Circuit Court for Baltimore City
Case No. 122004015

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 447

September Term, 2023

DORRELL JACKSON

v.

STATE OF MARYLAND

Leahy,
Shaw,
Raker, Irma S.
(Senior Judge, Specially Assigned),

Opinion by Raker, J.

Filed: January 21, 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).

Appellant, Dorrell Jackson, was convicted in the Circuit Court for Baltimore City of first-degree murder, first-degree assault, armed robbery, and various firearm violations. Appellant presents the following question for our review:

"Is the evidence sufficient to support Mr. Jackson's convictions?"

Finding the evidence sufficient, we shall affirm.

I.

Appellant was indicted by the Grand Jury for Baltimore City of first-degree murder, armed robbery and related firearm violations. Following a bench trial, the court found appellant guilty on all counts. For sentencing purposes, the court merged wear, carry, and transport a firearm on his person, wear, carry, and transport a handgun in a vehicle, and wear and carry a dangerous weapon with use of a firearm during the commission of a dangerous crime. The court merged first-degree assault with robbery with a deadly weapon. The court imposed a term of incarceration of life for first-degree murder, a consecutive term of incarceration of twenty years, suspend all but five years for use of a firearm during the commission of a dangerous crime and a concurrent sentence of fifteen years for possession of a regulated firearm. The court imposed a concurrent sentence of twenty years for robbery with a deadly weapon. Finally, appellant was sentenced to a concurrent sentence of twenty years for use of a handgun during the commission of a crime of violence, the first five years without parole.

On December 1, 2021, Officer Sobboh responded to a report of a robbery in the 500 block of Coventry Road in Baltimore City. He encountered Mr. Joseph Brown who was

not wearing clothes. Mr. Brown told the officer that a man approached him, pointed a gun and told him to remove his clothes and handover anything in his possession.

Detective Valderas, the primary investigator, went to the scene with Detective Stackhouse to search for evidence. The officers heard two gunshots coming from the intersection of Coventry Road and Random Road, and when they arrived at that location, they saw a person lying on the ground, bleeding profusely. They saw a woman leave a nearby home and leave in a black SUV. They saw a man on the ground, later identified as Amir Whyee, with gunshot wounds to his leg and head. Mr. Whyee died at the scene.

On December 5, 2021, Detective Scott, the homicide investigator, learned that a vehicle matching the tags of the one observed by the officers as it left the scene on December 1, was towed to the district station. The vehicle was involved in a shooting and multiple bullet casings were found in the vehicle, along with Mr. Brown's wallet. Detective Scott identified the owner of the vehicle as Angela Tyler. After further investigation, the detective discovered that appellant, Dorell Jackson, was in a relationship with the vehicle owner's daughter, Jasmine Tyler.

As the officers approached appellant to arrest him, Detective Moynihan observed appellant remove something from his waistband and make a tossing motion towards a vehicle. Detective Moynihan seized the handgun from under the vehicle. Firearms examiner Zoe Krohn examined the handgun and testified that one cartridge recovered from the scene of the shooting was "cycled though" the recovered handgun.

Detectives Moynihan and Scott interviewed appellant the day he was arrested. Appellant told the detectives that he had been shot in June 2021 and that he believed

"someone was out to get him." During Detective Scott's trial testimony, the State played portions of appellant's police interview and asked the detective to identify appellant in images obtained from apartment security cameras near the robbery and murder. Detective Scott testified that she and Detective Moynihan "decided it was best to . . . give [appellant] an out." She explained that "[a]n out is basically where you give them a reason to think it was possibly okay to do what they did."

During cross-examination, defense counsel asked Detective Scott about appellant's state of mind during the incidents.

> "[DEFENSE COUNSEL]: . . . And then he tells you that – essentially, that you believe that the individual who was the victim of the homicide, essentially he thought that the person was out to get him; is that correct?
>
> [DETECTIVE]: He said someone was out to get him. We told him that story, that possibly that person was out to get him. That's the out we gave him.
>
> [DEFENSE COUNSEL]: Okay. That's the out that you gave him. All right.
>
> And then – but when you also questioned him about the robbery, his rationale for the robbery, what was his rationale for the robbery, if any?
>
> [DETECTIVE]: His rationale for the robbery – let me think, he used the same outing tactic that we gave him earlier, that people were out to get him due to his shooting."

Defense counsel asked Detective Scott about his recollection of the use of the word "paranoid"[1] describing appellant's state of mind during the interview:

[1] Detective Moynihan, not Detective Scott, referred to appellant as "paranoid" during his testimony.

> "[DEFENSE COUNSEL]: And even at one point you mention that you thought he was—he had become paranoid; is that correct?
>
> [DETECTIVE]. I don't feel that he became paranoid, I used that as an out. I don't think he was paranoid.
>
> [DEFENSE COUNSEL]: Okay. So if your partner, Detective Moynihan, stated that my client appeared to be—at least during the statement, when he gave his statement, he was—he was providing an out that he would say that?
>
> [DETECTIVE]: So understand where he's coming from, but to me, paranoia is an irrational fear. I think he had a rational fear that people were out to get him. But he was so selfish that he didn't care about other people, he only cared about his fear. And instead of contacting police as anybody who would be in fear would do, he chose to irrationally then go after people and put other people in harm's way.
>
> . . .
>
> [DEFENSE COUNSEL]: Okay. Well, that's your opinion it's a selfish reaction."

Mr. Brown testified that he had never encountered appellant before and he followed appellant's instructions to remove his clothing and to hand over his wallet out of fear for his life. Officer Sobboh testified that he recovered Mr. Brown's clothes but not the wallet in a nearby alleyway.

Detective Moynihan testified as to the closed-circuit television ("CCTV") footage. He identified appellant and Mr. Whyee in the video, describing how appellant shot Mr. Whyee twice, with the second shot occurring about thirty seconds after the first shot. He testified that "between the first shot fired and the scream, right before the second shot is fired, you can almost hear him racking the gun . . . his gun must have got jammed before he could do that second round."

Appellant testified at trial. He stated that he shot and killed Mr. Whyee and admitted that he approached Mr. Brown with his gun drawn, forcing Mr. Brown to remove his clothes and hand over his wallet. He explained that he acted out of paranoia and self-defense, not because he intended to kill or rob Mr. Whyee or to rob and assault Mr. Brown.

Appellant testified that he was shot eight times in June 2021. This shooting, he said, occurred because "people thought [he] was going to retaliate for" the murder of "a friend" he called "my little brother." Appellant testified that people "put 50,000 on [his] head" and that's why he was shot eight times in June. He added that he had been to the hospital seeking treatment for his increasing his paranoia but was always turned away.

Appellant recounted that, on December 1, 2021, he was "paranoid" while he was walking to his mother's house and that when he noticed Mr. Brown, he thought that Mr. Brown was "trying to collect that money," referring to the bounty. Appellant stated that he saw Mr. Brown ahead of him and observed him walking in a manner that appeared to circle back around him. Appellant acknowledged that he stopped Mr. Brown and directed Mr. Brown to remove his clothes to confirm he was not carrying any weapons and whether Mr. Brown wanted to harm him. Appellant admitted that he "didn't think that [Mr. Brown] was trying to hurt [him] after the fact. That's why [he] left him alone . . .[and] left all his stuff in the alley."

Appellant described approaching Mr. Whyee while he was walking his dog near appellant's girlfriend's house. After learning Mr. Whyee was not from the area, appellant told Mr. Whyee to strip, as he did with Mr. Brown. Mr. Whyee refused and appellant testified the "conversation got heated." Appellant testified as follows:

> “Once he started getting aggressive, I switched my hand in pocket, you feel me—like, when he seen that, he looking up at my mother porch, looking back at me smirking. . . . he got the dog in his left hand, I believe, reach for his dip.
> So when he reached for his dip, like, he really grasped, so I pulled the trigger and hit him . . . So as I’m trying to calm him down, I’m trying—I ain’t going to lie, like, I was going to get away from the scene . . . But I was trying to make sure he all right . . .[then] he going again. That’s when I shot again.”

Appellant stated that he “thought [Whyee] was going to whip a gun out and shoot [him], like, and try to hit [him] in the parking lot,” and that he is “in fear. [He is] in fear every day.”

On cross-examination, the State focused on why appellant shot Mr. Whyee the second time.

> “[STATE]: The second shot that we heard in the video—
>
> [APPELLANT]: Yeah.
>
> [STATE]: --is you shooting that young man in the back of the head, isn’t it?
>
> [APPELLANT]: No, if the dustbin wasn’t right there, you would see that after the thigh shot and I was—you would see me trying to help the young man, like man, listen, just chill, just calm down, bro, and you’d see him doing like this (gesturing towards his waistband), and I hit him again, that’s what you would have seen. . . .
>
> [STATE]: Well, sir, what do you mean when you say, “So I hit him again”? You mean you shot him again, correct?
>
> [APPELLANT]: Yeah. The dude reaching for a gun—if a dude reaches for a gun and he coming and shoot you, what are you going to do?
>
> [STATE]: You never saw a gun, though, did you?

> [APPELLANT]: Um, he got—man, listen, I got hit eight times. I don't got time . . . to wait for no gun to get in my face to shoot.
>
> [STATE]: Sir, my question to you is you never saw a gun, correct?
>
> [APPELLANT]: No, I didn't."

The State shifted to why appellant failed to retreat when he realized he did not know Mr. Whyee or when he became afraid.

> "[STATE]: Here's my question, sir, right? When you tried, as your words, to probably make him go strip in the alley, right . . . and then he didn't do what you said . . . you said, this is—these are your words, right, you said, "I ain't on no bullshit so go ahead,". . . [y]ou were daring him to do something, right?
>
> [APPELLANT]: No.
>
> [STATE]: Well, what did you mean when you said, "I ain't on no shit so go ahead"?
>
> [APPELLANT]: The same thing I mean with Mr. Brown. He did—he cleared my conscience to where as though I'm, like, okay, he's not trying to harm me. And as you see, Mr. Brown is in this courtroom with all his belongings. Now I don't know where—young man who's really innocent and not on nothing see a man with a crazy look in his eyes that's talking crazy, if he don't know what I'm talking about—because his boss and all that, he don't know what I'm talking about, so I got to look crazy in his eyes and I got a gun, and all I tell him to do is, bro, listen, bro, chill . . .I don't know what man is not going to listen. . . .
>
> [STATE]: Help me to understand, sir. . . . You had already shot this man in the leg, right?
>
> [APPELLANT]: Right.
>
> [STATE]: You could have gone anywhere. You could have walked away from the situation, couldn't you? You could have

> called the police and you say this man tried to pull a gun on me. But you didn't do either of those two things, did you?
>
> [APPELLANT]: Because I wasn't raised like that."

Ms. Tyler testified about appellant's change in demeanor after he was shot in June 2021. She stated that he was paranoid and delusional, and that people were watching and following him. Ms. Tyler testified that on the day of the incident, appellant wanted to go back to the hospital because he was not feeling like himself. He went outside to calm down. After she heard the gunshots, she got into her vehicle to find appellant and when she did, he was very emotional and kicked and cracked the windshield. She explained that appellant was trying to make sure Mr. Whyee did not have a weapon, as appellant did with Mr. Brown.

The court found appellant guilty on all counts and imposed sentence. The court acknowledged the evidence presented by appellant suggested a possibility of extensive PTSD and paranoia, noting that "there's no question [that the shootings sustained by appellant] played a substantial part in the motivation and what led up to the circumstances here." The court was "mindful of the reality of the defendant and the evidence that was presented with reference to his motivation, what drove his conduct and what has been described as extensive PTSD, paranoia," concluding that "those circumstances are appropriately dealt with at the time of disposition. And they are clearly – there is no question they played a substantial part in the motivation and what led to the circumstances here."

This timely appeal followed.

II.

Appellant argues that the evidence was insufficient to support his convictions. He argues that (1) once he generated self-defense, the State failed to disprove imperfect self-defense and thus, he should have been convicted of manslaughter, not first degree murder; (2) that he did not have the intent to assault anyone; (3) that he lacked the specific intent for robbery (because the wallet was found later in the car); and (4) that one of the firearm convictions should be vacated because he should not have been convicted of a crime of violence related to Mr. Brown. Appellant admits that he killed Mr. Whyee and that he took Mr. Brown's wallet at gunpoint after telling Mr. Brown to remove his clothes. He contends he lacked the requisite *mens rea* of premeditation to kill Mr. Whyee, or the intent to assault or rob Mr. Brown. Appellant asserts that his paranoia resulting from a bounty placed on him by rival gang members caused him to approach Mr. Whyee and Mr. Brown to protect himself and his loved ones. Because of this paranoia and intention to protect others, appellant asserts that he did not act deliberately or with malice when he killed Mr. Whyee, but rather was defending himself, *albeit* imperfectly. Similarly, appellant maintains that he lacked the requisite intent for assault and robbery offenses because he acted out of fear that persons were pursuing him, not out of an intent to assault or rob Mr. Brown.

Appellant asserts the court erred in rejecting imperfect self-defense and as a result, he was guilty of manslaughter, not first-degree murder. He argues that he had an unreasonable but honest belief that he was in imminent danger that necessitated shooting Mr. Whyee twice because Mr. Whyee was the first aggressor. Finally, appellant asserts that

the State failed to rebut that he did not harbor an unreasonable but honest belief that he was in imminent danger. Thus, appellant argues the trial court erred by not reducing first-degree murder to manslaughter and by not acquitting him of assault and robbery.

The State argues that the evidence was sufficient to support all the convictions and that the State rebutted at least one element of imperfect self-defense and that the requisite intent of all the offenses had been proven. As to premeditation, the State points to the thirty seconds between appellant's first shot and second shot of Mr. Whyee, and in addition, while shooting the gun jammed, requiring appellant to clear the jam. The State asserts that appellant had the time to develop the required specific intent for premeditated murder based upon the delay between the firing of the first and second shots at Mr. Whyee. The State contends that appellant had the requisite intent to deprive Mr. Brown permanently of his property when officers found Mr. Brown's wallet in Ms. Tyler's car on December 5, 2021, the day of the car shooting. Similarly, the State argues that appellant does not deny he pointed a gun at Mr. Brown when he instructed Mr. Brown to strip and hand-over his wallet, indicating at least an intent to frighten Mr. Brown and not merely a reaction to appellant's fear of harm.

The State maintains that it presented sufficient evidence to rebut imperfect self-defense because it showed that appellant was a deadly aggressor when he approached and engaged Mr. Whyee without making any attempt to retreat after his initial shot to Mr. Whyee's leg. The State argues that appellant shot Mr. Whyee the second time not out of his claimed fear, but to prevent Mr. Whyee from returning the next day to possibly harm

appellant and his family. These facts, the State maintains, are incompatible with imperfect self-defense and do not mitigate murder to manslaughter.

III.

Md. Rule 8-131(c) provides that "[w]hen an action has been tried without a jury, the appellate court will review the case on both the law and the evidence." We accept the factual findings of the trial court unless clearly erroneous, and review conclusions of law *de novo*." *Mason v. State*, 25 Md. App. 467, 475 (2015). We review the sufficiency of the evidence to determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia,* 443 U.S. 307, 319 (1979); *Scriber v. State,* 236 Md. App. 332, 344 (2018). As a reviewing court, we do not judge the credibility of witnesses or resolve conflicts in the evidence. *Scriber*, 236 Md. App. at 344. The question before us is "not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder." *Id.* (emphasis in original).

Reviewing the sufficiency of evidence to support a criminal conviction, we consider whether the evidence could reasonably support a finding of guilt beyond a reasonable doubt. *Tichnell v. State*, 287 Md. 695, 717 (1980). The standard requires that "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id*.

IV.

A. Imperfect Self-Defense

We address first appellant's argument that he acted in imperfect self-defense and therefore the court erred in finding him guilty of first-degree murder and not manslaughter.

To understand imperfect self-defense, we first look at perfect self-defense, because the two defenses overlap, and differ only in that for imperfect self-defense, the defendant's belief of his danger does not have to be a reasonable belief. Perfect self-defense, requiring a reasonable belief, is defined as follows:

> "(1) The accused must have had reasonable grounds to believe himself in apparent imminent or immediate danger of death or serious bodily harm from his assailant or potential assailant;
>
> (2) The accused must have in fact believed himself in this danger;
>
> (3) The accused claiming the right of self-defense must not have been the aggressor or provoked the conflict; and
>
> (4) The force used must have not been unreasonable and excessive, that is, the force must not have been more force than the exigency demanded."

Porter v. State, 455 Md. 220, 234-35 (2017) (quoting *State v. Smullen*, 380 Md. 233, 252 (2004).

Imperfect self-defense differs primarily from perfect self-defense in that imperfect self-defense does not require that the defendant's belief be reasonable or that he used reasonable force. *Id*. at 235. Instead, the defendant must show only that he actually, even if unreasonably, believed that he was in danger, that the amount of force he used was

necessary, even if his belief was unreasonable, and that he subjectively, even if he unreasonably, believed that retreat was not safe. *Id*. If the trier of fact accepts imperfect self-defense, the verdict should be manslaughter, rather than not guilty as in perfect self-defense.

The question of whether there is sufficient evidence to raise a claim of imperfect self-defense is a question of law that requires the court to apply a subjective standard, viewing the evidence from the perspective of the defendant at the time of the killing. *See Dykes v. State*, 319 Md. 206, 221 (1990). To support a claim of self-defense, perfect or imperfect, the defendant has the burden to generate "some evidence" with respect to each of the elements of the defense. *Hollins v. State*, ___ Md. ___, 2024 WL 5198209, *7 (2024); *Wilson v. State*, 422 Md. 533, 541-42 (2011). The burden then shifts to the State to disprove, beyond a reasonable doubt, the non-existence of any one of the elements of the defense. *Simmons v. State*, 313 Md. 33, 40 (1988). Importantly, if the State proves the absence of any one of the elements of the defense, the defendant loses. *Id.*

Most pertinent to this case, when the defendant acts as the initial aggressor, the defendant must be a "nondeadly aggressor." *Cunningham v. State*, 58 Md. App. 249, 255 (1984). The encounter with the victim must be escalated by the victim to one of deadly aggression. *Id.* (rejecting a claim of imperfect self-defense because defendant approached the victim with gun drawn and was therefore a "deadly aggressor"). Likewise, in *Holt v. State*, we reasserted that while "'the privilege of self-defense is not necessarily forfeited by arming oneself in anticipation of an attack, that right is qualified by the proviso that the

right extends only to one who was not in any sense seeking an encounter.'" *Holt v. State*, 236 Md. App. 604, 625 (2018) (quoting *Marquardt v. State*, 164 Md. App. 95, 141 (2005)).

Here, the trial judge, in a bench trial, rejected appellant's claim of self-defense. We hold that the evidence was sufficient to support the judge's conclusion. The evidence was sufficient for the trial judge to conclude that appellant was the aggressor, that appellant was not in fear of *imminent or immediate danger* when he killed Mr. Whyee, that appellant did not believe that the force he used was reasonable and not excessive, and that appellant honestly believed that retreat was unsafe, all using a subjective standard.

As to who was the aggressor, the evidence was sufficient for the trial court to conclude that appellant was the aggressor. Appellant and Mr. Whyee met in the middle of the street, Whyee walking his dog and appellant "chilling." Appellant told Mr. Whyee to strip and Mr. Whyee refused. Appellant carried a cocked gun in his pocket. Following a heated conversation and Mr. Whyee "getting aggressive," appellant put his hand in his pocket, and when he believed Mr. Whyee "reached for his dip," he shot him in the leg.

Appellant testified that when Mr. Whyee started "going again," he shot him again, in the head. Appellant told police that Mr. Whyee could be back tomorrow, and when asked why he didn't retreat, he responded: "Because I wasn't raised like that." "The trial court could reasonably have found, beyond a reasonable doubt, that appellant was the aggressor. And the trial court could reasonably have found that appellant did not retreat. Even though appellant testified that Mr. Whyee reached toward his pants, and became aggressive, and even if the court accepted that testimony as true, that would not make Mr. Whyee the aggressor. *See Cunningham*, 58 Md. App. at 249. From the evidence presented, the trial

court could have reasonably found appellant to have been the aggressor, and hence, imperfect self-defense not applicable.

The trial court could have reasonably found, from the evidence, that appellant did not subjectively believe that he was in imminent or immediate danger of bodily harm or death. The court could have credited appellant's statement to the detective that "he didn't want [Whyee] to come back tomorrow" so he shot him in the head and appellant's statement "I felt as though if he was calm . . . and he only got shot in the leg, he could be back tomorrow." In addition, these statements would support a court finding that appellant did not have a subjective belief that the force was reasonable and not excessive.

B. First Degree Murder---Premeditation and Deliberation

We hold that the evidence was sufficient to support the conviction of first-degree murder. First-degree premeditated murder requires proof by the State of premeditation and deliberation on the part of the defendant. *Garcia v. State*, 253 Md. App. 50, 60 (2021). Premeditation means "the design to kill must have preceded the killing by an appreciable length of time, that is, time enough to be deliberate." *Tichnell v. State*, 287 Md. 695, 717-18 (1980). There is no specified time limit to establish premeditation or deliberation. *Id*. at 717-18. Significantly, if "the killing results from a choice made as the result of thought, however short the struggle between the intention and the act, it is sufficient to characterize the crime as deliberate and premeditated murder." *Id.* at 718. The length of time need only be "sufficient to convince the trier of fact that the purpose to kill was not the immediate offspring of rashness and impetuous temper but was the product of a mind fully conscious

of its own design." *Garcia*, 253 Md. at 59 (cleaned-up). The time "delay between firing a first and second shot [can be] enough time for reflection and decision to justify a finding of premeditation and deliberation." *Hunt v. State*, 345 Md. 122, 161 (1997).

Appellant shot and killed Mr. Whyee. Video evidence showed that the second shot was approximately thirty seconds after the first shot. Appellant testified that he never saw a gun on Mr. Whyee and that "I don't got time . . . to wait for no gun to get in my face to shoot." Although appellant stated that he didn't go "out looking for a murder," his initial intention does not negate premeditation and deliberation, which can be formed in an instant. The thirty seconds that passed between the first shot that wounded Mr. Whyee and the second that killed him was sufficient time for appellant to premeditate and deliberate (to decide) to kill Mr. Whyee. The State presented evidence that the court could have credited that in between the first and second shot, appellant's gun jammed, providing additional time for premeditation and deliberation.

C. Armed Robbery and First-degree Assault

"Robbery is the felonious taking and carrying away of a personal property from the person of another, accomplished by force or fear." *Harris v. State*, 353 Md. 596, 614 (1999). Assault is the "placing of a victim in reasonable apprehension of an imminent battery." *Lamb v. State*, 93 Md. App. 422, 428 (1992). First-degree assault is defined in Md. Code (2002, 2020 Repl. Vol.) § 3-202 of Maryland's Criminal Law Article ("Crim. Law") as "an assault with a firearm." Crim. Law § 3-202(b)(2).

Appellant admitted to the police and at trial that he aimed a loaded gun at Mr. Brown while demanding that Mr. Brown remove his clothes and hand-over his wallet. Although appellant scattered Mr. Brown's clothes in a nearby alley, appellant kept Mr. Brown's wallet and money, which was later found in the car appellant was driving. Even though appellant testified that he was fearful that people were attempting to kill him, and that he did not intend to rob Mr. Brown, the trial court was not required to believe him. The court did not err in weighing the credibility of appellant's testimony against the evidence presented by the State that police later found Mr. Brown's wallet in Ms. Tyler's car after the shooting on December 5, 2021. Simply because appellant may have abandoned the wallet, this does not mean that he did not intend to deprive Mr. Brown of his property. We hold that the evidence was sufficient to support the convictions for armed robbery and first-degree assault.

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