UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2128

September Term, 2015

MICHAEL ELLIOTT

v.

STATE OF MARYLAND

Krauser, C. J.,
Nazarian,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

JJ.

PER CURIAM

Filed: July 22, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Convicted of voluntary manslaughter, in the Circuit Court for Baltimore City, Michael Elliott, appellant, raises a single issue on appeal: whether the trial court erred in denying his motion for judgment of acquittal because "the State had failed to prove beyond a reasonable doubt" that he did not act in perfect self-defense. Finding no error, we affirm.

At trial, Elliott claimed that he was entitled to a judgment of acquittal because the evidence established that he had acted in "perfect self-defense" when he stabbed the victim with a knife. The trial court found that the evidence warranted a jury instruction on perfect self-defense but determined that, on the question of whether self-defense had been established, "a reasonable juror could come to either conclusion" and accordingly, denied the motion for judgment of acquittal.

Elliott cites *Jacobs v. State*, 32 Md. App. 509 (1976) in support of his position. His reliance on that case, however, is misplaced. In *Jacobs*, this Court held that the court erred in instructing the jury that the defendant had the burden of proving self-defense. *Id.* at 259. In so holding, we stated that, "where self-defense has been fairly generated by the evidence as an issue in the case, the burden is upon the State of negating such self-defense beyond a reasonable doubt as a necessary element of its proof of guilt." *Id.* at 260-261. *Jacobs* did not hold, however, that the defendant's evidence of self-defense was so overwhelming as to entitle him to a judgment of acquittal as a matter of law.

In *Hennessy v. State,* 37 Md. App. 559 (1977), we rejected an argument similar to the one Elliott now raises stating:

> [Hennessy] concedes by silence that there was sufficient evidence to sustain a manslaughter verdict, but argues that because the State did not

> affirmatively negate this self-defense testimony, he was entitled to what amounts to a judicially declared holding of self-defense as a matter of law. That is of course, absurd. The factfinder may simply choose not to believe the facts as described in that, or any other, regard, and the very fact that a large knife was used, causing the death of an unarmed man, raises in itself the issue of excessive force even if [Hennessy's] account had been believed.

Id. at 561-562 (internal citations omitted).

Elliott's contention that the court should have granted his motion for judgment of acquittal on the grounds that he was entitled to a finding of "self-defense as a matter of law" is, as it was in *Hennessy*, equally "absurd." Elliott was entitled to, and received, a jury instruction on perfect self-defense. The jury, however, was "free to believe some, all or none of the evidence [he] presented" in support of that defense. *Sifrit v. State*, 383 Md. 116, 135 (2004). In short, the court did not err in submitting the charge to the jury.

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