Circuit Court for Baltimore City
Case No. 121063002

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1739

September Term, 2022

DAVID HANLEY

v.

STATE OF MARYLAND

Graeff,
Nazarian,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: June 6, 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).

A jury in the Circuit Court for Baltimore City convicted David Hanley, appellant, of attempted second-degree murder and wearing and carrying a deadly weapon with intent to injure. The court sentenced appellant to a total term of 30 years' imprisonment, all but 15 years suspended.

In this appeal, appellant presents three questions, which we have rephrased slightly as follows:

1. Did the circuit court err in refusing to instruct the jury on imperfect self-defense?

2. Did the circuit court err in refusing to instruct the jury on hot-blooded response to lawfully adequate provocation?

3. Did the circuit court err in permitting the State to impeach appellant and another defense witness with a recording of a telephone call that appellant made from jail following his arrest, where the recording had not been disclosed to the defense until the third day of trial?

For the reasons set forth below, we answer the first question in the affirmative, and therefore, we shall reverse the judgments of the circuit court.[1]

FACTUAL AND PROCEDURAL BACKGROUND

On January 23, 2021, appellant was involved in an altercation with an individual, Kenneth Daugherty, outside of a Royal Farms store in Baltimore. During the altercation, appellant stabbed Mr. Daugherty multiple times. Mr. Daugherty was eventually taken to the hospital for treatment. Appellant was later arrested and charged with attempted first-

[1] In light of that ruling, we will not address the other two issues.

degree murder, attempted second-degree murder, first-degree assault, second-degree assault, and wearing and carrying a dangerous weapon with intent to injure.

At trial, Mr. Daugherty testified that, on the day of the altercation, he had gone to the Royal Farms to purchase food. While there, he observed a man and a woman engaged in an argument outside of the store. Mr. Daugherty approached the couple and stated: "Hey man, leave her alone." The man, later identified as appellant, then walked toward Mr. Daugherty while holding "something in his hand." Mr. Daugherty, who was carrying an extendable baton, brandished the weapon and "went to extend it." As Mr. Daugherty was doing so, appellant ran up and hit Mr. Daugherty in the face. Mr. Daugherty fell back, and appellant "punched" Mr. Daugherty several times. Appellant then ran off. After a brief moment, Mr. Daugherty realized he had been stabbed.

During Mr. Daugherty's testimony, the State showed security footage from outside the Royal Farms, which depicted a portion of the altercation between appellant and Mr. Daugherty. In the video, a woman, later identified as appellant's girlfriend, Amanda Guido, can be seen exiting the Royal Farms and walking around the corner of the store and out of camera view. A few seconds later, appellant can be seen exiting the store and following Guido around the corner and out of camera view. A few seconds after that, Mr. Daugherty can be seen exiting the store and walking toward the corner of the store where both Ms. Guido and appellant had disappeared. Mr. Daugherty, who remained in view of the camera, stops at the corner and, after a brief moment, brandishes his baton. Mr. Daugherty then begins to back away, and, after a few seconds, appellant emerges from the

corner and strikes Mr. Daugherty. Mr. Daugherty falls to the ground, and appellant strikes him several more times before running away.

Ms. Guido testified as a defense witness. She testified that she and appellant were dating and had been staying at a hotel on the day of the incident. She and appellant were frequent drug users, and they had been using heroin and cocaine on the day of the incident. They went to the Royal Farms to get snacks. While at the store, Ms. Guido and appellant got into a "minor altercation," and the two eventually left the store to "walk it off." After Ms. Guido and appellant left the store, they were approached by a man who "was wielding a long metal object," shouted a racial epithet at appellant, and then threatened to kill appellant. Appellant and the man then "had a little scuffle." When the altercation ended, Ms. Guido and appellant returned to their hotel, at which point Ms. Guido noticed that appellant's face was swollen, and he had blood dripping from his ear.

Appellant testified that he was a frequent drug user, and he had been using heroin on the day of the incident. He went to the Royal Farms with Ms. Guido because he needed money, he was "starting to have low blood sugars," and he needed food to increase his blood sugar. After exiting the store, appellant and Ms. Guido walked around the corner to wait for an Uber. While waiting there, appellant heard "an aggressive approach." He turned around and saw "a guy reaching for something." Appellant approached the guy, later identified as Mr. Daugherty, and was "hit in the face with a metal object." Appellant then attacked Mr. Daugherty "to protect myself, [to] protect my girlfriend." He added:

> [WITNESS]: I reacted. I acted on an instant impulse of rage, anger, anxiety, low blood sugar, because I never got my food, mixed emotions. I

just reacted. I was unable to have consciousness to know what was going on at the time. I just got out of a previous argument . . . with my girlfriend.

* * *

[DEFENSE]: So, Mr. Hanley, if you can recall, upon what you described as defending yourself, what was your intention at that time?

[WITNESS]: I [had] no intention, just to protect myself, protect myself and protect my girlfriend. That was my intention, protect myself and protect my girlfriend from this unknown stranger that came to me to attack me for no reason, for something he didn't have no business . . . getting himself into.

* * *

[DEFENSE]: So, Mr. Hanley, why didn't you ignore Mr. Daugherty?

[WITNESS]: He reached for something. At the time somebody reach for something and you don't know what it is, it could be anything. It could be a gun. I don't know if he had a gun on him. I don't know what he had. But I know I'm going to protect myself at any cost and anyone I love . . . at any cost, I'm going to protect them.

* * *

[STATE]: And it is your testimony that he attacked you?

[WITNESS]: He came from behind. And as I turned around, he reached for something. So I had an instant reaction to protect myself and my girlfriend.

[STATE]: And in protecting yourself, you – out of rage, anger, anxiety, and impulse to defend yourself and your girlfriend, you stabbed him nine times; correct?

[WITNESS]: That's correct.

Appellant further testified that he "never reacted to assault [Mr. Daugherty]." Appellant added that, although he could have continued to attack Mr. Daugherty, he stopped because he "had no reason to."

As indicated, the jury ultimately convicted appellant of attempted second-degree murder and wearing and carrying a deadly weapon with intent to injure. This timely appeal followed.

DISCUSSION

Appellant contends that the circuit court erred in refusing to instruct the jury on imperfect self-defense. He asserts that he presented "some evidence" as to all the elements of imperfect self-defense, and as a result, he was entitled to the instruction.

The State contends that appellant's argument is not preserved because, based on the exchange between the court and defense counsel regarding jury instructions, appellant requested an instruction only on perfect self-defense. In any event, the State argues that appellant's argument is without merit because he presented no evidence that he believed that retreat from the victim was not safe.

A.

Preservation

We begin with the State's argument that appellant did not request an imperfect self-defense instruction, and therefore, the issue is not preserved for this Court's review. To do that, we recount the discussion below.

Prior to the conclusion of the evidence, defense counsel requested that the court give the Maryland Pattern Jury Instruction ("MPJI-Cr") 4:17.14, which sets forth the elements of attempted first-degree premeditated murder (Part A) and attempted second-degree specific intent murder (Part B), as well as attempted voluntary manslaughter (Part C), which addresses self-defense. The instruction discusses the element of perfect (complete)

and imperfect (partial) self-defense and instructs that, if the defendant acted in complete self-defense, the verdict must not be guilty, but if the defendant acted in partial self-defense, the verdict should be guilty of attempted voluntary manslaughter.

After both sides had rested their case, and defense counsel moved for judgment of acquittal on the ground that appellant acted in self-defense, the parties and the court discussed potential jury instructions. The court stated that it understood that the defense claimed that appellant was attacked first, and it was "going to give the imperfect self-defense instruction." The colloquy, however, then continued, as follows:

> The issue with regard to this is that part (c) of that is attempted voluntary manslaughter. No request has been made for such an instruction with regard to that being an offense that he committed.
>
> So, essentially, I'm left with the position of giving the (a) and (b) parts and a description of what self-defense requires with regard to those. But a jury would not be given the opportunity to decide it's voluntary manslaughter. It's – if they find there's a defense, it's over.
>
> [DEFENSE]: Correct. Correct.
>
> THE COURT: And so –
>
> [DEFENSE]: No disagreement.

After the court had assembled the instructions it was going to give, and distributed those instructions to the parties, defense counsel stated: "The self-defense instruction is not here. The State indicated its position that the self-defense instructions were not required. The following then occurred:

> THE COURT: Based on the testimony of your client, which would be the only intent, there is no self-defense instruction.
>
> [DEFENSE]: Sure, there is.

> THE COURT: No.
>
> [DEFENSE]: Absolutely.
>
> THE COURT: Well, I disagree with you. That's why it's not there. His testimony, he doesn't know what was said. He doesn't know what was being pulled out, and he attacked someone.
>
> [DEFENSE]: His entire defense is based on self-defense, his entire defense.
>
> THE COURT: Well, unfortunately, based upon the evidence, which was his testimony, it's not available to you.
>
> [DEFENSE]: We'll object.
>
> THE COURT: I understand. No, no. I –
>
> [DEFENSE]: Note our exceptions.

The court stated that it thought it made it clear that the requested instruction would not be included earlier.

After the court instructed the jury on the elements of attempted first and second-degree murder, without any instruction on self-defense (complete or partial), defense counsel stated that he objected to the court's "failing to give the instruction on self-defense." In questioning, the court indicated that it understood counsel to be requesting an instruction relating to mitigation.

The record makes clear that appellant requested a self-defense instruction with respect to the attempted murder charges and that the court had initially agreed to give the pattern instruction that included imperfect, or partial, self-defense. At some point thereafter, the court changed its mind and did not include that instruction. Upon noticing the omission, defense counsel objected. Then, at the conclusion of the court's instructions,

defense counsel objected again. We are not persuaded by the State's argument that the issue was not raised, and therefore, appellant has preserved the issue for appeal.

B.

Analysis

In addressing the claim on the merits, we note that, where a party requests a jury instruction, the circuit court must give the instruction if, among other things, the instruction is "applicable under the facts of the case." *Hayes v. State*, 247 Md. App. 252, 288 (2020) (quoting *Thompson v. State*, 393 Md. 291, 302 (2006)). An instruction meets that standard if the evidence adduced at trial "is sufficient to permit a jury to find its factual predicate." *Bazzle v. State*, 426 Md. 541, 550 (2012). "The threshold determination of whether the evidence is sufficient to generate the desired instruction is a question of law for the judge." *Id.* (quoting *Dishman v. State*, 352 Md. 279, 292-93 (1998)).

In reviewing that determination, our task is to assess whether the requesting party "produced [the] minimum threshold of evidence necessary to establish a *prima facie* case that would allow a jury to rationally conclude that the evidence supports the application of the legal theory desired." *Id.* (quoting *Dishman*, 352 Md. at 292-93). "This threshold is low, in that the requesting party must only produce 'some evidence' to support the requested instruction." *Page v. State*, 222 Md. App. 648, 668, *cert. denied,* 445 Md. 6 (2015). The "some evidence" test is not confined by a specific standard and "calls for no more than what it says – 'some,' as that word is understood in common, everyday usage." *Bazzle*, 426 Md. at 551 (quoting *Dykes v. State*, 319 Md. 206, 216-17 (1990)). Moreover,

"[u]pon our review of whether there was 'some evidence,' we view the facts in the light most favorable to the requesting party." *Page*, 222 Md. App. at 668-69.

In Maryland, there are two forms of self-defense: perfect and imperfect. Perfect self-defense requires: 1) that the defendant had an objectively reasonable fear of imminent or immediate death or serious bodily harm; 2) that the defendant actually believed he was in danger; 3) that the defendant was not the aggressor and did not provoke the conflict; and 4) that the force used was objectively reasonable. *Dashiell v. State*, 214 Md. App. 684, 696 (2013). "Perfect self-defense is a complete defense to murder," and if established, it results in acquittal. *Porter v. State*, 455 Md. 220, 235 (2017) (quoting *State v. Smullen*, 380 Md. 233, 251 (2004)).

Imperfect self-defense, on the other hand, does not exonerate the defendant, but rather, it negates the element of malice and mitigates murder to voluntary manslaughter. *Roach v. State*, 358 Md. 418, 430-31 (2000). To establish imperfect self-defense, a defendant must show: 1) that he actually, even if unreasonably, believed that he was in danger; 2) that he actually, even if unreasonably, believed that the amount of force used was necessary; and 3) that he subjectively believed that retreat was unsafe. *Porter*, 455 Md. at 235. Thus, while perfect self-defense requires a defendant's actions and beliefs to be objectively reasonable, imperfect self-defense "requires no more than a subjective honest belief on the part of the [defendant] that his actions were necessary for his safety, even though, on an objective appraisal by a reasonable man, they would not be found to be so." *State v. Faulkner*, 301 Md. 482, 500 (1984) (quoting *Cunningham v. State*, 58 Md. App. 249, 256 (1984)).

"To be entitled to a jury instruction as to either perfect or imperfect self-defense, 'the defendant has the burden of initially producing some evidence on the issue.'" *Dashiell*, 214 Md. App. at 696 (quoting *Dykes*, 319 Md. at 216). "[W]hen evidence is presented showing the defendant's subjective belief that the use of force was necessary to prevent imminent death or serious bodily harm, the defendant is entitled to a proper instruction on imperfect self-defense." *Dykes*, 319 Md. at 213 (quoting *Faulkner*, 301 Md. at 500). *Accord Wilson v. State*, 422 Md. 533, 541 (2011). As noted, the "some evidence" test is not bound by any specific standard. "The source of the evidence is immaterial; it may emanate solely from the defendant." *Dykes*, 319 Md. at 217. Moreover, it does not matter if "the self-defense claim is overwhelmed by evidence to the contrary." *Id.* "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." *Id.*

Against that backdrop, we hold that the circuit court erred in not instructing the jury on imperfect self-defense because appellant presented "some evidence" to generate the instruction. First, appellant testified that Mr. Daugherty had approached him "aggressively" from behind and then attacked him, hitting him in the face with a metal object. That testimony constituted "some evidence" to establish that appellant actually believed he was in danger. Second, appellant testified that he stabbed Mr. Daugherty to protect himself, that he did not intend to assault Mr. Daugherty, and that he ended the attack because "he had no reason to" continue. That testimony constituted "some evidence" that appellant actually believed the amount of force used was necessary and reasonable.

As noted, the State argues that appellant presented no evidence that he believed retreat was unsafe. The State contends, rather, that appellant testified that he charged toward Mr. Daugherty for reasons other than to protect himself.

We are not persuaded by the State's arguments. Appellant did present evidence that he believed retreat was unsafe. As discussed, appellant testified that Mr. Daugherty attacked him and hit him in the face with a metal object. Appellant stated that he was unsure if the metal object was a gun and that he "had an instant reaction to protect [himself]." That testimony constituted "some evidence" that appellant believed retreat was unsafe. *See Sydnor v. State*, 133 Md. App. 173, 187 (2000) (the duty to retreat is a corollary to the exigency requirement, "which arises when one is in imminent and immediate danger of death or serious bodily harm"), *aff'd* 365 Md. 205 (2001). That there was evidence to the contrary is irrelevant. Appellant presented "some evidence" to generate an instruction on imperfect self-defense, and the circuit court erred in refusing to give such an instruction.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.