirm the judgments.

DISCUSSION

I. Jury Instructions

Mr. Stevens and Ms. Latham argue that the circuit court committed legal error in denying their request to amend the pattern jury instructions for openly carrying a dangerous weapon with intent to injure and in delivering jury instructions on flight.

Under Md. Rule 4-325(c), the court, upon a party's request, "shall[] instruct the jury as to the applicable law." In general, a court must give a requested instruction if "(1) the instruction is a correct statement of law; (2) the instruction is applicable to the facts of the case; and (3) the content of the instruction was not fairly covered elsewhere in instructions actually given." *Dickey v. State*, 404 Md. 187, 197-98 (2008); *accord Wood v. State*, 436 Md. 276, 293 (2013); *Bazzle v. State*, 426 Md. 541, 549 (2012). "However, instructions as to facts and factual inferences," such as the inferences that might be drawn from a defendant's flight, "are normally not required." *Harris v. State*, 458 Md. 370, 405 (2018).

We typically review a trial court's decision to give a jury instruction for an abuse of discretion, but "'we review without deference . . . whether the jury instruction was a correct statement of the law.'" *Carter v. State*, 236 Md. App. 456, 475 (2018) (quoting *Seley-Radtke v. Hosmane*, 450 Md. 468, 482 (2016)).

A. Openly Carrying a Dangerous Weapon with Intent to Injure

Mr. Stevens and Ms. Latham argue that the circuit court erred in delivering a jury instruction on openly carrying a dangerous weapon with the intent to injure because the instruction incorrectly stated the law.

At trial, the circuit court instructed the jury as follows:

> The Defendants are charged with the crime of carrying a dangerous weapon openly with the intent to injure another person.
>
> You have heard and seen that the object alleged to be dangerous is a knife. In order to convict either Defendant, the State must prove, one, that either Defendant wore or carried a knife; two, that the knife was carried openly with the intent to injure another person; and, three, that the knife was a dangerous weapon under the circumstances.

The instruction was identical to the pattern jury instruction for openly carrying a dangerous weapon under MJPI-Cr 4:35.

Mr. Stevens and Ms. Latham requested that the court revise the instruction to match the statutory language of Crim. Law § 4-101(c)(2): "[a] person may not wear or carry a dangerous weapon . . . openly with the intent or purpose of injuring an individual **in an unlawful manner**." (Emphasis added.) Defense counsel argued that the pattern instruction, which omitted the "unlawful manner" language, did not adequately inform the jury that a dangerous weapon could be carried in a lawful manner, such as in self-defense. Thus, defense counsel requested that the court add the "exact language, with the intent or purpose [to injure] an individual in an unlawful manner."

The circuit court denied the request. Instead, the circuit court informed defense counsel that they could "argue the law, supplementing what the parties believe may be necessary," during closing arguments.

On appeal, Mr. Stevens and Ms. Latham argue that the circuit court erred in denying their request to modify the pattern jury instruction because the instruction, as delivered, implied that a dangerous weapon could not be carried for a lawful purpose. Mr. Stevens and Ms. Latham contend that, had the court modified the pattern instruction to include the statutory language, the jury would have considered whether they wore or carried "a dangerous weapon for a lawful purpose—to defend [themselves]—not simply whether [they] possessed the weapon with the intent to injure another." They argue that the jury instruction "undermined [their] claim of perfect self-defense." Therefore, they contend, the circuit court committed reversible error.

The State responds that the circuit court did not err, because, it says, the jury instruction was "an accurate statement of law." The State contends that the court's instruction, "viewed as a whole," adequately informed the jury that Mr. Stevens and Ms. Latham could not be found guilty of openly carrying a dangerous weapon if they acted in self-defense. The State also contends that the jury's finding of voluntary manslaughter "render[ed] any error" caused by the instruction "harmless." In addition, the State contends that the circuit court subsequently "cured" any harm by permitting defense counsel to clarify the language of the statute and by giving supplemental instructions that incorporated the statutory language during jury deliberations.

We shall assume, solely for the sake of argument, that a jury might interpret MJPI-Cr 4:35 to mean that a person is prohibited from carrying a dangerous weapon even for a lawful purpose, such as self-defense. Therefore, we shall assume, solely for the sake of argument, that the circuit court erred in denying the request to modify the instruction to include a reference to the statutory requirement that the weapon be carried for an "unlawful purpose."

The putative error, however, does not entitle Mr. Stevens and Ms. Latham to the automatic reversal of their convictions. Rather, we would reverse the convictions only if we could not say that the instructional error was harmless beyond a reasonable doubt. *See*, *e.g.*, *Hall v. State*, 437 Md. 534, 540-41 (2014); *see also Lindsey v. State*, 235 Md. App. 299, 331 (2018) ("'[t]he burden is on the complaining party to show both prejudice and error[]'") (quoting *Tharp v. State*, 129 Md. App. 319, 329 (1999), *aff'd*, 362 Md. 77 (2000)); *accord Carter v. State*, 236 Md. App. at 475. "In order for the error to be harmless, we must be convinced, beyond a reasonable doubt, that the error in no way influenced the verdict." *Weitzel v. State*, 384 Md. 451, 461 (2004). In the circumstances of this case, we are convinced, beyond a reasonable doubt, that the error, if any, was harmless.

During jury deliberations, the jury sent a note, asking: "[Latham's attorney] read from Maryland Statute in his closing that indicated that a weapon may be carried with intent to injure if that intent to injure is lawful. However, this does not appear in our jury instructions. May we consider this in our deliberations?" The circuit court responded:

"The presence, if any, of complete or partial self-defense is something that should be considered by you in determining whether the intent to injure was lawful or unlawful."

The jury's question, and the circuit court judge's clarification, demonstrate that the jury heeded defense counsel's explanation of Crim. Law § 4-101(c)(2) and applied the accurate legal standard in its deliberations. As the supplemental instruction cured any potential confusion caused by the instruction, we conclude that the circuit court's error, if any, in its jury instruction was harmless beyond a reasonable doubt.[4]

B. Flight or Concealment of Defendant

At trial, the State asked the circuit court to instruct the jury that it could infer that Mr. Stevens and Ms. Latham were conscious of their guilt in Mr. Truxon's death because they had fled the house after the killing. Defense counsel objected to the instruction, arguing that the parties had not fled, but instead had simply gone to a relative's home after their home had been "invaded." Defense counsel thus contended that their departure did not "generate[] enough evidence of flight[.]"

The State disagreed, arguing that the evidence showed that Mr. Stevens and Ms. Latham had "removed themselves from the scene" instead of seeking help. The State further argued that Mr. Stevens and Ms. Latham "went out of their way to make sure they

[4] The error, if any, is also harmless in light of the jury's finding that Mr. Stevens and Ms. Latham were guilty of voluntary manslaughter because they had not acted in perfect self-defense. The jury's rejection of perfect self-defense necessarily implies that Mr. Stevens and Ms. Latham had openly worn or carried their weapons in an unlawful manner.

did not let police know what was going on" and had fled only "after cleaning up the home and burying the body."

The court, concluding that the evidence indicated the departure from the scene had occurred "far after the imminent threat had occurred," gave the pattern instruction on flight in MPJI-Cr 3:24:

> Flight or Concealment of Defendants. A person's flight immediately after the commission of a crime, or after having been accused of committing a crime, is not enough, by itself to establish guilt, but it is a fact that may be considered by you as evidence of guilt.
>
> Flight under these circumstances may be motivated by a variety of factors, some of which are fully consistent with innocence. You must first decide whether there is evidence of flight. If you decide there is evidence of flight, you then must decide whether this flight shows a consciousness of guilt.

On appeal, Mr. Stevens and Ms. Latham argue that the circuit court erred in delivering the instruction on flight because "there was no evidence of 'flight'" from the scene; rather, they argue, both of their departures were "unexceptional."

Before delivering a jury instruction on flight, a trial court must first conclude that four inferences can be reasonably drawn from the facts of the case: "'(1) from the defendant's behavior to flight; (2) from flight to consciousness of guilt; (3) from consciousness of guilt to consciousness of guilt concerning the crime charged; and (4) from consciousness of guilt concerning the crime charged to actual guilt of the crime charged.'" *Thompson v. State*, 393 Md. 291, 312 (2006) (quoting *United States v. Myers*, 550 F.2d 1036, 1049 (5th Cir. 1977)); *accord Hoerauf v. State*, 178 Md. App. 292, 321-22 (2008). Under a flight instruction, "an accused's flight, escape from custody,

resistance to arrest, concealment, assumption of a false name, and related conduct, are admissible as evidence of consciousness of guilt, and thus of guilt itself[.]" *Hoerauf v. State*, 178 Md. App. at 323 (citing 2 WIGMORE, EVIDENCE § 276 (Supp. 2007)).

The facts can be said to support the inferences, so that the court has the discretion to give the instruction, "'if the evidence is sufficient to permit a jury to find [their] factual predicate[s].'" *Page v. State*, 222 Md. App. 648, 668 (2015) (quoting *Bazzle v. State*, 426 Md. at 550). "This threshold is low, in that the requesting party must only produce 'some evidence' to support the requested instruction." *Id.* (citing *Bazzle v. State*, 426 Md. at 551).

"'The threshold determination of whether the evidence is sufficient to generate the desired instruction is a question of law for the judge.'" *Bazzle v. State*, 426 Md. at 550 (quoting *Dishman v. State*, 392 Md. 279, 292 (1998)). In deciding whether there was "some evidence" to support the instruction, "we view the facts in the light most favorable to the requesting party, here being the State." *Page v. State*, 222 Md. App. at 668-69.

A court may not give a flight instruction in the absence of evidence that the defendant's movement is more than just simple human locomotion. *Hoerauf v. State*, 178 Md. App. at 323 (citing 22 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 5181 (1978 & Supp. 2007)). This evidence must "reasonably justify an inference that [the flight] was done with a consciousness of guilt and pursuant to an effort to avoid apprehension or prosecution based on that guilt." *Hoerauf v. State*, 178 Md. App. at 323-24. A flight instruction is therefore *not* warranted when there are no

"attendant circumstances that reasonably justify an inference that the leaving was done with a consciousness of guilt and pursuant to an effort to avoid apprehension or prosecution based on that guilt[.]" *Id.* at 325-26. *See Page v. State*, 222 Md. App. at 669 ("there is a distinction between mere departure from the crime scene and actual flight").

Here, Mr. Stevens and Ms. Latham rely primarily on *Hoerauf v. State* in arguing that their departure lacked the "attendant circumstances" necessary for the court to have reasonably inferred that they fled in an effort to avoid apprehension or prosecution. In *Hoerauf*, a group of young men, including the defendant, approached another group of young men. *Hoerauf v. State*, 178 Md. App. at 297-98. Some members of the first group, but not the defendant, assaulted and robbed the other group. *Id.* at 297-99. After the assault, the attackers walked away, but the defendant remained behind to tell the victims that he would try to get their personal items back. *Id.* As the defendant walked away, he was stopped by the police and arrested. *Id.* On appeal, this Court held that a flight instruction was not warranted, because the defendant had "simply walked away from the scene" before the police arrived. *Id.* at 326. Thus, there were "no circumstances attendant to appellant's departure from the scene of the crime that would reasonably justify the inference of a consciousness of guilt." *Id.*

Mr. Stevens and Ms. Latham claim that they, like the defendant in *Hoerauf*, simply left the scene of the crime in a manner that did not justify an inference of a consciousness of guilt. They contend that they waited to leave until they knew that it was

safe to do so, as the house had been "invaded" and armed men might have remained outside. Thus, they argue, the flight instruction was not warranted.

Unlike the *Hoerauf* Court, we conclude that there were a number of circumstances attendant to Mr. Stevens's and Ms. Latham's departure from the scene of the stabbing from which the trial court could reasonably infer that they departed with a consciousness of guilt. Whereas in *Hoerauf* this Court determined that the defendant had "simply walked away," here Mr. Stevens and Ms. Latham waited to depart from their house until all evidence of the homicide had been hidden. Mr. Stevens admitted that before leaving the house he went to great lengths to conceal evidence, including burying Mr. Truxon, burying Mr. Truxon's gun, throwing one knife from the car, hiding the other knife in a trash can, and hiding his bloodied clothing in a storm drain. Mr. Stevens returned to the scene of the stabbing to find the house had been cleaned in his absence. Finding that no evidence of the stabbing remained, Mr. Stevens left the scene.

Ms. Latham, too, waited to leave the house until late at night. Although Ms. Latham claims that she spontaneously decided to leave when she awoke in the middle of the night, the evidence suggests that she waited until the house had been cleaned up, the body had been buried, and other evidence had been hidden. By that time, the police who had been investigating the trailer shooting had left, and Ms. Latham's children had been picked up by their uncle. On these facts, the trial court could reasonably infer that Ms. Latham delayed her departure until the risk of apprehension or prosecution had diminished.

The present case is considerably more analogous to *Hallowell v. State*, 235 Md. App. 484, 512 (2018), than it is to *Hoerauf*. *In Hallowell*, the defendant drove to a nearby fire station after a shooting and informed the firefighters that "somebody" needed help. *Id.* Rather than direct the firefighters to his car, in which the shooting victim lay, the defendant refused to identify himself and then ran away, leaving the victim. *Id.* This Court determined that "the circumstances 'reasonably justif[ied] an inference' that appellant left the scene 'with a consciousness of guilt and pursuant to an effort to avoid apprehension or prosecution based on that guilt.'" *Id*. (quoting *Hoerauf v. State*, 178 Md. App. at 325). Therefore, this Court held that the circuit court did not abuse its discretion in giving a flight instruction. *Id.*

As in *Hallowell v. State*, Mr. Stevens and Ms. Latham fled the scene instead of seeking help from the police officers who had responded to the shooting at the trailer outside of their home. Instead of requesting medical attention for Mr. Truxon from the nearby officers, Mr. Stevens and Ms. Latham hid his body and the evidence and then left the house. As in *Hallowell*, Mr. Stevens and Ms. Latham did not attempt to see whether Mr. Truxon would survive his injuries after the stabbing. Instead, Mr. Stevens buried the body and hid the other incriminating evidence. Both parties then fled and waited to inform the police of the incident until the afternoon of the following day.

Mr. Stevens and Ms. Latham argue that they delayed their departure not because of the need to hide the evidence but because of their fear after their home had been "invaded." However, neither Mr. Stevens nor Ms. Latham called the police for help in

the hours after the shooting. Nor did either appellant contact the police officers who were investigating the shooting outside of Michael Finch's trailer. Instead, both parties waited to leave the house until the police had left and the house had been cleaned of any evidence of the stabbing. As there were attendant circumstances that reasonably justified an inference that Mr. Stevens and Ms. Latham fled with a consciousness of guilt and while attempting to avoid apprehension, the trial court did not abuse its discretion in delivering a jury instruction on flight.

II. Limiting Scope of Defense's Cross-Examination

Mr. Stevens and Ms. Latham argue that the circuit court erred in limiting their cross-examination of Detective Michael Vodarick, a detective with the Baltimore City Police Department. In essence, they complain that the court prohibited them from establishing that Mr. Truxon's family members, and not Ms. Latham, had created a Facebook page that had information about the incident that is the subject of this case.[5]

Several months after Mr. Truxon was killed, Detective Vodarick interviewed Ms. Latham to determine, among other things, whether she had created a Facebook page under the name "Brand Love." The detective appears to have believed that Ms. Latham created the page because the posts had specific information about the incident on February 24, 2019. Ms. Latham denied that she currently had such an account. She

[5] What the Facebook page says is something of a mystery. The page does not appear to be in the record: the circuit court ruled that it was inadmissible because it could not be authenticated, and no one seems to have even marked it for identification. As best as we can tell, the page may have contained some information that members of the general public would probably not know.

asserted that her Facebook account was under the name "Moody Brand" or "Moody Brandy."

The State moved in limine to exclude the introduction of the actual Facebook posts themselves. In connection with that motion, the State represented that its investigators could not identify the internet protocol ("IP") address where the "Brand Love" account had been created, because the internet service provider ("ISP") had destroyed the records under its retention policy before the State had requested them. The investigators had, however, obtained information from the ISP showing that three of the four posts had been made at the home address of Laura Shears, a social worker who had been working with several members of Mr. Truxon's family. Ms. Shears reportedly denied that she had created the Facebook page, but said that her clients, including members of the Truxon family, had access to her internet connection. In addition, Ms. Shears reportedly said that she had learned of the Facebook page from a Truxon family member, but that she had not personally seen any family member creating the account or posting to the page.

The court recognized that the posts could not be authenticated and thus would not be admitted. Counsel for Mr. Stevens responded that she did not actually intend to introduce the Facebook posts, but only wanted to suggest that the police had not adequately investigated them.

At trial, the State played a recording of the interview between Detective Vodarick and Ms. Latham that occurred a few weeks after the homicide. It appears that the State

may have wanted to redact the portions of the interview that concerned the Facebook page, but the defense insisted that the jury should hear the portion in which the detective asked about the Brand Love Facebook page and insinuated that Ms. Latham created it. The court excluded any reference to the contents of the Facebook page itself, but required the State to play the portions concerning the existence of the page and whether Ms. Latham had a hand in creating it.

During their cross-examination of Detective Vodarick, defense counsel attempted to elicit testimony that linked the Facebook page to Mr. Truxon's family. The detective acknowledged that he had requested information about the account from ISPs and had learned that the information was no longer available. The detective also acknowledged that, based on his investigation, none of the posts were linked to Mr. Stevens or Ms. Latham. The circuit court restricted defense counsel from questioning Detective Vodarick about a potential connection between the Facebook page and Mr. Truxon's family.

On appeal, Mr. Stevens and Ms. Latham argue that, by limiting their cross-examination of Detective Vodarick, the trial court "deprived the defense of the full and fair opportunity to fully confront [their] accusers and to place the evidence in its proper context." They contend that because cross-examination was limited to showing that the IP address for the "Brand Love" account had not been linked to Ms. Latham, "a juror may have believed that the police simply had not been able to connect the address" to Ms. Latham or Mr. Stevens. Thus, Mr. Stevens and Ms. Latham argue, the court

deprived them of the opportunity to connect the account to the victim's family and to "rehabilitate[]" Ms. Latham's "credibility."

The State argues that the circuit court properly exercised its discretion in limiting the scope of the defendants' cross-examination of Detective Vodarick. The State contends that no evidence directly linked Mr. Truxon's family to the Facebook page or posts and that the statements attributed to Ms. Shears would have been inadmissible hearsay. The State further contends that evidence that the Facebook page or posts were created by Mr. Truxon's family was irrelevant to the issue of self-defense. Finally, the State contends that the court did not abuse its discretion because the court permitted defense counsel to elicit testimony from Detective Vodarick confirming that neither Mr. Stevens nor Ms. Latham were connected to the Facebook page. Thus, the State argues, Ms. Latham's denial during the interrogation and Detective Vodarick's confirmation during cross-examination "unambiguously communicated to the jury that Latham and Stevens were not responsible for the account or the posts."

The Confrontation Clause of the both the federal and State constitutions "guarantees" defendants "in a criminal proceeding the right 'to be confronted with the witnesses against [them].'" *Marshall v. State*, 346 Md. 186, 192 (1997) (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 678 (1986)); *accord Stanley v. State*, 248 Md. App. 539, 550-51 (2020). The right of confrontation includes a criminal defendant's right to "cross-examine witnesses about matters relating to their biases, interests, or motives to testify falsely.'" *Peterson v. State*, 444 Md. 105, 122 (2015) (quoting

Martinez v. State, 416 Md. 418, 428 (2010)); *accord Stanley v. State*, 248 Md. App. at 551. To comply with the Confrontation Clause, "a trial court must allow a defendant a 'threshold level of inquiry' that 'expose[s] to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witnesses.'" *Peterson v. State*, 444 Md. at 122 (quoting *Martinez v. State*, 416 Md. at 428); *accord Stanley v. State*, 248 Md. App. at 552.

Once the "constitutional threshold is met," though, the trial court "may limit the scope of cross-examination 'when necessary for witness safety or to prevent harassment, prejudice, confusion of the issues, and inquiry that is repetitive or only marginally relevant.'" *Peterson v. State*, 444 Md. at 122-23 (quoting *Martinez v. State*, 416 Md. at 428). *See* Md. Rule 5-611(a) ("[t]he court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment"). The trial court has discretion to limit cross-examination "to the subject matter of the direct examination and matters affecting the credibility of the witness." Md. Rule 5-611(b). "Therefore, although the defendant has 'wide latitude . . . the questioning must not be allowed to stray into collateral matters which would obscure the trial issues and lead to the factfinder's confusion." *Peterson v. State*, 444 Md. at 123 (quoting *Smallwood v. State*, 320 Md. 300, 307-08 (1990)); *accord Stanley v. State*, 248 Md. App. at 552.

As the trial court has discretion to make "a variety of judgment calls under Maryland Rule 5-611 as to whether particular questions are repetitive, probative, harassing, confusing, or the like[,]" decisions made by the court in "controlling the course of examination of a witness" are reviewed for abuse of discretion. *Peterson v. State*, 444 Md. at 124. To determine whether the trial court abused its discretion in limiting cross-examination, this Court considers "'whether the jury was already in possession of sufficient information to make a discriminating appraisal of the particular witness's possible motives for testifying falsely in favor of the government.'" *Marshall v. State*, 346 Md. at 194 (quoting *United States v. Christian*, 786 F.2d 203, 213 (6th Cir. 1986)).

Here, Mr. Stevens and Ms. Latham contend that the court deprived them of their right to cross-examination by preventing them from asking Detective Vodarick whether the Facebook page or posts had been linked to Mr. Truxon's family. We disagree. In their cross-examination of Detective Vodarick, Mr. Stevens and Ms. Latham succeeded in establishing that Ms. Latham had denied responsibility for the Facebook page and posts, that the detectives had been unable to connect the IP addresses for the page or posts to Ms. Latham or Mr. Stevens, and that the IP address for the account creator was no longer available. In the absence of any evidence that Ms. Latham or Mr. Stevens were responsible for the Facebook page or posts, the court did not abuse its discretion in concluding that any further questioning would have been "repetitive, [un]probative, harassing, [and] confusing." *Peterson v. State*, 444 Md. at 124.

Mr. Stevens and Ms. Latham argue that they should have been permitted to "place the evidence in proper context" by connecting the Facebook page or posts to Mr. Truxon's family. They argue that the State "made the source of the account relevant" when the State informed the jury that Ms. Latham had been accused of creating the Facebook page.[6] However, as the State contends, "[t]he identity of the person who created or posted to the Facebook page . . . was irrelevant as it did not tend to make it more or less probable that, as Detective Vodarick testified, Stevens and Latham were not connected to the Facebook page." The circuit court had permitted defense counsel to elicit testimony from Detective Vodarick that no ISP had connected the Facebook page to Mr. Stevens or Ms. Latham. It is hard to see how it would benefit the defense to establish definitively that Ms. Latham was not responsible for a Facebook page whose unidentified contents were not admitted or even admissible. The court did not abuse its discretion in concluding that the cross-examination was sufficient to address the defendants' alleged concerns.

Finally, Mr. Stevens and Ms. Latham could not have placed the evidence in "proper context" by connecting the Facebook page and posts to Mr. Truxon's family, because the Facebook page had never been linked to Mr. Truxon's family by admissible evidence. Indeed, defense counsel acknowledged that no one knows who created the

[6] Of course, the State had attempted to redact the portion of the interview in which the detective insinuated that Ms. Latham had created the Brand Love page, but the defendants objected to the redaction. The jury heard that evidence over the State's objection.

Facebook page. It appears that the page had been linked to Mr. Truxon's family only through the hearsay statements of Ms. Shears, the family's social worker. Ms. Latham and Mr. Stevens do not endeavor to explain how those hearsay statements would possibly have been admissible. It would have been futile to allow defense counsel to attempt to establish a putative link that was supported only by inadmissible hearsay.

Therefore, the circuit court did not abuse its discretion in limiting the scope of defense counsel's cross-examination of Detective Vodarick.

III. Medical Examiner's Expert Opinion Testimony

Mr. Stevens argues that the circuit court abused its discretion in admitting testimony from an expert witness who did not express an opinion to a reasonable degree of medical certainty.

At trial, the State called Dr. Diana Nointin, an Assistant Medical Examiner with the State's Medical Examiner's Office, to testify as an expert in the field of forensic pathology. Dr. Nointin testified that she had found, to a reasonable degree of medical certainty, that Mr. Truxon's death was caused by "sharp and blunt force injury, and the manner of death is homicide."

The State asked Dr. Nointin to "describe the injuries" that corresponded with images presented by the State. Dr. Nointin testified that a CT scan conducted during the autopsy of Mr. Truxon showed "sediment" in Mr. Truxon's airway. Dr. Nointin testified that "this may indicate that [Mr. Truxon] may have inhaled air, meaning that he may have been alive when he was buried." Defense counsel did not object to that statement.

On cross-examination, Dr. Nointin acknowledged that she could not opine to a reasonable degree of medical certainty that asphyxiation had occurred. She also acknowledged that sediment could have gotten into Mr. Truxon's airway by means other than if he were buried alive, though she regarded it as unlikely. Finally, she acknowledged that the cause of Mr. Truxon's death was sharp- and blunt-force injuries.

On re-direct examination, the State asked Dr. Nointin to clarify her "expert opinion" "as to what debris in [Mr. Truxon's] airway indicated." Defense counsel objected, arguing that Dr. Nointin "couldn't render an opinion . . . within a reasonable degree of medical certainty." The circuit court overruled the objection, but ruled that Dr. Nointin could testify as to what the debris suggested only "with regard to the injuries sustained." The circuit court clarified that Dr. Nointin would not be permitted to offer an opinion "to a reasonable degree of medical certainty" about whether Mr. Truxon was alive or dead when he was buried.

The State proceeded to ask Dr. Nointin what the sediment in Mr. Truxon's airway "indicat[ed]" to her as an expert. Dr. Nointin again testified that the sediment "suggests that Mr. Truxon was alive when he was buried." In response to further questioning by the State, Dr. Nointin added that she could not say to a reasonable degree of medical certainty whether Mr. Truxon was alive or dead when he was buried.

On appeal, Mr. Stevens argues that the circuit court abused its discretion in admitting Dr. Nointin's testimony because, he says, "the jury was told by a specialized medical expert that Stevens buried Truxon alive."

A. Preservation of Issue

As a threshold matter, the State argues that Mr. Stevens failed to preserve this issue for appeal. The State points out that Mr. Stevens did not raise his objection until re-direct examination.

Mr. Stevens responds that he preserved this issue for appeal by first raising his objection in a motion in limine, which the trial court denied, and by raising his objection again during the re-direct examination of Dr. Nointin. In his pretrial motion, Mr. Stevens had sought to preclude Dr. Nointin from "disclosing her opinion that there may have been soil in Truxon's airway that suggested that he was buried alive."

Under Maryland Rule 4-323(a), "an objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent." "Otherwise, the objection is waived." *Id.* A motion in limine does not preserve an objection to the admission of evidence. Rather, "when a motion *in limine* to exclude evidence is denied, the issue of admissibility of the evidence that was the subject of the motion is not preserved for appellate review unless a contemporaneous objection is made at the time the evidence is later introduced at trial." *Klauenberg v. State*, 355 Md. 528, 539 (1999). *See Reed v. State*, 353 Md. 628, 642-43 (1999).

"Witness testimony is no exception to this broad-reaching rule." *Wise v. State*, 243 Md. App. 257, 275 (2019). Thus, when a court denies a party's motion in limine to

exclude testimony, the party can preserve an objection to the admission of the testimony only by objecting again when the testimony is admitted at trial.

Here, Mr. Stevens failed to preserve his objection to Dr. Nointin's testimony about the autopsy report during the State's direct examination. Mr. Stevens failed to object when the State first asked Dr. Nointin to describe her findings in the CT scan. Mr. Stevens's pre-trial motion did not preserve his objection to Dr. Nointin's explanation that sediment had been observed in Mr. Truxon's airway, nor did Mr. Stevens's subsequent objection during the State's re-direct examination of Dr. Nointin. For the objection to be timely, Mr. Stevens had to make it known "at the time the evidence [was] offered or as soon thereafter as the grounds for objection [became] apparent." Md. Rule 4-323(a). Mr. Stevens failed to object at any point during the State's direct examination of Dr. Nointin when Dr. Nointin testified as to the evidence of sediment in Mr. Truxon's airway. Thus, Mr. Stevens waived his objection to that testimony.

However, Mr. Stevens adequately preserved his objection to Dr. Nointin's testimony during re-direct examination. On re-direct, the State asked Dr. Nointin to state her "expert opinion" "as to what the debris in [Mr. Truxon's] airway indicated." This question differed from the questions posed during direct examination, in which the State had asked Dr. Nointin to "describe . . . what we're looking at" in regard to the CT imaging of Mr. Truxon's brain, skull, throat, and spine. As Dr. Nointin had not expressed an "expert opinion" as to the significance of the debris in Mr. Truxon's airway

during direct examination, Mr. Stevens made a timely objection to the potential introduction of a new expert opinion.

Therefore, we shall consider Mr. Stevens's objection to the circuit court's admission of Dr. Nointin's testimony during the State's redirect examination.

B. Dr. Nointin did not express an expert opinion subject to the "reasonable degree of medical certainty" standard.

Mr. Stevens argues that the circuit court abused its discretion in permitting Dr. Nointin to offer an expert medical opinion that Mr. Truxon was buried alive, because Dr. Nointin did not express her opinion to a reasonable degree of medical certainty.

The admissibility of expert testimony "is within the sound discretion of the trial court." *Sippio v. State*, 350 Md. 633, 648 (1998). Under Maryland Rule 5-702, expert testimony is admissible, "in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue." When expert opinion testimony is used to prove the cause or manner of death, the opinion typically must be "established within a reasonable degree of probability." *American Radiology Services, LLC v. Reiss*, 241 Md. App. 316, 334 (2019) (citing *Karl v. Davis*, 100 Md. App. 42, 51-52 (1994)), *aff'd*, 470 Md. 555 (2020). *See, e.g.*, *Sissoko v. State*, 236 Md. App. 676, 714-15 (2018) (explaining that the trial court must determine whether an expert witness's opinion is based on a reasonable degree of medical certainty); *Hricko v. State*, 134 Md. App. 218, 271 (2000) (explaining that, for a medical expert witness to "give [an] opinion as to both the manner of death and the cause of death . . . 'there must be a legally sufficient factual basis to support the expert's

testimony'") (quoting *Sippio v. State*, 350 Md. at 649); *Mayor & City Council of Baltimore v. Theiss*, 354 Md. 234, 261-62 (1999) (Rodowsky, J., concurring) ("where expert opinion testimony is used to establish, for example, proof of causation or damages, such evidence must be sufficiently probable and not be based on speculation or conjecture").

Here, we need not consider whether Dr. Nointin's statement regarding the sediment in Mr. Truxon's airway was "established with a reasonable degree of probability" because the statement was not an expert opinion intended to prove the manner or cause of death. Dr. Nointin testified that Mr. Truxon died of sharp- and blunt-force injuries. She repeated that testimony on cross-examination. At no point during re-direct examination did Dr. Nointin allude to the sediment in Mr. Truxon's airway as a possible alternative cause of death. Additionally, during re-direct examination, Dr. Nointin clarified that she could not say within a reasonable degree of medical certainty whether Mr. Truxon was alive *or* dead when he was buried. Despite Mr. Stevens's claim, the circuit court did not permit the introduction of an expert opinion that was expressed with less than a reasonable degree of medical certainty.

Therefore, we conclude that the circuit court did not abuse its discretion by admitting Dr. Nointin's testimony.

IV. Sufficiency of the Evidence

Mr. Stevens and Ms. Latham argue that the circuit court erred by failing to grant their motion for judgment of acquittal on the charges of voluntary manslaughter. Ms.

Latham and Mr. Stevens also argue that there was insufficient evidence to support their convictions for openly wearing or carrying a dangerous weapon with the intent to injure. Mr. Stevens argues there was insufficient evidence to support his conviction for improper disposal of a body. The State responds that there was sufficient evidence to support all of the convictions.

In assessing the sufficiency of the evidence, this Court considers "'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Steward v. State*, 218 Md. App. 550, 558 (2014) (emphasis in original) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The question on review is not "'whether the evidence *should have* or *probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.'" *Breakfield v. State*, 195 Md. App. 377, 392-93 (2010) (quoting *Fraidin v. State*, 85 Md. App. 231, 241 (1991)) (emphasis in original).

This Court does not "undertake a review of the record that would amount to, in essence, a retrial of the case." *State v. Albrecht*, 336 Md. 475, 478 (1994). Instead, we defer to the factfinder's "'unique opportunity'" to "'view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses[.]'" *Jones v. State*, 213 Md. App. 483, 505 (2013) (quoting *Bordley v. State*, 205 Md. App. 692, 717 (2012)). Thus, we shall affirm a conviction if the conviction was supported by evidence that showed "directly, or circumstantially, or supported a rational inference of facts which

could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt." *State v. Albrecht*, 336 Md. at 479; *accord Steward v. State*, 218 Md. App. at 559.). At the same time, we "independently assess the evidence presented . . . to determine, *de novo*, whether it was legally sufficient to sustain appellant's convictions." *Steward v. State*, 218 Md. App. at 559.

A. Voluntary Manslaughter

1. Preservation of Issue

The State argues that Mr. Stevens and Ms. Latham did not preserve their challenge to the sufficiency of the evidence to support their convictions for voluntary manslaughter. The State contends that Mr. Stevens and Ms. Latham properly moved for judgment of acquittal for first-degree and second-degree murder, but not for voluntary manslaughter.

"'[A]ppellate review of the sufficiency of the evidence in a criminal case tried by a jury is predicated on the refusal of the trial court to grant a motion for judgment of acquittal.'" *Starr v. State*, 405 Md. 293, 302 (2008) (quoting *Lotharp v. State*, 231 Md. 239, 240 (1963)). When a criminal defendant moves for judgment of acquittal, the defendant must "state with particularity all reasons why the motion should be granted." Md. Rule 4-324(a). On appeal, the defendant is entitled only to review of the arguments made in the motion of acquittal. *Starr v. State*, 405 Md. at 302. *See Tetso v. State*, 205 Md. App. 334, 384 (2012) ("[a] defendant may not argue in the trial court that the evidence was insufficient for one reason, then urge a different reason for the insufficiency on appeal").

Furthermore, "[a] motion which merely asserts that evidence is insufficient to support a conviction, without specifying the deficiency, does not comply with the rule [Rule 4-324] and thus does not preserve the issue for sufficiency of appellate review." *Garrison v. State*, 88 Md. App. 475, 478 (1991). A defendant waives the right to raise a sufficiency argument on appeal by submitting on the argument for judgment of acquittal "without articulating the particularized reasons which would justify acquittal." *Id.*

Rule 4-324(a) is satisfied, however, when a party renews a motion for judgment of acquittal and states that the motion "'is based upon the same reasons given at the time the original motion was made.'" *Kamara v. State*, 184 Md. App. 59, 72 (2009) (quoting *Laubach v. Franklin Square Hospital*, 79 Md. App. 203, 208 n.3 (1989)). In those circumstances, "'the reasons supporting the motion are before the trial judge.'" *Id.* (quoting *Warfield v. State*, 315 Md. 474, 488 (1989)) "'If, for any reason, the judge desires that the reasons be restated, the judge may simply say so, and the moving party must then state the reasons with particularity.'" *Id.* (quoting *Warfield v. State,* 315 Md. at 488).

Here, the State argues that Mr. Stevens and Ms. Latham did not articulate with "particularity" the reasons why the court should grant the motions for judgment of acquittal on the manslaughter charges. The State contends that the defendants articulated their arguments for acquittal on the first- and second-degree murder charges, but not the manslaughter charges. Instead, the State argues, after the trial court granted the motions for judgment of acquittal as to the first- and second-degree murder charges and ruled that

the case was a "manslaughter case," defense counsel chose to "incorporate [their] arguments from the previous Motion for Judgment of Acquittal, with the Court's permission, and submit." Thus, the State argues, by submitting rather than articulating an argument, Mr. Stevens and Ms. Latham waived their right to raise a sufficiency of the evidence question as to the manslaughter conviction on appeal.

It is true that Mr. Stevens and Ms. Latham did "submit" instead of articulating an argument for their renewed motion for judgment of acquittal. In submitting, however, they incorporated their earlier arguments and defenses to the murder charges, including the argument that they had acted in self-defense. The self-defense argument applies equally to their motions for judgment of acquittal as to the manslaughter charges. The circuit court could have required Mr. Stevens and Ms. Latham to re-articulate their self-defense claim with specificity, but explicitly chose not to do so.[7]

Therefore, we conclude that Mr. Stevens and Ms. Latham sufficiently incorporated their self-defense argument into their motion for judgment of acquittal for the manslaughter charge in compliance with Rule 4-324(a).

2. Sufficiency of the Evidence

Mr. Stevens and Ms. Latham argue that the State failed to produce sufficient evidence to support their convictions for voluntary manslaughter. In accordance with *Dykes v. State*, 319 Md. 206, 217 (1990), they argue that the State had the burden to

[7] In response to defense counsel's decision to incorporate their previous arguments and submit, the circuit court responded, "You have the Court's permission, and the Court remembers your arguments."

prove, beyond a reasonable doubt, that at least one element of self-defense had not been met. They contend that the circuit court erred in denying their motion for judgment of acquittal for voluntary manslaughter, because, they say, the State did not disprove their entitlement to use deadly force in self-defense.

Voluntary manslaughter is an "*intentional* homicide, done in a sudden heat of passion, caused by adequate provocation, before there has been a reasonable opportunity for the passion to cool." *Dixon v. State*, 364 Md. 209, 238 (2001) (quoting *Cox v. State*, 311 Md. 326, 331 (1988)) (emphasis added in *Cox*). Perfect, or "complete," self-defense "is a complete defense to a charge of criminal homicide[,]" including voluntary manslaughter. *State v. Smullen*, 380 Md. 233, 251 (2004). Perfect self-defense "constitutes a justification for the killing[;]" thus, if a defense of perfect self-defense is found, a defendant must be acquitted of the murder charge. *Id.* "Imperfect self defense, by contrast, is not a complete defense." *State v. Faulkner*, 301 Md. 482, 486 (1984). "Its chief characteristic is that it operates to negate malice, an element the State must prove to establish murder. As a result, the successful invocation of this doctrine does not completely exonerate the defendant, but mitigates murder to voluntary manslaughter." *Id.*

The elements of perfect self-defense, all of which must be met for an acquittal, are as follows:

> (1) The accused must have had reasonable grounds to believe himself in apparent imminent or immediate danger of death or serious bodily harm from his assailant or potential assailant;

(2) The accused must have in fact believed himself in this danger;

(3) The accused claiming the right of self-defense must not have been the aggressor or provoked the conflict; and

(4) The force used must have not been unreasonable and excessive, that is, the force must not have been more force than the exigency demanded.

State v. Smullen, 380 Md. at 252 (emphasis omitted) (citing *State v. Marr*, 362 Md. 467, 473 (2001)). *See State v. Faulkner*, 301 Md. at 485-86; *Dykes v. State*, 319 Md. at 211.

Here, Mr. Stevens and Ms. Latham argue that all four elements of self-defense were met. Mr. Stevens and Ms. Latham had reasonable grounds to believe they were in apparent or immediate danger of death or serious bodily harm: Mr. Truxon had broken into their home, shot at a dog and at Ms. Latham, and pointed his gun at Mr. Stevens while demanding money. Because of Mr. Truxon's actions, Mr. Stevens and Ms. Latham did, in fact, believe themselves to be in danger. Neither Mr. Stevens nor Ms. Latham were the aggressor nor the provocateur of the conflict. Thus, there was sufficient evidence to support a finding of the first three elements of perfect self-defense. The State agrees that the evidence satisfied the first three elements.

The parties' agreement diverges at factor four. Mr. Stevens and Ms. Latham argue that the State did not produce sufficient evidence to prove that they had applied more force than necessary to disarm Mr. Truxon. They argue that they were "legally entitled to match deadly force with deadly force." Additionally, they argue that they stopped their "defensive movements" as soon as Mr. Truxon dropped his gun to the floor.

Mr. Stevens and Ms. Latham also contend that the State did not show that they applied "excessive" force. They argue that, while Mr. Truxon was stabbed over 70 times, they applied force only while Mr. Truxon continued to struggle. They argue that there was no evidence, "direct or circumstantial, from which a rational juror could find beyond a reasonable doubt that Truxon had lost the ability to pull the trigger before either one of the rapidly fatal stabs transected Truxon's aorta or the inferior vena cava."[8] They conclude that, as there was no evidence that Mr. Stevens or Ms. Latham used excessive or deadly force against Mr. Truxon "at *any* time after the exigency was eliminated[,] . . . there was no evidence from which a rational fact-finder could conclude that [they] [were] not acting in perfect self-defense."

The State argues that a reasonable jury could infer that Mr. Stevens and Ms. Latham used more force than was necessary "in light of the threatened harm[]" and that Mr. Stevens and Ms. Latham had subdued or disarmed Mr. Truxon "long before the assault on him ended[.]"

We agree that there was sufficient evidence for a reasonable jury to find that Mr. Stevens and Ms. Latham used unreasonable and excessive force. The State presented evidence that established that, when the fight began between Mr. Stevens and Mr. Truxon, Mr. Stevens turned the gun away from himself by grabbing Mr. Truxon's arm.

[8] The medical examiner did not accept the defendant's characterization of those stab wounds as "rapidly" fatal. She seemed to think that the rate of blood loss might have been slowed because of the position in which Mr. Truxon's body was put after he became immobile.

Immediately, two other men joined in the fight. Mr. Stevens and the two other men were larger, in height and weight, than Mr. Truxon, who, weighing only 137 pounds, was rather slight. When the two men began striking Mr. Truxon, Mr. Stevens pulled a knife out of his pocket and began to stab Mr. Truxon. The men placed Mr. Truxon in a "chokehold." At that point, Ms. Latham grabbed a butcher knife and stabbed Mr. Truxon at least two or three times. Mr. Truxon, while being held in a chokehold by men larger than him, suffered from 70 sharp-force injuries "on nearly every part of his body[,]" as well as 20 to 25 blunt-force injuries, including a depressed skull fracture.

Based on this evidence, a jury was not required to conclude that Mr. Stevens and Ms. Latham used no more force than was reasonably necessary. To the contrary, a reasonable jury could find that Mr. Stevens and Ms. Latham applied unreasonable force.

A reasonable jury could also find that Mr. Stevens and Ms. Latham applied more force than the exigency demanded. Mr. Stevens argues that the State had the burden of proving that Mr. Truxon had been disarmed, or rendered incapable of pulling the trigger, before the fatal injury was inflicted. The question, though, is not whether Mr. Stevens or Ms. Latham inflicted the fatal stab wound after Mr. Truxon had been subdued or disarmed, but whether Mr. Stevens and Ms. Latham continued to wield deadly force against Mr. Truxon after he had been subdued or disarmed. In view of the extraordinary number of injuries that Mr. Truxon suffered at the hands of the four combatants, including 43 stab wounds, 27 cutting wounds, and a skull fracture, we believe that the State produced evidence from which a reasonable jury could find that Mr. Truxon was

disarmed and incapacitated, yet still alive, when the threat of deadly force dissipated. To put it another way, a reasonable jury could find that four people could have subdued an armed intruder like Mr. Truxon, without stabbing or cutting him 70 times and fracturing his skull. Thus, a reasonable jury could infer that Mr. Stevens and Ms. Latham continued to apply deadly force against Mr. Truxon after the threat of serious bodily harm or death had ended. The jury was not required to conclude that Mr. Stevens and Ms. Latham used only so much force as the exigency required.[9]

B. Carrying a Deadly Weapon

Mr. Stevens argues that the evidence was legally insufficient to support his conviction of openly carrying a deadly weapon with the intent to injure because, he says, the State did not provide sufficient evidence to prove that the knife he carried was a "weapon" within the meaning of Crim. Law § 4-101(a).[10]

[9] Ms. Latham argues that she did not use excessive force, because she inflicted only two or three of the 70 knife wounds that Mr. Truxon suffered. She fails to recognize that she and Mr. Stevens were accomplices and, hence, that she is culpable for his conduct. In any event, the evidence was, in our judgment, sufficient for a jury to conclude that Mr. Truxon had been subdued, in a chokehold, when Ms. Latham stabbed him three times.

[10] Ms. Latham also argued that there was insufficient evidence to support her conviction for openly carrying a dangerous weapon with intent to injure. However, Ms. Latham limited the scope of her argument, contending only that "if complete self-defense applies to this case, then obviously, [she] is not guilty of wearing, carrying, or transporting a dangerous weapon openly with intent to injure." Because we conclude that there was sufficient evidence to convict Ms. Latham of voluntary manslaughter, we hold that there was sufficient evidence to convict Ms. Latham of openly carrying a dangerous weapon with intent to injure, as well.

Under Crim. Law § 4-101(c)(2), "[a] person may not wear or carry a dangerous weapon . . . openly with the intent or purpose of injuring an individual in an unlawful manner." The statute states that the term "weapon" includes a "switchblade knife," but does not include "a penknife without a switchblade." *Id.* § 4-101(a)(5)(i)-(ii)(2).

Mr. Stevens contends that the State failed to provide sufficient evidence to prove that the knife he used to stab Mr. Truxon was a penknife with a switchblade. He argues that the evidence demonstrated, instead, that his knife was a small pocket-knife without a switchblade function.

Mr. Stevens relies on *Mackall v. State*, 283 Md. 100, 111 (1978), in arguing that the State had the burden of proving, beyond a reasonable doubt, that "the weapon was one of those which the statute expressly specifies shall not be carried, or that it was any other dangerous or deadly weapon other than a penknife without a switchblade or a handgun." Mr. Stevens argues that the State failed to meet this burden because the evidence showed that the cuts to Truxon's body were "shallow and consistent with a penknife." Thus, he argues that the State's evidence failed to prove that "the small knife employed . . . was not one within the [list of] excluded weapons."

However, Mr. Stevens himself admitted that, during his struggle with Mr. Truxon, he pulled his knife out of his pocket with one hand and, without removing his other hand from Mr. Truxon, opened the knife and began to stab Mr. Truxon. Based on this admission, the jury could reasonably find that the Mr. Stevens did not manually unfold the knife, but instead used the knife's "switchblade function." Additionally, Ms. Latham

described the weapon as a "flip out" knife, which suggests that it opened automatically. While Mr. Stevens argues that the stab wounds were consistent with those from a penknife, the Court in *Mackall* "rejected" the notion that the nature of a wound could establish the difference between the use of a penknife and another form of knife. *Mackall v. State*, 283 Md. at 113. Thus, from this evidence, the jury could infer that Mr. Stevens did not use a weapon that fell within the statutory exception.

Undoubtedly, had the State been able to admit the knife into evidence, the jury could have relied on direct evidence to determine whether the weapon used was a penknife with or without a switchblade function. However, Mr. Stevens had thrown his knife out of his car window while on his evidence-hiding mission. The police had been unable to recover the knife during their investigation. Even so, there was substantial evidence permitting a reasonable trier of fact to find that Mr. Stevens carried a penknife with a switchblade function openly with the intent to injure Mr. Truxon.

C. Improper Disposal of a Body

Lastly, Mr. Stevens argues that the court erred in denying his motion for judgment of acquittal as to the charge of improper disposal of a body.

Section 5-514 of the Health-General Article makes it unlawful for an individual to bury or dispose of a body unless the burial falls within limited, enumerated exceptions. These exceptions include burial: "(1) In a family burial plot or other area allowed by a local ordinance; (2) In a crematory; (3) In a cemetery; (4) By donating the body to

medical science; or (5) By removing the body to another state for final disposition in accordance with the laws of the other state." HG § 5-514(a)(1)-(5).

Mr. Stevens contends that the State had the burden of proving that the wooded area where Mr. Stevens buried Mr. Truxon was not a family burial plot. He argues that the State introduced no evidence to prove that he had not buried Mr. Truxon in such a plot. The State argues that there was sufficient evidence for a reasonable jury to find that Mr. Stevens did not bury Mr. Truxon in a family burial plot.

In our judgment, the evidence was sufficient to support the conviction. Mr. Stevens informed the police that he had buried the body in a wooded area near his home. The State was not required to disprove Mr. Stevens's admission that he had buried Mr. Truxon in the woods, and not in a graveyard or family burial plot. Additionally, while Mr. Stevens claims that the wooded area *could* have been a family burial plot that had been too overgrown to easily identify, the State admitted sufficient evidence negating this theory. One evidence technician for the State testified that the body had been buried in a wooded area with an "unused railroad track." Another State evidence technician testified that the wooded area in which Mr. Truxon had been buried was not located near a path. Moreover, the State introduced photographs showing that the burial site was in an overgrown lot with an abandoned tire, other discarded junk, and a chain-link fence; it plainly was not a family burial plot. Based on this evidence, a reasonable jury could conclude that the wooded area did not contain an old family burial plot.

Although Mr. Stevens complains elsewhere about the medical examiner's testimony that Mr. Truxon may have been alive when he was buried, he relies on that same evidence to argue that there was insufficient evidence to support his conviction of improper disposal of a body. Mr. Stevens contends that the word "body" in HG § 5-514(a) means "a dead body." If Mr. Truxon were still alive when he was buried, Mr. Stevens argues, he could not have improperly disposed of a (dead) body.

This argument has little merit. The jury heard testimony from Dr. Nointin that the cause of Mr. Truxon's death was sharp- and blunt-force injuries, including a knife wound that severed the major vessels that transported blood to and from the lower half of his body. While Dr. Nointin testified that Mr. Truxon had sediment in his airway, signifying that he may have breathed in sediment while alive, she did not testify that Mr. Truxon died from asphyxiation as a result of being buried alive. The jury, in its position as factfinder, had sufficient evidence on which to draw a reasonable inference that Mr. Truxon was dead when he was buried. *See Steward v. State*, 218 Md. App. at 559 (stating that this Court will "decline to second guess any reasonable inferences drawn by the fact-finder, or to reweigh the fact-finder's resolution of conflicting evidence"); *Sifrit v. State*, 383 Md. 116, 135 (2004) (stating that a jury "is free to believe some, all, or none of the evidence presented").

Therefore, as the State provided sufficient evidence for the jury to conclude that Mr. Truxon was not buried in an old family burial ground and that Mr. Truxon was not

alive when he was buried, there is sufficient evidence to uphold Mr. Stevens's conviction for improper burial of a body.

IN CASE NO. 193, SEPTEMBER TERM, 2020, JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

IN CASE NO. 249, SEPTEMBER TERM, 2020, JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.