Circuit Court for Baltimore City
Case No. 117067003 & 117067004

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1841

September Term, 2017

CARLTON BEACHUM

v.

STATE OF MARYLAND

Graeff,
Kehoe,
Berger,
JJ.

Opinion by Graeff, J.

Filed: April 23, 2019

On September 11, 2017, a jury sitting in the Circuit Court for Baltimore City convicted appellant, Carlton Beachum, of voluntary manslaughter of Sherman Smith, attempted voluntary manslaughter of Joseph Sanders, second degree assault, two counts of use of a firearm in the commission of a crime of violence, and felon in possession of a firearm. The court sentenced appellant to an aggregate term of 30 years imprisonment, 10 to be served without the possibility of parole.[1]

On appeal, appellant raises the following question for this Court's review, which we have rephrased slightly, as follows:

> Did the trial court err by failing to instruct the jury on the defense of habitation?

For the reasons set forth below, we answer this question in the negative, and therefore, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On the night of February 22, 2017, appellant shot and killed Mr. Smith and wounded Mr. Smith's uncle, Joseph Sanders. The shooting occurred in Baltimore outside a two-story row house (the "Residence"), which appellant owned.[2] At the time, Mr.

[1] The court sentenced appellant as follows: 10 years on the voluntary manslaughter conviction; 10 years, consecutive, on the attempted voluntary manslaughter conviction; five years, consecutive and without the possibility of parole, on the felon in possession of a firearm conviction; and five years, consecutive and without the possibility of parole, on the use of a firearm in the commission of a crime of violence conviction. The court merged the assault conviction with the attempted voluntary manslaughter conviction for sentencing purposes.

[2] The first floor of the Residence consisted of a front bedroom room, a kitchen area, and a bathroom, and the second floor had two bedrooms, a kitchen, and a bathroom.

Smith's daughter, Sheray Smith, and Sheray's maternal aunt, Lakia Smith were renting bedrooms on the second floor of the Residence.[3] Appellant lived on the first floor of the Residence with his girlfriend. The front entrance of the Residence consisted of a glass storm door on the exterior, behind which was a small landing, and then a wood door, which led to a hallway.

Prior to the shooting, appellant and Sheray had several disputes regarding rent. When Sheray moved into the Residence with her fiancé on January 10, 2017, she agreed to a week-to-week tenancy. Appellant testified, however, that she became delinquent on her rent within the first two weeks of the lease.

On February 14, 2017, appellant confronted Sheray about the rent and gave her notice of eviction. In the ensuing argument, Sheray called her father, Mr. Smith, and the police.

Officer Brandon Reed, a member of the Baltimore City Police Department, responded to the dispatch call. Shortly after arriving at the Residence, he spoke with appellant and Mr. Smith outside the house. During the conversation, appellant produced Sheray's lease agreement and explained that he wanted to evict Sheray for non-payment of rent. Officer Reed advised that Sheray could not be evicted without an order from the court, which appellant had not obtained. Toward the end of the conversation, appellant

[3] Because there are two Ms. Smith's, we will refer to them by their first names, to avoid confusion. Sheray lived with her fiancé, and Lakia lived with her four-year-old child.

told Officer Reed and Mr. Smith that Sheray would "be out of her[e] by Friday, I can tell you that."

On February 15, 2017, appellant filed a petition to evict Sheray, and the next day he attempted to serve Sheray a 30-day notice of eviction. Sheray refused to accept the notice, and told him: "Next time my peoples come over here there's gonna be some shit, because my peoples ain't no joke." Appellant responded that he was going "to make [her] feel a little uncomfortable here." He removed Sheray's bedroom door from its hinges. After Sheray called the police, he replaced the door.[4]

On February 22, 2017, Sheray arrived home from a store to find that her bedroom door was locked. When Sheray confronted appellant about the door, appellant accused her of locking it and of being on drugs.

Sheray testified that, during the confrontation, appellant was "being loud and aggressive," and at one point, he charged at her. Using Lakia's cellphone, Sheray called Mr. Smith and asked him to come over to intervene in the dispute.[5] Mr. Smith, who was at his home with his wife and Mr. Sanders, told Sheray that he was coming to the Residence. Mr. Sanders testified that he overheard some of the phone conversation

[4] Lakia testified that appellant also removed the knob and lock of a door separating the first and second floor of the Residence. It is unclear when this occurred. Officer Reed testified that, on February 14, 2017, the day he was dispatched to the Residence, the door did not have a knob.

[5] Sheray explained that it was Lakia who actually placed the call and then gave the phone to her.

between appellant and Mr. Smith. Specifically, he heard a male on the other end of the call state: "You bitches [are] not gonna leave out of here tonight."

Mr. Smith and Mr. Sanders took a cab to the Residence. By the time they arrived, appellant and Sheray had returned to their rooms. When Mr. Smith knocked on the front door of the Residence, Sheray left her room, descended the stairs, and opened the front door.

Mr. Smith told Sheray to go back to her room. He proceeded to knock on appellant's door, while Mr. Sanders remained in the vestibule area. Appellant opened the door, and Lakia testified that she overheard Mr. Smith telling appellant that he should not have talked to Sheray "like that," and that Sheray and Lakia were "moving out."

Appellant similarly testified that Mr. Smith accused him of "disrespecting [his] daughter," and appellant responded: "Bro, I didn't disrespect your daughter." Mr. Sanders testified that Mr. Smith asked appellant to give Sheray more time to pay the rent, and that Mr. Smith's demeanor was calm during the conversation.

Appellant then observed Mr. Sanders, who he had never seen before. He slammed the bedroom door and retrieved a gun from his room. Appellant testified at trial that he armed himself because he thought Mr. Smith and Mr. Sanders were at the Residence to "make good" on Sheray's February 15, 2017, threat.[6] After exiting his bedroom, appellant looked toward the front door of the Residence and saw that Mr. Smith and Mr. Sanders

[6] As mentioned *supra*, appellant testified that, on February 15, Sheray told him: "Next time my peoples come over here there's gonna be some shit, because my peoples ain't no joke."

had exited the front door and were standing on the outside steps. Appellant stated that it was "[l]ike they was trying to lure me outside." He approached them because he felt that if he did not continue his conversation with Mr. Smith, Sheray would allow Mr. Smith back inside the Residence.

With his gun on his thigh, appellant went to the glass storm door leading to the porch, opened it a couple of inches, and asked Mr. Smith: "What was you saying, bro?" Mr. Smith again accused him of disrespecting Sheray, and appellant again denied that he disrespected her.

Appellant testified that Mr. Smith reached for his "dip" and pulled out a gun.[7] Appellant fired two shots through the storm door, striking Mr. Sanders and Mr. Smith while the two were facing the door. At the time of the shooting, Mr. Sanders was standing closer to the front door than Mr. Smith, although the two were nearly "side by side." Appellant observed Mr. Sanders fall down in front of the door and Mr. Smith run up a nearby alley.

Appellant testified that he returned to his bedroom to store the gun, and then he left the Residence. He entered the nearby alley and observed Mr. Smith, who had been shot and was lying on the ground with a revolver near his hand. He told Mr. Smith to "hold on."

Mr. Sanders offered a different account of the shooting. He testified that he was on the bottom step of the porch when he turned around and saw that Mr. Smith had a gun

[7] Appellant testified that, when he retrieved his gun from his room, he was unaware that Mr. Smith was armed.

on his right leg. He threw up his hands and said: "Bro, what's going on?" Mr. Smith then shouted, "[l]ook out," and pushed Mr. Sanders out of the way. While Mr. Smith and Mr. Sanders were facing away from appellant, appellant fired two shots through the glass storm door, hitting Mr. Sanders. Mr. Sanders fell down and screamed for Mr. Smith to run. He then crawled to a nearby gutter and hid behind a vehicle. He did not observe where Mr. Smith went.

Sheray testified that, prior to the shooting, she was in Lakia's room looking out a window with a view of the front door of the Residence. She saw Mr. Smith and Mr. Sanders exit the house and stand beside each other at the bottom of the porch steps. She then observed appellant come to the storm door and start shooting.[8] She heard one shot initially, and then two additional shots. Mr. Smith ran up an adjacent alley, and Mr. Sanders ran across Brunswick St. Following the shooting, she called the police, who arrived minutes later. Sheray then went downstairs and exited the Residence.

Appellant was arrested outside the Residence. He told the police that he had shot Mr. Smith and Mr. Sanders because Mr. Smith had pulled out a gun and he was "afraid of getting killed." He stated that he had a gun underneath his bedroom mattress, which the police subsequently retrieved.

At trial, James Wagster, a Forensic Scientist at the Baltimore City Police Crime Lab, testified that two cartridges were recovered from the scene of the crime. Both were fired from the gun retrieved from the Residence, i.e., a Glock pistol.

[8] Sheray testified, however, that she did not see appellant's gun.

The parties stipulated that appellant previously had been convicted of possession with the intent to distribute a controlled substance, a crime that prohibited him from possessing a firearm. They also stipulated that DNA swabs taken from the revolver recovered next to Mr. Smith's body matched Mr. Smith.

During closing, the State argued that appellant deliberately and premeditatedly shot Mr. Smith and Mr. Sanders. It claimed that appellant did not act in self-defense because he was the initial aggressor, did not actually believe that he was in immediate danger, and did not use a reasonable amount of force against Mr. Smith and Mr. Sanders.

Defense counsel argued that appellant shot Mr. Smith and Mr. Sanders in self-defense. He stated that Mr. Smith, on the night of the shooting, did not call the police, but instead travelled to the residence, while armed, for the purpose of "escalating" a conflict with appellant. Counsel argued that appellant shot Mr. Smith and Mr. Sanders because he reasonably believed, based on Sheray's prior threats, that the two intended to cause appellant harm.

The jury subsequently found appellant guilty of several offenses, including voluntary manslaughter of Mr. Smith and attempted voluntary manslaughter of Mr. Sanders. This appeal followed.

DISCUSSION

Appellant contends that the "trial court erred in failing to instruct the jury on the defense of habitation." He argues that, because the shooting occurred when the victims were on the front steps of the Residence, the victims were within appellant's home or the

curtilage of the Residence, and therefore, he was entitled to raise the defense of habitation, which excepted him from the duty to retreat in a typical self-defense case.

The State contends that the "trial court properly denied [appellant's] request for a jury instruction on the defense of habitation." It asserts that the evidence did not support the defense of habitation because the victims were not entering or attempting to enter the house at the time of the shooting. Rather, the "uncontroverted evidence . . . was that the victims had left the house and were outside on the public sidewalk or steps" of the house when appellant left his apartment and went looking for the victims "to reinitiate contact." Moreover, the State argues that the "trial court's instructions on self-defense, which did not include a duty of retreat, fairly covered the defense of habitation." Finally, the State argues that the omission of appellant's requested instruction regarding the defense of habitation did not prejudice appellant because the instruction does not "affirmatively state that the [appellant] [did] not have a duty to retreat."

A.

Proceedings Below

Following the State's case-in-chief, the court held a bench conference with the attorneys to discuss, among other things, jury instructions. Defense counsel argued that the defense of habitation instruction was generated by the facts because the "steps and the door" outside the Residence constituted the "curtilage" of the house. The prosecutor argued that the instruction was not appropriate because the shooting occurred when Mr. Smith and Mr. Sanders were outside the Residence, and the relevant dwelling for purposes

of the defense of habitation was not the entire Residence, but only appellant's apartment on the first floor.

The court agreed with the State, stating: "The steps are a common area outside of the protected area. The protected area inside the storm door is an area that – in which [appellant] has a proprietary interest, but so also does [the victim's] daughter, [Sheray]." The court advised that it intended to "give the self-defense/imperfect self-defense [instruction]" and would consider giving the defense of habitation instruction only if the evidence at trial showed that Mr. Smith and Mr. Sanders "were attempting to come back in the [Residence] or that they never left."

At the close of trial, counsel again met with the court to discuss jury instructions. The court informed them that, because there was no evidence that either Mr. Smith or Mr. Sanders was attempting to enter the Residence at the time of the shooting, the court was not going to give the defense of habitation instruction. Defense counsel objected.

The court advised that it was giving the "full self-defense" instruction from the Maryland Criminal Pattern Jury Instruction ("MCPJI-Cr") 4-117.2, but it would not include an instruction regarding the duty to retreat. When the State asked why the court was omitting that instruction, the court stated:

> You can argue that in reference to how safe he was. But I am not going to give [the instruction], one, because this is a Baltimore City jury. And although this jury seems to be very sophisticated, I have never met a Baltimore City jury who understood retreat. So okay. And then I would say if I give the instruction the [appellant] does not have to retreat if he was in his own home.

The court then gave the following instructions regarding self-defense:

> You have heard evidence that [appellant] killed Mr. Smith and attempted to kill Mr. Sanders. You must decide whether self-defense is a complete defense, a partial defense, or no defense at all. In order to convict the [appellant] of murder, the State must prove that the [appellant] did not act in either complete or partial self-defense.
>
> * * *
>
> Now, self-defense requires four—it has four different elements. And you are required to find the [appellant] not guilty if all of the following four factors are present. Factor number one, the [appellant] was not the aggressor or although the [appellant] was the initial aggressor, he did not raise the fight to the deadly force level. . . . Number two, the [appellant] actually believed that he was in immediate and imminent danger of death or serious bodily harm. Number three, that the belief was reasonable. And number four, that the [appellant] used no more force than was reasonably necessary to defend himself in light of the threatened or actual force.[9]

[9] This instruction was consistent with the model pattern instruction, with the exception of the duty to retreat. MJPI-CR 4:17.2 (C) provides, in pertinent part:

> Self-defense is a complete defense, and you are required to find the defendant not guilty, if all of the following four factors are present:
>
> > (1) the defendant was not the aggressor [[or, although the defendant was the initial aggressor, [he] [she] did not raise the fight to the deadly force level]];
> >
> > (2) the defendant actually believed that [he] [she] was in immediate and imminent danger of death or serious bodily harm;
> >
> > (3) the defendant's belief was reasonable; and
> >
> > (4) the defendant used no more force than was reasonably necessary to defend [himself] [herself] in light of the threatened or actual force. [[This limit on the defendant's use of deadly force requires the defendant to make a reasonable effort to retreat. The defendant does not have to retreat if [the defendant was in his or her home] [retreat was unsafe] [the avenue of retreat was unknown to the defendant] [the defendant was being robbed] [the defendant was lawfully arresting the victim]].

In order to convict [appellant] of murder, the State must prove that self-defense does not apply in this case. But that's in order to convict the [appellant] of murder in the first degree, attempt, murder in the second degree, or attempt, assault in the first degree, assault in the second degree, or manslaughter. In order to convict the [appellant] of those charges, the State must prove that self-defense does not apply.

If you find self-defense, it is a defense to any one of those charges. This means that you are required to find him not guilty unless the State has persuaded you beyond a reasonable doubt that at least one of the four factors I just announced was absent.

* * *

But even if you find that the [appellant] did not act in complete self-defense, the [appellant] may still have acted in partial self-defense. If the [appellant] actually believed that he was in immediate imminent danger of death or serious bodily harm, even though a reasonable person would not have believed that, the [appellant's] actual, though unreasonable belief is a partial self-defense and the verdict should be . . .[10] guilty of voluntary manslaughter rather than murder. If the [appellant] used greater force than a reasonable person would have used, but the [appellant] actually believed that the force was necessary, the [appellant's] actual, though unreasonable belief is a partial self-defense and the verdict should be guilty of voluntary manslaughter rather than murder. Voluntary manslaughter for Mr. Smith or attempted voluntary manslaughter or and/or assault in the second degree involving Mr. Sanders.

In order to convict the [appellant] of murder or assault in the first degree, the State must prove that the [appellant] did not act in complete self-defense or partial self-defense. If the [appellant] did act in complete self-defense, the verdict must be not guilty of those charges. If the [appellant] . . . did not act in complete self-defense, but did act in partial self-defense, the verdict must be guilty of voluntary manslaughter, attempted voluntary manslaughter, and/or assault in the second degree, but not guilty of the murder counts or first degree assault counts.

[10] In the transcript, the word "not" appears here. We have modified the text to reflect the correct statement of law. And, we note, the jury found appellant guilty of voluntary manslaughter, not murder.

B.

Analysis

Pursuant to Maryland Rule 4-325(c), a trial court must, upon the request of any party, instruct the jury regarding the applicable law. *Nicholson v. State*, 239 Md. App. 228, 239 (2018), *cert. denied*, 462 Md. 576 (2019); *Woolridge v. Abrishami*, 233 Md. App. 278, 305, *cert. denied*, 456 Md. 96 (2017). In reviewing a trial court's failure to give a requested instruction, we consider the following factors: "'(1) whether the requested instruction was a correct statement of the law; (2) whether it was applicable under the facts of the case; and (3) whether it was fairly covered in the instructions actually given.'" *Wallace & Gale Asbestos Settlement Trust v. Busch*, 238 Md. App. 695, 715 (quoting *Tharp v. State*, 129 Md. App. 319, 329 (1999)), *cert. granted*, 462 Md. 84 (2018). *See also* Maryland Rule 2-520(c) ("The court need not grant a requested instruction if the matter is fairly covered by instructions actually given."). We review a trial court's decision not to give a proposed jury instruction under an abuse of discretion standard, but we will reverse if "'the defendant's rights were not adequately protected.'" *Carroll v. State*, 428 Md. 679, 689 (2012) (quoting *Cost v. State*, 417 Md. 360, 369 (2010)).

Here, defense counsel asked the court to give MJPI-Cr. 4:17.2(D), the instruction for the defense of habitation, which states:

> Voluntary manslaughter is an intentional killing that is not murder because the defendant acted in partial defense of [his] [her] home.
>
> You have heard evidence that the defendant killed (name) in defense of [his] [her] home. You must decide whether this is a complete defense, a partial defense, or no defense in this case.

> In order to convict the defendant of murder, the State must prove that the defendant did not act in either complete defense of [his] [her] home or partial defense of [his] [her] home. If the defendant acted in complete defense of [his] [her] home, your verdict must be not guilty. If the defendant did not act in complete defense of [his] [her] home, but did act in partial defense of [his] [her] home, the verdict should be guilty of voluntary manslaughter and not guilty of murder.
>
> Defense of one's home is a complete defense, and you are required to find the defendant not guilty, if all of the following five factors are present:
>
> 1. (name) entered [or attempted to enter] the defendant's home;
>
> 2. the defendant actually believed that (name) intended to commit a crime that would involve an imminent threat of death or serious bodily harm;
>
> 3. the defendant reasonably believed that (name) intended to commit such a crime;
>
> 4. the defendant believed that the force that [he] [she] used against (name) was necessary to prevent imminent death or serious bodily harm; and
>
> 5. the defendant reasonably believed that such force was necessary.
>
> If you find that the defendant actually believed that (name) posed an imminent threat of death or serious bodily harm, and that such belief was reasonable, you must find the defendant not guilty. If you find that the defendant actually believed that (name) posed an imminent threat of death or serious bodily harm, but that such belief was unreasonable, you should find the defendant not guilty of murder, but guilty of manslaughter. If you find that the State has persuaded you, beyond a reasonable doubt, that the defendant did not have an actual belief that (name) posed an imminent threat of death or serious bodily harm, you should find the defendant guilty of murder.

As indicated, the State contends that the court properly denied the requested instruction. It lists the following reasons in support: (1) the instruction was not applicable to the facts of the case because the victims, at the time of the shooting, were not entering or attempting to enter appellant's home; (2) it was fairly covered by the instructions

actually given because the court's instructions on self-defense did not include a duty to retreat; and (3) even if the court erred in failing to give the instruction, there was no prejudice to appellant.

We address first the State's argument that the defense of habitation was fairly covered by the self-defense instruction given. In this regard, this Court's opinion in *Sangster v. State*, 70 Md. App. 456 (1987), *aff'd on different issue*, 312 Md. 560 (1988), is instructive.

In *Sangster*, the defendant requested an instruction on the "castle doctrine," i.e., that he did not have a duty to retreat because he was attacked in his home. *Id.* at 480–81. This Court held that the instruction was "correctly refused because the castle doctrine is an exception to" the general duty to retreat in a self-defense case, and in that case, the court did not include the duty to retreat in the instruction on self-defense.[11] *Id.* at 481. The court stated: "It would be senseless to instruct the jury on the castle doctrine where no instruction was given on the duty to retreat." *Id.*

[11] This Court described the relationship between the castle doctrine and the defense of habitation as follows:

> The habitation defense applies when a defendant has used deadly force in response to a reasonable belief that the victim intended to commit a felony in the home or to inflict serious bodily harm or death on the inhabitants of the home. This defense is essentially a corollary to the "castle doctrine," which allows a person to use deadly force without the need to retreat, in order to protect the person's home.

Braboy v. State, 130 Md. App. 220, 226 n.9, *cert. denied*, 358 Md. 609 (2000).

Similarly, here, even assuming, *arguendo*, that the defense of habitation was generated by the evidence, the circuit court, in giving the instruction on self-defense, did not instruct the jury that appellant had a duty to retreat. Accordingly, as in *Sangster*, the circuit court did not abuse its discretion in deciding not to give the requested instruction.

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