Circuit Court for Baltimore City
Case No. 123041030

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 67

September Term, 2024

MICHAEL BRECKENRIDGE

v.

STATE OF MARYLAND

Friedman,
Kehoe, S.,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: January 5, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

A jury, in the Circuit Court for Baltimore City, convicted Michael Breckenridge, appellant, of second-degree assault and use of a handgun in the commission of a crime of violence. The court sentenced Breckenridge to a total term of five years' imprisonment.

In this appeal, Breckenridge presents three questions for our review. For clarity, we have rephrased those questions as:

1. Did the trial court err or abuse its discretion in excluding from evidence statements Breckenridge made to the police prior to trial?

2. Did the trial court err or abuse its discretion in declining Breckenridge's request to give an altered version of the pattern jury instruction on self-defense?

3. Was the evidence adduced at trial sufficient to sustain Breckenridge's convictions?

For reasons to follow, we hold that the trial court did not err or abuse its discretion in excluding Breckenridge's statements or in declining to give the requested jury instruction. We also hold that the evidence was sufficient to sustain Breckenridge's convictions. Accordingly, we affirm.

BACKGROUND

In the early morning hours of January 15, 2023, Breckenridge was involved in an altercation with another man, Kelly Fox, outside of The Place Lounge, a bar and lounge located on West Franklin Street in Baltimore City. During that altercation, Fox was shot in the shoulder. Breckenridge was subsequently arrested and charged with first-degree assault, second-degree assault, use of a handgun in the commission of a crime of violence, reckless endangerment, and discharging a firearm in Baltimore City.

At trial, Fox testified that, at approximately 10:00 p.m. on January 14, 2023, he was with some friends at The Place Lounge. Several hours later, as the bar was closing, Fox observed a woman who appeared to be getting ready to leave. Fox noticed that the woman was "sitting next to a gentlemen[,]" whom Fox later identified as Breckenridge. Because it was "late," Fox "thought about going to ask her if she was going to walk to her car by herself," but he "didn't know whether [she and Breckenridge] were together or not," so he "thought to ask him." When Fox inquired, Breckenridge stated: "I don't have to answer that question." Fox thought Breckenridge "was joking," but Breckenridge then "got closer" and "said something." Fox responded with "something around the lines of don't get it twisted, I'll beat you up." At that point, the owner of the bar got in between Breckenridge and Fox, and Breckenridge left the bar. Shortly thereafter, Fox left the bar and walked to his vehicle, which was parked nearby. Fox testified that his intention upon leaving the bar was to "[g]et in [his] car and go home." As he was walking to his vehicle, Fox observed Breckenridge "rummaging in [a] car" that was parked in front of Fox's vehicle. Breckenridge then walked toward Fox, and Fox could see that Breckenridge was holding a gun. Fox testified that he did not have a weapon or alter his course to meet Breckenridge. According to Fox, Breckenridge then proceeded to "smack[] [Fox] with the gun" and "shoot[] [him]." After falling to the ground and seeing that he was bleeding, Fox got into his vehicle and drove away. Upon realizing that he had been shot, Fox found a passing police officer and reported the shooting. Fox was taken to the hospital and treated for a gunshot wound to the shoulder.

On cross-examination, Fox admitted that he had threatened to "beat [Breckenridge] up" while the two were inside of the bar prior to the shooting. Fox also admitted that he initially told the police that Breckenridge had shot him "by accident." On redirect, Fox clarified that, when he talked to the police following the shooting, he was "groggy" and "heavily medicated." Fox stated that he did not remember being interviewed by the police.

Baltimore City Police Detective Timothy Bardzik testified that he interviewed Breckenridge following the shooting. According to the detective, Breckenridge stated that he had gotten into a "verbal and physical altercation with [Fox]" and that he was "in fear for his life[.]" Breckenridge stated that he ultimately hit Fox on the side of the head with a gun. Breckenridge stated that he "wasn't sure exactly how it went off," but that, when he hit Fox with the gun, "the gun did go off." Breckenridge insisted that the gun had gone off accidentally.

Breckenridge also testified, admitting that he had hit Fox with the gun but claiming that he did so in self-defense and that the shooting was accidental. Breckenridge testified that, on the night of the shooting, he was at The Place Lounge with a female friend when he was accosted by Fox, whom Breckenridge did not know. Breckenridge testified that Fox asked him about his relationship with his female friend. According to Breckenridge, Fox had "a real aggressive demeanor." When Breckenridge did not respond, Fox "started cursing" and threatening Breckenridge with "physical harm[.]" Breckenridge testified that Fox was "way bigger" than him and that he "felt threatened." Eventually, the confrontation ended, and Breckenridge left the bar and walked to his vehicle. As he was walking to his

vehicle, Breckenridge "hear[d] something," so he turned around and saw Fox walking in his direction. Breckenridge continued walking to his vehicle and, once there, retrieved a handgun, which he kept in a holster in the rear of his vehicle. Breckenridge then put the handgun in his pocket and, upon observing Fox walking in his direction, started walking toward Fox. According to Breckenridge, Fox was "hollering and screaming[,]" which caused Breckenridge to feel "threatened." Eventually, Fox entered Breckenridge's "personal space," at which point Breckenridge brandished the handgun, still in its holster, and "smacked" Fox in the face with the handgun. The handgun then "went off," and Fox fell to the ground. Not realizing that Fox had been shot, Breckenridge put the handgun back in his pocket and left the scene.

At the conclusion of the evidence, the jury was instructed on the charged crimes. The jury was also instructed on the elements of self-defense pursuant to Maryland Criminal Pattern Jury Instruction 5:07 Self Defense. The jury ultimately found Breckenridge guilty of second-degree assault and use of a handgun in the commission of a crime of violence. The jury found Breckenridge not guilty of the remaining charges.

This timely appeal followed. Additional facts will be supplied as needed below.

DISCUSSION

I.

Breckenridge's first claim of error concerns the trial court's decision to exclude from evidence a statement he made to the police prior to trial. As discussed, Breckenridge testified at trial that Fox had threatened him and that he had acted in self-defense in striking

Fox with his handgun. On cross-examination, the prosecutor questioned Breckenridge about his actions upon leaving the bar, focusing primarily on Breckenridge's decision to remain at the scene and approach Fox outside of the bar. On redirect, defense counsel inquired further regarding Breckenridge's actions upon leaving the bar. Breckenridge explained that he remained outside of the bar because he was waiting for his female friend. Breckenridge also stated that, when he saw Fox leaving the bar, he thought Fox "would approach" him "because of the interaction in the bar and the things [Fox] was saying to [him] as [he was] standing in the back of [his] vehicle."

Shortly thereafter, defense counsel moved to have a recording of Breckenridge's interview with the police admitted into evidence. After the State objected, defense counsel argued that the interview was admissible as a prior consistent statement pursuant to Maryland Rules 5-616 and 5-802.1. The State countered that those rules were inapplicable because Breckenridge's credibility had not been impeached during cross-examination. The trial court agreed with the State and ruled that the evidence was inadmissible.

Following his conviction, Breckenridge filed a motion for a new trial, arguing that he "was prohibited from presenting statements that the victim made that explain the reasons for the defendant's fear of the victim." The trial court denied the motion.

Parties' contentions

Breckenridge argues that the trial court erred in excluding from evidence his interview with the police and that the court abused its discretion in denying his motion for a new trial. Breckenridge contends that, during his interview with the police, he disclosed

the contents of certain verbal threats Fox made prior to the shooting that caused Breckenridge to feel threatened. Breckenridge argues that he should have been permitted to present evidence of those threats because such evidence "was important to rebut the prosecutor's suggestion that [he] was lying about his belief that [Fox] was accosting him or about his fear of [Fox]." Breckenridge also contends that the evidence was relevant in establishing the elements of self-defense and in countering the prosecutor's suggestion that he was the aggressor. Breckenridge argues, therefore, that his statements to the police regarding Fox's threats were admissible pursuant to Rule 5-802.1(b).

The State argues that the disputed evidence was properly excluded as hearsay and that Breckenridge's motion for new trial was properly denied. The State notes that, although Rule 5-802.1(b) does permit the admission of a witness's prior consistent statements, that exception to the general rule against hearsay applies only where the credibility of the witness has been attacked and where the prior statements were made before any motive to fabricate existed. The State contends that neither factor was present here.

Analysis

"Determinations regarding the admissibility of evidence are generally left to the sound discretion of the trial court." *Baker v. State*, 223 Md. App. 750, 759 (2015) (cleaned up). Where, however, an evidentiary determination involves whether evidence is hearsay and whether it is admissible under a hearsay exception, we review that determination *de novo. Gordon v. State*, 431 Md. 527, 538 (2013). If the court renders any factual findings

in making a hearsay determination, those findings will not be disturbed absent clear error. *Id.*

"'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). Hearsay is generally inadmissible, "[e]xcept as otherwise provided by [the Maryland] rules or permitted by applicable constitutional provisions or statutes[.]" Md. Rule 5-802. One such exception can be found in Maryland Rule 5-802.1, which provides, in pertinent part, that an out-of-court statement by a witness is not excluded by the hearsay rule if it is "consistent with the declarant's testimony" and is "offered to rebut an express or implied charge against the declarant of fabrication, or improper influence or motive[.]" Md. Rule 5-802.1(b).

Maryland Rule 5-802.1(b) also includes a "premotive" requirement in that the "prior statement must predate the alleged motive to fabricate." *Thomas v. State*, 429 Md. 85, 101 (2012). The rationale behind the rule is that, if a witness has been attacked by a charge of fabrication or improper influence or motive, "the applicable principle is that the prior consistent statement has no relevancy to refute the charge unless the consistent statement was made *before* the source of the bias, interest, influence or incapacity originated." *Id.* at 102 (quotation marks and citations omitted) (emphasis in original). Thus, "a prior consistent statement may not be admitted to counter all forms of impeachment or to bolster the witness merely because he or she has been discredited." *Id.* (cleaned up). That is, "Rule 5-802.1(b) is not an avenue for the admission of a witness's consistent out-of-court

statement unless the statement is introduced to rebut an impeachment based upon a specific event which is the source of the witness's motivation to fabricate." *Acker v. State*, 219 Md. App. 210, 226 (2014).

We hold that the trial court did not err in excluding Breckenridge's statements to the police regarding the alleged threats that Fox directed at Breckenridge prior to the shooting. For those statements to be admissible pursuant to Rule 5-802.1(b), Breckenridge's credibility had to be impugned, and the statements he sought to have admitted had to predate any alleged motive to fabricate. Neither condition was met. The prosecutor did not attack Breckenridge's credibility or otherwise imply that Breckenridge was lying about his encounter with Fox. Regardless, even if Breckenridge's credibility had been impeached, the statements he sought to have admitted were made well after the shooting occurred. Any motive Breckenridge had to fabricate his testimony would have arisen before that time. As such, the statements were properly excluded. For the same reasons, the trial court did not abuse its discretion in denying Breckenridge's motion for a new trial. *See Brewer v. State*, 220 Md. App. 89, 111 (2014) (noting that the decision to grant a new trial is discretionary, and "we do not consider that discretion to be abused unless the judge exercises it in an arbitrary or capricious manner or when he or she acts beyond the letter or reason of the law" (quotation marks and citations omitted)).

II.

Breckenridge's next claim of error concerns the trial court's self-defense instruction. That instruction, which was derived practically verbatim from Maryland Criminal Pattern Jury Instructions ("MPJI-Cr") 5:07, was as follows:

> Now you have heard evidence that the defendant acted in self-defense. 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: one, the defendant was not the aggressor or although the defendant was the initial aggressor, he did not raise the fight to the deadly force level; two, the defendant actually believed he was in immediate or imminent danger of bodily harm; three, the defendant's belief was reasonable; and four, the defendant used no more force than was reasonably necessary to defend himself in light of the threatened or actual harm.
>
> Deadly force is that amount of force reasonably calculated to cause death or serious bodily harm. If you find that the defendant used deadly force, you must decide whether the use of deadly force was reasonable. Deadly force is reasonable if the defendant actually had a reasonable belief that the aggressor's force posed an immediate or imminent threat of death or serious bodily harm. In addition, before using deadly force, the defendant is required to make a reasonable effort to retreat. The defendant does not have to retreat if the defendant was in his home, if retreat was unsafe, if the avenue of retreat was unknown to the defendant, or the defendant was being robbed.
>
> * * *
>
> In order to convict the defendant, the State must prove that self-defense does not apply in this case. This means that you are required to find the defendant not guilty unless the State has persuaded you beyond a reasonable doubt that at least one of the four factors of complete self-defense was absent.

Prior to the court's reading of that instruction, Breckenridge asked the court to give a modified version of the instruction that did not include a definition of "deadly force." Breckenridge argued that that portion of the instruction did not apply because there was no

evidence that he intended to shoot Fox or that his hitting Fox with the gun was calculated to be deadly. The State disagreed and argued that the instruction should be read in its entirety. Ultimately, the court declined Breckenridge's request and instructed the jury as noted.

Parties' contentions

Breckenridge argues that the trial court erred in refusing his request for a modified self-defense instruction, which would have omitted the portion of the instruction concerning "deadly force." He contends that the court's instruction, as it was given, required the jurors to determine whether he used deadly force and whether such force was reasonable. He argues that his modified instruction was more appropriate "under the unusual circumstances of this case where [he] did not deliberately aim or intentionally discharge the firearm."

The State argues that the trial court did not err in giving MPJI-Cr 5:07 in its entirety. The State contends that the given instruction was generated by the evidence and that it was up to the jury, as the fact-finder, to determine whether Breckenridge used deadly force.

Analysis

Maryland Rule 4-325(c) states, in relevant part, that a "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." Under that rule, a circuit court "must give a requested jury instruction when (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." *Rainey v. State*, 480 Md. 230, 255 (2022) (quotation marks and citations omitted).

"The threshold determination of whether the evidence is sufficient to generate the desired instruction is a question of law for the judge." *Bazzle v. State*, 426 Md. 541, 550 (2012) (quotation marks and citation omitted). In reviewing that determination, we look at the evidence in a light most favorable to the requesting party and assess whether the requesting party "produced that minimum threshold of evidence necessary to establish a *prima facie* case that would allow a jury to rationally conclude that the evidence supports the application of the legal theory desired." *Id.* (quotation marks and citation omitted); *see also Rainey*, 480 Md. at 255. "This threshold is low, in that the requesting party must only produce 'some evidence' to support the requested instruction." *Page v. State*, 222 Md. App. 648, 668 (2015). The "some evidence" test is not confined by a specific standard and "calls for no more than what it says – 'some,' as that word is understood in common, everyday usage." *Bazzle*, 426 Md. at 551 (cleaned up). Moreover, the source and weight of the evidence is immaterial. *Dashiell v. State*, 214 Md. App. 684, 696 (2013).

Overall, "[w]e review a trial court's decision to propound or not propound a proposed jury instruction under an abuse of discretion standard." *Lawrence v. State*, 475 Md. 384, 397 (2021). Under that standard, the court's decision "will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Id.* at 398 (quotation marks and citation omitted).

We hold that the trial court did not err in instructing the jury on deadly force. The court's instruction, which was requested by the State, was clearly generated by the evidence. Fox testified that, following his initial altercation with Breckenridge inside of the bar, he left the bar and went directly to his vehicle. Fox testified that it was Breckenridge who accosted him outside of the bar and that, in so doing, Breckenridge brandished a handgun, "smacked" Fox with the gun, and "shot" him. Although Breckenridge later claimed that he acted in self-defense and that the shooting was accidental, he nevertheless admitted to hitting Fox with a loaded gun and causing Fox to be shot in the shoulder. That evidence was more than sufficient to generate a deadly force instruction.

Beyond that, we cannot say that the court abused its discretion in declining Breckenridge's request to omit the portion of the self-defense instruction regarding deadly force. Not only was the given instruction supported by the evidence, but the instruction was derived, essentially verbatim, from the pattern instruction on self-defense. *See Rainey v. State*, 252 Md. App. 578, 596 (2021) ("Appellate courts in Maryland strongly favor the use of pattern jury instructions." (quotation marks and citation omitted)). Furthermore, given Fox's testimony, the question of whether Breckenridge used deadly force, and whether that action was reasonable, was directly at issue and was a factual matter for the jury to decide. Under the circumstances, it would have been inappropriate for the court to modify the pattern instruction in the manner championed by Breckenridge.

III.

Parties' contentions

Breckenridge's final argument is that the evidence adduced at trial was insufficient to sustain his convictions. He contends that, "from the defense perspective, the evidence established that [he] acted in self-defense." He argues that, because each element of self-defense was established, reversal is required.

The State argues that the evidence supporting Breckenridge's claim of self-defense merely generated the issue for the jury. The State notes that there was other evidence that refuted Breckenridge's self-defense claim, such that the jury could infer that Breckenridge did not act in self-defense. The State argues, therefore, that the evidence was sufficient.

Analysis

"The standard for appellate review of evidentiary sufficiency is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Scriber v. State*, 236 Md. App. 332, 344 (2018) (quotation marks and citation omitted). "When making this determination, the appellate court is not required to determine 'whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.'" *Roes v. State*, 236 Md. App. 569, 583 (2018) (quoting *State v. Manion*, 442 Md. 419, 431 (2015)). "This is because weighing the credibility of witnesses and resolving conflicts in the evidence are matters entrusted to the sound discretion of the trier of fact." *Scriber*, 236 Md. App. at 344 (quotation marks and citation omitted). "We defer to any possible

reasonable inferences the [fact-finder] could have drawn from the admitted evidence and need not decide whether the [fact-finder] could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence." *Fuentes v. State*, 454 Md. 296, 308 (2017). "[T]he limited question before an appellate court is not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder." *Scriber*, 236 Md. App. at 344 (quotation marks and citation omitted).

Perfect self-defense is a complete defense to the crime of assault. *In re Lavar D.*, 189 Md. App. 526, 577 (2009). The elements of perfect self-defense are: (1) that the defendant had a reasonable basis to believe he was in imminent or immediate danger of death or serious bodily harm; (2) that the defendant actually believed he was in danger; (3) that the defendant was not the aggressor; and (4) that the defendant did not use excessive or unreasonable force. *Porter v. State*, 455 Md. 220, 234-35 (2017). Generally, the defendant bears the initial burden of producing evidence to generate the issue of self-defense. *In re Lavar D.*, 189 Md. App. at 578. Once that burden is met, the burden then shifts to the State, which "'must shoulder the burden of proving beyond a reasonable doubt to the satisfaction of the jury that the defendant did not [act] in self-defense.'" *Id.* (quoting *Dykes v. State*, 319 Md. 206, 217 (1990)).

That said, we have long held that, once self-defense has been generated, the issue becomes one of fact for the fact-finder. *Gilbert v. State*, 36 Md. App. 196, 205 (1977). A

defendant is generally not entitled to a judgment of acquittal merely because he has produced some evidence as to each of the elements of self-defense. *Id.* at 205-07. "It is only in very rare instances that the defensive testimony will be so clear and decisive as to create a counter-presumption moving the proof backward, . . . where the State becomes vulnerable to a directed judgment of acquittal[.]" *Id.* at 205. In other words, '"where all evidence points toward the existence of the defense and where nothing in the State's case, circumstantial or otherwise, controverts the defense in any regard, the evidence may be so clear and decisive as . . . to entitle the defendant to a directed verdict as a matter of law.'" *Id.* at 206-07 (quoting *Evans v. State*, 28 Md. App. 640, 728 (1975)).

Against that backdrop, we hold that the evidence was sufficient to sustain Breckenridge's convictions. Although Breckenridge did present evidence in support of his self-defense claim, the State produced ample evidence to controvert that defense. Fox testified that the initial altercation between him and Breckenridge inside of the bar prior to the shooting was over when the owner of the bar intervened and Breckenridge left. Fox testified that he left the bar shortly thereafter with the intention of getting in his car and going home. Fox testified that, as he was walking to his car, he saw Breckenridge get out of a vehicle and walk toward Fox while holding a gun. Fox testified that he did not have a weapon or alter his course to meet Breckenridge. Fox testified that Breckenridge approached him, hit him with the gun, and shot him in the shoulder.

From that evidence, a reasonable inference could be drawn that, at the time of the shooting, Breckenridge did not have a reasonable basis to believe he was in imminent or

immediate danger of death or serious bodily harm, that Breckenridge was the aggressor, and that Breckenridge used excessive or unreasonable force. As such, there was sufficient evidence to refute Breckenridge's claim of self-defense and to sustain his convictions of assault and use of a firearm in the commission of a crime of violence.

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