Circuit Court for Baltimore City
Case No. 122326010

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1126

September Term, 2023

HILLARD D. WILLIAMS

v.

STATE OF MARYLAND

Wells, C.J.,
Leahy,
Tang,

JJ.

Opinion by Leahy, J.

Filed: April 18, 2024

* This is an unreported opinion. The 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).

Hillard D. Williams ("Appellant") was indicted by a grand jury in Baltimore City on eleven counts,[1] including assault, robbery, and related crimes after he and another individual got into a car accident and an altercation ensued. On July 28, 2023, following a two-day trial in the Circuit Court for Baltimore City, the jury found Appellant guilty of the sole count of second-degree assault.

On appeal, Appellant contends that the trial court erred in failing to instruct the jury on self-defense and in denying his motion for a new trial.[2] For the reasons explained herein, we shall affirm.

BACKGROUND

The following account is derived from the evidence adduced at Appellant's jury trial on July 27 and 28, 2023, viewed in the light most favorable to the State. *Molina v. State*, 244 Md. App. 67, 87 (2019). Our summary of the trial record is limited to that which is necessary to address the dispositive issues in this appeal.

[1] Appellant was indicted by the grand jury on the principal offenses of assault in the first degree, robbery, assault in the second degree, theft, and corresponding conspiracy counts, along with wearing and carrying a dangerous weapon with the intent to injure.

[2] Appellant's questions presented are:

1. "Whether the circuit court erred in denying a self-defense instruction where a party to a physical altercation told police the other individual had a knife in his possession."

2. "Whether the circuit court erred in denying a motion for new trial where a witness gave testimony in defiance of an order to exclude evidence and an alternate juryperson later sent a note related to that testimony."

On the evening of October 27, 2022, Officer Michael Smith from the Baltimore City Police Department received an emergency call regarding an auto accident at the intersection of Clifton Avenue and North Fulton Avenue. Officer Smith was dispatched to the scene and testified later at trial that upon arrival, he observed "two vehicles in the middle of the roadway and a small crowd gathered around the vehicles." Initially treating it as a "basic investigation of an auto accident[,]" Officer Smith proceeded to determine fault and identify the drivers involved. His investigation revealed that Appellant was traveling straight down Fulton Avenue, maintaining the right-of-way, while Mr. Jeffrey Reaves was making a left-hand turn against traffic when the collision occurred.

Officer Smith described Appellant as "irate" and "aggressive" towards Mr. Reaves. He testified that Appellant "blamed Mr. Reaves for the accident[,]" and alleged that "Mr. Reaves was at fault" and "intoxicated" at the time of the incident.

Officer Smith related that Mr. Reaves had a bloody nose and lip, seemed "discombobulated[,]" and had "ragged" clothing, as if "he had been in a scuffle." Concerned by the size of the crowd gathering at the scene, Officer Smith requested backup upon hearing allegations that Mr. Reaves was intoxicated; he also sought the assistance of a Drug Recognition Expert (DRE), despite his personal belief that Mr. Reaves was not "under the influence."

After speaking to Mr. Reaves, Officer Smith shifted the focus of his investigation to one concerning a "potential robbery and assault." Mr. Reaves reported that "someone had taken his wallet" and that he was missing approximately $100. According to Officer

Smith, the police later developed suspicions, based on the footage from the City Watch camera, about a second individual who was on the passenger side of Mr. Reaves's vehicle and "was not on scene" when police officers arrived.

Officer Smith explained that Baltimore City has "approximately 700 or so cameras" scattered throughout the city used "to monitor . . . anything from crime to traffic." The central monitoring station, known as City Watch, is situated in the Central District and oversees the footage collected by these cameras. When the cameras are not under manual control, they rotate and "pan[] in sections . . . in a 360 degree loop." Officer Smith contacted Detective Shelley, who was actively monitoring the City Watch cameras and had reviewed the footage captured at the intersection of Clifton and North Fulton Avenues.

Detective Shelley informed Officer Smith that "a possible assault had occurred" based on his review of the closed-circuit television (CCTV) footage. Acting on Detective Shelley's information, Officer Smith arrested Appellant for assault and robbery. Officer Smith then "searched his vehicle" and discovered a baseball bat in the trunk, which was seized and entered into evidence, but he did not discover any property belonging to Mr. Reaves. Officer Smith notified detectives of the incident and had Appellant transferred to the Western District for further questioning.

The CCTV footage retrieved from "City Watch camera 742 at the intersection of Clifton and North Fulton," was played before the jury and admitted as evidence. Officer Smith observed on the CCTV footage "Mr. Williams standing on the passenger side of Mr. Reaves' Jeep, peering into the passenger window[,]" and a little while later, Mr. Williams

moving to "the driver's side with his arms inside the vehicle." Approximately a minute later,[3] the footage showed Mr. Reaves "on his knees" outside the vehicle with Appellant standing nearby. Another minute later, Appellant walked back to "the trunk of his vehicle" and returned with a "wooden baseball bat" in his hand.

Detective Jorge Perez testified that he interviewed both Appellant and Mr. Reaves at the police station. He stated that Appellant was "very upset" and "irritate[d]" and inquired about the charges against him. He related that Appellant said "he didn't need to . . . rob nobody because he had $8,000 in his bag[,]" which he then "thr[e]w . . . [on] the table." When Detective Perez questioned Appellant about whether "any baseball bat [was] involved[,]" Appellant admitted that at one point he took a bat from his car but only did so "because [Mr. Reaves] had a knife."

Mr. Reaves, however, told Detective Perez that Appellant was "choking him" and that while he was being choked, "more people [were] going into his pocket[.]" Detective Perez admitted that the police did not ask Mr. Reaves about the knife. He also said that the police did not find any property belonging to Mr. Reaves on Appellant or in Appellant's car.

At trial, Mr. Reaves testified that just before the accident, he had finished refilling the vending machines he operates as part of his business and collected his commission

[3] As reflected in the transcript from the trial and on State's Exhibit 2 (CCTV footage from City Watch Camera 742), the footage shows only segments of what occurred as the City Watch Camera moves in 360-degree circular motion, panning away from the scene and then returning to the scene, in approximately one-minute intervals.

from the vending machine profits. He explained that while driving home, he was "merging into the lane" when he "was struck by another vehicle." He believed Appellant was responsible for the accident because he "flew across after seeing that the last car was coming" just as he was about to make a left-hand turn against traffic. He acknowledged, however, that Appellant thought that he had caused the accident, leading to an argument between the two men.

Mr. Reaves disclosed that he has a prosthetic left leg because complications from diabetes required an amputation. He elaborated that wearing the prosthetic creates "an unbalance" while walking and "makes it harder . . . to come to a curb to step up[.]" He related that on the day of the accident, Appellant "got out of his vehicle" and approached him screaming, "You're going to give me $1,000, you're going to give me $1,000." Initially, Mr. Reaves believed Appellant was requesting money for vehicle repairs following the accident.

Mr. Reaves called 9-1-1 "for a police officer to come do a police report" after the car accident, and he began "recording the whole situation" on his cellphone. He said that Appellant "leaned over" inside his vehicle, "had his hands around [his/ Mr. Reaves] throat[,]" and was "choking" him. Mr. Reaves testified that he could "[b]arely" breathe and felt "[l]ike [he] was getting ready to pass out." Meanwhile, another individual tore Mr. Reaves's jeans and "grabbed [his] wallet[.]" During the altercation, Mr. Reaves was "struck" in his right eye and his nose by the person who had been rifling through his vehicle and pockets. Mr. Reaves testified that he "felt like [his] life was in danger."

Appellant walked away from Mr. Reaves and "went to his vehicle to retrieve a bat." Meanwhile, Mr. Reaves exited his vehicle to retrieve his phone, which was taken from him and "slammed on the ground" when individuals in the crowd realized he was recording. Due to his prosthetic leg, Mr. Reaves was unable to "bend straight down[,]" and had to kneel to retrieve his phone. It was during this time that Appellant "came back to [Mr. Reaves's] driver's side door[,]" began swinging "in a downward motion[,]" and demanded money. Police officers then arrived at the scene, and the crowd dispersed.

Mr. Reaves recalled that he informed the responding police officer that he had been "robbed of [his] possessions[,]" "assaulted[,]" and that his phone, that contained video evidence, had been "smashed"; however, he could not recall whether he informed the responding police officers that he had been choked. He did tell the police officers that he "need[ed] medical attention" because he was "harmed" and was "bleeding[.]"

Mr. Reaves testified that although he possessed a handgun permit, he did not have his firearm with him on that particular day. Additionally, he stated that he did not carry a knife, but he did own "one pocketknife."

At the conclusion of the State's evidence, defense counsel moved for judgment of acquittal on the armed robbery, theft, first-degree assault, and related conspiracy charges, and submitted, without further argument, on the second-degree assault charge. The State entered a *nolle prosequi* on the armed robbery and the conspiracy to commit armed robbery with a deadly or dangerous weapon charges.

After the court denied the motion on the remaining counts, the defense rested its case and renewed its motion for judgment of acquittal, incorporating the arguments previously articulated. The court denied the renewed motion and stated that "at this point, a reasonable trier of fact could conclude [Appellant] is guilty of each of the remaining charges[.]"

Jury Instructions

During the afternoon session of the last day of trial, defense counsel requested a self-defense instruction. Defense counsel argued:

> [I]n reviewing the evidence, I go through my notes of Detective Perez's testimony. Detective Perez testified about his interview with [Appellant] and [Appellant's] assertion that, that Mr. Reaves brandished a knife during the incident.
>
> And I think that that is consistent with [Appellant's] actions because up until the point in the video—and it's . . . significantly into the video after the incident, Mr., Mr. Williams has no – although he's upset, there's no physical interaction with Mr. Reaves until at some point something causes him to go into the car. And then some[time] shortly after he goes back and retrieves a bat.
>
> He doesn't use it aggressively. He doesn't—certainly doesn't strike Mr. Reaves with it. But I think that's consistent with him defending himself from a perceived fear upon seeing an armed individual with a knife.

The State countered, arguing that there was:

> [N]othing in the testimony or the evidence that's been generated that says that that knife was pulled in an aggressive way or that a knife was even pulled. There's just an allegation made through—which there's allegation made that the knife—that there was a knife. He—that he told the detective there was a knife.

> It doesn't say—we don't have anything as to why there was a knife and why he struck him or that he acted in self-defense way, shape or form.
>
> * * *
>
> Or that he was afraid.

Defense counsel responded:

> [Y]ou know, the only way that [Appellant] would have been aware to report the presence of a knife to the detective was that it was displayed in some manner. I think that's certainly a reasonable inference. And I think it's, it's also a reasonable inference to infer that if during the course of this heated argument between these men about this accident, if one person displays a knife, that that other person would be in fear. And I think that's consistent with [Appellant], who is admittedly upset throughout most of this exchange, but doesn't engage in any physical activity until he looks into the car, looks into the car. . . . And I certainly—I think it's, it's more than reasonable to infer from that that he saw the knife. That's what had him go back to get the baseball bat to protect himself[.]

The court denied the request for a self-defense instruction, stating:

> I do understand and appreciate the argument. I am mindful of the fact that there only needs to be some evidence to generate an instruction on self-defense. But I believe based on the record in front of me, that there is not evidence of—that, that anything happened in self-defense sufficient to generate the instructions. Over your objection, which is noted, I'm not going to give the self-defense instruction.

When the court concluded delivering all the instructions to the jury, the court turned to counsel and asked "Counsel, is there any need to approach?" Both defense counsel and the State's attorney responded "No, Your Honor."

The jury deliberated and rendered a verdict, finding Appellant guilty of the sole charge of second-degree assault. On August 2, 2023, the circuit court sentenced Appellant to ten years, with all but five years suspended, to be followed by three years of supervised probation. On August 7, 2023, Appellant timely filed his notice of appeal.

DISCUSSION

I.

DECLINING TO INSTRUCT ON SELF-DEFENSE

A. Evidence Required to Generate a Perfect Defense Jury Instruction

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 the rule, "a circuit court must give a requested instruction when (1) the requested instruction is a correct statement of law; (2) the requested instruction is applicable to the facts of the case; and (3) the content of the requested instruction was not fairly covered elsewhere in the jury instructions actually given." *Rainey v. State*, 480 Md. 230, 255 (2022) (citations and quotations omitted). The trial court's "decision whether to give a jury instruction 'is addressed to the sound discretion of the trial judge,' . . . unless the refusal amounts to a clear error of law." *Preston v. State*, 444 Md. 67, 82 (2015) (quoting *Gunning v. State*, 347 Md. 332, 348 (1997); other citations omitted). "Whether the evidence is sufficient to generate the desired instruction in the first instance is a question of law for the judge." *Roach v. State*, 358 Md. 418, 428 (2000) (citation omitted).

The four elements to claim perfect self-defense are:

> (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 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.

Porter v. State, 455 Md. 220, 234-35 (2017) (citation and emphasis omitted).

Whether evidence supports the giving of a requested instruction is a "relatively low threshold"—the party must only show "'some evidence'" that supports the giving of the requested instruction. *McMillan v. State*, 428 Md. 333, 355 (2012) (quoting *Dykes v. State*, 319 Md. 206, 216 (1990)). More specifically, at least *some* evidence must be presented to "support each element of the defense[.]" *Id.* (citation omitted). "If there is any evidence relied on by the defendant which, if believed, would support his claim that he acted in self-defense, the defendant has met his burden." *Dykes*, 319 Md. at 217. In determining whether competent evidence exists to generate the requested instruction, we examine the record in the light most favorable to the requesting party. *Rainey*, 480 Md. at 255 (citing *Dykes*, 319 Md. at 216-17).

In *Bynes v. State*, 237 Md. App. 439 (2018), on addressing the requirements of generating "some evidence" in the context of a self-defense claim,[4] we emphasized the

[4] There are two forms of self-defense—perfect self-defense and imperfect self-defense. *State v. Smullen*, 380 Md. 233, 251 (2004). "Perfect self-defense is a complete defense and results in the acquittal of the defendant." *Roach v. State*, 358 Md. 418, 429 (2000) (citation omitted). As Judge Adkins explained in *Porter v.* State:

> Imperfect self-defense, on the other hand, does not require the defendant to demonstrate that he had reasonable grounds to believe that he was in imminent danger. Rather, he must only show that he **actually believed** that

(Continued)

"prerequisite that the defendant actually believed that he was in immediate or imminent danger of bodily harm." *Bynes*, 237 Md. App. at 449 (emphasis removed). We noted that "appellant never expressed fear for his own safety" and that the other party to the altercation in that case "offered no testimony that suggested that the appellant had an actual and subjective belief that he was in immediate or imminent danger of bodily harm." *Id.* at 450-51. An initial aggressor is generally not entitled to the defense of self-defense. *Cunningham v. State*, 58 Md. App. 249, 256 (1984). However, an initial aggressor may "invoke the law of self-defense" if "it was the victim who escalated the fight to the deadly level." *Watkins v. State*, 79 Md. App. 136, 139 (1989).

B. Parties' Contentions

Appellant argues that the circuit court erred by failing to propound his requested self-defense instruction because there was "some evidence" to support his theory that he acted in self-defense. Relying on *Dykes v. State*, 319 Md. 206, 217 (1990), Appellant asserts that if there is "any evidence relied on by the defendant which, if believed, would support his claim that he acted in self-defense, the defendant has met his burden." According to Appellant, in this case, Mr. Reaves caused an automobile accident, which

> he was in danger, even if that belief was unreasonable. Additionally, to assert imperfect self-defense, the defendant is not required to show that he used a reasonable amount of force against his attacker—only that he **actually believed** the amount of force used was necessary. Lastly, to have acted in imperfect self-defense, a defendant must have only "subjectively believe[d] that retreat was not safe"—that belief need not be reasonable.

455 Md. 220, 235 (2017) (alteration in original) (internal citations omitted). Appellant did not request an imperfect self-defense jury instruction.

"upset and frustrated" Appellant. The argument between Appellant and Mr. Reaves escalated when "Appellant placed his hands into Mr. Reaves' vehicle[.]" Appellant claims that it was at this moment Mr. Reaves "brandished a knife." In response, Appellant retrieved a baseball bat from his vehicle, but he asserts that he never struck Mr. Reaves.

Appellant contends that even if he was the "first to place his hands on Mr. Reaves," Mr. Reaves "raise[d] the fight to the level of deadly force" by brandishing a knife. Thus, while Appellant concedes he "placed his hands on [Mr.] Reaves," he argues that he was not the one who "raise[d] the fight to the deadly force level," which would make Mr. Reaves the initial aggressor.

Appellant asserts that his subjective fear was "a reasonable inference," given that the "knife [was] pulled" and his retreat to his vehicle was "to arm himself." He argues, therefore, that there was "some evidence" to "satisfy the subjective belief of danger of bodily harm" element because Appellant was "visibly upset after the altercation" and told police officers that Mr. Reaves "pulled a knife[.]" Regardless of whether the evidence fully satisfies the criteria for self-defense, Appellant argues that this determination was "a question for the jury[.]" Denying Appellant's request for the self-defense instruction, according to Appellant, "barred [Appellant] from pleading his full defense to the jury."

Conversely, the State asserts that the trial judge appropriately exercised discretion in denying the instruction on self-defense because there was "not sufficient evidence to generate the instruction." Citing *Porter v. State*, 455 Md. 220, 240 (2017), the State argues

that the evidence must generate "some evidence" for each of the four elements of perfect self-defense to permit a jury instruction.

Even if Appellant had reasonable grounds to believe himself in danger after engaging in "an argument with a driver who caused an auto accident . . . [who] brandish[ed] . . . a knife[,]" this argument, according to the State, only satisfies the first element. According to the State, Appellant failed to offer any testimony or other evidence to show that there was some evidence to satisfy the second element—that he "in fact believed himself in [] danger[.]"

The State also contends that the evidence failed to generate some evidence under the final element of perfect self-defense because Appellant "did not establish that he was 'not' the 'aggressor.'" (Quoting *Porter*, 455 Md. at 235). The State asserts that Appellant "concedes that 'he was the first to place his hands on Mr. Reaves.'" Furthermore, Appellant "offers no evidence or argument that he was not the aggressor" and there was nothing in the record that demonstrates otherwise.

Initially, however, the State argues that the claim of error is waived under the strictures of Maryland Rule 4-325(f). For the reasons explained below, we agree.

C. Preservation

Maryland Rule 4-325(f) provides: "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." The rule "makes clear that an objection to a jury instruction is not

preserved for review unless the aggrieved party makes a timely objection after the instruction is given and states the specific ground of objection thereto." *Gore v. State*, 309 Md. 203, 207 (1987) (construing what was then Md. Rule 4-325(e)). "There are good reasons for requiring an objection at the conclusion of instructions even though the party had previously made a request"; for example, "a party initially requesting a particular instruction may be entirely satisfied with the instructions as actually given." *Johnson v. State*, 310 Md. 681, 686-87 (1987) (citations omitted). We have pointed out that the purpose of the Rule is to provide the trial "court an opportunity to correct the instruction before the jury starts to deliberate." *Allen v. State*, 157 Md. App. 177, 183 (2004).

Substantial compliance with Rule 4-325(f) is sufficient to preserve error for appellate review. *Gore*, 309 Md. at 208; *see also Watts v. State*, 457 Md. 419, 427 (2019) ("Although strict compliance (based upon the record developed at trial) is preferred, an objection that falls short of that mark may survive nonetheless if it substantially complies with Rule 4-325([f])."). There are, however, several conditions to establish substantial compliance with the Rule: 1) there must be an objection; 2) the objection must appear on the record; 3) the objection must be accompanied "by a definite statement of the ground for objection" unless otherwise apparent from the record; and 4) the circumstances must show that it would have been "futile or useless" for counsel to renew the objection after the court provided instructions to the jury. *Id.* at 209. Even "a cryptic objection 'substantially complies' with the last requirement of the rule—that the objection states the grounds of the objection—if 'the ground for objection is apparent from the record.'"

Taylor v. State, 473 Md. 205, 227 (2021) (quoting *Gore*, 309 Md. at 209). However, we make clear that "these occasions represent rare exceptions, and that the requirements of the Rule should be followed closely." *Sims v. State*, 319 Md. 540, 549 (1990).

The State urges that, according to Maryland Rule 4-325(f), "unless the party objects on the record promptly *after* the court instructs the jury[,]" the claim of error is waived. (Quoting Md. Rule 4-325(f) (emphasis supplied by the State's brief)). While acknowledging that an "objection after instructions" may not be necessary if it "would be futile or useless[,]" the State argues that "[t]here is no indication that an objection would have been futile" in this case. This is so, the State contends, because during discussions regarding jury instructions, defense counsel "proffered simply" that "[Appellant's] behavior was 'consistent with him defending himself from a perceived fear upon seeing an armed individual with a knife.'" In contrast, the State contends, on appeal Appellant advances a different argument; unlike at trial, the State says Appellant now "offers a more thoughtful argument, engaging the issues of the deployment of deadly force, and who struck whom first, and otherwise pursuing a more thoughtful analysis of the issue than he did below." Indeed, as the State emphasized at oral argument, Appellant *never* argued at trial that Mr. Reaves escalated the fight to the level of deadly force. According to the State, the ability of Appellant to articulate—on appeal—this more "thoughtful" argument weighs against a finding that it would have been futile or useless for Appellant to object following jury instructions, because the trial judge was never presented with the more "*complete* argument" advanced on appeal.

In reply, Appellant insists that he did not waive his objection to the trial court's refusal to give the self-defense jury instruction. He argues that defense counsel "engaged in a lengthy discussion with the circuit court requesting the instruction" and any further objection would have been "futile or useless." Appellant points to the trial judge's statement that "based on the record in front of me . . . there is not evidence of—that, that anything happened in self-defense sufficient to generate the instructions[,]" as an indication that the judge would not have been persuaded by any additional argument. In any case, Appellant asserts that if we find he waived or otherwise failed to preserve his objection, we should exercise our discretion to undertake plain error review.

We initially conclude that Appellant has not preserved his argument for our review. Defense counsel requested the court to provide a self-defense jury instruction *prior* to the court instructing the jury, and stated, in relevant part:

> Detective Perez testified about his interview with [Appellant] and [Appellant's] assertion that Mr. Reaves brandished a knife during the incident. And I think that that is consistent with [Appellant's] actions . . . [because] although he's upset, there's no physical interaction with Mr. Reaves until at some point something causes him to go into the car. And then some[time] shortly after he goes back and retrieves a bat. He doesn't use it aggressively. He doesn't—certainly doesn't strike Mr. Reaves with it. But I think that's consistent with him defending himself from a perceived fear upon seeing an armed individual with a knife.

However, following the court's jury instructions, defense counsel did not object to the jury instructions nor raise any concerns. In our assessment, Appellant's argument was not preserved for our review. Additionally, as we explain further below, we opt not to exercise our discretion to engage in plain error review of this issue.

Our case law emphasizes that the Maryland Rules are not merely aspirational guidelines but are "precise rubrics established to promote the orderly and efficient administration of justice and . . . are to be read and followed." *Dorsey v. State*, 349 Md. 688, 700-01 (1998) (quotation omitted). As we explained in *Montague v. State*:

> The requirement that an objection to an instruction be made *after* the court has completed its instructions is important, for an objection at that point gives the trial court "an opportunity to correct the instruction in light of a well-founded objection." *Stabb v. State*, 423 Md. 454, 464-65 (2011). Consistent with these principles, a party's failure to object to an instruction after the court has instructed the jury generally forfeits the right to raise the issue on appeal." *See, e.g.*, *Correll v. State*, 215 Md. App. 483, 516 (2013)).
>
> However, the rule that parties must object to instructions after they are given is not an absolute requirement. As Judge Greene has recently noted for the [Supreme Court of Maryland], in the context of jury instructions, "there is 'some play in the joints' in determining whether an issue has been preserved. If the record reflects that the trial court understands the objection and, upon understanding the objection, rejects it, this Court will deem the issue preserved for appellate review." *Watts v. State*, 457 Md. 419, 428 (2018) [(quotation omitted)]. For an appellate court to conclude that there has been substantial compliance with Rule 4-325 ([f]), the following conditions must be met:
>
> > There must be an objection to the instruction; the objection must appear on the record; the objection must be accompanied by a definite statement of the ground for objection unless the ground for objection is apparent from the record[,] and the circumstances must be such that a renewal of the objection after the court instructs the jury would be futile or useless.
>
> *Bowman v. State*, 337 Md. 65, 69 (1994)[.]

244 Md. App. 24, 59 (2019) (fourth alteration in original) (emphasis removed).

In this case, Appellant fails at the first, second, and fourth steps in the analysis. To begin, at no point did defense counsel object to the instructions on the record. While

Appellant does not argue that defense counsel submitted proposed written instructions to the court, he clearly did *request* a self-defense instruction, and the court heard brief argument from both defense counsel and the State concerning why the instruction should—or should not be—given in this case. Ultimately, the court agreed with the State, and ruled as follows:

> I do understand and appreciate the argument. I am mindful of the fact that there only needs to be some evidence to generate an instruction on self-defense. But I believe based on the record in front of me, that there is not evidence of—that, that anything happened in self-defense sufficient to generate the instructions. Over your objection, which is noted, I'm not going to give the self-defense instruction.

Despite the language used by the trial judge, defense counsel's *request* for a jury instruction was not an *objection*, and counsel did not object *after* the trial judge made her ruling. Nor did defense counsel object after the court instructed the jury. When the trial judge finished instructing the jury, she asked: "Counsel, is there any need to approach?" Defense counsel replied, "No, Your Honor." Thus, no objection appears in the record before us, and, accordingly, Appellant fails the first and second prongs of the analysis.[5] Nothing prevented defense counsel from placing an objection on the record after the trial judge ruled against Appellant's request for a self-defense instruction, or after the judge instructed the jury.

[5] If defense counsel *had* objected to the court's ruling, it is likely that Appellant would not have been required to articulate "a definite statement of the ground for [the] objection[,]" *Montague*, 244 Md. App. at 59 (quoting *Bowman*, 337 Md. at 69), because the parties had just given argument pertaining to the self-defense instruction.

Putting aside the fact that defense counsel did not actually object *before* the charge of the jury, Appellant has not demonstrated that it would have been "futile or useless" to renew such an objection *after* the instructions were given. Indeed, this case is a far cry from the circumstances of, for example, *Gore v. State*, 309 Md. 203 (1987). In *Gore*, defense counsel informed the court, during a bench conference, that he intended to object if the court gave a supplemental jury instruction on a particular matter of law. *Gore*, 309 Md. at 206. The court's response was: "You can object all you want, but I'm going to [give the controverted instruction]." *Id.* at 209. Under these circumstances, the Supreme Court of Maryland was "satisfied that Gore's objection at the bench conference was sufficient to establish substantial compliance" with then-Rule 4-325(e). *Id.* Nor is this case akin to *Corbin v. State*, where, as we summarized in *Montague*, "after being rebuffed by the trial court on three separate occasions, counsel did not have to renew her objection after the jury was instructed because doing so would have been an exercise in futility[.]" *Montague*, 244 Md. App. at 61 (construing *Corbin v. State*, 94 Md. App. 21, 27 n.2 (1992)). Nor does this case fall within the parameters of *Bennett v. State*, 230 Md. 562 (1963), where the Supreme Court held the petitioner substantially complied with then-Md. Rule 756(f), the predecessor to Md. Rule 4-325(f):

> In the instant case, where the requests for instructions were submitted to the court in writing and written instructions . . . were prepared by the court and were discussed in chambers . . . before [the instructions were] read to the jury in open court, it is clear that the trial court was fully aware of the particular instruction the defendant desired the court to give, for, in rejecting the second request, the court noted in writing . . . that it was 'sufficiently covered in [the] court's instructions.' Moreover, the record discloses that the defendant not only objected then and there of the denial of the second requested instruction

> but also excepted to the refusal of the court to read it to the jury. And while no further exceptions were made to the prepared charge after it had been read to the jury, there was in this case no reason to repeat in the court room what had already been said and recorded by the reporter in chambers.
>
> In addition . . . the trial court and counsel for the State . . . not only believed but subsequently recognized that the defendant had made an effective objection. . . . [O]n the motion for a new trial, [the court] heard arguments by counsel for and against the claim that a new trial should be granted because the court erred when it denied the second requested instruction.
>
> We think that the objection or exception the defendant made was substantial compliance with the requirements of the rule[.]

Bennett, 230 Md. at 568-69 (second alteration in original).

Here, we are not persuaded that it would have been "futile or useless" for defense counsel to lodge his objection anew after the trial court provided instructions to the jury. Unlike *Gore*, in this case, the trial judge did not affirmatively indicate that she would not entertain further argument on the self-defense instruction. And unlike *Corbin*, defense counsel's attempts to obtain a self-defense instruction were not repeatedly denied prior to the judge instructing the jury.

Moreover, we note that Appellant has—for the first time on appeal—argued that the victim escalated the conflict to the level of deadly force by virtue of Appellant allegedly seeing a knife in the victim's vehicle and therefore, according to Appellant, a perfect self-defense instruction could have been provided despite the fact that he was the initial aggressor in the conflict. Defense counsel had the opportunity to present the court with this more nuanced argument either by objecting after the court's initial ruling, or by objecting after the court instructed the jury. But defense counsel did not object, and we

cannot say whether the judge would have been persuaded by this new argument. Therefore, this case is also distinguished from *Bennett*, where it was not necessary "to repeat in the court room what had already been said and recorded . . . in chambers[,]" because defense counsel had immediately "objected then and there . . . [and] also excepted to the refusal of the court to read [the instruction] to the jury." *Bennett*, 230 Md. at 568-69.

D. Plain Error Review

Even if the claim was not preserved, Appellant argues that we should exercise our discretion to engage in plain error review because the "record is clear on the circuit court's denial" of the requested instruction, and because the State had an opportunity to "respond to [the] request[.]"

"In theory, if neither strict nor substantial compliance is found, the last refuge an appellant may seek is to ask for plain error review." *Watts*, 457 Md. at 428 (citing *Newton v. State*, 455 Md. 341, 364 (2017)). While we have discretion under Maryland Rules 4-325(f) and 8-131(a) to review unpreserved errors pertaining to jury instructions, the Supreme Court has emphasized that we should "rarely exercise" that discretion because "considerations of both fairness and judicial 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[.]" *Ray v. State*, 435 Md. 1, 23 (2013) (quoting *Chaney v. State*, 397 Md. 460, 468 (2007)). Thus, plain error review is reserved for errors that are "compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial." *Savoy v. State*, 420 Md. 232, 243 (2011) (quoting *State v. Hutchinson*, 287 Md. 198, 203

(1980)). The error must be "so material to the rights of the accused as to amount to the kind of prejudice [that] precluded an impartial trial." *Newton*, 455 Md. at 364 (alteration in original) (quoting *Diggs v. State*, 409 Md. 260, 286 (2009)). Moreover, "[t]he plain error hurdle, high in all events, nowhere looms larger than in the context of alleged instructional errors." *Malaska v. State*, 216 Md. App. 492, 525 (2014) (quoting *Peterson v. State*, 196 Md. App. 563, 589 (2010)).

Four conditions must be met before we my exercise our discretion to undertake plain error review:

> (1) "there must be an error or defect—some sort of 'deviation from a legal rule'—that has not been intentionally relinquished or abandoned, *i.e.*, affirmatively waived, by the appellant"; (2) "the legal error must be clear or obvious, rather than subject to reasonable dispute"; (3) "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 . . . court proceedings'"; and (4) the error must "seriously affect[] the fairness, integrity or public reputation of judicial proceedings.

Newton, 455 Md. at 364 (quoting *State v. Rich*, 415 Md. 567, 578 (2010) (quoting *Puckett v. United States*, 556 U.S. 129, 135 (2009))).

In this case, we are precluded from exercising our discretion to undertake plain error review because it was not "clear or obvious" that Appellant was entitled to a self-defense instruction. *Id.* (quotation omitted). For example, Appellant contends that "some evidence" he subjectively believed himself to be in danger is generated from the testimony of Detective Perez, who testified that—in the course of questioning Appellant at the scene—Appellant stated: "I did take the bat, the baseball bat because he had a knife."

While this statement *might* generate sufficient evidence of Appellant's subjective fear to meet the "some evidence" threshold, it is not *clear* or *obvious* that it does so.

Even more doubtful is whether there was "some evidence" that Appellant was not the "aggressor" or otherwise the person who "provoked the conflict[.]" *Porter*, 455 Md. at 235 (quotation omitted). In his opening brief, Appellant acknowledges that he "placed his hands into Mr. Reaves' vehicle" *before* Mr. Reaves allegedly "brandished a knife." For the first time on appeal, Appellant argues that the alleged pulling of the knife "raise[d] the fight to the level of deadly force" and, therefore, he may have been entitled to a self-defense instruction *even if* he were the initial aggressor. But this argument was not made to the trial court, and we cannot say that this new argument—to the degree it *might* have merit—was, or should have been, clear or obvious to the trial court.

As should be clear from this discussion, the evidence supporting the proposition that Appellant acted in self-defense can only be described as "scant." Accordingly, we do not find that the court's purported error "affected [Appellant's] substantial rights, which in the ordinary case means [a demonstration] that [the error] affected the outcome of the . . . court proceedings[.]" *Newton*, 455 Md. at 364 (quotation omitted).

In sum, this is not one of those rare cases in which we will exercise plain error review. *See Morris v.* State, 153 Md. App. 480, 507 (2003) ("[A]ppellate invocation of the 'plain error doctrine' 1) always has been, 2) still is, and 3) will continue to be a rare, rare phenomenon.").

II.

DENYING THE MOTION FOR NEW TRIAL

A. Background

Prior to opening statements, Appellant moved to exclude any testimony about certain citations that were issued to Appellant on the day of the incident—including a citation for driving an unregistered vehicle—because, in Appellant's view, those citations were irrelevant to the issue of who was at fault for causing the car accident, and the defense would stipulate to the fact that Appellant was the driver of one of the two vehicles—and thus that Appellant was present at the scene. The court agreed, and further determined that evidence of the citations would constitute inadmissible "other crimes evidence[.]" The court therefore ruled that "evidence pertaining to [the] citations issued would be other crimes evidence and would not be permissible to establish identity unless identity's an issue and certainly [it] sounds like it won't be."

During the trial, the State asked Officer Smith whether he "determine[d] whether or not the vehicle belonged to [Appellant]" and defense counsel immediately objected. Officer Smith responded that "[t]he vehicle was unregistered." The court promptly sustained the objection and struck Officer Smith's response to the question from the record. Later, the court instructed the jury that "[a]ny testimony that I struck or I told you to disregard" was "not evidence" and that the jury should "not give [such testimony] any weight or consideration[.]"

During closing arguments, an alternate juror sent the judge a note stating: "It was mentioned that [Appellant's] car was impounded because it wasn't registered. Are we allowed to know that or is that something we're supposed to disregard?" As previously noted, the following colloquy then occurred:

> THE COURT: But, I mean, I did tell them to disregard that, but I don't think I should address this note.
>
> DEFENSE COUNSEL: I, I would wait to see—
>
> THE STATE: Yeah.
>
> DEFENSE COUNSEL: If she's not going to go back, I don't think—
>
> THE COURT: She's not going to deliberate, we're not going to—
>
> DEFENSE COUNSEL: Yeah.
>
> THE COURT: —address this note.
>
> DEFENSE COUNSEL: I think that's—
>
> THE COURT: Okay.
>
> DEFENSE COUNSEL: —the way to go.
>
> THE STATE: No objection.

The trial judge and the defense counsel worked to draft a response to the alternate juror and made the following determinations:

> THE COURT: It's a little bit w[eird] that I'm just not going to address it.
>
> Do you want me to say Alternate No. 2—alternate to our Alternate—
>
> DEFENSE COUNSEL: We have your note—

THE COURT: As to your question, if you're not going to deliberate, we're not going to—should I tell her that?

DEFENSE COUNSEL: Yeah[.]

Thereafter, the judge verbally told the jury, in pertinent part: "So the question from our alternate, I will address that at the appropriate time."

B. Parties' Contentions

Appellant argues that the circuit court erred in denying Appellant's motion for a new trial after the alternate juror sent a note to the court asking whether the jury should disregard whether Appellant's car was unregistered. Appellant contends that the note gave "a uniquely rare look into the jury's mind" which indicated that "the jury did not disregard the testimony." Appellant posits that "[w]ho caused the accident was a central issue of the dense." Furthermore, "evidence about unrelated wrongdoings [such as] driving an unregistered vehicle" was "inherently prejudicial[.]" Appellant argues that it is possible for a juror to believe that if "Appellant drives without regard for the law . . . he [may] commit[] assaults for the same reason."

The State counters that not only is this argument "merely waived, it is forfeited." According to the State, Appellant "accepted the trial judge's invitation and guided the trial judge through composing a response" to the alternate juror.

Regardless of whether this argument was preserved, the State contends that it is "meritless." The note was sent by an alternate juror before defense counsel's closing argument, and the alternate juror was dismissed before deliberations began. Moreover,

there is nothing in the record to suggest that the alternate juror's question "indicated some compromise of any of the jurors, even including the alternate who sent the note." Thus, according to the State, the trial court did not abuse its discretion in denying the motion for a new trial.

C. Legal Framework

This Court acknowledges that raising an error for the first time in a motion for a new trial is not a substitute for preservation. *Isley v. State*, 129 Md. App. 611, 619 (2000), *overruled on other grounds*, *Merritt v. State*, 367 Md. 17, 24 (2001). If trial errors are "not preserved for appellate review by timely objection at trial, raising them in a Motion for a New Trial and then appealing the denial of that motion is not a way of outflanking the preservation requirement." *Id.* (citing *Buck v. Cam's Broadloom Rugs, Inc.*, 328 Md. 51, 61 (1992)). "A post-trial motion cannot be permitted to serve as a device by which a defendant may avoid the sanction for nonpreservation." *Torres v. State*, 95 Md. App. 126, 134 (1993).

Regarding the review of the denial of a motion for new trial, the Supreme Court of Maryland has clarified that reversal is appropriate only if the "degree of probable prejudice [was] so great that it was an abuse of discretion to deny a new trial[.]" *Williams v. State*, 462 Md. 335, 345 (2019) (quoting *Merritt*, 367 Md. at 29). "Abuse occurs when a trial judge exercises discretion in an arbitrary or capricious manner or when he or she acts beyond the letter or reason of law." *Id.* (quoting *Campbell v. State*, 373 Md. 637, 666 (2003)).

D. Analysis

Maryland Rule 4-331, which governs motions for a new trial, is structured to provide relief "on three progressively narrower sets of grounds but over the course of three progressively longer time periods." *Isley*, 129 Md. App. at 623. The Rule stipulates, in relevant part:

> (a) **Within ten days of verdict. —** On motion of the defendant filed within ten days after a verdict, the court, in the interest of justice, may order a new trial.

Md. Rule 4-331(a).

Here, Appellant filed a timely motion for a new trial five days after the verdict. The claims raised in Appellant's motion, however, are not preserved for our review. Appellant did not object to the court's response to the alternate juror's note, and, in fact, collaborated closely with the court in drafting a response. In essence, the contentions Appellant raises on appeal were all raised for the first time in his motion for a new trial. As reiterated in *Isley*, "[i]f such alleged errors [are] not preserved for appellate review by timely objection at trial, raising them in a Motion for a New Trial and then appealing the denial of that motion is not a way of outflanking the preservation requirement." *Isley*, 129 Md. App. at 619 (citation omitted). Therefore, we will not entertain Appellant's claims, which were raised for the first time on appeal.

Even if we were to consider the issue, we would determine that the trial court did not err in denying the motion for a new trial based on the note sent by the alternate juror. The alternate juror who sent the note was dismissed after closing arguments and did not

take part in the jury's deliberations. Defense counsel collaborated with the trial court in formulating a response to the alternate juror's note. Furthermore, Appellant points to no evidence in the record to suggest that the question from the alternate juror compromised the jury deliberation process.

CONCLUSION

For these reasons, we hold the trial court did not err in declining to instruct the jury on self-defense nor did the trial court err in denying the motion for a new trial.

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