

Circuit Court for Baltimore City
Case No. 122264041

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1647

September Term, 2024

DONTE Z. SIMMS

v.

STATE OF MARYLAND

Zic,
Ripken,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 12, 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 voluntary manslaughter and related offenses, Donte Z. Simms, appellant, presents for our review a single issue: whether the court “abuse[d] its discretion in denying the defense’s motion for new trial based on the lack of jury instruction on involuntary manslaughter.” For the reasons that follow, we shall affirm the judgments of the circuit court.

Mr. Simms was initially charged by indictment with first degree murder and related offenses. At trial, the State produced evidence that at 12:43 a.m. on August 15, 2022, paramedics were dispatched to 312 Park Avenue, where they discovered Eric Plater “seated on the ground” and suffering from a gunshot wound to his chest. Mr. Plater later died of the wound. The State called Darold Kelly, Jr., who testified that in “the early hours of” August 15, 2022, he was “parked out front of [his] residence at 304 to 306 Park Avenue,” when he “saw a young man get thrown out sideways from one of the stores up the street.” Mr. Kelly testified that a “few doors down from 304 Park Avenue,” there is a barbershop owned by Mr. Simms, whom Mr. Kelly had “[a]t that time” known for “probably about a year.” “[A]fter some time,” Mr. Kelly exited his vehicle “to kind of help” the man “on the ground.” While the man was “down there laying on the ground,” Mr. Simms exited the barbershop, closed the door, turned the lights off, and told Mr. Kelly: “I don’t have anything to do with this shit.” Mr. Simms then crossed the street, entered a vehicle, and departed.

The State also called Calvin Hemphill, who testified that he “loosely knew [Mr. Simms] through a barbershop that he had ran, but then . . . bumped into him while . . . locked up.” In August 2022, Mr. Hemphill and Mr. Simms were incarcerated at “Central

Booking.” During their conversations, Mr. Simms told Mr. Hemphill: “I had another business partner and I had some problems with him.” Mr. Simms stated that [h]im and his business partner, they had a disagreement about the money. So, they agreed to meet in the barbershop to discuss how he was going – how the dude was going to get his money or whatever and everything.

* * *

So, the guy come over there and talked to Donte Simms about the narcotics or whatever. So, Donte said, “I don’t owe you no money.” So, the guy like, “Man, you do.” He say, “Man, I’ve been getting shorted on the money for a while,” or whatever and everything. So, they going back and forth or whatever. So, the guy like, “Listen, I’m just going to get some collateral to hold or whatever until I get my money.” So, the guy started walking around the barbershop looking for items or whatever and everything that he could hold. While he doing that, Donte walked to the back of the barbershop, retrieve a nine millimeter, and come back up to the – in the middle of the barbershop or whatever. Dude turned around. He shot the dude once in the chest with the nine millimeter.

* * *

And then he dragged the guy out of the barbershop to the business next door that was owned by a lady. And, so, he told the lady that the guy was suffering from a drug overdose[.]

* * *

[H]e was saying that he didn’t know whether that lady was going to come to court or whatever because the lady called the paramedics. And, so, I’m assuming that’s how the paramedics responded, but he told the lady at that business next door that the guy was suffering from a drug overdose. Then he got out of there and he was wondering about whether the lady would come to court and testify against him, because he recorded a little bit of the conversation on his cell phone to try to make it look like the guy was the aggressor. So, he was saying he was trying to get his lawyer to get the cell phone or whatever because the cameras in the barbershop didn’t record audio. He had cameras in the barbershop and, so, he like – he tried to get his lawyer to get the cell phone because he recorded a snippet, like maybe ten seconds or whatever and everything, so he can make it look like the guy was the aggressor.

Following the close of the State’s case, Mr. Simms testified that he owned the barbershop, which was located at 312 Park Avenue. During the evening of August 14, 2022, Mr. Simms was working in the barbershop, and Mr. Plater was present. Mr. Simms testified that Mr. Plater, who “sold drugs,” “was messed up off of something” and “high.” When Mr. Simms “noticed that some things of [his] wasn’t there no more,” he asked Mr. Plater if he had touched Mr. Simms’s “stuff.” Mr. Plater “became instantly defensive” and “started basically asking . . . for some money.” Mr. Simms replied that he “didn’t have any money,” and Mr. Plater “began to get . . . angry.” When Mr. Simms told Mr. Plater that “it was time for him to go,” Mr. Plater “became very aggressive.” At 12:12 a.m., Mr. Simms used his phone to take a picture of Mr. Plater, who “had [a] gun in his hand” and “was steadily demanding money.” When Mr. Simms “tried to walk past,” Mr. Plater “raised the gun.” Mr. Simms “turned around and grabbed for” the gun, and the two “started struggling over” it. During the struggle, the gun “went off and . . . fell to the ground.” Mr. Simms “kicked [the gun] away,” and Mr. Plater “fell face first.” Mr. Simms “ran out of the shop” and asked “a guy in a green Honda Accord” to “take [Mr. Plater] to the hospital.” Mr. Simms and another man “tried to . . . get [Mr. Plater] to the car,” but “the guy pulled off.” Mr. Simms saw “a guy . . . on a scooter coming down the street” and asked him to call for an ambulance. Mr. Simms then “went in the shop,” “turned off the lights,” “locked the door,” “got in [his] car,” and departed.

Following the close of the evidence, the court instructed the jury as to first degree premeditated murder, second degree specific intent murder, voluntary manslaughter,

perfect self-defense, and imperfect self-defense. The jury subsequently acquitted Mr. Simms of first degree murder and second degree murder, but convicted him of voluntary manslaughter.

Following the verdict, Mr. Simms filed a motion for a new trial. Conceding that he “did not ask that the jury be instructed on . . . involuntary manslaughter” and “offered no objection to the jury instructions as given,” Mr. Simms contended that “the failure to . . . so [instruct the jury] left the jury with the impermissible all or nothing choice which, under the plain meaning of the term is defined as ‘too bad to be allowed.’” (Emphasis omitted.)

Following a hearing, the court denied the motion, stating:

There's two things. One, the Court doesn't find it's in the interest of justice because there was ample opportunity for counsel to request the instructions that were – they believe were appropriate at the time. The instructions that were given included first-degree murder, second-degree murder, voluntary manslaughter, perfect and imperfect self-defense.

The Court is required to give an instruction if and when it suits – basically, when it applies to the facts in this case; and in this particular case, the Court did give the voluntary manslaughter instruction based on not only the evidence that was put forth during the course of the trial, but also because of the defense counsel and the prosecutor's request. To now say that the Court should give – should have given another instruction when, at the time, the Court – well, now the Court has no ability to remedy that and the jury has already reached their verdict.

So, the Court does not find it's in the interest of justice because the objection was not made at the time it was given, and the case law also says that a[n] objection to jury instructions should be made at the time precisely so that the Court has an opportunity to remedy it, and that wasn't done here. And that's not about preserving for appellate reasons. That's about, as far as jury instructions go, giving the opportunity to rectify the issue. Not that the Court does not believe that the instructions that were given were appropriate, but if counsel would have made the argument during the course of trial, or at the time that the instructions were given, or would have requested those

instructions, the Court would have had an opportunity to consider it in light of the facts that were put forward.

Mr. Simms contends that because the “evidence presented at trial was sufficient to generate [a] jury instruction” on “gross negligence involuntary manslaughter,”¹ and the court failed to “reach[] the merits of the . . . motion for new trial,” the court abused its discretion in denying the motion. We disagree. We have stated that

[a]lthough nothing, including trial error, is theoretically barred from consideration on a Motion for a New Trial, trial errors are not classic grist for the New-Trial-Motion mill. If such alleged errors were 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. The non-preservation, moreover, is in and of itself an unassailable reason for the trial judge to deny the New Trial Motion, should he, in his discretion, choose to do so.

Isley v. State, 129 Md. App. 611, 619 (2000) (citation omitted), *overruled in part on other grounds*, *Merritt v. State*, 367 Md. 17 (2001).

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

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.

Here, Mr. Simms did not preserve for appellate review by timely objection at trial the court's failure to instruct the jury as to involuntary manslaughter by grossly negligent act. Mr. Simms may not outflank the preservation requirement by raising the issue in a motion for new trial and then appealing from the denial of that motion, and the non-preservation was in and of itself an unassailable reason for the court to deny the motion. Hence, the court did not abuse its discretion in denying the motion.

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