Circuit Court for Baltimore County
Case No. C-03-CR-20-002727

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2177

September Term, 2022

MICHAEL DIGGINS

v.

STATE OF MARYLAND

Reed,
Tang,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: January 30, 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).

A jury sitting in the Circuit Court for Baltimore County acquitted the appellant, Michael Diggins, of first- and second-degree murder, but convicted him of voluntary manslaughter, use of a handgun in the commission of a crime of violence, and other related firearm offenses. The court sentenced Diggins to twenty years' incarceration, suspending all but ten, for use of a handgun in the commission of a violent crime; imposed a consecutive ten-year term for manslaughter; and either merged or imposed concurrent sentences for the remaining convictions. Diggins timely appealed and presents a single question for our review, which we quote:

> Did the trial court err by including bracketed language in its jury instructions on self-defense that was not generated by the evidence?

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

BACKGROUND

On October 2, 2019, Officer Quemiline Bull of the Baltimore County Police Department ("BCPD") was dispatched to a Quick Mart convenience store at the Cranbrook Shopping Center in Cockeysville to investigate a reported disturbance. Upon arriving at the scene, Officer Bull entered the Quick Mart, where he found a man, later identified as Colby Ohmar Woodard, lying prone in a pool of blood on the floor. Officer Bull testified that Woodard was completely unresponsive and showed no signs of breathing.

Footage from Officer Bull's body camera was admitted into evidence at trial and played for the jury. On that recording, Officer Bull can be heard radioing for an ambulance to assist Woodard and instructing a Quick Mart employee to close the store. Officer Bull also advised dispatch that he was "keeping [his] eye on" an automobile believed to belong

to the victim and requested that responding officers secure said vehicle. Once medics arrived at the scene and began attending to Woodard, Officer Bull coordinated with other police units and, with their assistance, established a perimeter around the Quick Mart. The police were unable, however, to identify or apprehend a suspect that evening.

Robert Powell was among the paramedics who responded to the scene. Mr. Powell testified that when he arrived, other emergency medical personnel were already on site and attempting to resuscitate Woodard, who was in "cardiac arrest secondary to a gunshot wound." Mr. Powell observed that Woodard had suffered a single puncture wound to the left midclavicular region and was in asystole, meaning that his heart had stopped and was devoid of electrical activity. Accordingly, Mr. Powell pronounced Woodard dead at the scene.

Baltimore County Homicide Detective Eric Dunton responded to the Quick Mart at approximately 12:30 a.m. on October 3rd. Upon his arrival, Detective Dunton spoke with and was briefed by Officer Bull. Detective Dunton then entered the Quick Mart, where Woodard's body was located, before proceeding to a black Honda Accord ("the Honda"), which was "stopped in the roadway" with "the driver[']s side door . . . open." Although the vehicle's engine had been turned off, Detective Dunton learned that it was running when patrol officers first arrived at the scene. Detective Dunton's review of the Honda's vehicle registration ultimately led him to "positively identify" the victim as Colby Woodard. During a search of the area surrounding the Honda, Detective Dunton and his fellow

officers found a bullet and two shell casings, as well as "what appeared to be a blood trail that led . . . to the Quick Mart where the victim was ultimately found."

Kathi Michael, a BCPD forensic technician, processed the scene. Ms. Michael testified that she entered the Quick Mart and photographed Woodard's body before being directed to the eastern portion of the shopping center. Parked in the exit lane of the eastern entrance, Ms. Michael found the Honda with its driver's side door ajar. Ms. Michael photographed the vehicle as well as nearby evidence that patrol officers had marked prior to her arrival, including the bullet and what she identified as two Perfecta 9mm Luger shell casings. In addition to the bullet and shell casings, Ms. Michael observed "[a] trail of possible blood" leading from the Honda to the front door of the Quick Mart.

Before leaving the scene, Ms. Michael met with a forensic investigator with the Office of the Chief Medical Examiner. Together, they conducted a preliminary examination of Woodard's body. That examination revealed gunshot wounds to Woodard's lower left abdomen, as well as the top and underside of his left forearm, which Detective Dunton described as an apparent "through-and-through gunshot wound[.]" Ms. Michael also recovered thirteen dollars in cash and "a baggie of possible marijuana" from Woodard's pants pockets. She did not, however, discover a weapon on his person. Following the examination, the forensic investigator arranged for the body to be transported to the Office of the Chief Medical Examiner for an autopsy. The ensuing

autopsy identified Woodard's cause of death as "two gunshot wounds[,] one to the left forearm and one to the left abdomen."[1]

Following the preliminary examination of Woodard's body, Ms. Michael met with Detectives Dunton and Massey at police headquarters, where the Honda had been towed.[2] A search of the vehicle produced "a scale with possible controlled dangerous substance residue on it" as well as several small "packages of possible marijuana." The search did not, however, reveal either blood or weapons.

As part of his investigation, Detective Dunton interviewed Naresh Dangol, an apparent witness to the shooting. At trial, Mr. Dangol testified that he went to the Cockeysville Quick Mart on the evening of October 2nd for the purpose of playing a lottery scratch-off ticket. When he went outside to smoke, Mr. Dangol observed two men arguing in front of the store but could not hear them well enough to discern the nature of their dispute. One of the men was wearing a pink shirt, while the other was dressed in black. Although Mr. Dangol was a frequent customer of the Quick Mart, he did not personally know either individual.

Mr. Dangol testified that he had overheard the man in black say: "Here's a camera[.] [C]ome somewhere else." Mr. Dangol then watched him walk across the parking lot, while

[1] The assistant medical examiner who performed the autopsy also determined "that the location and configuration of the two gunshot wounds [we]re such that they may represent the path of a single bullet having first passed through the left forearm and then re-entering the left side of the abdomen."

[2] The record does not reveal Detective Massey's first name.

the pink-shirted individual remained standing in front of the store. Mr. Dangol admonished the second man not to follow the first, advising him that it would be "useless" to do so. The pink-shirted man did not, however, heed his advice.

Mr. Dangol testified that he watched the pink-shirted individual enter a car and drive toward the man in black. Shortly thereafter, Mr. Dangol heard the sound of gunshots emanating from the direction in which the men had headed and saw the pink-shirted man returning to the Quick Mart on foot. Upon reaching the store, the pink-shirted man opened the front door, said "[c]all 9-1-1[,]" and fell to the floor. Mr. Dangol testified that he remained at the scene until the police arrived, whereupon he directed the responding officers to the victim's vehicle.

During the course of his investigation, Detective Dunton also directed Gregory Klein, a BCPD forensic video technician, to retrieve surveillance footage from security cameras at and around the crime scene. The video recordings from those cameras were admitted into evidence at trial and played for the jury. The cameras collectively captured the following events, which Detective Dunton narrated.

Diggins arrived at the scene on foot shortly after 10:30 p.m., walked toward the Quick Mart, and entered the store. Once inside, Diggins lingered by the entrance while a man whom Detective Dunton identified as Mr. Dangol stood at a checkout counter.[3] Diggins remained at the front door as Mr. Dangol exited the Quick Mart, only to return

[3] At trial, Diggins affirmed that he had been "standing there asking random people to buy [him] a cigar" because he was too young to purchase one himself.

seconds later. Eventually, Diggins caught the attention of another patron, handed him cash with which to make a purchase on his behalf, and left the store.

Once outside, Diggins encountered Woodard, who had arrived in his vehicle a short time prior. Diggins and Woodard conversed, while Mr. Dangol stood nearby. Based on their body language and other "information received," Detective Dunton inferred that what began as a casual conversation between Diggins and Woodard escalated into an argument.[4] Their verbal exchange apparently continued as Diggins began to walk across the parking lot, while Woodard remained standing on the sidewalk. Detective Dunton testified that Woodard entered his vehicle and followed Diggins "towards . . . the exit part of the roadway . . . where the car ultimately stopped." This court observed that when he next appeared in frame, Woodard was running toward the Quick Mart. Moments after arriving at and entering the store, Woodard fell to the floor.

In addition to depicting the events leading to and immediately following the fatal shooting, the surveillance footage led to the identification of Adolpho Marquez as a potential witness to the crime. At trial, Mr. Marquez testified that at approximately 10:45 p.m. on October 2nd, he heard gunshots as he was leaving a Merritt's Athletic Club in the vicinity of the Cranbrook Shopping Center. Upon turning in the direction of the sound, Mr. Marquez saw a car as well as a single person running "[i]n a different direction" from where Mr. Marquez was standing. Mr. Marquez described the individual as "thin" and dressed in black clothing with white stripes on the pant legs.

[4] The surveillance footage lacked audio.

On October 4th, Detective Dunton distributed a digital "flyer" to "security personnel" in an attempt to identify the suspect seen on the surveillance footage. Imbedded in the flyer was a clip from the Quick Mart video depicting the then unnamed suspect. When he did not obtain any new leads, Detective Dunton circulated the flyer "to the entire [BCPD]" on October 7th. Later that month, Detective Dunton received a reply from BCPD Officer Mary Berg, who was serving as a school resource officer assigned to Dulaney High School. At trial, Officer Berg testified that, upon receiving the flyer via a departmental email, she recognized the person in the video as Diggins, a Dulaney High School student, and informed the Homicide Unit of her identification.

At or around 7:00 p.m. on September 22, 2020, Detective Dunton arrested Diggins pursuant to a warrant and transported him to BCPD headquarters.[5] Detective Dunton's ensuing interview of Diggins began at approximately 7:36 p.m. that evening and ended at 8:44 p.m. During that interview, Detective Dunton played for Diggins the surveillance videos from inside the Quick Mart and outside the shopping center. Although Diggins admitted that he was depicted in the footage, he claimed not to recall the events depicted thereon. In fact, Diggins denied that he knew Woodard and never acknowledged having interacted with him.

At trial, Diggins admitted that he had feigned ignorance during his interview with Detective Dunton and provided a detailed narrative of the events surrounding the fatal

[5] At trial, Detective Dunton attributed the delay in arresting Diggins to the COVID-19 pandemic.

shooting. Diggins testified that in October 2019, he resided with his father in Cockeysville, attended Dulaney High School, and worked at a Wendy's on Eastern Avenue in Baltimore City. Diggins recounted that he returned home after school on the date of the shooting and retrieved a loaded gun that he had "bought from someone off the street . . . about a month before." Diggins explained that he had purchased the firearm for self-protection, testifying: "I travel by myself late at night. I wait on City bus stops by myself . . . in dangerous areas." After arming himself with the firearm, Diggins made his way to Wendy's, where he worked a four-hour shift.[6]

Diggins testified that he left work at around 8:00 p.m., whereupon he took a bus from Eastern Avenue to the Lexington Street Light Rail Station and rode the light rail to Timonium before "catch[ing] the 93 [bus] to Cranbrook." After disembarking from the bus, Diggins went to the Quick Mart "to . . . get a Black & Mild [cigar] and buy some weed."[7] Once a fellow patron agreed to purchase the cigar for him, Diggins exited the store.

In front of the Quick Mart, Diggins encountered Woodard, who "gave him a five," meaning that he "shook [his] hand[,]" and asked Diggins whether he "want[ed] to buy some weed[.]" Diggins answered in the affirmative but added that he "already had someone [he] was getting it from." Shortly thereafter, Woodard instructed Diggins that "if [he] wasn't buying the weed from him, [he] couldn't buy it from right there." Diggins replied that he

[6] Diggins testified that he had kept the gun in his bookbag while at work, but "put it in [his] pants" after he left.

[7] According to Diggins, he regularly purchased marijuana from a particular person in front of the Quick Mart.

"did not have to buy weed from [Woodard]." A few seconds later, Woodard insisted that Diggins "couldn't stand right there if [he] wasn't buying the weed from him." Diggins responded that he "could stand where [he] want[ed.]" Diggins claimed, however, that he began walking home after hearing Woodard tell him "that he would take [his] money and kill [him] if it wasn't [sic] . . . for those cameras being right there."

Diggins testified that the following occurred as he attempted to walk home: "I heard a car pull up behind [me]. When I turned around, [Woodard] was running towards [me] with his hands in his pants." Diggins subsequently clarified that only Woodard's right hand had been "in the front of his pants," while his left had been "down towards his side." Although he recounted that Woodard was "yelling" as he ran, Diggins claimed that he could not make out what he was saying. Diggins testified that as Woodard approached him, he drew the handgun and, once Woodard was within approximately five feet, fired an unknown number of shots. After discharging the weapon, Diggins ran home, uncertain as to whether he had struck Woodard. Diggins disposed of the firearm by throwing it while he ran.

We will include additional facts as necessary in our discussion of the issue presented.

DISCUSSION

A. Parties' Contentions

Diggins contends that the trial court abused its discretion when propounding pattern jury instructions on perfect and imperfect self-defense by admonishing the jury that the

defenses only apply if "the [d]efendant was not the aggressor *or although the [d]efendant was the initial aggressor, he did not raise the fight to the deadly force level*[.]" Diggins claims that the court erred by incorporating the italicized clause in its instruction because "there was *no* evidence that [he] was the initial aggressor and thus no basis upon which to tell the jury that he might have been." According to Diggins, reversal is warranted because the inclusion of the contested language "at best confused the jury [and] at worst suggested that [his] ultimate use of deadly force precluded a verdict of not guilty."

The State rejoins that "by simply not crediting parts of Diggins's testimony [to the contrary], the jury could have reasonably concluded that [he] was the initial aggressor." The State argues that the jury could have reasonably inferred that Diggins had been the initial aggressor from evidence that he (1) "was angry with Woodard from their argument"; (2) "told Woodard 'Here's a camera, come somewhere else' before leading [him] away . . . from the Quick Mart"; (3) demonstrated consciousness of guilt by fleeing the scene after the shooting; and (4) "denied to police that Woodard confronted him after their argument." Alternatively, the State asserts that any error was harmless beyond a reasonable doubt, arguing, *inter alia*, that the instruction inured to Diggins's benefit by offering the jury an alternative avenue for acquitting him of murder "if it did not accept his claim that Woodard was the initial aggressor."

B. The Jury Instructions

After the close of evidence and outside the presence of the jury, the court discussed jury instructions with counsel. At defense counsel's request and over the State's objection,

the court elected to instruct the jury on both perfect and imperfect self-defense using the applicable Maryland Criminal Pattern Jury Instructions ("MPJI-Cr").

The court first addressed MPJI-Cr 4:17.2(C1), which concerns the application of perfect self-defense to first-degree premeditated and second-degree specific-intent murder, and then provided, in part:[8]

> Complete self-defense, sometimes called perfect self-defense, is a total defense, and you are required to find the defendant not guilty, if all of the following four factors are present:
>
> (1) the defendant was not the aggressor [[*or*, *although the defendant was the initial aggressor, [he] [she] did not raise the fight to the deadly force level*]];[9]
>
> (2) the defendant actually believed that [he] [she] was in immediate or imminent danger of death or serious bodily harm;
>
> (3) the defendant's belief was reasonable; and
>
> (4) the defendant used no more force than was reasonably necessary to defend [himself] [herself] in light of the threatened or actual force.
>
> You must 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 self-defense was absent.

MPJI-Cr 4:17.2(C1) (emphasis added; brackets retained). The trial court asked defense counsel whether he was "suggesting" that it include the above-italicized language in its

[8] MPJI-Cr 4:17.2(C1) has since been revised without substantive change.

[9] The Notes on Use to MPJI-Cr 4:17.2 direct trial courts to use this bracketed language "if there was evidence that the defendant was the aggressor at the nondeadly force level but the non-aggressor at the deadly force level." MPJI-Cr 4:17.2, Notes on Use.

instruction to the jury. Defense counsel answered: "I don't believe that . . . applies, given the nature of the car driving out to the scene of the shooting." The State rejoined:

> I think that's up for the jury to decide who they think is the initial aggressor in this situation. It's not just the car driving on. If they look at the totality of all of this and what the jury believes happened while . . . the men were standing there and having . . . this argument, what Mr. Dangol says he heard the [d]efendant say, and . . . that the argument between these two men just moved to a different location because of what the [d]efendant said about there being cameras that I think that's certainly up for the jury to decide that, but I don't think it is a -- in this scenario a sort of proven fact that the [d]efendant was not the initial aggressor.

Defense counsel maintained, however, that there was no evidence that his client had been the initial aggressor, saying: "[T]here's no initial aggression by Mr. Diggins . . . back at the store. There's no initial aggression in this case alleged against Mr. Diggins by anybody." The court ultimately decided to read the bracketed provision, reasoning: "I think it is an issue for the jury to resolve."

The court then turned to the following paragraph of MPJI-Cr 4:17.2(C1), which addresses imperfect self-defense:

> Even if you find that the defendant did not act in complete self-defense, [he][she] may still have acted in partial self-defense. For partial self-defense to apply, you still must find that the defendant actually believed [he][she] was in immediate or imminent danger of death or serious bodily harm and the defendant [was not the initial aggressor] [*was the initial aggressor but did not raise the degree of force used to the deadly level*].

(Emphasis added; brackets retained). The court observed that the above-italicized language was substantively the same as that used in reference to the first element of perfect self-defense. Diggins's attorney responded that he assumed that the court would be consistent in its rulings. The State likewise stated: "I think it would be the same as the above [in]

leaving that choice to the jury[.]" The court again elected to include the challenged language in its instruction.

Finally, defense counsel requested that the court propound MPJI-Cr 5:07, the general self-defense jury instruction, which provided, in part:[10]

> You have heard evidence that the defendant acted in self-defense. Self-defense 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 was not the aggressor [[*or*, *although the defendant was the initial aggressor, [he] [she] did not raise the fight to the deadly force level*]];
>
> (2) the defendant actually believed that [he] [she] was in immediate or imminent danger of bodily harm;
>
> (3) the defendant's belief was reasonable; and
>
> (4) the defendant used no more force than was reasonably necessary to defend [himself] [herself] in light of the threatened or actual force.

(Emphasis added). Again, the court noted the presence of the same language with which the defense had twice taken issue in MPJI-CR 4:17.2, stating: "[T]he Number 1 in that pattern jury instruction says, ['']The [d]efendant was not the aggressor or although the [d]efendant was the initial aggressor.['] Is there any objection to me keeping that consistent with the other instructions?" Defense counsel answered: "Consistent with my objection, yes, but I understand the [c]ourt's ruling."

Prior to closing argument and deliberations, the court instructed the jury, in pertinent part, as follows:

[10] MPJI-Cr 5:07(C1) has also since been revised without substantive change.

You have heard evidence that the [d]efendant killed Colby Woodard in self-defense. You must decide whether this is a complete defense, a partial defense or no defense. In order to convict the [d]efendant of murder, the State must prove that the [d]efendant did not act in either complete self-defense or partial self-defense. If the [d]efendant acted in complete self-defense, your verdict must be not guilty. If the [d]efendant did not act in complete self-defense, but did act in partial self-defense, your verdict should be guilty of voluntary manslaughter and not guilty of murder.

Complete self-defense, sometimes called perfect self-defense, is a total defense, and you are required to find the [d]efendant not guilty if all of the following four factors are present: The [d]efendant was not the aggressor *or although the [d]efendant was the initial aggressor, he did not raise the fight to the deadly force level*, the [d]efendant actually believed that he was in immediate or imminent danger of death or serious bodily harm, the [d]efendant's belief . . . was reasonable, and the [d]efendant used no more force than was reasonably necessary to defend himself in light of the threatened or actual force. . . .

You must find the [d]efendant not guilty unless the State has persuaded you beyond a reasonable doubt that at least one of the four factors of complete self-defense was absent.

Even if you find that the [d]efendant did not act in complete self-defense, he may still have acted in partial self-defense. For partial self-defense to apply, you still must find that the [d]efendant actually believed he was in immediate or imminent danger of death or serious bodily harm, and the [d]efendant was not the initial aggressor *or was the initial aggressor[] but did not raise the degree of force used to the deadly level*.

* * *

You have heard evidence that the [d]efendant acted in self-defense. Self-defense is a complete defense and you are required to find the [d]efendant not guilty if all of the following four factors are present: The [d]efendant was not the aggressor *or although . . . the [d]efendant was the initial aggressor, he did not raise the fight to the deadly force level*, the [d]efendant actually believed that he was in immediate or imminent danger of bodily harm, the [d]efendant's belief was reasonable, and the [d]efendant used no more force than was reasonably necessary to defend himself in light of the threatened or actual harm.

After the court had propounded the above instructions, defense counsel renewed his objection thereto, saying: "I would just renew my objections from yesterday in terms of the initial aggressor comments that were included by . . . the [c]ourt and any other objections, but I think they were all related to that line item in various numbers." The court overruled the renewed objection "for the reasons explained yesterday."

C. Standard of Review

Maryland Rule 4-325 governs jury instructions in criminal cases and provides, in pertinent part: "The court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding." Md. Rule 4-325(c). Pursuant to Rule 4-325(c), a court must give a requested 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.'" *Rainey v. State*, 480 Md. 230, 255 (2022) (emphasis added) (quoting *Ware v. State*, 348 Md. 19, 58 (1997)). In this case, only the second factor (*i.e.*, whether the evidence generated the instruction) is at issue.

"Generally, '[w]e review a trial judge's decision whether to give a jury instruction under the abuse of discretion standard.'" *Page v. State*, 222 Md. App. 648, 668 (quoting *Thompson v. State*, 393 Md. 291, 311 (2006)), *cert. denied*, 445 Md. 6 (2015). However, "[w]hether the evidence is sufficient to generate the desired instruction in the first instance is a question of law[,]" which we review without deference. *Roach v. State*, 358 Md. 418, 428 (2000). *See also Molina v. State*, 244 Md. App. 67, 148 (2019) ("Because this

'threshold determination of whether the evidence was sufficient to generate the desired instruction is a question of law for the judge,' our review is without deference." (cleaned up) (quoting *Bazzle v. State*, 426 Md. 541, 550 (2012)).

The evidentiary threshold for generating a jury instruction is low. "[T]he requesting party need only produce some evidence to support the requested instruction." *Hayes v. State*, 247 Md. App. 252, 288 (2020) (quotation marks and citations omitted). The "some evidence" test "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.'" *Bazzle*, 426 Md. at 551 (citation omitted). When reviewing whether one has met "the very low bar imposed by the 'some evidence' standard[,]" *Zadeh v. State*, 258 Md. App. 547, 562 (2023), moreover, "'we view the facts in the light most favorable to the requesting party, here being the State.'" *Rainey v. State*, 252 Md. App. 578, 591 (2021) (quoting *Page*, 222 Md. App. at 668-69).

Not every instructional error requires reversal. *See Moore v. State*, 412 Md. 635, 666 (2010) ("[N]ot every error committed during a trial is reversible error."). Absent "structural error," "[a]n instructional error is subject to harmless error analysis."[11] *Adkins v. State*, 258 Md. App. 18, 30 (2023). To hold an error harmless, "'we must be convinced, beyond a reasonable doubt, that [it] in no way influenced the verdict.'" *Rainey*, 252 Md.

[11] "[S]tructural errors are fundamental constitutional errors that defy analysis by harmless error standards." *United States v. Davila*, 569 U.S. 597, 611 (2013) (quotation marks and citations omitted). *See also State v. Jordan*, 480 Md. 490, 507 (2022) (explaining the "three 'broad categories' of structural errors" identified by the Supreme Court of the United States).

App. at 602 (quoting *Weitzel v. State*, 384 Md. 451, 461 (2004)). An instructional error does not, therefore, require reversal "'where the jury instructions, taken as a whole, sufficiently protect the defendant's rights and adequately covered the theory of the defense.'" *Carroll v. State*, 428 Md. 679, 689 (2012) (quoting *Fleming v. State*, 373 Md. 426, 433 (2003)).

D. The Merits

When viewing the evidence, and all reasonable inferences drawn therefrom, in the light most favorable to the State, the following narrative of events emerges. Shortly after 10:30 p.m. on the evening of October 2, 2022, Diggins exited a bus near the Cranbrook Shopping Center on his way home from work. With a nine-millimeter handgun hidden in his waistband, Diggins walked to and entered a Quick Mart convenience store in the shopping center to purchase Black and Mild cigars. As he was under the age of twenty-one, Diggins was unable to purchase the cigars directly. Accordingly, Diggins elicited the assistance of another customer, who agreed to buy the cigars on his behalf. After handing the customer cash with which to make the purchase, Diggins exited the store.

Once outside, Diggins encountered Woodard, who had arrived at the store moments earlier. Diggins and Woodard began to argue. During that argument, Woodard told Diggins that he would have escalated the verbal altercation to physical violence if not for the presence of nearby security cameras. Acknowledging the presence of the cameras, Diggins

suggested that they go elsewhere and began to walk across the front parking lot.[12] The two men continued to exchange words as Diggins walked away.

After Diggins had gone, Woodard conversed with Mr. Dangol, who advised him against following Diggins. As Diggins neared the parking lot's eastern exit, however, Woodard entered his vehicle, followed Diggins, and parked. Within seconds of Woodard parking, Diggins drew the handgun from his waistband and fired twice, striking Woodard in his left forearm and lower abdomen. As Woodard ran back to the Quick Mart, Diggins fled the scene, discarding the firearm as he did so.

This narrative of events satisfied the low bar of "some evidence" that Diggins was the initial aggressor. Accordingly, we hold that the trial court did not err by including the optional language at issue in its self-defense jury instructions.

E. Harmless Error

Even if the court erred by including the optional language at issue in its self-defense jury instructions, any such error was harmless and does not therefore require reversal.

In *Perry v. State*, 150 Md. App. 403 (2002), *cert. denied*, 376 Md. 545 (2003), we addressed whether a superfluous jury instruction constitutes reversible error. Relying on

[12] At trial, defense counsel asked Diggins whether he "sa[id] anything like . . . hey, let's go fight out here by the entrance ramp, but there's cameras, so let's go do it out there[.]" Diggins answered in the negative, claiming: "That was something that [Woodard] said." Diggins then testified that Woodard had told him "that he would take my money and kill me . . . if it wasn't for those cameras being right there." The jury was, however, "entitled to accept—or reject—*all, part, or none* of the testimony of any witness, whether that testimony was or was not contradicted or corroborated by any other evidence." *Nicholson v. State*, 239 Md. App. 228 (2018) (emphasis retained) (quoting *Omayaka v. Omayaka*, 417 Md. 643, 659 (2011)), *cert. denied*, 462 Md. 576 (2019).

Rule 4-325(c), the appellant in that case claimed that the trial court reversibly erred in giving a supplemental jury instruction on aiding and abetting, arguing that the issue had not been generated by the evidence presented at trial. This Court disagreed, holding that a trial court offends Rule 4-325(c) by under-instructing—rather than over-instructing—the jury. We explained:

> A rule requiring a necessary instruction does not forbid an unnecessary instruction. It is under-inclusion that runs the risk of error. Over-inclusion only runs the risk of boredom.
>
> Actually, there is some justification for some of the overly inclusive instructions that are frequently given. In doubtful or ambiguous situations, the discreet thing to do is to tell the jury more than it needs to know rather than run the risk of denying the jury necessary knowledge. When in doubt, it is better to err on the side of over-inclusion rather than under-inclusion.

Id. at 427.

In *Brogden v. State*, 384 Md. 631 (2005), the Supreme Court of Maryland cautioned that the *Perry* Court "paint[ed] with too broad a brush in its conception that a superfluous jury instruction can never amount to error." *Id*. at 645 n.6. In contrast to our "assessment of the breadth of Md. Rule 4-325(c)" in *Perry*, the Supreme Court determined that a gratuitous jury instruction can "sometimes" be erroneous, particularly when it "purports to place a burden of proof on a defendant to prove a defense that the defendant never raised." *Brogden*, 384 Md. at 645 n.6.

The petitioner in *Brogden* was charged with, *inter alia*, wearing, carrying, or transporting a handgun. At trial, he declined to advance an affirmative defense, and instead relied entirely on the presumption of innocence and the State's burden of proof. During

deliberations, the trial court received a note from the jury requesting clarification regarding "whether the State had the burden of proving that petitioner did not have a license to carry a handgun"—an issue that was neither generated by the evidence nor raised by the parties at trial. *Id.* at 635. Over the petitioner's objection, the court instructed the jury that "it's the burden of the [d]efendant to prove the existence of the license, if one exists, not the State." *Id.* at 643.

The Maryland Supreme Court concluded that "[t]he supplemental jury instructions . . . were simply not 'appropriate' under Md. Rule 4-325 in that they did not state the 'applicable law' as to the issues relating to the handgun charge then properly before the jury for deliberation." *Id.* at 644. The Court further held that the instructional impropriety had not been harmless. It reasoned that by giving the jury a supplemental instruction on an affirmative defense that the petitioner strategically elected to forgo, the trial court placed upon him a burden of proof that he never assumed. The Court explained:

> At the point the supplemental instruction was given, the entire burden of proving the commission of that particular crime rested with the State. Petitioner had presented no defense. The jury had already been correctly instructed. To then inform the jury that petitioner had the burden of establishing the existence of a license in order to prevail on a defense that petitioner had never raised, was to impose a burden on petitioner that he never had.

Id. In summation, the Supreme Court held that, by giving an instruction that the petitioner bore the burden of proving an affirmative defense that he never pursued, the court misled the jury "as to which party bore the ultimate burden of proof as to the handgun charge." *Id.* at 650.

This case is readily distinguishable from *Brogden*. As a preliminary matter, in giving its instructions, the court in this case did not "inject[] into the jury deliberations" an affirmative defense that Diggins declined to assert as did the court in *Brogden*.[13] Granted, Diggins's theory of the case was that Woodard had been the initial aggressor, while the optional portion of the pattern instruction presumed that Diggins had been the initial aggressor at the nondeadly level. Even so, the alternative instruction did not undermine or supersede Diggins's theory of the case, nor was it sufficiently distracting as to infringe upon his "right to chart his own defense[.]" *Id.* at 647 (emphasis, quotation marks, and citation omitted).

The most significant distinction between *Brogden* and the instant case is that the presumably superfluous instruction here did not prejudice Diggins by impermissibly shifting the burden of proof to him. As noted above, the trial court in *Brogden* instructed the jury that the petitioner bore the burden of proving "'the existence of the license [to carry a handgun], if one exists, not the State[.]'" *Id.* at 643. In so doing, it "impose[d] a burden on [the] petitioner that he never had." *Id.* at 644. If the jury instructions in this case had similarly allocated to Diggins the ultimate burden of persuasion on the issue of self-defense, we would not hesitate to hold that the court committed prejudicial error requiring

[13] As discussed *supra*, the petitioner in *Brogden* "merely relied on a presumption of innocence," *id.* at 649, evidently making "the strategic choice . . . not to attempt to set forth the affirmative defense that he possessed a license to carry a handgun." *Id.* at 641. Thus, the Supreme Court determined that by instructing the jury on the affirmative defense of licensure, the trial court "injected into the jury deliberations a defense theory that was never raised at trial[.]" *Id.* at 650.

reversal. *See Squire v. State*, 280 Md. 132 (1977) (holding that the court committed plain and prejudicial error by instructing the jury that the defendant bore the burden of proving self-defense). *See also Stambaugh v. State*, 30 Md. App. 707, 711, *cert. denied*, 278 Md. 734 (1976). Here, however, the court properly instructed the jury that the State shouldered the burden of disproving Diggins's self-defense theories beyond a reasonable doubt. *See In re Lavar D.*, 189 Md. App. 526, 577-78 (2009) ("[W]here the defense of self-defense . . . is generated in a case, the burden lies with the State to prove that the accused did not act in self-defense." (citations omitted)), *cert. denied*, 414 Md. 331 (2010). As the court neither hijacked the defense nor erroneously shifted the burden of proof, we are persuaded that the overly inclusive instruction in this case did not prejudice Diggins as did the erroneous instruction in *Brogden.*

We find no merit in Diggins's assertion that the contested language confused or misled the jury to his detriment. Whether a criminal defendant acted as the initial aggressor is "a common denominator consideration which applies to perfect self-defense and imperfect self-defense alike." *Watkins v. State*, 79 Md. App. 136, 138 (1989). Thus, the State may negate both self-defense claims by proving that the defendant was the aggressor and escalated the altercation to the deadly level. In this case, the jury evidently found that the State failed to do so. We do not think that the error in this case was so egregious as to infringe upon the Appellant's "right to conduct his own defense." *Jordan*, 480 Md. At 507.

Throughout trial, Diggins's only defense was that he shot and killed Woodard in either perfect or imperfect self-defense. Imperfect self-defense was, moreover, the sole

theory of voluntary manslaughter on which the court instructed the jury. The fact that the jury acquitted Diggins of first- and second-degree murder while convicting him of voluntary manslaughter therefore indicates that it adopted the theory of imperfect self-defense and found that the State failed to prove that he both was the aggressor and escalated the confrontation to the deadly level. *See Carter v. State*, 366 Md. 574, 592 (2001) ("[J]urors are presumed to follow the court's instructions."). As the jury apparently found in Diggins's favor as to the aggressor element of self-defense, we cannot discern what possible prejudice Diggins could have suffered as a result of the court's corresponding instruction. In fact, as the State observes, including the initial aggressor language could have benefitted Diggins by "provid[ing] the jury with another pathway for acquitting [him] . . . if it did not accept his claim that Woodard was the initial aggressor." In any event, Diggins does not explain—and we cannot discern—how omitting the optional language in this case could have reasonably led the jury to acquit him of voluntary manslaughter, much less any of the related firearm offenses. Thus, even if the court erred by including the optional language at issue, any such error was nonprejudicial and therefore harmless.

For the foregoing reasons, we affirm the judgment of the circuit court.

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

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