Circuit Court for Queen Anne's County
Case No. 17-CR-17-02

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 499

September Term, 2017

RODNEY O. WESSON

v.

STATE OF MARYLAND

Woodward, C.J.,
Fader,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 31, 2018

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

Following a bench trial in the Circuit Court for Queen Anne's County, Rodney O. Wesson, appellant, was convicted of first-degree assault, second-degree assault, and reckless endangerment. On appeal, Wesson contends that the trial court erred in convicting him of first-degree assault because it failed to consider whether he acted in imperfect self-defense. For the reasons that follow, we affirm.

At trial, the State presented evidence that Eugene King, the victim, was dating Blanch Ellerbe, Wesson's wife. King and Ellerbe were attending a high school football game when Ellerbe ran into Wesson. Wesson and Ellerbe started arguing and pushing each other, at which point Wesson's friend, Danne Stewart, grabbed Ellerbe by the arm. King walked over to confront Stewart and, as the two men argued, King felt someone punch him in the chest. When King looked up, he saw Wesson walking away holding a knife and realized that he had been stabbed.

Wesson testified that, after the argument with Ellerbe ended, he and Stewart tried to walk away from King several times, but that King followed them and pushed Stewart. According to Wesson, he then turned around to face King, who appeared to be angry and ready to fight. Believing that King was going to hurt him, Wesson pulled out his work knife and jabbed it toward King, hoping to get him to back away. When he realized that he had stabbed King, Wesson stated that he immediately ran away and threw the knife in a nearby trash can.

During closing argument, defense counsel asserted that Wesson had acted in self-defense. Before rendering its verdict, the trial court then elected to read jury instructions for first-degree assault, second-degree assault, reckless endangerment, and self-defense

into the record. Thereafter, the court made the following findings with respect to Wesson's claim of self-defense:

> With respect to whether or not this is self-defense, perhaps, Mr. King was the aggressor. There are two sides to that story and while the defendant may have believed he was in immediate or imminent danger of bodily harm, frankly, I don't think that belief was the least bit reasonable. He used deadly force, which was thoroughly unnecessary and certainly not called for at that standpoint and he had all kinds of avenues to escape that situation and didn't avail himself of any of them.
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> The idea that one would believe that self-defense would apply, that is, self-defense using deadly force would apply in this situation, where they're against no weapon, even if the individual is bigger, you have thousands – certainly hundreds of people around. You have the police within fifty feet of you. You have the ability to get away. It's simply not reasonable and he did have that duty, in this instance to retreat.
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> Furthermore, I didn't find the testimony of Mr. Stewart the least bit credible and, frankly, the defendant's testimony was so tied up in recanting some of what he had said before and so conflicting, it didn't make his testimony credible and the one thing that I really don't find credible is his indication that when Mr. King approached within three feet of him, looked angry, that he would have had enough time, in that time, to get the knife out, to flip the switch on the knife, to turn the knife and do the stabbing. It doesn't line up and, consequently, I don't believe it.

On appeal, Wesson does not contend that the evidence was insufficient to support his convictions.[1] Rather, he claims that his first-degree assault conviction should be reversed because, in rendering its verdict "the court engaged only in an analysis of perfect self-defense when it should have, by its own findings, considered and found that [he] acted in imperfect self-defense." However, the court was not required to explain all its reasons

[1] In any event, such a claim would clearly lack merit as Wesson acknowledged stabbing King in the chest with a knife.

in arriving at the verdict. *See Chisum v. State*, 227 Md. App. 118, 139 (2016). And, more importantly, Wesson did not specifically ask the trial court to consider imperfect self-defense or object when the court failed to address that defense in its findings. Consequently, this issue is not preserved for appellate review. *See id.* at 131 n.2, 139-40 (holding that a claim that the trial court erred in the "manner in which it rendered its verdict" does not fall under the automatic review provision of Maryland Rule 8-131(c) and, therefore, it must be raised in the circuit court to be preserved for appellate review).

Moreover, even if preserved, Wesson's assertion that the "trial court's findings established that [he] acted in imperfect self-defense" lacks merit. In making this claim, Wesson relies on the court's comments that "perhaps Mr. King was the aggressor" and that Wesson "may have believed he was in immediate or imminent danger of bodily harm." However, the court did not actually find that King was the aggressor or that Wesson subjectively believed that he was in imminent danger of bodily harm. Rather, it simply noted that there was conflicting evidence on those points. However, as previously noted, Wesson did not ask the court to resolve those conflicts. And, in any event, the court later indicated that it did not find Stewart or Wesson's testimony regarding self-defense credible. Finally, even if the court had resolved both of those conflicts in Wesson's favor, it would still not have "established" that he acted in imperfect self-defense because the trial court did not find that he subjectively believed that the use of a knife was necessary under the circumstances. *See Wallace-Bey v. State*, 234 Md. App. 501, 531 (2017) (setting forth the elements of imperfect self-defense).

JUDGMENT OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.