Circuit Court for Washington County
Case Nos.: C-21-CR-22-000387; C-21-CR-22-000510

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

Nos. 1574, 1576

September Term, 2023

JAMES RUSSELL ANDERSON

v.

STATE OF MARYLAND

Berger,
Ripken,
Hotten, Michele D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Hotten, J.

Filed: February 27, 2025

*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).

Following a three-day trial, a jury sitting in the Circuit Court for Washington County convicted James Russell Anderson, appellant, of seven counts—attempted second-degree murder, first-degree assault, and second-degree assault of Cynthia Sullivan; first-degree assault and second-degree assault of Linda "Adele" West; malicious destruction of property for damage to Ms. West's vehicle; and malicious destruction of property for damage to Ms. Sullivan's vehicle. The court sentenced Anderson on October 6, 2023, as follows: thirty years' imprisonment, all suspended but twenty-five years, for attempted second-degree murder of Ms. Sullivan; twenty-five consecutive years' imprisonment, all suspended but ten years, for first-degree assault of Ms. West; and two consecutive terms of sixty days' imprisonment, all suspended, for malicious destruction of property as to Ms. West's and Ms. Sullivan's vehicles. The remaining counts were merged for sentencing.

On appeal, Anderson presents two questions for our review:

1. Did the trial court err in refusing to give an instruction on imperfect defense of others?

2. Did the trial court err in permitting the State to elicit Mr. Anderson's opinion about Rebecca Finkelman's credibility?

For the reasons that follow, we affirm the judgment of the circuit court.

BACKGROUND

As of the trial in this case, Anderson was engaged to Rebecca Finkelman. Prior to dating Anderson, Ms. Finkelman was married to a police officer for twenty years. She testified that during their marriage, her ex-husband was abusive towards her, at times strangling her and even holding a gun to her head. Due to his status as a police officer, Ms. Finkelman believed that her ex-husband could easily locate her whereabouts. After her

divorce was finalized, Ms. Finkelman began dating Anderson. At the time of the incident in this case, Ms. Finkelman lived with Anderson and had a restraining order in place against her ex-husband.

On March 1, 2022, Ms. Finkelman was expecting a gift in the mail for a nearby neighbor, Davi Glessner. When the gift arrived, Ms. Finkelman went to check the mailbox at the end of her driveway. Upon retrieving the gift, Ms. Finkelman decided to drive the gift over to Ms. Glessner's home. Ms. Glessner has two young children: a toddler and a newborn. While Ms. Finkelman was there, several people drove onto the property and entered Ms. Glessner's home. It later turned out that these people were Ms. West, the owner of the farm property that Ms. Glessner was renting; Ms. Sullivan, Ms. West's realtor; Ms. West's friend, Patrick; and "two big guys to provide security in case there was any hostilities." Leading up to the incident, Ms. West had initiated eviction proceedings against Ms. Glessner and her partner, Shawn Brockaloney, for unpaid rent.

Four weeks prior to the incident, Ms. West had attempted to notify the tenants, via email to Mr. Brockaloney, that she would be entering the home to inspect the condition of the house and move an antique bed from the third floor of the house to a barn on the property. However, that notice was never received because Mr. Brockaloney had recently changed his email address. The night before she showed up at the property, Ms. West again sent the notice to Mr. Brockaloney, this time to a different email address. However, Mr. Brockaloney was not home when Ms. West and the rest of her group arrived.

It is not clear whether Ms. Glessner knew that Ms. West would be arriving to inspect the home, or whether she even recognized any of the people who showed up at the house.

However, it is clear that Ms. Glessner was "very angry" at Ms. West and her group for entering the home, and that Ms. Finkelman did not recognize any of the individuals in Ms. West's group. One of the men in Ms. West's group "came at" Ms. Finkelman "in a very aggressive manner and bombarded [her] with very aggressive questions." Ms. Finkelman testified that the man was "in my face with this demeanor that was scaring me," and that she was feeling "insecure and not safe." Ms. Finkelman heard "a lot of stomping, a lot of screaming" coming from upstairs, and her "only thought was somebody is getting hurt." At some point, Ms. Glessner dialed 911 and handed the phone to Ms. Finkelman. Ms. Finkelman told the 911 operator that one of the men in Ms. West's group was carrying "what looked to me like a long gun wrapped in a moving blanket."

At some point, Ms. Glessner called Anderson to "brief" him on "what was going on." Anderson testified that she sounded "very hysterical" on the phone, and that made him feel "concerned as to what was going on." Ms. Glessner told Anderson that "there were several people at the house that were not supposed to be there." She also told Anderson that "they were in trouble and they needed help." Ms. Glessner then handed the phone to Ms. Finkelman. Ms. Finkelman was "also hysterical," and she told Anderson that "I don't know who these people are," and "I think we need help." She also told Anderson that the people in Ms. West's group "had nearly knocked the baby out of her arms," and that she and Ms. Glessner were "being pushed around."

At this point, Anderson proceeded to make the short drive over to Ms. Glessner's house. When Anderson arrived at Ms. Glessner's house, he saw "a car that wasn't usually there" that was "blocking the driveway up toward, to go up to the house." It was later

revealed that this car belonged to Ms. Sullivan, and that Ms. Sullivan was in the car at the time. Upon seeing the car, Anderson had a "high level of concern" for the safety of Ms. Finkelman, Ms. Glessner, and the children in the house. Specifically, Anderson testified he was concerned "that their lives could be in danger" based on the phone call with Ms. Glessner and Ms. Finkelman. Anderson was "scared" of what the people who were not supposed to be there were doing, so he "rammed into the car with [his] truck to push it back." Anderson backed up and hit Ms. Sullivan's car five times. Each time, Anderson "would back up his truck twenty or thirty feet, and then he accelerated" into the front of the car. At some point, Anderson's truck was on top of Ms. Sullivan's car.

By this point, Ms. West was at the barn where she was unloading the bed. After Anderson had finished ramming his truck into Ms. Sullivan's car, he "swung around on the driveway to come up toward the barn." As he drove toward the barn, Anderson almost hit Patrick. When Anderson reached the barn, Ms. West "went over and tried to talk some sense into him." However, she became frantic and ran back to her car, where she and Patrick quickly tried to throw the remaining pieces of the bed into the barn. Ms. West testified that after she had finished moving the bed into the barn, she "jumped into the passenger seat" of her car, and "less than five seconds later," Anderson ran into the back of her car. Anderson testified that he did this with the "overall goal still the same to get the women rescued." He then backed up, but could not hit Ms. West's car again because his wheels had gotten stuck in the mud.

With his truck stuck in the mud, Anderson could not get out because his seatbelt was jammed, so he called Ms. Glessner and asked to speak to Ms. Finkelman. Ms.

Finkelman then drove her SUV over to where Anderson was stuck. Anderson was eventually able to get his seatbelt unjammed and he got into the SUV with Ms. Finkelman. At the same time, however, Patrick drove Ms. West's car to the entrance of the farm to prevent Anderson and Ms. Finkelman from leaving the property before the police arrived. When Anderson saw this car blocking the way out, he asked Ms. Finkelman to "honk the horn and yell at them to get out of the way." When Ms. West's car "backed up instead," Ms. Finkelman used her SUV to push the car out of the way, and they were able to escape the property before the police arrived.

Anderson was charged in the Circuit Court for Washington County on eight counts under two indictments that were consolidated for trial. The State charged Anderson with attempted first-degree murder, attempted second-degree murder, first-degree assault, and second-degree assault of Ms. Sullivan; first-degree assault and second-degree assault of Ms. West; malicious destruction of property for damage to Ms. West's vehicle; and malicious destruction of property for damage to Ms. Sullivan's vehicle.

After a jury trial from July 24 to July 26, 2023, Anderson was acquitted of attempted first-degree murder and convicted of the remaining counts. The court sentenced him on October 6, 2023, as follows: thirty years' imprisonment, all suspended but twenty-five years, for attempted second-degree murder of Ms. Sullivan; twenty-five consecutive years' imprisonment, all suspended but ten years, for first-degree assault of Ms. West; and two consecutive terms of sixty days' imprisonment, all suspended, for malicious destruction of property as to Ms. West's and Ms. Sullivan's vehicles. The remaining counts were merged for sentencing.

Anderson noted this timely appeal on October 11, 2023.

STANDARD OF REVIEW

A requested jury instruction is required when (1) it "is a correct statement of the law;" (2) it "is applicable under the facts of the case;" and (3) its contents were "not fairly covered elsewhere in the jury instruction[s] actually given." *Rainey v. State*, 480 Md. 230, 255 (2022) (quoting *Ware v. State*, 348 Md. 19, 58 (1997)). On appeal, we review the overall decision of the trial court for an abuse of discretion, but the second requirement (whether the instruction is applicable in that case) is akin to assessing the sufficiency of the evidence, which requires a *de novo* review. *Rainey*, 480 Md. at 255.

In a criminal trial, opinions about the credibility of another person are "inadmissible as a matter of law because [they] invade[] the province of the jury." *Bohnert v. State*, 312 Md. 266, 279 (1988). Therefore, we review *de novo* to determine whether the State impermissibly elicited an opinion about the credibility of another person.

DISCUSSION

I. Anderson Did Not Waive His Objection to the Circuit Court's Jury Instructions

The State contends that Anderson affirmatively waived his assignment of error when, after jury instructions had been given and the circuit court asked whether defense counsel had any objection or further request, counsel affirmatively stated, "No, Your Honor." According to the State, Anderson failed to comply with Maryland Rule 4-325(f), which does not allow parties to assign as error the giving or the failure to give an instruction unless they object on the record promptly after the court instructs the jury.

Anderson, while conceding that he did not object after jury instructions were given, argues that this case represents one of those rare exceptions to the general requirement of strict compliance with Rule 4-325(f). He points to the fact that discussion on the imperfect defense of others instruction was lengthy, spanning thirty-four uninterrupted transcript pages, and that, near the tail end of the exchange, the circuit court said, "I disagree. And so, we're going to stop this discussion. I disagree." This, according to Anderson, rendered a post-instruction objection "futile or useless."

Under Rule 4-325(f), "[n]o party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly *after the court instructs the jury*, stating distinctly the matter to which the party objects and the grounds of the objection." Md. Rule 4-325(f) (emphasis added). "[T]he Maryland Rules are not aspirational guidelines." *Montague v. State*, 244 Md. App. 24, 59 (2019), *aff'd*, 471 Md. 657 (2020). "Rather, they are 'precise rubrics established to promote the orderly and efficient administration of justice and . . . are to be read and followed.'" *Id.* (quoting *Dorsey v. State*, 349 Md. 688, 700–01 (1998)). "[A] party's failure to object to an instruction after the court has instructed the jury generally forfeits the right to raise the issue on appeal." *Id.* "However, the rule that parties must object to instructions after they are given is not an absolute requirement." *Id.*

"[T]here is 'some play in the joints' in determining whether an issue has been preserved." *Watts v. State*, 457 Md. 419, 428 (2018) (quoting *Sergeant Co. v. Pickett*, 283 Md. 284, 289 (1978)). "If the record reflects that the trial court understands the objection and, upon understanding the objection, rejects it, this Court will deem the issue preserved

for appellate review." *Id.* For an appellate court to conclude that there has been substantial compliance with Rule 4-325(f), the following conditions must be met:

> There must be an objection to the instruction; the objection must appear on the record; the objection must be accompanied by a definite statement of the ground for objection unless the ground for objection is apparent from the record[,] and the circumstances must be such that a renewal of the objection after the court instructs the jury would be futile or useless.

Bowman v. State, 337 Md. 65, 69 (1994). "[S]ubstantial compliance with the objection requirement will preserve only those contentions actually raised before the trial court in the first instance." *Montague*, 244 Md. App. at 60.

The Court's substantial-compliance decisions "represent the rare exceptions [to Rule 4-325(f)] and the requirements of the Rule should be followed closely." *Sims v. State*, 319 Md. 540, 548–49 (1990). "Unless the attorney preserves the point by proper objection after the charge, or has somehow made it crystal clear that there is an ongoing objection to the failure of the court to give the requested instruction, the objection may be lost." *Id.*

Here, Anderson concedes that he did not object to the circuit court's jury instructions after they were given. Therefore, his assignment of error is only preserved for this Court's review if he satisfied all the requirements of the substantial compliance exception. Those requirements, as explained above, include: (1) an objection to the instruction on the record; (2) a definite statement of the ground for objection; and (3) that under the circumstances, a renewal of the objection after the court instructed the jury would have been futile or useless. *Bowman*, 337 Md. at 69.

The first two requirements are easily satisfied. Throughout a lengthy discussion between defense counsel and the court over the requested defense of others instruction,

defense counsel objected several times to the court's refusal to give the instruction. Additionally, each objection was accompanied by a definite statement of Anderson's grounds for the objection: namely, that his trial testimony provided "some evidence" of his subjective belief that Ms. Finkelman was in immediate and imminent danger of death or serious bodily harm, and that the force he used was necessary to defend her, thereby generating the imperfect defense of others instruction.

The more difficult question is whether renewal of the objection after the court instructed the jury would have been futile or useless. To show that further objection would have been "futile or useless," it is not enough to show that defense counsel raised an objection before the jury was instructed, that defense counsel indicated the basis of the objection, and that the court made clear it disagreed with defense counsel's argument. *See Montague*, 244 Md. App. at 61. In *Montague*, the defendant argued that the court erred in promulgating an instruction on concealment when there was no evidentiary basis. *Id.* Although "[t]he objection was certainly made to the trial court before the jury was instructed," "[t]he basis for this objection was made clear to the court at that time," and "it is equally clear that the trial court did not agree with the premise of trial counsel's argument," we determined that nothing in the record suggested that renewing the objection would have been futile or useless. *Id.*

In cases where further objection *was* found to be futile or useless, the record reflected affirmative statements by the trial court signaling to counsel that regardless of counsel's objection, the court would not change its ruling. *See Gore v. State*, 309 Md. 203, 206, 209 (1987) (holding that, after the trial court stated to defense counsel "you can object

all you want, but I'm going to [give the controverted instruction]," no additional objection was required to comply with Rule 4-325(f)); *Corbin v. State*, 94 Md. App. 21, 27 n.2 (1992) (after being rebuffed by the trial court on three separate occasions, counsel did not have to renew her objection after the jury was instructed because doing so would have been an exercise in futility). Implied in these holdings is that further objection would *not* be futile in a case where the court welcomed the objection, or was at least ambiguous about whether further objection was welcomed.

This case fits comfortably within the substantial compliance exception to Rule 4-325(f). As in *Gore* and *Corbin*, the record in this case reflects several affirmative statements by the circuit court signaling to defense counsel that regardless of counsel's objection, the court would not change its ruling. For example, following Anderson's first request for the imperfect defense of others instruction, the court denied the request, stating, "I'm not going to give the instruction." After Anderson renewed his request for the jury instruction, the court again replied, "I'm not giving the Defense of Others instruction." After another request for the instruction, the court replied frustratedly, indicating its decision was final, when it said, "I disagree. And so, we're going to stop this discussion. I disagree."

In total, Anderson made six separate requests for the imperfect defense of others instruction, and on each occasion, the court responded by denying the requested jury instruction. This back-and-forth spanned thirty-four uninterrupted transcript pages. Each request was accompanied by Anderson's grounds for seeking the instruction, and each denial by the court was accompanied by its reasons for declining to give the instruction.

Thus, the circuit court was fully aware of Anderson's objection at the time it instructed the jury, and the court's growing frustration with Anderson's requests near the tail-end of the exchange shows that any further objection would have been futile. For these reasons, Anderson's assignment of error is preserved for appellate review under the substantial compliance exception to Rule 4-325(f).

II. The Circuit Court Did Not Err When it Refused to Give an Instruction on Imperfect Defense of Others

Anderson argues that the circuit court erred for two distinct reasons. First, he argues that the court applied an incorrect legal standard when it refused to instruct the jury on imperfect defense of others. Alternatively, he argues that even if the court applied the correct standard, the court still reached the wrong conclusion. The State, on the other hand, contends that the court applied the correct standard and reached the right conclusion.

A. The Circuit Court Applied the Correct Legal Standard

In Maryland, a requested jury instruction must be given "when (1) it 'is a correct statement of the law;' (2) it 'is applicable under the facts of the case;' and (3) its contents were 'not fairly covered elsewhere in the jury instruction[s] actually given.'" *Jarvis v. State*, 487 Md. 548, 564 (2024) (quoting *Rainey*, 480 Md. at 255). The first and third requirements are not contested here, so the parties only dispute whether an imperfect defense of others jury instruction "is applicable under the facts of the case." *Id.* This requirement is satisfied "'if the evidence is sufficient to permit a jury to find its factual predicate.'" *Rainey*, 480 Md. at 255 (quoting *Bazzle v. State*, 426 Md. 541, 550 (2012)). In other words, the instruction must be given if the requesting party has produced "some

evidence" sufficient to raise the jury issue. *Jarvis*, 487 Md. at 564 (quoting *Arthur v. State*, 420 Md. 512, 525 (2011)).

The "some evidence" standard is a "fairly low hurdle," and need not even rise to the level of a preponderance. *Arthur*, 420 Md. at 526. "It calls for no more than what it says—'some,' as that word is understood in common, everyday usage." *Dykes v. State*, 319 Md. 206, 216–17 (1990). "[B]ecause whether 'some evidence' exists is viewed in the light most favorable to the requesting party, . . . both the source of that evidence and its weight compared to the other evidence presented at trial are immaterial." *Jarvis*, 487 Md. at 564 (citations omitted). "If there is any evidence relied on by the defendant which, if believed, would support his claim . . ., the defendant has met his burden." *Dykes*, 319 Md. at 217. However, it is a burden nonetheless, and "[t]he defendant must meet this burden as to each element of the defense" to generate the requested instruction. *Id.*

Anderson contends that the circuit court applied a heightened standard, requiring that he show "enough evidence," as opposed to "some evidence" of imperfect defense of others, and finding that the evidence did not "rise to that level." According to Anderson, the fact that the court used the phrase "enough evidence" as opposed to "some evidence" shows that it was impermissibly intruding on the province of the jury by weighing the evidence. The State, on the other hand, argues that while the circuit court used the phrase "enough evidence," it is clear when viewed in context of the entire discussion that the court was actually applying the correct "some evidence" standard.

When deciding whether to give a requested jury instruction, it is not the court's job to weigh the evidence before it; that is the jury's duty. *Wilson v. State*, 422 Md. 533, 542–

43 (2011). Rather, the court's only duty at the jury instruction stage is to assess whether the party requesting the instruction has met its burden of producing some evidence as to each element of the defense. *Jarvis*, 487 Md. at 564; *see also Dishman v. State*, 352 Md. 279, 292 (1998) ("The determination of whether an instruction must be given turns on whether there is *any evidence* in the case that supports the instruction") (emphasis added). The question here is whether the circuit court properly applied that standard, and appellate review of this question will not rise or fall with the circuit court's own characterization of its actions. Rather, "it is the *substance* of a trial court ruling . . . that determines its significance[.]" *State v. Taylor*, 371 Md. 617, 637 (2002) (emphasis in original).

Here, Anderson points to two statements that, in his view, prove that the court applied a more rigorous standard. First, in response to Anderson's request for an imperfect defense of others instruction, the court responded that it was "concerned that [defense counsel was] asking [the court] to send to the jury an instruction in a case *that does not rise to that level*[.]" Later, the court responded to one of Anderson's repeated requests for the instruction by stating, "It's my job to be the guardian of the gate to determine whether *enough* evidence has been presented for me to allow the jury of Washington County citizens to even consider a defense." According to Anderson, the court's language in these two statements reveals that it applied a more demanding standard than the required "some evidence" threshold. Anderson's argument is unpersuasive.

The fact that the circuit court characterized its job as determining whether "enough evidence" was presented to raise the jury issue, and concluded that the evidence did not rise to "that level," sheds no light on the actual standard the court applied. For example,

the court could have meant that the evidence was not enough to rise to the "some evidence" level. Far from being legal error, it is the court's duty when faced with a requested jury instruction to evaluate whether there is enough evidence to meet that threshold. *See Hollins v. State*, 489 Md. 296, 311 (2024) (explaining that a jury instruction must be given "when in a trial judge's assessment, the defendant has provided *enough evidence* to instruct the jury on an asserted defense or theory") (emphasis added); *Rainey*, 480 Md. at 268 (observing that an appellate court must "independently review whether there was *sufficient evidence* in the record to support the given jury instruction") (emphasis added). "Absent a misstatement of law or conduct inconsistent with the law, a trial judge is presumed to know the law and apply it properly." *Medley v. State*, 386 Md. 3, 7 (2005) (cleaned up) (citations omitted).

Viewed in context of the entire discussion, it is clear that the court was applying the correct "some evidence" standard, and that the court's statements regarding "enough" evidence to "rise to that level" were in reference to that standard. For example, the circuit court expressly referred to the "some evidence" test five times during the discussion on imperfect defense of others. Additionally, the court's questioning of defense counsel, while not explicitly referencing the "some evidence" standard, reveals that the court was in fact applying that standard:

> THE COURT: Okay, where does that lead to a conclusion that there's *any evidence* that anybody was under risk of imminent or immediate death?
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> …

> THE COURT: *What evidence is there* that Cynthia Sullivan was going to assault or threaten to assault imminently and immediately Rebecca or Davi or any other person?
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> …
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> THE COURT: *What evidence at that moment is there* that Linda Adele West was assaulting anyone or threatening to assault anyone such that he could inject himself and defend somebody?
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> …
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> THE COURT: Okay. I think the central question in this analysis is *whether there is evidence* that he defended a person from Cynthia Sullivan because he's charged with harm to Cynthia Sullivan.
>
> …
>
> THE COURT: Having heard this case I do not believe there is *any evidence* generated out of any witness that the Defendant's actions were taken to stop a direct attack that was underway or even a threatened attack much less no sort of attack that was going to lead to imminent or immediate death or bodily harm.

These statements demonstrate that the circuit court sought *any* evidence that might generate an imperfect defense of others instruction, and ultimately concluded that the evidence presented at trial was not "enough" to "rise to th[e] level" of that very low bar. The court did not weigh the evidence, as Anderson accuses the court of having done, but rather, it asked Anderson repeatedly to point to any evidence generating the requested instruction. Thus, the circuit court properly applied the "some evidence" standard.

Having determined that the court applied the correct standard, we next consider whether the court rightly concluded that the standard was not met in this case.

B. Anderson Failed to Produce "Some Evidence" Warranting an Imperfect Defense of Others Instruction

To reiterate, a requested jury instruction must be given if the requesting party produces some evidence sufficient to raise the jury issue as to each element of the defense. *Jarvis*, 487 Md. at 564. A jury instruction on imperfect defense of others is generated if the defendant produces some evidence that (1) he actually believed that the person defended was in immediate and imminent danger of death or serious bodily harm, and (2) he actually believed the amount of force used was necessary. *Lee v. State*, 193 Md. App. 45, 57–59 (2010); *see also Maryland Criminal Pattern Jury Instruction* 4:17.3. This belief need not be reasonable to generate the imperfect form of the defense. *Id.*

"Except for the person or thing being defended, the doctrines of self-defense, defense of others, and defense of habitation are essentially identical." Charles E. Moylan, Jr., Criminal Homicide Law 191 (2002). Thus, a comparison to the doctrine of self-defense is appropriate here.

An important principle of self-defense is that to successfully invoke the defense, "[the defendant] is . . . required to have used a reasonable amount of force *against his attacker*." *Porter v. State*, 455 Md. 220, 235 (2017) (emphasis added). In other words, a defendant may not invoke the defense of self-defense if he used force on someone other than his attacker. It follows that a defendant may not invoke defense of others unless the person upon whom they used force was the person threatening immediate and imminent death or serious bodily harm upon the person they were attempting to defend. *See, e.g.*, *Lee*, 193 Md. App. at 65 ("The facts adduced at trial did not include 'some evidence' that

the appellant actually believed when he shot *Comploier* that any other person—patron or coworker—was in immediate and imminent danger *from Comploier*") (emphasis added); *Dashiell v. State*, 214 Md. App. 684, 698 (2013) ("The jury could have found that [when Dashiell punched *Justin Carter*,] he had reasonable grounds to believe that he faced imminent or immediate threat of serious bodily harm *from Justin Carter*") (emphasis added).

To generate an instruction on imperfect defense of others, then, it is not sufficient that the defendant believed the person they were trying to defend was in a general state of danger at the hands of some unspecified person, as Anderson did here. For example, the law would not permit Anderson to drive recklessly along the highway and cause fatal car crashes on his way to rescue Ms. Finkelman, only to have the murder charges mitigated to manslaughter because he had an honest belief that Ms. Finkelman was in imminent danger of death or serious bodily harm at the hands of someone far away. To do so would allow any individual to act with near impunity in an emergency situation, safe in the knowledge that the worst they could be convicted of is manslaughter. Rather, an instruction on defense of others is only generated by the evidence when "the person being defended was coming under direct attack when the defendant came to his or her defense." *Lee*, 193 Md. App. at 64.

Lee does not stand for the proposition that so long as one honestly believes another is coming under direct attack, he may use force on whomever he would like along the way to defending them. If that were the case, then any action Anderson took on his way to rescue Ms. Finkelman would have been shielded from murder charges, so long as he

honestly believed that she was coming under an imminent, direct threat of bodily harm in that moment. Implied in *Lee*'s statement of the law, therefore, is that the person being defended must have been coming under direct attack not just from anyone, but *from the person upon whom the defendant used force*, when the defendant came to his or her aid.

In this case, Anderson honestly believed that intruders, possibly armed with firearms, were "pushing around" Ms. Finkelman and that "lives could be in danger." He also honestly believed that ramming his truck into the cars blocking the driveway was necessary so he could get to the house to save Ms. Finkelman. Thus, if Anderson went into the house, saw individuals surrounding Ms. Finkelman with what he thought were firearms, and tackled them to the ground, he may have had a strong case for defense of others. However, that is not what happened here.

We view the evidence at this stage in the light most favorable to Anderson, the requesting party. The evidence shows that Ms. Finkelman has an abusive ex-husband who she believed could easily locate her whereabouts given his profession as a law enforcement officer. When Ms. Finkelman went to check the mailbox at the end of their driveway, Anderson thought she would only be gone for a few minutes, but she was gone for 30 minutes, so he became "very concerned as to where she was and what she was doing and if she was safe." Then, Anderson received a call from Ms. Glessner and Ms. Finkelman, during which the women told him that there were people at Ms. Glessner's house who were not supposed to be there, that they were in trouble, and that they needed help right away because they were being "pushed around." This caused Anderson to feel "scared" that Ms. Finkelman was in danger. Upon his arrival at Ms. Glessner's home, Anderson found that

the driveway was blocked by cars, so he used his truck to push those cars out of the way "to get Rebecca out of there."

Anderson's honest belief that his loved one was in imminent danger of death or serious bodily harm is understandable given the circumstances and the information available to him in the moment. However, it did not permit him to cause indiscriminate destruction on his way to rescuing her, and that is exactly what he did. Anderson did not simply push the other vehicles in the driveway aside. Rather, he rammed his truck into Ms. Sullivan's vehicle five times, backing up 20-30 feet and accelerating into the car each time, and then ran into Ms. West's vehicle as well. At some point, Anderson's truck was on top of Ms. Sullivan's car. Importantly, none of the evidence produced at trial indicated that Ms. Finkelman or Ms. Glessner were coming under direct attack from Ms. Sullivan or Ms. West, or that Anderson actually believed when he rammed his truck into Ms. Sullivan and Ms. West that any person was in immediate and imminent danger from Ms. Sullivan or Ms. West.

One may use lawful force to defend another if they reasonably believe that someone was threatening imminent death or serious bodily harm upon the person being defended. *Lee*, 193 Md. App. at 58. Even if that belief is not reasonable, it may serve to mitigate an offense if the person using force actually believed it was necessary. *Id.* at 59. However, to generate the jury instruction, there must be some evidence that the person upon whom force was used was the person threatening the harm. Here, Ms. Sullivan and Ms. West were nowhere near Ms. Finkelman when Anderson rammed his truck into them, and Anderson never testified that he believed Ms. Sullivan or Ms. West were threatening Ms. Finkelman

with imminent death or serious bodily harm. Thus, even though he did have an honest belief that Ms. Finkelman was generally in danger from someone inside the house, and even though he believed the force he used was necessary to rescue her from the house, Anderson did not generate any evidence showing that he actually believed Ms. Finkelman was under threat from either of the people he actually assaulted: Ms. Sullivan and Ms. West. A generalized fear that another is in danger is not enough to excuse any act of violence in the pursuit of rescue. Therefore, having generated no evidence of imperfect defense of others, the circuit court correctly denied the requested jury instruction.

III. The Circuit Court Erred in Permitting the State to Elicit Testimony from Anderson Regarding Ms. Finkelman's Credibility, but that Error was Harmless

"[I]n a criminal trial, a court may not permit a witness to express an opinion about another person's credibility." *Walter v. State*, 239 Md. App. 168, 184 (2018). Such opinions are "inadmissible as a matter of law because [they] invade[] the province of the jury." *Bohnert*, 312 Md. at 279. "Just as a witness may not testify that another witness is telling the truth, a prosecutor may not ask a defendant whether other witnesses are lying." *Walter*, 239 Md. App. at 186. Such questions similarly "encroach on the province of the jury by asking the defendant to judge the credibility of the witnesses and weigh their testimony." *Id.* An opinion about another witness's credibility may come in many forms, including "in the form of questions, assertions of disbelief, opinions (not as expert witnesses), argument, *recounting of what others were purported to have said contrary to the version of the accused*, hearsay, or otherwise." *Crawford v. State*, 285 Md. 431, 451 (1979) (emphasis added).

Here, the State was permitted to ask Anderson to "recount" what Ms. Finkelman was "purported to have said" on a phone call "contrary to the version" that she testified to on the stand. *Id.* In other words, the State sought to impugn Ms. Finkelman's credibility through its questioning of Anderson in the following exchange:

> STATE: How do you know the newborn was in a swing?
>
> ANDERSON: That's what Rebecca said.
>
> STATE: When did she say that?
>
> ANDERSON: When she was on the stand.
>
> STATE: Okay, and that's where the piece of furniture almost hit the kid?
>
> ANDERSON: Yes.
>
> STATE: Okay. But would you say she said when she called was that [the] baby was almost knocked out of Davi's arm. That's different from what she said isn't it? Isn't that different from what she testified to?
>
> ANDERSON: I think so.
>
> STATE: You think so. It's also different from what's on the 911 call, isn't it?
>
> DEFENSE COUNSEL: Your Honor, I'm going to object. It sounds like she's trying to impeach Rebecca through Mr. Anderson and it's not for Mr. Anderson to say whether Rebecca is saying things accurately. And I just want to make that clear.
>
> STATE: Your Honor, I'm talking about –
>
> COURT: I think this is the subject of cross-examination what he heard her say during the testimony and how it may or may not differ from what he heard on the phone. So, overruled.

The State impermissibly elicited testimony from Anderson that would suggest to the jury that Ms. Finkelman was lying. By allowing the State to do so, the circuit court erred as a matter of law.

"Once error is established, the burden is on the State to show that it was harmless beyond a reasonable doubt. The record must affirmatively show that the communication (or response or lack of response) was not prejudicial." *Denicolis v. State*, 378 Md. 646, 658–59 (2003). An error may also be deemed "harmless" if "a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict." *Dorsey v. State*, 276 Md. 638, 659 (1976). The Supreme Court of Maryland has "stated frequently that, where credibility is an issue and, thus, the jury's assessment of who is telling the truth is critical, an error affecting the jury's ability to assess a witness' credibility is not harmless error." *Dionas v. State*, 436 Md. 97, 110 (2013). This is one of those rare cases where an error affecting the jury's ability to assess a witness's credibility is, in fact, harmless.

Anderson conceded, in his own testimony, that he hit Ms. Sullivan's and Ms. West's vehicles. The only issue in dispute was whether Anderson's culpability could be mitigated because he was acting in defense of others. Ms. Finkelman's testimony went to the heart of that issue. However, the defense of others issue never even reached the jury, because Anderson failed to produce "some evidence" sufficient to generate the jury instruction on defense of others. Since Ms. Finkelman's testimony concerned an issue that did not reach the jury, her credibility was not critical to the jury's ultimate decision. Therefore, we hold that the court's error in permitting the State to elicit testimony regarding Ms. Finkelman's credibility was harmless.

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