UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1101

September Term, 2014

CLIFTON SALAAM

v.

STATE OF MARYLAND

Krauser, C.J.,
Graeff,
Friedman,

JJ.

Opinion by Graeff, J.

Filed: April 4, 2016

A jury in the Circuit Court for Wicomico County convicted appellant, Clifton Salaam, of attempted second degree murder and related offenses. The court sentenced him to thirty years, all but twenty years suspended, for the conviction of attempted murder, five years, consecutive, for the conviction of use of a handgun in a crime of violence, and five years consecutive, for the conviction of possession of a handgun by a prohibited person.

On appeal, appellant presents four questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the circuit court abuse its discretion in admitting evidence of attempts to induce two witnesses not to testify?

2. Did the circuit court abuse its discretion in overruling objections to comments made by the prosecutor during closing argument?

3. Did the circuit court abuse its discretion in admitting a jail recording of a telephone conversation that was not properly authenticated?

4. Did the circuit court abuse its discretion in declining to give the jury an instruction on self-defense?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On October 13, 2013, Nicholas Sykes was shot while visiting his friend Montez Scott at 214 Green Street, where Mr. Scott lived with his children's mother, Christina Mewborn. Mr. Sykes testified that, because he was intoxicated during the visit and was given drugs in the hospital, he remembered only "bits and pieces" of that day. Mr. Sykes further stated that he was friends with Ms. Mewborn's sister, Syretta Copeland.

Daniel George, a taxi driver, testified that, on October 13, 2013, he received a call to go to Green Street. En route, he "picked up a young lady," who sat in the right rear

passenger-side seat of Mr. George's vehicle. When he arrived at 214 Green Street, Mr. George saw Mr. Sykes, a prior passenger.

Mr. George saw Mr. Sykes talking and debating with a second man. When Mr. Sykes entered the taxi, a "light skinned guy" on the porch of the residence asked Mr. Sykes "about some money or something." Mr. Sykes asked Mr. George for change for a $20 bill. After Mr. George gave Mr. Sykes two $10 bills, Mr. Sykes exited the vehicle. The guy on the porch came to the car, and Mr. Sykes gave him a $10 bill. The man then produced a gun and shot Mr. Sykes. When the shooter ran away, Mr. George took Mr. Sykes to the hospital.

Later that day, Mr. George went to the Fruitland Police Department to look at some photographs. Mr. George selected a photo of appellant based on his light skin and because the photo "looked like" the shooter. Although Mr. George was "not 100 percent positive" that the person in the photo was the individual who shot Mr. Sykes, he drew a ponytail on the photo because he remembered that "the shooter had a ponytail." At trial, when asked if he saw "the person in the courtroom that was the shooter," Mr. George identified appellant as "somebody that looks like him."

During redirect examination, Mr. George testified that he was shown a second photo array at his home. Mr. George selected a photo of appellant. He testified that he was "still not 100 percent certain," but the photo was "similar."

Nicai Butcher testified that, on October 13, 2013, she was picked up by a cab, which then went to Green Street. When the cab pulled up to a house, Ms. Butcher saw "two men . . . standing toe and toe, like in each other's faces." Ms. Butcher identified one of the men

as appellant and the other as the victim. Appellant was African-American, light skinned and "had hair which was back in a ponytail." When the victim started to come toward the taxi, a "guy that was on the porch . . . said something about him owing some money." The victim asked the cab driver if he had any change for him. As the victim was counting his money on the passenger seat, appellant called the victim a "punk" and a "bitch." The victim "tried to charge at" appellant and stated that he was going to "fuck [appellant] up." Appellant then raised his arm, and using a small black handgun, he shot the victim approximately three times.

Two police officers subsequently came to Ms. Butcher's home and showed her some photos. Ms. Butcher selected a photo of the person that she saw shoot the victim. When asked if she saw that person in the courtroom, Ms. Butcher identified appellant.

Detective Brian Beaver, a member of the Fruitland Police Department, testified that "there was a short period of time when [the department] lost contact with [Ms.] Butcher." Following Detective Beaver's testimony, the State played a recording of a telephone conversation between appellant and Ms. Copeland that occurred while appellant was incarcerated at the Wicomico County Detention Center. During the conversation, the following colloquy occurred:

> [APPELLANT]: Oh, let me ask you this. (Inaudible) the situation (inaudible) hanging around.
>
> [MS. COPELAND]: Huh-uh, I told you what I was about to do, (inaudible).
>
> [APPELLANT]: Yeah, they didn't find her. (Inaudible) didn't find her.

* * *

> [] Yeah, but it ain't you, then they can't. They can't use nothing she says, you feel me? So that's what I'm saying. So that would be good. That would be good anyway.

* * *

> [] Yeah. And there was (inaudible). Yeah, basically it was her. It was really her fault. (Inaudible) it was her fault. But yeah, man, that was a little situation yo. (Inaudible).[1]

After the recording concluded, the State called Ms. Copeland, who testified that, at the time of trial, appellant had been her boyfriend for two years. Ms. Copeland believed that she was at 214 Green Street on October 13, 2013, but she did not specifically remember, and she did not remember a shooting.

Discussion

I.

Appellant's first contention is that the circuit court abused its discretion in admitting evidence that two witnesses, Mr. George and Ms. Butcher, were asked not to testify. He asserts that the evidence was improperly admitted because "the State did not sufficiently link any attempts to induce the witnesses not to testify to him." In support, he cites *Washington v. State*, 293 Md. 465, 468 n.1 (1982) ("Evidence of threats to a witness, or attempts to induce a witness not to testify or to testify falsely, is generally admissible as substantive evidence of guilt when the threats or attempts can be linked to the defendant.").

[1] In closing argument, the State argued that appellant was talking about witnesses Nicai Butcher and Daniel George.

The State contends that appellant's contention is not preserved for this Court's review. Alternatively, it argues that the "court properly exercised its discretion in admitting evidence that [Ms.] Butcher had been threatened," and "any error in admitting [Mr.] George's testimony was harmless beyond a reasonable doubt."

A.

Mr. George

During the prosecutor's examination of Mr. George, the following colloquy occurred:

> [PROSECUTOR:] Okay. Between the day of the shooting and today, have you been threatened in any way?
>
> THE COURT: Overruled.
>
> [MR. GEORGE]: I had somebody, the guy in the van.
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: What's your objection?
>
> [DEFENSE COUNSEL]: Can we approach, Your Honor?
>
> THE COURT: You can tell me.
>
> [DEFENSE COUNSEL]: No, I can't tell you in front of the jury, Your Honor.
>
> THE COURT: Is it the form of the question?
>
> [DEFENSE COUNSEL]: No.
>
> THE COURT: Then what could it be? Come forward.
>
> (Whereupon, counsel and [appellant] approached the bench and the following occurred at the bench:)

[DEFENSE COUNSEL]: Your Honor, if he has been threatened it's not been disclosed in discovery.

[PROSECUTOR]: He just said so yesterday.

THE COURT: Overruled.

[DEFENSE COUNSEL]: Well, Your Honor.

THE COURT: I said overruled, be seated.

[DEFENSE COUNSEL]: You understand.

(Whereupon, counsel and [appellant] returned to the trial tables and the following ensued in open court:)

THE COURT: Please be seated, [defense counsel], and continue with the trial. You may resume.

[PROSECUTOR:] You can answer. Have you been threatened?

[MR. GEORGE:] I mean I heard somebody telling me, you know, this and that. But I told them I wasn't worried about it, you know what I mean.

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

[PROSECUTOR:] Are you concerned?

[MR. GEORGE:] If I see something, if I can remember and I see something, I'm going to speak it, you know what I mean, because it could have been my child. If I don't know something, I don't know 100 percent, I can't say 100 percent that's it, and then make a wrong mistake, I don't want to do that. As far as somebody threaten me, I just put it in the hands of God, you know what I mean, because I got to work, I got to live.

Ms. Butcher

During the prosecutor's examination of Ms. Butcher, the following colloquy occurred:

[PROSECUTOR:] Since the shooting has anyone tried to contact you[?]

[MS. BUTCHER:] Yes.

[PROSECUTOR:] Male or female?

[MS. BUTCHER:] Female.

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

[DEFENSE COUNSEL]: Can we approach, Your Honor?

THE COURT: Why?

[DEFENSE COUNSEL]: Because there are certain arguments I can't make in front of the jury, otherwise there's no reason to object.

(Whereupon, counsel and [appellant] approached the bench and the following occurred at the bench:)

[DEFENSE COUNSEL]: Your Honor, I believe what she's going to do is ask questions about any kind of pressure that's been put on her. [Appellant] did not put any pressure on her, he's been at the jail.

THE COURT: Aren't you now testifying?

[DEFENSE COUNSEL]: No, I'm telling you what I expect her to bring out and why I'm objecting. She just asked her if anybody tried to contact her. And the fact is there's nothing that links any –

THE COURT: You're up here making a factual argument and not a legal argument.

[DEFENSE COUNSEL]: It is a legal argument, Your Honor.

THE COURT: Overruled.

[DEFENSE COUNSEL]: Your Honor, you have to give me a chance to make my argument.

THE COURT: You're not making any scintilla of a legal argument, you're just coming up here and testifying and saying she's going to say this or she's going to say that. Why don't we find out what she says.

[DEFENSE COUNSEL]: Based on the question she just asked her that's exactly what's going to happen.

[PROSECUTOR]: Your Honor, I'm going to proffer that she is going to say that she was contacted but if the phone call was placed, there's a conversation between [appellant] and his girlfriend Syretta, she admits that she tried to contact this witness.

[DEFENSE COUNSEL]: That doesn't mean [appellant] tried to contact her.

THE COURT: She didn't ask if [appellant] did.

[DEFENSE COUNSEL]: That's the implication that she's trying to make.

THE COURT: You can handle it on cross-examination. Overruled.

(Whereupon, counsel and [appellant] returned to the trial tables and the following occurred in open court:)

[PROSECUTOR:] Since the shooting has anybody tried to contact you?

[MS. BUTCHER:] Yes.

[PROSECUTOR:] You indicated it was a female?

[MS. BUTCHER:] Yes.

[PROSECUTOR:] Was it threatening in any way?

[MS. BUTCHER:] No.

[PROSECUTOR:] Did she ask you to do or not to do something?

[MS. BUTCHER:] Basically implying she wanted me not to testify.

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

[DEFENSE COUNSEL]: Hearsay.

[PROSECUTOR]: It's not for the truth of the matter asserted, just that it was said.

[DEFENSE COUNSEL]: Well, it is for the truth of the matter asserted, Your Honor.

THE COURT: Well, is it or isn't it? You two are both trained lawyers, you should know. If there's any doubt, come forward.

(Whereupon, counsel and [appellant] approached the bench and the following occurred at the bench:)

[PROSECUTOR]: The pressure, for lack of a better word, is just that she asked a question. I don't think a question is hearsay anyway.

THE COURT: Right. What's your response to that?

[DEFENSE COUNSEL]: Well, what did the woman say to her, and that is hearsay.

[PROSECUTOR]: I'll rephrase it and say did she ask her something.

(Whereupon, counsel and [appellant] returned to the trial tables and the following occurred in open court:)

[PROSECUTOR:] Did the female ask you a question?

[MS. BUTCHER:] She didn't necessarily ask me any questions.

[PROSECUTOR:] Have you seen that female today?

[MS. BUTCHER:] Yes.

[PROSECUTOR:] Where have you seen her?

[MS. BUTCHER:] In the courtroom here and out there in the hall.

* * *

[PROSECUTOR:] Were you also contacted via the internet, attempted to be contacted?

[MS. BUTCHER:] Attempted.

[PROSECUTOR:] How so?

[MS. BUTCHER:] She had sent me a friend request on Facebook.

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

* * *

[PROSECUTOR:] Was there a screen name attached to the friends request you received?

[MS. BUTCHER:] I believe it was her real name.

[PROSECUTOR:] Which was what?

[MS. BUTCHER:] Serena. I'm not too sure what the rest of it was but I know her face, I know it was her.

[PROSECUTOR:] Was there a picture attached to this friend request?

[MS. BUTCHER:] Yes. I went through a couple of her pictures to make sure it was indeed her.

[PROSECUTOR:] And it's the same woman you just described that you see in the courtroom today?

[MS. BUTCHER:] Yes.

[PROSECUTOR:] Did you accept that friend request?

[MS. BUTCHER:] No.

[PROSECUTOR:] Since the date of the shooting and when you initially spoke with the police officers, have you moved?

[MS. BUTCHER:] Yes.

[PROSECUTOR:] Okay. I don't want you to tell me where you live.

[MS. BUTCHER:] Okay.

[PROSECUTOR:] But when you moved did you contact the State's Attorney's Office and tell them that you moved?

* * *

[MS. BUTCHER:] No.

[PROSECUTOR:] Did there come a time when somebody came looking for you from law-enforcement?

[MS. BUTCHER:] Yes.

[PROSECUTOR:] And then did there come a time within the last say couple weeks that you talked to me or somebody else from the State's Attorney's Office?

[MS. BUTCHER:] Yes.

B.

Preservation

We address first the State's contention that appellant's argument, that the court erred in admitting the evidence that the two witnesses had been asked not to testify, is not preserved for our review. As the State notes, this Court ordinarily "will not decide any . . . issue unless it plainly appears by the record to have been raised in or decided by the trial

court." Md. Rule 8-131(a). Additionally, we have made clear that, "[w]here a party asserts specific grounds for an objection, all other grounds not specified by the party are waived." *Thomas v. State*, 183 Md. App. 152, 177 (2008), *aff'd on other grounds*, 413 Md. 247 (2010).

Here, appellant did not object to Mr. George's testimony on the ground raised on appeal, i.e., that there was no link to the threat and appellant. Rather, defense counsel objected solely on the ground that the State had not disclosed previously that Mr. George had been threatened. Under these circumstances, the claim made on appeal is not preserved for this Court's review, and we will not address it.

With respect to Ms. Butcher's testimony, defense counsel did not object each time the prosecutor posed a question concerning whether someone had attempted to induce the witness not to testify, and he did not request a continuing objection to that line of questioning. Under these circumstances, the issue is not preserved. *See Wimbish v. State*, 201 Md. App. 239, 261 (2011) ("[T]o preserve an objection, a party must either object each time a question concerning the matter is posed or . . . request a continuing objection to the entire line of questioning."), *cert. denied*, 424 Md. 293 (2012) (citations and quotations omitted). Because appellant failed to properly preserve for review his contention that the court erred in admitting evidence that the witness had been asked to testify, we will not address it.

II.

Appellant's next contention involves the prosecution's closing argument. He asserts that the prosecution made two improper comments "relevant to witness intimidation or inducement not to testify."

We begin by setting out the relevant portion of the prosecutor's closing argument:

> [PROSECUTOR:] . . . Now I'll concede that Mr. George did not 100 percent pick [appellant] out of a photo array. But on two occasions he looked at a photo array and he picked the same person. And it's not the same picture, but it's the same [d]efendant. And he said that guy is really similar, he's missing the ponytail, and he is in the picture, but that's the guy that looks similar. Now he never affirmatively said I'm 100 percent certain, but he was just being honest, he didn't want to pick somebody if he wasn't sure. And maybe a little intimidated.
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.
>
> * * *
>
> [PROSECUTOR:] . . . Consider the relationship between the parties and that why is [appellant's] girlfriend going to talk to [Ms. Butcher] if [appellant] isn't the shooter?
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.

Appellant contends that the prosecutor's comments were improper because: (1) "there was no link between [appellant] and any attempt to induce [Mr.] George or [Ms.] Butcher not to testify"; and (2) there was "no basis for the prosecutor's comment that intimidation played a role in Mr. George's uncertainty" about his identification of appellant.

The State contends that the court properly exercised its discretion in overruling appellant's objections because "there was a sufficient connection between" appellant and the threats made to Mr. George and Ms. Butcher, and there was "a fair inference from Mr. George's testimony" that "he was shaken by the threats he received." Alternatively, the State contends that, even if the argument was improper, reversal is not required, because "the arguments at issue were isolated incidents in the course of closing," the "court instructed . . . the jury that closing arguments are not evidence," and "the weight of the evidence . . . against appellant was strong."

In addressing this contention, we note that an attorney has "'great leeway in presenting closing arguments to the jury.'" *Sivells v. State*, 196 Md. App. 254, 270 (2010) (quoting *Degren v. State*, 352 Md. 400, 429 (1999)), *cert. dismissed*, 421 Md. 659 (2011). As the Court of Appeals has explained:

> "[I]t is, as a general rule, within the range of legitimate argument for counsel to state and discuss the evidence and all reasonable and legitimate inferences which may be drawn from the facts in evidence; and such comment or argument is afforded a wide range. Counsel is free to use the testimony most favorable to his side of the argument to the jury, and the evidence may be examined, collated, sifted and treated in his own way. . . . Generally, counsel has the right to make any comment or argument that is warranted by the evidence proved or inferences therefrom; the prosecuting attorney is as free to comment legitimately and to speak fully, although harshly, on the accused's action and conduct if the evidence supports his comments, as is accused's counsel to comment on the nature of the evidence and the character of witnesses which the prosecution produces."

Id. (quoting *Mitchell v. State*, 408 Md. 368, 380 (2009)).

An appellate court reviews the question whether a prosecuting attorney has stepped outside of the bounds of "legitimate" closing argument under an abuse of discretion standard. *Id.* The Court of Appeals has stated:

> The determination whether counsel's "remarks in closing were improper and prejudicial, or simply a permissible rhetorical flourish, is within the sound discretion of the trial court to decide." *Jones-Harris v. State*, 179 Md. App. 72, 105, 943 A.2d 1272, *cert. denied*, 405 Md. 64, 949 A.2d 652 (2008). An appellate court generally will not reverse the trial court "unless that court clearly abused the exercise of its discretion and prejudiced the accused." *Degren*, 352 Md. at 431, 722 A.2d 887.

Id. at 271.

In assessing whether the circuit court here abused its discretion in overruling defense counsel's objection to the prosecutor's comment, we note that evidence of an attempt to induce those witnesses not to testify was admitted into evidence. Under these circumstances, we cannot conclude that the circuit court abused its discretion in allowing the prosecutor to invite the jury to draw inferences from the evidence that was admitted at trial. *Spain v. State*, 386 Md. 145, 156 (2005) ("Courts have consistently deemed improper comments made during closing argument that invite the jury to draw inferences from information that was not admitted at trial.").

And we agree with the State that a fair implication from Mr. George's testimony was that he did feel intimidated as a result of threats he received. He testified: "As far as somebody threaten me, I just put it in the hands of God, you know what I mean, because I got to work, I got to live." Mr. George's testimony that he "put it in the hands of God" permits an inference that he was concerned by what was said to him. Under these

circumstances, the State's comment was not improper, and the circuit court properly exercised its discretion in overruling defense counsel's objections to this argument.

III.

Appellant next contends that "the trial court erred by admitting a recorded conversation without proper authentication." The State contends that the jail recording between appellant and his girlfriend, Ms. Copeland, was properly authenticated by Lieutenant Michael Jamison, a member of the Wicomico County Department of Corrections, and Detective Beaver.

Rule 5-901(a) provides that "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." In authenticating an exhibit, the proponent's burden is "slight." *Dickens v. State*, 175 Md. App. 231, 239 (2007). Rule 5-901(b) provides a non-exhaustive list of examples of authentication, including: (1) "[e]vidence describing a process or system used to produce the proffered exhibit or testimony and showing that the process or system produces an accurate result," Rule 5-901(b)(9); (2) "[c]ircumstantial evidence, such as appearance, contents, substance, internal patterns, location, or other distinctive characteristics, that the offered evidence is what it is claimed to be," Rule 5-901(b)(4); and (3) "[i]dentification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, based upon the witness having heard the voice at any time under circumstances connecting it with the alleged speaker," Rule 5-901(b)(5). In reviewing whether an exhibit is what it purports to

be, the appellate court reviews a trial court's evidentiary determination for an abuse of discretion. *Gerald v. State*, 137 Md. App. 295, 304, *cert. denied*, 364 Md. 462 (2001).

Here, Lieutenant Jamison testified that part of his administrative duties was to supervise the Department of Corrections' intel unit, which "gathers information, gang related information, as well as monitors phone calls and provides recordings to the courts." He testified that all telephone calls at the detention center are recorded through a company called IC Solutions, a private vendor. He explained that all the inmates that "make the phone calls have ID numbers, they enter in their ID numbers, and everything is tracked that way." The parties to the telephone conversation are all put on notice that the call is being recorded by a prerecorded message before each call. Lieutenant Jamison explained how the recordings are transferred to a CD or a DVD, stating that every phone call has its own unique number that is time and date stamped. Although he was "not a hundred percent familiar" with how a specific phone call was tracked to a specific inmate, he testified that it was "mainly done through the ID numbers," as well as "voice recognition . . . capabilities on some of the calls."

Lieutenant Jamison testified that, after he was asked to provide the State's Attorney's Office with a copy of a telephone call for appellant, he logged into the system, copied the recording from the system onto his computer, and created a CD. He identified State's Exhibit No. 9 as a business certification certifying that he created the audio CD with appellant's ID number.

The State then offered into evidence the CD. The court overruled defense counsel's objection, stating: "Well, I believe under [*Washington v. State*, 406 Md. 642 (2008)], a sufficient foundation has been laid and they are self-authenticating under the silent witness theory. So you're free to argue its probative value but I'm going to allow it."

The State subsequently called Detective Beaver, who testified that he listened to the phone call that the Wicomico County Detention Center provided to the State's Attorney's Office, and he was able to recognize the voices of appellant and his girlfriend, Ms. Copeland. When asked how he was able to recognize their voices, Detective Beaver stated: "I interviewed both of them. Both of them have fairly distinctive voices and I recognized the voice and the inflection and the enunciation in their voice." Detective Beaver then identified the CD admitted into evidence as the CD of the phone call that he listened to from the detention center.

Given Lieutenant Jamison's testimony regarding how the call was recorded, that the calls were tracked by inmate ID numbers, that he located the recording by using appellant's ID number, and that he personally downloaded the recording, as well as Detective Beaver's testimony that he recognized appellant's and Ms. Copeland's voices on the recording, there was sufficient evidence to support a finding that the recording was what the prosecutor claimed. Accordingly, the circuit court did not abuse its discretion in determining that the recording was properly authenticated and in admitting the recording into evidence.

IV.

Appellant's last contention is that the circuit court erred in refusing to instruct the jury on self-defense. He contends that there was some evidence to generate the instruction, and therefore, the court was required to give it.

The State contends that "the trial court properly exercised its discretion in declining to instruct the jury on perfect and imperfect self-defense." It asserts that there was not "some evidence" to generate this instruction because, to the extent appellant believed that he was in imminent danger of death or serious bodily harm, his belief was "unreasonable because [the victim] was unarmed and [appellant] made no reasonable effort to retreat from the yard to the house a mere few feet away or flee to another part of the neighborhood."

Maryland Rule 4-325(c) provides that the trial court must, upon the request of any party, instruct the jury regarding the applicable law. *Tucker v. State*, 407 Md. 368, 379 (2009). The court is required to give a requested instruction if: "'(1) the requested instruction is a correct statement of law; (2) the requested instruction is applicable under the facts of the case; and (3) the content of the requested instruction was not fairly covered elsewhere in the jury instruction actually given.'" *McMillan v. State*, 428 Md. 333, 354 (2012) (quoting *Thompson v. State*, 393 Md. 291, 302-03 (2006)).

In determining whether the evidence supports the giving of a requested instruction, there is "a relatively low threshold that must be met." *Id.* at 355. The defendant need only show "'some evidence' that supports the requested instruction." *Bazzle v. State*, 426 Md. 541, 551 (2012). "The source of the evidence is immaterial; it may emanate solely from the

defendant." *Dykes v. State*, 319 Md. 206, 217 (1990). "There must be some evidence to support *each element* of the defense however." *McMillan*, 428 Md. at 355 (emphasis added). "We review 'a trial court's refusal or giving of a jury instruction under the abuse of discretion standard.'" *Bazzle*, 426 Md. at 548 (quoting *Stabb v. State*, 423 Md. 454, 465 (2011)).

Perfect self-defense "is a complete defense to a charge of criminal homicide and, if credited by the trier of fact, results in an acquittal." *State v. Smullen*, 380 Md. 233, 251 (2004). Although imperfect self-defense is not a complete defense, it "'mitigates murder to voluntary manslaughter.'" *Wilson v. State*, 422 Md. 533, 541 (2011) (quoting *State v. Faulkner*, 301 Md. 482, 486 (1984)).

There are four elements to a claim of perfect self-defense:

> "(1) The accused must have had reasonable grounds to believe himself in apparent imminent or immediate danger of death or serious bodily harm from his assailant or potential assailant;
>
> (2) The accused must have in fact believed himself in this danger;
>
> (3) The accused claiming the right of self-defense must not have been the aggressor or provoked the conflict; and
>
> (4) The force used must have not been unreasonable and excessive, that is, the force must not have been more force than the exigency demanded."

State v. Marr, 362 Md. 467, 473 (2001) (quoting *Faulkner*, 301 Md. at 485-86). Moreover, "[o]ne of the elements of the defense of self-defense is the duty of the defendant to retreat or avoid danger if such means were within his power and consistent with his safety." *Burch*

v. State, 346 Md. 253, 283 (citation and quotations omitted), *cert. denied*, 522 U.S. 1001 (1997).

The Court of Appeals has noted that

> "The only substantive difference between the two doctrines, other than their consequences, is that, in perfect self-defense, the defendant's belief that he was in immediate danger of death [or] serious bodily harm or that the force he used was necessary must be objectively reasonable. In all other respects, the elements of the two doctrines are the same."

Smullen, 380 Md. at 253 (quoting *Burch v. State*, 346 Md. 253, 283 (1997)). *Accord Marquardt v. State*, 164 Md. App. 95, 140 n.2, *cert. denied*, 390 Md. 91 (2005). "[E]ach element of the defense of self-defense, perfect or imperfect, must be independently established" by the defendant. *Wilson v. State*, 195 Md. App. 647, 663 (2010), *vacated on other grounds*, 422 Md. 533 (2011).

We agree with the State that the evidence presented here did not generate "some evidence" sufficient to generate the requested instruction. As the State notes, even assuming that appellant believed that he was in immediate danger of death, his belief was not reasonable "because [the victim] was unarmed and [appellant] made no reasonable effort to retreat from the yard to the house a mere few feet away or flee to another part of the neighborhood." Moreover, there was no evidence that appellant held the subjective belief

that he had no avenue of retreat. Accordingly, the evidence did not generate a self-defense instruction, and the circuit court did not abuse its discretion in declining to give the instruction.

JUDGMENTS OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.