Circuit Court for Baltimore City
Case Nos. 119322015 & 119322016

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 1633

September Term, 2021

JIMMY MCRAVIN

V.

STATE OF MARYLAND

Reed,
Albright,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: March 22, 2023

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

** 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.

Following a jury trial in the Circuit Court for Baltimore City, Jimmy McRavin, Appellant, was found guilty of voluntary manslaughter,[1] use of a firearm in the commission of a crime of violence,[2] and possession of a regulated firearm after having been convicted of a disqualifying crime.[3] The circuit court sentenced Mr. McRavin to 38 years in prison. Here, Mr. McRavin challenges five circuit court rulings—four of which pertain to jury instructions and the fifth to the circuit court's denial of his speedy trial motion. In so doing, Mr. McRavin argues that (1) with respect to his speedy trial rights, the circuit court should have dismissed the case because the delay between his arrest and trial prejudiced his ability to investigate, and (2) sufficient evidence was generated to support certain requested jury instructions and was not generated to support others.

Mr. McRavin presents five questions for our review, which we have reordered:

1. Did the trial court err in not dismissing the indictment for violation of [Mr.] McRavin's speedy trial rights?

2. Did the trial court err or abuse its discretion in failing to instruct the jury, as part of a self-defense instruction, that [Mr.] McRavin had no duty to retreat when he was within the curtilage of his home on the porch?

3. Did the trial court err or abuse its discretion in instructing the jury as part of the self-defense instruction that [Mr.] McRavin could have been the initial aggressor?

[1] Md. Code, Crim. Law § 2-207.

[2] Md. Code, Crim. Law § 4-204.

[3] Md. Code, Crim. Law §§ 5-101 and 5-133.

4. Did the trial court err or abuse its discretion in not instructing the jury on defense of others?

5. Did the trial court err or abuse its discretion in not instructing the jury on the defense of necessity?

For the reasons we explain below, we answer "no" to all Mr. McRavin's questions and affirm the judgment of the circuit court.

BACKGROUND

I. The Killing of James Thompson

On October 12, 2019, Mr. McRavin pointed his father's gun at James Thompson and shot him five times in broad daylight: twice in the back of the head, twice in the back left upper arm, and once in the left lower back. None of the shots Mr. McRavin fired were at close range. The two gunshot wounds to the back of Mr. Thompson's head are what killed him.

Earlier that day, Mr. McRavin was at his home in Baltimore, Maryland with his mother, Deborah McRavin, his child's mother, Shawnta Davis, and his then 5-month-old baby. Mr. McRavin got into a heated argument with Ms. Davis because Ms. Davis saw Mr. McRavin smoking a cigarette while holding the baby, and she tried to get the cigarette out of his hand. Mr. McRavin put his hands on her, choked her, "stomped" on her, and kicked her. Ms. Davis appeared to have suffered injuries to her face and left eye. Mr. McRavin exited the home and stood on the porch. At some point, Ms. Davis called 911 to report Mr. McRavin's attack. Ms. Davis also called her cousin, Mr. Thompson, "want[ing] him to come to the house and take care of [Mr. McRavin]," a request

overheard only by Ms. McRavin. Ms. McRavin then went outside and stood on the porch with Mr. McRavin for about 10 minutes. She offered him her late husband's gun and told Mr. McRavin that Mr. Thompson was coming to the home. Ms. McRavin also advised Mr. McRavin to leave. Instead, Mr. McRavin took the gun, put it in his pocket, and remained on the porch.

Mr. Thompson did not arrive until at least one hour after Ms. McRavin gave Mr. McRavin the gun. Mr. McRavin then shot Mr. Thompson and fled the scene, leaving Mr. Thompson on the ground.[4] Police and Emergency Medical Services personnel ("EMS") arrived and transported Mr. Thompson to the hospital where he later died. Shell casings, Mr. Thompson's clothing, a pocketknife, and video surveillance footage[5] were recovered at the scene.

II. Mr. McRavin's Arrest and Charges

On October 23, 2019, Mr. McRavin was arrested for the murder of Mr. Thompson. On November 18, 2019, Mr. McRavin was charged with first-degree murder, use of a

[4] There is conflicting eyewitness testimony as to the location of Mr. Thompson at the time of the shooting. Testimony from Ms. Athena Silver (Mr. McRavin's neighbor) suggests that Mr. Thompson could have been *either* ascending the McRavin porch stairs or on the sidewalk when Mr. McRavin shot him.

[5] The video surveillance footage was taken from a nearby randomly rotating camera that overlooked the housing complex where the shooting occurred. It was admitted through Sergeant Julian Jemmott, one of the officers who arrived at the scene and discovered the camera.

handgun in the commission of a crime of violence, and possession of a regulated firearm after having been convicted of a disqualifying crime.

III. Trial Postponements

Mr. McRavin was supposed to be tried on April 2, 2020. Mr. McRavin asserted his right to a speedy trial in an omnibus motion filed with his counsel's appearance on January 7, 2020. Leading up to the trial date, COVID-19 was spreading fast. By mid-January of 2020, there were 282 confirmed cases worldwide, with the United States having its first confirmed case in Washington State.[6] *CDC Museum COVID-19 Timeline* (hereinafter "*COVID-19 Timeline*"). By mid-March of 2020, COVID-19 spread to 114 countries, claiming the lives of over 4,200 people and infecting over 118,000 more. *Id*. Some states, including Maryland, [7] began to issue stay-at-home orders to limit exposure. *Id*. On March 12, 2020, then-Chief Judge Mary Ellen Barbera ("Chief Judge Barbera") of the Court of Appeals of Maryland (now the Supreme Court of Maryland) [8] issued her first

[6] Information about the COVID-19 pandemic can be found here: CDC Museum Timeline, https://www.cdc.gov/museum/timeline/covid19.html (last visited March 23, 2023).

[7] Governor Hogan's March 30, 2020 Stay-At-Home Order required, absent some exception or exclusion, all residents to stay at home, restricted, or, in some cases, stopped non-essential business operations, and prohibited gatherings larger than 10 people. Md. Order No. 20-03-30-01 (2020), https://salisbury.md/wp-content/uploads/2020/04/1877_001-3-2.pdf; *see* Mervosh et al., *See Which States and Cities Have Told Residents to Stay at Home*, NY TIMES, Apr. 20, 2020, https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html (discussing each state's stay-at-home order(s) during the COVID-19 pandemic).

[8] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also*, Md. Rule 1-

Administrative Order concerning COVID-19, pausing "[a]ll civil and criminal jury trials in the Circuit Courts throughout the state of Maryland scheduled to begin on March 16, 2020, through April 3, 2020[.]" C.J. Barbera, Admin. Order, March 12, 2020, at 1. Confirmed cases skyrocketed to 500,000 and deaths to over 18,600 in a few short months. *COVID-19 Timeline*.

In a General Order dated March 25, 2020, the circuit court ordered that "all misdemeanor and felony cases set for pretrial conferences, initial appearances, or for trial are [] postponed," and found good cause for the postponements. On April 2, 2020, the circuit court scheduled Mr. McRavin's trial for July 27, 2020.

About two months later, Chief Judge Barbera ordered all circuit court criminal jury trials "scheduled to begin on or after March 16, 2020 . . . to resume, with trial dates to be scheduled beginning on October 5, 2020, and thereafter[.]"[9] C.J. Barbera, Admin. Order, May 22, 2020, at 2. Consequently, the circuit court rescheduled Mr. McRavin's trial for December 15, 2020.

On November 12, 2020, however, due to a significant uptick in confirmed COVID-19 cases in Maryland and nationwide, Chief Judge Barbera re-imposed a civil

101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland…."). The Judges of the Court are now called "Justices."

[9] Chief Judge Barbera's June 3, 2020 and October 2, 2020 Administrative Orders concerning the resumption of criminal and civil jury trials contained the same language.

and criminal jury trial suspension and ordered a rescheduling of trial dates. C.J. Barbera, Admin. Order, Nov. 12, 2020, at 1-2. Among other things, criminal trials without empaneled juries scheduled from November 16, 2020 to December 31, 2020 were suspended and rescheduled for as early as January 4, 2021. *Id.* Just days before that Order, the United States had reported 100,000 new COVID-19 cases in just 24 hours. *COVID-19 Timeline*.

The infection rate continued to surge as Thanksgiving neared, prompting the CDC to urge Americans to limit their contact with those outside of their household. *COVID-19 Timeline*. On November 20, 2020, over 11 million Americans were infected with COVID-19. *Id.* Once again, to mitigate exposure to COVID-19, Chief Judge Barbera's November 24, 2020 Administrative Order continued to pause criminal jury trials without empaneled juries pending from November 16, 2020 to February 12, 2021 and rescheduled them starting the beginning of February 16, 2021. C.J. Barbera, Admin. Order, November 24, 2020, at 2. To comply, the circuit court rescheduled Mr. McRavin's trial to April 6, 2021.

Because of the increase in COVID-19 cases, Chief Judge Barbera issued four more Administrative Orders, postponing criminal jury trials until at least April 26, 2021. C.J. Barbera, Admin. Orders, December 22, 2020, at 2; February 2, 2021, at 2; February 16, 2021, at 2-3; May 24, 2021, at 2-3 (rescheduling trials without empaneled juries pending between November 16, 2020 and April 23, 2021 beginning April 26, 2021).

Shortly thereafter, counsel contacted the circuit court to receive a trial date for Mr. McRavin. The trial was then specially set for November 10, 2021.

IV. Motion to Dismiss

Before trial, on October 21, 2021, Mr. McRavin moved to dismiss his case, arguing that his speedy trial rights were denied. A motion hearing was subsequently held on November 10, 2021. Analyzing the *Barker* factors,[10] Mr. McRavin contended that the court violated his constitutional right to a speedy trial because he suffered "presumed and actual prejudice as a result of the inordinate delay in bringing his case to trial." Consequently, Mr. McRavin argued the case should be dismissed.[11]

According to Mr. McRavin, all *Barker* factors weighed in his favor. The *Barker* factors are the length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. *Barker v. Wingo*, 417 U.S. 514, 530 (1972). As to the length of delay, Mr. McRavin contended that the delay was presumptively prejudicial because his trial was "2 years and 18 days from the day of arrest and 1 year and 10 months and 3 days from the day of indictment," triggering further inquiry. As to the reason for the delay, although conceding that COVID-19 was the reason for all trial

[10] *Barker v. Wingo*, 417 U.S. 514, 530 (1972).

[11] During the motion to dismiss hearing only, Mr. McRavin noted that the court violated the *Hicks* 180-day limit. *See State v. Hicks*, 285 Md. 310 (1979). He also argued that the delays were presumptively unconstitutional, the postponements extended the trial past the *Hicks* date, and that he never waived his right under *Hicks*. Mr. McRavin conceded, however, that COVID-19 was the cause for the delays. The court denied his motion, reasoning that while the delay was presumptively unconstitutional, the delay was "[n]o fault of the State, no fault of [Mr. McRavin], but [] it is one that . . . was never anticipated."

postponements, Mr. McRavin noted that jury trials resumed on April 26, 2021, but the court chose not to restart trials requiring larger jury pools until later that year. As to Mr. McRavin's assertion of his speedy trial right, Mr. McRavin maintained that he asserted his right in the omnibus motion on January 7, 2020 and had not waived it. As to prejudice, Mr. McRavin reiterated that prejudice was presumed because of the lapse of time between his arrest and trial date. Additionally, he argued he was unable to interview potential witnesses due the demolition of the housing complex where the shooting occurred. This demolition, which occurred during the summer of 2020, was part of a neighborhood replacement and transformation plan in East Baltimore that also involved, among other things, relocating the residents of the housing complex. Mr. McRavin also noted that the inability to assist in the preparation of his defense caused him considerable stress and anxiety.

The circuit court agreed with Mr. McRavin that the length of delay was "presumptively unconstitutional," triggering a further inquiry, but ultimately denied the motion. The circuit court acknowledged that the postponement prejudiced the defendant because "the pandemic placed a burden on the defense, the ability to investigate[.]" Nonetheless, the circuit court denied the motion and allowed the trial to proceed, reasoning that the postponements were "[n]ot the fault of the defense, not the fault of the State . . . . [rather] it was a pandemic that [the circuit court] had not seen the likes of in . . . 100 years."

The trial commenced as scheduled.

V. Trial

A. Evidence

The State called seven witnesses to testify (and introduced several exhibits): Dr. Nikki Mourtzinos, D.O. (the assistant medical examiner who performed Mr. Thompson's autopsy), Sergeant Julian Jemmott (one of the officers who arrived at the scene), Amealia Harvey (the crime lab technician who responded to the scene), Detective Seong Koo (one of the homicide detectives who investigated the incident), Ms. Davis, Ms. Silver (Ms. McRavin's neighbor), and Ms. McRavin. The defense recalled Ms. McRavin (and introduced exhibits).

Dr. Mourtzinos discussed, among other things, the entrance points of Mr. Thompson's gunshot wounds and Mr. Thompson's cause of death. She found that all bullets entered Mr. Thompson's body through the back of his head, back left arm, or lower back. She noted that Mr. Thompson's two gunshot wounds to the back of his head injured his skull and brain, which were "quite devastating injuries that were not survivable." She concluded that the two gunshots to the back of his head killed Mr. Thompson and ruled Mr. Thompson's death a homicide.

Sergeant Jemmott, Ms. Harvey, and Detective Koo described what they did when they arrived at the scene. Sergeant Jemmott was the first to arrive. He saw Mr. Thompson lying on the ground and seemed not to be breathing. Sergeant Jemmott made sure EMS was en route and secured the crime scene. While canvasing the scene, he saw video surveillance cameras and ensured that a homicide detective was tasked to retrieve the

footage. Ms. Harvey testified that the police recovered a black jacket, a black pocketknife, a white tank top, a set of keys, a cell phone, and shell casings. Ms. Harvey took photographs depicting Ms. Davis' injuries and the crime scene. Detective Koo, as part of his testimony, recounted that the police interviewed Ms. Davis, Ms. Silver, and Ms. McRavin. He also noted that Renee Richardson was another potential witness, but she refused to speak with law enforcement.

Ms. Davis was not forthcoming with her testimony. She did not recall her relationship with Mr. McRavin or the events that took place on the day Mr. McRavin killed Mr. Thompson, all despite the State's attempts to refresh her recollection. As a result, the State introduced police body-worn camera footage taken on the day of the shooting as well as Ms. Davis' recorded police interview. The body-worn camera footage depicted Ms. Davis telling police that Mr. McRavin, her boyfriend at the time, put his hands on her, choked her, and "stomp[ed]" on her during an argument about Mr. McRavin smoking a cigarette around their baby. She then called 911 and her cousin, Mr. Thompson. The police-recorded interview showed Ms. Davis recounting that, after Mr. McRavin hit her, Ms. McRavin went outside and then came back inside to tell Ms. Davis that Mr. Thompson arrived. Within about five seconds of being told about Mr. Thompson's arrival, Ms. Davis heard three gunshots. Ms. Davis ran outside and found Mr. Thompson lying on the ground.

Ms. Silver testified inconsistently about where she was and what she personally perceived at the time of the shooting. From inside her home located across the street from

the McRavin home, Ms. Silver testified that she heard Ms. Davis yelling, "I'm going to call my cousin [Mr. Thompson] to . . . kick your ass" at Mr. McRavin while he was outside. She also heard Ms. Davis say, "I'm going to get [Mr. McRavin] killed." She first testified that she was inside her home when she heard gunshots, and her now-deceased girlfriend, Renee Richardson, was outside on the porch.[12] Later, she stated she was sitting on the porch and saw Mr. Thompson "walking kind of slow, down the street, toward the [McRavin] house," "had his hands behind his back," and "came down there like he was trying to do something . . . [l]ike he was trying to fight[,] [l]ike he was trying to beef."

Ms. Silver also offered conflicting testimony regarding the conversation she overheard between Mr. McRavin and Mr. Thompson. She recalled that the men did not speak to one another but later clarified that Mr. McRavin said, "[w]hat, are you going to bring a [racial slur] to my mother house?" She told the jury that when Mr. Thompson "was going up the steps . . . towards the door," Mr. Thompson "got blasted."

Ms. McRavin also gave conflicting testimony. When showed the video surveillance footage at trial, and although admitting the video was "cloudy" and that she could "barely see [who was standing on the porch]," Ms. McRavin noted that the video showed her and Mr. McRavin standing on the McRavin porch at some point before Mr. Thompson arrived. She initially testified that she did not tell her son anything before Mr. Thompson came to the McRavin home but later changed her testimony, stating that she

[12] Ms. Richardson passed away sometime in the summer of 2020.

told him Mr. Thompson was coming to the house. She also stated she gave Mr. McRavin her late husband's gun while on the porch. Ms. McRavin testified that, from inside her home, she heard two gunshots hitting the door. She went to the door to see Mr. McRavin "running off the porch because the guy [Mr. Thompson] was shooting at the door," though admitting that she did not see Mr. Thompson shooting. She also said that she was on the porch when she saw Mr. Thompson pull out a silver and black object with a handle – which she believed to be a gun – from his "dip area."[13] According to Ms. McRavin, Mr. Thompson "was trying to get at [Mr. McRavin] . . . he was trying to attack, about to attack." She then subsequently changed her testimony, stating that she was in the home with the front door closed for about five to seven minutes before she heard gunshots and only saw Mr. Thompson lying down on the ground when she went to the front door.

B. Jury Instructions

Prior to the court instructing the jury, Mr. McRavin made two requests pertaining to the self-defense instruction. First, Mr. McRavin requested that the court exclude the portion of the self-defense instruction that stated "[o]r although the Defendant was the initial aggressor, he did not raise the fight to the deadly force level," but the court denied the request. After hearing both parties on the issue, the circuit court found that the State generated some evidence for this part of the instruction. In its determination, the circuit court considered that prior to his encounter with Mr. Thompson, Mr. McRavin equipped

[13] "Dip area" typically refers to a person's midsection. *See Potts v. State*, 231 Md. App. 398, 416 (2016).

himself with a gun, refused to leave, and fired the gun at Mr. Thompson "as soon as [Mr. Thompson] got to the foot of the steps . . . without any notification to [Mr. Thompson] or anything." After the court ruled on the jury instruction, Mr. McRavin objected and stated his reasoning again for the court to grant the request: "I still don't think - - he's in his house. If his mother gives him a gun, that doesn't make him the aggressor[.]" The court denied the request again. At the conclusion of jury instructions, Mr. McRavin did not object.

Second, in the middle of jury instructions, at a bench conference requested by the court on another matter, Mr. McRavin asked the court to add, as part of the instruction, that the no-duty-to-retreat rule "include[s] 'from your own home or curtilage of your home . . . [o]r your porch." The court denied the request without providing an explanation. The next day, Mr. McRavin asked the court again to include "porch" in its no-duty-to-retreat instruction.[14] The court still declined to grant the request, reasoning that the case law was not clear on whether the no-duty-to-retreat rule extends to curtilage. But, the court did note that if the jury sought clarification about "what in-home mean[s]," then it may "be able to add something to [the instruction]."

Mr. McRavin also requested that the circuit court instruct the jury on defense of others.[15] Preliminarily, during the State's case-in-chief, the circuit court found that

[14] The State did not object to the requested instruction.

[15] At no point during the trial did Mr. McRavin specify whether he wanted the court to instruct on a perfect or imperfect defense of others or both.

evidence has yet to be generated to indicate Mr. McRavin's belief, explaining that "you can't just get it all in just because someone else says, 'I thought - - I was afraid,' and, therefore, he might be afraid. That's not how it goes." At the close of evidence, when Mr. McRavin renewed his request, the circuit court found that there was no evidence to generate this instruction, explaining that "[Ms. McRavin] testified she was in the house, . . . three or four times, when the shots were fired." After the court finished instructing the jury, Mr. McRavin renewed his request for the defense-of-others instruction, but the court declined again.

Additionally, Mr. McRavin asked for a necessity instruction, a request that was also declined. The court concluded that no evidence was generated to give this instruction, explaining that "a reasonable trier of fact could not find defense of necessity because of the timing of [Mr. McRavin] receiving the gun." The court pointed out that there was "no dispute that the gun was received at least one hour before, maybe longer than that[.]" The court also considered that Mr. McRavin chose to take the gun from his mother and remain outside until Mr. Thompson arrived. After the conclusion of the instructions, Mr. McRavin objected again.

C. Jury Note

While deliberating, the jury presented a handwritten note[16] asking about the definition of curtilage and its effect on Mr. McRavin's duty to retreat: "Does the defendant being outside on the porch constitute being in home . . . meaning, does he have to be physically inside the 4 walls of the home for him to NOT be required to retreat." (emphasis in original). The record does not appear to reflect the answer the court gave to the jury.[17] Rather, it only reflects that Mr. McRavin and his counsel waived their appearances for the reading of the jury note and that counsel was satisfied with the court's response to the jury's question:

> [MR. MCRAVIN]: That Mr. McRavin did waive his -- waived his presence for any jury questions.
>
> THE COURT: All Right. So there were two jury questions –
>
> [MR. MCRAVIN]: Yes.
>
> THE COURT: -- and I advised counsel over the phone what they were. They were satisfied with the notes sent back to the jury. They have now signed those notes, and [Mr. McRavin's counsel] waived his presence for both notes. Is that accurate, ma'am?
>
> [MR. MCRAVIN]: Correct.

We will supplement additional facts where necessary.

[16] Not relevant here, the jury presented two other handwritten notes, one asking if they can "see the video of Debra [sic] McRavin's police interview," and the other dealing with a juror scheduling conflict.

[17] The court's response was not attached to the jury note. Nor was it present in the record.

STANDARD OF REVIEW

We review possible violations of a defendant's constitutional right to a speedy trial *de novo*. *Hallowell v. State*, 235 Md. App. 484, 513 (2014). We make the same inquiry as the trial court, analyzing the *Barker* factors. *Barker v. Wingo*, 407 U.S. 514, 530 (1972). The examination should be "practical, not illusionary, realistic, not theoretical, and tightly prescribed, not reaching beyond the peculiar facts of the particular case." *State v. Bailey*, 319 Md. 392, 415 (1990).

Jury instruction rulings are reviewed for abuse of discretion. *Bazzle v. State*, 426 Md. 541, 548 (2018). We will not reverse the circuit court's decision absent a clear showing of the court's abuse of discretion. *Stabb v. State*, 423 Md. 454, 465 (2011). The discretion must be "manifestly unreasonable, or exercised on untenable grounds, or untenable reasons." *Id.* (quoting *In re Don Mc.*, 344 Md. 194, 201 (1996)).

If the trial court made an instructional error, and the error prejudiced the defendant, we must reverse the judgment. *Tharp v. State*, 129 Md. App. 319, 329 (1999). Harmless error review is "highly favorable to the defendant[.]" *Tetso v. State*, 205 Md. App. 334, 412 (2012). The State must prove that the error was harmless beyond a reasonable doubt, meaning the error "[d]id not play any role in the jury's verdict." *Bellamy v. State*, 403 Md. 308, 332 (2008).

DISCUSSION

I. Mr. McRavin's Speedy Trial Motion

In the context of a criminal defendant's right to a speedy trial, we employ the same analysis under Article 21 of the Maryland Declaration of Rights as the U.S. Supreme Court employs under the Sixth Amendment. *See, e.g.*, *State v. Kanneh*, 403 Md. 678, 687-88 (2008). Specifically, we look to the four *Barker* factors to assess whether there was a constitutional speedy trial violation: length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. *Kanneh*, 403 Md. at 688; *see also Barker*, 407 U.S. at 530. We examine each factor in connection with one another, not in isolation. *Barker*, 407 U.S. at 530. "[T]hese factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process."[18] *Id.*

[18] The constitutional analysis is distinct from the analysis under Maryland's so-called *Hicks* Rule. By statute and rule, absent a finding of good cause, criminal trials in Maryland may not occur later than 180 days after the earlier of the first appearance of the defendant before the circuit court or the appearance of counsel. *See* Md. Code, Crim. Proc. § 6-103; Md. Rule 4-271. In *Hicks*, our Supreme Court considered earlier versions of that statute and rule and held that they were mandatory, not merely directory. *Hicks*, 285 Md. at 318-20. The *Hicks* Rule, however, as it came to be known, is a "statement of public policy, not a source of individual rights." *Choate v. State*, 214 Md. App. 118, 140 (2013). As such, though "compliance with the [*Hicks* Rule] would also presumably satisfy the constitution[,]" *Tunnell v. State*, 466 Md. 565, 571 (2020), any "benefits . . . confer[red] upon criminal defendants are purely incidental." *Choate*, 214 Md. App. at 140 (quotations omitted). On appeal, Mr. McRavin does not challenge the circuit court's ruling pertaining to *Hicks*. As such, we do not address it further.

1. Length of Delay

The length of delay is, to some extent, a triggering mechanism, requiring courts to balance the other factors. *Barker*, 407 U.S. at 530. "[T]he length of delay is measured from the date of arrest or filing of indictment, information, or other formal charges to the date of trial." *Divver v. State*, 356 Md. 379, 388-89 (1999). The Supreme Court of Maryland has, on several occasions, "employed the proposition that a pre-trial delay greater than one year and fourteen days [is] 'presumptively prejudicial[.]'" *Glover v. State*, 368 Md. 211, 223 (2002) (citing cases). Because Mr. McRavin waited over two years for a trial, we agree that the delay was "presumptively prejudicial," a conclusion that requires us to make a further inquiry.

2. Reason for Delay

All parties agree that the trial postponements were the result of COVID-19. As the circuit court noted, the delays were "[n]ot the fault of the defense, not the fault of the State . . . [rather] it was a pandemic that [the circuit court] had not seen the likes of in . . . 100 years." We agree with the circuit court (and several other jurisdictions) that a global pandemic of such magnitude would be a justified and valid reason for trial delays. *See, e.g., Ali v. Commonwealth*, 75 Va. App. 16, 45 (2022); *State v. Ambriz*, 880 S.E. 2d 449, 472 (N.C. 2022); *State v. Brown*, 310 Neb. 224, 240-41 (2021). Because all delays were due to the pandemic, we do not weigh this factor against either party.

3. Assertion of Right

In *Barker v. Wingo*, the U.S. Supreme Court explained that courts should consider how and when a defendant asserted a speedy trial right:

> The more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.

407 U.S. at 531. Therefore, in examining this factor, the court should "weigh the frequency and force of objections as opposed to attaching significant weight to a purely pro forma objection." *Id.* at 530.

Because Mr. McRavin did not specifically assert his right to a speedy trial until October 21, 2021, we only weigh this factor slightly in Mr. McRavin's favor. Of course, Mr. McRavin generally asserted his speedy trial right, in *pro forma* fashion, in an omnibus motion filed with his counsel's appearance on January 7, 2020, and he never waived his speedy trial right. Nevertheless, there is no indication that Mr. McRavin objected to any of the trial postponements during the delay period, nor did he otherwise specifically assert his speedy trial right during that period. It was not until 21 months after his omnibus motion, on October 20, 2021, that Mr. McRavin specifically articulated and pressed his speedy trial right in a motion to dismiss the charges against him. *See Lloyd v. State*, 207 Md. App. 322, 332 (2012). Even though courts were closed to jury trials, nothing prevented Mr. McRavin from objecting to the trial postponements.

4. Prejudice

Though we agree with both Mr. McRavin and the trial court that the delay was lengthy, we hold that Mr. McRavin was not prejudiced by it. The trial delays were the fault of neither the State nor the defense. And even the defense conceded that the main reason for the delays was the COVID-19 pandemic. The trial was postponed several times because courts were closed to jury trials. While we understand Mr. McRavin's frustration, we find that a defendant's inability to be tried in a timely manner due to an unanticipated global pandemic like COVID-19, in and of itself, does not rise to the level of a constitutional speedy trial violation.

As to Mr. McRavin's inability to investigate, we fail to see the connection between the trial postponements and his inability to interview witnesses. Because the housing complex where the shooting occurred was not demolished until the summer of 2020, Mr. McRavin could have conducted the investigation between the time of his arrest on October 23, 2019 and the first trial date of April 2, 2020. Mr. McRavin also admitted that "during the pandemic . . . there was not a lot of investigators . . . going out." The prejudice Mr. McRavin faced, if any, was not attributable to the trial postponements. For this reason, we weigh this factor in the State's favor.

Balancing all the *Barker* factors together, we hold that the circuit court did not err in denying Mr. McRavin's speedy trial motion.

II. Jury instructions

Trial courts have a significant amount of discretion in providing or declining to provide jury instructions, "although statutes, court rules, and case law may place limits on the judge's discretion." *Carter v. State*, 366 Md. 574, 584 (2001). Md. Rule 4-325(c) states:

> The 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). The trial court must give a requested jury instruction when it is, (1) a correct statement of law, (2) applicable to the facts of the case, and (3) its content was not fairly covered in the instructions actually given. *See, e.g.*, *Carroll v. State*, 428 Md. 679, 689 (2012). If the court gives an instruction that satisfies those requirements, it is not an abuse of discretion to do so. *See Wright v. State*, 474 Md. 467, 484-86 (2021).

Regarding the applicability requirement, the standard is low: a jury instruction applies to the facts of the case whenever there is "some evidence" to support it. *Bazzle v. State*, 426 Md. 541, 551 (2012). In the context of a request by the defense, "some evidence" means any evidence produced by any party "relied on by the defendant which, if believed, would support his claim[.]" *Dykes v. State*, 319 Md. 206, 217 (1990). "It need not rise to the level of . . . [a] 'preponderance.'" *Id.*; *see also Rainey v. State*, 480 Md. 230, 258 (2022) (describing the "some evidence" standard as "a low and minimum

threshold") (quotations omitted). As long as there is "some evidence" to generate the instruction, the instruction applies to the facts of the case and contrary evidence (even if overwhelming) is irrelevant. *Dykes*, 319 Md. at 217. Whether there is evidence to warrant an instruction is a "question of law for the trial judge." *Bazzle*, 426 Md. at 550 (quoting *Dishman v. State*, 352 Md. 279, 292 (1998)). The evidence is viewed in a light most favorable to the requesting party. *Hayes v. State*, 247 Md. App. 252, 288 (2020).

On appeal, Mr. McRavin and the State primarily focus their arguments on whether various jury instructions applied to the evidence at hand. Mr. McRavin contends that the circuit court abused its discretion when it declined to instruct that the duty-to-retreat rule applies to porches because there was evidence sufficient to generate the instruction.[19] He also argues that the circuit court abused its discretion in instructing on initial aggressor as part of self-defense because, he asserts, there was no evidence to show that he was the initial aggressor. Finally, Mr. McRavin contends that the court abused its discretion when it declined to instruct on defense of others and defense of necessity because some evidence existed to support those instructions. We address each contention in turn.

[19] As to the failure to give his requested duty-to-retreat instruction, Mr. McRavin also argues, and the State disputes, that the duty-to-retreat rule applies to porches.

As to the other challenged instructions (both that the circuit gave and failed to give), Mr. McRavin and the State center their disputes on whether those instructions were generated by the evidence. Accordingly, we limit our discussion of those instructions to that issue.

A. Duty-To-Retreat Instruction

Mr. McRavin contends that the circuit court erred in failing to instruct the jury that he had no duty to retreat from his porch,[20] and, in so doing, prejudiced him. According to Mr. McRavin, the requested instruction was a correct statement of law, was not fairly covered by other instructions, and was generated by some evidence at trial: Ms. McRavin's testimony, video surveillance footage, and Ms. Davis' police interview all revealed that Mr. McRavin was on his porch moments before the shooting. Crime scene photos also showed shell casings on or around the McRavin home porch. Mr. McRavin argues that if the court gave the requested instruction, then the jury would have

[20] "[T]here is no duty to retreat if one is attacked in his own home[.]" *Gainer v. State*, 40 Md. App. 382, 388 (1978). Mr. McRavin argues that his porch was among the areas of his home from which he did not have to retreat, and that his requested jury instruction to that effect was legally correct. In support, he notes that the prosecutor at trial did not object to the requested instruction. He also cites language from Maryland cases that, he asserts, shows that Maryland recognizes curtilage as part of the home and concludes that there is no duty to retreat within its bounds. *E.g.*, *Gainer*, 40 Md. App. at 388 (describing a "universally recognized" exception to the duty to retreat that extends to one's "dwelling or its curtilage") (quotations omitted); *Braboy v. State*, 130 Md. App. 220, 230 n.10 (2000) (describing as "compelling" the proposition that "'dwelling' may very well include areas outside of the house itself . . . . there is general agreement that no duty to retreat rests upon one who, without fault, is attacked by another when in his own curtilage.") (quoting 40 Am. Jur. 2d Homicide § 168) (cleaned up). In response, the State argues that a prosecutor's concession on an issue of law at trial is not necessarily binding on appeal. *See Greenstreet v. State*, 392 Md. 652, 667 (2006) ("The question . . . is a question of law requiring the application of facts. Hence, we are not bound by the concession made by the prosecutor[.]"). The State further argues that the language referring to curtilage in the Maryland case law is merely *dicta*, that no Maryland authority has squarely held that the duty to retreat applies within the curtilage of the home (outside the home itself), and that Mr. McRavin's "porch" could not be within his home's curtilage—as a matter of law—because that porch was a shared entrance with two other housing units in the housing complex.

concluded that he acted in perfect self-defense, acquitting him of murder. We are not persuaded.

First, however, we conclude that this issue is preserved. Contrary to the State's contention, even though the jury sought clarification about whether Mr. McRavin had a duty to retreat from his porch, and Mr. McRavin did not object to the court's response, Mr. McRavin's challenge to the absence of "porch" from the duty-to-retreat instruction was still preserved, given his substantial compliance with Md. Rule 4-325(f).[21] For substantial compliance with Md. Rule 4-325(f)'s prompt objection requirement, the following conditions must be met:

> [T]here must be an objection to the instruction; the objection must appear on the record; the objection must be accompanied by a definite statement of the ground for objection unless the ground for objection is apparent from the record and the circumstances must be such that a renewal of the objection after the court instructs the jury would be futile or useless.

[21] Md. Rule 4-325(f) provides, in pertinent part:

> No party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection. Upon request of any party, the court shall receive objections out of the hearing of the jury. An appellate court, on its own initiative or on the suggestion of a party, may however take cognizance of any plain error in the instructions, material to the rights of the defendant, despite a failure to object.

Gore v. State, 309 Md. 203, 209 (1987). Here, while the court was instructing the jury, and again the next day, Mr. McRavin asked that the duty-to-retreat instruction include Mr. McRavin's porch, but the court declined both times. Based on the circumstances, we do not see how an additional objection would have changed the court's mind on the requested instruction. Therefore, we conclude that Mr. McRavin substantially complied with Rule 4-325(f) and that his contention is preserved.[22]

Nevertheless, we decline to decide whether "porch" should have been specifically mentioned among those areas from which Mr. McRavin need not have retreated because the jury's verdict rendered any failure to include "porch" harmless. As we have discussed, a harmless error analysis requires that we not reverse for an error that "did not play any role in the jury's verdict[.]" *Bellamy*, 403 Md. at 332 (quotation omitted). In conducting this analysis, "we are not to find facts or weigh evidence." *Taylor v. State*, 407 Md. 137, 165 (2009) (quotation omitted). Instead, we determine whether the possibility that error played a role in the verdict can be "exclude[ed] beyond a reasonable doubt." *Id.* (quotation omitted). Because the duty to retreat is an element for perfect and imperfect self-defense, *see Porter v. State*, 455 Md. 220, 234-35 (2017), a jury can only find that the defendant acted in either manner if it resolves the duty-to-retreat issue in the

[22] Although it appears that the circuit court later responded to a jury question concerning the duty to retreat, and that the defense indicated that it was "satisfied with the notes sent back to the jury[,]" we do not accept the State's position that this affects the preservation analysis. As noted earlier, the circuit court's responses are not in the record, and we do not have sufficient context here to evaluate the defense's expression of satisfaction and determine its effect, much less to construe the same against Mr. McRavin.

defendant's favor. Because Mr. McRavin was found guilty of manslaughter, the jury must have believed that Mr. McRavin acted in imperfect self-defense. Therefore, in making that determination, the jury must have considered the duty-to-retreat issue and determined that Mr. McRavin did not have the duty to retreat from his porch, that his retreat was unsafe, or that he made a reasonable effort to retreat. Because the non-mention of "porch" in the jury instruction "did not play any role in the jury's verdict," we see no reason to reverse based on its absence. *Bellamy*, 403 Md. at 308.

B. Initial Aggressor Portion of the Self-Defense Instruction

Mr. McRavin asserts that the circuit court incorrectly gave the initial aggressor portion of the self-defense instruction because there was no evidence to show he was the initial aggressor.[23] As Mr. McRavin's argument proceeds, he first assumes that he had no legal duty to retreat from his porch. He then notes that he did not "willingly [seek] out" Mr. Thompson. Rather, Mr. Thompson voluntarily came to the McRavin home.

[23] Contrary to the State's contention, we find that this issue was properly preserved because Mr. McRavin, during the last jury instruction conference prior to the charge of the jury, substantially complied with Md. Rule 4-325(f). The facts fall within *Bennett v. State*, 230 Md. 562, 568-69 (1963). There, our Supreme Court concluded the defendant's objection and subsequent exception, during a chambers conference, to the court's refusal to instruct the jury was sufficient to preserve the defendant's contention—even though neither the objection nor exception was stated in open court. *Bennett*, 230 Md. at 568-69. Our Supreme Court reasoned that "the trial court was fully aware of the [defendant's] particular instruction[,]" and there was "no reason to repeat in the court room what had already been said and recorded by the reporter in chambers." *Id.* Likewise, here, we find that the circuit court was "fully aware" of Mr. McRavin's request to not instruct on initial aggressor because Mr. McRavin stated his request, both parties argued the issue, and Mr. McRavin stated his objection and reasoning immediately after the court's ruling—all of which was on record.

According to Mr. McRavin, his remaining on his porch thus precludes an initial aggressor instruction.[24] We disagree.

The initial aggressor portion of the self-defense instruction was correctly given because some evidence indicated Mr. McRavin was the initial aggressor. Mr. McRavin armed himself with a gun before Mr. Thompson arrived and waited outside with the gun until Mr. Thompson's arrival. Moreover, there was also evidence distinct from Mr. McRavin's decisions to arm himself and remain on his porch: there was testimony that could suggest that Mr. Thompson never left the sidewalk during the encounter,[25] and Mr.

[24] Our understanding is that Mr. McRavin does not make a legal argument that a person who has no duty-to-retreat from his porch can never be an initial aggressor; rather, he invites review based upon the "some evidence" standard. In so doing, he relies upon a line of cases holding that, in certain situations, a jury must be instructed that a defendant who anticipates an assault has "a right to arm himself[,]" such that properly doing so will not necessarily defeat a claim of self-defense. *See, e.g.*, *Gunther v. State*, 228 Md. 404, 408-10 (1962); *Marr v. State*, 134 Md. App. 152, 180-82 (2000) (collecting cases). Mr. McRavin, however, does not assert that the circuit court should have instructed the jury that he had a right to arm himself. Instead, he extrapolates from the cases to argue that, because he had a right to arm himself and a right to remain on his porch, there can be no evidence here that he was the initial aggressor. That, however, does not follow. Even if we were to assume (without deciding) that Mr. McRavin had those rights, the cases on which he relies merely recognize that, despite arming himself, Mr. McRavin might still be able to claim self-defense; those cases do not state that self-defense is a foregone conclusion, or that a defendant in Mr. McRavin's position cannot be the initial aggressor in an altercation. *See Marr*, 134 Md. App. at 183 (quoting *Medley v. State*, 52 Md. App. 225, 234-35 (1982)) ("*Gunther* must be read as recognizing no more than the principle expressed in the authorities cited in it—that one does not *necessarily* forfeit his privilege of self-defense because he has previously armed himself in anticipation of an attack.") (emphasis added). We must look to the evidence to determine whether an initial aggressor instruction was generated.

[25] As noted earlier, that testimony was conflicting and alternatively could have suggested that Mr. Thompson was ascending the steps of Mr. McRavin's porch. Nonetheless, the "some evidence" standard is a "minimum" and "low" threshold that takes the evidence in

McRavin shot Mr. Thompson five times in the back of his body and not at close range. Taken together, all of this suggests that, at the time Mr. Thompson was shot, Mr. McRavin was the initial aggressor. Therefore, we find that circuit court properly instructed the jury on the initial aggressor portion of the self-defense instruction.

C. Defense-of-Others Instruction

Mr. McRavin next argues that the circuit court improperly declined to instruct the jury on defense of others. Specifically, Mr. McRavin points to his mother's testimony that, on seeing Mr. Thompson pull out what she thought was a gun,[26] she was afraid for her and her son's life. Mr. McRavin contends that his mother's testimony was sufficient to generate a defense-of-others instruction.[27] We disagree.

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the "light most favorable to the requesting party[.]" *Rainey*, 480 Md. at 258, 268 (quotations omitted). The evidence need not be so clear as to allow only a single conclusion.

[26] There was other testimony such as that of Ms. Silver that Mr. Thompson was allegedly approaching the McRavin home. Neither party cites that testimony as sufficient to generate the defense-of-others instruction. For this reason, we too decline to consider it in our analysis. *See* Md. Rule 8-504(a)(4), (c).

[27] Mr. McRavin does not specify whether he challenges the circuit court's failure to instruct on perfect or imperfect defense of others. We focus our attention on the perfect defense-of others-instruction because we find that the court's failure to instruct on imperfect defense of others, even if it were an abuse of discretion, was harmless. At most, a successful imperfect defense of others could only have mitigated Mr. McRavin's murder charge to manslaughter—the same offense of which Mr. McRavin was found guilty. Thus, an imperfect defense-of-others instruction would not have altered the verdict, and Mr. McRavin submits no argument to the contrary. Indeed, while he emphasizes on appeal that a successful perfect defense of another would have resulted in an acquittal, he does not articulate the effect (if any) of a successful imperfect defense.

When a defendant claims to have acted in defense of himself or of another, in order to get the corresponding jury instruction, he must point to some evidence, direct or circumstantial, of what he (the defendant) in fact believed at the time of the incident, among other requirements. *Lee v. State*, 193 Md. App. 45, 58 (2010). For imperfect defense of another, this subjective belief must be "[t]hat he had to use force to defend another against immediate and imminent risk of death or serious harm." *Id.* Additionally, for perfect defense of another, that belief (and the level of force used) must have been objectively reasonable. *Id.* at 58-59. As such, where there is no evidence of what the defendant subjectively believed at the time he acted, the trial court need not instruct on either imperfect or perfect defense of others. *See Lee*, 193 Md. App. at 65 (discussing both perfect and imperfect defense of others); *cf. State v. Martin*, 329 Md. 351, 368 (1993) (discussing imperfect self-defense).

In *State v. Martin*, our Supreme Court held that it was not an abuse of discretion to decline a self-defense instruction that was predicated largely on what the defendant subjectively believed during an earlier, separate encounter with the victim on the same day that the defendant shot the victim. 329 Md. at 368. The defendant, who had been drinking and smoking marijuana, testified to remembering very little. *Id.* at 355. From other evidence, however, it was reasonable to infer that during the earlier encounter, the defendant was afraid of the victim. *Id.* at 364. Other evidence also showed that prior to being shot, the victim approached the defendant with a beer cup and a round, plastic, three-gallon, beer container in his hands. *Id.* at 354-55. Also, a defense expert testified

about what the defendant's condition "was liable to" be, or "could have been," at the time of the fatal shooting, given that the defendant was an alcoholic and how much he was said to have consumed that day. *Id.* at 356. From this, the defendant contended that there was "some evidence" from which the jury could have inferred that defendant subjectively believed that deadly force was necessary at the time he shot the victim. *Id.* at 364.

Our Supreme Court, however, reminded that "[i]t is the defendant's subjective belief at the moment that the fatal shot is fired that is relevant and probative[.]" *Martin*, 329 Md. at 365. Without some evidence from which to infer that defendant's earlier "state of mind was still in existence" at the time of the shooting, a self-defense instruction was not generated. *Id.* at 365. Expert testimony about what the defendant's state of mind *might have been* was insufficient. Ultimately, the Court held that "[w]here the defendant's subjective belief at a particular time must be shown to generate a defense, only evidence bearing directly on that issue will suffice. Evidence of the defendant's subjective belief at some earlier time will not do." *Id.* at 368.

Even if there is some evidence of what the defendant actually believed at the time, it will not generate a defense-of-others instruction if, in the defendant's mind, the threat he was protecting against was less serious than "immediate and imminent risk of death or serious harm." *Lee*, 193 Md. App. at 65. In *Lee*, the defendant, while working as a security officer at a tavern, shot the victim six times in the tavern's parking lot. *Id.* at 50-52. At trial, the defendant explained that the victim had approached him with a knife. *Id.* at 56. The defendant did not retreat "[b]ecause it was people standing behind me. If I was

to leave, maybe one of those people would get hurt." *Id.* at 56. On appeal, we held that defense of others was not generated because a belief that some patrons *may have been* hurt was not enough from which to infer *actual belief* of imminent and immediate death or serious harm:

> The facts adduced at trial did not include 'some evidence' that the appellant actually believed when he shot [the victim] that any other person—patron or coworker—was in immediate and imminent danger . . . much less that he held an objectively reasonable belief of the same. The appellant's testimony that, had he retreated, '*maybe* one of those people would get hurt,' could not support a reasonable inference that he actually believed such harm was imminent or immediate. He did not testify that he thought a patron would be killed or otherwise seriously injured if he retreated. As defense of others was not generated as a defense at trial, the appellant was not entitled to a jury instruction about it, as a matter of law.

Id. at 65 (emphasis in original) (footnote omitted).

Of course, even though there must be some evidence of the defendant's subjective mental state at the relevant moment to generate a defense-of-others instruction, this does not mean that the defendant must testify. Instead, the defendant's mental state can be demonstrated entirely through circumstantial evidence (including evidence put on by the State)—the defendant need not take the stand or otherwise affirmatively put on evidence. *See, e.g., Martin*, 329 Md. at 363 ("Ordinarily, one's state of mind is proven circumstantially."); *Holt v. State*, 236 Md. App. 604, 622-23 (2018) ("To invoke either perfect or imperfect self-defense . . . [d]irect testimony is not necessary; the necessary belief can be shown circumstantially by [the defendant's] acts, conduct and words.")

(cleaned up); *Dashiell v. State*, 214 Md. App. 684 (2013) (holding that a perfect self-defense instruction was generated in part because of testimony from witnesses to the altercations between the defendant and victim); *cf.* Moylan, *Criminal Homicide Law* (MICPEL, 2002), § 9.4, p.167 ("There is no requirement that a defendant must take the stand and testify in order to generate a theory of mitigation . . . . Evidence of that may be produced by other defense witnesses or by State's witnesses.").

Applying those principles to this case, we see no abuse of discretion in the trial court's declining to instruct on defense of others. Ms. McRavin testified that she was fearful when she saw Mr. Thompson pull out what she thought was a gun. At best, however, this tended to show only what Ms. McRavin subjectively believed, not what Mr. McRavin believed.[28] Here, those two mental states cannot be treated as one: the shooting occurred at least some moments *after* Ms. McRavin had returned inside,[29] so Ms. McRavin necessarily did not see what Mr. McRavin saw at the moment when Mr. McRavin started shooting, nor did she witness the shooting itself. Inferring from Ms.

[28] Ms. McRavin claimed that Mr. Thompson was shooting at the McRavin door, but she did not see it occur. None of the other witnesses corroborated that part of her testimony. There was also no forensic evidence that showed bullet holes on the McRavin home door. Neither party contends on appeal that this part of Ms. McRavin's testimony was sufficient to show that Mr. McRavin subjectively believed that his mother or son was in imminent and immediate danger. Accordingly, we do not address this issue.

[29] As noted earlier, Ms. McRavin's testimony was inconsistent as to the precise time that she went inside and how much of the interaction between Mr. Thompson and Mr. McRavin she witnessed. But even a read of her testimony most favorable to the defense still shows that she was inside the home before the shooting began.

McRavin's fearfulness that Mr. McRavin in fact believed that his mother or son were in imminent and immediate danger would require the kind of speculation about Mr. McRavin's mental state that *State v. Martin* rejected.

For the same reasons, looking to Ms. McRavin's beliefs even earlier in time would not change that result. At least an hour before Mr. Thompson arrived, and after hearing from Ms. Davis that Mr. Thompson was on his way, Ms. McRavin handed Mr. McRavin a gun. Even if taking the gun was some evidence that Mr. McRavin in fact believed he had to protect his mother and son from Mr. Thompson, it was only evidence of his belief at that time—*i.e.*, approximately an hour before the shooting. It was not evidence that, at the moment of the shooting, Mr. McRavin subjectively believed that his mother or son was in imminent and immediate danger of death or serious harm.

Mr. McRavin points us to no other evidence (including circumstantial evidence) that could generate a defense-of-others instruction, and our own review has returned none. Indeed, there was no evidence that Mr. McRavin's mother or son were on the porch or otherwise in Mr. Thompson's path. The only evidence was that Mr. McRavin's mother and son were inside, that Mr. McRavin was outside and opened fire on Mr. Thompson at some range, and that Mr. McRavin shot Mr. Thompson exclusively in the back of his body (specifically, in the back of Mr. Thompson's head, his left upper arm, and his left lower back). In sum, there was no evidence, direct or circumstantial, to support that Mr. McRavin subjectively believed that his son or mother was in imminent and immediate danger of death or serious harm when he shot Mr. Thompson. We hold that the circuit

court did not abuse its discretion in denying Mr. McRavin's request for a perfect defense-of-others instruction.

D. Defense-of-Necessity Instruction

Mr. McRavin next asserts that there was some evidence to justify a defense-of necessity-instruction,[30] pointing out that his mother and son were in the home when Mr. Thompson approached with what appeared to be a gun; Ms. Davis summoned Mr. Thompson to the McRavin home; Mr. Thompson reached into his "dip area" to retrieve his weapon; and Mr. McRavin ran away and did not commit any further criminal acts after shooting Mr. Thompson. Because of these circumstances, Mr. McRavin contends that he had no other option than to illegally take possession of a regulated firearm and to use it. We disagree.

In *State v. Crawford*, the Supreme Court of Maryland explained that the necessity defense arises when the defendant must choose between two evils, one of which involves doing something illegal. 308 Md. 683, 691 (1987). Its justification is "not that a person faced with a choice of two evils lacks the *mens rea* for the crime in question." *Id.* Rather,

[30] In his opening brief, Mr. McRavin limited this challenge to his conviction for possession of a regulated firearm after being convicted of a disqualifying offense, and he did not argue that it related to his other convictions. In his reply brief, he attempted to expand that challenge to encompass his conviction for using firearm in committing a crime of violence, but he did not argue that it extended to his manslaughter conviction. We give Mr. McRavin the benefit of the expanded scope, and we consider his challenge as reaching both of his firearm offense convictions. Our analysis, however, is no different as to either conviction. As such, we focus our discussion on Mr. McRavin's conviction for possession of a regulated firearm.

it is that "the law promotes the achievement of higher values at the expense of lower ones and that 'sometimes the greater good for society will be accomplished by violating the literal language of the criminal law.'" *Id.* (cleaned up).

In the case of unlawful possession of a regulated firearm, the defendant must point to some evidence of each of the following five elements in order to generate a defense-of-necessity instruction:

> (1) the defendant must be in present, imminent, and impending peril of death or serious bodily injury, or reasonably believe himself or others to be in such danger, (2) the defendant must not have intentionally or recklessly placed himself in a situation in which it was probable that he would be forced to choose the criminal conduct, (3) the defendant must not have any reasonable legal alternative to possessing the handgun, (4) the handgun must have been made available to the defendant without a preconceived design, and (5) the defendant must give up possession of the handgun as soon as the necessity or apparent necessity ends.

Crawford, 308 Md. at 699. A necessity defense is foreclosed, however, if "the threatened harm is property damage, or future personal injury," or that "the compulsion to possess the handgun arose directly from the defendant's misconduct." *Id.*

Here, there was no evidence to suggest that it was necessary for Mr. McRavin to possess the handgun.[31] As to the first element, and as we discussed above, when Mr. McRavin took the gun, neither he nor his mother or son was in imminent and immediate

[31] The State does not contend that a necessity defense is unavailable for the crime of possession of a regulated firearm after having been convicted of a disqualifying crime. For this reason, we assume. without deciding, that the necessity defense would be available upon a showing of some evidence to generate it.

danger. Indeed, Mr. Thompson did not arrive until at least one hour later.[32] *Cf. McMillan v. State*, 428 Md. 333, 344 n.3 (2012) (quoting MPJI-Cr 5:03) ("The defense of duress is not established by proof that the defendant had been threatened with violence at an earlier time. [The defendant] must have been under a present threat at the time of the commission of the crime charged."); *see also Crawford*, 308 Md. at 699, 701 (holding that defense of necessity applies to illegal possession of a regulated firearm when a defendant picks up an assailant's handgun immediately after the defendant "has been attacked and shot and lies injured after falling from a window . . . [and] hears what he believes are his aggressors in hot pursuit.").

Moreover, even if we were to assume that there was some evidence of the first element, there was no evidence of either the second or the third. The evidence demonstrated that Mr. Thompson did not arrive for at least one hour. Instead of leaving the scene with his mother and son, calling the police to inform them that Mr. Thompson was on his way, or shutting himself and his family inside the home, Mr. McRavin illegally took possession of the gun and waited on the porch until Mr. Thompson arrived. Mr. McRavin has failed to point to evidence that he did not intentionally place himself in a situation where he would probably have to choose criminal conduct, or that he did not have at least one reasonable, legal alternative.

[32] As discussed earlier, the trial court made this factual finding, and neither party disputes it on appeal. For this reason, we do not address it. *See Wise v. State*, 471 Md. 431, 443 (2020) ("When circuit courts make factual findings in support of their legal conclusions, this Court cannot disturb such factual findings absent clear error.").

Having concluded that there is no evidence of at least the first three elements, and because there must be some evidence of all five elements to generate a defense of necessity instruction, we need go no further. We hold that the circuit court did not abuse its discretion in declining to give the instruction.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.