Circuit Court for Cecil County
Case No.: C-07-CR-19-000806

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 744

September Term, 2020

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AARON JARVIS

v.

STATE OF MARYLAND

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Wells, C.J.,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Wells, C.J.

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Filed: July 21, 2023

*At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Aaron Jarvis, appellant, was charged with attempted first- and second-degree murder, first- and second-degree assault, and reckless endangerment. At trial, the Circuit Court for Cecil County instructed the jury on perfect, but not imperfect, self-defense. The jury acquitted Jarvis of the attempted-murder charges, but they convicted him of the remaining counts. The court then sentenced Jarvis to 15 years, 5 suspended, for first-degree assault with concurrent 5-year sentences for second-degree assault and reckless endangerment, followed by 5 years of supervised probation. On appeal, Jarvis presents the following questions:

1. Did the trial court err by failing to instruct the jury on imperfect self-defense?

2. Did the trial court err in imposing separate sentences for first-degree assault, second-degree assault, and reckless endangerment?

For the reasons below, we affirm Jarvis's convictions, but we vacate his sentences for second-degree assault and reckless endangerment.

## BACKGROUND

On the evening of May 5, 2019, Jarvis and his brother-in-law, Ethan Durrett, got into a heated text exchange about Jarvis's return of their mother-in-law's car. During this exchange, Durrett assured Jarvis, "We don't need serious issues," but Jarvis responded, "Let's have serious issues, dawg." Shortly after midnight, Durrett texted Jarvis to meet him "in the back of Wawa so [they could] chat." When Durrett later texted that he was on his way, Jarvis told him to come to his apartment instead. Durrett responded that he would

meet Jarvis "in the field away from the apartments," but Jarvis again insisted Durrett come to his apartment. Durrett's wife drove him there.[1]

Jarvis testified that he did not want to fight Durrett. When Jarvis arrived home and got out of his car, he turned and saw Durrett. Jarvis tried to walk around Durrett to get home, but Durrett cut him off. Jarvis testified that he took out a knife because he was afraid of Durrett, who was "quite a bit bigger" than he, and hoped it would deter him. It did not. Durrett swung at Jarvis, but he ducked the punch and tackled Durrett, bringing them both to the ground. Neither of them realized it yet, but when Jarvis wrapped his arms around Durrett to tackle him, he stabbed him in the back.

The scuffle on the ground continued until Durrett knocked the knife out of Jarvis's hands. After this, Durrett punched Jarvis in the face and "something changed;" Jarvis started saying, "I didn't mean to - - you're bleeding, you're bleeding, you're bleeding." Upon getting up, Durrett kicked Jarvis one last time, returned to his wife's car, and was rushed to the emergency room. The entire incident lasted no more than a minute.

Before closing arguments, Jarvis requested the trial court instruct the jury on both perfect and imperfect self-defense. The court found "that the evidence generate[d] a sufficient need to instruct on [perfect] self-defense," but not on imperfect self-defense and instructed the jury accordingly. The jury acquitted Jarvis of the attempted-murder charges but convicted him of first- and second-degree assault and reckless endangerment. The court

[1] Accounts differ on what happened once Durrett arrived at Jarvis's apartment complex. For reasons discussed below, the facts presented here are those in the light most favorable to Jarvis.

sentenced Jarvis to 15 years' incarceration, 5 suspended, for first-degree assault, and 5 years concurrent for both second-degree assault and reckless endangerment. This appeal followed.

## DISCUSSION

### I. The trial court erred by failing to instruct the jury on imperfect self-defense, but the error was harmless.

Jarvis first contends that the trial court erred by refusing to instruct the jury on both tiers of self-defense. Upon request, "a defendant is entitled to have the jury instructed on any theory of defense that is fairly supported by the evidence[.]" *Roach v. State*, 358 Md. 418, 432 (2000) (cleaned up); *see also* Md. Rule 4-325(c). We review a trial court's decision to forgo a requested instruction for an abuse of discretion. *Stabb v. State*, 423 Md. 454, 465 (2011).

In assessing whether the trial court abused its discretion, we consider whether: "(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 instructions actually given." *Carroll v. State*, 428 Md. 679, 689 (2012) (cleaned up). Only the second criterion is disputed here.

For an instruction to apply, the defendant must only produce "some evidence" to raise the issue. *Arthur v. State*, 420 Md. 512, 525 (2011) (cleaned up). This hurdle is low. "If there is *any* evidence relied on by the defendant which, if believed, would support [their] claim, [they have] met [their] burden." *Bazzle v. State*, 426 Md. 541, 551 (2012) (cleaned

up) (emphasis added). In conducting this review, "we view the evidence in the light most favorable to the [defendant]." *General v. State*, 367 Md. 475, 487 (2002) (cleaned up).

The requested instruction here concerned self-defense. Self-defense has two tiers: perfect and imperfect. Perfect self-defense is a complete defense and compels acquittal. *Porter v. State*, 455 Md. 220, 235 (2017) (cleaned up). It has four elements:

> (1) The defendant must have had reasonable grounds to believe they were in imminent or immediate danger of death or serious bodily harm;
>
> (2) They must have in fact believed themselves in this danger;
>
> (3) They must not have been the aggressor; and
>
> (4) They must not have used unreasonable and excessive force.

*Id.* at 234–35 (cleaned up).

Imperfect self-defense, in contrast, does not require that the defendant's belief be reasonable or that they use reasonable force. *Id.* at 235. Rather, they must only show that they actually—if unreasonably—believed that they were in danger and that they actually—if unreasonably—believed that the amount of force used was necessary. *Id.* (cleaned up). As a mitigating, rather than complete, defense, imperfect self-defense's chief characteristic is that it operates to negate malice, a necessary element of murder—or, in this case, attempted murder. *Id.* at 236 (cleaned up). Thus, it does not result in complete exoneration of the defendant, but instead mitigates (attempted) murder to (attempted) voluntary manslaughter. *Id.*

The trial court did not explain why it only issued the perfect self-defense instruction, but "[i]t is hard to imagine a situation where a defendant would be able to produce sufficient

evidence to generate a jury issue as to perfect self[-]defense but not as to imperfect self[-]defense." *State v. Faulkner*, 301 Md. 482, 502 (1984). In perfect self-defense, the reasonableness of the defendant's belief is at issue. *Id.* at 502–03. But, before a jury can find a belief reasonable, they must first find that it exists. *Id.* at 503. It follows, then, that when reasonableness of a belief is at issue, its existence is also at issue. *Id.* Consequently, the jury must reject both the reasonableness of the defendant's belief and its existence to find them guilty of murder. *Id.* And since the existence of a belief is all imperfect self-defense requires, it will almost always be generated whenever perfect self-defense is generated. *See id.*; *see also Cunningham v. State*, 58 Md. App. 249, 254 (1984) ("Imperfect self-defense . . . stands in the shadow of perfect self-defense.").

Here, Jarvis testified that he did not want to fight Durrett. He also testified that Durrett was quite a bit bigger than he, and he only brought out his knife to deter a confrontation. In the light most favorable to Jarvis, Durrett also threw the first punch. By finding that this evidence generated a perfect self-defense instruction, the trial court necessarily found that the reasonableness of Jarvis's belief was at issue. Because the existence of Jarvis's belief was thus also at issue, the trial court abused its discretion by not also giving the imperfect self-defense instruction.

Once an appellant, in a criminal case, establishes error, we conduct a *de novo* review of the record to determine whether the error in any way influenced the verdict. *Nicholson v. State*, 239 Md. App. 228, 244 (2018) (cleaned up). If we cannot find beyond a reasonable doubt that it did not, the error cannot be deemed "harmless," and a reversal is mandated. *Id.* "The purpose of the harmless[-]error rule is to prevent a small error . . . from setting

aside convictions for a defect that would not have changed the result at trial." *Alarcon-Ozoria v. State*, 477 Md. 75, 108 (2021). We will not reverse a conviction where the error "did not influence the verdict to the defendant's detriment." *Id.* (cleaned up).

An error related to charges of which a defendant was acquitted is harmless. *See Nicholson*, 239 Md. App. at 244. In this case, Jarvis was acquitted of attempted first- and second-degree murder. Given that the purpose of the imperfect self-defense instruction would have been to mitigate these charges, the verdict cured the error.

Still, Jarvis argues that he was harmed because, had the jury convicted him of attempted voluntary manslaughter instead, he would have received a shorter sentence. *See* Md. Code. Ann., Crim. Law § 2-207 ("[A] person who commits manslaughter . . . is subject to . . . imprisonment not exceeding 10 years."); Md. Code. Ann., Crim. Law § 1-201 ("The punishment [for] an attempt to commit a crime may not exceed the maximum punishment for the crime attempted."). This argument is unpersuasive. Put simply: an acquittal is a more favorable verdict than a mitigated conviction. To be sure, from a sentencing perspective, a conviction of attempted voluntary manslaughter may sometimes be a better result for a defendant because it has a lower maximum sentence. But first-degree assault is still a "lesser" crime. *See Dixon v. State*, 364 Md. 209, 225 (2001). And "a mere error in instructions as to a greater degree of a crime will be deemed immaterial and non-prejudicial where the verdict is brought in for a lesser degree of the crime." *Evans v. State*, 28 Md. App. 640, 655 (1975), *aff'd*, 278 Md. 197 (1976). So too here. At bottom, Jarvis received more than what an instruction on imperfect-self defense could have given him. His charges for first- and second-degree murder were not just mitigated, he was acquitted of them

entirely. Consequently, we hold that, under these circumstances, the trial court's error was harmless beyond a reasonable doubt.

## II. The trial court erred by imposing separate sentences for first-degree assault, second-degree assault, and reckless endangerment.

Jarvis next contends that his sentences for second-degree assault and reckless endangerment should have merged into his sentence for first-degree assault. The State agrees. And so do we.

The Double Jeopardy Clause of the Fifth Amendment of the United States Constitution, applied to the states through the Fourteenth Amendment, prohibits multiple punishments for the same offense. *Butler v. State*, 255 Md. App. 477, 497–98, *cert. denied*, 382 Md. 264 (2022). The common-law rule of merger derives from that protection. *Id.* at 498 (cleaned up). Offenses merge if they are the same under the required-evidence test and "are based on the same act or acts." *Id.* A departure from this rule imposes an illegal sentence that may be corrected at any time, even if unpreserved. *See Johnson v. State*, 427 Md. 356, 371 (2012). Whether a sentence is illegal is a question of law that we consider *de novo*. *Bonilla v. State*, 443 Md. 1, 6 (2015) (cleaned up).

Under the required-evidence test, "if all of the elements of one offense are included in the other offense, so that only the latter offense contains a distinct element or distinct elements, the former merges into the latter." *Nicolas v. State*, 426 Md. 385, 407 (2012) (cleaned up). Second-degree assault merges into first-degree assault under this test. *See Simms v. State*, 240 Md. App. 606, 628 (2019) (cleaned up). So too does reckless endangerment. *See Marlin v. State*, 192 Md. App. 134, 165 (2010) (cleaned up). And here,

all of Jarvis's convictions were based on a single act: stabbing Durrett. Consequently, his sentences for second-degree assault and reckless endangerment should have merged into his sentence for first-degree assault. [2]

**APPELLANT'S SENTENCE FOR SECOND-DEGREE ASSAULT AND RECKLESS ENDANGERMENT IN COUNTS FOUR AND FIVE VACATED. JUDGMENTS OF THE CIRCUIT COURT FOR CECIL COUNTY OTHERWISE AFFIRMED. REMANDED TO THE CIRCUIT COURT FOR CECIL COUNTY TO REVISE THE COMMITMENT RECORD. COSTS TO BE PAID EQUALLY BY THE PARTIES.**

[2] Because Jarvis's sentences for second-degree assault and reckless endangerment were concurrent with his sentence for first-degree assault, vacating them does not alter the sentencing "package" devised by the circuit court. Remand for resentencing is thus unnecessary. *See Twigg v. State*, 447 Md. 1, 26–28 (2016).