Circuit Court for Montgomery County
Case No. C-15-CR-22-000761

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 918

September Term, 2023

SERGEY S. DANSHIN

v.

STATE OF MARYLAND

Beachley,
Ripken,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Getty, J.

Filed: September 4, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

The issues in this case stem from events that bookend every jury trial: selecting the jury and instructing the jury. The Appellant, Sergey Danshin, contends the first issue arose when the oath was administered to prospective jurors. He claims the courtroom clerk used the wrong oath, as prospective jurors were not sworn "to tell the truth." The next issue arose at the end of trial when the jury was instructed. Danshin maintains that enough evidence was generated to warrant the defense of others jury instruction and the trial court erred by refusing to give this instruction.

On the night of June 22, 2022, Danshin and two other men went to a Red Roof Inn in Montgomery County, Maryland. Danshin had asked the men to accompany him while he went to help his friend leave a relationship with a man named Javier Gonzalez-Mena. A fight ensued at the Red Roof Inn, which led to Danshin shooting and killing Gonzalez-Mena. After a jury trial, Danshin was convicted of first-degree murder, use of a handgun in the commission of a felony, and possession of a regulated firearm by a disqualified person.

On appeal, Danshin raises the following questions:

> 1. Did the trial court commit reversible error by refusing to propound a defense of others jury instruction?
>
> 2. Did the trial court commit reversible error by failing to swear the venire panel to tell the truth before conducting *voir dire*?

BACKGROUND

A. The Shooting

On the night of June 22, Javier Gonzalez-Mena was shot and killed outside of a Red Roof Inn in Montgomery County. However, the events leading up to his murder began in the days and hours beforehand.

Earlier in the day of June 22, Danshin texted Jamen Scharnberg about their friend Christina Jones. Jones was in a tumultuous relationship with Gonzalez-Mena. At trial, Jones testified that it was not "the most healthy relationship." Jones stated that she got into a physical altercation with Gonzalez-Mena a few days before his murder and that Gonzalez-Mena told her that she "would end up in the dumpster that he [was] parked in front of." After the fight, Jones confided in Scharnberg and his girlfriend about what happened. She then told Danshin what transpired between her and Gonzalez-Mena and went to stay with him.

Danshin reached out to Scharnberg on June 22 and told him that Jones had been staying with him and left the day before on a date. She had not returned and Danshin was unable to get in contact with her.[1] In the text exchange, Scharnberg expressed his concern

[1] There seems to be some confusion regarding whether Scharnberg told this information to Danshin or if Danshin told this to Scharnberg. In Danshin's brief he states that Scharnberg called him the night of the shooting to discuss Jones, and Scharnberg informed Danshin that Jones left the night before and had not returned home. However, the State's brief says that Danshin reached out to Scharnberg to tell him Jones left the day before and had not returned. The record, including the trial transcripts and the State's Exhibit 77 (a text exchange between Danshin and Scharnberg), support the State's account.

for Jones and her continued interaction with Gonzalez-Mena and his roommate, Carlos Rugamas. [2] He also told Danshin that he had tried to contact Gonzalez-Mena to no avail.

Later in the day, Danshin asked Scharnberg if he "want[ed] to be included in tonight's event?" Scharnberg told Danshin he had spoken with Jones and gave her Danshin's phone number. He told Danshin that Jones' room number was in the "low 200s" at the Red Roof Inn and that it "[s]ound[ed] like [a] dude was in the room with her. [I] [a]sked if she was ok, but it didn't seem like she could answer." Around 9:00 p.m. Danshin told Scharnberg he had not heard from Jones. Danshin then asked Scharnberg if he had a "strap"[3] and said "if you want in on the party we'll pick you up on the way. I aim to have this resolved in 90 minutes." Scharnberg did not respond to this message.

Earlier the same day, Danshin contacted Willman Quintanilla and Micah Clemons to "assist him in the rescue of Jones." Danshin told Quintanilla that he wanted to "bring [some girls] back because [Gonzalez-Mena] had hit them." Danshin told Clemons he needed help because his friend was in danger and asked Clemons to meet him. Clemons drove from Manassas, Virginia, to Gaithersburg, Maryland, in order to meet up with Danshin and Quintanilla. Clemons had knives and guns in his car as well as extra ammunition and magazines.

[2] At trial, Jones testified about Rugamas' and Gonzalez-Mena's sexual and physical assaults of her as well as Gonzalez-Mena's threats on her life.

[3] At trial Scharnberg testified that "strap" means gun.

Danshin, Quintanilla, and Clemons met at a 7-Eleven convenience store near the motel. Quintanilla proceeded to drop Danshin and Clemons off about a block away from the Red Roof Inn. Quintanilla remained in the car while Danshin and Clemons walked towards the motel.

Once at the motel, Danshin and Clemons went upstairs to the room where Jones, Rugamas, and Gonzalez-Mena were staying. Both men wore masks covering their faces and had guns at their sides. Danshin knocked on the door and identified himself as a friend of Jones. Clemons testified that two men came out of the room holding machetes in "a very aggressive manner" and Danshin was brandishing his gun. Clemons retreated down the stairwell and Danshin began to follow but at some point, returned upstairs. At the bottom of the stairwell, Clemons encountered Rugamas holding a machete and ran away to a nearby forest. Both men then heard two shots fired but did not witness the shooting.

At trial, Jones testified that Gonzalez-Mena had also started to go down the stairwell, but she "grabbed his hand and [] asked him to please come inside and [they] ran up the steps." She said that as soon as they turned the corner Gonzalez-Mena was shot.

After Gonzalez-Mena was shot, the shooter then asked Jones to come with him, which she did "because of what just happened." She went with the shooter to his car where he took off his mask, revealing his identity to Jones. Jones saw that the shooter was Danshin.

After a brief stop at the 7-Eleven, Danshin brought Jones to another person's home where she was able to call the police. Officers ultimately detained both Danshin and

Clemons. Danshin made a recorded, post-*Miranda* statement to police, portions of which were played during the jury trial, which is discussed *infra*.

B. Jury Selection

Jury selection began on January 9, 2023. After the jury entered the room, the judge gave an overview and general instructions to the jurors regarding restroom breaks, understanding questions, and how to respond to questions. The judge began asking preliminary questions about age and residency before the State asked to approach the bench and the parties had the following conversation:

The Court:	Forgot to swear them?
[The State]:	That's right.
The Court:	Got it.
[The State]:	And are we going to do a roll [call]? Sorry.
The Court:	. . . Yes.

The clerk proceeded to conduct a roll call of the jurors and then administered an oath:

> The Clerk: Ladies and gentlemen of the jury, please stand and raise your right hand. Look upon the defendant. You and each of you do solemnly promise and declare that you shall well and truly try and a true deliverance make between the State of Maryland and Sergey Danshin, whom you shall have in charge, and a true verdict give, according to the evidence. Please respond.

Defense counsel then asked if the parties could approach the bench.

> [Defense Counsel]: I may be wrong about this, but is that the oath that you're giving for voir dire? What was the—

The Court:	What would you give after they respond?
[Defense Counsel]:	Well, there's two different things here.
The Court:	Which one did she—which one did you give?
The Clerk:	This is the voir dire. This is the voir dire.
The Court:	Okay.
[Defense Counsel]:	That's the voir dire.
The Court:	Mm-hm. What do you think it is?
[Defense Counsel]:	Okay. That's fine. Just—I thought it was more like, swearing to tell the truth in the answers you'll be giving, rather than return a verdict. I didn't—you know, if that's the standard one—
[The State]:	I think I've fought that every time. The same thing, and just—
The Court:	Yeah. Yeah this is—
[The State]:	—the same one and—okay. All right. Yeah.

The judge then continued to conduct voir dire.

At the end of questioning, the judge proceeded to call each individual juror to the front of the courtroom and both the State and defense counsel had the opportunity to seat or excuse each juror. Once this process concluded and all 12 jurors were selected, each side was able to strike any of the 12 jurors. After a few jurors were excused and new jurors were seated in their place, the judge confirmed the selected jury with both sides:

The Court:	All right. Defense, are you satisfied?
[Defense Counsel]:	We're satisfied.

The Court: State.

* * *

[The State]: State's satisfied, Your Honor.

The seated jurors were then charged and given instructions to return the following day for the beginning of trial.

C. Jury Trial

On the first day of the jury trial, the jurors were brought into the courtroom and sworn in by the courtroom clerk. During the trial, in addition to witness testimony, a portion of Danshin's post-*Miranda* statement was played for the jury. Danshin told the detectives that he met Jones about two weeks ago and was "getting worried about her." Jones had stayed with Danshin "about two or three days ago" and "told me another story about she's been getting sex trafficked or something, this is what my understanding is."

Initially, Danshin told detectives that on the night of June 22, Jones called Danshin and said "you need to come get me." He said around 10:00 p.m. he and Quintanilla drove to the Comfort Inn[4] in Shady Grove, Maryland, and he saw her "in the street basically and she's just like, doesn't look right."

> [S]he's like half naked and disheveled and like not wearing footwear and like kind of beaten up and she looks like a hot mess. And I get her in the car and we start talking and she's like blubbering at this point . . . and she basically starts begging for drugs . . . . So I drive over to my friend's place, which is where you guys found me.

[4] Danshin later told detectives that Jones said she was at the Red Roof Inn.

The detectives then told Danshin what they knew: that they understood the men Jones was with were not "great guys," that Danshin went to the Red Roof Inn with Clemons, and that Clemons brought a gun and gave it to Danshin. The detectives said they wanted to know Danshin's motivation and what his role was in the shooting.

Danshin began to tell the detectives more about what happened at the Red Roof Inn and said, "[w]ithout admitting wrongdoing, I did what either of you would've done in this situation." The detectives continued questioning Danshin, and he started to explain what happened further, while continuing to deny he shot Gonzalez-Mena:

Mr. Danshin:	The motivation behind this is that I didn't shoot [Gonzalez-Mena], it looked like he was going to cut her goddamn head off with the machete because she's had that same machete away from him when I knocked on the door.
[Detective]:	And so what you're saying is when she's being grabbed and the guy has a machete, you shoot him because you're in fear that she's going to be harmed?
Mr. Danshin:	No, what I'm saying is, first of all, the gun that [Clemons] gave me [did not work] . . . .
	* * *
Mr. Danshin:	I didn't pull the trigger.
[Detective]:	No? Well then tell me what happened.
Mr. Danshin:	I did to the best of my ability.
[Detective]:	You did what?
Mr. Danshin:	I did [to] the best of my ability.

[Detective]: Well, it was just bits and pieces. So I don't understand.

Mr. Danshin: Yes, yes, yes.

[Detective]: Is this a metaphysical thing? Did—were you holding the gun?

Mr. Danshin: Yes, I held the gun.

[Detective]: All right. Who pulled the trigger?

Mr. Danshin: I don't know. I can't say. I didn't see a shot fired. I heard two shots.

[Detective]: As you were holding the gun, you heard two shots but you didn't get the sensation . . . . When you hear the shots, you're saying you're not holding the gun?

Mr. Danshin: No.

[Detective]: Who's holding the gun?

Mr. Danshin: Somebody right behind us perhaps.

The interview proceeded, and Danshin continued to either evade or deny shooting Gonzalez-Mena.

Mr. Danshin: I did not shoot [Jones'] boyfriend. She couldn't have seen me shoot her boyfriend because, first of all, I was at the bottom of the stairs with her. I heard the shots fired, but I didn't see the guy. I—

[Detective]: You went there to do something heroic. You might as well say, you know what, that's what I did.

Mr. Danshin: Don't you think I'd like to?

[Detective]: Yeah, I do think you'd like to. I'm asking you. I'm giving you the opportunity to tell me.

Mr. Danshin: Yeah, but I—you want me to lie, it seems to me, here.

* * *

[Detective]: . . . I don't know what actually happened because I wasn't there—but I believe that you believe that [Jones] was in danger or you were helping her or you needed to collect her or whatever it is, that that happened. What we're asking you is, who pulled the trigger, but we're asking you exactly what was occurring during that time. So—

Mr. Danshin: That's impossible, because I heard the gunshots. I heard them, and some of the people you mentioned I saw during the time I heard the gunshots. I saw [Clemons] and I saw [Jones] when I heard the gunshots.

* * *

[Clemons] wasn't shooting [Gonzalez-Mena]. [Jones] wasn't shooting him. I wasn't shooting at him. We were—I didn't see—

[Detective]: So, like, some uninvolved person is shooting somebody?

Mr. Danshin: I'm sure they were involved. I don't know who it was because I—I was facing in a different direction. I go—I hear bang. I go, oh, shit, and then I just run faster, and—

* * *

[If] I were to say anything, I would say that I went there to prevent a crime from occurring.

Towards the end of the interview, detectives told Danshin he was charged with murdering Gonzalez-Mena.

> [Detective]: . . . So this is a murder charge. So you're charged with murder and so is [Clemons]. That's what you're going to be charged with.
>
> * * *
>
> Mr. Danshin: . . . the one thing I really want to communicate to you—and this is, this is as true as anything I've said . . . this was only done to prevent imminent harm to a person and not, like the potential harm, not the speculation of harm, but the actual imminent harm, because I already had clear evidence of the physical trauma.

Before the State rested, all parties discussed the proposed jury instructions outside the presence of the jury. Specifically, the judge heard from both sides on whether or not the defense of others instruction should be given:[5]

[5] Danshin requested the pattern jury instruction found in the Maryland Criminal Pattern Jury Instructions for defense of others (MPJI-Cr 4:17.3(c)), which states in part:

> You have heard evidence that the defendant killed (name) in defense of another person. You must decide whether this is a complete defense, a partial defense, or no defense in this case.
>
> In order to convict the defendant of murder, the State must prove that the defendant did not act in either complete defense of another person or partial defense of another person. If the defendant did act in complete defense of another person, the verdict must be not guilty. If the defendant had the intent to kill and did not act in complete defense of another person, but did act in partial defense of another person, the verdict should be guilty of voluntary manslaughter and not guilty of murder.

(continued)

> . . . Now, with respect to defense of other[s], [defense counsel], I'll hear from you. If you can point me in the direction of what we're—what evidence you think there is that [Danshin] was defending another that there was some sort of direct attack against [Jones] that the harm—the likelihood of death or harm was immediate or imminent. The Court just doesn't see it.

Defense counsel proceeded to argue that enough evidence had been generated to give the defense of others instruction. Counsel said that the evidence "permits an inference that [Jones] was being restrained, and [Gonzalez-Mena] had a machete in one hand, and

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> Defense of another person is a complete defense, and you are required to find the defendant not guilty, if all of the following four factors are present:
>
> (1) the defendant actually believed that the person [he] was defending was in immediate or imminent danger of death or serious bodily harm;
> (2) the defendant's belief was reasonable;
> (3) the defendant used no more force than was reasonably necessary in light of the threatened or actual force; and
> (4) the defendant's purpose in using force was to aid the person [he] was defending.
>
> In order to convict the defendant of murder, the State must prove that defense of another person does not apply in this case. This means that you are required to find the defendant not guilty, unless the State has persuaded you, beyond a reasonable doubt, that at least one of the four factors of complete defense of another person was absent.
>
> Even if you find that the defendant did not act in complete defense of another person, the defendant may still have acted in partial defense of another person. [If the defendant actually believed that the person defended was in immediate or imminent danger of death or serious bodily harm, even though a reasonable person would not have so believed, the defendant's actual, though unreasonable, belief is a partial defense of another person and results in a verdict of voluntary manslaughter rather than murder.] [If the defendant used greater force than a reasonable person would have used, but the defendant actually believed that the force used was necessary, the defendant's actual, though unreasonable, belief is a partial defense of another person and the verdict should be guilty of voluntary manslaughter rather than murder.]

[Jones] walks around the corner, and what Mr. Danshin talks about in terms of when the shots were fired was defense of [Jones] at that point." Counsel continued that

> it's very reasonable to believe, based on everything [Danshin] knew both before that day but even just based on what happened that evening, that the person who he thought was in danger is now in the hands of a man with a machete . . . . I think what you have to do is put in context here him trying to avoid admitting firing the shot, but at the same time, he's explaining why the shot would be fired.

Ultimately, the judge decided not to give the defense of others instruction as not enough evidence had been generated:

> . . . I want to make sure I make a record as to why the Court's declining to give [the defense of others instruction]. If the Court were to view from Ms. Jones' perspective, right, she would have the right to defend herself in a certain scenario just like anyone else does. The Court would still find in this scenario if Ms. Jones had acted in some manner where she shot [Gonzalez-Mena], and the evidence and testimony was the same, which was there was no wielding of the machete at her, there were no threats being made . . . she wouldn't have generated a self-defense instruction based on the evidence that's before the Court.
>
> And if she can't generate that self-defense instruction, [Danshin] can't generate that defense of other[s] instruction in this case.
>
> * * *
>
> For the most part throughout [Danshin's] statement, he talks in general terms about [Jones is] in danger, I wanted to rescue [Jones], but does not reach that threshold—the Court's calling it a threshold—of providing some evidence that [Jones] was in imminent or immediate danger of death or serious bodily harm.

The judge proceeded to instruct the jury and each side gave its closing argument. After deliberation, the jury found Danshin guilty of first-degree murder, use of a handgun

in the commission of a felony, and possession of a regulated firearm by a disqualified person. This appeal timely followed.

STANDARD OF REVIEW

"We review a trial court's decision to give or refuse a jury instruction under the abuse of discretion standard." *Nicholson v. State*, 239 Md. App. 228, 239 (2018) (citing *Stabb v. State*, 423 Md. 454, 465 (2011)). In evaluating whether there was an abuse of discretion in granting or denying a request for a particular jury instruction, we consider three factors, whether: "(1) the requested instruction is a correct statement of the law; (2) the requested instruction is applicable under the facts of the case; and (3) the content of the requested instruction was not fairly covered in the instruction[s] actually given." *Rainey v. State*, 480 Md. 230, 255 (2022) (quoting *Ware v. State*, 348 Md. 19, 58 (1997)).

Whether a trial court must give a particular jury instruction depends on whether there is "any evidence in the case that supports the instruction; if the requested instruction has not been generated by the evidence, the trial court is not required to give it." *General v. State*, 367 Md. 475, 486–87 (2002). The defense only needs to produce "some evidence" to support the requested instruction, and "this Court views the facts in the light most favorable to the requesting party." *Rainey*, 480 Md. at 255 (citing *Dykes v. State*, 319 Md. 206, 216–17 (1990)).

Even though the "in the light most favorable" standard "requires that the evidence and proper inferences be drawn in [the defendant's] favor, the standard does not require the taking of isolated sentences, or parts of sentences, in the testimony and construing them

out of context, without any regard to the rest of the witness's testimony." *Jarvis v. State*, __ Md. __, No. 22, Sept. Term, 2023, slip op. at 18–19 (citations omitted).

DISCUSSION

A. Instructing the Jury

1. The Parties' Contentions

On appeal, Danshin contends that enough evidence was generated to support a defense of others instruction. He states that both Jones' trial testimony and his own recorded interview with detectives demonstrate the violent nature of Jones and Gonzalez-Mena's relationship. Danshin claims that his knowledge of the violent history between Jones and Gonzalez-Mena was the reason he went to the motel on June 22.

After arriving at the motel, two men came out of Jones' room wielding machetes. In his statement to detectives, Danshin said that it "looked like [Gonzalez-Mena] was going to cut [Jones'] goddamn head off with the machete" and that "this was only done to prevent imminent harm to a person and not, like, the potential harm, not the speculation of harm, but the actual imminent harm, because I already had clear evidence of the physical trauma." Danshin maintains that these statements, in conjunction with his other comments to detectives discussed *supra*, were enough to meet the "some evidence" burden for the defense of others instruction.

Danshin also avers that the trial court "chose to ignore the portions of Danshin's statements which were consistent with the requested instructions and instead, reached factual conclusions based upon its own determination that Danshin's statement was not

credible." (Emphasis omitted). Furthermore, Danshin argues the trial court erred when it determined that the threat to Jones was not imminent and that Danshin's right to defend Jones had to be coterminous with Jones' right to defend herself.

The State maintains that the trial court properly declined to instruct the jury on defense of others. The State contends that Danshin did not generate evidence to show that he actually believed he was defending Jones when he shot Gonzalez-Mena. Moreover, Danshin repeatedly denied that he fired the shots that killed Gonzalez-Mena. The State argues that "Danshin cannot—by careful parsing—escape or avoid what he actually said over and again: he did not shoot Gonzalez-Mena and did not shoot him to defend Jones." Since Danshin's statement to detectives did not provide any evidence that he killed Gonzalez-Mena in defense of others, nor did anyone else's testimony, the State claims he did not generate evidence for the court to give the defense of others instruction to the jury.

2. Defense of Others Jury Instruction

Judges generally have broad discretion in deciding whether or not to provide jury instructions, "although statutes, court rules, and case law may place limits on the judge's discretion." *Carter v. State*, 366 Md. 574, 584 (2001). *See also* Md. Rule 4-325(c) (stating that a judge may give a jury instruction if requested by either party but "need not grant a requested instruction if the matter is fairly covered by instructions actually given."). The trial court must give a requested jury instruction if: "(1) the requested instruction is a correct statement of the law; (2) the requested instruction is applicable under the facts of the case; and (3) the content of the requested instruction was not fairly covered elsewhere

in the jury instruction actually given." *Wright v. State*, 474 Md. 467, 484 (2021) (quoting *Thompson v. State*, 393 Md. 291, 302 (2006)).

Here, the parties do not dispute that the requested jury instruction was a correct statement of the law. The question is whether the requested defense of others jury instruction was applicable under the facts of the case.

When requesting a defense of others jury instruction, the defendant "has the burden of initially producing some evidence on the issue of mitigation or self-defense (or relying upon evidence produced by the State) sufficient to give rise to a jury issue with respect to these defenses." *Lee v. State*, 193 Md. App. 45, 55 (2010) (internal quotations omitted).

Prior cases have explained what "some evidence" means in the context of generating a jury instruction for self-defense:

> Some evidence is not strictured by the test of a specific standard. It calls for no more than what it says—"some," as that word is understood in common, everyday usage. It need not rise to the level of "beyond reasonable doubt" or "clear and convincing" or "preponderance." The source of the evidence is immaterial . . . . If there is any evidence relied on by the defendant which, if believed, would support his claim that he acted in self-defense, the defendant has met his burden.

Dykes, 319 Md. at 216–17 (emphasis omitted).

Furthermore, since defense of others can be a perfect or mitigation defense, evidence can be direct or circumstantial. If the defendant proves he was acting in perfect self-defense of others, "*i.e.*, that he held a subjectively genuine and objectively reasonable belief that he had to use force to defend another against immediate and imminent risk of death or serious harm *and* the level of force he used was objectively reasonable to

accomplish that purpose," the defendant would be acquitted of murder. *Lee*, 193 Md. App. at 58. However, if the defendant "held an actual belief that he had to use force to defend another, but his belief was not objectively reasonable and/or the level of force he used was not objectively reasonable, the result would be to mitigate" the murder charge to manslaughter. *Id.* at 58–59.

Danshin relies on three cases concerning the self-defense instruction to argue the trial court erred in refusing to give the defense of others instruction. Danshin first cites to *Wilson v. State*, 422 Md. 533 (2011).[6] In *Wilson*, the defendant was convicted of first-degree murder. When the defendant first spoke to police, he acknowledged being at the gas station where the shooting happened, "but denied any knowledge of the shooting." *Id.* at 538. Later, in his third interview with police, the defendant admitted he shot the victim because it was "Kill or be killed," but was "adamant that he had no intention to kill anyone." *Id.* at 538–39. At trial, the circuit court denied the defendant's request to give the imperfect self-defense instruction. *Id.* at 539. The Supreme Court reversed and found that the defendant's statements to police as well as his statements at trial were sufficient to meet the "some evidence" standard and it was "not for the court to determine whether [his response] was preposterous and/or inane." *Id.* at 542–43. Therefore, he was entitled to a jury instruction on imperfect self-defense. *Id.* at 543.

[6] Danshin initially cites to *Wilson* in his opening brief but later, in response to the State's argument, his reply brief states that this case is "inapposite."

Danshin next cites to *Roach v. State* to show a scenario where a defendant was entitled to an instruction on perfect and imperfect self-defense even though there were inconsistencies in his statement to police. 358 Md. 418 (2000). The defendant in *Roach* was convicted of first-degree murder for a shooting outside of a liquor store. *Id.* at 421–22. The defendant gave conflicting statements to police, which were introduced at trial. At first, the defendant denied having any knowledge about the shooting and denied having a gun. Eventually, the defendant admitted to shooting the victim and that the gun was his. *Id.* at 423. At trial, the defendant testified that the gun went off accidentally. The circuit court refused to give the self-defense instruction to the jury. However, the Supreme Court reversed and determined that the defendant generated "some evidence" to generate the self-defense instruction and it was up to the jury to determine whether they would credit his statement. *Id.* at 432.

Finally, Danshin cites to *Dykes v. State*, 319 Md. 206 (1990). The defendant in *Dykes* was convicted of second-degree murder. *Id.* at 209. Similar to the defendants in *Wilson* and *Roach*, the defendant in *Dykes* gave varying accounts of the events leading up to the murder and the murder itself. *Id.* at 218–20. However, in each statement, the defendant admitted to stabbing the victim. *Id.* Ultimately, the Supreme Court held that the judge erred in refusing to grant the defendant's request for a self-defense jury instruction as "some evidence" was generated and the judge impermissibly weighed the evidence and made findings of fact. *Id.* at 221–22.

We now turn to the evidence Danshin relied on at trial to determine whether he met his burden of producing "some evidence." Throughout his briefs, Danshin relies on his recorded, post-*Miranda* statement to police, discussed *supra*, to argue he produced enough evidence to garner the defense of others jury instruction.

Applying the principles outlined above, we determine there was no abuse of discretion in the trial court's refusal to instruct on defense of others. At no point during his statement to police does Danshin provide an opening to say he was defending someone else.

At first, Danshin told detectives he drove by the motel, picked Jones up from the street, and drove her to his friend's house. After detectives informed Danshin they knew more about what transpired at the motel, Danshin gave more details about what happened. However, throughout the interview Danshin repeatedly denied that he shot Gonzalez-Mena, saying: "I didn't shoot him"; "the gun [Clemons] gave me [didn't work]"; "I didn't pull the trigger"; "I didn't see a shot fired"; "I did not shoot her boyfriend"; "I wasn't shooting at him."

At the same time, Danshin gave vague statements and hypotheticals about what he would do if someone was in a dangerous situation: "I did to the best of my ability"; "I don't know [who pulled the trigger]. I can't say"; "[t]he only people that I would consider hurting are people who are [hurting] women and children. And I think most people would agree that if somebody is going to kill a child, then you do whatever you can to not let that

happen"; "[if] I were to say anything, I would say that I went there to prevent a crime from occurring."

While defendant has the prerogative to argue inconsistent theories, "that choice alone does not require that the jury automatically be so instructed" on those theories. *Jarvis v. State*, __ Md. __, No. 22, Sept. Term, 2023, slip op. at 31. The defendant is only entitled to an instruction that is "fairly supported by the evidence." *Id.* at 22 (quoting *Roach*, 358 Md. at 432).

Even though Danshin's case is similar to those of the defendants in *Wilson*, *Roach*, and *Dykes* in that his story evolves and changes throughout his interview, there is one key difference: Danshin never admits to shooting Gonzalez-Mena. Danshin's strategy when speaking to police, as demonstrated through his statements admitted at trial, was maintaining his innocence, not asserting that he shot Gonzalez-Mena to defend someone else. It is certainly his right to choose his own trial strategy, but he cannot have it both ways: claiming his innocence while also claiming he shot Gonzalez-Mena to defend Jones. *See e.g.*, *Sims v. State*, 319 Md. 540, 554–55 (1990) (stating that "[t]he issue in this instance involved the honestly held subjective feelings of the perpetrator at the moment of the shooting. When the defendant maintains that he was not the perpetrator, this becomes a very difficult, though probably not impossible, burden to meet.") (footnote omitted).

The Supreme Court's recent opinion in *Jarvis v. State* further supports our holding. __ Md. __, No. 22, Sept. Term, 2023, slip op. In *Jarvis*, there were two different accounts about the events leading up to the defendant stabbing the victim. Under the defendant's

theory, the stabbing was accidental. *Id.* at 17. Under the victim's theory, the stabbing was "intentional and unprovoked." *Id.* However, "[n]either account contains any evidence that [the defendant] possessed a subjective belief that stabbing [the victim] was necessary for [defendant's] protection." *Id.*

The court in *Jarvis* stated that "[t]estimony that an action was accidental—alone—cannot be used to support the theory that the action was both an accident and intentionally done in self-defense." *Id.* at 23. The Court found that the evidence proffered did not amount to "some evidence" to generate the imperfect self-defense instruction. *Id.* at 32. So too, Danshin's testimony that he did not shoot Gonzalez-Mena could not be used to support his theory that the shooting was done in defense of Jones.

We therefore affirm the trial court's refusal to grant the defense of others jury instruction.

B. Selecting the Jury

Danshin next argues that the trial court committed reversible error by failing to swear the jury pool to tell the truth before conducting voir dire. While an oath was administered, Danshin claims the wrong oath was used. The State contends that Danshin did not preserve this issue and waived any claimed error.

At the beginning of jury selection, the trial judge had just started asking prospective jurors preliminary questions when the State asked to approach the bench. During the bench conference, the judge realized the jury pool had not been sworn in. The clerk then administered the following oath:

> Ladies and gentlemen of the jury, please stand and raise your right hand. Look upon the defendant. You and each of you do solemnly promise and declare that you shall well and truly try and a true deliverance make between the State of Maryland and Sergey Danshin, whom you shall have in charge, and a true verdict give, according to the evidence. Please respond.

Thereafter, defense counsel asked to approach the bench, raising concerns about the language of the oath given and whether it was the correct oath to give before voir dire. After a brief discussion, the judge confirmed that the correct oath was given and then continued to conduct voir dire.

At the end of jury selection, the judge confirmed with counsel for both parties that they were satisfied with the 12 jurors selected. Defense counsel said "[w]e're satisfied," and the seated jurors were charged and given instructions to return the next day for the beginning of trial.

Typically, an 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." Maryland Rule 8-131(a). The primary purpose of this rule is "to ensure fairness for all parties in a case and to promote the orderly administration of law." *State v. Bell*, 334 Md. 178, 189 (1994) (quoting *Brice v. State*, 254 Md. 655, 661 (1969)). In order to properly preserve an issue for appellate review, a party must make a "timely and clearly stated objection" to the trial court "so that the court has an opportunity to consider the issue and to correct the error." *Jordan v. State*, 246 Md. App. 561, 587 (2020).

Danshin contends that defense counsel "provided ample opportunity to the court to correct its own error." He argues that counsel "alerted the trial court that he believed that

the oath given by the clerk was 'the oath you give them after they respond,'" that he alerted the trial court that there are two different oaths, and that he "told the trial court that he believed the *voir dire* oath was 'swearing to tell the truth in the answers you'll be giving, rather than return a verdict.'"

Danshin further avers that counsel did not acquiesce to the error and cites to *State v. Ablonczy*, to argue he did not waive his challenge by accepting the jury panel. 474 Md. 149 (2021). In *Ablonczy*, the trial court refused to ask defense counsel's requested jury instruction on presumption of innocence, burden of proof, right to remain silent, and beyond a reasonable doubt. *Id.* at 154. Defense counsel immediately objected. *Id.* However, at the conclusion of jury selection, defense counsel accepted the jury as empaneled. *Id.* at 155. After discussing and applying its prior decision in *State v. Stringfellow*, 425 Md. 461 (2012),[7] the Supreme Court held that "objections that relate to the determination of a trial court to not ask a proffered *voir dire* question are not waived by later acceptance, without qualification, of the jury as empaneled," and that the defendant did not waive his objection "by accepting the jury as empaneled without repeating his prior objection." *Ablonczy*, 474 Md. at 166.

[7] The Court in *Stringfellow* stated that objections during voir dire fall into two categories. "The first group of objections goes 'to the inclusion or exclusion of a prospective juror (or jurors) or the entire venire[.]'" *Ablonczy*, 474 Md. at 161–62 (quoting *Stringfellow*, 425 Md. at 469). In this instance, an "unqualified acceptance of the jury panel waives any prior objections." *Id.* at 162. The second group of objections "which are 'incidental to the inclusion [or] exclusion of a prospective juror or the venire[, are] not waived by accepting a jury panel at the conclusion of the jury-selection process[.]" *Id.* (quoting *Stringfellow*, 425 Md. at 469).

While Danshin relies on *Ablonczy* to argue he did not waive his objection by accepting the jury as empaneled, there is a key difference in this case: at no point did defense counsel state an objection. During the bench conference, defense counsel questioned the oath administered to prospective jurors, but counsel did not clearly object to the oath. Nor did counsel object to the empaneled jury. Therefore, it does not matter which type of objection this should be classified as under *Stringfellow*, as no objection was made. We therefore find that this issue is not preserved for our review.

Further, we decline to exercise plain error review. Plain error review is "reserved for those errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant of a fair trial." *Newton v. State*, 455 Md. 341, 364 (2017) (quoting *Robinson v. State*, 410 Md. 91, 111 (2009)).

Four conditions must be met before we may exercise our discretion to undertake plain error review: (1) "there must be an error or defect—some sort of 'deviation from a legal rule'—that has not been intentionally relinquished or abandoned, *i.e.*, affirmatively waived by the appellant"; (2) "the legal error must be clear or obvious rather than subject to reasonable dispute"; (3) "the error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it 'affected the outcome of the district court proceedings'"; and (4) "the error must 'seriously affect the fairness, integrity or public reputation of judicial proceedings.'" *Id.* (quoting *State v. Rich*, 415 Md. 567, 578 (2010)).

Trial courts have "broad discretion in how jury selection is conducted." *Kidder v. State*, 475 Md. 113, 135 (2021). Jurors are selected from a pool that represents a "fair cross section of the adult citizens" who reside in the county. *Id.* at 123; Maryland Code, Courts & Judicial Proceedings Article ("CJ"), §8-104 (1974, 2020 Repl. Vol.). Before questioning begins, an oath is administered to prospective jurors. *Collins v. State*, 452 Md. 614, 618 n.2 (2017).

Maryland Rule 4-312(e) sets forth the requirement that prospective jurors should be under oath when answering questions during voir dire:

> (1) Examination. The trial judge may permit the parties to conduct an examination of qualified jurors or may conduct the examination after considering questions proposed by the parties. If the judge conducts the examination, the judge may permit the parties to supplement the examination by further inquiry or may submit to the jurors additional questions proposed by the parties. *The jurors' responses to any examination shall be under oath*. On request of any party, the judge shall direct the clerk to call the roll of the array and to request each qualified juror to stand and be identified when called.

(Emphasis added). However, the Maryland Rules "do not prescribe a particular oath." *Collins*, 452 Md. at 618 n.2.

Danshin argues there is plain error, and the error affected the outcome of the court proceedings. However, an oath was administered to the potential jurors in this case. While Danshin disagrees with the language of the oath given, there is not a specific oath that trial courts are required to administer verbatim to prospective jurors. All that is required is that the jury pool is "under oath," and that was done here. *See Alston v. State*, 177 Md. App. 1, 27–31 (2007) (upholding a defendant's conviction when the jury was belatedly sworn in).

Cf. Harris v. State, 406 Md. 115, 132 (2008) (reversing a defendant's convictions where the jury was never sworn). Accordingly, we decline to exercise our discretion to undertake plain error review.

CONCLUSION

At trial, Danshin failed to produce "some evidence" to generate the defense of others jury instruction. In the evidence admitted at trial, Danshin either denied shooting Gonzalez-Mena or gave vague and hypothetical responses to detectives. Therefore, the trial court did not abuse its discretion in refusing to instruct the jury on defense of others. Danshin also did not preserve his challenge to the administration of the oath during voir dire and we decline to exercise our discretion to undertake plain error review on this issue. Accordingly, we affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.