Circuit Court for Montgomery County
Case No. 138934C

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2294

September Term, 2022

ADONIS A. HERNANDEZ-LOVO

v.

STATE OF MARYLAND

Reed,
Zic,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: August 30, 2024

Appellant, Adonis Hernandez-Lovo, was found guilty of first-degree assault and carrying a dangerous weapon with intent to injure by a jury in the Circuit Court for Montgomery County. Mr. Hernandez-Lovo brings this appeal because he claims that the circuit court erred when it did not give the imperfect self-defense instruction. He argues that he established he had a subjective belief that he was in fear of imminent harm to generate the instruction through testimony he and his victim, Brian Bermudez, presented during the jury trial. We agree with the State that regardless of Mr. Hernandez-Lovo's beliefs regarding fear of imminent harm, he failed to meet the evidentiary standard to support that he was not the aggressor, and, thus, we affirm the circuit court's decision not to give the imperfect self-defense instruction.

Mr. Hernandez-Lovo also appeals the circuit court's decision to limit his defense counsel's opening statement and not permit admission of any subsequent evidence pertaining to Mr. Hernandez-Lovo's schizophrenia, the lack of taking his schizophrenia medication on August 29, and his behavioral tendencies when he has not taken the medication. We, again, affirm the circuit court. The court did not abuse its discretion by not allowing evidence of Mr. Hernandez-Lovo's schizophrenia, his medicine intake, and his typical behaviors when he does not take the medication to be introduced through lay-witness testimony.

QUESTIONS PRESENTED

Mr. Hernandez-Lovo presents two questions for our review, verbatim as follows:

1. Did the circuit court err by not instructing on imperfect self-defense?

2. Did the circuit court impermissibly limit defense counsel's opening statement and his subsequent efforts to elicit lay-opinion testimony concerning the fact that [Mr. Hernandez-Lovo] was schizophrenic, that [Mr. Hernandez-Lovo] was not taking his medication for schizophrenia on the date of the incident, and that [Mr. Hernandez-Lovo] acted differently when he did not take his medication?

For the reasons that follow, we answer Mr. Hernandez-Lovo's questions in the negative, and, therefore, affirm.

BACKGROUND

The charges of first-degree assault and carrying a dangerous weapon with intent to injure arose on August 29, 2021 when Mr. Hernandez-Lovo wielded a machete and used it to cut Mr. Bermudez. Mr. Hernandez-Lovo is Mr. Bermudez's brother-in law and had lived with Mr. Bermudez for a year and a half before the incident. The two shared a residence with Mr. Bermudez's wife (Mr. Hernandez-Lovo's sister), their two children, Mr. Hernandez-Lovo's mother, and her two teenage twins.

Incident on August 29

According to Mr. Bermudez, when Mr. Bermudez arrived at his residence on August 29, Mr. Hernandez-Lovo "was lying down in the living room." Mr. Bermudez went to "the backyard to smoke marijuana." Mr. Bermudez was sitting in his backyard when Mr. Hernandez-Lovo "came outside, turned off the light, . . . and attacked [Mr.

Bermudez] with a machete."[1] Mr. Hernandez-Lovo hit Mr. Bermudez "in the arm with a machete"[2] and "[Mr.] Bermudez ran away while [Mr. Hernandez-Lovo] gave chase."

Officer Dustin Fritz at first "responded to a report of a 911 disconnect[,]" in the area near Mr. Hernandez-Lovo's home and while traveling to the scene, he was "update[d] that there was a possible stabbing." When Officer Fritz arrived, Mr. Hernandez-Lovo was walking in the driveway and people were screaming for help at the front door. Officer Fritz told the people in the home to shut the front door and lock it. At this point, Mr. Hernandez-Lovo was shirtless and held a machete in one hand and a boxcutter in the other, sometimes pointing the machete at the officers and sometimes at his own head. Officer Fritz and his partner, Officer Lipscomb, drew their handguns and flashed light on Mr. Hernandez-Lovo while waiting for backup. Officer Alex Miranda arrived at the scene to communicate with Mr. Hernandez-Lovo in Spanish; and with the aid of a negotiator, Officer Miranda spoke with Mr. Hernandez-Lovo, repeatedly telling him to drop the machete. This continued on for three hours before police used tasers to detain him.

[1] There is contradictory evidence as to whether Mr. Hernandez-Lovo spoke to Mr. Bermudez before attacking Mr. Bermudez. At first, Mr. Bermudez claimed that Mr. Hernandez-Lovo "told [Mr. Bermudez] he was going to kill him." Later on, Mr. Bermudez told officers that Mr. Hernandez-Lovo had actually not said anything before striking him. Mr. Bermudez again later confirmed with Officer Karen Lipscomb that Mr. Hernandez-Lovo had not said anything before hitting him.

[2] An expert in orthopedics and orthopedic surgery testified to treating Mr. Bermudez at Suburban Hospital and verified that Mr. Bermudez had "a laceration to the palm side of his wrist just before his hand."

Mr. Hernandez-Lovo was charged with first-degree assault and carrying a dangerous weapon with intent to injure. At trial, which lasted for three days, Mr. Hernandez-Lovo testified that he cut Mr. Bermudez with the machete because Mr. Hernandez-Lovo was concerned for his safety, continuously living in fear, and under the belief that Mr. Bermudez might assault or attack him on August 29 as a result of past altercations with Mr. Bermudez. Mr. Hernandez-Lovo cited to incidents that occurred on June 20 and 27, 2021.

Incident on June 20

On June 20, Mr. Hernandez-Lovo was walking to his mother's bedroom when he saw Mr. Bermudez blocking the door. Mr. Hernandez-Lovo asked permission to walk by, touching Mr. Bermudez's arm as he walked by, and Mr. Bermudez would not let him pass. Mr. Hernandez-Lovo's mother and sister prevented Mr. Hernandez-Lovo and Mr. Bermudez from fighting. Mr. Hernandez-Lovo believed Mr. Bermudez to be the initial aggressor when he was not allowed to pass.

Mr. Bermudez also testified to an incident in June where Mr. Bermudez was standing by a doorway in the home, and Mr. Hernandez-Lovo presumably wanted to walk through the doorway. Mr. Bermudez testified that Mr. Hernandez-Lovo was giving him a "bad face." Rather than saying "excuse me," Mr. Bermudez testified that Mr. Hernandez-Lovo pushed him, and then they pushed each other. Mr. Bermudez testified that he generally tried to avoid Mr. Hernandez-Lovo because he "didn't know what was going on with him."

Incident on June 27

According to Mr. Hernandez-Lovo, on June 27, Mr. Hernandez-Lovo knocked on the bathroom door to ascertain if it was occupied. Mr. Bermudez exited the bathroom and started fighting Mr. Hernandez-Lovo, striking Mr. Hernandez-Lovo in the face about 12 times, resulting in scratches and injuries to his teeth. Again, others in the home tried to separate them. Mr. Hernandez-Lovo's mother testified that she saw Mr. Bermudez jumping on top of Mr. Hernandez-Lovo, who was drunk, and heard Mr. Bermudez insult Mr. Hernandez-Lovo and call him derogatory names. Mr. Bermudez threatened Mr. Hernandez-Lovo at the conclusion of the incident by warning him to "watch out" if Mr. Bermudez ever saw him "in the street."

According to Mr. Bermudez, the June 27 incident began when Mr. Hernandez-Lovo kicked the bathroom door while Mr. Bermudez was occupying the bathroom. He claims that Mr. Hernandez-Lovo was in a fighting stance with raised hands, so the two men began hitting each other. Mr. Bermudez saw that Mr. Hernandez-Lovo was being held by his mother, and Mr. Bermudez said he threatened Mr. Hernandez-Lovo by saying, "I told him that when I saw him in the street he should watch out because it was going to be different because [] his mom wasn't going to be there to hold him." He later described the incident to a police officer saying that he "kicked [Mr. Hernandez-Lovo's] ass" on the day of the bathroom incident.

At the conclusion of trial, Mr. Hernandez-Lovo was convicted of first-degree assault and carrying a dangerous weapon with intent to injure. The circuit court sentenced Mr. Hernandez-Lovo to nine years of incarceration, with all but four years

suspended for the assault charge, and three years of incarceration, with all suspended and to run concurrently, for the weapon charge, and four years of supervised probation. This appeal followed.

STANDARD OF REVIEW

We review a circuit court's "refusal or giving of a jury instruction under the abuse of discretion standard[,]" and we must determine whether a circuit court abused its discretion based on three considerations: "(1) whether the requested instruction was a correct statement of the law; (2) whether it was applicable under the facts of the case; and (3) whether it was fairly covered in the instructions actually given." *Bazzle v. State*, 426 Md. 541, 548-49 (2012) (internal citations and quotation marks omitted). The second consideration is at issue in Mr. Hernandez-Lovo's appeal. "The threshold determination of whether the evidence is sufficient to generate the desired instruction is a question of law for the judge[;]" therefore, we review this first issue of the appeal under a *de novo* standard. *Id*. at 550 (quoting *Dishman v. State*, 352 Md. 279, 292 (1998)); *see also Rainey v. State*, 480 Md. 230, 254 (2022).

As for the second issue in this appeal, which concerns whether the circuit court erred in disallowing evidence pertaining to Mr. Hernandez-Lovo's schizophrenia diagnosis, medication, and behaviors through lay-opinion testimony, it is reviewed for abuse of discretion. "The decision as to whether to require a witness to testify as an expert is a matter largely within the discretion of the trial court, and its action in admitting or excluding such testimony will seldom constitute a ground for reversal." *Prince v. State*, 216 Md. App. 178, 198 (2014) (cleaned up). The circuit court abuses its

discretion when its decision is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Alexis v. State*, 437 Md. 457, 478 (2014) (cleaned up).

DISCUSSION

I. THE CIRCUIT COURT DID NOT ERR IN DECLINING TO INSTRUCT THE JURY ON IMPERFECT SELF-DEFENSE.

On appeal, Mr. Hernandez-Lovo contends that the circuit court erred when it "declined to instruct on imperfect self-defense." Mr. Hernandez-Lovo argues that he presented "more than enough evidence to generate an imperfect self-defense instruction." Specifically, Mr. Hernandez-Lovo's testimony that "[he] subjectively believed that [Mr.] Bermudez's threats created a sense of imminent danger that led [Mr. Hernandez-Lovo] to strike [Mr. Bermudez] on August 29" was "enough to generate imperfect self-defense." Mr. Hernandez-Lovo continues, contending that the two altercations that occurred in June with Mr. Bermudez and Mr. Bermudez's threat following the June 27 altercation made Mr. Hernandez-Lovo "continuously fear for his life and believe that [Mr.] Bermudez might assault or attack him at any time, including August 29." Finally, Mr. Hernandez-Lovo cites to *State v. Martin*, 329 Md. 351, 367 (1993), and argues in his brief that:

> [I]f a defendant alleges that they acted in imperfect self-defense at time B because of threats they received earlier at time A, an instruction on imperfect self-defense is generated only if the defense presents sufficient evidence of the defendant's "subjective belief at the critical moment" they acted, *i.e.*, at time B.

The State asserts that "there was no evidence generated for at least one of the elements of imperfect self-defense—namely, that [Mr.] Hernandez-Lovo was not the

aggressor." The State contends that Mr. Hernandez-Lovo was required to show with "*some* evidence" that he was not the initial aggressor, and he failed to do this. (Emphasis in original). We agree with the State.

The Supreme Court of Maryland has held that:

> Perfect self-defense requires the following elements:
>
> > (1) The accused must have had reasonable grounds to believe himself in *apparent* imminent or immediate danger of death or serious bodily harm from his assailant or potential assailant;
> >
> > (2) The accused must have in fact believed himself in this danger;
> >
> > (3) The accused claiming the right of self-defense must not have been the aggressor or provoked the conflict; and
> >
> > (4) The force used must have not been unreasonable and excessive, that is, the force must not have been more force than the exigency demanded.

Porter v. State, 455 Md. 220, 234-35 (2017) (quoting *State v. Smullen*, 380 Md. 233, 252 (2004).[3]

[3] Similarly, the pattern jury instruction for perfect self-defense is as follows:

> 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:

The elements of perfect and imperfect self-defense are largely the same. *See State v. Smullen*, 380 Md. 233, 253 (2004). "The only substantive difference" between perfect and imperfect self-defense is that "in perfect self-defense, the defendant's belief that he was in immediate danger of death of serious bodily harm or that the force used was necessary must be *objectively* reasonable." *Smullen*, 380 Md. at 253 (cleaned up) (emphasis added). Imperfect self-defense requires the defendant to "only show that he *actually believed* that he was in danger, even if that belief was unreasonable" and requires only that the defendant "*actually believed* the amount of force used was necessary." *Porter*, 455 Md. at 235 (citation omitted).

A. The Evidence Was Not Sufficient To Generate An Imperfect Self-Defense Instruction.

In order for a defendant to generate an imperfect self-defense instruction, the defendant must show that "some evidence" in the record exists to support the requested

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> (1) the defendant was not the aggressor [[or, although the defendant was the initial aggressor, [he or she] did not raise the fight to the deadly force level]];
>
> (2) the defendant actually believed that [he or 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 or herself] in light of the threatened or actual harm.

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instruction. *Bazzle*, 426 Md. at 551 (2012) (internal citation and quotation marks omitted). The some evidence standard requires a trial court to "view[] the facts in the light most favorable to the requesting party." *Rainey*, 480 Md. at 255. The Supreme Court of Maryland explained the standard in *Dykes v. State*:

> *Some evidence* is not strictured by the test of a specific standard. It calls for no more than what it says—"some," as that word is understood in common, everyday usage. It need not rise to the level of "beyond reasonable doubt" or "clear and convincing" or "preponderance." The source of the evidence is immaterial; it may emanate solely from the defendant. It is of no matter that the self-defense claim is overwhelmed by evidence to the contrary. 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 met his burden. Then the baton is passed to the State. It must shoulder the burden of proving beyond a reasonable doubt to the satisfaction of the jury that the defendant did not kill in self-defense.

319 Md. 206, 216-17 (1990) (emphasis in original).

Mr. Hernandez-Lovo argues that he was entitled to an imperfect self-defense instruction because "defense counsel elicited more than enough evidence to generate an . . . instruction." Mr. Hernandez-Lovo cites *Porter* to support his argument that he only needed to produce evidence that he had a subjective belief he was either in immediate or imminent danger, not both, to qualify for the imperfect self-defense instruction under the some-evidence standard. *Porter*, 455 Md. at 245 ("The elements of imperfect self-defense require Porter to demonstrate that she actually feared 'imminent *or* immediate' danger—not both.[] *See Smullen*, 380 Md. at 252 (emphasis added). We find the temporal distinction between imminent and immediate persuasive—an imminent threat is

not dependent on its temporal proximity to the defensive act. Rather, it is one that places the defendant in imminent fear for her life.").

Mr. Hernandez-Lovo testified that he was "always worried[,]" "concerned for [his] safety[,]" and under the belief that Mr. Bermudez would "attack" him because of the previous fights in June between the two of them, and Mr. Bermudez's resulting threats. Mr. Hernandez-Lovo argues that this testimony is enough to meet the some evidence standard that "[Mr.] Bermudez's threatening of him made him continuously fear for his life and believe that [Mr.] Bermudez might assault or attack him at any time, including August 29[,]" and as a result, supports that he had a subjective belief he was in imminent fear on August 29, satisfying the requirement for the imperfect self-defense instruction.

Mr. Hernandez-Lovo also argues that "there did not need to be evidence that [Mr.] Bermudez attacked, tried to attack, or threatened [Mr. Hernandez-Lovo] first on August 29. Instead, in the light most favorable to [Mr. Hernandez-Lovo], the temporal lens through which the evidence needed to be evaluated included" events that happened prior to August 29, putting Mr. Hernandez-Lovo in this permanent state of imminent fear.

The State argues that Mr. Hernandez-Lovo's argument that "all that was needed" to generate the imperfect self-defense instruction was evidence of an imminent threat "is wrong." The State points to *McMillian v. State* which states that "[t]here must be some evidence to support *each element* of the defense." 428 Md. 333, 355 (2012) (citation omitted) (emphasis added). The State argues that Mr. Hernandez-Lovo failed to produce some evidence that he was not the initial aggressor, a required element of the imperfect self-defense instruction. We agree. Mr. Hernandez-Lovo needed to present some

evidence to support each of the four elements outlined in *Smullen*, and reiterated in *Porter*, to generate an imperfect self-defense instruction. We hold that he did not.

As the State argues, Mr. Hernandez-Lovo needed to produce some evidence that he was not the "aggressor or provoked the conflict" to satisfy that element of the imperfect self-defense instruction. *Smullen*, 380 Md. at 252. This Court held in *Cunningham v. State* that a defendant's "total failure of proof" of a necessary element, despite "partial" or "fuller" proof of other elements, will not generate an imperfect self-defense jury instruction. 58 Md. App. 249, 257 (1984). In *Cunningham*, this Court concluded that Mr. Cunningham was properly denied a jury instruction on imperfect self-defense because he did not produce any evidence that he was not the aggressor. *Id.* at 257-58.

After Mr. Cunningham and the victim interacted "several hours" earlier, without violence, Mr. Cunningham "approached the victim," "drew the gun from a bag[,]" and killed him. Mr. Cunningham asserted that he "feared for his life when he shot his victim[,]" thus warranting an imperfect self-defense jury instruction. *Id.* at 254.[4] This Court further held that assuming Mr. Cunningham's testimony indicating his "belief that he was in deadly peril" was credible, it was not sufficient to generate the imperfect self-defense instruction because the defense requires the "establishment of all of the other

[4] Mr. Cunningham's moped was stolen earlier in the day, so "he armed himself with a loaded gun," went looking for the person who stole his moped, and found the man leaning against the moped. *Id.* at 254. The man's hands were "by his pants[,]" and Mr. Cunningham claimed he believed that the man was "grabbing for something" and was "afraid that" the man would kill him. *Id.* at 254, 257.

elements that are necessary to comprise the defense," and "all of the testimony establishe[d] unequivocally that the appellant was the aggressor and there was no shred of evidence to indicate otherwise." *Id.* at 254, 257. Thus, Mr. Cunningham failed to produce some evidence that he was not the aggressor, a necessary element of the imperfect self-defense instruction, when he approached and killed the victim hours after Mr. Cunningham saw the victim with Mr. Cunningham's stolen moped. *Id.*

Here, just as in *Cunningham*, accepting for the sake of argument Mr. Hernandez-Lovo's belief that Mr. Bermudez was going to attack him, he did not meet the burden of producing some evidence that he was not the initial aggressor, a requirement of the imperfect self-defense instruction. Mr. Hernandez-Lovo argued before the circuit court that "Mr. Bermudez was the initial aggressor when he made the threats two months" before the August 29 incident, but those threats and altercations are too attenuated from Mr. Hernandez-Lovo cutting Mr. Bermudez with a machete on August 29. Just as this Court concluded that Mr. Cunningham's previous altercation with his victim was not enough to support that Mr. Cunningham was not the initial aggressor when he later confronted and shot his victim, *Cunningham*, 58 Md. App. at 254-55, we conclude that Mr. Hernandez-Lovo's previous altercations with Mr. Bermudez were not sufficient to support that Mr. Hernandez-Lovo was not the initial aggressor when he confronted and cut Mr. Bermudez with a machete.

Prior to the June incidents, the two had lived peacefully without any altercations for approximately two years. After those two incidents in June, no fights occurred between the two until two months later when Mr. Hernandez-Lovo struck Mr. Bermudez

with a machete while Mr. Bermudez was alone outside. Mr. Hernandez-Lovo's actions were unprompted, having been separated from Mr. Bermudez for hours, as Mr. Bermudez was away from the house. Furthermore, Mr. Hernandez-Lovo testified that he did not believe that Mr. Bermudez had any weapons on him when Mr. Hernandez-Lovo went outside with his machete. Accordingly, we hold that Mr. Hernandez-Lovo did not meet the evidentiary standard to support that he was not the aggressor to generate the imperfect self-defense instruction. [5]

II. THE CIRCUIT COURT DID NOT ERR IN PRECLUDING THE DEFENSE FROM ELICITING EVIDENCE REGARDING MR. HERNANDEZ-LOVO'S CLAIMED SCHIZOPHRENIA THROUGH LAY OPINION TESTIMONY.

Mr. Hernandez-Lovo argues that the circuit court erred in precluding his "defense counsel's opening statement and . . . evidence demonstrating (a) [Mr. Hernandez-Lovo]'s status as a schizophrenic person, (b) evidence indicating that he was not taking his medication for schizophrenia on August 29, and (c) evidence concerning [Mr. Hernandez-Lovo]'s behavior when he did not take his medication." Mr. Hernandez-Lovo's defense counsel's opening statement included the following:

> Mr. Hernandez-Lovo has been diagnosed with schizophrenia. He's not taking his meds, fully, at the time that this happens, August 29th, 2021. And so, again, at the end of this trial, you're also going to have to consider what was going on in his mind. That's just as important, and a Judge will tell you that you have to consider that at the end of this trial.

[5] Having held that Mr. Hernandez-Lovo did not meet the evidentiary standard to generate the imperfect self-defense instruction, we decline to address Mr. Hernandez-Lovo's argument that the circuit court erred in not providing him with an imperfect self-defense instruction for first-degree assault under *Christian v. State*, 405 Md. 306 (2008), which the State contends is no longer good law on that issue.

The State objected to the mention of schizophrenia because it was "not privy to any of this information," and as a result, the State did "not have a psychologist" to testify about Mr. Hernandez-Lovo's "mental health." The defense counsel responded that it did not plan to put on expert testimony to show Mr. Hernandez-Lovo's incapability of "form[ing] the requisite intent" but wanted to show because "all of these things [] going on in his head" and having not taken his medication, there was "at least some reason to doubt whether he intended serious physical injury or death in what he did." The circuit court ruled:

> [W]hile I understand that the defendant can put on evidence that . . . he lacked the requisite *mens rea* and didn't have the specific intent—the problem with the evidence that he is trying to put on is that I agree with [the State] relevance because [sic] the knowledge that the defendant is schizophrenic and the knowledge that he did not take his medication without some credible evidence of what the impact of that is wouldn't make it more or less probable that he lacked the requisite intent.
>
> The jury would be speculating about what that means. I don't believe that that is something that would ordinarily be in the knowledge of a layperson. I certainly don't know what the impact is of not taking medication for schizophrenia and because I believe that the leap is far too great, I'm going to grant the motion *in limine* of the State and I will instruct the jury to disregard any statements about schizophrenia or the taking or not taking of drugs for schizophrenia and also remind them that statements in opening are not evidence.

The defense counsel intended to have Mr. Hernandez-Lovo and his mother testify about whether he took his schizophrenia medication on August 29 and how he acts when he does not take the medication. We agree with the circuit court's ruling.

A lay witness's testimony "in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue." Md. Rule 5-701. Only expert witnesses may offer testimony based on specialized "knowledge, skill, experience, training, or education." Md. Rule 5-702; *see also State v. Galicia*, 479 Md. 341, 389 (2022) (stating that "'when the subject of the inference . . . is so particularly related to some science or profession that is beyond the ken of the average layman,' it may be introduced only through the testimony of an expert witness" (citations omitted)).

Mr. Hernandez-Lovo and his counsel sought to introduce evidence of his schizophrenia diagnosis, that he did not take his schizophrenia medication on August 29, and that his behaviors change when he is not on his medication. While the defense counsel said he would introduce this evidence through "some witnesses," Mr. Hernandez-Lovo's mother was the only witness specifically mentioned by counsel during trial to testify to this evidence. A circuit court should exercise its discretion and admit lay opinion testimony if it: (1) "is derived from first-hand knowledge;" (2) "is rationally connected to the underlying facts;" (3) "is helpful to the trier of fact;" and (4) "is not barred by any other rule of evidence." *Robinson v. State*, 348 Md. 104, 118 (1997) (citations omitted). There is no indication that Mr. Hernandez-Lovo's mother had first-hand knowledge of whether her son took his medication on August 29. At trial, Mr. Hernandez-Lovo's attorney argued that:

> I think part of that testimony [of Mr. Hernandez-Lovo's mother] is he was not taking his medications and he is more groggy and out of it when he does not do that. And that is based on her personal interactions with him when he was taking his medications and when he was not taking his medications.
>
> [] I would proffer to the Court she would testify that she gave him his medications to make sure he was taking them and then, at some point, he started doing that and stopped taking them and she was not monitoring to make sure that he took them every day and then she noticed a difference in his demeanor at that point.

Without having first-hand knowledge of whether Mr. Hernandez-Lovo took his medication on August 29, her testimony becomes obsolete as a lay-opinion witness under *Robinson* and should not be admitted.

Additionally, a lay-opinion witness, such as his mother, could not have introduced Mr. Hernandez-Lovo's schizophrenia diagnosis because such testimony would need to be based on specialized "knowledge, skill, experience, training, or education" of an expert witness under Maryland Rule 5-702. *See also United States v. Torres-Correa*, 23 F.4th 129, 136 (1st Cir. 2022) (holding that the trial court did not abuse its discretion in prohibiting counsel from questioning a person about his schizophrenia diagnosis, because the questioning "would not be probative unless an expert witness were available to testify regarding how schizophrenia affects a person's perceptive abilities" under Rule 702 of the Federal Rules of Evidence).[6] Mr. Hernandez-Lovo's claimed schizophrenia diagnosis and related behaviors should have been admitted through an expert witness, and because

[6] Maryland Rule 5-702 is Maryland's "counterpart" to Rule 702 of the Federal Rules of Evidence. *Rochkind v. Stevenson*, 471 Md. 1, 21-22 (2020).

his defense counsel offered no expert witness to supply such evidence, the circuit court properly declined any evidence being admitted relating to Mr. Hernandez-Lovo's schizophrenia.[7] *See Johnson v. State*, 457 Md. 513, 530 (2018) ("If a court admits evidence through a lay witness in circumstances where the foundation for such evidence must satisfy the requirements for expert testimony under Maryland Rule 5-702, the court commits legal error and abuses its discretion." (citations omitted)).

[7] Maryland jurisprudence states a two-prong rule for admitting lay-witness testimony concerning mental health:

> [T]he statement by the lay non-expert witness becomes trustworthy and thus admissible only after he demonstrates a sufficient foundation for the inference drawn. . . . The testimony of an expert may be based upon his examination made weeks or even many months after the critical date. The expert from that examination is attempting to reconstruct the condition of the mind of the accused as of the critical date. The expert may never have seen the accused prior to the beginning of this examination. The non-expert is testifying upon the basis of his observations of the accused over a sufficient period of time. We regard it as of material assistance to the jury to have the benefit of those lay observations together with his conclusion as to whether as of the time of the event in question the accused seemed to deviate or not to deviate from the established norms. . . .
>
> [A] lay witness may describe what he has observed which is relevant to the issues then on trial before the court and he may state what conclusions he has drawn based upon those observations if they have been conducted over a sufficient period of time to permit his reaching a conclusion.

State v. Conn, 286 Md. 406, 428, 408 (1979). But here, Mr. Hernandez-Lovo failed to establish a sufficient factual basis that he suffered from a mental illness, such as by offering psychological expert testimony, which would make lay-opinion testimony "together with" the expert testimony "benefi[cial.]" *Id.*

CONCLUSION

First, the circuit court did not err by not instructing on imperfect self-defense because Mr. Hernandez-Lovo did not provide sufficient evidence under the some-evidence standard to support that he was not the aggressor on August 29. Second, the circuit court did not abuse its discretion when it declined to allow Mr. Hernandez-Lovo to elicit evidence regarding his schizophrenia through lay witness testimony. Accordingly, we affirm the circuit court.

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