

Circuit Court for Baltimore City
Case No. 123222005

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1428

September Term, 2024

TAYVON MILLER

v.

STATE OF MARYLAND

Reed,
Shaw,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 3, 2025

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Convicted by a jury in the Circuit Court for Baltimore City of first degree murder and related offenses, Tayvon Miller, appellant, presents for our review a single issue: whether the court erred in “refusing to instruct the jury on involuntary manslaughter.” For the reasons that follow, we shall affirm the judgments of the circuit court.

Mr. Miller was charged by indictment with first degree murder, robbery with a dangerous weapon, use of a firearm in the commission of a crime of violence, and illegal possession of a regulated firearm. At trial, the State called Baltimore City Police Officer Yuxuan Li, who testified that “right before” 9:00 p.m. on June 28, 2023, he received a call to respond to the 2600 block of West Patapsco Avenue “for a shooting.” Arriving at the location, which is in the Arbuta Arms apartment complex, Officer Li “observed the victim, a black male, late 30s or early 40s, laying on the ground, unconscious,” and “right next to a Mitsubishi.” Officer Li approached the Mitsubishi and spoke with the driver, who identified herself as Cirra Wright. During the conversation, which was recorded by the officer’s body-worn camera, Ms. Wright identified the victim as Frissell Townes. Ms. Wright stated that a man with a gun approached the car, ordered Mr. Townes “to get out,” and shot him. Ms. Wright described the shooter as “[t]all, skinny, . . . slim build,” “black,” “30s or 40s,” and wearing a “gray shirt.”

The State also called Ms. Wright, who testified that at the time of trial, she had known Mr. Miller for over five years, and they had previously engaged in an “intimate,” “on and off” relationship. On June 28, 2023, Ms. Wright and Mr. Miller “were texting all day.” Ms. Wright testified: “He was mad at me. He was saying I owed him some money. He said I was using people. It was just like an argumentative kind of day.” That evening,

Ms. Wright and Mr. Townes, with whom Mr. Wright had been “hanging out,” were sitting in her Mitsubishi Mirage outside her residence at the Arbuta Arms. Mr. Townes had with him a “black and blue” book bag. Mr. Townes subsequently “got shot” outside Ms. Wright’s car. Ms. Wright testified that she was “originally untruthful with police” about who she saw “do it.” When the prosecutor asked, “who did you see,” Ms. Wright stated: “From what I remember, I remember seeing Tayvon.”

During Ms. Wright’s testimony, the court admitted into evidence text messages between her and Mr. Miller. At 8:04 p.m. on June 28, 2023, Mr. Miller sent to Ms. Wright a message that stated: “I’m going to show you what’s what I gave it a pass last time.” At 8:06 p.m., Mr. Miller stated: “I’m done tell you what’s what you done thought shit was sweet for the last time.” Mr. Miller also stated, “[s]ee what secretive gets you,” and, “I’m done talking.” At 8:10 p.m., Mr. Miller stated: “I done talking.” At 8:36 p.m., Mr. Miller stated: “You forget yourself I see so let me remind you.” At 8:48 p.m., Mr. Miller stated: “Well seeing but idk why y’all act surprised when I do what I do. Just don’t snitch.” Mr. Miller also stated: “Idk why you don’t know what’s up with me lol.” At 8:49 p.m., Mr. Miller sent messages asking where Ms. Wright was. At 8:50 p.m., Ms. Wright replied that she was “home.” At 9:04 p.m., Mr. Miller sent a message that stated: “See.”

The State also called Sean Wilson, who testified that on June 28, 2023, he was working for a company known as “Ready Ice,” and drove one of the company’s “Sprinter vans.” At approximately 4:30-5:00 p.m., Mr. Wilson parked his van in the 2600 block of West Patapsco Avenue, where he had previously lived. Mr. Wilson thereafter “hung out, walked the neighborhood,” and waited for his “sister to get home.” At 8:13 p.m., a camera

on the van recorded a “blue sedan” parking near the van. Mr. Wilson observed a “tall black male” sitting in the sedan. At 8:52 p.m., a “man passed” Mr. Wilson, who stated: “What’s up, brother?” The man replied, “[w]hat’s up,” and “that he wasn’t there.” Mr. Wilson stated: “I wasn’t here neither.” The man replied: “You ain’t seen my face.” Mr. Wilson “looked over” and saw “somebody on the ground.” Mr. Wilson subsequently “ran into [an] apartment building.” Mr. Wilson recalled that the man who spoke to him “had a bag.” During a subsequent interview with police, a detective showed Mr. Wilson a photographic array. Mr. Wilson selected a photograph of Mr. Miller and underneath it wrote, “potential shooter.” During cross-examination, Mr. Wilson stated that “the person that got in the blue car . . . look[ed] like” Mr. Miller.

The State also called Harry Summerville, who testified that on June 28, 2023, he was “doing maintenance work” in the 2600 block of West Patapsco Avenue, when he “noticed a gentleman that was standing over a body.” Mr. Summerville testified that “it looked like he was snatching up a bag or something like that.” When the man walked away, Mr. Summerville “walked over to the guy that was on the ground” and saw that “there was blood coming out of his head.” The State also called Medical Examiner Babatunde Stokes, who testified that Mr. Townes suffered a “gunshot entrance wound” to his “left front forehead,” and around the wound were “little red dots . . . associated with close-range gunfire.”

The State also produced evidence that following the shooting, a crime lab technician searched the “immediate crime scene area” and discovered a “fired cartridge casing.” The State called Baltimore City Police Detective John Amato, who testified that he investigated

the shooting and determined that the “suspect’s vehicle” was a blue Mercury Sable. Detective Amato subsequently obtained the Sable’s license plate number and discovered that the car was registered to Mr. Miller. On July 5, 2023, the detective discovered the Sable in the 1800 block of Harford Avenue. Police searched the car and discovered an empty 9 millimeter “firearm magazine,” “a bookbag that had multiple loose rounds of ammunition inside of it,” a “weapons cleaning kit,” and “a box of 9 millimeter ammunition.” Detective Amato subsequently discovered that the ammunition “have the exact same marking on the bottom of the[ir] casings . . . as the spent casing [at] the homicide crime scene.”

The State also called Federal Bureau of Investigation Special Agent Michael Fowler, who was admitted by the court “as an expert in historical cellular record analysis.” Agent Fowler testified that he analyzed data extracted from Mr. Miller’s cellphone and determined that from 7:58 p.m. to 8:03 p.m. on June 28, 2023, the location of the phone was “consistent with the area of the Horseshoe Casino.” From 8:16 p.m. to 8:52 p.m., the location of the phone was “consistent with the area of 2600 West Patapsco Avenue.” At 8:54 p.m., the cellphone gave “an indication of that device starting to move away from that area. . . in a northbound direction.” Finally, “just before the 9:30 p.m. time period that evening,” the location of the cellphone was “consistent with moving into the area of that subscriber[’s] address.”

Following the close of the evidence, defense counsel argued to the jury, in pertinent part: “[T]here’s absolutely no evidence – no one saw who shot Mr. Townes. There’s no evidence. There’s no direct evidence of who shot Mr. Townes. There’s no gun. There’s

no DNA. There's no video. There is nothing. That's a nothing, okay." Defense counsel further argued that "the State . . . failed to meet its burden to prove beyond and to exclusion of [a] reasonable doubt that" Mr. Miller "is guilty of" first degree murder, second degree murder, robbery, and possession of a firearm on the day of the murder. Following argument, the jury convicted Mr. Miller of the offenses.

Mr. Miller contends that the court "erred in refusing to instruct the jury on involuntary manslaughter." Following the close of the evidence, the court indicated that it would instruct the jury as to the offenses of first degree murder and second degree murder. Defense counsel asked the court to instruct the jury as to the offense of involuntary manslaughter,¹ arguing:

¹MPJI-Cr 4:17.9 states, in pertinent part:

A
INVOLUNTARY MANSLAUGHTER – GROSSLY NEGLIGENT ACT

The defendant is charged with the crime of involuntary manslaughter. In order to convict the defendant of involuntary manslaughter, the State must prove:

- (1) that the defendant acted in a grossly negligent manner; and
- (2) that this grossly negligent conduct caused the death of (name).

Grossly negligent means that the defendant, while aware of the risk, acted in a manner that created a high degree of risk to, and showed a reckless disregard for, human life.

* * *

(continued)

[W]e believe that . . . the jury can infer from the evidence that has been presented to them that the shooting of Mr. Townes, if they decided it was actually committed by Mr. Miller –

* * *

was in fact either done in – the circumstances in which the shooting, they are free to infer that it may have been either grossly negligent or simply not a lawful act

* * *

Regarding . . . unlawful act, the jury could infer that in the – again, we have no evidence as to what happened behind the car. It could have been a robbery or snatching of the bag or something of that nature.

The court declined to instruct the jury as to the offense.

Mr. Miller contends that the court erred in declining to give the instruction, because “involuntary manslaughter was a permissible verdict in light of the evidence.” Mr. Miller cites *Dishman v. State*, 352 Md. 279 (1998), in which the Supreme Court of Maryland

B
INVOLUNTARY MANSLAUGHTER – UNLAWFUL ACT

The defendant is charged with the crime of involuntary manslaughter. In order to convict the defendant of involuntary manslaughter, the State must prove:

(1) that [[the defendant] [another participating in the crime with the defendant]] [[committed] [attempted to commit]] (unlawful act(s));

(2) that [the defendant] [another participating in the crime] killed (name); and

(3) that the act resulting in the death of (name) occurred during the [commission] [attempted commission] [escape from the immediate scene] of the (unlawful act(s)).

concluded that “the trial court erred by refusing [a] manslaughter instruction” where “(1) the indictment charged manslaughter, (2) the State never entered a *nolle prosequi* of the manslaughter charge, and (3) the evidence allowed the jury to conclude that [Mr. Dishman] acted with gross negligence and not a specific intent to kill or cause serious bodily injury[.]” *Id.* at 300. Mr. Miller contends that “[i]nvoluntary manslaughter was a permissible verdict based on the evidence,” because “[a]s defense counsel argued[,], ‘we have no evidence as to what happened behind the car,’” and “defense counsel brought up the possibility that this was a robbery or robbery-gone-wrong scenario.”

We reject the contention. In *Dishman*, the Court stated that “[i]t is beyond dispute that a defendant is not entitled to a lesser-included offense instruction unless the evidence adduced at the trial provides a rational basis upon which the jury could find him not guilty of the greater but guilty of the lesser offense.” *Id.* at 293 (internal citation and quotations omitted). Here, it is true that there was evidence adduced at trial that Mr. Miller believed that Ms. Wright owed him money and was “using” others, and that Mr. Miller robbed Mr. Townes of his book bag. But, there was also considerable, if not overwhelming, evidence that Mr. Miller intentionally killed Mr. Townes with willfulness, deliberation, and premeditation. This evidence included text messages sent by Mr. Miller to Ms. Wright prior to Mr. Townes’s death, in which Mr. Miller stated that he was “going to show [Ms. Wright] what’s what,” that Ms. Wright would “[s]ee what secretive gets” her, that Mr. Miller was “done talking,” and that he would “remind” Ms. Wright of herself. Mr. Miller also ordered Ms. Wright not to “snitch,” and asked for her location. The State also produced evidence that Mr. Miller arrived at Ms. Wright’s residence approximately forty

minutes prior to Mr. Townes's death, that Mr. Miller was in possession of a firearm and ammunition, that Mr. Miller ordered Mr. Townes to exit Ms. Wright's vehicle before he was shot, and that the gunshot that killed Mr. Townes was fired at his forehead and at close range. We also note that Mr. Miller's defense, as presented by defense counsel in argument, was not that Mr. Townes was shot during a "robbery-gone-wrong," but that there was no evidence that Mr. Miller was the person who shot Mr. Townes, and insufficient evidence that Mr. Miller committed any of the offenses. From these circumstances, we conclude that there is no rational basis upon which the jury could have found Mr. Miller not guilty of first degree murder but guilty of involuntary manslaughter, and hence, the court did not err in declining to instruct the jury as to involuntary manslaughter.

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