

Circuit Court for Baltimore City
Case No.: 122298001

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 2293

September Term, 2023

CHASE MARCO WILSON

v.

STATE OF MARYLAND

Berger,
Tang,
Kehoe, Christopher B.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, Christopher, J.

Filed: November 18, 2025

* This is an unreported opinion. This 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).

After a jury trial in the Circuit Court for Baltimore City, Chase Marco Wilson¹ was convicted of second-degree murder, use of a firearm in the commission of a crime of violence, and the unlawful wearing, carrying, or transporting of a handgun. The court sentenced him to forty years' imprisonment, with all but twenty-five years suspended, to be followed by five years' probation, for second-degree murder; fifteen years' imprisonment for use of a firearm in the commission of a crime of violence (without the possibility of parole for the first five years), to run concurrently with the sentence for second-degree murder; and a concurrent sentence of three years for unlawfully wearing, carrying, or transporting a handgun.

In this direct appeal, Wilson presents two issues which we have reworded:

- I. Did the circuit court err in denying Wilson's motion to suppress evidence of statements made by him in a custodial interrogation?
- II. Did the circuit court err in declining to instruct the jury on the mistake of fact defense?²

¹ In their briefs, the appellant refers to himself as "Wilson." The State does the same. We will do likewise.

² Wilson phrased his questions as follows:

1. Did the detectives violate Wilson's right to counsel during a custodial interrogation when they did not stop asking him questions after he said, "Time out. Before I do the talking and all this, I can't get my lawyer or not?"
2. Did the trial court err when it refused to instruct the jury on Wilson's mistake of fact defense where the evidence supported Wilson's honest and reasonable (albeit inaccurate) belief that Fruh was reaching for a gun during a robbery?

Our answer to the first question is “no.” As to the second, we believe that the trial court should have instructed the jury on mistake of fact. But the court’s error was harmless because the substance of the instruction was included in other instructions given to the jury. *See* Md. Rule 4-325(c) (stating that a trial court “need not grant a requested instruction if the matter is fairly covered by instructions actually given”). Therefore, we will affirm the judgments of the trial court.

BACKGROUND

The State’s Case

There is no dispute that, at around 9 p.m. on August 31, 2022, Wilson shot and killed Julian Fruh in a parking lot at the Marble Hall apartment complex near the campus of Morgan State University. At the time, Wilson was a student at the University and Fruh worked there as a security guard.

The police were alerted to the shooting by Nicholas Knight, another security guard at the University, and also by a concerned individual who reported the shooting to Lieutenant Lewis Ely, Jr., a member of the University’s Police Department.

When Lieutenant Ely arrived on the scene, he saw Knight giving aid to Fruh, who was lying on the ground and bleeding from the back of his head. He also saw a dark colored backpack³ on the ground next to Fruh. Lieutenant Ely called for an ambulance and

³ Some of the witnesses referred to this item as a “backpack” and others as a “book bag.” We will use “backpack” for the sake of consistency.

contacted the Baltimore City Police Department, which eventually became the primary investigating agency.

The police collected six shell casings⁴ from the scene and obtained video camera surveillance footage. The video recordings that were introduced into evidence showed that, just prior to the shooting, Fruh was walking down the street while speaking on his mobile phone and possibly looking for someone. While the shooting itself was not clearly captured on camera, images from one camera showed muzzle flashes followed by one person falling to the ground and another running away. Other video footage showed a person going into a nearby apartment building where an interior camera captured images of a person going up a stairwell and into an apartment. Police identified this person as Wilson. The police developed Wilson as a suspect, and eventually he was arrested.

At the trial, Knight testified that he had known Fruh since high school. He stated that Fruh started working as an unarmed security guard at the University about three weeks before the shooting, and that he himself had been a security guard at the University for about a week prior to the shooting. Earlier in the evening of the shooting, Fruh told Knight that he had purchased cannabis that day and that he was upset because he was dissatisfied with its quality. While on break, Fruh walked to Knight's post, and Knight walked back with him.

⁴ On appeal, Wilson correctly points out that the State did not present evidence linking the shell casings recovered at the scene to any particular firearm. However, Fruh's autopsy confirmed that Fruh had been shot six times.

Knight further testified that, while they were walking together, Fruh called the person who had sold him the cannabis, verbally confronted him angrily with his dissatisfaction with its quality, and arranged to meet. At that time, Knight did not know that it was Wilson who had sold Fruh the cannabis. According to Knight, eventually Fruh met with Wilson in a parking lot and demanded his money back. Knight testified that Fruh did not arrange the meeting to buy more cannabis. Knight related that, as soon as Fruh and Wilson met, Fruh punched Wilson, and Wilson started shooting in response. Knight ran, and, as indicated earlier, called 911. Knight also testified that Fruh had been wearing a backpack before the shooting and that he did not remove it during the episode. The police took custody of the backpack. It contained cannabis, a digital scale, and some clothing.

Detective Jonathan Jones, a Baltimore City homicide detective who was the lead investigator in the case, was a critical witness for the State. He recovered Fruh's phone and used a password obtained from Knight to examine its contents. Detective Jones testified that his review of the phone data showed a phone call and an exchange of text messages between Fruh and Wilson in the hours prior to the shooting. The messages indicated to Detective Jones that Fruh and Wilson had arranged a meeting where Wilson sold Fruh cannabis sometime before the shooting. The messages also indicated that Fruh was satisfied with the quality of the cannabis and that he wanted to buy more. As a result, the two

arranged to meet again at around 9 p.m. As noted earlier, the shooting occurred around 9 p.m.⁵

During Detective Jones's direct examination, the prosecutor played for the jury a video recording of the detective's interview of Wilson after his arrest. In that interview, Wilson admitted his involvement in the shooting death of Fruh. Wilson claimed that while the two were engaged in what he thought was a cannabis transaction, Fruh struck him. Wilson thereafter believed that Fruh was attempting to rob him. Wilson also testified that he believed that Fruh was attempting to draw a firearm from his backpack. In response, Wilson pulled out his own pistol and shot Fruh multiple times. We will discuss the interview in more detail in our analysis.

The Defendant's Case

The defense called two witnesses at trial, Marquise Tucker and Wilson. Tucker, who testified that he was a student at Morgan State University at the time of the shooting, told the jury that he and Wilson were friends and that he had been with Wilson before the shooting and Wilson had been in a good mood. Tucker testified that he also saw Wilson after the shooting and noticed that he had an injury to his head and described him variously

⁵ In his testimony, Detective Jones acknowledged that there were discrepancies between Knight's testimony and the information revealed in the text messages concerning Fruh's reason for meeting with Wilson for a second time. The detective also acknowledged that Knight did not initially tell the police that Fruh had punched Wilson.

as very scared, shaken up, traumatized, and stuttering. He said that Wilson was too “out of it” to explain what had happened.

Wilson testified that, at the time of the shooting, he was a student at Morgan State University studying communications and that he sold cannabis to support his own cannabis smoking habit. He said he had been robbed before and that he always carried a gun for protection, whether he was selling cannabis or not, because he was aware that students were frequently robbed both on the University’s campus and in the neighboring area. Wilson testified that he met Fruh for the first time on the day of the shooting when he sold four ounces of cannabis to him. Wilson testified that Fruh contacted him again later that day and expressed his desire to buy more cannabis. The two agreed to meet at the place where they had met before to accomplish the sale.

Wilson further testified that a few minutes after he arrived at the meeting place, Fruh appeared there with Knight, whom he had never met before. According to Wilson, neither Fruh nor Knight was wearing their full security guard uniforms.

Wilson further testified that, when he and Fruh met, he expected Fruh to send him the money for the cannabis electronically. Instead, Fruh complained about the quality of the cannabis that Wilson had sold him earlier in the day, faked turning around, and then punched him in the face. Wilson related that, at that point, he believed Fruh was attempting to rob him. Wilson said that, as he stumbled back after being punched, Fruh and Knight

advanced, and Fruh reached for Wilson’s pockets trying to get hold of him.⁶ Wilson testified that he was able to get some separation from Fruh. Then he saw Fruh reach into his backpack, and he thought Fruh was reaching for a gun. He testified that, fearing for his life, he then began shooting and ran away. He first returned to his apartment and later went “back home” to the District of Columbia. Along the way, he disposed of his handgun.⁷

Wilson acknowledged that he was initially not forthcoming to Detective Jones about the shooting during his interrogation but attributed that to being scared and unfamiliar with the law of self-defense.

DISCUSSION

I.

Wilson’s Motion to Suppress

On June 28, 2023, Wilson filed a motion to suppress the incriminating statements he had made during his interview with Detective Jones. He contended that he had asserted his Fifth Amendment right to an attorney during his custodial interrogation and that the police had violated his rights by not ceasing all questioning, in violation of the holdings of *Miranda v. Arizona*, 384 U.S. 436, 470 (1966), and its progeny. The State filed a written response to the motion. After a hearing held on the first day of trial, July 21, 2023, the trial

⁶ Detective Jones agreed that the footage depicted Wilson moving away from Fruh and Fruh moving towards Wilson.

⁷ At one point in his testimony, Wilson stated that he threw his gun away in Baltimore; at another, he stated that he threw the weapon into the Anacostia River while driving home.

court denied Wilson’s motion. In this appeal, he claims that the court erred in doing so. Eventually, we will explain why the trial court did not err. But first, we will address the State’s contention that Wilson waived his right to challenge the trial court’s ruling.

The State’s Waiver Contention

To this Court, the State argues that Wilson waived his right to seek suppression of his confession because his motion to suppress evidence of his statement to the police was not filed within the deadlines imposed by Maryland Rule 4-252.⁸ This is so, according to the State, because Rule 4-252 provides that, in the circuit court, matters such as unlawfully obtained confessions, “shall be raised by motion in conformity with this Rule and if not so raised are waived unless the court, for good cause shown, orders otherwise[.]” Md. Rule 4-

⁸ Md. Rule 4-252 currently states, in pertinent part:

Rule 4-252. Motions in circuit court

(a) **Mandatory motions.** — In the circuit court, the following matters shall be raised by motion in conformity with this Rule and if not so raised are waived unless the court, for good cause shown, orders otherwise:

* * *

(4) An unlawfully obtained admission, statement, or confession; and

* * *

(b) **Time for filing mandatory motions.** — A motion under section (a) of this Rule shall be filed within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213(c), except when discovery discloses the basis for a motion, the motion may be filed within five days after the discovery is furnished.

252(a)(4). Additionally, Rule 4-252(b) states that a motion based on information disclosed in discovery must be filed “within five days after the discovery is furnished.”

In the present case, Wilson’s trial counsel⁹ entered his appearance on November 22, 2022, and the State disclosed Wilson’s statement to the police on December 19, 2022. According to the dictates of the Rule, Wilson’s motion was due, at the latest, on December 27, 2022.¹⁰ But it was not until June 28, 2023, that is, six months after the deadline passed and about three weeks prior to trial, that Wilson filed his motion to suppress evidence of his interrogation by the police.

According to the State, “before the trial court even would have been able to consider the merits of the motion, it would have first needed to find good cause to excuse the late filing” which it did not do. Arguing that the prosecutor raised the timeliness issue to the trial court and relying on Md. Rule 4-252(b), the State claims that, because Wilson did not assert good cause to excuse the late filing, there was no basis upon which the court could have found good cause to excuse the late filing, which is a predicate for the court to address the merits of a belatedly filed motion to suppress. Therefore, according to the State, we

⁹ Wilson has different appellate counsel.

¹⁰ Maryland Rule 1-203(a) provides that Saturdays, Sundays, and holidays are not counted when computing time periods seven days or less. As a result, although the fifth day after December 19, 2022 fell on December 24, 2022, the actual deadline in this case is computed to be on Tuesday, December 27, 2022 because the 24th was a Saturday, the 25th was a Sunday, and the 26th was a holiday.

cannot address the merits of Wilson’s contention that the trial court erred in denying his motion to suppress. We do not agree.

To be sure, a failure to comply with the filing deadlines set out in Md. Rule 4-252(b) can constitute a waiver of the right to raise the issue on appeal. *Carroll v. State*, 202 Md. App. 487, 510 (2011). The Rule is “designed to facilitate the fair consideration of a suppression motion in advance of trial.” *Sinclair v. State*, 444 Md. 16, 29 (2015). Thus, a motion must both be timely and state the grounds upon which it is made “to alert both the court and the prosecutor to the precise nature of the complaint, in order that the prosecutor have a fair opportunity to defend against it and that the court understand the issue before it.” *Denicolis v. State*, 378 Md. 646, 660 (2003).

In *Sinclair*, Maryland’s Supreme Court stated that strict compliance with the timing requirements of Rule 4-252 is required to preserve an issue for appellate review. In that case, Sinclair initially filed an “omnibus motion,”¹¹ which was timely under Rule 4-252; however, it did not provide specific grounds for the suppression of evidence. *Sinclair*, 444 Md. at 31. Because Sinclair notified the court that motions in limine might be forthcoming, a motions hearing was scheduled. No motions were subsequently filed, and the hearing was

¹¹ Maryland’s Supreme Court has recognized that an omnibus motion is a common practice that is often permitted at the discretion of the trial courts and generally not disturbed on appeal “where the State is not unduly prejudiced by being called upon to respond immediately to allegations of which it had no prior notice.” *Denicolis*, 378 Md. at 660. In the present case, Wilson did not file an omnibus motion.

cancelled. *Id.* at 32. On the morning of trial, Sinclair raised an oral motion in limine in which he contended that evidence obtained from his cell phone should be suppressed. *Id.*

Although the prosecutor told the court that “I had no notice” that the suppression issue would be raised, the circuit court permitted the parties to orally argue the motion. *Id.* at 26. On appeal, Sinclair argued that the court’s permission amounted to an implicit finding of good cause. *Id.* at 33. The Supreme Court determined otherwise and held that the timeliness requirement of Rule 4-252 was not excused because Sinclair had not made a showing of good cause; nor had the circuit court made an explicit finding of good cause. *Id.* at 33, 36. The Court noted that the State was prejudiced by Sinclair’s belatedly filed motion because the State did not have an opportunity to develop the factual record and, without time for a full evidentiary hearing, the parties and circuit court were left with “a truncated motions hearing with the jury panel at the door.” *Id.* at 34.

The circumstances of *Sinclair* and the circumstances of this case are quite different. Wilson filed his motion to suppress three weeks in advance of trial and the State filed a written response, while in *Sinclair*, the defendant raised his argument for the first time on the first day of trial. Although our Supreme Court in *Sinclair* explained why it is important for parties and courts to comply with the requirements of Md. Rule 4-252, the Court also recognized that trial courts have discretion to hear noncompliant motions “for good cause shown.” The Court explained:

In *Denicolis*, this Court observed that some trial courts allow defense counsel to file timely an omnibus motion “seeking a panoply of relief based on bald, conclusory allegations devoid of any articulated factual or legal

underpinning,” and later supplement that motion to flesh out the specific grounds at or before a motions hearing. 378 Md. at 660. Courts exercise their discretion to hear those noncompliant motions in light of “the time constraints under which defense counsel and *pro se* defendants often operate.” *Id.* The Court acknowledged that “[a]lthough that practice is not what the Rule anticipates and is not to be encouraged, we have not disturbed the discretion of the trial courts to permit [that practice], at least where the State is not unduly prejudiced.” *Id.* [.] ; see also *Phillips v. State*, 425 Md. 210, 216 n.4 (2012); *Jones [v. State]*, 395 Md. 97, 103 n.3 (2006)].

Sinclair, 444 Md. at 30 (emphasis added).

Returning to the present case, Wilson did not file his motion within the five-day limit prescribed by Md. Rule 4-252(b), but he did file his motion to suppress in advance of trial. The prosecutor filed a written response. At the suppression hearing, the prosecutor noted in passing that the motion to suppress was not timely filed but did not argue that the State was prejudiced by the late filing. The trial court decided to consider the motion on its merits, thus exercising its discretion to do so.

It is true that the court did not explicitly state its reasons for addressing the motion to suppress on its merits, but we presume that “trial judges know the law and apply it properly[.]” *State v. Chaney*, 375 Md. 168, 181 (2003). For this reason, “error is never presumed by a reviewing court[.]” *Id.* at 184. We will not second-guess the trial court’s exercise of its discretion to have a hearing in order to decide whether the police violated a defendant’s constitutionally protected right to remain silent when questioned by the police.¹² We turn now to that topic.

¹² See *Miranda*, 384 U.S. at 471-74.

The Suppression Hearing

During the hearing on Wilson’s motion to suppress and with the agreement of the parties, no live testimony was taken. Instead, the relevant portion of the video recording of Wilson’s custodial interview was played for the court.

The recorded interrogation began with Detective Jones advising Wilson of his *Miranda* rights and obtaining his waiver of those rights. In addition, Detective Jones repeatedly told Wilson that he — that is, Wilson — controlled the interview. At the outset of the interview, the following exchange occurred:

DETECTIVE 1^[13]: Yeah, so [I] gotta advise you of your rights and talk to you about it. That’s how that – whenever you go (inaudible . . .). So that’s what we’re doing right now, is advising you of your rights, so you know you control this whole thing, and then we go from there.

* * *

DETECTIVE 1: So then you’re going to ask me all the stuff you want to ask me.

THE DEFENDANT: Okay.

DETECTIVE 1: Yeah, I’ll tell you – tell you why you’re here, tell you – but this is just for your protection.

THE DEFENDANT: Okay.

After that, and in the course of filling out an advice of rights form, Detective Jones obtained some background information from Wilson and advised him of his *Miranda* rights as follows:

¹³ Detective Jones is referred to as “Detective 1” in the transcript.

DETECTIVE 1: I just put your name up there on the top. I'm going to read these over with you. All right?

THE DEFENDANT: I gotta check all these.

DETECTIVE 1: Yeah, just put your initials by (inaudible . . .)

DETECTIVE 1: You have the right to remain silent. Do you understand that?

THE DEFENDANT: Right.

DETECTIVE 1: Initial.

THE DEFENDANT: Initial.

DETECTIVE 1: Anything you say or write may be used against you in a court of law. Do you understand?

THE DEFENDANT: I understand everything you're about to tell me right now.

DETECTIVE 1: You have the right to talk to an attorney before any questions or during any questions. You understand that?

THE DEFENDANT: Yes.

DETECTIVE 1: If you agree to answer any questions, you may stop at any time and request an attorney, and no further questions will be asked of you. Do you understand that?

THE DEFENDANT: Yes.

DETECTIVE 1: If you want an attorney and cannot afford to hire one, an attorney will be appointed to represent you. Do you understand that?

THE DEFENDANT: Yes.

DETECTIVE 1: All right. The bottom line says you've been advised of and understand your rights. If you voluntarily waive your rights and agree to talk to police, I'll have you turn (inaudible . . .) present at this time. And that way you can stop at any time. I'm basically saying you control this whole thing. You stop whenever you want to stop. You start whenever you want to start.

THE DEFENDANT: Okay.

DETECTIVE 1: You control this thing.

THE DEFENDANT: Okay. Let me start now.

Responding to Detective Jones's questions, Wilson then gave the police more background information about himself, and explained that he was a student at Morgan State University. At first, other than acknowledging that he had heard that a shooting had taken place on campus, Wilson denied any knowledge of it. He said that, at the time of the shooting, he had been in the company of two women who were also students at the University. Wilson denied having any phone contact with Fruh except for reasons that had to do with Fruh's role as a security guard. At that point, Detective Jones said: "Okay. All right. You got all that out of your system?"

Thereupon, Detective Jones explained to Wilson that he was the target of the homicide investigation, and he told Wilson that the entire area where the shooting occurred and Wilson's apartment building was "covered in video cameras[.]" and, as a result, he was able to observe Wilson's actions the "entire night of this incident." After that, Detective Jones said:

What happened that night? And did you shoot him? Just tell me straight up, because it's all – I've got video cameras all over the place. All over the place. So this is the situation, it's better to tell the truth, and so that we can deal with that, as opposed to anything else. And we come back, and it's looking like, yo, you straight up just didn't do everything right.

Wilson then asked the detective if he could ask a question and the following exchange took place:

DETECTIVE 1: But before . . . you ask me a question, let's deal with one thing at a time.

THE DEFENDANT: Right.

DETECTIVE 1: Because I don't want you to dig a hole, and it gets too deep that we can't get out of it. Okay?

THE DEFENDANT: Right.

DETECTIVE 1: You're going to Morgan?

THE DEFENDANT: Right.

DETECTIVE 1: Clearly you're an intelligent young man.

THE DEFENDANT: Right.

DETECTIVE 1: So we don't need to – we don't need to beat around the bush with anything else.

THE DEFENDANT: Right.

DETECTIVE 1: I got everything on camera.

THE DEFENDANT: Right.

DETECTIVE 1: Okay?

THE DEFENDANT: Right. Okay, okay. If you got everything on camera –

DETECTIVE 1: So I just need – I need to know your side of everything.

THE DEFENDANT: You got everything –

DETECTIVE 1: I need to know your side of the story. No, no. Don't try – don't try to – don't try to analyze it. I need to know your side of the story about what took place that night.

THE DEFENDANT: *Basically – wait. Time out. Before I do the talking and all this, I can't get my lawyer or not?*^[14]

¹⁴ That the written transcript includes a question mark after the phrase “I can't get my lawyer or not” is of no significance for two reasons.

First, in the suppression hearing, the trial court did not review a transcript, it listened to an audio-visual recording of the interview.

(Footnote Continued)

DETECTIVE 1: You – that’s – that’s your call. I can’t tell you what to do, but I’m just letting you know about what we have. And I’m asking you for your side of the story.

THE DEFENDANT: But. So wait, before that – I’m trying to figure out. So what, I’m arrested right now?

DETECTIVE 1: Yeah, there’s a warrant for your arrest. Yes.

THE DEFENDANT: So right now, even after this, I’m about to go somewhere else?

DETECTIVE 1: Yes, sir.

THE DEFENDANT: So I ain’t going home?

DETECTIVE 1: No, sir. But I will tell you this. There’s a very high probability that this is going to be your only time to tell your side of the story.

THE DEFENDANT: For real.

DETECTIVE 1: I’m not – I’m no attorney.

THE DEFENDANT: Yeah.

DETECTIVE 1: I’m not an attorney. But I’m gonna say this, but I’m gonna say that there’s a probability and –

THE DEFENDANT: Yeah.

DETECTIVE 1: And you know probability because you’re in school.

THE DEFENDANT: Right.

* * *

THE DEFENDANT: So what’s the probability?

DETECTIVE 1: The probability of you going home today?

THE DEFENDANT: Yeah.

Second, punctuation in a transcript is at best an uncertain guide. *See, e.g., Deering Woods Condo. Ass’n v. Spoon*, 377 Md. 250, 272 n.7 (2003) (“Punctuation is, of course, supplied by the court reporter and not dictated by the judge.”); *Smith v. State*, 291 Md. 125, 133 (1981) (“As anyone familiar with appellate review can attest, transcripts are seldom perfect. Mistakes inevitably occur. Punctuation, for example, is a matter of judgment.”).

DETECTIVE 1: Zero.

THE DEFENDANT: For real?

DETECTIVE 1: Yes.

THE DEFENDANT: I'm about to go to jail?

DETECTIVE 1: Yes. Yes. But I will say this. The probability of . . . you having a time to talk with me later on and getting your side of the story out is slim to none. I'm not saying it's none. I'm just saying it's slim. I know there's –

THE DEFENDANT: So I'm about to go to jail and be sitting right now.

DETECTIVE 1: Yes, sir. Yes, sir. But before we get to that, I need to know your side of the story.

THE DEFENDANT: So, okay, if you all seen all this on camera –

DETECTIVE 1: I need to –

THE DEFENDANT: – this person, he punched me in the face.

DETECTIVE 1: Okay. Okay.

THE DEFENDANT: He punched me in my face.

DETECTIVE 2: Who is this person you're talking about?

THE DEFENDANT: The security guard.

(Emphasis added.)

At that point during the hearing on Wilson's motion to suppress, the video recording of Wilson's custodial interrogation was stopped.¹⁵ After hearing the parties' respective arguments on the motion to suppress, the court denied the motion:

THE COURT: The statement that I heard on the video was pretty much [Wilson] saying, can I get an attorney? Or he either said or nothing or

¹⁵ As noted earlier, on the video recording, Wilson thereafter made inculpatory statements concerning his role in the shooting death of Fruh.

something, can I get an attorney or nothing? Or and he said, can we gain [sic] an attorney or something? And then the officer responds, that's your call. I can't decide for you. And then there's a conversation that goes on after that.

So the Defendant is asking a question. . . . [I]f the officer had said, no, you can't have an attorney, I think we'd probably be in a different posture. The officer says, that's your call. I can't decide this for you. And then which to me indicates that it's up to it's back in the court of [Wilson] to make that decision as to whether he's going to get an attorney.

I don't think he invoked his right to attorney. As a matter of fact, he asked the officer a question about whether he should have an attorney. And the officer says, I can't decide that for you. So as far as whether he clearly invoked his right to an attorney, the [c]ourt would indicate that he did not clearly invoke his right to an attorney. He just asked that was possible. And the officer answered truthfully, that it was possible, that this is his call and his decision to make. So the [c]ourt denies the motion as to his invocation of counsel.

The Standard of Review

In cases, such as the one before us, that involve assertions that law enforcement officers violated rights guaranteed by the Fifth Amendment, appellate courts:

view the evidence and inferences that may be reasonably drawn therefrom in a light most favorable to the prevailing party on the motion and to defer to the motions court's factual findings and uphold them unless they are shown to be clearly erroneous. We, however, make our own independent constitutional appraisal, by reviewing the relevant law and applying it to the facts and circumstances of this case.

Ballard v. State, 420 Md. 480, 491 n.5 (2011) (cleaned up).

The Teachings of Miranda v. Arizona

The Fifth Amendment to the United States Constitution provides, in relevant part, that “[n]o person . . . shall be compelled in any criminal case to be a witness against himself[.]” In the watershed case of *Miranda v. Arizona*, 384 U.S. 436 (1966), the United

States Supreme Court recognized that a “police-dominated atmosphere” can be inherently coercive and potentially work to “undermine the individual’s will to resist and to compel him to speak where he would not otherwise do so freely.” *Id.* at 456, 467. “[T]o combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination,” *id.* at 467, the Supreme Court established the following well-known prophylactic warnings that police are required to convey to a suspect before a custodial interrogation:

[The suspect] must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

Id. at 479.

Once advised, a criminal defendant has a choice; he may waive these rights and make a statement to law enforcement, or he may invoke these constitutional safeguards. If the suspect invokes his rights, “law enforcement officers must immediately cease questioning a suspect who has clearly asserted his right to have counsel present during custodial interrogation.” *Davis v. United States*, 512 U.S. 452, 454 (1994) (citing *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981)). “In the event that officers continue to question [the] individual, any evidence flowing therefrom is illegally obtained and thus subject to exclusion as fruit of the unlawful conduct.” *Reynolds v. State*, 461 Md. 159, 178 (2018).

Moreover, and pertinent to the contentions raised by the parties in the present case, the Supreme Court has made clear that once an accused waives his rights to silence and to

consult with counsel, any subsequent invocation of the right to counsel during a custodial interrogation must be unambiguous and unequivocal. *Davis*, 512 U.S. at 459. We use an objective standard to evaluate whether a reasonable police officer would have understood that a suspect invoked their right to silence. *Williams v. State*, 445 Md. 452, 475 (2015).

Wilson's Contentions

Wilson asserts that, during his custodial interrogation, he made an unambiguous and unequivocal request for counsel when he said, “Time out. Before I do the talking and all this, I can’t get my lawyer or not?” during his interrogation. From this premise, he contends that Detective Jones should have ceased questioning until Wilson could consult with a lawyer, and because he did not, Wilson’s Fifth Amendment rights were violated. He claims that, as a remedy, the court was required to grant his motion to suppress and apply the exclusionary rule to his later inculpatory statements as the fruit of the violation of his rights.

The State's Contentions

The State agrees with none of this. It contends that, when Wilson said, “Time out. Before I do the talking and all this, I can’t get my lawyer or not?” he asked a question that did not amount to a “clear and unequivocal statement that a reasonable police officer would construe as a demand for counsel.” Moreover, asserts the State, Detective Jones truthfully answered Wilson’s question by correctly telling Wilson that it was up to him to decide.

In addition, the State points out that, regardless of whether Wilson invoked his right to counsel, he immediately thereafter reinitiated the conversation by asking questions about his right to counsel, his status as an arrestee, and his ability to go home.

Analysis

Wilson does not dispute that he initially waived his *Miranda* right to remain silent at the beginning of the interview. The question becomes, therefore, whether Wilson subsequently invoked his *Miranda* rights during the interview with Detective Jones. As noted earlier, such an invocation of rights can only be accomplished by an unequivocal and unambiguous statement to that effect. Wilson argues that when he said, “Time out. Before I do the talking and all this, I can’t get my lawyer or not[,]” he made an unequivocal and unambiguous assertion of his right to counsel. We do not agree.

The United States Supreme Court explained its rationale for requiring an unambiguous and unequivocal invocation of *Miranda* rights, as follows:

If an accused makes a statement concerning the right to counsel “that is ambiguous or equivocal” or makes no statement, the police are not required to end the interrogation, or ask questions to clarify whether the accused wants to invoke his or her *Miranda* rights.

* * *

A requirement of an unambiguous invocation of *Miranda* rights results in an objective inquiry that “avoids difficulties of proof and provides guidance to officers” on how to proceed in the face of ambiguity.

Berghuis v. Thompkins, 560 U.S. 370, 381 (2010) (cleaned up) (quoting *Davis*, 512 U.S. at 459, 461-62).

Moreover, the Court explained that: “If an ambiguous act, omission, or statement could require police to end the interrogation, police would be required to make difficult decisions about an accused’s unclear intent and face the consequence of suppression ‘if

they guess wrong.” *Id.* at 382 (quoting *Davis*, 512 U.S. at 461). In *Davis*, the Court declined to impose a rule requiring police to ask clarifying questions in response to equivocal or ambiguous statements. 512 U.S. at 461.¹⁶

With this as background, we return to what Wilson said during his interrogation:

Basically — wait.^[17] Time out. Before I do the talking and all this, I can’t get my lawyer or not?

In *Davis*, the suspect, during questioning by officers, stated, “Maybe I should talk to a lawyer.” 512 U.S. at 455. The Supreme Court found that statement to be ambiguous and that it did not require a cessation of the questioning. We think that Wilson’s question “Time out. Before I do the talking and all this, I can’t get my lawyer or not?” is not analytically distinguishable. Moreover, Wilson’s query was immediately followed by Wilson continuing to speak to, and ask questions of, Detective Jones.

¹⁶ Writing for the majority in *Davis*, Justice O’Connor explained (emphasis added):

The *Edwards* [451 U.S. at 484] rule—questioning must cease if the suspect asks for a lawyer—provides a bright line that can be applied by officers in the real world of investigation and interrogation without unduly hampering the gathering of information. But if we were to require questioning to cease if a suspect makes a statement that *might* be a request for an attorney, this clarity and ease of application would be lost. . . . We therefore hold that, after a knowing and voluntary waiver of the *Miranda* rights, law enforcement officers may continue questioning until and unless the suspect clearly requests an attorney.

Davis, 512 U.S. at 461.

¹⁷ Neither party asserts that the words “Basically — wait” are particularly relevant to the issues raised in this appeal. We agree.

In addition, during his interrogation and as part of the *Miranda* warnings given to him, Wilson was repeatedly told that he was in control of the interview. Detective Jones advised Wilson, “So that’s what we’re doing right now, is advising you of your rights, so you know you control this whole thing, and then we go from there.” Later, after advising Wilson of his *Miranda* rights to remain silent and to an attorney, Detective Jones told Wilson, “If you agree to answer any questions, you may stop at any time and request an attorney, and no further questions will be asked of you. Do you understand that?” Wilson, who had some college education, said that he understood each of his rights as Detective Jones explained them to him.

In his brief, Wilson focuses on the words “Time out. Before I do the talking and all this, I can’t get my lawyer or not[.]” He asserts:

The phrase “time out” signifies Wilson’s deliberate and assertive interruption of the interrogation process. Wilson did not passively ask for clarification. He stopped the interrogation to address an important issue. Wilson’s pause during the interrogation reflects the seriousness of the fundamental rights in play. . . . Considering that Wilson said he understood his right to stop the interrogation until his counsel was present, a reasonable detective would know that Wilson’s statement, “*Time out*[.]” was a request for the questioning to cease until the condition of an attorney is satisfied.

* * *

Wilson explicitly stated that *before* he continued talking, the police had to satisfy a condition, that of a lawyer. Wilson’s statement showed his intent to hold off on self-incriminating statements until that condition was satisfied. Wilson’s choice of words and phrasing demonstrated that he was aware of the risks of proceeding without a lawyer and, for that reason, wanted an attorney before cooperating further. Although phrased as a question in the transcript, Wilson focused on asserting his right to counsel. While colloquial,

the structure of Wilson’s statement does not detract from its meaning to a reasonable police officer, who would understand the statement in context as an unequivocal request to stop the interrogation until counsel is present.

We do not agree. The issue before us is not what Wilson subjectively intended to communicate. Instead, our task is to decide whether his words clearly and unambiguously communicated to Detective Jones that he wished to stop the interrogation until he had an opportunity to speak to a lawyer. As the United States Supreme Court has explained:

If an accused makes a statement concerning the right to counsel “that is ambiguous or equivocal” or makes no statement, the police are not required to end the interrogation, or ask questions to clarify whether the accused wants to invoke his or her *Miranda* rights[.]

Berghuis, 560 U.S. at 381 (internal citation omitted) (quoting *Davis*, 512 U.S. at 459, 461-62).

Moreover, in *Davis*, the Court stated:

We therefore hold that, after a knowing and voluntary waiver of the *Miranda* rights, law enforcement officers may continue questioning until and unless the suspect clearly requests an attorney.

512 U.S. at 461.

We believe that Wilson’s query, “Time out. Before I do the talking and all this, I can’t get my lawyer or not[,]” is not the sort of “[un]ambiguous or [un]equivocal” statement that requires a police officer to stop the interrogation. *Id.* As the trial court stated in explaining why it was denying Wilson’s motion to suppress:

I don’t think he invoked his right to attorney. As a matter of fact, he asked the officer a question about whether he should have an attorney. And the officer says, I can’t decide that for you. So as far as whether he clearly invoked his right to an attorney, the Court would indicate that he did not

clearly invoke his right to an attorney. He just asked that was possible. And the officer answered truthfully, that it was possible, that this is his call and his decision to make.

The trial court did not err when it denied Wilson’s motion to suppress his statements made to the police during his interview.

II.

The Mistake of Fact Jury Instruction

Wilson’s second contention is that the trial court erred in refusing to instruct the jury on the “mistake of fact” defense. He asserts that he was entitled to the instruction because his “primary defense at trial was that he used deadly force to terminate a robbery that threatened his life based on the mistaken fact that the robber — Fruh — was reaching for a gun in his backpack after punching [him] in the head.”

We agree with Wilson that the court erred when it declined to give the mistake of fact instruction.¹⁸ But we will affirm the court’s judgment because the substance of the

¹⁸ There is a preservation issue. The Supreme Court of Maryland has recently explained that: “To assign error to a trial court’s refusal to give a particular jury instruction, the aggrieved party must lodge an on-the-record objection ‘promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection.’” *Danshin v. State*, 491 Md. 520, 532 (2025) (cleaned up) (quoting Md. Rule 4-325(f)).

In the present case, there was an exchange between the trial court and counsel after the court finished giving instructions to the jury. Only part of it is audible, and it is unclear from what is audible whether defense counsel renewed his objection to the court’s refusal to give the mistake of fact instruction. However, the parties agree that Wilson’s trial counsel did so. There is no reason for us to conclude otherwise. We hold that Wilson’s contention

(Footnote Continued . . .)

mistake of fact instruction was “fairly covered by [the] instructions actually given.” Md. Rule 4-325(c). The relevant “instructions actually given” were those that pertained to complete and partial self-defense, which were part of the court’s instructions as to the murder charge.

The Standard of Review

Md. Rule 4-325 states in pertinent part (*italicized emphasis added*):

Rule 4-325. Instructions to the jury

(a) **When Given.** — The court shall give instructions to the jury at the conclusion of all the evidence and before closing arguments and may supplement them at a later time when appropriate. In its discretion the court may also give opening and interim instructions.

* * *

(c) **How Given.** — The 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. The court may give its instructions orally or, with the consent of the parties, in writing instead of orally. *The court need not grant a requested instruction if the matter is fairly covered by instructions actually given.*

* * *

(f) **Objection.** — 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. . . .

* * *

that the court erred when it declined to instruct the jury on mistake of fact is preserved for appellate review.

The Supreme Court of Maryland recently summarized the standard of review in criminal cases involving disputes over jury instructions:

At the request of either party, the trial court shall “instruct the jury as to the applicable law and the extent to which the instructions are binding,” but the trial court need not “grant a requested instruction if the matter is fairly covered by other instructions.” Md. Rule 4-325(c). In other words, 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 instructions actually given.”

* * *

On appeal, we review the overall decision of the trial court for an abuse of discretion, but the second requirement (whether the instruction is applicable in that case) is akin to assessing the sufficiency of the evidence, which requires a *de novo* review.

Danshin, 491 Md. at 531-32 (cleaned up) (citing, among other cases, *Jarvis v. State*, 487 Md. 548, 563-64 (2024); *Rainey v. State*, 480 Md. 230, 255 (2022)).

In *Hollins v. State*, our Supreme Court explained:

In a criminal jury trial, the trial court “may, and at the request of a party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding.” Md. Rule 4-325(c). A trial judge is required to give instructions on the law. These types of instructions may cover such things as the burden of proof, presumption of innocence, and the elements of the crimes charged.

* * *

Elements [of an offense], *affirmative defenses* and certain presumptions relate to the requirement that a party meet a burden of proof that is set by a legal standard. A trial judge *must* give such an instruction if the evidence generates the right to it because it sets the legal guidelines for the jury to act effectively as the trier of fact.

Hollins v. State, 489 Md. 296, 307-09 (2024) (cleaned up; emphasis added).

Finally, whether evidence is sufficient to generate a requested instruction is a question of law for the trial court. *Fleming v. State*, 373 Md. 426, 434 (2003); *see also General v. State*, 367 Md. 475, 483-84 (2002).

The Evidentiary Basis of Wilson’s Mistake of Fact Contentions

The evidentiary basis for Wilson’s assertion that he was entitled to a mistake of fact instruction is set out in detail in his brief. What follows is a summary of a longer narrative.

Wilson had a handgun to protect himself against robberies which occurred frequently in the area around the University. Wilson had been robbed prior to his encounters with Fruh. He met Fruh for the first time on August 31, 2022 at around 11:00 a.m. at Marble Hall. Fruh offered to sell Wilson cannabis. Wilson declined. At approximately 12:30 p.m., Wilson encountered Fruh again. Wilson told Fruh that he could sell him four ounces of cannabis for \$250. Fruh wanted to buy the cannabis and paid Wilson via Cash App in return for the cannabis. The two men then exchanged phone numbers.

Later, Fruh texted Wilson that the cannabis was good, and he wanted more. Wilson agreed to meet Fruh in the evening at the same place. Wilson brought both cannabis and his handgun to the meeting. Fruh arrived, accompanied by Knight. Wilson told Fruh to “Cash App” him so that he could give Fruh the cannabis. But Fruh said, “What’s up with the shake you gave me earlier?” Fruh turned away from Wilson and then turned back and punched Wilson in the forehead. Wilson believed that he was being robbed and stepped back away from Fruh and Knight. Fruh followed him and was reaching for Wilson’s

pockets and trying to get a hold of him. Knight was close behind Fruh but did not hit Wilson. Wilson got some separation, and Fruh started reaching inside his backpack.

Wilson believed that Fruh was reaching for a gun, although he did not see one. Fearing for his life, Wilson began to shoot at Fruh. Wilson did not aim at any particular area of Fruh's body, and he did not know how many times he shot Fruh.

The Mistake of Fact Instruction

After the close of evidence, counsel had a bench conference with the court regarding instructions. Defense counsel requested that the court instruct the jury as to mistake of fact:

THE COURT: Mistake of fact, Counsel?

[DEFENSE COUNSEL]: We believe it's appropriate, Your Honor.

[PROSECUTOR]: Your Honor, I guess I would argue that it doesn't apply –

THE COURT: Just a minute please.

(Brief pause.)

THE COURT: After looking at the notes under the instruction, I'm going to [rule] that mistake of fact is, in fact, not appropriate. *The Court does not believe that it applies to murder – to the murder charge.* The Court notes any objection.

(Emphasis added.)

The instruction in question is MPJI-Cr 5:06, which states:

You have heard evidence that the defendant's actions were based on a mistake of fact. Mistake of fact is a defense. You are required to find the defendant not guilty if:

- (1) the defendant actually believed (alleged mistake);
- (2) the defendant's belief and actions were reasonable under the circumstances; and

(3) the defendant did not intend to commit the crime of (crime) and the defendant's conduct would not have amounted to the crime of (crime) if the mistaken belief had been correct, meaning that, if the true facts were what the defendant thought them to be, the [defendant's conduct would not have been criminal] [defendant would have the defense of (defense)].

In order to convict the defendant, the State must prove beyond a reasonable doubt that at least one of the three factors was absent.

Wilson contends that the “mistake of fact defense instruction applies to murder and [was] a necessary component of self-defense not otherwise addressed” in the trial court's instructions to the jury. He argues that the mistake of fact instruction “impacts the instructions on self-defense and imperfect self-defense.”

For its part, the State presents three reasons why any error on the trial court's part is not a basis for a new trial.

The first is that, in this case, “the pattern jury instruction for mistake of fact is cumulative of the pattern instruction for self-defense, which was given to the jury.” Therefore, reasons the State, “it was not error for the court to refuse to give the mistake of fact instruction.” The State cites Md. Rule 4-325(c) (stating that a trial court “need not grant a requested instruction if the matter is fairly covered by the instructions actually given”).

As we will explain, although the trial court erred when it declined to give the mistake of fact instruction, the error was harmless because the substance of the instruction was expressed in other instructions given by the court.¹⁹

Analysis

The Trial Court Erred by Declining to Give the Mistake of Fact Instruction

The instruction in question is MPJI-Cr 5:06, which states:

You have heard evidence that the defendant's actions were based on a mistake of fact. Mistake of fact is a defense. You are required to find the defendant not guilty if:

- (1) the defendant actually believed (alleged mistake);
- (2) the defendant's belief and actions were reasonable under the circumstances; and
- (3) the defendant did not intend to commit the crime of (crime) and the defendant's conduct would not have amounted to the crime of (crime) if the mistaken belief had been correct, meaning that, if the true facts were what the defendant thought them to be, the [defendant's conduct would not have been criminal] [defendant would have the defense of [in the present case, self-defense]].

As noted, we exercise *de novo* review of the trial court's decision to give or not to give jury instructions. We agree with Wilson that the trial court erred when it declined to give the mistake of fact instruction to the jury. Our conclusion is based on our reading of the three most relevant Maryland appellate decisions: *Law v. State*, 29 Md. App. 457

¹⁹ Therefore, it is not necessary for us to address either of the alternative contentions presented by the State.

(1975); *Cunningham v. State*, 58 Md. App. 249 (1984); and *General v. State*, 367 Md. 475 (2002). We will discuss these decisions in chronological order.

Law v. State is significant because in it, this Court identified the fundamental legal principles that are relevant to this appeal. James Cecil Law was convicted of second-degree murder and assault with intent to murder. Two police officers were investigating a report that Law’s house was being burglarized. Law mistook the officers for burglars and fired a shotgun at them, fatally wounding one of the officers. 29 Md. App. at 459-60. In the course of explaining why the convictions had to be reversed, this Court cited our opinion in *Evans v. State*, 28 Md. App. 640, 652 (1975), *aff’d*, 278 Md. 197 (1976), for the principle that “it is unconstitutional to impose upon a defendant in a criminal case the burden of proving, by any standard, his innocence as to any element of a crime, or to relieve the State of its burden of proving beyond a reasonable doubt any element of the crime charged.” *Law*, 29 Md. App. at 460.

Moreover, we explained that:

In order for a killer to have a “perfect” defense or self-defense to homicide, (1) he must be free from fault in bringing on the difficulty with his adversary; and (2) *he must reasonably believe (though he need not correctly believe)* both (a) that his adversary will, unless forcibly prevented, immediately inflict upon him a fatal or serious bodily injury, *and* (b) that he must use deadly force upon the adversary to prevent him from inflicting such an injury.

Id. at 464 (cleaned up; emphasis added) (quoting W. LaFave and A. Scott, CRIMINAL LAW, 583-89 (1972)).

In *Cunningham v. State*, this Court explored the differences between the concepts of perfect and imperfect self-defense. Writing for the Court, Judge Moylan explained:

In discussing voluntary manslaughter generally and the “Imperfect Right of Self-Defense” specifically, LaFave and Scott, *CRIMINAL LAW*, at 583, makes it indisputably clear that the reasonableness of the killer’s belief is but one of the two elements that would be necessary to establish a perfect defense of self-defense:

“In order for a killer to have a ‘perfect’ defense of self-defense to homicide, (1) he must be free from fault in bringing on the difficulty with his adversary; and (2) *he must reasonably believe (though he need not correctly believe)* both (a) that his adversary will, unless forcibly prevented, immediately inflict upon him a fatal or serious bodily injury, and (b) that he must use deadly force upon the adversary to prevent him from inflicting such an injury. If one who is not the aggressor kills his adversary with these two actual and reasonable beliefs in his mind, his homicide is justified, and he is guilty of no crime—not murder, not manslaughter, but no crime.”

An aggressor, faced even with the reasonable belief in the necessity to kill, “cannot have the defense of self-defense, for that requires both freedom from fault in the inception of the difficulty and the entertainment of *beliefs which are reasonable.*”

58 Md. App. at 255-56 (cleaned up; emphasis added).

Finally, in *General v. State*, the Supreme Court of Maryland discussed the jury instruction at issue in the present case, namely, mistake of fact.

In the early morning hours, General’s vehicle strayed onto the shoulder of a highway and struck what he thought was a plastic bag. He continued on his way. Tragically, the “plastic bag” was a woman who was either kneeling or sitting on the shoulder at the time. She died of her injuries. *General*, 367 Md. at 479. After a jury trial, General was convicted

of failure to remain at the scene of an accident and related offenses. *Id.* at 478-49. At the trial, General's counsel requested that the court give the mistake of fact instruction MPJI-Cr 5:06 (which is the instruction at issue in the case before us). The trial court concluded that the instruction was not applicable in light of the evidence presented to the jury. *Id.* at 480.²⁰

The Supreme Court of Maryland reversed the convictions. The Court explained:

As a general rule, mistake of fact is a recognized common law defense to certain crimes. Mistake or ignorance of fact exists when the actor does not know what the actual facts are or *believes them to be other than as they are*. In essence, a mistake of fact is a defense when it negates the existence of the mental state essential to the crime charged.

* * *

[A] trial judge is required to give a requested instruction that correctly states the applicable law and that has not been fairly covered in other instructions.

* * *

The defendant is entitled to have the jury instructed on any theory of the defense that is fairly supported by the evidence. Once the defendant properly has generated the defense of mistake of fact, he or she is entitled to

²⁰ In lieu of the mistake of fact instruction, the trial court in *General* gave the proof of intent instruction, MPJI-Cr 3:31:

I instruct you that intent is a state of mind and ordinarily cannot be proven directly, because there is no way of looking into another person's mind. Therefore a defendant's intent may be shown by surrounding circumstances. In determining the defendant's intent, you may consider the defendant's acts and statements, as well as the surrounding circumstances. Further, you may but are not required to infer that a person ordinarily intends the natural and probable consequences of his acts.

General, 367 Md. at 481.

have the jury understand that the State must still prove each element of the crime beyond a reasonable doubt and that the burden never shifts to the defendant.

* * *

In reviewing the adequacy of jury instructions, we review the instructions as a whole. If the instructions given as a whole adequately cover the theory of the defense, the trial court does not need to give the specific requested instruction. . . . The principle articulated in Maryland Rule 4–325(c) still governs: “[t]he court need not grant a requested instruction if the matter is fairly covered by instructions actually given.”

* * *

The knowledge and intent instructions, while sufficiently informing the jury of the required mental element, did not expressly direct the jury’s attention to the defense of mistake of fact. . . . Petitioner was entitled to an instruction on the theory of his defense, as he requested. The trial court abused its discretion in declining to give the requested instruction, and a new trial is in order.

Id. at 483-90 (cleaned up; emphasis added).

Returning to the case before us, the trial court declined to give the mistake of fact instruction because it concluded that the instruction was inappropriate in homicide cases. The court’s ruling was inconsistent with the analysis and holdings in *Cunningham*, 58 Md. App. at 251-52, and *Law*, 29 Md. App. at 459, both of which were murder cases.

Wilson asserts that the court erred as a matter of law when it declined to give the mistake of fact instruction, and the State does not argue otherwise. We agree. Thus, reversal of Wilson’s convictions is required unless the substance of the mistake of fact instruction was “fairly covered by instructions actually given.” Md. Rule 4-325(c).

The Substance of the Requested Instruction was Fairly Covered by Other Instructions

On appeal, Wilson argues that the trial court’s failure to instruct the jury on mistake of fact was prejudicial because the substance of the instruction was not “fairly covered” by the trial court’s other instructions. He states that the trial court erred in concluding that the mistake of fact instruction is inapplicable in homicide cases:

[T]he trial court instructed the jury on the elements of perfect self-defense, including that the Defendant “actually believed that he was in immediate or imminent danger of death or serious bodily harm” and “that the Defendant’s belief was reasonable[.]” The trial court did not instruct the jury that Wilson’s belief could be inaccurate but reasonable. The trial court instructed the jury on imperfect self-defense, including that for “partial self-defense” to apply, Wilson must believe, albeit unreasonably, that he was in immediate or imminent danger of death or serious bodily injury. *The trial court did not instruct the jury that Wilson could honestly believe a mistaken fact.*^[21]

(Emphasis added; citations to record omitted.)²²

²¹ The italicized language does not appear in the pattern jury instruction for Mistake of Fact. In his briefs, Wilson does not identify where he asked the trial court to add this embellishment to the Mistake of Fact instruction.

²² Wilson elaborated on these themes in his reply brief:

In [defense counsel’s] closing argument, Wilson argued that the shooting was fully justified even though Wilson mistook that Fruh was reaching for a gun because Wilson’s mistake was reasonable under the circumstances:

But even if you got there, “I don’t believe, Mr. McDaniel, that there was a gun in the bag.” That’s not the question. The question is whether or not he reasonably believed he was an [sic] imminent danger of death or serious bodily harm. That the Defendant’s belief was reasonable, given all of the robberies that have taken place there, and the fact that this man now has

(Footnote Continued)

The State’s primary argument is that the mistake of fact instruction was “fairly covered” by the court’s instructions on self-defense. Relying on Md. Rule 4-325(c), the State asserts that there was no error because the mistake of fact instruction would have been “cumulative” to the court’s instruction on self-defense. Therefore, according to the State, “there was no error [on the court’s part] because the mistake of fact instruction, as applied to this case, was fairly covered by the self-defense instructions.”²³

lured him to this place so that he could rob him of his weed with his friend that’s right behind him with a bag that he’s reaching into that’s not see-through.

In the prosecutor’s rebuttal argument, the State countered by emphasizing the absence of a gun:

But what we have is, again, the fact that Julian [Fruh] is unarmed. There is nothing in his book bag. . . . There was no gun in that book bag.

The prosecutor emphasized “So again, all that talk about the book bag, it’s a red herring. Mr. Fruh was not armed during this encounter.” The prosecutor connected the absence of a gun with the jury’s assessment of Wilson’s credibility:

But what it comes down to is the Defendant’s credibility. He’s asking you to believe that he was actually in fear of imminent, immediate, or imminent danger of death or serious bodily harm. Do you believe him with that? This is an unarmed security guard.

(Cleaned up.)

²³ The State frames its contentions in terms of the pattern jury instruction on self-defense. We believe that it is more appropriate to base our analysis on the instructions actually given by the court. The differences between the two are non-substantive.

The State asserts that the critical instruction was the court’s instruction on self-defense:

had the trial court given the [mistake of fact] instruction, then it would have instructed the jury to find Wilson not guilty if: (1) Wilson actually believed Fruh had a gun, (2) Wilson’s belief and actions were reasonable, and (3) if Fruh did have a gun, then Wilson’s actions either would not have been criminal or he would have the defense of self-defense.

But . . . the court *did* instruct the jury to this effect when it delivered the self-defense instructions. The jury was told, in the context of the perfect self-defense instruction, that one of the elements required a showing that “the Defendant *actually believed* that he was in immediate or imminent danger of death or serious bodily harm; [and] that the Defendant’s *belief* was reasonable.”

(Emphasis in original; citations to the record omitted.)

The context of the State’s argument is best illustrated by setting out the mistake of fact and partial mistake of fact instructions and the court’s actual instructions side-by-side (emphasis added):

Mistake of Fact Instruction (MPJI-Cr 5:06)	Relevant Parts Of The Trial Court’s Self-Defense Instructions
You have heard evidence that the defendant’s actions were based on a mistake of fact. Mistake of fact is a defense. You are required to find the defendant not guilty if: (1) the defendant <i>actually believed</i> (alleged mistake); (2) <i>the defendant’s belief and actions were reasonable under the circumstances</i>; and (3) the defendant did not intend to commit the crime of (crime) and the defendant’s conduct would not have amounted to the crime of (crime) if the mistaken belief had been correct, meaning that, if the true facts were what the defendant thought them to be, the [defendant’s conduct would not have been criminal] [defendant would have the defense of ([self-]defense)]. In order to convict the defendant, the State must prove beyond a reasonable doubt that at least one of the three factors was absent.	In order to convict the Defendant of murder, the State must prove that the Defendant did not act in either complete defense, self-defense, or partial self-defense. . . . Complete self-defense requires – a complete self-defense, sometimes called perfect self-defense, is a total defense, and you’re required to find the Defendant not guilty if all of the four following factors are present. [1] The Defendant was not the aggressor or, although the Defendant was the initial aggressor, did not raise the fight to a deadly level of force; [2] <i>the Defendant actually believed that he was in immediate or imminent danger of death or serious bodily harm</i>; [3] <i>that the Defendant’s belief was reasonable</i>; and [4] the Defendant used no more force than was necessary to defend himself in light of the threatened or actual force. This limit on the Defendant’s use of deadly force requires the Defendant to make reasonable efforts to retreat. The Defendant does not have to retreat if the retreat is unsafe, the [a]venue of retreat was unknown to the Defendant, or the Defendant was being robbed. You must find the Defendant not guilty unless the State has persuaded you beyond a reasonable doubt that at least one of the four factors of complete self-defense was absent. If you find that the Defendant did not act in complete self-defense, he still may have acted in partial self-defense.
In order to convict the defendant, the State must prove beyond a reasonable doubt that <i>at least one of the three factors</i> was absent.	You must find the Defendant not guilty unless the State has persuaded you beyond a reasonable doubt that <i>at least one of the four factors</i> of complete self-defense was absent. If you find that the Defendant did not act in complete self-defense, he still may have acted in partial self-defense.

Mistake of Fact Instruction (MPJI-Cr 5:06)	Relevant Parts Of The Trial Court’s Partial Self-Defense Instructions
You have heard evidence that the defendant’s actions were based on a mistake of fact. Mistake of fact is a defense. You are required to find the defendant not guilty if: (1) the defendant <i>actually believed</i> (alleged mistake); (2) <i>the defendant’s belief and actions were reasonable under the circumstances</i>; and (3) the defendant did not intend to commit the crime of [murder] and the defendant’s conduct would not have amounted to the crime of [murder] if the mistaken belief had been correct, meaning that, if the true facts were what the defendant thought them to be, the . . . [defendant would have the defense of (defense)]. In order to convict the defendant, the State must prove beyond a reasonable doubt that at least one of the three factors was absent.	For partial self-defense, <i>you must still find the Defendant actually believed</i> he was in immediate or imminent danger of death or serious bodily harm; and the Defendant was not the initial aggressor; or was the initial aggressor, but did not raise the degree of force used to deadly force or a deadly level. <i>If the Defendant actually believed that he was in immediate or imminent danger of death or serious bodily harm, even though a reasonable person would not have so believed, that is partial self-defense</i>, and your verdict should be guilty of manslaughter and not guilty of murder. If the Defendant used greater force to defend himself in light of the threatened or actual force than a reasonable person would have used, but the Defendant actually believed that force was necessary, and the Defendant made a reasonable effort to retreat, that is partial self-defense, and your verdict should be guilty of manslaughter and not of murder – and not guilty of murder. The Defendant does not have a duty to retreat if retreat is unsafe; the avenue of retreat was unknown; the Defendant actually believed that he could not have safely retreated or could not safely retreat, although a reasonable person would have not so believed; or the Defendant was being robbed. In order to convict the Defendant of murder, the State must prove beyond reasonable doubt that the Defendant did not act in complete self-defense or partial self-defense. If the Defendant acted in complete self-defense, your verdict must be not guilty. If the Defendant did not act in complete self-defense, but acted in partial self-defense, your verdict should be guilty of manslaughter and not guilty of murder.

Both the mistake of fact instruction proposed by Wilson and the court’s instructions identify the dispositive issues, namely whether Wilson actually believed that he was acting to protect himself when he shot Fruh and whether that belief was reasonable. By returning a verdict of guilty on the second-degree murder charge, the jury signaled that it did not believe either or both of these propositions. We agree with the State that the court’s instructions to the jury as to complete and partial self-defense “fairly covered” the substance of the mistake of fact instruction sought by Wilson. Therefore, we affirm the judgment of the circuit court.

THE JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY IS AFFIRMED. APPELLANT TO PAY COSTS.