Circuit Court for Harford County
Case No. C-12-CR-21-000967

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 196

September Term, 2023

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CARL ROBERT ALEXANDER

v.

STATE OF MARYLAND

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Zic,
Ripken,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: September 6, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

Following a jury trial in the Circuit Court for Harford County, Carl Robert Alexander, appellant, was convicted of voluntary manslaughter; first-degree assault; use of a firearm in the commission of a crime of violence; wearing, carrying, or transporting a handgun; possession of ammunition; and possession of a firearm by a disqualified person. He raises two issues on appeal: (1) whether the evidence was sufficient to sustain his convictions for voluntary manslaughter, first-degree assault, and use of a firearm in a crime of violence, and (2) whether the court erred in failing to merge his first-degree assault conviction into his conviction for voluntary manslaughter. For the reasons that follow, we shall affirm the judgments, but vacate appellant's sentence for first-degree assault.

Appellant first contends that the evidence was insufficient to sustain his convictions for voluntary manslaughter, first-degree assault, and use of a firearm in a crime of violence because the State failed to disprove that he acted in perfect self-defense. But appellant did not raise this claim when making his motion for judgment of acquittal at the close of all the evidence. Rather, defense counsel argued that with respect to the first-degree murder count only: (1) the State had failed to prove premeditation, and (2) appellant's testimony regarding the incident "cuts really hard against any malice aforethought or any willful or intentional deliberate action to actually kill [the victim]." *See Peters v. State*, 224 Md. App. 306, 354 (2015) ("[R]eview of a claim of insufficiency is available only for the reasons given by [the defendant] in his motion for judgment of acquittal." (quotation marks and citation omitted)). Consequently, this contention is not preserved for appellate review.

Moreover, even if preserved, we would find no error. Appellant's convictions were based on his having shot the victim in the chest. In an attempt to justify his actions,

appellant testified that he and the victim had been engaged in an altercation just before the shooting, wherein the victim had strangled him to the point he "thought he was going to die." He further testified that the victim returned shortly after that altercation, broke down the door to get into the house, and then "rushed in the house at me . . . like a linebacker goes after a quarterback." Thinking that the victim was "coming back to attack [him]" again and that "[t]here was no way I was going to fight him off[,]" appellant stated that he "raised the gun and fired at [the victim] one time."

Appellant essentially contends that this testimony established that he acted in perfect self-defense as a matter of law. However, in *Hennessy v. State*, 37 Md. App. 559 (1977), we rejected a similar argument stating:

> [Hennessy] concedes by silence that there was sufficient evidence to sustain a manslaughter verdict, but argues that because the State did not affirmatively negate this self-defense testimony, he was entitled to what amounts to a judicially declared holding of self-defense as a matter of law. That is of course, absurd. The factfinder may simply choose not to believe the facts as described in that, or any other, regard[.]

*Id.* at 561 (internal citations omitted).

Appellant's contention is equally meritless. Although, he was entitled to, and received, a jury instruction on perfect self-defense, *see Dykes v. State*, 319 Md. 206, 211 (1990) (stating the requirements for perfect self-defense), the jury was "free to believe some, all, or none of the evidence presented" that supported that defense. *Sifrit v. State*, 383 Md. 116, 135 (2004). And here, the jury could reasonably find that appellant did not have reasonable grounds to believe that he was in danger of death or serious bodily harm; that he used excessive force; or that some of his testimony regarding the events was simply

unbelievable. *See, e.g., Rajnic v. State*, 106 Md. App. 286, 291-93 (1995) (finding that sufficient evidence existed from which a jury could reject appellant's claim of self-defense despite the undisputed testimony that the victims were larger than appellant, intoxicated, threatened to beat up appellant, and charged into his bedroom on the heels of those threats). Consequently, there was sufficient evidence to sustain his convictions.

Appellant next contends that his conviction for first-degree assault should merge into his conviction for voluntary manslaughter. The State agrees, as do we. The Supreme Court of Maryland has held that the intent-to-injure modality of first-degree assault merges into a conviction for attempted voluntary manslaughter when it is based on the same conduct. *Dixon v. State*, 364 Md. 209, 239-40 (2001). Moreover, if there is any ambiguity as to which modality of first-degree assault the jury relied on when reaching its verdict, that ambiguity must be resolved in favor of the defendant. *Id.* at 251. Neither the jury instructions, the verdict sheet, nor the prosecutor's closing argument, indicate whether the jury convicted appellant of first-degree assault based on his having used a firearm to commit the assault or his having intended to cause serious physical injury in the commission of the assault. Thus, we must resolve that ambiguity in favor of appellant. Under the circumstances, the trial court erred in failing to merge appellant's sentence for first-degree assault into his conviction for voluntary manslaughter, which is the greater offense. Consequently, we shall vacate his sentence for first-degree assault.

**SENTENCE FOR FIRST-DEGREE ASSAULT VACATED. JUDGMENTS OF THE CIRCUIT COURT FOR HARFORD COUNTY OTHERWISE AFFIRMED. COSTS TO BE PAID ONE-HALF BY**

**APPELLANT, ONE-HALF BY HARFORD COUNTY.**