Circuit Court for Prince George's County
Case No.: CT190937X

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1218

September Term, 2022

DAQUAN ODEMNS

v.

STATE OF MARYLAND

Leahy,
Beachley,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wilner, J.

Filed: January 24, 2024

A jury in the Circuit Court for Prince George's County found appellant Daquan Odemns guilty of (1) use of a firearm in the commission of a crime of violence, for which he was sentenced to 20 years in prison with all but five years suspended, (2) *voluntary* manslaughter, for which he was sentenced to a consecutive term of five years to be followed by five years of probation, and (3) wearing or carrying a handgun, which the court merged into the conviction for use of a firearm.

In this appeal, appellant's sole complaint is that the court committed reversible error "by refusing [his] request to instruct the jury on *involuntary* manslaughter" (emphasis added).

Relevant Facts Leading Up to the Shooting

This case arose from a confrontation between appellant and the estranged husband of appellant's girlfriend that occurred on August 13, 2019 and resulted in the shooting death of the husband. This was the last in a series of confrontations between the two men. We shall refer to the husband as Donte and the girlfriend as Tiffany. Donte and Tiffany had one child together, whom we shall refer to as K. After two years of marriage, they stopped living together in March of 2019. K. was two years old at the time. Tiffany

had filed for a divorce, but no hearing had yet been set. She and Donte initially shared custody of the child, but Tiffany limited his access to the child in March of 2019, which effectively ended that access. She testified that she stopped access because Donte "was stalking and he was suicidal."

Appellant and Tiffany both worked the overnight shift (10:30 p.m. to 7:00 a.m.) for the Architect of the Capitol cleaning the offices of members of Congress, and, also in March, they met in that context. They began dating and eventually began living together at Tiffany's mother's home.

About a month later, the first contact between appellant and Donte occurred. As Tiffany and appellant, while on their way to work, were stopped for a red light on Pennsylvania Avenue, Donte, in a car next to theirs, threw a lit cigar through the passenger window of their car, which is where Tiffany was seated, got out of his car, walked around to appellant's side, began "yelling and cursing," and demanded that appellant get out of the car. At that point, the light turned green, and appellant drove off. That incident apparently occurred on March 28, 2019.

A second incident occurred the next morning after appellant had returned home from work. He left Tiffany's home to meet a friend and encountered Donte, who followed him with a knife in his hand and asked whether he was the man in the car with Donte's wife. Appellant said "no" and walked back into the building followed by Donte, who still had the knife in his hand. Donte remained on the first floor, and, when appellant knocked on a neighbor's door, Donte left. As a result of that encounter, the couple called the police

and Tiffany filed a petition for a protective order and appellant filed a petition for a peace order. A court date was set, but Donte could not be served, and the case never made it to a hearing. Donte did leave a Facebook message, however, indicating that he was aware that restraining orders had been issued. Tiffany testified that, following that incident, she and appellant received threatening messages from Donte every day up to the day of the final confrontation. Some of those messages were played for the jury.

In an effort to avoid those contacts, on or about July 1, 2019, appellant and Tiffany left Tiffany's mother's house and moved to a new place at 5811 Folgate Court. That did not work for long. By August 13 – the day of the fatal encounter – Donte had discovered their new address and informed Tiffany of that fact. Tiffany informed appellant, who was on jury duty at the time, and he came home. Twice during the afternoon, the doorbell rang but no one was there. On the second occasion, they observed Donte running back to his vehicle. He called Tiffany's cell phone and said that he knew where they lived. They called the police, a police officer appeared shortly after 1:00 p.m., noticed a bag of clothes and a bike at the front door but then left.

At some point during this period – appellant was uncertain as to the exact date – appellant obtained a gun from his brother "to protect himself" from Donte. He kept the gun in his room.

Several hours later, around 6:00 p.m., the couple saw Donte standing a few doors from their home. Tiffany went out on the porch and inquired why he was there, to which he asked, in grossly insulting language, where appellant was. In response, appellant, in

light of a threat from Donte that appellant was "going to get put in the dirt and not make it to the next year," brought with him the gun stored in his room.

It appears from the testimony and from appellant's brief that Donte initially was three houses away from their home, that appellant and Tiffany were together, that appellant placed himself in front of her and, observing Donte "fumbling with his waistband," concluded, in light of the threats, "[t]hat he had a gun or a weapon." [1] On that assumption, appellant pulled out his gun and ran toward Donte, shooting as he went. Donte turned away and ran. Altogether, appellant fired eight shots at Donte after he had turned and ran. Four of those shots found their mark; three entered through Donte's back and killed him.[2] Tiffany ran back into the house.

Appellant testified that he had no familiarity with handguns, that he did not believe that he was precluded from possessing one, and that he was unaware that any of the bullets had hit Donte. Appellant instructed Tiffany to call the police, which she did. Before the police arrived, appellant and Tiffany made up a story that Donte had charged them with a knife, that appellant "believed he had a knife because he always carries one and that's when

[1] In evidence are photographs of what that block of Folgate Court looked like. It consisted of narrow row homes with no space between them. The jury could see that the distance between Donte and appellant, initially three doors away, was not great.

[2] The evidence showed that one shot hit him on the left side from back to front, injuring the carotid artery and exiting out the right upper chest. A second shot also entered through the back, injured the right lung and exited through the right shoulder. A third shot entered through the lower back, hit the pelvis and small bowel and exited through the left side. The fourth shot hit the back of his right thigh, injured the femoral vein and exited the front of the thigh.

he fired his shots." At the police station, he eventually changed his story, in part in light of DNA evidence that Donte was excluded from being the major contributor to DNA on the knife that was in evidence.

All of this is background for the one issue before us – whether the court erred in refusing to give the jury an instruction on "mistake of fact on involuntary manslaughter." Counsel argued to the court that:

> (1) Even if appellant's belief that Donte was armed with a weapon – a knife – was mistaken and he acted on the mistaken belief that Donte was armed, the jury must be instructed that "mistake of fact is something for them to consider" and,
>
> (2) With respect to involuntary manslaughter, the gross negligent version of it, "we requested that be put in because we believe it's important that his conduct was either grossly negligent rather than a purposeful and intentional effort to kill somebody."

The State objected, arguing that those instructions were inapplicable because the evidence showed appellant's conduct to be intentional and purposeful rather than grossly negligent. The court agreed with the State that, although appellant's conduct may have been an effort at self-defense, of himself or Tiffany, it was purposeful, not negligent.

The court clearly tied the two defenses together. It defined self-defense as being of two kinds – (1) perfect or whole self-defense or (2) imperfect or partial self-defense,

"which might go back and forth, but they're synonymous." Voluntary manslaughter, the court explained, "is not murder because the Defendant acted in partial self-defense." So, "if it's a partial self-defense, it negates first and second-degree murder and moves it to a manslaughter."

The court then defined partial self-defense, as follows: "If the Defendant actually believed that he was in immediate and imminent danger of death or serious bodily harm, even though a reasonable person would not have so believed, the Defendant's actual, though unreasonable, belief is a partial self-defense and the verdict should be guilty of voluntary manslaughter rather than *the murder."* Or *"*[I]f the Defendant used greater force than a reasonable person would have used, but the Defendant actually believed that the force used was necessary, a Defendant's actual, though unreasonable belief is a partial self-defense and the verdict should be guilty of voluntary manslaughter rather than murder."

The Issue and Standard of Review

The issue before us is clear and undisputed – whether the court erred in declining to give the instruction on involuntary manslaughter requested by appellant. The standard to be applied in resolving that issue is also undisputed. A requested instruction is required to be given if (1) it correctly states the law, (2) it is generated by some evidence and thus applies to the facts of the case, and (3) it is not fairly covered by another instruction that is given. *Preston v. State*, 444 Md. 67-68 (2015). *See also Adkins v. State*, 258 Md. App. 18, 27 (2023). The "some evidence" element has a low threshold. As stated in *Bazzle v. State*,

426 Md. 541, 551 (2012), it need not rise even to the level of a preponderance, including with respect to a self-defense claim:

> "It is 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 ... the defendant has met his burden. Then the baton is passed to the State ... [i]n evaluating whether competent evidence exists to generate the requested instruction, we view the evidence in the light most favorable to the accused."

Involuntary Manslaughter

In Maryland, involuntary manslaughter is a common law felony that consists of the *unintentional* killing of a human being, irrespective of malice (emphasis added). *State v. Thomas*, 464 Md. 133, 152 (2019). The *Thomas* Court recognized that there were three varieties of the offense: (1) unlawful act manslaughter – doing some unlawful act endangering life but which does not amount to a felony; (2) gross negligence manslaughter – negligently doing some act lawful in itself; and (3) the negligent omission to perform a legal duty. *Id*. For the latter two categories, the Court continued, "the negligence must be criminally culpable – i.e., grossly negligent." *Id.*

The Court addressed the meaning of gross negligence in this context in *Beckwitt v. State*, 477 Md. 398, 432 (2022), noting that the defendant must have committed acts "so heedless and incautious as necessarily to be unlawful and wanton" and "such a gross departure from what would be the conduct of an ordinarily careful and prudent person under the same circumstances so as to furnish evidence of indifference to the consequences."

Appellant acknowledges that the evidence "fairly supported a finding that [Donte's] death was the result of a deliberate attempt to take his life" but contends that his (appellant's) testimony sufficed to rebut the presumption that he intended to kill Donte and permit a finding that he intended only to drive him away and was indifferent to the consequences.

We disagree. We start with the fact that no knife was found on Donte; nor did the appellant, after changing the story he and Tiffany concocted, say that he actually saw Donte in possession of a knife, or any other weapon, on that occasion. There were certainly grounds for seeking assistance in obtaining and enforcing a peace order. But arming himself with a deadly weapon that, despite his alleged unfamiliarity with the weapon, he obviously knew how to fire and intended to fire, leaving the safety of his home, and running after Donte, who was not on his property, and firing eight shots at him while Donte was running away, striking him four times, three times in the back, is beyond gross negligence but partakes of malice – an *intent* to kill or inflict significant bodily harm. That is not involuntary manslaughter.

JUDGMENT AFFIRMED; APPELLANT TO PAY THE COSTS.