

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1199

September Term, 2024

MICHELINA GOODWIN

v.

STATE OF MARYLAND

Zic,
Ripken,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: June 1, 2026

On March 7, 2024, a jury sitting in the Circuit Court for St. Mary’s County found Michelina Goodwin (“Appellant”) guilty of second-degree murder, using a firearm in the commission of a felony, and unlawful burial of human remains. In August of 2024, the court sentenced Appellant to a term of forty years’ incarceration for the second-degree murder conviction; a consecutive term of twenty years’ incarceration for the conviction for use of a firearm in the commission of a felony; and one consecutive year of incarceration for the conviction for unauthorized burial of human remains.

Thereafter, Appellant noted a timely appeal to this Court presenting the following issue for our review:¹

Whether the trial court erred in declining to instruct the jury on the defense of others. For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On December 21, 2022, Candee Ellis filed a missing person report with the Maryland State Police regarding her brother, James Nalborczyk (“Nalborczyk” or “the victim”), with whom she had last spoken approximately ten days prior. At the time, Nalborczyk was residing with Appellant at Appellant’s home in St. Mary’s County, along with a third individual, Larry Murphy (“Murphy”). In January of 2023, Appellant admitted to police that she had shot and killed Nalborczyk at her residence, concealed his body with Murphy’s assistance, and had later dismembered and disposed of Nalborczyk’s body at

¹ Rephrased from:

Did the trial court commit reversible error by refusing to give the jury instruction for perfect and imperfect defense of others?

various locations in St. Mary’s County and Charles County. Police recovered Nalborczyk’s remains at the locations identified by Appellant. In December of 2023, Appellant was indicted in the Circuit Court for St. Mary’s County for first-degree murder of Nalborczyk; use of a firearm in the commission of a felony; and unauthorized burial of human remains. A jury trial was conducted over the course of nine days commencing in February of 2024. The following facts were elicited at that trial.

Initial Police Investigation

On December 24, 2022, following receipt of the report that Nalborczyk was missing, as part of their investigation, Troopers Posch and Buglio of the Maryland State Police went to Appellant’s house, where Nalborczyk, the victim, also lived. Appellant told the police that she had last seen Nalborczyk on December 9, 2022. When asked whether Nalborczyk had a phone number, as he had been reported missing, Appellant responded that he had told her that “he had gotten a HVAC job and he was going over [to] Virginia and they were going to give him a company truck and a company phone.” Regarding Nalborczyk’s phone, Appellant indicated that she was not “worried about [Nalborczyk’s] phone not working” because once he acquired the new phone, he would call “everybody[.]” The police then left, and the investigation into the disappearance of Nalborczyk continued. In the ensuing weeks, police spoke to Appellant again and searched her home.

On December 28, 2022, after obtaining cell phone data, including location data, for Nalborczyk’s phone, police found his phone “completely dead, in pretty rough shape” about ten feet from the side of a road. The police performed a data extraction of the phone which enabled them to review the text messages stored on the phone. Among the text

messages that the police recovered from the phone were numerous, mostly unanswered, messages from Nalborczyk to Appellant in the days prior to when he went missing. It appeared that Nalborczyk was angry that Appellant was with another man. At times, Nalborczyk wrote that he loved Appellant, and, at times, that he hated her. He indicated that he would hurt her and wrote that he would “never forgive” her. The cell phone extraction also showed a series of text messages between Appellant’s phone and Nalborczyk’s phone between December 11, 2022 and December 17, 2022.²

The police investigation also revealed video surveillance footage from a Lowe’s hardware store showing Appellant purchasing a 16-inch chainsaw on December 13, 2022.

In December of 2022, Anthony Blend, a friend of Appellant, recalled that Appellant had brought various items to his house including a shotgun, some “hunting stuff,” and other “personal belongings[.]”³ According to Blend, Appellant told him that she had “accidentally shot her roommate” approximately one week prior with a double-barrel shotgun, that she had not spoken with police, and that “she got rid of the body.” Blend clarified that Appellant, in describing the accident, related that there was an argument or fight between the victim and Murphy, and as Appellant moved down the hallway, she

² The State would later argue in closing argument that these messages were sent and received by Appellant, who was in possession of both phones, as part of her attempt to cover-up her role in the victim’s disappearance.

³ Blend said that Appellant informed him the shotgun she brought to his house was not the shotgun she used to shoot the victim. The shotgun Appellant brought to Blend was a single-barrel shotgun later determined to be inoperable.

tripped, and shot the victim in the hallway. After Appellant showed Blend a picture of her missing roommate, Blend contacted police and provided this information.

At trial, Eric Holt, a customer at the liquor store where Appellant worked and who was familiar with Appellant, said that, in December 2022, Appellant had asked him to help her get rid of a gun. She brought what he understood to be a shotgun to his home in a tan case. She asked him to sell it for her, and when he was unable to, he gave it back to Appellant.

In January of 2023, Appellant contacted her estranged father, Richard Persechino, who had been in contact with her “maybe three times or four times in her whole life”—the most recent contact had occurred approximately twenty years prior—seeking “\$10,000 because the MS-13 w[ere] after her.” According to Persechino, Appellant said the money was alternatively needed for a lawyer or for leaving the country to escape the MS-13 gang. Persechino declined to provide these funds, and suggested that she contact the police. Persechino contacted the Maryland State Police himself after concluding his conversation with Appellant.

Around the same time in January 2023, Appellant contacted her uncle, James Persechino, for the first time in years, and asked him for help because she said she was afraid of MS-13 gang members. At trial, he testified that Appellant told him that there was a “missing person” and that she knew that drug dealers, and possibly MS-13, were involved with the fact that the person was missing. During a subsequent phone call, after learning that her father had informed police of what she had told him, Appellant disclosed to her

uncle that she was contemplating suicide, which prompted him to call the police to request a welfare check on her at her home.

Appellant's Police Interview

On January 10, 2023, the police went to Appellant's home and arranged for her to be transported to the hospital as a result of her suicidal ideations. Shortly after her release, on January 14, 2023, she was again transported to the hospital.⁴ Following her release from the hospital, Appellant was taken to the police department to be interviewed.

Sergeant Roger Schwarb of the Maryland State Police testified that, on January 18, 2023, he, along with Trooper Evan Ruggles, interviewed Appellant. A video recording of that interview was admitted into evidence and played for the jury during the trial. At the outset of the interview, after being advised of her Miranda rights, Appellant informed the police about a string of experiences which she asserted suggested that a criminal gang might have been involved in Nalborczyk's disappearance.

Appellant explained that Nalborczyk had left his phone at her house, and that "it was not working anyway[.]" and that she had retained it because Nalborczyk would eventually "need numbers out of it[.]"

During their interview, the police confronted Appellant with the fact that, in the days before he went missing, Nalborczyk "sent a lot of text messages to you ... that were, you know, him telling you how much he cared about you and that he was sorry for an argument

⁴ Apparently before Appellant was transported to the hospital on January 14, 2023, police also encountered her at her residence where they executed a search warrant of the premises and of her vehicle.

that you guys had.” Appellant responded that their argument had not been about herself and Nalborczyk; rather, she asserted that the argument had been about her being “strict” with Nalborczyk.

When asked how it came to be that there were substantial amounts of blood at the house, Appellant provided a narrative that a year or more prior, a drug dealer had been allowed into the house in the early morning, who allegedly tried persistently to enter her bedroom. In this narrative, Appellant asserted that a dog bit the drug dealer’s arm, which resulted in blood covering the walls. When confronted that the blood was likely more recent than the time frame provided by Appellant, she pivoted to discussing her concerns regarding needing protection from gang members.⁵

The police then asked her how there came to be a large hole in the door to Murphy’s room. At that point, Appellant indicated that there had been a physical altercation between herself, Nalborczyk, and Murphy. Initially, Appellant explained that Nalborczyk “was trying to rape” her and that she went into Murphy’s room and locked the door. Then, Nalborczyk beat a hole in the door. She said this event occurred “awhile back.” She said that Nalborczyk was angry that she “wouldn’t have a relationship with him.” She said that the event concluded after Nalborczyk broke the hole in the door “and that was the end of that.” Police continued questioning Appellant, suggesting that it was incongruous for Nalborczyk to have broken down a door, only for all the occupants to have immediately returned to a peaceful evening. Appellant asserted that Nalborczyk had taken pills or

⁵ Blood samples taken from Appellant’s residence were consistent with her DNA profile and did not match Nalborczyk’s or Murphy’s DNA profiles.

alcohol beforehand; however, after obtaining additional alcohol from her room, he departed.

Police asked Appellant about what happened to the chainsaw that she had purchased from Lowe's in the days following Nalborczyk's disappearance. She provided several possible reasons for her purchase, eventually claiming that she did not know the current whereabouts of or where she had left the chainsaw.

As police continued to confront Appellant with discrepancies in her narrative, Appellant ultimately confessed to killing Nalborczyk, dismembering his body with the chainsaw, and disposing of his body. She indicated that:

I was in my bedroom. I was trying to stay away from [Nalborczyk]. He had apparently been sitting there waiting for me to get home. He got mad because I hadn't come home the night before, while he was not my boyfriend. So he started banging on my door and wanted in. I wouldn't let him in. My door doesn't really close all the way. So he got in and he wanted, you know, to have sex with me. It was, you know, whatever. He threw me up against the wall a couple times. He threw me on the bed a couple times. Finally got him to go, leave me alone.

And he came back, he wouldn't leave me alone. So, like I said, asked [Murphy] if I could come in his room for awhile. I'm there and I shut the door. I sat next to him. We were watching TV. You hear him, [Nalborczyk], out there, yelling and screaming and beating the walls and s[**]t. Next thing, he's yelling about the Jim Beam. He just wants some Jim Beam, which is absurd because he had his own liquor and it was setting on my makeup table. I told him it was in on the makeup table. And next thing you know, his head is going through the d[**]n door. He reaches in, opens the door and comes in.

He starts yelling at me. I'm sitting on the bed. He like kicks me by my shoulders and throws me up against the -- the back of the bed a couple times, the wall, like, right there. And the dog comes in and the dog is like trying to get him to stop and growling and whatnot. And he kicks the dog, the big white one, in the leg. That's when [Murphy] stood up and said, no, no, stop. That's all [Murphy] had done.

So [Nalborczyk] grabbed a hold of [Murphy] and started beating the s[**]t out of him. And [Murphy] never threw a fist, not a single time. I left the room, [Nalborczyk] keeps beating . . . [Murphy]. [Murphy] is just trying to get a hold of [Nalborczyk] -- get away from him. He never was able to get his arms up. [Nalborczyk] beat [Murphy] down to the front landing and pulled [Murphy] back up. [Murphy] was trying to get away. He was trying to get downstairs. [Nalborczyk] kept beating him. You know, [Murphy] doesn't have any -- any bone right there.⁶ It's not good.

I was scared for [Murphy]. [Nalborczyk] pulled him back up to the front top landing, you know, he kept beating on him and beating on him. [Murphy] still constantly trying to get away. Never, never, never hit him back. I'm so proud of him. But at the same time, I was so scared for him because if [Nalborczyk] hit him in that eyeball, he's done for, right.

So my husband had left a double-barrel shotgun there and I just grabbed it to try to get [Nalborczyk] to get the f[**]k off of [Murphy]. I wasn't strong enough to pull him off of him. I didn't know the [gun] was loaded. I didn't - - I didn't mean to. The little dog, Otis, was there and I accidentally stepped on him. The f[**]king gun went off and that was that.

Appellant later said that she "didn't mean to" kill Nalborczyk, and that she only wanted him to turn and look at her so he would see that Appellant was serious and stop fighting Murphy. She related that "the dog was standing [t]here and [she] stepped on the dog, and [she] looked and that[] was when it happened. It was a f[**]king accident." She told police that she "did not know [the gun] was loaded." She claimed that afterwards, she asked Murphy to help her move Nalborczyk's body to the laundry room, where they left him for a few days, because "it didn't look good" and she did not know how she was going

⁶ On direct examination, Sergeant Schwarb indicated that during the interview, Appellant had pointed to her right eye when discussing Murphy's absence of bone under his eye. According to Sergeant Schwarb, Murphy has no bone under his eye on the left side of his face, and also has a glass eye on his left side.

to provide an explanation; Appellant further claimed that she did not know how she was going to “save [Murphy] because it didn’t look right.” Throughout the interview, Appellant asserted at a minimum of six instances that her firing of the shotgun was accidental. In the interview, she also acknowledged that her finger had been on the trigger of the shotgun.⁷

Appellant informed police that she used a chainsaw to dismember Nalborczyk’s body, and that she then took his remains to locations in Charles County and St. Mary’s County, where she also set the remains on fire. She told police that she threw the chainsaw on the side of the road. She told police that she threw the shotgun she used to shoot Nalborczyk to the side of a road in Charles County. She then led the police to the locations where she disposed of Nalborczyk’s remains. Body-worn camera video and audio recordings of Appellant showing police to those locations were admitted into evidence and played for the jury. Police recovered Nalborczyk’s remains at those locations. The chainsaw and the shotgun were never located.

Additional Evidence

An autopsy was conducted. The Office of the Chief Medical Examiner concluded that Nalborczyk had been shot in the left side of his back, and that he had died from this wound. The autopsy report further indicated that the post-mortem dismemberment was consistent with the use of a chainsaw, and also reflected that portions of the remains bore evidence of post-mortem burning. A toxicology analysis was conducted as part of the autopsy. At trial, Dr. Joseph Mininni, an assistant medical examiner working in the Office

⁷ The State later introduced into evidence handgun safety certifications Appellant obtained in 2020.

of the Chief Medical Examiner, testified that the toxicology analysis demonstrated the presence of cocaine, a metabolite of cocaine, and ethanol. Dr. Mininni indicated that he could not indicate how ethanol came to be in Nalborczyk's system, as it could be the natural result of decomposition or of ingestion.⁸

The defense called no witnesses at trial.

Jury Instructions

At the conclusion of the presentation of evidence phase of the trial, the court and parties discussed jury instructions. Appellant asked the trial court to instruct the jury on both perfect and imperfect defense of others, arguing that those instructions had been generated by the evidence. Appellant argued the following:

We believe that there has been some evidence of defense of others generated by [Appellant's] statement to include portions related to: I just wanted him to stop hitting [Murphy] and I saved [Murphy]. In conjunction with other evidence that has been raised in the case to include threatening text messages, physical damage in the home, plus the results of the toxicology that was done as part of the autopsy. We cited *Dykes v. State*, *Christian v. State*[,] and referenced the *Faulkner* case^[9] about why we believe [MPJI-Cr] 4:17.3 should have been provided. We believe without the instruction, our argument will not have the same impact because it gives the impression that the defense of others doctrine is not one that is recognized by law. We believe that it impacts our client's right to a fair trial and substantive due process in this case.

⁸ The State presented numerous additional witnesses and exhibits over the course of the nine-day trial; as Appellant does not contest the sufficiency of the evidence, we do not recount each item of testimony or evidence.

⁹ Appellant appears to have been referencing *Dykes v. State*, 319 Md. 206 (1990); *Christian v. State*, 405 Md. 306 (2008); and *State v. Faulkner*, 301 Md. 482 (1982).

The State responded that the defense of others jury instruction had not been generated because the defense of others defense requires an intentional killing, and Appellant told the police that she accidentally shot Nalborczyk when she tripped over a dog. The State argued the following:

Ultimately, the cases cited to, specifically, excuse me, the *Christian* case, it requires an intentional killing, as does [MPJI-Cr] 4:17.3. In fact, it reads that the killing must be an intentional killing of another. And in here, there's been no evidence presented at trial to indicate that was an intentional killing. Therefore, the State does not believe that the voluntary instruction is applicable in this case. And, in fact, the involuntary would apply rather than the voluntary requested by the defense under 4:17.3. We're not saying it wasn't an intentional act. We're saying that the defense that Ms. Goodwin has raised is that this was an accidental shooting of the defense -- of the decedent, Mr. Nalborczyk.

The State continued, engaging in the following colloquy with the court:

[The State]: We're saying that -- we're not saying -- we're not arguing that her actions were intentional. The argument is which is the first[-]degree murder and the second[-]degree murder. The State's argument is that the evidence at trial submitted by the defendant, the statement given by the defendant is that the shooting of Mr. Nalborczyk, I guess, when the firearm discharged, the discharge was accidental.

[The court]: Right. Which you are arguing -- oh, okay.

[The State]: Yes. We are arguing for first[-]degree and second[-]degree murder, yes.

[The court]: Which would be intentional?

[Appellant]: Yes, sir.

The court then ruled, articulating the following:

[T]he defense has said that there can be . . . two competing or several different theories or defense. And that's true. The [c]ourt doesn't weigh the merits of the evidence, but there has to be evidence generated in the trial for instruction to be given. The evidence generated by the defense is that the

shooting and the death was accidental. There's no evidence that the defense has presented that [Appellant's] conduct or action was intentional. There's no evidence from her statements where she says I intended to shoot the gun. So the [c]ourt can't give an instruction on perfect or imperfect defense of others. So I will not give an instruction on . . . perfect or imperfect defense of others. The instruction the defense wanted me to give indicates that if the jury found imperfect self-defense, they would return a verdict of voluntary manslaughter. The [Appellant] has not injected any evidence of voluntary manslaughter. [The defense] injected evidence of involuntary manslaughter and the [c]ourt is going to instruct on involuntary manslaughter; that's the third count. So I'll deny the request to give an instruction on self-defense or defense of others. Defense of others is probably -- is germane to this case. As I said, there is no evidence of that in this trial.

The court instructed the jury on first-degree murder, second-degree specific intent murder, and involuntary manslaughter based on a grossly negligent act. The court did not instruct the jury on defense of others. At the conclusion of the court's jury instructions, Appellant objected to the court's declination to provide this instruction.

The jury found Appellant guilty of second-degree murder, using a firearm in the commission of a felony, and unlawful burial of human remains. This timely appeal followed.

DISCUSSION

THE TRIAL COURT DID NOT ERR IN DECLINING TO GIVE A JURY INSTRUCTION ON DEFENSE OF OTHERS

A. Party Contentions

Appellant claims that, when viewing the evidence in the light most favorable to her, there was some evidence that she acted in either perfect or imperfect defense of Larry Murphy. She argues that the evidence in support of the defense of others theory came from several sources, including Appellant's statements to police; Nalborczyk's text messages,

the toxicology analysis, and the damage to Appellant’s home as corroborative of her statements to police; and the “State’s theory.” She asserts that her statements that the shooting was accidental were insufficient to negate evidence that she intended to shoot Nalborczyk, and that she was entitled to put forth inconsistent defenses. Appellant posits that the alleged error was not harmless.

The State contends that there were two versions of the killing offered at trial: Appellant’s account in which she fired the shotgun accidentally, and the State’s theory, in which Appellant intentionally killed Nalborczyk. According to the State, neither of these theories provides evidence that Appellant intentionally killed Nalborczyk for the purpose of defending Murphy. Citing *Jarvis v. State*, 487 Md. 548 (2024), the State argues that Appellant cannot “cobble together” two accounts to manufacture an inference that is inconsistent with both accounts. The State asserts that because there was no evidence that Appellant intentionally shot Nalborczyk with the intent to defend Murphy, the defense of others instruction was not generated, and the trial court did not err in declining to give the instruction.

B. Standard of Review

At the request of either party, a trial court is required to “instruct the jury as to the applicable law and the extent to which the instructions are binding.” Md. Rule 4-325(c). A trial court is not required to provide a requested instruction if the matter is fairly covered by other instructions given. *See id.* “[A] requested jury instruction is required when (1) it ‘is a correct statement of the law;’ (2) it ‘is applicable under the facts of the case;’ and (3) its contents were ‘not fairly covered elsewhere in the jury instruction[s] actually given.’”

Jarvis, 487 Md. at 564 (2024) (quoting *Rainey v. State*, 480 Md. 230, 255 (2022)). “If any one part of the test is not met, we will affirm the trial court’s denial of the request for instruction.” *Joiner v. State*, 265 Md. App. 546, 565–66 (2025) (citation and brackets omitted). “With respect to the second prong of the test, ‘the threshold determination of whether the evidence is sufficient to generate the desired instruction is a question of law[,]’” which this court reviews *de novo*. *Id.* at 566 (quoting *Hollins v. State*, 489 Md. 296, 309 (2024)) (brackets and further citation omitted). “In determining whether there was some evidence to support the instruction, we review the evidence in the light most favorable to the accused.” *Id.* (quoting *Hollins*, 489 Md. at 309) (internal quotation marks and further citation omitted). We review the overall decision of the trial court as to whether to give an instruction for abuse of discretion. *Jarvis*, 487 Md. at 564.

C. Analysis

For a jury instruction to be mandated, the requesting party must produce “‘some evidence’ sufficient to raise the jury issue.” *Joiner*, 265 Md. App. at 566 (quoting *Jarvis*, 487 Md. at 564). “In the realm of self-defense, the defendant, thus, bears the initial burden of ‘producing “some evidence” on the issue of mitigation or self-defense’ to entitle him or her to a jury instruction.” *Jarvis*, 487 Md. at 564 (quoting *Dykes v. State*, 319 Md. 206, 215 (1990)); *see also Lee v. State*, 193 Md. App. 45, 55 (2010) (brackets, internal quotation marks, and citation omitted) (“When claiming defense of others, the defendant has the burden of initially producing ‘some evidence’ on the issue of mitigation or self-defense (or relying upon evidence produced by the State) sufficient to give rise to a jury issue with respect to these defenses.”). The defendant must meet this burden “as to each element of

the defense,” although the burden of demonstrating some evidence is a low hurdle. *Jarvis*, 487 Md. at 564 (citation omitted).

“Defense of others can be either perfect or imperfect.” *Jefferson v. State*, 268 Md. App. 354, 372 (2026) (citing *Lee*, 193 Md App. at 59–60). The former is a complete defense to criminality, which, if successful, would result in an acquittal. *Id.* On the other hand, in the context of murder, imperfect defense of others “is only a partial defense which mitigates murder to [voluntary] manslaughter.” *Id.* To generate a perfect defense of others instruction, the defendant must produce “some evidence” to support each of the following:

- (1) the defendant actually believed that the person defended was in immediate [or] imminent danger of death or serious bodily harm;^[10]
- (2) the defendant’s belief was reasonable;
- (3) the defendant used no more force than was reasonably necessary to defend the person defended in light of the threatened or actual force; and,
- (4) the defendant’s purpose in using force was to aid the person defended.

Id. at 372–73 (alteration in original) (citing *Choi v. State*, 134 Md. App. 311, 326 (2000)).

Defense of others, like self-defense, is a justification or mitigation defense. If the appellant proved that he was acting in perfect defense of others, i.e., that he held a subjectively reasonable belief that he had to use force to defend another against immediate and imminent risk of death or serious harm and the level of force he used was objectively

¹⁰ In *Danshin v. State*, 491 Md. 520, 538–39 (2025), the Supreme Court of Maryland noted an inconsistency between the pattern jury instructions and appellate iterations of the elements of defense of others. Specifically, the Appellate Court of Maryland has regularly used the expression “immediate *and* imminent” while the pattern jury instructions used the term “immediate *or* imminent.” *See id.*; *see also Jefferson*, 268 Md. at 370 n.3. In *Danshin* and *Jefferson*, as in this case, the parties present no argument as to whether the proposed instruction was a correct statement of the law; rather, the argument concerned whether the instruction was applicable. As a result, each court assumed without deciding that the instruction contemplated by the trial court was a correct statement of the law. *Danshin*, 491 Md. at 538–39; *Jefferson*, 268 Md. at 370 n.3. We shall do the same.

reasonable to accomplish that purpose, he would be entitled to an acquittal on the murder charge. *See* Judge Charles E. Moylan, Jr., *Criminal Homicide Law* 194 (2002). On the other hand, if the appellant held an actual belief that he had to use force to defend another, but his belief was not objectively reasonable and/or the level of force he used was not objectively reasonable, the result would be to mitigate what might otherwise be murder down to the manslaughter level. The former is the “perfect” or “complete” form of the defense; the latter is the “imperfect” or “partial” form.

Edwards v. State, 267 Md. App. 392, 430–31 (2025), *cert. denied*, 493 Md. 181 (2026) (quoting *Lee*, 193 Md. App. at 58–59) (emphasis omitted).

Essential to both perfect and imperfect defense of others are the defendant’s actual, subjective beliefs related to the need to use force and to the level of force required. *See id.* In other words, perfect self-defense contains all of the elements of imperfect self-defense and adds the additional element that each of the relevant subjective beliefs be objectively reasonable. “[I]t is the defendant’s subjective belief at the moment that the fatal shot is fired that is relevant and probative[.]” *Danshin v. State*, 491 Md. 520, 547 (2025) (quoting *State v. Martin*, 329 Md. 351, 365 (1993)).

To sufficiently introduce evidence such that an instruction on perfect or imperfect defense of others is required, a defendant must generate evidence as to each element of the defense. *Jefferson*, 268 Md. App. at 372 (“We, therefore, must determine whether ‘some evidence’ of each element of the defense of others defense was adduced at trial.”). “Except for the rare phenomenon of one factor’s occasional one-level slippage from the perfect defense of others to the imperfect defense of others, the failure of the defendant to generate an issue as to any single factor of the paradigm is tantamount to the failure to generate the issue of the paradigm as a whole.” *Edwards*, 267 Md. App. at 430.

Here, neither party introduced evidence that Appellant’s subjective purpose in shooting Nalborczyk was to aid Murphy.¹¹ *See Jarvis*, 487 Md. at 566; *see also Jefferson*, 268 Md. App. at 373. Appellant asserts that evidence at trial, viewed in a light most favorable to her, was sufficient to generate a defense of others instruction, as demonstrated by her statement to police that Nalborczyk was attacking Murphy, and she was afraid for Murphy’s safety; the account in the autopsy report that Nalborczyk might have had cocaine and ethanol in his system; the damage to her home; the text messages sent by Nalborczyk in the days prior to the shooting; and the State’s evidence that Appellant was familiar with firearms and the associated inference that Appellant intended the natural consequences of her actions. However, there was no evidence adduced at trial that Appellant shot Nalborczyk for the purpose of aiding Murphy. *See Jarvis*, 487 Md. at 566. “[W]hile circumstantial evidence and reasonable inferences drawn therefrom can satisfy the ‘some evidence’ standard,” reviewing the evidence in a light most favorable to Appellant, this evidence does not satisfy the requisite threshold of establishing that Appellant’s subjective purpose in shooting Nalborczyk was to aid Murphy. *See id.* (citing *Martin*, 329 Md. at 363).

Although Appellant indicated in her statement to police that Nalborczyk was attacking Murphy and that she took out the firearm to scare him into ceasing the attack on

¹¹ To generate an instruction on defense of others, Appellant needed to introduce evidence concerning each element of the defense. *Edwards*, 267 Md. App. at 430. However, as we determine that there was no evidence adduced concerning the fourth element, “we need not address, and intimate no opinion on, any other element” of defense of others. *See Jarvis*, 487 Md. at 566 n.12.

Murphy, she repeatedly stated in that statement and subsequently that she did not intend to shoot Nalborczyk, that shooting him had been an accident caused by her tripping over a dog, and that she was unaware the firearm was loaded. The other evidence Appellant refers to as demonstrative of Nalborczyk's actions—his text messages to her in the days before the shooting, the damage to her home, and the toxicology analysis—do not provide any insight into Appellant's subjective purpose in shooting Nalborczyk. While the damage to Appellant's home and toxicology analysis could provide some corroborative effect in support of Appellant's statement to police, they are devoid of any inferences concerning her state of mind. The text messages are further attenuated to a defense of others defense; while the messages contain general threats by Nalborczyk to harm himself or Appellant, nothing in the messages suggests a threat by Nalborczyk to harm Murphy; more to the point, nothing in the messages contains an inference that Appellant believed shooting Nalborczyk was necessary to aid Murphy. Finally, the State elicited evidence that Appellant was familiar with firearms and the inference that by placing her finger on the trigger, she intended the natural result of killing Nalborczyk; however, the State did not elicit evidence that in doing so, Appellant killed Nalborczyk with the purpose of aiding Murphy.

“There were thus two accounts” of Appellant's shooting of Nalborczyk. *See Jarvis*, 487 Md. at 567. Under one, the shooting was accidental. Under the second, the shooting was intentional. Under neither account was there evidence that Appellant's purpose in shooting Nalborczyk was for the purpose of aiding Murphy. *See id.*

Appellant suggests that the evidence that the shooting was intentional, coupled with her statements to police regarding her concern for Murphy’s well-being, could provide an inference that Appellant shot Nalborczyk for the purpose of aiding Murphy. However, the Supreme Court of Maryland has held that it is not appropriate “to combine individual, out-of-context portions of . . . two accounts to cobble together an inference that is inconsistent with both of them.” *Jarvis*, 487 Md. at 567. The Court clarified that “[w]hile the ‘in the light most favorable’ standard requires that the evidence and proper inference be drawn in [Appellant’s] favor, that standard ‘does not require the taking of isolated sentences, or parts of sentences, in the testimony and construing them out of context, without any regard to the rest of the witness’s testimony.’” *Id.* at 567–68 (quoting *Rodriguez v. Lynch*, 246 Md. 623, 626 (1967)) (further citation and quotation marks omitted). Here, as in *Jarvis*, in neither theory of the shooting was there any evidence that Appellant’s purpose in shooting Nalborczyk was to aid Murphy.

In differentiating the absence of evidence for the purpose of a jury instruction from a defendant’s ability to put forth inconsistent theories of defense, the Supreme Court of Maryland explained: “[a]lthough as a legal matter there is no bar to putting forth different or inconsistent theories of defense [e.g., accident and self-defense], there will often be practical problems of proof, particularly where different theories involve proof of different mental states on the part of the defendant.” *Jarvis*, 487 Md. at 569 (alteration in original) (quoting *Sims v. State*, 319 Md. 540, 550–51 (1990)). The Court noted that “[i]t becomes extremely difficult for a defendant to produce ‘some evidence’ that he or she subjectively

believed using deadly force was necessary to protect themselves, when the defendant testifies that the use of deadly force was accidental only.” *Id.* (citation omitted).

Despite these “practical problems of proof,” inconsistent theories and evidence are not prohibitive of a defendant generating a jury instruction. *See id.* at 569. For instance, in *Danshin v. State*, the defendant was charged with killing the decedent. 491 Md. at 529. While the defendant “largely denied” shooting the decedent, there was also evidence adduced at trial that the defendant told police he had shot, the decedent was shot, and the motivation behind the actions was that the decedent was attacking a third person with a machete. *Id.* at 527–28, 546. Thus, while the evidence at trial was varied, there was at least a “shred of evidence” generated to support each element of a defense of others jury instruction. *Id.* at 546 (quoting *Sims*, 319 Md. at 553).

Conversely here, Appellant did not meet her burden of introducing a minimum of a shred of evidence that Appellant shot Nalborczyk for the purpose of aiding Murphy. *See Sims*, 319 Md. at 553. Thus, in the absence of evidence establishing all the elements of defense of others, the instruction was not generated, and the trial court did not err in declining to propound such an instruction.^{12, 13}

¹² Appellant relies on *Lee v. State*, 193 Md. App. 45 (2010) and *Shuck v. State*, 29 Md. App. 33 (1975) to support the proposition that her intervention into the altercation between Nalborczyk and Murphy was justified, as was her use of force. We need not reach these elements because, as explained *supra*, Appellant failed to adduce evidence demonstrating she shot Nalborczyk for the purpose of aiding Murphy, and thus, the elements of defense of others were not satisfied.

¹³ Because we have determined that the trial court did not err in declining to propound the requested jury instruction, we do not reach the question of harmless error. *See Jarvis*, 487 Md. at 554.

**JUDGMENTS OF THE CIRCUIT
COURT FOR ST. MARY'S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**