Circuit Court for Anne Arundel County
Case No. 02-K-14-2602

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2412

September Term, 2015

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SHYPELLE GUNTER

v.

STATE OF MARYLAND

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Kehoe,
Graeff,
Shaw Geter,

JJ.

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Opinion by Kehoe, J.

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Filed: August 2, 2017

A jury in the Circuit Court for Anne Arundel County convicted Shypelle Gunter, appellant, of second-degree murder, use of a handgun in the commission of a crime of violence, and carrying a handgun.[1] Appellant was sentenced to fifty years' imprisonment, of which fifteen years were suspended. In his appeal from those convictions, appellant presents two questions for our review, which we have rephrased:

1. Did the trial court err in refusing to instruct the jury on voluntary manslaughter based on a hot-blooded response to legally adequate provocation?

2. Did the trial court commit plain error when it interrupted defense counsel's closing argument to state to the jury that, contrary to the court's previous instructions, the State did not need to prove the absence of mitigating circumstances for the jury to find appellant guilty of first- or second-degree murder?

The trial court did not err in declining to give the requested hot-blooded response instruction. The judge's revision of the jury instructions, while an error, was not preserved by appellant's counsel at trial and does not warrant plain-error review by this court. Accordingly, we affirm the trial court's decision.

**Background**

Appellant does not argue that the evidence presented to the jury was insufficient to support the verdicts against him, so we will summarize the evidence in the light most favorable to the State in order to place appellant's contentions in context. *See Washington v. State*, 180 Md. App. 458, 461 n.2 (2008).

[1] The jury acquitted appellant of first-degree premeditated murder, felony murder, armed robbery, and use of a handgun in a felony.

Seydou Ba was a "hack"—an unlicensed taxi driver—who sometimes gave rides to Deairra Lopez. When Mr. Ba offered to pay Ms. Lopez for sex, she told appellant, her boyfriend. Months later, in the early morning hours of November 17, 2014, appellant asked Ms. Lopez for her cell phone and used it to contact Mr. Ba. Appellant then left his mother's house in Glen Burnie with Lopez's phone and returned about two hours later. Neighbors found Mr. Ba shot to death in his car—just a couple streets away from appellant's mother's home—a few hours after that. Appellant had been aware for some months that Mr. Ba had made advances towards Ms. Lopez.

A search of Mr. Ba's cell phone records led investigators to Ms. Lopez, the last person to contact Mr. Ba before his death. Both Ms. Lopez and appellant were interviewed by police investigators on November 20. Over the course of several hours, appellant's story of what happened the night Mr. Ba was shot changed dramatically. At first, appellant claimed he had no involvement in Mr. Ba's death, that he was out with friends in Baltimore at the time of the shooting, and that he knew nothing about it. When the investigators told appellant that his story did not match up with his girlfriend's account of the evening, appellant confessed to accidentally shooting Mr. Ba. He said he contacted Mr. Ba because Mr. Ba had propositioned Ms. Lopez. Appellant told investigators that he got into the back seat of Mr. Ba's car, the two began "tussling," and "the gun went off." Appellant later said he got in the front seat and Mr. Ba threw the first punch, striking appellant in the face. After Mr. Ba reached for the gun tucked in

appellant's waistband, the two began fighting over the weapon, and then the gun went off.

When police told appellant that his story did not match the forensic evidence, appellant again modified his version of events. He said that Mr. Ba was "beating [him] up" and he "couldn't get out of the car." That's when he pulled the gun out, placed it against Mr. Ba's head, and shot him in self-defense. Appellant also admitted that he learned several months before the shooting about Mr. Ba's propositioning of Ms. Lopez.

Throughout the interview, the police also repeatedly asked appellant whether he took money from Mr. Ba after shooting him. Appellant never changed his story on this front, remaining adamant that he did not take any money.

Extended portions of these recorded interviews were played for the jury during appellant's trial for the murder of Mr. Ba. The state supplemented appellant's confession with other evidence: cell phone GPS records that placed Ms. Lopez's phone in the area at the time of the shooting, calls and text messages that showed Ms. Lopez's phone was in contact with Mr. Ba's phone in the hours before his death, and a box of bullets found in a linen closet outside appellant's bedroom—the same kind found on the ground outside Mr. Ba's car. Appellant presented no evidence.

The trial court then discussed proposed jury instructions with counsel. Defense counsel first requested that the court give Maryland Pattern Criminal Jury Instruction (MPJI-Cr) 4:17.2, which sets forth the elements of first-degree (premeditated) murder, second-degree (specific intent) murder, voluntary manslaughter based on imperfect self-

defense, and perfect self-defense.[2] The trial court questioned the applicability of the requested instruction:

> THE COURT: Tell me how you think a self-defense [instruction] was generated[.]
>
> [DEFENSE]: Well, the testimony. . . is rife with information where [appellant] says that he was struck first by Mr. Ba, that Mr. Ba was the aggressor, that he hit him in the face. . . . That they were fighting. In fact, I think at one point in time he says that he felt like . . . Mr. Ba was getting the better of him. . . . [T]hat is the situation prior to the gun being drawn. This is simply . . . an altercation started by Mr. Ba.

The court ultimately agreed to give the instruction on voluntary manslaughter based on perfect or imperfect self-defense.

Defense counsel then argued for an additional voluntary manslaughter instruction based on a hot-blooded response to legally adequate provocation (emphasis added):

> [DEFENSE]: Your Honor, I think that ***the jury heard evidence of the reason why [appellant] even went out to approach Mr. Ba, [and] that was over this issue about Ms. Lopez telling [appellant] about this advance, unwanted, unwarranted advance by Mr. Ba*** to her prior. So I think this sort of falls into that situation of, you know, being told by your girlfriend that somebody has, you know, been propositioning her and ***really is in the same line I guess as the person who comes into his house and sees somebody in bed with his wife***. That kind of hot blooded response to the situation appears to be what was motivating the act to begin with.

[2] MPJI-Cr 4:17.2 also includes voluntary manslaughter based on perfect and imperfect defense of habitation. As this variation on the defense was inapplicable, the trial court did not include it in its instructions.

The trial court refused to give the instruction:

> THE COURT: [I]n my mind there's no evidence that he's acting in a hot blooded or enraged manner, especially given the fact that he was told about the issue that you're alleging enraged him months before [the murder]. So I'm not going to give that particular instruction.

Defense counsel replied, "I'll just note my exception on that, Your Honor."

Among its general instructions, the court then instructed the jury that a defendant is presumed innocent, that the State has the burden of proof, and that the jury was to consider each charge separately and to return a separate verdict for each charge. The court also instructed the jury on the elements of first- and second-degree murder (emphasis added):

> THE COURT: In order to convict [appellant] of first degree murder *the* ***State must prove***, number one, that [appellant] caused the death of Seydou Ba; number two, the killing was willful, deliberate and premeditated; number three, the killing was not justified; and number four, ***there were no mitigating circumstances.***
>
> * * *
>
> In order to convict [appellant] of second degree murder ***the State must prove***, number one, that [appellant] caused the death of Seydou Ba; number two, that [appellant] engaged in a deadly conduct, either with the intent to kill or with the intent to inflict such serious bodily harm that death would be the likely result; number three, that the killing was not justified; ***and number four, that there were no mitigating circumstances***.

The court did not define mitigating circumstances or justification for the jury. This is consistent with MPJI-Cr 4:17.2(A), (B) and (C), which also do not define the terms. The court then gave instructions on voluntary manslaughter (emphasis added):

> THE COURT: Voluntary manslaughter is an intentional killing, which is not murder because [appellant] acted…in partial self-defense….Partial self-defense does not result in a verdict of not guilty, but rather reduces the level of guilt from murder to manslaughter. You've heard evidence that [appellant] during the course of the trial killed Seydou Ba in self-defense. You must decide whether this is a complete defense, a partial defense or no defense at all.
>
> In order to convict [appellant] of murder ***the State must prove [appellant] did not act in either complete self-defense or partial self-defens*e.** If [appellant] did act in complete self-defense your verdict must be not guilty. If [appellant] did not act in complete self-defense, but did act in what is known as partial self-defense your verdict must be guilty of voluntary manslaughter, but not guilty of murder.
>
> * * *
>
> If [appellant] actually believed that he was in immediate and imminent danger of death or serious bodily injury, even though a reasonable person would not have so believed, [appellant's] actual, though unreasonable, belief is a partial self-defense and the verdict should be guilty of voluntary manslaughter rather than murder. If [appellant] used greater force than a reasonable person would have used, but [appellant] actually believed that that level of force was necessary, [appellant's] actual, though unreasonable, belief is a partial self-defense and the verdict should be guilty of voluntary manslaughter rather than murder.
>
> Again, in order to convict [appellant] of murder ***the State must prove that [appellant] did not act in complete self-defense or partial self-defense***. If [appellant] did act in

> complete self-defense, the verdict must be not guilty. If [appellant] did not act in complete self-defense, but did act in partial self-defense, the verdict must be guilty of voluntary manslaughter and not guilty of murder.

During closing argument, defense counsel discussed the elements of first-degree murder. After discussing the first three elements the judge had included in the jury instructions, counsel said "[a]nd then the fourth element that's required for first degree murder is that there were no mitigating circumstances. And we'll talk a little bit more about mitigating circumstances. But that's like if people were involved in a fight or somebody was trying to defend themselves and somebody gets killed."

At that point, the court interrupted defense counsel and called for a bench conference, during which the following colloquy ensued (emphasis added):

> THE COURT: I'm very sorry to interrupt you. . . . ***I'm trying to figure out what the mitigating circumstances would be in this case***. I had actually started to cross that out. I was going to tell the jury that (indiscernible) mitigating circumstances don't – are not an element of first or second degree murder. ***So I'm going to ask you not to discuss that any further. I will say that it was my error and make the corrections.*** If you believe that should be in there you can tell me why.
>
> [DEFENSE]: About the mitigating circumstances requirements in the law? I think it's the fourth part of first degree murder. . . . I'm taking it right from the first degree murder instruction.
>
> THE COURT: Yeah, I was wondering why that was in there. If you look at [MPJI-Cr] 4:17.2. . . It says the original first and second degree murder instructions don't include the option of either justification or mitigation … ***Justification [or] mitigation is generally on evidence in addition to complete and partial self-defense***. . . . So if you have some way to explain to me what would the mitigating –

> ***the only thing that I can think of that mitigates or that would be, at least from what I've heard, would be the (indiscernible) self-defense***. So I don't know if any other (indiscernible) mitigates it. . . .
>
> [DEFENSE]: ***There's also the issue about the conduct with the girlfriend***.
>
> THE COURT: What conduct with the girlfriend?
>
> [DEFENSE]: Well, that would, I guess that would go more toward that.

The trial court was not convinced by this argument and directed counsel to look again at the general instructions on first- and second-degree murder, to be used when no issue of mitigation or justification has been generated:

> THE COURT: What are we saying [MPJI-Cr] 4:17 just generally. . . . It doesn't go into justification or mitigation.
>
> [STATE]: Right.
>
> THE COURT: So I'm going to . . . make a correction on my instructions and reword this. And I absolutely apologize.

At this point the bench conference concluded, without objection by defense counsel, and the trial court addressed the jury (emphasis added):

> THE COURT: I made an error in the instructions. . . . [T]his is my fault and absolutely not the fault of counsel at all. And I'm going to give you a corrected version of the instructions. ***I indicated that one of the elements for first and second degree murder is that there were no what we call mitigating circumstances. That element does not apply in this case.***
>
> So even though I went through the four elements of first degree murder and the four elements of second degree murder with you earlier when I was reading them to you, **I'm striking that last element; it does not apply. The State is not required to [prove] it.** It's my fault that

> counsel were led to perhaps arguing that. So when you get your written version of the instructions it will just have the first three elements of first and second degree murder.

Defense counsel continued with his closing argument, discussing the elements of first- and second-degree murder as modified by the trial court's new instructions. At no point did defense counsel object to the change in the court's instructions, nor did he indicate his displeasure with the trial court's *sua sponte* interruption of his closing argument. Counsel also reiterated the court's instructions on voluntary manslaughter and self-defense, stressing that the judge's corrections to the other instructions did not take away the jury's power to acquit appellant if it found that he was acting n self-defense or to convict him of manslaughter if the jury concluded that her was acting in imperfect self-defense (emphasis added):

> [DEFENSE]: Now, when people get involved in a fight and somebody thinks that maybe the other person is going to hurt them badly or that there's a reasonable chance that that person might do that, in their mind, that's justification. . . .
>
> But the law even recognizes that you don't have first or second murder when a person's got even an unreasonable belief that they could have potentially been killed by the victim in this case. Do you understand? So if during the course of the fight when Mr. Ba is the aggressor and he starts hitting Mr. Gunter—and you heard Mr. Gunter say after being questioned by Mr. Turner that the gun comes out "because Mr. Ba was getting the best of me." ***That is at best self-defense, which is a complete defense to all charges, or it is an imperfect self-defense, which reduces the murder first degree and murder second degree down to manslaughter.***

> ***Now, the Judge did instruct you of that on voluntary manslaughter. And no other corrections on that one. That's correct.*** So I want to just read through again voluntary manslaughter. It's the intentional killing, which would be murder. This is important. This is the exact language. It would be murder, first or second degree, but it's not murder because the Defendant acted in partial self-defense. ***Partial self-defense doesn't result in a verdict of not guilty, so the person doesn't get off. But it reduces the level of guilt from murder first degree or second degree, it reduces it down to manslaughter.***
>
> [E]ven if it turns out to be an unreasonable thought by the Defendant, the person charged, it still has the impact of reducing the charge from murder first degree and from murder second degree down to manslaughter.
>
> ***I hope you all understand that. It's very, very important.*** And if you have any questions about that I'm sure that the Judge is going to be sending in the instructions to you, so you can actually read for yourself what the instruction says for . . . voluntary manslaughter.

The State then made its rebuttal argument, and the jury was sent to deliberate. During deliberation, the only note sent to the court was a request for "louder speakers" because the volume on the computer used to replay appellant's confession was "too low."

**Analysis**

I.

Appellant first argues that the trial court erred in refusing "to instruct the jury on the hot-blooded response to legally adequate provocation variety of voluntary manslaughter." Appellant asserts that the trial court based its decision solely on the grounds that appellant knew about Mr. Ba's solicitation of Ms. Lopez several months prior to the shooting, which did not support the theory that appellant was acting in a hot-blooded or

enraged manner on the night of the shooting. Appellant maintains that the trial court "completely ignored" an alternative legally adequate provocation: appellant's claim that Mr. Ba started the fight and struck appellant first. Therefore, appellant avers, the trial court erred in refusing to give the instruction. In response, the State asserts that appellant's contention is not preserved for appellate review and, in any event, is meritless. We agree with both of the State's arguments.

A. Preservation

Md. Rule 4-325(e) states (emphasis added):

> 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.

The rule can be satisfied by substantial compliance. *See Gore v. State*, 309 Md. 203, 206–09 (1987); *Horton v. State,* 226 Md. App. 382, 414 (2016). Substantial compliance with Rule 4-325(e) occurs when:

> the request for the instruction was clearly brought to the court's attention in open court, counsel's reasons for requesting the instruction were stated on the record, the court had ample opportunity to consider the request and did consider the request, and the court's explanation of why the instruction would not be given was unequivocal and not likely to change if the exception was restated after the court gave its instructions.

*Horton*, 226 Md. App. at 414.

We have previously set out the relevant portions of the trial proceedings. Appellant's trial counsel made it clear that appellant wanted the court to instruct the jury that it could

find appellant guilty of manslaughter if it concluded that appellant's killing of Mr. Ba was a hot-blooded response to legally adequate provocation. It is equally clear that the trial court considered the request and declined to give the instruction. We conclude that *an* objection was preserved for appellate review. But the objection that is preserved is, of course, the objection that appellant actually made.

Appellant's trial counsel asked the court to give the hot-blooded response to legally adequate provocation instruction because:

> Ms. Lopez [told appellant] about this advance, unwanted, unwarranted advance by Mr. Ba . . . . [which is] really is in the same line I guess as the person who comes into his house and sees somebody in bed with his wife. That kind of hot blooded response to the situation appears to be what was motivating the act to begin with.[3]

Trial counsel did not suggest to the trial court what appellate counsel now argues to this court, namely, that the instruction was appropriate because appellant's killing of Mr. Ba was a hot-blooded response to a mutual affray, *Glenn v. State,* 68 Md. App. 379, 403 (1986), or a substantial battery, *Dorsey v. State,* 29 Md. App. 97, 103–04 (1975), *aff'd,* 278 Md. 221 (1976).

In short, the argument raised by appellant on appeal—that the tussle with Mr. Ba amounted to mutual combat or a substantial battery and warranted an instruction on hot-

[3] The trial court correctly refused to give this instruction. First, as noted by the court, appellant had known for months that Mr. Ba had apparently offered to pay Ms. Lopez for sex. There was nothing hot-blooded about appellant's response. Moreover, even if defense counsel's analogy to discovering a spouse *in flagrante delicto* were convincing, which it is not, Maryland no longer recognizes the discovery of one's spouse engaged in sexual intercourse with another as legally adequate provocation. See Md. Code Ann., Crim. Law § 2-207(b) (2012).

blooded response to legally adequate provocation—is not the same argument presented at trial. Accordingly, that argument was not preserved and cannot be raised now for the first time before this court. *Dionas v. State*, 199 Md. App. 483, 523–24 (2011), *rev'd on other grounds*, 436 Md. 97 (2013).

B. Looking Past Preservation

Even if this argument had been properly preserved, the trial court did not err in refusing to give an instruction for voluntary manslaughter based on a hot-blooded response to legally adequate provocation. To justify such an instruction, a defendant must produce some evidence that (1) there was legally adequate provocation, (2) the killing was done in the heat of passion, (3) there was no cooling-off period and (4) there was a causal connection between the provocation, the passion, and the killing. *See Wilson v. State,* 195 Md. App. 647, 680–81 (2010), *rev'd on other grounds,* 422 Md. 533 (2011).

Appellant did not present any evidence, and so the sole evidence of his state of mind was the statements he made to the police. Although appellant's reasons for the killing varied, he never stated that he killed Mr. Ba in the heat of passion.[4] At no time did appellant indicate that he shot Mr. Ba out of anger or as a reaction to his being struck; rather, appellant, maintained that the shooting was either an accident or done in self-

[4] The State suggests that appellant also failed to produce any evidence that he was provoked. We disagree, as Appellant did state that he shot Mr. Ba after Mr. Ba struck him in the face. *See Wilson,* 195 Md. App. at 690 ("[A] blow with the fist may be sufficient to reduce an intentional killing to manslaughter, particularly if it is a blow in the face[.]") (internal citations and emphasis omitted).

defense. *See Cunningham v. State,* 58 Md. App. 249, 259–60 (1984) (defendant's unequivocal claim of self-defense and "abject failure to provide evidence of hot-blooded motivation, as to which he was the best if not exclusive source," was fatal to his request for an instruction on voluntary manslaughter based on hot-blooded response). Because appellant failed to meet his *prima facie* burden with respect to this element, the trial court did not err in refusing to give the instruction. *See Wilson,* 195 Md. App. at 681 ("Should any of the four [elements] be lacking, mitigation based on the Rule of Provocation will not be an issue for the jury to consider.").

II.

Appellant next argues that the trial court committed plain error by interrupting defense counsel's closing arguments to alter its jury instructions, announcing that the State did not need to prove the absence of mitigating circumstances for the jury to find appellant guilty of murder. Appellant maintains that the trial court's original instructions, which included the mitigating circumstances element, were correct and that defense counsel based his closing argument on these instructions. Changing the instructions during closing arguments, appellant says, "abruptly pulled the proverbial rug out from under defense counsel," "changed the elements of the principal charge" and "substantially reduced the State's burden of proof." Because defense counsel did not object at trial to preserve the issue on appeal, appellant asks this court to exercise plain-error review.

The State counters that this case does not warrant plain-error review because the change to the instruction—although erroneous—did not prejudice appellant's case or mislead the jury. Although the jury was told that mitigating circumstances were not at issue, the jury had never been instructed as to what a "mitigating circumstance" might be and was properly instructed about imperfect self-defense and its effect of reducing a would-be murder conviction to one of voluntary manslaughter.

As we noted in *Malaska v. State*, "[p]lain error review is a rarely used and tightly circumscribed method by which appellate courts can, at their discretion, address unpreserved errors by a trial court which 'vitally affect[ ]a defendant's right to a fair and impartial trial.'" 216 Md. App. 492, 524 (2014), *cert. denied*, 135 S.Ct. 1162 (2015) (quoting *Diggs v. State*, 409 Md. 260, 286 (2009)). Indeed, "[t]he plain error hurdle, high in all events, nowhere looms larger than in the context of alleged instructional errors." *Malaska*, 216 Md. App. at 525 (quoting *Peterson v. State,* 196 Md. App. 563, 589 (2010)). This is because "considerations of both fairness and judiciary efficiency ordinarily require that all challenges that a party desires to make to a trial court's ruling, action or conduct be presented in the first instance to the trial court so that (1) a proper record can be made with respect to the challenge, and (2) the other parties and the trial judge are given an opportunity to consider and respond to the challenge." *Chaney v. State*, 397 Md. 460, 468 (2007).

A four-prong test for invoking the backstop of plain-error review was outlined in the Supreme Court decision of *Puckett v. United States*, 556 U.S. 129, 135 (2009):

> First, there must be an error or defect—some sort of [d]eviation from a legal rule—that has not been intentionally relinquished or abandoned, i.e., affirmatively waived, by the appellant. Second, the legal error must be clear or obvious, rather than subject to reasonable dispute. Third, the error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the [trial] court proceedings. Fourth and finally, if the above three prongs are satisfied, the court of appeals has the discretion to remedy the error—discretion which ought to be exercised only if the error seriously affect[s] the fairness, integrity or public reputation of judicial proceedings. Meeting all four prongs is difficult, as it should be.

This formulation was later expressly adopted by the Court of Appeals in *State v. Rich*, 415 Md. 567, 578–79 (2010). When we apply these criteria to the case before us, we conclude the exercise of plain-error review is not warranted.

It was error for the court to instruct the jury that the State was not obligated to prove the non-existence of mitigating circumstances because the court had previously, and appropriately, instructed the jury on imperfect self-defense. We believe that the court intended to communicate to the jury that there were no other mitigating circumstances presented by the evidence other than imperfect self-defense. Considered in isolation, the supplemental instruction was, at best, ambiguous on that point. Assuming, for purposes of analysis, that the supplemental instruction was plainly erroneous, we will nonetheless decline to exercise plain error review because appellant has not shown that the error affected the outcome of the trial.

Although the jury was told by the court to disregard mitigating circumstances, the jury was ***not*** told to forget about appellant's claim that he shot Mr. Ba in self-defense. In fact, the jury was told three times in the oral instructions and three times in the written

instructions that, before the jury could convict appellant of murder, it needed to conclude that the State had proven beyond a reasonable doubt that appellant was acting not acting perfect or imperfect self-defense. The instructions as a whole did not alter the State's burden of proof on the issues before the jury.

We also believe that the instructions, as modified, adequately covered appellant's theory of defense: self-defense. In his closing arguments before the jury, after the court's interruption, appellant's counsel reminded the jury that the instruction on voluntary manslaughter remained unaltered and explained how finding the appellant acted in self-defense when he killed Mr. Ba would mitigate his crime to voluntary manslaughter. Notably, defense counsel's explanation never referred to mitigating circumstances:

> [A]n important concept for everybody to understand is that even if it was an unreasonable thought by [appellant] that he thought he needed to use this amount of force to repel this attack or to defend himself, even if that turns out maybe you could have done something else to, you know, avoid or to get out of the situation, even if it turns out to be an unreasonable thought by the Defendant, the person charged, it still has the impact of reducing the charge from murder first degree and from murder second degree down to manslaughter.
>
> I hope you all understand that. It's very, very important.

Clearly, the trial judge and appellant's counsel believed that the instructions as revised left room for the jury to consider appellant's proffered self-defense arguments. If counsel had concerns about this issue, he could have objected.

The trial court's supplemental instruction must be considered in the context in which they were made. *See State v. Garland*, 278 Md. 212, 220 (1976) (holding that when reviewing erroneous jury instructions, an appellate court should not focus on "a particular

portion lifted out of context, but rather their adequacy must be determined by viewing them as an entirety."). Considered in isolation, the court's supplemental instruction was incorrect. But in the context of the overall charge, we believe that the jury was properly instructed that if it found the existence of self-defense, appellant's crime would be manslaughter and not murder. For that reason, we do not find the judge's revisions of the jury instructions "affected the appellant's substantial rights" or the "outcome of the [trial] court proceedings." *Puckett v. United States*, 556 U.S. 129, 135 (2009).

The evidence against appellant was very strong. The cell phone records, coupled with Ms. Lopez's testimony, established that appellant was only a few streets away from the scene of the shooting that night and that he used his girlfriend's cell phone to bring Mr. Ba to the area. After initially denying that he shot Mr. Ba, appellant admitted to police that he killed him. Appellant gave the police three inconsistent versions as to how the shooting took place. Only in the third version did he claim that he was acting in self-defense. His statements to the police were played to the jury during the trial. Circumstantial evidence placed Gunter in the area when Mr. Ba was killed and demonstrated that appellant had easy access to the kind of bullets used to kill Mr. Ba.

In order for us to undertake plain error review, appellant must demonstrate that the error affected the outcome of the trial. Appellant has failed to do so in light of the ample evidence against him and the fact that the instructions as a whole were clear that the State was required to prove beyond a reasonable doubt that neither perfect nor imperfect self-defense was applicable. *See Steward v. State*, 218 Md. App. 550, 568 (2014) (holding that

legally incorrect instructions do not "automatically require [the] Court to exercise [its] discretion and undertake plain error review").

**THE JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY ARE AFFIRMED. COSTS TO BE PAID BY APPELLANT.**