Circuit Court for Baltimore City
Case No.: 121341014

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 755

September Term, 2023

TROY PEACE

v.

STATE OF MARYLAND

Zic,
Tang,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 4, 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.

A jury in the Circuit Court for Baltimore City convicted Troy Peace, appellant, of illegal possession of a firearm. The sole issue he presents for our review is: Whether the trial court erred in refusing to instruct the jury on the defense of necessity. For the following reasons, we shall affirm.

BACKGROUND

In October 2021, Peace got into an argument with DuJuan Murray outside of Peace's house, which he shared with his ex-girlfriend and her family. During the argument, Murray reached toward the dip of his waist. Peace testified that he feared Murray was reaching for a gun, so he started punching Murray in the chest. As the two fought, Murray dropped a gun on the ground. Peace eventually got free from Murray, grabbed the gun, and fired it at him. Murray ran away from Peace to the front of his truck parked on the street and stood between it and another parked vehicle.

Peace testified that he was unaware at first that he had shot Murray, so he fired a "warning shot" at a nearby vehicle. Murray then started running away, but he ran only about four car-lengths before collapsing in the street. Peace testified that the fight ended at that point. He also agreed that "the threat no longer exist[ed]."

Peace did not, however, discard the firearm at that point. Instead, he "stayed there just looking at everything, trying to get [his] thoughts together." Then he comforted his ex-girlfriend's child, who lived in the house and had come running outside. Then he heard his ex-girlfriend on the phone with police and told her, "Don't tell them my name." Then he went back into the house to put on a shirt. Then he came back outside, "stood there a little bit longer," and "[k]ept walking back and forth," before asking his ex-girlfriend if she

was okay. Then he got in his car and left. Peace drove about two miles away from the house, placed the gun in a black plastic bag, and threw it into a trash can. When asked why he continued to keep the gun, Peace answered, "Because I was scared. I didn't want [Murray] to grab it."

At trial, Peace requested that the court instruct the jury on the defense of necessity. The court refused,[1] the jury convicted Peace of illegal possession of a firearm, and the court later sentenced him to ten years' incarceration, the first five without parole. This appeal followed.

DISCUSSION

A trial court must give a requested jury instruction if: (1) it is a correct statement of the law; (2) it is applicable under the facts of the case; and (3) its content was not fairly covered in another instruction. *Ware v. State*, 348 Md. 19, 58 (1997). This case concerns the second prong.

An instruction is applicable "if the evidence is sufficient to permit a jury to find its factual predicate." *Bazzle v. State*, 426 Md. 541, 550 (2012). We review the question of whether there was sufficient evidence to generate a requested jury instruction *de novo*. *Howell v. State*, 465 Md. 548, 561 (2019). The test is whether there is "some evidence" in the record to support the requested instruction. *Dykes v. State*, 319 Md. 206, 216–17 (1990).

[1] The trial court's stated reasons for declining to issue the instruction—which the State does not adopt on appeal—differ from those discussed in this opinion. We are not bound by that court's reasoning and "may uphold the final judgment . . . on any ground adequately shown by the record." *Rush v. State*, 403 Md. 68, 103 (2008) (cleaned up). *See also State v. Funkhouser*, 140 Md. App. 696, 719 (2001) (noting that we will affirm even when a trial court is "right for the wrong reason").

A defendant in a criminal case is entitled to have the jury instructed on their theory of the case if there was some evidence to support that theory. *Id.* In evaluating whether there was "some evidence," we view the facts in the light most favorable to the requesting party, here being Peace. *Hoerauf v. State*, 178 Md. App. 292, 326 (2008).

In some cases, necessity is a valid defense to the crime of unlawful possession of a firearm. *State v. Crawford*, 308 Md. 683, 698–99 (1987). To generate the instruction, there must be some evidence of five elements:

> (1) the defendant must be in present, imminent, and impending peril of death or serious bodily injury, or reasonably believe himself or others to be in such danger; (2) the defendant must not have intentionally or recklessly placed himself in a situation in which it was probable that he would be forced to choose the criminal conduct; (3) the defendant must not have any reasonable, legal alternative to possessing the handgun; (4) the handgun must be made available to the defendant without preconceived design[;] and (5) the defendant must give up possession of the handgun as soon as the necessity or apparent necessity ends.

Id. at 699.

The evidence here did not generate the defense-of-necessity instruction. Peace testified that "the threat" ended when Murray collapsed in the street. Logically, when "the threat" ended, so too did "the necessity or apparent necessity[.]" *Id.* But there was no evidence that Peace gave up possession of the firearm at that point as required under the fifth *Crawford* element. On the contrary, as detailed above, Peace held on to the weapon while: pacing around the area; comforting his ex-girlfriend's child; telling his ex-girlfriend not to give the police his name; going back inside his house to put on a shirt; pacing around the area again; checking to see if his ex-girlfriend was okay; getting in his car; and driving roughly two miles away from the scene before finally disposing of the gun in a trash can.

Peace did not produce any evidence that he was "in present, imminent, and impending peril of death or serious bodily injury, or reasonably believe[d] himself or others to be in such danger[,]" *id.*, during this series of events after Murray collapsed. Yet even though "the necessity or apparent necessity" had ended, there was no evidence that Peace "g[a]ve up possession of the [firearm] as soon as" it did. *Id.* Consequently, the evidence did not generate the defense-of-necessity instruction, and the circuit court did not err or abuse its discretion in declining to give it.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.