Circuit Court for Baltimore County
Case No.: C-03-CR-20-002996

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1117

September Term, 2024

XAVIER DAMON BYRD

v.

STATE OF MARYLAND

Wells, C.J.,
Arthur,
Woodward, Patrick L.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.
Dissenting Opinion by Woodward, J.

Filed: June 12, 2026

A jury sitting in the Circuit Court for Baltimore County found Appellant Xavier Damon Byrd guilty of voluntary manslaughter and using a firearm in the commission of a violent crime.[1] The court sentenced him to twenty years' imprisonment for the firearm offense plus ten consecutive years' imprisonment for voluntary manslaughter.[2]

Thereafter, Byrd timely appealed to this Court presenting the following questions for our review:

1. Did the trial court err by refusing to instruct jurors on perfect self-defense?

2. Did the trial court err by admitting prior testimony from an unavailable witness who was not subject to cross-examination by a party with a similar motive?

3. Must the trial court correct the commitment record to remove the reference to a sentence of supervised probation, which was not given following Byrd's second trial?

For the reasons set forth below, we hold the trial court erred in refusing to instruct the jury on perfect self-defense. Thus, we reverse Byrd's conviction for voluntary manslaughter and remand the case to the circuit court for a new trial. Consequently,

[1] Although there is more than one legal theory that can be used to support the crime of voluntary manslaughter, the jury in this case was only instructed on the imperfect self-defense theory. The jury acquitted appellant of second-degree murder.

[2] This case arises from the retrial of Byrd following this Court's 2023 reversal of his convictions for second-degree murder and use of a firearm in the commission of a crime of violence. We reversed those convictions because we determined the trial court had erred in failing to instruct the jury on imperfect self-defense. *Byrd v. State*, No. 1787, Sept. Term 2021 (filed unreported January 23, 2023).

Also, in his first trial, Byrd was jointly tried with his co-defendant, Marvin Washington, who was charged with armed robbery. The jury acquitted Washington.

because Byrd's now-reversed voluntary manslaughter conviction served as the predicate offense, we must also reverse his conviction for use of a firearm in the commission of a crime of violence. We need not address his remaining contentions.

FACTUAL AND PROCEDURAL BACKGROUND

Introduction

At trial it was undisputed that in the early morning of August 16, 2020, Byrd fatally shot Gary Melvin at an Exxon gas station in Reisterstown, Maryland following an altercation over a marijuana transaction. The shooting was captured by the gas station's video surveillance system. The only disputed issue at trial—with respect to the shooting—dealt with Byrd's mental state at the time. The jury had to determine whether Byrd maliciously shot and killed the victim and was thus guilty of murder, or whether Byrd acted in partial, or imperfect, self-defense and was =thus guilty of voluntary manslaughter. The jury chose the latter. Under the circumstances, a full acquittal was simply not a realistic option.

Facts[3]

On the night of August 15, 2020, Byrd, Marvin Washington, Jamon Murphy, and Murphy's cousin drove in Murphy's Honda to a party in a hotel room, arriving between

[3] Because of our disposition of this case, the only facts of relevance to our analysis are those related to Byrd's mental state in juxtaposition to the elements of perfect and imperfect self-defense. As a result, we shall largely confine our recitation of the facts accordingly.

12:00 and 1:00 a.m. on August 16, 2020.[4] Murphy and Washington played football together in high school and remained friendly. Murphy had not met Byrd, who was Washington's friend, prior to this evening.

The group stayed at the party for "roughly two to three hours" and then departed in Murphy's car—without Murphy's cousin—to drive around and listen to music. They made a couple of stops at gas stations along the way "just to kill time." Eventually, they made their way to an Exxon gas station on Reisterstown Road, arriving around 5:00 a.m. Murphy entered the gas station's convenience store to buy a snack, after which the group was to return to Murphy's house where Byrd and Washington would take a rideshare home. Murphy noticed there were two men outside the gas station, one wearing a jersey and the other wearing an orange shirt. After purchasing his snack, Murphy sat in his car while Byrd spoke with the two men.

After three to five minutes, Murphy beeped his car's horn to signal to Byrd and Washington he was ready to leave. Washington and Byrd, however, did not get back in the car. About five minutes later, a white vehicle pulled behind Murphy's Honda.

Murphy heard a commotion and words going back and forth in a loud tone behind him, but he could not see what was going on or understand what was being said. Murphy saw Washington standing next to the passenger side of his car and that Byrd was three feet behind the car on the passenger side. Murphy heard a gunshot, but he did not see a gun or

[4] Jamon Murphy did not testify live during Byrd's re-trial. Instead, a portion of his testimony from Byrd's first trial was read into the record during the re-trial.

know who had shot. Washington and Byrd then got into Murphy's Honda, and Murphy drove off.

Murphy drove to his apartment, and Washington and Byrd went to another apartment nearby. All three then took an Uber back to Baltimore. Murphy said everyone was shaken up, and they did not speak about the incident, except that while Murphy did not recall the exact words, at some point, Byrd said something to the effect of "if [I] knew you all was going to pout like this, I would have shot him in his head."

Murphy went to his father's house that morning, told him everything that happened, and they contacted the police. Murphy, along with his father and an attorney later met with a homicide detective. Before the police interviewed him, Murphy entered an agreement whereby anything he told the police would not be used against him.

The Video

Surveillance video from the Exxon station was played for the jury and admitted into evidence at trial; it is now part of the record on appeal. The video shows Murphy's black Honda parked in front of a gas pump at the well-lit Exxon station. Shortly thereafter, the victim's white car pulls up to the gas pump behind Murphy's car. Then, Washington walks over to the victim's car, opens the door, gets into the passenger seat, and closes the door. He stays in the car for less than a minute. Thereafter, Byrd gets in the passenger side of the victim's car and leaves the car door open while inside. It is impossible to see what is happening inside the white car at any time.

While Byrd is in the victim's car, Washington walks over to Murphy's Honda and then walks to the driver's side of the victim's white car. Although the angle of the video does not show the driver's window directly, it is clear Washington is interacting with the victim through the open window. Then, Washington reaches inside the victim's car through the front driver's side window and grabs an item with a black strap before walking toward Murphy's Honda while holding it in his hand.

The victim then immediately gets out of the driver side of his white car and seems to say something to Byrd who is still seated on the passenger side. Byrd then gets out of the victim's car and both of them walk toward the front of the victim's car. Byrd appears to have his hand on his gun as he walks away from the victim's car and toward Murphy's Honda.

The victim quickly comes around the front of his car toward Byrd, meeting him at the front passenger side of the vehicle. As Byrd turned to face him, the victim lunged toward Byrd with his arm cocked back as if winding up to punch Byrd. As Byrd quickly steps backwards, he appears to trip and fall. While falling backward, Byrd shoots the victim and both of them fall to the ground.

Both men then got up, Byrd climbs into Murphy's Honda as it is pulling away, and the victim falls back to the ground where he ultimately lies motionless. Seven seconds elapsed from the time when Byrd exited the victim's car to when he fired his pistol.

Byrd's Testimony

Byrd testified in his own defense. At the time of the shooting, Byrd was sixteen years old and a junior in high school. Consistent with Murphy's testimony, Byrd said he met with Murphy and Washington on the night before the shooting and went to a party at a hotel. He acknowledged carrying a gun with him. He said he carried the gun because he knew several young people who died violently, had seen two of his friends get shot, and watched one of them die. He recalled the first time he had witnessed violence was in elementary school when he saw a stabbing outside of a store near his home.

Byrd said after they left the party, the three drove around for a while and ended up at the Exxon station. He said he saw two men standing outside, and he asked one of them about obtaining some marijuana. In response, one of those two men called someone. Shortly thereafter, the victim arrived in his white car and parked behind Murphy's Honda.

After Washington went to the victim's car and returned, Byrd then went to the victim's car, which had the passenger door open, and sat in the passenger seat at the invitation of the victim. Byrd believed the victim was high because he was slurring his words and "he was kind of like, like nodding, kind of like in and out a little bit."[5] Byrd said he asked for $40 worth of marijuana, that the victim offered him $20 worth and that they negotiated. Eventually, Byrd got the $40 worth of marijuana, but he testified the victim became silent and "mad or like agitated."

[5] A post-mortem toxicology screen of the victim "was positive for oxycodone, fentanyl, and methamphetamine in the blood and for amphetamine (a metabolite of methamphetamine) in the urine." It was negative for alcohol.

Byrd said the victim got out of his car aggressively "yelling and screaming" and, as a result, Byrd got out and went towards Murphy's Honda to get away from him. Byrd said that, as he started walking towards Murphy's Honda, the victim "rushed around the hood and came towards me to strike me." When asked what was going through his mind when the victim rushed at him, Byrd said he was afraid the victim might knock him out and take his gun and shoot him. Specifically, Byrd stated:

> Well, for one, I was trying to get away from [the victim]. But I, at that point, I had got scared because [the victim] still was yelling and screaming, his tone still was aggressive. So, I ain't know what he was trying to do. And then he ended up swinging, he ended up swinging on me. So, I had got scared that maybe he can, he was going to knock me out and take the gun and shoot me. So, I ended up shooting [the victim] in his leg.

When asked whether he was afraid of the victim, Byrd responded "Yes, he was, he was big. I was skinny. I was like, I was sixteen, a hundred pound, a hundred twenty pounds. He was, in my eyes, he was, he was a little stocky." Byrd said he believed the victim could have had a gun, even though he never saw one, "[b]ecause it was 5:00 in the morning and he came to sell weed to somebody he don't know and I'm from Baltimore City, so anybody that I know of that sell weed going to, that's a drug dealer, going to have a gun at 5:00 in the morning, somebody you don't know."

Byrd said he believed he had shot the victim in the leg because that was where his gun was pointed when he fired it. He said after he got up, he saw the victim get up, and then he jumped inside Murphy's Honda. When asked why he did not just run away from the victim, Byrd said "if I would have ran away instead of retreating to the car, he would have most likely ended up hitting me, that's why."

Washington and Murphy asked him what happened, and Byrd testified he told them "when [Washington] had got into [Murphy's Honda] and I was coming, walking to [Murphy's Honda], that the man ended up coming at me and trying to swing on me and I didn't know if he was going to take the gun so I ended up shooting him … in his leg." He denied saying he should have "shot him in the head" and said he did not realize the victim had died. When asked why he did not call the police, he said he was scared. When asked why he was scared, he said "[b]ecause I just shot a man."

Byrd testified that, after leaving the Exxon station, the three went back to Murphy's mother's house and then took an Uber to Byrd's house. Byrd said he later found out he shot the victim in the torso, not the leg, and that the victim had died as a result.

The police investigation of the shooting involved collecting the security camera footage, witness interviews, a search of the area for weapons, crime scene technicians photographing the scene, searching and fingerprinting the victim's white car, and the autopsy of the victim. One 9-mm shell casing was recovered, and no firearm was ever found.

DISCUSSION

Self-Defense

"'Maryland recognizes two varieties of self-defense – the traditional one that we now call perfect or complete self-defense and a lesser form sometimes referred to as imperfect or partial self-defense.'" *Jarvis v. State*, 487 Md. 548, 555 (2024) (quoting *State v. Smullen*, 380 Md. 233, 251 (2004)).

Perfect self-defense, which, if successful, is a complete defense to homicidal criminality, requires the following:

> (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) (cleaned up). "In addition, in the case of deadly force outside of one's home, an individual must make a reasonable effort to retreat before using such force." *Jarvis*, 487 Md. at 555 (citing *Porter*, 455 Md. at 235).

Imperfect self-defense "is not a complete defense" to criminal homicide but rather "operates to negate malice, an element the State must prove to establish murder." *State v. Faulkner*, 301 Md. 482, 486 (1984). As a result, "the successful invocation of the defense does not result in complete exoneration of the defendant but mitigates murder to voluntary manslaughter." *Roach v. State*, 358 Md. 418, 430-31 (2000).

Imperfect self-defense requires the defendant "must only show that he **actually believed** that he was in danger, even if that belief was unreasonable." *Porter*, 455 Md. at 235 (emphasis in original). That subjective analysis applies to each of the basic elements and thus "to assert imperfect self-defense, the defendant is not required to show that he used a reasonable amount of force against his attacker – only that he **actually believed** the amount of force used was necessary." *Id*. (emphasis in original). Correspondingly, "a

defendant must have only 'subjectively believe[d] that retreat was not safe' – that belief need not be reasonable." *Id*. (quoting *Burch v. State*, 346 Md. 253, 284 (1997)).

As can be seen from the foregoing, perfect self-defense contains all the elements of imperfect self-defense and adds the additional element: that each of the relevant subjective beliefs be objectively reasonable.

Standard of Review

Maryland Rule 4-325(c) provides, in pertinent part, that, at the request of either party, the trial court shall "instruct the jury as to the applicable law and the extent to which the instructions are binding[,]" but the trial court need not "grant a requested instruction if the matter is fairly covered by [other] instructions actually given." "In other words, a requested jury instruction is required when (1) it is a correct statement of the law; (2) it is applicable under the facts of the case; and (3) its contents were not fairly covered elsewhere in the jury instruction[s] actually given." *Jarvis*, 487 Md. at 564 (cleaned up).

In *Jarvis*, we summarized the standard of review for a trial court's refusal to give a particular jury instruction as follows: "On appeal, we review the overall decision of the trial court for an abuse of discretion, but the second requirement (whether the instruction is applicable in that case) is akin to assessing the sufficiency of the evidence, which requires a *de novo* review." *Id*. (citation omitted).

In assessing whether a particular jury instruction is applicable under the facts of a given case, a defendant must, as an initial matter, "produce 'some evidence' sufficient to raise the jury issue." *Arthur v. State*, 420 Md. 512, 525 (2011).

In the context of a claim of self-defense "the defendant, thus, bears the initial burden of producing some evidence on the issue of mitigation or self-defense to entitle him or her to a jury instruction." *Jarvis*, 487 Md. at 564 (cleaned up). "The 'some evidence' standard is a 'fairly low hurdle for a defendant.'" *Hollins v. State*, 489 Md. 296, 311 (2024) (quoting *Arthur*, 420 Md. at 526).

> *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 has 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.

Dykes v. State, 319 Md. 206, 216-17 (1990).

"[B]ecause whether 'some evidence' exists is viewed in the light most favorable to the requesting party, both the source of that evidence and its weight compared to the other evidence presented at trial are immaterial[.]" *Jarvis*, 487 Md. at 564 (citations omitted).

Trial

At the conclusion of the presentation of evidence phase of Byrd's trial, the court and parties discussed jury instructions. Byrd requested the court instruct jurors on both imperfect and perfect self-defense using pattern jury instruction MPJI-Cr. 4:17.2(C.1). Byrd pointed out, unlike the first trial, he had testified at this trial adding an "additional layer" of evidence. Byrd's counsel then argued for the court to give both the perfect and

imperfect self-defense instructions:

> And I think the way that these individuals were positioned, based on the information that has come out, and I say position meaning in age and location and, and how they approached one another, I think that the jury can consider whether or not they thought that what [Byrd]'s actions were, were reasonable.
>
> So, I'm asking that this [c]ourt include [the pattern instruction on both perfect and imperfect self-defense] so it's not to take away from the ability from this jury to make that decision if, in fact, they think it's appropriate in light of the evidence. If the jury doesn't agree with what the Defense argument would be, then they certainly have the freedom on the sheet to find that it was not a perfect self-defense and then they can consider whether it was second degree or imperfect.
>
> But I do think they should have the opportunity, at least based on what we've generated throughout the, and, and really throughout the body of this trial, to even consider it amongst themselves.

The State responded that perfect self-defense was not generated because there was no evidence Byrd acted reasonably—specifically, because Byrd elevated the encounter to deadly force and because the victim was not armed.

The court then asked Byrd's counsel whether any evidence had been generated that Byrd had an actual fear of imminent death or serious bodily harm. The defense pointed out that Byrd testified he was afraid he would be struck and knocked to the ground and that the victim could take his gun. Returning to the reasonableness standard, Byrd's counsel argued reasonableness can still depend on a variety of factors, such as the setting, the relative ages of the combatants, and the duration of the encounter, and is not simply a question of whether one combatant was armed more heavily than another. Byrd's counsel again argued the issue should be given to the jury:

> But really the heart of the question is, can a jury at least consider it? And I think that, frankly, (inaudible) [Byrd] and based on what he's testified to, [the jury] should at least be able to consider it.
>
> They don't have to agree. But we have, we don't have to have the full and clean, complete argument here. Just have [to] generate just a little bit of enough so that [the jury] can think about it. And (inaudible) very fair for the jury to be able to consider.

The State concluded by again arguing the objective standard had not been met because there was no evidence of a threat to Byrd's life and a punch does not rise to the level of a threat of serious bodily injury. Among other things, the State said:

> You just can't shoot an unarmed person without any communicated threat and imminent bodily injury. And a punch does not rise to that level of a possible punch. And it's clear in the video that there's nothing in the hands of the victim.
>
> And it was clear from the testimony of [Byrd] that there was nothing in the hands. So, we're simply talking about a physical punch being met by someone who is able to fire a gunshot and that would be insufficient from the objective standard for the perfect self-defense in this case.

Following arguments, the court declined to instruct the jury on perfect self-defense, stating as follows:

> THE COURT: There's no question that the imperfect self-defense has been generated. But I'm not in agreement with the Defense on a complete self-defense. I don't think that's been generated. I don't think there was testimony from [Byrd] and there was no other evidence that came in the case which indicated that the [Byrd] actually believed in immediate, he was in immediate or imminent danger of death or serious bodily harm.[6]
>
> The other thing, when I read this instruction, although it talks about the State's burden with respect to these factors, factor four, [Byrd] used no more force than was reasonably necessary to defend himself in light of the threatened or actual force. And then in parenthesis the instructions said, this

[6] If this statement were true, then imperfect self-defense would not have been generated.

> limit on the [Byrd's] use of deadly force requires a [Byrd] to make a reasonable effort to retreat.
>
> [Byrd] does not have to retreat if [he] was at his or her home, retreat was unsafe, the avenue of retreat was unknown to the [him], [he] was being robbed, [he] was lawfully arresting the victim. I, I just don't see that that's been generated.
>
> I agree [sic] the imperfect self-defense, I don't think there's any dispute about that, that's been generated from the evidence. But not the complete self-defense.

After taking a recess, the court reiterated its prior ruling, noting the differences between imperfect and perfect self-defense, and highlighting that, for perfect self-defense, a defendant must have reasonably believed he was in immediate danger and must have used a reasonable amount of force. The court also noted a defendant's duty to retreat. The court said it understood Byrd's counsel's perspective was that this was an issue the jury should be able to consider, but the court believed the instruction had not been generated.

Later the court instructed the jury on second-degree murder and voluntary manslaughter based on imperfect self-defense. The court did not instruct the jury on perfect self-defense.

> [Byrd] is charged with the crime of murder. This charge includes second degree murder and voluntary manslaughter. Second degree murder is the killing of another person with either the intent to kill or the intent to inflict such serious bodily harm that death would be the likely result. Second degree murder does not require premeditation or deliberation.
>
> In order to convict [Byrd] of second-degree murder, the State must prove one, that [Byrd] caused the death of Gary Melvin. Two, that [Byrd] engaged in the deadly conduct either with the intent to kill or with the intent to inflict such serious bodily harm that death would be the likely result. Three, that the killing was not justified and four, that there were no mitigating circumstances.

> Voluntary manslaughter is an intentional killing, which is not murder, because the Defendant acted in partial self-defense. Partial self-defense, sometimes called imperfect self-defense, does not result in a verdict of not guilty, but rather reduces the level of guilt from murder to manslaughter. You should only consider voluntary manslaughter if you find that [Byrd] had the intent to kill.
>
> You have heard evidence that [Byrd] killed Gary Melvin in self-defense. You must decide whether based on this evidence [Byrd] acted in partial self-defense. For partial self-defense to apply, you must find that [Byrd] was not the initial aggressor, or [Byrd] was the initial aggressor but did not raise the degree of force used in the fight to the deadly level.
>
> You also must find that [Byrd] actually believed he was in immediate or imminent danger of death or serious bodily harm. If the [Byrd] actually believed he was in immediate or imminent danger of death or serious bodily harm, even though a reasonable person would not have so believed, that is partial self-defense, and the verdict should be guilty of voluntary manslaughter instead of murder.
>
> If [Byrd] used greater force to defend himself in light of the threatened or actual force than a reasonable person would have used, but [Byrd] actually believed that the force used was necessary and [Byrd] made a reasonable effort to retreat, that is partial self-defense and your verdict should be guilty of manslaughter and not guilty of murder.
>
> [Byrd] does not have to retreat if retreat was unsafe, the avenue of retreat was unknown to [him], [he] actually believed he could not safely retreat even though a reasonable person would not have so believed.
>
> In order to convict [Byrd] of murder, the State must prove that [he] did not act in partial self-defense. If [he] acted in partial self-defense and had the intent to kill, your verdict should be guilty of manslaughter and not guilty of murder.

Following the jury instructions, Byrd's counsel renewed their objection to the instructions. As noted earlier, the jury acquitted Byrd of second-degree murder and found him guilty of voluntary manslaughter.

Parties' Contentions

Much as he did at trial, Byrd claims when viewing the evidence in the light most favorable to him, there was 'some evidence' he acted in perfect self-defense, "even if it was not the only or even most plausible theory of what happened." He directs us to the following facts is support of that theory. *First*, he was only sixteen years old and engaged in an early morning drug transaction at the time of the offense. To Byrd, the victim appeared high on drugs and became loud, aggressive, and physical. In a matter of seconds, the victim lunged at him while winding up to strike him. He points to his trial testimony where he said he was afraid the victim might strike him, take his gun, and shoot him, and as a result, Byrd shot the victim and believed that he shot him in the leg. He testified he was walking away from the victim in the seconds before the shooting, which is confirmed by the video. He claims for him to attempt to retreat further, he would have had to turn his back on his attacker as he was lunging to strike him.

The State responds that the trial court had the discretion to refuse to give the perfect self-defense instruction, and the court did not abuse that discretion in declining to instruct the jury on that theory. The State acknowledges the "some evidence" standard for generating a self-defense instruction is a low bar, but maintains even under that low standard, the trial court was not required to instruct the jury on perfect self-defense. In a nutshell, the State's argument is Byrd's shooting of an unarmed man, without first retreating, was so patently unreasonable no rational juror could have found them to be reasonable, and therefore perfect self-defense was not generated.

Analysis

During Byrd's first trial, Byrd asked the trial court to instruct the jury on imperfect self-defense, and the court declined. In the first trial, unlike the second, Byrd did not testify, and he did not request a perfect self-defense instruction. At the conclusion of the first trial, the jury found Byrd guilty of second-degree murder. On appeal, Byrd contended he had adduced "some evidence" of imperfect self-defense, and therefore, the trial court erred by not instructing the jury on imperfect self-defense. We agreed and reversed Byrd's convictions, prompting a retrial. *See Byrd v. State*, No. 1787, Sept. Term 2021 (filed unreported January 23, 2023). We concluded some evidence of imperfect self-defense had been adduced through the surveillance video of the incident, Murphy's account of what occurred, Byrd's age, and the victim's intoxicated state. *Byrd v. State*, Slip op. at 10-11. All that evidence comprised a subset of the evidence adduced at Byrd's re-trial where, notably, Byrd testified in his own defense.

Given we already determined imperfect self-defense was generated on a subset of the evidence adduced during Byrd's re-trial, *Byrd v. State*, Slip op. at 23, we find no difficulty in determining imperfect self-defense was also generated during the re-trial. But even so, Byrd's testimony on re-trial alone provided "some evidence" of imperfect self-defense— meaning Byrd adduced some evidence: (1) he in fact believed he was in imminent or immediate danger of death or serious bodily harm from his assailant or potential assailant; (2) he was not the aggressor and did not provoke the conflict; (3) he honestly believed the amount of force he used was not excessive; and (4) he had no duty

to retreat once the victim attacked him.[7]

Thus, the only remaining questions are whether some evidence was adduced at trial upon which a rational juror could conclude Byrd's beliefs were objectively reasonable and conclude the level of force he used was objectively reasonable.[8]

"The objective standard does not require the jury to ignore the defendant's perceptions in determining the reasonableness of his or her conduct." *State v. Marr*, 362 Md. 467, 480 (2001). "In making that determination, the facts or circumstances *must* be taken as perceived by the defendant, even if they were not the true facts or circumstances, *so long as a reasonable person in the defendant's position could also reasonably perceive the facts or circumstances in that way*." *Id*. (citations omitted). In *Marr*, Maryland's Supreme Court elaborated on this point, as follows:

> A belief, as to either imminent danger or the amount of force necessary to meet that danger, is necessarily founded upon the defendant's

[7] That there may have been conflicting evidence as to any of those four elements is of no moment to our analysis. "Indeed, the trial judge is explicitly required not to weigh the evidence." *Jarvis*, 487 Md. at 568, fn. 13. See *Dykes*, 319 Md. at 217 ("It is of no matter that the self-defense claim is overwhelmed by evidence to the contrary.").

[8] In *State v. Smullen*, 380 Md. 233, 269 (2004) Maryland's Supreme Court illustrated this point:

> As we have indicated, the two elements common to both perfect and imperfect self-defense in Maryland are that the defendant must have, in fact, believed himself in apparent imminent and immediate danger of death or serious bodily harm from his assailant and that the accused must not have been the aggressor or provoked the conflict. Perfect self-defense requires, in addition, that the accused have had reasonable grounds for perceiving the apparent imminent or immediate danger and that the force used must not have been unreasonable, *i.e.*, more than the exigency demanded.

> sensory and ideational perception of the situation that he or she confronts, often shaded by knowledge or perceptions of ancillary or antecedent events.
>
> The perception that serves as the impetus for responsive action may be incorrect for a variety of reasons, ranging from ignorance of relevant facts that, if known, would put the situation in a different light, to distortions in sensory perceptions, to judgmental errors in the instantaneous assimilation and appreciation of the apparent situation.
>
> The fact that the defendant's perception is incorrect does not necessarily make it unreasonable; human beings often misunderstand their surroundings and the intentions of other people. A defendant who is suddenly grabbed by another person at gunpoint may reasonably believe that the person is an assailant intending to do him immediate and grievous bodily harm, even though, in fact, the person is a plain clothes police officer possessing a valid warrant and properly, though forcibly, attempting to arrest him.
>
> Similarly, the defendant, confronted by a person with a gun, may reasonably, though incorrectly, believe that the gun is real or is loaded, when, in fact, it is not.
>
> In those kinds of circumstances, the jury would have to determine the reasonableness of the defendant's conduct in light of his reasonable, though erroneous, perception.
>
> If, however, on Halloween, the defendant confronts a costumed stranger on the street and shoots him in the honestly held belief that the stranger is a menacing alien from Mars intent upon his immediate destruction, the jury is not entitled to judge the reasonableness of the defendant's conduct on the assumption that the victim was, in fact, an alien from Mars intent on harming the defendant.

Marr, 362 Md. at 481–82 (internal citation omitted) (paragraph breaks added). The key takeaway from the foregoing passage is: **it is only when the accused's assertion of honest beliefs with respect to self-defense are so patently unreasonable, that the trial court is permitted to refuse to allow a jury to make a reasonableness determination.** In other words, reasonableness is typically a jury question, but the court may decide it as a matter of law only when the evidence allows no other reasonable conclusion. *See Lambert*

v. State, 70 Md. App. 83, 95-96 (1987) ("The level of force employed by appellant [(stabbing the unarmed victim 26 times)] was so grossly excessive that the [trial] court properly determined as a matter of law, that he was not entitled to a [perfect] self-defense instruction.")[9]

We have reviewed the video recording of the shooting. It is entirely unclear from the video what precipitated the victim's aggressive behavior and attack on Byrd. We know, however, Byrd and the victim haggled over the marijuana transaction, and we can see Washington reach into the victim's car and take an object with a dark strap. Nonetheless, the video clearly shows Byrd got out of the victim's car and began walking away from the victim and the victim's car and toward Murphy's Honda when suddenly, the victim lunged at Byrd with his fist cocked and Byrd shot him while falling backward. The entire episode lasted mere seconds.

Byrd, who was sixteen years old, testified he believed the victim was high, which toxicology screen from the victim's autopsy corroborated. Byrd said when the victim got out of his car yelling aggressively, Byrd tried to get away from him by going to Murphy's Honda. He testified he was afraid the victim—who was older and stockier than him—might knock him out, take his gun, and shoot him.

Byrd said he believed the victim could have had a gun, even though he never saw

[9] We also concluded no evidence had been adduced during Lambert's trial of his honest subjective belief of the need to resort to deadly force to defend himself, and therefore Lambert was also not entitled to a jury instruction on imperfect self-defense. *Lambert*, 70 Md. App. at 99.

one, "[b]ecause it was 5:00 in the morning and he came to sell weed to somebody he don't know and I'm from Baltimore City, so anybody that I know of that sell weed going to, that's a drug dealer, going to have a gun at 5:00 in the morning, somebody you don't know."

Under the circumstances—involving an encounter with an older, aggressive, and intoxicated drug dealer, evolving in mere seconds into a rapid physical confrontation—we conclude when viewing the evidence in the light most favorable to Byrd, there was "some evidence" Byrd reasonably believed himself to be in immediate danger of death or serious bodily injury and that he used no more force than reasonably necessary to defend himself. In other words, we determine Byrd's actions were not so patently unreasonable that he was, as a matter of law, not entitled to a jury instruction on perfect self-defense to allow the jury to judge the objective reasonableness of his beliefs.

What evidence to believe, what weight to be given it, and what facts flow from that evidence are for the jury, not the judge, to determine. *Gore v. State*, 309 Md. 203, 210, 214 (1987). "When the trial judge resolves conflicts in the evidence, in the face of the 'some' evidence requirement, and refuses to instruct because he believes that the evidence supporting the request is incredible or too weak or overwhelmed by other evidence, he improperly assumes the jury's role as fact-finder." *Dykes*, 319 Md. at 224.

CONCLUSION

The trial court erred in refusing to instruct the jury on perfect self-defense and, consequently, we reverse Byrd's conviction for voluntary manslaughter. We must also

reverse Byrd's conviction for use of a firearm in the commission of a crime of violence because Byrd's now-reversed voluntary manslaughter conviction served as the predicate offense for that charge.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY REVERSED. CASE REMANDED FOR FURTHER PROCEEDINGS. COSTS TO BE PAID BY BALTIMORE COUNTY.

Circuit Court for Baltimore County
Case No.: C-03-CR-20-002996

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1117

September Term, 2024

XAVIER DAMON BYRD

v.

STATE OF MARYLAND

Wells, C.J.,
Arthur,
Woodward, Patrick L.,
(Senior Judge, Specially Assigned),

JJ.

Dissenting Opinion by Woodward, J.

Filed: June 12, 2026

I respectfully dissent. After accurately setting forth the law regarding perfect and imperfect self-defense and the circumstances under which instructions on those defenses should be given to a jury, the Majority properly states that "the only remaining questions are whether some evidence was adduced at trial upon which a rational juror could conclude Byrd's beliefs were objectively reasonable and conclude the level of force he used was objectively reasonable." *Byrd v. State*, No. 1117, slip op. at 19 (Md. App. June 12, 2026). However, I part ways with the Majority when it concludes that "when viewing the evidence in the light most favorable to Byrd, there was 'some evidence' Byrd reasonably believed himself to be in immediate danger of death or serious bodily injury[.]" *Id*. at 22. My review of the record indicates that there was no evidence, much less "some evidence" that Byrd's belief about the immediate danger to him of death or serious bodily injury was "objectively reasonable." I will explain.

The analysis of objective reasonableness must start with, and remain focused on, Byrd's own statement of why he believed that he was in immediate danger of death or serious bodily injury from the actions of the victim. As articulated by the Majority, Byrd testified that the victim, whom Byrd acknowledged was unarmed, "ended up swinging, he ended up swinging on me. So, I had got scared that maybe he can, *he was going to knock me out and take the gun and shoot me*. So, I ended up shooting [the victim] in his leg." *Id.* at 7 (emphasis added). Shortly thereafter, Byrd testified that the victim "ended up coming at me and trying to swing on me and I didn't know if he was going to take the gun so I ended up shooting him[.]" *Id.* at 8. To me, the key part of Byrd's statement is that Byrd

believed that the victim would take Byrd's gun and shoot him. For that belief to be objectively reasonable, there must be some evidence that the victim knew that Byrd had a gun before attempting to hit him. There is no such evidence.[1]

In his testimony on cross-examination, Byrd testified to his extensive efforts to conceal the handgun that he was carrying on the night of the shooting. When he got into Murphy's car, Byrd had the gun hidden in his front pants with only the top of the gun sticking out, but the top was covered by his "white t and a bomber jacket." Byrd admitted that he was "careful all night not to have that handgun sticking out or exposed to anybody." He even testified that "[n]obody knew that I had a gun[.]" Byrd also said that he did not tell Murphy or Washington that he had a gun when he got into Murphy's car.

When Byrd arrived at the hotel party, he went into the party with the gun. Byrd agreed with the prosecutor that (1) he kept "the gun covered up and concealed so people wouldn't know [he] had a gun at this party;" (2) he never told anyone at the party that he had a gun; and (3) he never showed the gun to anybody. After leaving the hotel party, Byrd kept the gun on him while riding around in Murphy's car. He admitted that he kept the gun on him all night.

Byrd further acknowledged that when he got into the victim's car at the Exxon station, he had the gun on him, did the "whole transaction with a gun still on," and had the gun accessible and ready to grab. There was, however, no testimony adduced at the trial

[1] Even if there was evidence of the victim's knowledge of the gun, there would also have to be evidence that Byrd knew that the victim had such knowledge.

that while he was sitting in the car with the victim, Byrd ever told the victim that he had a gun, showed him the gun, or in any other way indicated to the victim that he had a gun.

Finally, the prosecutor showed Byrd the surveillance video of the shooting and asked him questions about what appeared in the video. At two minutes, nine seconds, Byrd admitted that he was out of the car, but denied that the gun was out of his pants. At two minutes, eleven seconds, Byrd agreed that he was beginning to walk back to Murphy's car and that the victim was coming around the front of his car. Again, Byrd denied that the gun was out, saying, "[y]ou see it, but it's not out, it's still in my pants." At two minutes, thirteen seconds, Byrd acknowledged that the victim was coming toward him, that he was facing the victim, and that he "started to raise the handgun towards [the victim]." Byrd then admits that the victim started to come at him, "took a swing," and "at this point you have the gun up and you shoot him." In sum, it is clear from the video and Byrd's testimony that Byrd did not remove the handgun from its concealed location in his pants until a second or two before he shot the victim and at the same time as the victim was swinging his arm to hit Byrd.

Therefore, I conclude that there is no evidence from which a rational juror could conclude that the victim knew that Byrd had a gun prior to attempting to hit him. Consequently, Byrd's belief that the victim was going to knock him out, take his gun, and shoot him was not "objectively reasonable." Accordingly, Byrd was not entitled to a perfect self-defense instruction. I would affirm.