Circuit Court for Anne Arundel Co.
Case No. 2K13000356

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 282

September Term, 2016

CARROLL JOHNSON,

v.

STATE OF MARYLAND

Arthur,
Reed,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: May 23, 2018

Appellant, Carroll Johnson, was indicted in the Circuit Court for Anne Arundel County, Maryland and charged with first degree murder, use of a firearm in the commission of a felony, use of a firearm in the commission of a crime of violence, possession of a regulated firearm after having been convicted of a disqualifying crime, and wearing, carrying and transporting a handgun. After a jury trial, appellant was convicted of first degree murder, use of a firearm in the commission of a crime of violence, possession of a regulated firearm after being convicted of a disqualifying crime, and wearing, carrying and transporting a handgun. Appellant was sentenced to life imprisonment for first degree murder, a concurrent 20 years, with all but the 5 years mandatory minimum suspended, for use of a firearm in the commission of a crime of violence, and a concurrent 15 years, with all but the 5 years mandatory minimum suspended, for possession of a regulated firearm, credit for time served, and to be followed by 5 years supervised probation. Appellant timely appealed and presents the following question for our review:

> Is the evidence sufficient to sustain the conviction for first degree murder?

For the following reasons, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

At approximately 5:00 p.m. on December 30, 2012, Michael Nauton was working as a bartender at Dietrich's Tavern, a bar and carryout/package store located on Furnace Branch Road in Glen Burnie, Maryland. Several customers were inside, including appellant, known to Nauton as "C.J." Nauton testified that he knew appellant both as a customer and as a former employee of the bar.

At some point, the victim, Sir Keith English Queen Jones ("Sir Keith" or "Jones"), entered the bar, motioned in appellant's direction, and then went back outside. A moment later, Nauton saw appellant get up and walk out of the bar. Nauton did not see Jones with a weapon when he entered the bar. The next time Nauton saw Jones was approximately ten minutes later when he went outside for a cigarette break and saw a police officer performing "chest compressions on someone in the parking lot." That person was later identified as Jones.

Several witnesses, including Christopher Serio, Mallorie Smith, and Stephanie Brown, saw two men talking outside Dietrich's Tavern before the shooting, but none of them testified that they saw any weapons. In fact, Smith, who arrived with Brown to buy wine inside the package store, testified that the men appeared to be "casually talking, hanging out" and "maybe having a cigarette." After she entered the store, however, Smith heard two to three gunshots. When she went back outside, Smith saw one of the men lying next to her vehicle. The other man was gone.[1] Several days after the shooting, Smith met with Detective Vincent Carbonaro and identified a photograph of the person she believed was the "shooter."

In addition to the testimony from these witnesses, the jury heard that Dietrich's Tavern used a surveillance video system that shot video of the bar area, the carryout/package store, and the parking lot areas around the outside of the establishment.

[1] Another witness, Kathleen Rogers, testified that she looked out her window, located across the street from Dietrich's, when she heard gunfire and saw a man walking quickly away from the scene.

The video, which was played for the jury, displayed various images of appellant and Jones, as well as other individuals, in and outside the bar area from between 4:45 and 5:10 p.m. on the day in question. Appellant was seen in the video wearing a fedora hat. The video did not capture the shooting.

After the shooting, Corporal Earnest Sasser of the Anne Arundel County Police Department, who was one of the first responders to the scene, aided in attempting C.P.R. on Jones. He also assisted in interviewing witnesses at the bar and developed a description of the suspect as an African-American male in his thirties, 5'9" tall, around 180 pounds, and wearing a blue heavy jacket, white hooded sweatshirt, and light blue jeans. Corporal Sasser testified that, although several witnesses heard gunshots, he never spoke to anyone who actually witnessed the shooting.

Jones was brought to the emergency room at Baltimore Washington Medical Center ("BWMC") in traumatic cardiac arrest. Ultimately, Jones was pronounced dead at 5:57 p.m. An autopsy was performed and it was determined that Jones died of multiple gunshot wounds. Jones was shot eight times, including in the upper chest, the back of the neck, the middle of the back, the left lower torso, the right buttock, the left arm, the right wrist, and the left thigh. The manner of death was classified as a homicide.

Included in the evidence in this case was a baggie that was recovered from Jones's underwear at the hospital, as well as two bullets found about his person. Also included in the evidence was Jones's cell phone, found inside a Ravens jacket in the parking lot after the shooting. Cartridge casings and another bullet were also found at the crime scene. In addition, two bullets were recovered from Jones's autopsy. A firearms expert opined that

the cartridge casings recovered in this case were all .380 auto caliber, and that seven out of eight of these casings were fired from the same firearm. The remaining casing could not be identified or eliminated. The five bullets were identified as being either .380 auto or nine millimeter Luger caliber, copper-jacketed projectiles, all fired from the same firearm. No weapons were recovered in this case, either near, on, or about the victim, *i.e.*, Jones, or the minivan belonging to Jones's girlfriend that was found at the scene. Therefore, the firearms expert was unable to compare a weapon to the recovered ballistics evidence.

Several of appellant's acquaintances implicated him in the shooting. Joseph Alvini, a friend of appellant's, visited appellant at his mother's house, where appellant was staying at the time, a day or two prior to the shooting. Appellant possessed a silver, semi-automatic handgun, and Alvini believed the gun had the word "Lorcin" printed on it.[2] Appellant told Alvini the gun was for self-defense because he was "scared" and "worried."

Alvini further testified that he saw appellant the day after the shooting, December 31, 2012, back at his mother's house. Alvini and appellant talked about the shooting and how "it was going to be hot," and appellant stated that "he had to take care of his business." They also discussed the possibility that appellant would be caught. Appellant knew Dietrich's, as well as the layout of the surveillance cameras, but was not worried about being seen because "he was outside of the field of vision, often." Appellant never indicated that Jones had a gun on his person at the time. On cross-examination, Alvini agreed that

[2] The firearms expert agreed that the projectiles that were recovered in this case could have been fired from a Lorcin firearm.

appellant was nervous and that he, Alvini, believed it was because appellant "was being shook down."

Kenneth Pitts was at Dietrich's Tavern on the night of the shooting and agreed that appellant was there as well. At some point, Pitts and Lawrence Lewis, known to Pitts as "Black," decided to leave and saw appellant casually talking to Jones in the parking lot. Approximately two minutes after Pitts and Lewis drove away, Lewis received a phone call indicating someone had been shot. They returned to Dietrich's and found Jones in the parking lot. Appellant was no longer present at the scene**.**

Lawrence Lewis testified at trial and agreed that he knew both appellant, a.k.a. "CJ," and Jones. On December 29, 2012, appellant texted Lewis on his cellphone, stating "Yo, I need you to bring me some bullets. I'm beefing all to shit." The next day, at approximately 5:00 or 6:00 p.m., Lewis brought some nine millimeter bullets with him to appellant's apartment, located off Oakwood Road in Glen Burnie. After his memory was refreshed, Lewis testified that he knew that appellant owned a black .380 handgun.

While inside appellant's apartment, the subject of Jones came up. Lewis testified that appellant wanted to talk to Jones at Dietrich's Tavern about "some money issues." Before they went to the bar, appellant changed into dark clothes, putting on a dark jacket, a hat, a turtleneck, and a hoodie, as well as some sort of "[l]ong johns[.]" Lewis testified that appellant put this latter item over his arm and explained, "[y]ou know, you shoot a gun, you don't want the gun powder and stuff to get on your arms and stuff like that. You know what I mean? Or you're trying to conceal yourself real good, for real." It appears

the "long johns" were actually a "cut-off sock, at the footie part," over his arm.[3] In addition to this attire, appellant also took a loaded .380 handgun with him, placing it in his "dip," which Lewis explained meant "[c]lose to your groin."

Lewis drove his car to the bar, testifying that appellant told him that Jones would be there. When they arrived, they saw Jones. Lewis said a quick "what's up," and then Lewis and appellant went inside the bar and sat beside Kenneth Pitts. After ordering drinks, Lewis testified that he talked to appellant, trying to "see if I could smooth everything out," because he, Lewis, knew Jones and thought he could talk to him. Appellant replied that "he had it. He was gonna talk to him," meaning Jones.

Thereafter, appellant went outside the bar. Lewis followed a few minutes later and saw appellant and Jones arguing, "with their hands," while they were sitting inside Jones's van in the parking lot. Lewis texted appellant to see if everything was okay, and appellant responded "yeah." Lewis then went back inside the bar and sat down. Appellant returned, sat beside him, and started working out some math on a piece of paper. Lewis explained:

> I think he was trying to add up how much he owed him. It was something crazy about Sir Keith lending him some money and told him to pay him back a certain amount of money a month. And it was a crazy amount. And he was trying to see how much he done gave him from that time to how much he owed him left.

Appellant then went back outside. Lewis got up, bought a cigar from the package store, and then he and Pitts decided to leave Dietrich's to go "[s]moke some weed." As he

[3] Lewis would identify a photograph of this "arm sock" later during trial.

and Pitts drove off, Lewis saw appellant and Jones standing and talking near the corner of the building. Lewis did not see any weapons out at that time.

While they were away looking to buy marijuana, Lewis received a phone call from someone asking if he was at Dietrich's Tavern because there were reports that there had been a shooting. After this, at around 5:28 p.m., Lewis received a text message from appellant stating "[d]on't go back to the bar." Lewis then testified that he spoke to appellant on the phone. He described their conversation as follows:

> Q. What did he say?
>
> A. He said he killed him.
>
> Q. Did he say anything more specific than that he just killed him?
>
> A. He said, something about some cigarettes and weed. He said give me all your cigarettes and all your weed or something like that. You smoke cigarettes, let me get all that. You smoke weed, let me get all that. And that's when he say he shot him for real.
>
> Q. Did he say anything about Sir Keith pulling a gun out on him?
>
> A. No.

Appellant told Lewis that, after Jones asked for a cigarette, appellant shot Jones. According to Lewis, appellant stated that "he shot him, he went down, he just kept shooting him while he was down." Appellant also "say he unloaded the clip. I don't know how many, he just said I unloaded the whole thing." Lewis clarified that appellant "say I unloaded it until it clicked," as in "until it was empty." Appellant further told Lewis that "he knew he was dead."

Lewis did not have any further contact with appellant that evening. But, when they spoke on a subsequent occasion, appellant told Lewis that, after he shot Jones, he fled the scene. Lewis assumed appellant, who was on foot, went to his mother's house because she lived nearby. Vanessa Johnson, appellant's mother, confirmed at trial that she lived a "couple hundred feet" from Dietrich's Tavern on the night in question. Appellant visited her at her home sometime around 5:30 to 6:00 p.m. that same day and borrowed her car. Appellant returned the car the next day at around noon.

Returning to Lewis's testimony, Lewis initially testified that he never spoke to appellant about what happened with the gun. However, he would later admit that appellant told him he took the gun to his mother's house and eventually gave it to an unidentified female.

On cross-examination, Lewis verified that he was testifying pursuant to an immunity agreement with the State. Lewis also clarified that appellant and Jones were having a "heated argument" outside the bar and agreed that "an argument is threatening, yeah." Lewis was told that, at some point, Jones took marijuana and cigarettes from appellant. On further cross-examination, Lewis was asked if he knew Jones had a reputation for being dangerous, and Lewis replied that he heard things through other individuals, but "I ain't never know it from no firsthand knowledge." Lewis testified that Jones "always been like a good guy to me until I heard it otherwise."

Detective Vincent Carbonaro of the Anne Arundel County Police Department, the primary detective in this case, reviewed the cell phone retrieved from Jones's jacket, and saw text messages between Jones and appellant. The messages referred to an arrangement

involving money and an agreement to meet at Dietrich's Tavern on the day in question. As indicated, Carbonaro confirmed that several witnesses identified appellant as being present at Dietrich's Tavern that same night. Detective Carbonaro also testified that he reviewed surveillance video from Dietrich's Tavern and Champ's Restaurant, a restaurant located directly across Furnace Branch Road. None of the video, from either establishment, captured images of the shooting itself. Further, although it was determined that a .380 caliber handgun was used in the shooting, Detective Carbonaro confirmed that the gun was never found.

Detective Carbonaro also testified that appellant was arrested in connection with this case on February 12, 2013, at his apartment. Included among the items seized at appellant's apartment pursuant to a search warrant were a fedora hat and a "white sock with a hole in it." Detective Carbonaro agreed, without objection, the sock could be worn on a person's arm in such a way as to shield the arm from gunshot residue. Finally, the parties stipulated that appellant had a prior conviction that prohibited him from possessing a regulated firearm.

After the State rested, appellant testified on his own behalf and admitted that he shot Jones on December 30, 2012, in front of Dietrich's Tavern. He explained that, although he had been friends with Jones for approximately 15 years, he was afraid of him and "had a lot of issues at the time. We weren't in a good place with each other." Appellant brought a gun to Dietrich's because he "thought I was going to be confronted." Based on prior encounters with Jones, appellant thought that Jones would not be alone, that there would

be a group of people, and that "it was[n't] going to be a situation I was going to make it out of."

Appellant believed that "somebody was going to try to kill me." Asked to explain, appellant testified that Jones threatened to kidnap his wife and son and to "have my mother's house run up in," and, whenever he saw Jones's friends, those associates would be "beefin.'" Appellant testified that "beefin'" meant "[i]f we run into each other be prepared for some type of violence."

Appellant maintained that he was afraid of Jones. Appellant knew that Jones shot a friend of his, named Rodney Jones. Appellant testified that that incident left him afraid because:

> Well, the situation they were in that left Rodney shot is the same situation that we were kind of in. They had a falling out over money where I guess Sir Keith thought that Rodney got the better of him. And he shot him, twice in the heart and once in the head.

Appellant also knew that Jones was a member of the Blood gang, and was affiliated with a sect known as a "Treetop Piru." On one occasion, when appellant and a friend named Vincent Calamida went to a certain location, Calamida got out of appellant's car wearing a blue bandana. At the sight of the blue bandana, a rival color, Jones knocked Vincent out, in front of appellant. Appellant was also aware of other violent incidents involving Jones, including a fight with Michael Nauton, the bartender at Dietrich's, and another time when a mutual friend of appellant and Jones, named Jeron Spears, was shot and then left by Jones to die in an abandoned house.

Appellant also admitted at trial that he sold drugs. In fact, since 2012, appellant sold marijuana and "Percocets or something" to Jones from time to time. Jones came to appellant's apartment to buy marijuana sometime in the month of October, just before this incident. According to appellant, Jones also wanted to "invest" some money with appellant. Appellant offered to loan Jones $1,000, but, instead, Jones gave appellant $500 and told him he wanted that money back, plus an additional $750, right before Christmas so he could have money for his own children. Appellant accepted Jones's $500 "investment."

The very next day, Jones returned to appellant's apartment and demanded $300, plus more marijuana. Four days after that, Jones came and took $250. And, about two weeks later, Jones asked for another $250. All of these times, Jones was alone.

On a subsequent occasion, Jones sent a person nicknamed "Nephew" to collect money from appellant. Nephew arrived, while Jones was apparently outside, and appellant gave Nephew $450. After giving Nephew the $450, appellant believed that the terms of the investment were concluded. But, Jones returned the next week and asked for another $500. According to appellant, "that's when we started becoming unbenefited [sic] because I told him he had already received everything that he was supposed to receive as far as what our business was." Jones "went off on some tirade," according to appellant, and demanded that appellant keep paying him. Appellant gave Jones the $500 and, again, thought that was the end of their business.

However, on or around December 29, 2012, appellant received several messages from Jones, indicating that Jones was going to send Nephew again to collect another $250. Appellant and Jones then exchanged several texts and phone calls concerning whether

appellant still owed Jones money and, apparently, whether appellant would continue to comply with Jones's commands. In brief, according to appellant, Jones expected $250 a week, indefinitely, as interest on the $500 "investment" or loan. It was during these arguments that appellant claimed that Jones threatened to kidnap appellant's wife and son and do harm to appellant's mother.

The next morning, December 30, 2012, Jones appeared outside appellant's residence. Appellant testified that his wife and his roommate were inside the apartment, but he had sent his son away to his grandmother's the night before based on Jones's threats. Expecting a home invasion from Jones or his associates, appellant contacted Jones. He indicated that he was not home and that he was somewhere else watching a football game. This is when appellant made arrangements to meet Jones later that same day at Dietrich's Tavern.

In the meantime, appellant contacted, Lawrence Lewis, a mutual friend, to obtain ammunition for a gun. Appellant also obtained a Mossburg shotgun and shells for that weapon from Joseph Alvini. The shotgun remained in the closet by the front door to appellant's apartment.

Later that day, Lewis arrived at appellant's apartment to drive appellant to Dietrich's. Appellant denied that he was attired in a turtleneck or was wearing any sort of sock on his arm. However, he agreed he placed a fully loaded handgun in his right front pants pocket, testifying that he, in fact, loaded the gun "on my way out the door." He also told his wife that he was going to meet Jones. Knowing that Jones had been in New Jersey the day before, appellant testified that "I told her I had to go meet him and that he didn't

come from New Jersey just to talk to me. And I was trying to keep her out of it . . . [and] just wanted her to be safe."

Lewis and appellant then drove to Dietrich's Tavern. Appellant went inside, ordered a pineapple juice, texted Jones in order to tell him he was there, and then started writing out some calculations about the amount of money due Jones. When Jones arrived, appellant went outside and met Jones in Jones's van. Appellant got inside the van, and then, according to appellant, "[w]e had a verbal altercation." Jones became "irate," "upset," and "agitated," and would not listen to reason. At some point during the argument, Jones took off his jacket, and appellant saw that Jones had a firearm tucked in his waistband. After seeing that Jones was armed, appellant immediately got out of the van and went back inside the bar.

Hoping that their mutual friend, Lewis, would intervene, appellant found Lewis in the package store buying a cigar. Appellant paid for the cigar and bought some cigarettes for himself. Appellant admitted that he did not call 911 at that time to report that Jones was outside Dietrich's Tavern with a gun. Asked why he did not call the police, appellant testified that he had known Jones for 15 years and thought they could work out their disagreement.

Moments later, Jones stuck his head in the tavern door and motioned for appellant to come back outside. Although appellant claimed he was "terrified," he decided to go back outside to speak to Jones. Jones was standing nearby, talking on his cellphone. Although Lewis and Kenneth Pitts were outside for a short while, appellant was left alone with Jones when Lewis and Pitts decided to drive off in order to go buy marijuana.

At that point, appellant decided to remain outside, with Jones standing nearby, to smoke a cigarette. Thereafter, after observing two women (apparently Smith and Brown) walk by and enter the package store, Jones ended his phone conversation and asked appellant for a cigarette. The two men started to approach each other, and, as appellant reached into his pocket for the cigarettes, Jones struck appellant in the face and "rushed" him, pushing appellant up against a wall. Appellant lost his balance and fell to the ground.[4]

During the struggle, Jones went into appellant's left pants pocket, where appellant kept marijuana, and started pulling out the bags of drugs, stating, "[g]ive me all this shit, bitch," and "[y]ou think it's a game." While this was happening, appellant's right hand was in his own right pants pocket, the same pocket where appellant kept his gun.

Then, and while appellant was still on the ground being accosted by Jones, appellant managed to kick Jones's leg and/or shin. In response, Jones backed up and lifted his shirt. Appellant testified that Jones "went to lift up his shirt like he was getting ready to pull his gun on me." Appellant maintained that Jones was "[r]eaching for his firearm," concealed under his shirt in his "dip," and actually started to pull it out. Seeing this, appellant drew his gun on Jones. According to appellant's testimony, "It happened so fast I don't – all I know is when I saw him lift his shirt I pulled the gun out of my pocket. And I just started

[4] Appellant testified at trial that he was 6'1" tall and weighed 198 pounds, although he weighed only 165 pounds in December 2012. He testified that Jones was heavier, wider, and "bigger and broader" than him. Evidence established that Jones was 6'0" tall and weighed 207 pounds. Alcohol and drug screens of the victim from the autopsy proved negative.

shooting. The whole thing happened so fast, I mean, if you blinked you would have missed it."

Appellant started shooting Jones from the ground while Jones stood over him. Jones then turned around and ran away from appellant, apparently, according to the latter, with a gun still in his hand. Appellant, now up on his feet, kept firing, even while Jones was running for cover. Appellant admitted that he only stopped shooting when he "[r]an out of bullets." Appellant testified that "[w]hen I fired the last shot, that's when he fell to the ground on his stomach."[5]

Afterwards, appellant walked over and saw that Jones "was wheezing, but he was still alive." Appellant claimed that, even after he had been shot in the arm, Jones was still holding a loaded semi-automatic handgun. At that point, "I took the gun from his hand and I put it in my coat pocket." Appellant then left the scene and went directly to his mother's house, located about three hundred feet away from Dietrich's Tavern.

The day after the shooting, December 31, 2012, appellant gave Jones's gun, a nine millimeter, to a friend named Earl Watkins in West Baltimore. And later that afternoon, appellant threw away the gun he used, a silver and black .380, wrapping it up in a McDonald's bag and throwing it away at a Gulf Gas Station located near Aquahart Road and Crain Highway. Appellant claimed that his attorney, Jerry Tarid, told him to get rid of the guns because he, appellant, was not allowed to be in possession of a firearm. Appellant

[5] During cross-examination, appellant agreed that the autopsy report showed that the trajectory of many of the eight gunshots that struck Jones was down to up. He also agreed that the one shot that was "straight on by [the victim's] face" was "traveling down[,] not up[.]"

conceded that he was guilty of possession of a regulated firearm after a disqualifying conviction, as well as wearing, carrying or transporting a handgun.

Appellant further agreed that he never told his friends that he acted in self-defense. These friends included Lewis, whom appellant told not to come back to the bar after the shooting. Finally by way of background, the State played recordings of phone calls appellant made from the detention center after he was arrested on this crime. One of those calls apparently was a call to his wife in which he told her to destroy a cell phone. As indicated previously, the jury ultimately convicted appellant of first degree murder and related offenses.

DISCUSSION

1. Parties' Contentions

Appellant's sole contention on appeal is that the evidence was insufficient to support his first degree murder conviction because the State failed to prove that he did not act in either perfect or imperfect self-defense. The State responds by observing that the jury was free to reject appellant's self-defense claim and that the evidence was sufficient to sustain his conviction. We agree with the State and shall explain.

2. Standard of Review

Our standard of review of the sufficiency of the evidence is as follows:

> On appeal in a criminal case, we review the evidence in the light most favorable to the prosecution and determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Smith*, 374 Md. 527, 533 (2003) (citations omitted). When making this determination, the appellate court is not required to determine "whether *it* believes that the evidence at

> the trial established guilt beyond a reasonable doubt." *State v. Manion*, 442 Md. 419, 431 (2015) (emphasis in original) (quoting *Dawson v. State*, 329 Md. 275, 281 (1993)). Rather, it is the trier of fact's task to weigh the evidence, and the appellate court will not second guess the determination of the trier of fact "where there are competing rational inferences available." *Manion*, 442 Md. at 431 (quoting *Smith v. State*, 415 Md. 174, 183 (2015)). We nod with approval at the State's commentary that, when reviewing the legal sufficiency of the evidence, "this Court does not act like a thirteenth juror weighing the evidence[.]"

Perry v. State, 229 Md. App. 687, 696–97 (2016).

3. Analysis

Murder in the first degree can be established by evidence that the death was "a deliberate, premeditated, and willful killing." Md. Code (2002, 2012 Repl. Vol., 2016 Supp.), § 2-201(a) of the Crim. Law Article ("CL"). The Court of Appeals has explained that

> [f]or a killing to be "willful" there must be a specific purpose and intent to kill; to be "deliberate" there must be a full and conscious knowledge of the purpose to kill; and to be "premeditated" the design to kill must have preceded the killing by an appreciable length of time, that is, time enough to be deliberate. It is unnecessary that the deliberation or premeditation shall have existed for any particular length of time. Their existence is discerned from the facts of the case.

Tichnell v. State, 287 Md. 695, 717–18 (1980) (citations omitted), *cert. denied*, 466 U.S. 993 (1984).

In Maryland, it is well established that "under the proper circumstances, an intent to kill may be inferred from the use of a deadly weapon directed at a vital part of the

human body." *Smallwood v. State*, 343 Md. 97, 104 (1996) (quoting *State v. Raines*, 326 Md. 582, 591 (1992)). Furthermore,

> "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." *Willey* [*v. State*], 328 Md. [126,] 133 [(1992),] 613 A.2d [956,] 959. Indeed, a delay between firing a first and second shot "is enough time for reflection and decision to justify a finding of premeditation." *Hunt v. State*, 345 Md. 122, 161, 691 A.2d 1255, 1274, *cert. denied*, 521 U.S. 1131, 117 S.Ct. 2536, 138 L.Ed.2d 1036 (1997) and cases cited therein.

Mitchell v. State, 363 Md. 130, 148–49 (2001) (emphasis in original); *accord Morris v. State*, 192 Md. App. 1, 32 (2010) ("The time needed to establish deliberation can be brief").

Here, there was sufficient evidence for the jury to find that appellant acted willfully, deliberately, and with premeditation when he shot and killed Jones. Appellant, an admitted drug dealer, was having disagreements with Jones over money and the amount due on an investment/debt. Appellant arranged to meet Jones on the day in question at Dietrich's Tavern, a place well known to him, purportedly to discuss these financial issues. Prior to the meeting, appellant obtained ammunition for his semi-automatic handgun from his friend, Lewis. As he and Lewis left for Dietrich's, appellant loaded the handgun and placed it in his pants pocket. After he and Lewis arrived at Dietrich's, appellant and Jones were seen involved in an argument, which appellant admitted occurred inside Jones's van. Witnesses testified that they did not see any weapons on Jones's person, and, ultimately, no gun was recovered in connection with this case. Appellant himself admitted that he shot Jones multiple times, indicating that he completely discharged his weapon until he ran out

of bullets. Appellant then fled the scene and discarded the murder weapon. After the murder, appellant confessed to Lewis that he killed Jones and told another friend, Alvini, that he took care of "his business," notably, outside the field of vision of Dietrich's surveillance cameras. Moreover, appellant clearly conceded during his testimony at trial that he shot Jones. These facts were sufficient for a rational trier of fact to find that appellant willfully, knowingly and deliberately killed Jones.

Nevertheless, appellant contends that he acted in either perfect or imperfect self-defense, and that, therefore, the jury's verdict was contrary to the evidence he offered at trial. There are two forms of self-defense in Maryland: perfect self-defense and imperfect self-defense. *State v. Smullen*, 380 Md. 233, 251 (2004). Perfect self-defense "operates as a complete defense to either murder or manslaughter[,]" and, where successful, results in acquittal of the defendant. *State v. Faulkner*, 301 Md. 482, 485 (1984); *accord Porter v. State*, 230 Md. App. 288, 308 (2016). Imperfect self-defense is available where the defendant's "actual, subjective belief . . . that he/she is in apparent imminent danger of death or serious bodily harm from the assailant, requiring the use of deadly force, is not an objectively reasonable belief." *State v. Marr*, 362 Md. 467, 473 (2001).

The elements which must be present for perfect self-defense are:

> (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 not have been unreasonable and excessive, that is, the force must not have been more force that the exigency demanded.

State v. Faulkner, 301 Md. at 485–86; *accord Haile v. State*, 431 Md. 448, 472 (2013); *Johnson v. State*, 223 Md. App. 128, 149, *cert. denied*, 445 Md. 6 (2015).

In addition, one of the elements of self-defense is, with limited exceptions not applicable here, the duty of the defendant to retreat or avoid danger. *Redcross v. State*, 121 Md. App. 320, 328, *cert. denied*, 350 Md. 488 (1998); *accord Burch v. State*, 346 Md. 253, 283, *cert. denied*, 522 U.S. 1001 (1997). Further, even a faultless victim may become an aggressor by employing more force than reasonably necessary. *See Lambert v. State*, 70 Md. App. 83, 95-96 n.1, *cert. denied*, 309 Md. 605 (1987). "If all of the aforementioned elements are present, self-defense acts as a complete defense to the offense and the result is an acquittal." *Redcross*, 121 Md. App. at 328.

Imperfect self-defense may also mitigate an intentional killing. The elements for that defense "are the same as perfect self-defense, except that actual subjective belief on the part of the accused that she was in apparent imminent danger of death or serious bodily harm from her assailant is not an objectively reasonable belief." *In re Julianna B.*, 177 Md. App. 547, 550–51 (2007). As the Court of Appeals has also explained:

> Unlike perfect or complete self-defense, imperfect self-defense does not constitute a justification for the killing and does not warrant an acquittal. Its only effect is to negate the element of malice required for a conviction of murder and thus reduces the offense to manslaughter. A person laboring under the honest subjective belief that he/she was, indeed, in apparent

> imminent danger of death or serious bodily harm and that the force used was necessary to meet the danger cannot be found to have acted out of malice.

Smullen, 380 Md. at 252.

Here, there is no dispute that appellant was entitled to have the jury consider his claim that he acted in either perfect or imperfect self-defense. His testimony suggested some evidence that: (1) he had reason to fear Jones; (2) he believed that, when he saw Jones's gun, he was in danger; (3) at one point, Jones rushed appellant to retrieve marijuana from appellant's pocket; and (4) believing Jones was reaching for a gun, appellant responded in kind with the use of deadly force. Indeed, this evidence was before the trial court when it decided to give the pattern instruction on first degree premeditated murder, which included both the available defenses of perfect and imperfect self-defense. *See* Maryland State Bar Ass'n, *Maryland Criminal Pattern Jury Instructions* 4:17.2, at 563–67 (2d ed. 2012, 2016 Supp.).

That being said, the jury was not required to credit such evidence. As we explained in *Hennessy v. State*, 37 Md. App. 559, *cert. denied*, 281 Md. 738 (1977):

> Appellant concedes by silence that there was sufficient evidence to sustain a manslaughter verdict, but argues that because the State did not affirmatively negate this self-defense testimony, he was entitled to what amounts to a judicially declared holding of self-defense as a matter of law. That is of course, absurd. *Gilbert v. State*, 36 Md. App. 196, 373 A.2d 311. The factfinder may simply choose not to believe the facts as described in that, or any other, regard, *Jacobs v. State*, 6 Md. App. 238, 242, 251 A.2d 33, ...

Hennessy, 37 Md. App. at 561–62.

Moreover, as is well-established that "[a] fact-finder is free to believe part of a witness's testimony, disbelieve other parts of a witness's testimony, or to completely discount a witness's testimony." *Pryor v. State*, 195 Md. App. 311, 329 (2010). Furthermore, we recognize that "the finder of fact has the ability to choose among differing inferences that might possibly be made from a factual situation." *Smith*, 415 Md. at 183 (internal quotations omitted). As such, we "defer to any possible reasonable inferences the [trier of fact] could have drawn from the admitted evidence." *State v. Mayers*, 417 Md. 449, 466 (2010) (citing *State v. Smith*, 374 Md. 527, 557 (2003)). Additionally, we "need not decide whether the [trier of fact] could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence." *Id. See also Johnson v. State*, 227 Md. 159, 163 (1961) ("[E]xculpatory statements by an accused are not binding upon, but may be disbelieved by, the trier of facts").

The State observes in its brief that there were "competing facts on [appellant]'s subjective fear of imminent harm, the objective reasonableness of that fear, [appellant]'s aggressor status, and the proportionality of the force applied." We concur with this assessment. Appellant knew Jones for a considerable amount of time, and there was evidence that he thought he could resolve their differences. Appellant also did not retreat from Dietrich's Tavern entirely, even after seeing that Jones was armed with a gun while the two men sat and argued in Jones's van. Furthermore, there was evidence that, prior to the arranged meeting, appellant not only armed himself in anticipation of possible deadly conflict, but wore clothing that arguably was designed to conceal both himself and the

evidence, namely gunshot residue. Finally, in contrast to appellant's claims, no other witness testified that Jones was armed, and no gun was ever found on Jones's person or in the surrounding area. This evidence, coupled with how appellant fled, quickly discarded his weapon, and confessed his role in the shooting without any contemporaneous mention of threatening behavior on the part of Jones, suggests a rational conclusion that appellant did not act in self-defense, but instead, with premeditation and deliberate willfulness. Ultimately, we are persuaded that the resolution of these competing facts was entirely within the purview of the jury. Accordingly, the evidence was sufficient to sustain appellant's conviction for first degree murder.

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