UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0213

September Term, 2016

DONALD LEROY NETZ, JR.

v.

STATE OF MARYLAND

Krauser, C.J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 6, 2017

Following a jury trial, in the Circuit Court for Washington County, Donald Leroy Netz, Jr., appellant, was convicted of second-degree assault. In his appeal, Netz claims that the trial court erred in refusing to give a requested jury instruction on mutual affray. Finding no error, we affirm.

A requested instruction must be given only when the instruction is a correct statement of law; is generated by the evidence; and, is not fairly covered by another instruction. *Coleman-Fuller v. State*, 192 Md. App. 577, 592 (2010). Here, the requested instruction was not a correct statement of law, as it stated that "to convict the Defendant of Second Degree Assault, the State must prove that the contact did not occur during a Mutual Affray." Although the State did need to prove, as part of its burden in proving second-degree assault, that the victim did not consent to the contact, the State did not need to prove the non-existence of all the situations in which the victim may have consented to the contact (including during a mutual affray).

Nevertheless, the requested instruction was fairly covered by other instructions. Netz admits that he asked for the instruction for the sole purpose of establishing that the victim consented to the contact. The record reflects that the court, as part of its instruction on second-degree assault, did instruct the jury that the State needed to prove that the contact was non-consensual.

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