Circuit Court for Baltimore County
Case No. C-03-CR-20-000041

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2063

September Term, 2022

RICKY CHARLES

v.

STATE OF MARYLAND

Wells, C.J.,
Tang,
Ausby, Kendra Y.,
(Specially Assigned),

JJ.

Opinion by Ausby, J.

Filed: July 10, 2024

*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 Maryland Rule 1-104(a)(2)(B).

In the Circuit Court for Baltimore County, a jury convicted Appellant, Ricky Charles, of first-degree murder and use of a firearm in the commission of a crime of violence. The court sentenced him to life without the possibility of parole. In this appeal Charles raises a single issue, which we have rephrased:

> Did the circuit court err by refusing to instruct the jury on voluntary manslaughter, hot blooded response to legally adequate provocation?

For the reasons stated below, we find no error in the circuit court's refusal to instruct the jury on voluntary manslaughter, hot blooded response to legally adequate provocation, and affirm.

FACTUAL BACKGROUND

On September 21, 2019, at 6:22 p.m., Jacob Weber was outside, at the corner of Avondale and Southern Avenues, when he heard people arguing or yelling. He saw a blue Dodge and black Jeep but was unable to see either driver. He heard a woman say, "get out of the road," and a man say, "pull over the car, bitch." The woman drove in the direction of Fairview Avenue. The man in the Dodge made a U-turn and followed the woman. Weber went inside and called police.

On that same day, Juan Canales was outside his cousin's home on Fairview Avenue when he saw Melissa West driving a black Jeep, which she backed onto the parking pad of her home on Fairview Avenue. A man arrived in a blue Dodge, exited the vehicle, and began arguing with West. Canales testified that the two were yelling and insulting each other, and that they spit on each other. Canales heard the man tell West, if she did not go into the house, he would kill her. While the two were standing close to the blue Dodge, the

man open the car door whereupon Canales heard gunshots. West fell to the ground and the man got into the blue Dodge. Canales never saw West strike the man.

While sitting on the porch of a home on Fairview Avenue, Gage Brokke and Emma Curreri also heard gunshots. They saw West lying in the street a Black man driving away, speeding, in a blue SUV. Curreri heard arguing prior to the gunshots.

Two friends of Charles, Edward Schmidt and Kelly Anderson, who lived a few blocks away from the shooting, testified that one night Charles came to their apartment and told them that he had shot and killed someone. Initially, they did not believe Charles because, according to Schmidt, Charles appeared to be under the influence. Charles added that the woman had called him a "nigger," and that he had spit on the woman. Schmidt testified that he still did not believe Charles because Charles didn't seem like the type of person who would do such a thing. When Schmidt and Anderson later saw the shooting reported on the news, they believed that Charles had killed the woman; however, they did not notify police. Anderson saw Charles after that night but did not discuss the shooting.

At the scene, West was transported to the hospital and pronounce dead at 6:58 p.m. An autopsy revealed that West had been shot at close range, in the armpit and in the back. West's face was swabbed for DNA and an endotracheal tube was preserved for testing. The autopsy concluded that the cause of death was a gunshot wound and the manner of death was homicide.

Through investigation, police identified Charles as the murder suspect. Three months after the shooting, Charles was arrested. Police obtained buccal swabs from Charles

and submitted them for DNA testing. After comparing the DNA profiles of the swabs taken from West with the buccal swabs taken from Charles, forensic analysts concluded that Charles could not be excluded as a contributor to the DNA profiles.

At the trial, Charles requested the jury be instructed on voluntary manslaughter, hot blooded response to legally adequate provocation.[1] He argued that the instruction was

[1] MPJI-Cr 4:17.4(C) VOLUNTARY MANSLAUGHTER (HOT BLOODED RESPONSE TO LEGALLY ADEQUATE PROVOCATION)

Voluntary manslaughter is an intentional killing, which would be murder, but is not murder because the defendant acted in hot blooded response to legally adequate provocation. This does not result in a verdict of not guilty, but rather reduces the level of guilt from murder to manslaughter. You should only consider voluntary manslaughter if you find that the defendant had the intent to kill.

You have heard evidence that the defendant killed (name) in hot blooded response to legally adequate provocation. In order to convict the defendant of murder, the State must prove that the defendant did not act in hot blooded response to legally adequate provocation. If the defendant had the intent to kill and acted in hot blooded response to legally adequate provocation, the verdict should be guilty of voluntary manslaughter and not guilty of murder.

Killing in hot blooded response to legally adequate provocation is a mitigating circumstance. In order for this mitigating circumstance to exist in this case, the following five factors must be present:

(1) the defendant reacted to something in a hot blooded rage, that is, the defendant actually became enraged;

(2) the rage was caused by something the law recognizes as legally adequate provocation, that is, something that would cause a reasonable person to become enraged enough to kill. In this case, the only act that you can find to be adequate provocation is [a battery by the victim upon the defendant] [a fight between the victim and the defendant] [an unlawful warrantless arrest of the defendant by the victim, which the defendant knew or reasonably believed was unlawful];

(3) the defendant was still enraged when (pronoun) killed the victim, that is, the defendant's rage had not cooled by the time of the killing;

generated by the combination of West's use of a racial slur and spitting on him. The trial judge refused to give the instruction on the grounds that the evidence did not support it. The jury convicted Charles of first-degree murder and use of a firearm in the commission of a crime of violence. This appeal followed.

STANDARD OF REVIEW

The decision of the trial court to give a jury instruction is reviewed under the abuse of discretion standard. *Thompson v. State*, 393 Md. 291, 311 (2006). Pursuant to Maryland Rule 4-325(c), the trial court is required to give a requested instruction under the following circumstances: (1) the requested instruction is a correct statement of the law; (2) the requested instruction is applicable under the facts of the case; and (3) the content of the requested instruction was not fairly covered elsewhere in the given jury instruction. *Thompson*, 393 Md. at 302 (citing *Evans v. State*, 333 Md. 660, 691 (1994)). A requested

(4) there was not enough time between the provocation and the killing for a reasonable person's rage to cool; and

(5) the victim was the person who provoked the rage.

In order to convict the defendant of murder, the State must prove that the mitigating circumstance of hot blooded provocation was not present in this case. This means that the State must persuade you, beyond a reasonable doubt, that at least one of the five factors was absent. If the State has failed to persuade you that at least one of the five factors was absent, you cannot find the defendant guilty of murder, but may find the defendant guilty of voluntary manslaughter.

In order to convict the defendant of murder, the State must prove that the defendant did not act in hot blooded response to legally adequate provocation. If the defendant did act in hot blooded response to legally adequate provocation, the verdict should be guilty of voluntary manslaughter and not guilty of murder.

jury instruction is applicable if the evidence is sufficient to permit a jury to find its factual predicate." *Bazzle v. State*, 426 Md. 541, 550, (2012). Sufficiency of the evidence is a question of law for the trial court. *Rainey v. State*, 480 Md. 230, 255 (2022). Thus, this Court must undertake an independent review of whether the evidence at trial was sufficient to "establish a *prima facie* case that would allow a jury to rationally conclude that the evidence supports the application of the legal theory desired." *Rainey*, 480 Md. at 255 (quoting *Bazzle*, 426 Md. at 550). We review the evidence in the light most favorable to the party requesting the instruction. *Rainey*, 480 Md. at 255 (citing *Dykes v. State*, 319 Md. at 206, 216 (1990)). The requesting party bears the burden to produce "some evidence" to support the requested instruction. *Id*.

DISCUSSION

To mitigate murder to manslaughter, pursuant to the "rule of provocation," there must have been adequate provocation; the killing must have been in heat of passion; it must have been a *sudden* heat of passion (i.e., the killing must have followed provocation before there was a reasonable opportunity for passion to cool); and there must have been a causal connection between the provocation, the passion, and the fatal act. *Girouard v. State*, 321 Md. 532, 539 (1991) (citations omitted). Examples of adequate provocation may include illegal arrest, mutual affray, and assault and battery. *Id*. at 538. Words alone, including racial slurs, do not amount to a mutual affray, and do not constitute adequate provocation. *Sims v. State*, 319 Md. 504, 552 (1990). However, a combination of words and conduct may give rise to adequate provocation. *Id*. Specifically, words can constitute adequate

provocation if they are accompanied by conduct indicating a present intention and ability to cause the defendant bodily harm. *Lang v State*, 6 Md. App. 128, 132 (1969). Ultimately, the provocation must be enough to inflame the passion of a *reasonable* man such that he would be sufficiently infuriated so as to strike out in hot-blooded blind passion to kill. *Girouard*, 321 Md. at 539.

Appellant relies on *State v. Rich*, 415 Md. 567 (2010), for the postulation that a combination of a racial slur and spitting is *per se* "sufficient to generate a genuine jury question on the issue of whether [the defendant] was guilty of voluntary manslaughter." *Id* at 582. However, the Court in *Rich*, did not base its holding on the evidence of a racial slur and spitting alone. In fact, the Court reiterated that "it is well settled that provocative words—even if accompanied by *some* physical contact—do not constitute adequate provocation to mitigate a murder to a manslaughter." *Id* at 581. (Emphasis added). In *Rich*, the jury heard the defendant's post arrest statement to police, wherein the defendant gave *a detailed account* of his interaction with the victim, providing the jury with evidence of the defendant's state of mind while in the heat of the altercation with the victim. Such evidence, the Court held was sufficient for the jury to accept or reject the defendant's claims and evaluate the reasonableness of his response. *Id* at 583. Here, Appellant has produced no such evidence.[2] Appellant argues that the jury received evidence of a

[2] Although the ultimate burden of proving the absence of mitigation rests upon the State when that issue is properly in the case, the burden of initially producing "some evidence" on that issue (or of relying upon evidence produced by the State or adduced from witnesses called by the State) sufficient to give rise to a jury issue with respect to mitigation, is properly cast upon the defendant. *Dykes v. State,* 319 Md. 206, 215–17 (1990); *Simmons v.*

combination of words and conduct by West, which gave rise to adequate provocation. Specifically, Appellant points to testimony that West called him a racial slur, that she approached him as the two were yelling and insulting one another, and that she spat on him. Appellant concedes, and we agree, that the credibility of this evidence was subject to the determination of the jury. We do not agree, however, that even if the jury found that evidence to be credible, it would amount to legally adequate provocation to kill.

In *Giroud*, the Court instructs us that even when a combination of words and assault are present, the fear of bodily harm must be reasonable. *Girouard*, 321 Md. at 540. In *Giroud*, the victim, Giroud's spouse, berated him with a barrage of insults and indignities. In addition, she followed him into the bedroom, stepped up onto the bed, stepped onto *Giroud*'s back, and pulled his hair. *Girouard*, 321 Md. at 535-36. Nonetheless, the Court held that Giroud "could not reasonably have feared bodily harm at her hands," because she "simply did not have the size or strength to cause [Girouard] to fear for his bodily safety;" thus, there was no evidence to support a present ability to cause bodily harm. *Girouard*, 321 Md. at 540. In *Lang*, the victim, while standing outside of Lang's apartment, dared Lang to fight, shouted obscenities at him, pointed his finger at him, and shook his fist at him, all this occurring at distances ranging from five to thirty feet, while the victim was on the lawn, outside the apartment, and Lang was inside the apartment, at the window. *Lang*,

State, 313 Md. 33, 39–40 (1988). The blood must indeed be hot, and under some circumstances only the hot-blooded killer can attest to that. *Price v. State,* 82 Md. App. 210, 217 (1990) citing *Bartram v. State,* 33 Md. App. 115, 175 (1976); *Cunningham v. State,* 58 Md. App. 249, 259 (1984).

6 Md. App. at 131-32. Although witnesses testified that Lang appeared to be "awfully scared," shaken, and angry, [the court, this court, we] held that there was no evidence to indicate that the victim had a present intention or ability to cause bodily harm, noting that he was unarmed, and he did not attempt to enter the apartment. *Lang*, 6 Md. App. at 132.

Here, there is no evidence that West had the intention or ability to cause bodily harm to Appellant. Other than the racial slur, there is no evidence of what West was saying to Appellant during their word spar. There is no evidence that she verbally expressed an intent to cause bodily harm. Other than the mutual spitting, there is no evidence that West sought to assault Appellant. There is no evidence that she hit him or attempted to make any bodily contact with him. There is no evidence that West was armed with a weapon. Finally, there is no evidence that Appellant appeared fearful or intimidated by West or her words. To the contrary, the evidence indicates that it was Appellant who expressed the intent to cause bodily harm when he threatened West that he would kill her if she didn't go into her house. There being no evidence to support a present intention or ability to cause bodily harm, the standard of reasonableness has not been met.

We hold that the provocation in this case was not legally adequate provocation to mitigate homicide to manslaughter. Therefore, it was not error for the circuit court to refuse to instruct the jury on voluntary manslaughter – hot blooded response to legally adequate provocation.

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