Circuit Court for Prince George's County
Case No. CT190153B

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 490

September Term, 2023

CHRISTOPHER FOXWORTH

v.

STATE OF MARYLAND

Nazarian,
Reed,
Shaw,

JJ.

Opinion by Shaw, J.

Filed: August 30, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This is an appeal from the Circuit Court for Prince George's County. At the conclusion of a jury trial, Appellant, Christopher Foxworth, was convicted of second-degree murder, use of a handgun in the commission of a crime of violence, illegal possession of a regulated firearm, and wear, carry, and transport of a handgun on or about his person. Appellant was sentenced to forty years for second-degree murder; twenty years for unlawful use of a firearm in the commission of a crime of violence, with all but five years suspended; five years all suspended for possession of a regulated firearm; and three years for unlawful use, wear, and carry of a handgun. He was sentenced to five years of supervised probation upon his release for the handgun violations. This appeal timely followed. Appellant presents two questions for our review:

1. Did the circuit court err by refusing to instruct the jury on perfect or imperfect defense of others?

2. Did the circuit court err by failing to merge [Appellant's] conviction for wearing and carrying a handgun into his conviction for use of a handgun in the commission of a crime of violence?

We answer the first question in the affirmative, and we, therefore, decline to address the remaining question. Accordingly, we reverse the judgments of the circuit court for counts one, three and seven and remand the case for a new trial.

BACKGROUND

A four-day jury trial commenced on December 12, 2022, in the Circuit Court for Prince George's County on charges against Appellant related to the January 8, 2019, homicide of Mr. Thomas Jerel Baldwin. The parties stipulated that:

> On January 8th of 2019, at approximately 7:16 a.m., members of the Prince George's County Police Department and the Fire Department responded to [] Lundy Drive in Lanham, Prince George's County, Maryland, where they discovered 29-year-old [] Thomas Jerel Baldwin suffering from a gunshot wound to the head. Thomas Jerel Baldwin was pronounced dead on scene by Officer Santos, Number 3878, at approximately 7:29 a.m. The body of Thomas Jerel Baldwin was then transported to the Office of the Chief Medical Examiner in Baltimore by Decedent Mortuary Removal Service, LLC. The body of Thomas Jerel Baldwin was not altered from the time he was pronounced dead to the postmortem examination. On January 9th of 2019, Dr. Locke, of the Office of the Chief Medical Examiner, performed an autopsy on the body of Thomas Jerel Baldwin. Except for medical intervention, the body of Thomas Jerel Baldwin was in the same or substantially the same condition as it was in when police discovered the body.

During its case-in-chief, the State called Mr. Dorian Ragland as a witness. Mr. Ragland, was also charged with the homicide of Mr. Baldwin. He testified that on January 8, 2019, he was in Fredericksburg, Virginia with Appellant and Mr. Baldwin. They went to Lanham, Maryland to retrieve something that Mr. Ragland buried in the backyard of a home he had lived in. When they were close to their destination, Mr. Ragland got out of the car and walked to where his previous home was located. Mr. Ragland testified that he told Appellant and Mr. Baldwin to wait while he went into the backyard. Once in the backyard, he turned around and saw Mr. Baldwin with a gun pointed at him. Mr. Ragland testified that he pleaded with Mr. Baldwin and then he heard the sound of a gunshot that was fired by Appellant. Mr. Baldwin then fell to the ground.

According to Mr. Ragland, after the shooting, Appellant was frantic, scared and upset about what had taken place. The two left Lanham, went to his brother's house in Southeast Washington, D.C. and Appellant explained what happened leading up to the

shooting. He told Mr. Ragland that Mr. Baldwin was talking to him about shooting Mr. Ragland on their way to Lanham and that he said he did not like him. Mr. Ragland testified that earlier that day, Mr. Baldwin came to his house with two guns, and one was the weapon that he pointed at him in the backyard. Mr. Ragland testified that he heard one gunshot. He further stated that he had been charged with various crimes related to the incident and that he entered into a plea agreement with the State. On cross-examination, Mr. Ragland stated that he did not see Appellant with a gun when they left Virginia. He testified that Appellant saved his life by shooting Mr. Baldwin.

Mr. Christopher Wheeler from the Prince George's County Police Department testified that he made contact with Mr. Ragland in the Bowen Road area in Southeast Washington, D.C., and placed him in custody as a possible suspect on that day. Sergeant Christopher Rothenberger from the Prince George's County Police Department testified that he made contact with Appellant in the Bowen Road area in Southeast Washington, D.C., on that day, and that he was taken into custody as a suspect. Detective Wesley Burns from the Prince George's County Police Department testified that the Chrysler 3000 that Mr. Baldwin had been driving was reported missing. The vehicle was last seen in the 2500 block of West Street, in Southeast, Washington, D.C.

Detective Aven Odhner from the Prince George's County Police Department testified as a cell-phone forensic expert. According to him, the cell phone associated with Mr. Ragland and Mr. Foxworth recorded them traveling from Virginia to Prince George's County on January 7, 2019, and towards Southeast Washington, D.C. and Northern

Virginia in the early morning of January 8, 2019. Dr. James Locke, a former Maryland State Medical Examiner and forensic pathology expert, testified that he performed Mr. Baldwin's autopsy on January 9, 2019. He determined that the cause of death was a gunshot wound to the head, the manner of death was homicide.

The State also called Mr. Anthony Boyd. Mr. Boyd testified that in June 2019, he first encountered Appellant while incarcerated at the Upper Marlboro jail. In October 2019, Mr. Boyd had a long conversation with Appellant: "[Appellant] told me [to] tell [Mr. Ragland] to keep his mouth shut and kick them in the head for us and that dead man can't talk when only three people was there and tell [Mr. Ragland] that can't nobody talk about him because the other guy is dead." Mr. Boyd stated that Appellant didn't provide details about why Mr. Baldwin was killed but stated that he didn't like Mr. Baldwin because of a woman.

On the final day of trial, the court instructed the jury and counsel gave their closing arguments. Appellant was found guilty of second-degree murder, use of a handgun in the commission of a crime of violence, illegal possession of a regulated firearm, and wear, carry, and transport of a handgun on or about his person. He was sentenced to forty years, for second-degree murder; twenty years for unlawful use of a firearm in the commission of a crime of violence, with all but five years suspended; five years all suspended for possession of a regulated firearm; and three years for unlawful use, wear, and carry of a handgun. He was sentenced to five years of supervised probation upon his release for the handgun violations. Appellant timely appealed.

DISCUSSION

I. The court erred by declining to instruct the jury on the "defense of others."

Appellant argues the court erred in rejecting his request for jury instructions on perfect and imperfect "defense of others." He asserts that the instructions were critical to protect his right to present a defense to the murder charge and to have the jury consider the defense's theories and lesser included offenses generated by the evidence. Appellant argues the court ruled first that it would not accept his requested modification of the pattern jury instruction; and then the court rejected the correct pattern instruction, finding that the instruction was not generated by the evidence at trial.

The State first argues that Appellant's argument on appeal differs from his argument at trial, and, thus, it was not properly preserved for appellate review. The State further argues the court properly declined Appellant's request.

"The [trial] 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." Md. Rule 4–325(c). A trial court is required to give a requested instruction under the following circumstances: "(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." *Thompson v. State*, 393 Md. 291, 302 (2006).

We review a trial court's denial of a requested jury instruction under an abuse of discretion standard. *Hall v. State*, 437 Md. 534, 539 (2014) (citation omitted). However, whether "the evidence is sufficient to generate the desired instruction in the first instance is a question of law for the judge." *Roach v. State*, 358 Md. 418, 428 (2000) (citation omitted). Accordingly, our review is limited to determining "whether the criminal defendant produced that minimum threshold of evidence necessary to establish a *prima facie* case that would allow a jury to rationally conclude that the evidence supports the application of the legal theory desired." *Wood v. State*, 209 Md. App. 246, 302 (2013). "In evaluating whether competent evidence exists to generate the requested instruction, we view the evidence in the light most favorable to the accused." *Fleming v. State*, 373 Md. 426, 433 (2003) (citation omitted).

Maryland appellate courts have held that where a requested instruction is technically erroneous, but the subject is one in which the court is required to give an instruction, the trial court has a duty to include a correct instruction. *Noel v. State*, 202 Md. 247, 252 (1953) ("[I]t has been held that where there was a request for instruction that was technically erroneous, the court should have included a correct instruction in his charge."); *Gooch v. State*, 34 Md. App. 331, 337 (1976) ("It is the duty of the trial court to make the initial decision as to the form and content of the advisory instruction and where the request for instruction is technically erroneous, to include a correct instruction in the court's charge."); *Glover v. State,* 88 Md. App. 393, 398 (1991); *Dickey v. State*, 404 Md. 187, 198 (2008) ("We have noted that where a requested instruction is technically erroneous,

but the subject is one in which the court is required to give an instruction, it is the duty of the trial court to include a correct instruction.").

In *Glover v. State*, this Court addressed whether a trial court erred in refusing to correctly instruct the jury after the appellant requested an incorrect, but similar, instruction. 88 Md. App. 393, 398 (1991). There, the appellant's mother approached a Maryland law enforcement officer, challenged him to race and then took off at a high speed. *Id.* at 396. The officer followed her, and she eventually stopped in an open field where her family members had gathered. *Id*. The appellant walked towards the officer and an argument ensued between the two men. *Id.* The appellant punched the officer and was subsequently arrested for battery and hindering a police officer. *Id.* at 397.

At trial, the appellant requested a jury instruction on the law of fresh pursuit in support of his arguments that the officer was out of his jurisdiction, was not in fresh pursuit when he arrived at the field, and illegally accosted his mother, which, according to the appellant, would have permitted him to resist the unlawful stop of his mother and unlawful arrest of himself. *Id.* at 397. The appellant requested the instruction pertaining to *interstate* pursuits which was solely related to the authority of officers of other states to make arrests in Maryland. *Id.* The trial court found that the requested instruction was not relevant because the officer involved was an in-state officer. *Id.* The court denied the instruction and reasoned that it would do nothing more than confuse the jury. *Id.* The appellant objected to the court's failure to read its requested instruction; however, he failed to raise

the companion Maryland statute governing *intrastate* fresh pursuit which pertains to the authority of in-state officers to make arrests in Maryland. *Id.* at 397-98.

On appeal, the appellant conceded that his requested instruction was inappropriate, however, he argued that the flaw in the proposed instruction was not a sufficient reason for the trial court to refuse to give any instruction on the relevant legal issue in the case. *Id.* at 398. The State maintained that the requested instruction was inaccurate and potentially misleading and so the court's refusal to give it was not error. *Id.* This court determined that the request made by the appellant triggered an obligation by the circuit court to give a fresh pursuit instruction assuming such an instruction would have been relevant. *Id.* at 398. We stated:

> Where a requested jury instruction is "potentially misleading" *Hunt v. State*, 321 Md. 387, 405, 583 A.2d 218, 226 (1990), *cert. pet. filed*, No. 90–8164 (May 1, 1991), or "inaccurate" *Collins v. State*, 318 Md. 269, 290, 568 A.2d 1, 11, *cert. denied*, 497 U.S. 1032, 110 S.Ct. 3296, 111 L.Ed.2d 805 (1990), a defendant has no right to it and a trial judge's refusal to grant it is not error. On the other hand, where a request for a jury instruction is "technically erroneous," the trial court should include "a correct instruction in his charge" and failure to do so is error.

Id. at 398.

We ultimately held that the premise of the instruction requested was not relevant and the court's failure to give the instruction was not error. *Id.* at 408. We affirmed the judgments of the court. *Id.*

Turning to the present case, Appellant's counsel initially requested that the court provide the jury with Maryland Pattern Jury Instruction Cr 5:501[1], which states:

> You have heard evidence that the defendant acted in defense of (name of person). Defense of others is a defense, and you are required to find the defendant not guilty if all of the following four factors are present:
>
> (1) the defendant actually believed that the person (pronoun) was defending was in immediate or imminent danger of bodily harm;
>
> (2) the defendant's belief was reasonable;
>
> (3) the defendant used no more force than was reasonably necessary in light of the threatened or actual force; and
>
> (4) the defendant's purpose in using force was to aid the person (pronoun) was defending.
>
> In order to convict the defendant, the State must prove that the defense of others does not apply in this case. This means that you are required to find the defendant not guilty unless the State has persuaded you, beyond a reasonable doubt, that at least one of the four factors of defense of others was absent.

Appellant's counsel then requested that the court modify the pattern instruction and instruct the jury based only on "a reasonable man standard" and to delete the language regarding the defendant's actual belief. The following discussion occurred prior to the court instructing the jury:

> [The court]: Well, can I ask you, Counsel, you said you would like me to use the reasonable man standard. But when I look at the jury instruction you provided to me, 5:01, defense of others, 5:03, duress, it specifically says that the defendant actually believed. So you're saying that you want me to instead

[1] Appellant requested the court to instruct the jury on MPJI-Cr 5:01 and MPJI-Cr 4:17.3. (C). MPJI-Cr 5:01 is included within MPJI-Cr 4:17.3 (C). For purposes of brevity, we state only MPJI-Cr 5:01.

> of saying whether the defendant actually believed, whether a reasonable person would have believed.
>
> [Appellant's counsel]: No, we're asking the Court to say -- yes, basically in that situation, what a reasonable person in that situation would have done.
>
> [The court]: That's not what the jury instruction says. It says what the defendant actually believes.
>
> [Appellant's counsel]: We're asking the Court to –
>
> [The court]: -- change it?
>
> [Appellant's counsel]: Yes.
>
> [The court]: Oh, you want me to change the law. Oh, okay.
>
> [. . . .]
>
> [The court]: Okay. Well, I understand the Defense is requesting the Court to add additional jury instructions. But it's clear that even the Defense concedes that what you're asking is different than what the law says and what you've asked me to do is to change it. You said instead of making it be what the defendant actually believes, which is what the law says, the jury instruction mandates, you want me to now use it as what a reasonable person would believe. And that request is not something the Court can do. I am duty bound and responsible for applying the law as it is. And the Court has to abide by that law and it's very clear, the jury instructions you're requesting have not been generated through the evidence and testimony thus throughout this trial. And your request for those additional jury instructions is denied for that reason.

We agree with the court that the modified "defense of others" instruction requested by Appellant's counsel was an inaccurate statement of law. *See Thompson*, 393 Md. at 302-03. However, we do not agree with the court's decision to omit the correct pattern jury instruction. As we see it, the court had an obligation to instruct on the "defense of

others" even though the language of the instruction offered by the defendant was in some respects, erroneous. *Glover*, 88 Md. App. at 400.

Unlike *Glover*, here, a "defense of others" instruction was relevant. As Appellant's counsel recounted the evidence that had been generated, in requesting the instruction, he stated: "Without the actions of Christopher Foxworth, Mr. Ragland, according to his own testimony, would not be here. I mean, he was staring down the barrel of a gun. There was no time for Mr. Ragland to talk, no time for Mr. Ragland to act. Christopher Foxworth saved Mr. Ragland's life. We believe that that was generated here." We note that Mr. Ragland did, in fact, testify that when he was in the backyard, he turned around, and Mr. Baldwin had a gun drawn at him. Mr. Ragland also testified to pleading with him and that Appellant saved his life by shooting Mr. Baldwin.

As previously stated, whether the evidence is sufficient to generate an instruction is a question of law for the trial judge and our review is limited. We determine whether an appellant produced the "minimum threshold of evidence necessary to establish a *prima facie* case that would allow a jury to rationally conclude that the evidence supports the application of the legal theory desired." *Wood*, 209 Md. App. at 302. Based on the testimony in the case at bar, there was sufficient evidence generated regarding this issue and thus, the instruction was relevant. Ultimately, it was for the jury to determine whether Mr. Ragland's testimony was credible and whether the "defense of others" was a mitigating or complete defense.

We observe that Appellant's counsel did not request that the court give the pattern instruction following the court's determination not to give the modified instruction. However, the question of whether an instruction regarding the "defense of others" was warranted, was raised and presented to the court and thus, the issue was preserved. *See* Md. Rule 8-131(a).

In sum, the court erred in not providing the jury with the correct instruction as it was generated by the evidence. We, therefore, reverse the judgments of the court for counts one, three and seven and remand the case for a new trial.

JUDGMENTS FOR COUNTS ONE, THREE AND SEVEN OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED; CASE REMANDED TO THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY FOR A NEW TRIAL. COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.