

Circuit Court for Worcester County  
Case No. C-23-CR-17-269

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 0182

September Term, 2018

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JORDAN JAMES KUZMA

v.

STATE OF MARYLAND

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Meredith,  
Wright,  
Grill Graeff,

JJ.

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Opinion by Wright, J.

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Filed: April 26, 2019

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On January 16, 2018, a jury in the Circuit Court for Worcester County convicted Jordan James Kuzma (“Kuzma”), appellant, of second-degree assault, carrying a dangerous weapon with the intent to injure another, and possessing an assisted knife in Ocean City, Maryland. He was sentenced to two years in the Worcester County Detention Center, with all but six months suspended, and two years of probation. Kuzma now challenges his conviction and presents the remaining question for our review, which we have reworded and consolidated for clarity:<sup>1</sup>

1. Did the circuit court err in denying Kuzma’s requested jury instructions?

For the reasons provided below, we answer this question in the negative and affirm the judgment of the circuit court.

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<sup>1</sup> Kuzma has presented two questions to this Court for review. The original questions that Kuzma presented are as follows:

I. Did the trial Court err in failing to give one or more of the defendant’s/appellant’s requested jury instructions given the record of the evidence in this case?

II. Did the trial Court err in ruling on and denying the defendant’s/appellant’s motion to modify his sentence without the defendant’s/appellant’s a request to consider it, where it had been timely submitted and requested to be held *sub curia*?

Before oral argument, Kuzma withdrew the appeal of his “Motion for Reduction of Sentence.” Therefore, we consider only Kuzma’s first question on appeal.

## **FACTUAL AND PROCEDURAL BACKGROUND**

On the evening of June 18, 2017, Detective Sergeant Frank Wrench (“Detective Wrench”) and two other officers were alerted to a robbery near 3rd Street and Baltimore Avenue in Ocean City, Maryland. Detective Wrench and the officers began searching the area for the suspect. All three were in plain clothing and were driving together in an unmarked vehicle.<sup>2</sup>

While at a stoplight, Detective Wrench noticed a group of approximately eight youths standing on the left side of the street. He reported that the youths were “startled” by something and began running in different directions. Detective Wrench wondered whether the youths’ sudden departure was connected to the robbery, so he promptly made a left turn at the traffic light and parked his vehicle at the south face of the City Hall in Ocean City.

Detective Wrench and the two officers exited the vehicle, and the officers began searching for the youths. Detective Wrench approached the area where the individuals were gathered, moved to the sidewalk, and saw Kuzma emerge from behind a car holding a black, spring-assisted folding knife. As Kuzma approached, Detective Wrench took out his gun and began yelling “Police, get on the ground.”

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<sup>2</sup> Detective Wrench is in the Special Enforcement Unit of the Criminal Investigation Division of the Ocean City Police Department. The unit is a “non-uniformed section,” and all detectives wear plain clothing when conducting investigations. While in plain clothing, Detective Wrench wears an identification badge attached to a lanyard that hangs around his neck.

Kuzma testified that just before Detective Wrench and the officers arrived, he was attacked by multiple people and subsequently “blacked out.” Upon awakening, Kuzma saw the group run from the scene and drew his knife “just in case it happened again.” After emerging from behind the car, Kuzma saw Detective Wrench yelling, but could not understand what he was saying because Kuzma’s “ears were ringing.” Kuzma eventually dropped his knife when he realized that Detective Wrench had his gun drawn, but Kuzma continued his approach.

When Kuzma was close enough, Detective Wrench pulled him to the ground and Corporal Todd Speigle (“Corporal Speigle”) placed Kuzma in handcuffs.<sup>3</sup> Kuzma confirmed Detective Wrench’s testimony that during an interview at the scene of the arrest, Kuzma did not realize that Detective Wrench was the same officer who had his gun drawn moments before. After being released from a brief stay in jail, Kuzma was treated for a concussion at MedStar Franklin Square Hospital.

Kuzma was charged with three offenses: (1) second-degree assault; (2) carrying a dangerous weapon with the intent to injure another; and (3) possession of an assisted knife “in Ocean City, Maryland.”<sup>4</sup> His jury trial took place on January 16, 2018, in the Circuit Court for Worcester County. During trial, Detective Wrench testified about his interaction with Kuzma on June 18, 2017, and explained that he was “frightened” by the

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<sup>3</sup> Corporal Speigle handcuffed Kuzma because Detective Wrench was still aiming his gun at Kuzma while restraining him on the ground.

<sup>4</sup> Ocean City Municipal Code § 58-123: Prohibited Acts.

possibility of being stabbed. Kuzma also testified about the interaction with Detective Wrench, but claimed that he used the knife to “dissuade” an attack and did not intend to injure Detective Wrench.

After arguments, Kuzma requested jury instructions on self-defense, mistake of fact, and motive:

THE COURT: Do you wish to note any exceptions as to the instructions?

[STATE]: No, Your Honor.

[DEFENSE COUNSEL]: Yes, Your Honor.

THE COURT: [Defense Counsel]?

(Whereupon, counsel and the Defendant approached the bench and the following occurred out of the hearing of the panel:)

[DEFENSE COUNSEL]: Your Honor, the Defendant had asked for the pattern instruction on motive to be read, that’s Maryland Criminal Pattern Jury Instruction [(“MCJI-Cr”)] 3:32. We asked for also Mistake of Fact to be read, which is 5:06, and the one for Self-Defense, which is 5:07. We believe that those jury instructions are generated by the facts of the case, therefore the issues talked about intent well, you know, I think that all of those are generated by the testimony in evidence.

THE COURT: [State]?

[STATE]: Your Honor, I do not believe that motive is a necessary requirement of this particular charge and therefore I don’t believe it should be given nor do I think the evidence has been generated sufficient to establish it.

I also don’t think particularly there was any evidence generated for a self-defense argument. And if there was no evidence generated for a self-defense argument the mistake of fact should fail.

THE COURT: I’ll deny your request.

[DEFENSE COUNSEL]: Thank you.

The jury deliberated for thirteen minutes before delivering its verdict. Kuzma was found guilty of all three charges, and was sentenced to two years in the Worcester County Detention Center, suspending all but six months, and two years of probation.

On April 10, 2018, Kuzma filed a “Motion for Reduction of Sentence” and asked that the court hold his motion *sub curia*. The circuit court denied his motion on May 15, 2018. Based on this denial, as well as the denial of his requested jury instructions, Kuzma filed this appeal.

Additional facts will be included as they become relevant to our discussion below.

### **STANDARD OF REVIEW**

We review a court’s denial of a jury instruction for abuse of discretion. *Stabb v. State*, 423 Md. 454, 465 (2011). A court’s discretionary decision will only be reversed when there is “a *clear* showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *Id.* (quoting *In re Don Mc.*, 344 Md. 194, 201 (1996)) (emphasis added).

Upon reviewing a trial court’s approval or denial of a requested jury instruction, we determine whether the evidence supported the instruction, whether the instruction was accurate as to the law, and whether the instruction was “otherwise . . . fairly covered by the instructions actually given.” *Gimble v. State*, 198 Md. App. 610, 627 (2011).

## DISCUSSION

Jury instructions present the jury with the law that they are to apply in their deliberations in a “simple, direct, and understandable manner.” Robert E. Larsen, *Navigating the Federal Trial*, § 2.2. Md. Rule 4-325(c) dictates that a “court may, and at the request of any party shall, instruct the jury as to the applicable law . . . .”<sup>5</sup> A circuit court must grant such a request when a “three-part test” is satisfied: “(1) the instruction is a correct statement of law; (2) the instruction is applicable to the facts of the case; and (3) the content of the instruction was not fairly covered elsewhere in the instructions actually given.” *Dickey v. State*, 404 Md. 187, 197-98 (2008). A defendant is simply required to supplement their request with “‘some evidence’ that supports the requested instruction[.]” *Bazzle v. State*, 426 Md. 541, 551 (2012) (quoting *Dykes v. State*, 319 Md. 206, 216-17 (1990)).<sup>6</sup>

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<sup>5</sup> Md. Rule 4-325(c) **Instructions to the Jury.**

(c) **How Given.** 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. The court may give its instructions orally or, with the consent of the parties, in writing instead of orally. The court need not grant a requested instruction if the matter is fairly covered by instructions actually given.

<sup>6</sup> In *Dykes v. State*, the Court of Appeals explained that “[s]ome evidence . . . 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.’” *Dykes*, 319 Md. at 216-17.

## I. Self-Defense

Kuzma claims that he drew his knife just as he was recovering from being attacked. Because he did this to discourage further attack, Kuzma argues that he held an actual and reasonable belief that he needed to defend himself, satisfying the requirements of perfect self-defense. Conversely, the State argues that Kuzma did not fulfill the requirements, as he did not reasonably believe that he was facing harm, was the aggressor in his interaction with Detective Wrench, and used excessive force. The State also asserts that Kuzma had a duty to retreat but did not abide by this duty.

At trial, Kuzma requested MPJI-Cr 5:07, the jury instruction for perfect self-defense. *See Dykes*, 319 Md. at 211 (quoting *Faulkner v. State*, 54 Md. App. 113, 114-15 (1983)).<sup>7</sup> For the defense to apply, four factors must be satisfied:

- (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

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<sup>7</sup> Imperfect self-defense applies when a defendant's belief is "honest, but unreasonable," and can lessen a charge from murder to voluntary manslaughter if proven. *Jones v. State*, 357 Md. 408, 422 (2000); *see also* MPJI-CR 4:17.2. However, imperfect self-defense is only applicable in homicide cases, and was therefore unavailable to Kuzma here. *See Jones*, 357 Md. at 422 (quoting *Richmond v. State*, 330 Md. 223, 233 (1993) (explaining that an instruction on imperfect self-defense may only be given for "criminal homicide and its shadow forms, such as attempted murder") (citations omitted); *see also State v. Owens*, 299 S.E.2d 258, 259 (N.C. App. 1983) (discussing the mistake of fact defense in the context of a homicide committed in self-defense).



(4) the defendant used no more force than was reasonably necessary to defend [himself] [herself] in light of the threatened or actual harm.

MPJI-Cr 5:07 defines “deadly force” as “force reasonably calculated to cause death or serious bodily harm.” A defendant is justified in using deadly force when they have the “reasonable belief that the aggressor’s force posed an immediate or imminent threat of death or serious bodily harm.” MPJI-Cr 5:07. However, a defendant may not employ deadly force without making a “reasonable effort to retreat.”<sup>8</sup> MPJI-Cr 5:07.

The significance of this duty to retreat has previously been explained by the Court of Appeals as follows:

The duty to retreat, other than from one’s home, if retreat is safely possible, is a consideration, though a critical one, in determining the necessity for using deadly force, as is the prospect of standing one’s ground and resisting with non-deadly force . . . . There remain as essential elements of the [instruction on self-defense] the duty of the defendant to retreat or avoid danger if such means were within his power and consistent with his safety[.]

*Sydnor v. State*, 365 Md. 205, 215-16 (2001) (internal quotations and citations omitted).

When Kuzma emerged from behind the car holding a knife, Detective Wrench was unarmed. Detective Wrench did not pull his weapon until moments *after* Kuzma began approaching him while holding a knife. Kuzma was therefore the initial aggressor because he was no longer facing threatened or actual harm, and by drawing his knife, he

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<sup>8</sup> Under MPJI-CR 5:07, retreat is not required when “[the defendant was in [his] [her] home, retreat was unsafe, the avenue of retreat was unknown to the defendant, the defendant was being robbed, or the defendant was lawfully arresting the victim].”

employed unreasonable, deadly force.<sup>9</sup> Furthermore, regardless of whether Kuzma *actually* believed that he faced imminent bodily harm, his belief was not reasonable. Not only was Detective Wrench initially unarmed, but he was also standing approximately twenty feet from Kuzma when Kuzma began to advance. Consequently, Kuzma failed to satisfy the factors necessary for a self-defense instruction. Even if we were to assume that Kuzma’s belief was reasonable, he still would not satisfy the necessary factors because he used unreasonable, deadly force.

Kuzma also testified that he was under attack shortly before Detective Wrench arrived at the scene. In the interval between the end of the initial attack on him and Detective Wrench’s arrival, Kuzma had the power and duty to safely retreat. He did not retreat and instead chose to arm himself in anticipation of further attack. Even if he was facing harm, Kuzma had a duty to retreat. Because Kuzma failed to retreat, he was not entitled to a jury instruction on self-defense.

## **II. Mistake of Fact**

Kuzma argues that the circuit court should have provided the jury instruction on mistake of fact. After being attacked, Kuzma testified that he “was still dizzy, everything was like a blur,” and his “ears were ringing,” making him unsure of whether Detective

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<sup>9</sup> In *Thornton v. State*, the Court of Appeals explained that a deadly weapon is “any instrument with which death may be readily or easily produced” and may be deadly “in its nature or in the manner in which it is used.” 397 Md. 704, 735 n.16 (2007). Accordingly, we are satisfied that Kuzma’s knife was a deadly weapon used in the pursuit of deadly force.

Wrench was one of his attackers. Thus, Kuzma asserts that he was mistaken as to Detective Wrench’s identity, and if his mistaken belief were true, a jury could have found that “he was entitled to defend himself against further attack.” In response, the State argues that, regardless of Kuzma’s actual belief, his belief was not reasonable and “his choice to attack someone who was no longer attacking him still would have been a crime.”

Under MPJI-Cr 5:06, a jury may find a defendant not guilty of a crime if the defendant relied on a mistaken factual belief in their commission of the crime. Three factors must be fulfilled in order for the “mistake of fact” defense to apply:

- (1) the defendant actually believed (alleged mistake);
- (2) the defendant’s belief and actions were reasonable under the circumstances; and
- (3) the defendant did not intend to commit the crime of (crime) and the defendant’s conduct would not have amounted to the crime of (crime) if the mistaken belief had been correct, meaning that, if the true facts were what the defendant thought them to be, the [defendant’s conduct would not have been criminal] [defendant would have the defense of (defense)].

MPJI-Cr 5:06.

The first two factors require that the jury find the defendant’s actual belief to be reasonable, as a mistake of fact occurs when a defendant has no knowledge of the real facts or “believes them to be other than as they are.” *General v. State*, 367 Md. 475, 484 (2002). Accordingly, the third factor requires that the defendant’s actions “*would not have amounted to a crime had the circumstances been as he believed them to be.*” *Marquardt v. State*, 164 Md. App. 95, 139 (2005) (emphasis added). Fulfilling each

factor “negates the existence of the mental state essential to the crime charged,” allowing the jury to clear a defendant of guilt. *General*, 367 Md. at 484.

Because of Kuzma’s diminished perception following the attack, we will assume, for the sake of argument, that his actual belief that Detective Wrench was one of his attackers was reasonable. As to the third factor, there must be “some evidence” that, if the circumstances were as he testified, Kuzma’s unlawful act would have been an innocent one. *See* David E. Aaronson, *Maryland Criminal Jury Instructions and Commentary* § 8.10(B), at 1828 (2018). Such evidence is not present here. By drawing and brandishing his knife, Kuzma immediately resorted to deadly force and demonstrated an intent to cause harm to Detective Wrench. Thus, even if his mistaken belief that Detective Wrench was one of his attackers was correct, Kuzma’s actions still amount to the crime of second-degree assault.<sup>10</sup> *See Brown v. State*, 64 Md. App. 324, 330-31 (1985) (explaining that brandishing and aiming a gun amounted to common law assault). Although there is *some* evidence to support the first two factors of the defense, the third factor is clearly unsupported. Therefore, the circuit court did not abuse its discretion in declining to give the requested instruction.

### **III. Motive**

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<sup>10</sup> In its objection to the “mistake of fact” instruction, the State argued that “if there was no evidence generated for a self-defense argument[,] the mistake of fact should fail.”

Kuzma contends that he raised the issue of motive by claiming that “he had no *intention* to assault, or *intent* to injure the alleged victim.” (emphasis added).

Specifically, Kuzma points to his testimony that he had no reason or political motivation to want to injure Detective Wrench, and to Detective Wrench’s testimony that he did not know Kuzma. In response, the State argues that motive is a not a legal issue requiring a jury instruction and that the “absence of a connection between Kuzma and [Detective Wrench] . . . would not have eliminated Kuzma as a suspect.” The State also indicates that motive was fairly covered by the court’s given instructions.<sup>11</sup>

Unlike the jury instructions for self-defense and mistake of fact, the jury instruction for motive does not require that specific factors be fulfilled:

Motive is not an element of the crime charged and need not be proven. However, you may consider the motive or lack of motive as a circumstance in this case. Presence of motive may be evidence of guilt. Absence of motive may suggest innocence. You should give the presence or absence of motive the weight you believe it deserves.

MPJI-Cr 3:32

Rather, motive has been noted as “a factor in the burden of persuasion,” as it “may influence a jury in deciding which inferences to draw.” *Ross v. State*, 232 Md. App. 72,

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<sup>11</sup> In their argument, the State points to two instructions from the circuit court: The jurors should (1) “draw any reasonable inference or conclusion from the evidence that [they] believe to be justified by common sense and [their] own experience” and (2) “weigh all of the evidence presented, whether direct or circumstantial, and that ‘[n]o greater degree of certainty is required of circumstantial evidence than of direct evidence.’”

90 (2017). A judge is required to instruct a jury on legal issues that “relate to the requirement that a party meet a burden of proof[,]” such as the elements of a crime or affirmative defenses to a crime.<sup>12</sup> *Patterson*, 356 Md. at 684. However, there is no such requirement for evidentiary inferences:

An evidentiary inference . . . is not based on a legal standard but on the individual facts from which inferences can be drawn and, in many instances, several inferences may be made from the same set of facts. A determination as to the presence of such inferences does *not normally support a jury instruction*. While supported instructions in respect to matters of law are required upon request, instructions as to evidentiary inferences *normally are not*.

*Id.* at 685 (emphasis added).

It is clear from both *Patterson* and the text of MPJI-Cr 3:32 that motive is a factual issue, analogous to an evidentiary inference, and “is not an element of the crime charged and need not be proven.” Thus, there was no requirement that the circuit court provide a jury instruction on motive. *See Patterson*, 356 Md. at 684-85 (explaining that jury instructions are typically required for legal matters, such as the elements of a crime, but are not required for evidentiary inferences). We also recognize that there was no prior relationship between Kuzma and Detective Wrench, and that Kuzma lacked political

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<sup>12</sup> In *Patterson*, the Court of Appeals explained that an instruction on a legal issue must be provided “if the evidence generates the right to it because it sets the legal guidelines for the jury to act effectively as the trier of fact.” 356 Md. at 684.

motivation to inflict any harm; however, both issues are merely collateral to the central issues of the case.<sup>13</sup>

In adhering to the abuse of discretion standard, we will not reverse the circuit court's discretionary decision unless it was blatantly unreasonable. *See Gunning*, 347 Md. at 351. Here, the motive was fairly covered by the instructions provided to the jury. At trial, the circuit court in part provided the jury with two instructions that are relevant here:

(1) You may draw any reasonable inference or conclusion from the evidence that you believe to be justified by common sense and your own experience;" and

(2) Intent is a state of mind and ordinarily cannot be proven directly because there is no way of looking into a person's mind. Therefore, the Defendant's intent may be shown by surrounding circumstances. In determining a Defendant's intent, you may consider the Defendant's acts and statements as well as the surrounding circumstances. Further, you may, but are not required to infer that a person ordinarily intends the natural and probable consequences of his acts.

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<sup>13</sup> A collateral fact is unlike a "non-collateral fact," which is "a fact that is material to the issues in a case . . ." *Hardison v. State*, 118 Md. App. 225, 239 (1997). This Court explained that collateral facts should be excluded from the evidence in a case:

Evidence of collateral facts, or of [facts] which are incapable of affording any reasonable presumption or inference as to the principal fact or matter in dispute, should be excluded, for the reason that such evidence tends to divert the minds of the jury from the real point in issue, and may arouse their prejudices.

*Wise v. State*, 132 Md. App. 127, 137 (2000) (quoting *Dorsey v. State*, 276 Md. 638, 643 (1976)).

Thus, the circuit court fairly covered motive when it instructed the jury as to evidentiary inferences. The circuit court’s decision to deny Kuzma’s requested jury instruction on motive was well within its discretion. *See Cost v. State*, 417 Md. 360, 369 (2010) (indicating that trial courts have discretion in determining whether to give a particular jury instruction). We hold that because this decision was not “manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons,” the circuit court did not abuse its discretion in refusing to instruct the jury as to Kuzma’s motive. *Gunning*, 347 Md. at 352 (quoting *In re Don Mc.*, 344 Md. at 201).

As a final point, in maintaining that motive was raised because “he had no *intention* to assault, or *intent* to injure the alleged victim,” Kuzma equates motive to intent. Although motive and proof of intent are separate jury instructions, the intent that Kuzma ascribes to “motive” was fairly covered by the court’s jury instruction on intent.

For the foregoing reasons, we hold that the circuit court did not err in denying Kuzma’s requested jury instructions on self-defense, mistake of fact, and motive, and we therefore affirm the circuit court’s judgment.

**JUDGMENT OF THE CIRCUIT COURT  
FOR WORCESTER COUNTY AFFIRMED;  
COSTS TO BE PAID BY APPELLANT.**