Circuit Court for Charles County
Case No. 08-K-15-000475

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1854

September Term, 2016

SHONDELL JAVON MIDDLETON

v.

STATE OF MARYLAND

Leahy,
Reed,
Shaw Geter,

JJ.

Opinion by Leahy, J.

Filed: July 20, 2018

A dispute between teenagers over marijuana ended in the death of Jourdan Anthony Lucas. Shondell Javon Middleton, the appellant here, stabbed Lucas to death three days after he and Kevin Caldwell stole Lucas's marijuana. During long stretches of the intervening three days, Lucas and his friends waited outside of Caldwell's apartment where Middleton stayed, harassing and threatening him and the Caldwells, vandalizing the Caldwells' property, and generally looking to retaliate for the marijuana theft. Middleton called the police several times, but the harassment persisted. On the third day, Middleton spoke with Lucas on the phone and told him he was ready to fight to settle their dispute. When Lucas arrived accompanied by two friends, all unarmed, Middleton went back inside the apartment and called Pamela Caldwell, Kevin's mother, to come home.[1] When Pamela arrived with her mother (Kevin's grandmother), Middleton grabbed a knife and ran outside, chasing Lucas down and eventually stabbing him to death.

After a five-day bench trial beginning on September 12, 2016, the Circuit Court for Charles County convicted Middleton of second-degree murder, first- and second-degree assault, and carrying a deadly weapon with intent to injure. Although the court found that Middleton was in fear of Lucas on the day of the attack, the court determined that Middleton had not acted in "perfect" or "imperfect" self-defense or defense of others.

[1] We will refer to the Caldwells by their first names for the sake of clarity.

Middleton filed a timely appeal in which he challenges the sufficiency of the evidence to sustain his convictions for second-degree murder and first-degree assault by raising the following questions:[2]

1. Did the State fail to prove beyond a reasonable doubt that Mr. Middleton did not act in self-defense or defense of others?

2. Did the trial court fail to apply the law of imperfect self-defense properly?

We hold that there was sufficient evidence presented at trial to support the court's determinations that Middleton committed second-degree murder and first-degree assault, that he did not act in self-defense or defense of others, and that the law of imperfect self-defense did not apply under the circumstances. We affirm Appellant's convictions.

BACKGROUND

At trial before the Honorable Larnzell Martin Jr., Middleton admitted to killing Lucas but maintained that he acted in self-defense or defense of others.[3] The State cited Middleton's statement to police and the testimony of eyewitnesses, as proof that Middleton did not kill Lucas in self-defense or defense of others, but instead, to eliminate the threat

[2] Appellant phrases the issues presented as follows:

1. "Was the evidence insufficient, as a matter of law, to sustain the convictions for second degree murder and first degree assault?"

2. "Was the evidence insufficient, based on the lower court's factual findings, to support the convictions for second degree murder and first degree assault?"

[3] Middleton also asserted a defense of habitation, which the trial court rejected on the ground that there was no evidence that anyone "attempted to enter the residence[.]" Middleton does not challenge that ruling on appeal.

Lucas posed to the Caldwells due to Middleton's theft from Lucas. The following story unfolded as told by the witnesses and other evidence presented at trial.[4]

The conflict between Middleton and Lucas began on May 4, 2015, three days before their fatal encounter. At that time, Middleton had been staying for a couple weeks with the Caldwells. Kevin was his best friend and Pamela referred to Middleton as her "son." Middleton was planning to leave on May 8, to attend his brother's college graduation.

On May 4, Pamela was in South Carolina with her mother, leaving Kevin and Middleton at home with Kevin's younger sister. Early that evening, Middleton and Kevin arranged to purchase "an eighth" of an ounce of marijuana from Jourdan Lucas. Because Lucas did not have a scale to weigh their purchase, the three drove to a tobacco shop where Lucas could buy one. While Lucas was inside the store, Middleton and Kevin decided to leave. Placing Lucas's other belongings on the sidewalk, they drove away, taking his marijuana and leaving Lucas without transportation.

Over the next three days, Lucas, seeking retribution, made multiple visits to the Adams Crossing apartment complex in Waldorf where the Caldwells resided. On the night of the theft, Lucas, accompanied by his friends Christopher Troese and Daniel Jacques, and up to seven other people, assembled in the parking lot outside the Caldwells' apartment. When Middleton, accompanied by Kevin and his sister, drove into the apartment complex that evening and saw the group assembled, they turned around and drove to a nearby police station, where they obtained an escort into their home.

[4] The evidence included video surveillance footage, discussed *infra*, from the apartment complex that captured a portion of the altercation.

Later that night, Lucas and his associates continued to attempt, unsuccessfully, to confront Middleton and Kevin at the Caldwells' apartment, including banging on the door. They spray-painted Pamela's vehicle with epithets (the same vehicle Middleton had driven earlier that evening) and bashed-in its rear window.

The threats and harassment continued over the next two days. Accompanied by Troese, Jacques, and other friends, Lucas repeatedly appeared at the Caldwells' apartment and continued to demand a fight. Middleton called the police several times to intervene, but each time Lucas and his accomplices fled before they were detained.

In response to these encounters, on May 6, Middleton accompanied Pamela when she purchased a BB gun. The Caldwells also assembled other weapons and set them on their kitchen counter, including a taser, a stick, and the switchblade knife Middleton would later use to kill Lucas.

On the morning of May 7, Middleton was alone in the apartment while Pamela was at work with her mother, and the Caldwell children were in school. That morning, Middleton exchanged text messages with Lucas and then called him and said, "look, you know, it's[] just me and you. I go back tomorrow. This is over some dumb shit. I don't want . . . no more of this drama. And, me and you got to duke it out." Middleton testified that he wanted to "fight one on one" in order "to keep him from feeling the need to fill a void of respect for the posse or gang to leave the family alone[.]" Middleton explained that, because he was leaving town the next day, he wanted to make sure the issue was "squashed" and the Caldwells wouldn't be "affected by" a "dumb situation [h]e and Kevin

created." Lucas agreed to come over, asserting, "Y'all started this and we're going to finish it."

Lucas arrived at the Caldwells' apartment building around 10:15 a.m., accompanied by Troese and Jacques. The three called out to Middleton, "Get your bitch ass down here. We out here." Middleton responded that he would be out as soon as he got dressed, but he did not answer the door or come outside. He did not notice any of them carrying a weapon and no one had threatened to shoot or stab him, but he claimed, "if somebody did have a weapon [he] wouldn't have a chance to see it anyway."

Instead, as previously arranged in the event of a new threat, Middleton phoned Pamela, who immediately left work with her mother, Ms. Hardin. When the two women arrived home about twenty minutes later, Lucas, Troese, and Jacques were standing in the parking lot outside their apartment building. Upon the arrival of Pamela, Troese, concerned that Middleton had set them up, walked away toward his parked vehicle. Carrying her new BB gun, Pamela demanded to know who was "here for [her] son," but no one answered. She complained about damage to her apartment and car, then warned that no one would be hurting or jumping Middleton.

Middleton testified that he heard Pamela yelling and "a lot of commotion" outside during this encounter. When she yelled his name, he "ran by and . . . picked the knife up and . . . just ran out the door." He testified that he was "scared," "like I was running from an animal," and feared something would happen to Pamela and her mother. When asked what was in his mind as he "blasted out of the house that morning" with the knife, Middleton testified, "Protecting myself, Pam and grandma." He explained that he "didn't

want [Lucas] to take it out on" the Caldwells, preferring to "settle it between" Lucas and himself before he left town the next day.

Middleton said that he saw Jacques first, then Lucas. They "put their stance up," as if they were boxing, and Middleton "started chasing [Lucas] in the . . . rage of the moment." Lucas "was skipping backwards" with at first, then "started running." Middleton ran after him. According to Middleton, they did not speak to each other and he did not threaten to kill Lucas. As Middleton was reaching Lucas, Lucas "put his hands up . . . kind of waiting on [Middleton]." Middleton "threw the knife down" and Lucas charged at him with his head down and "kind of went for" a wrestling takedown. Middleton grabbed Lucas by the head, put him in a chokehold, and fell backward. The two began wrestling on the ground and Lucas "tried to kick" Middleton but missed.

According to Middleton, at some point as they wrestled on the ground, Lucas and Middleton began struggling over the knife. Troese approached and Middleton heard Lucas yelling for Troese to "Get 'em . . . Get 'em." Troese ran up and tried to kick Middleton in the head. At that point, with Troese still in arm's reach of Middleton and Lucas, Middleton grabbed the knife "grabbed the knife and . . . started swinging away." Middleton testified that he "blacked out like most people do in any fight . . . any regular fight. So, you can only imagine when you're scared and what happens then. So, I was just swinging." Troese stood by, "kind of engaging[,]" and Pamela ran up with "the gun by her side," saying "you're not going to touch my son." When Middleton walked away, he recalled "saying don't jump at my mom . . . just leave my family alone[.]"

At the police station, Middleton gave a recorded statement, admitting to chasing Lucas and stabbing him after "being kicked in the head." When a detective asked who the victim is, Middleton answered:

> Yeah, his name is Jourdan. Honestly, they've been – they've just been antagonizing us, I mean, the whole – the house, the car, the family. They've been antagonizing us, and today was the breaking point. That's really all it was. Today was just the day just – that was just like, Man, nothing – enough is enough. You all going to – the other day they threw a fire extinguisher through the back of my mom's car.

Troese testified that he drove Lucas to the Caldwells' apartment building on the morning of May 7, 2015. According to Troese, he walked away, toward his parked vehicle, when Pamela arrived. When he saw Middleton chasing Lucas through the parking lot, Troese followed. Middleton dropped his knife on the ground, then fell on top of Lucas. When Lucas called for his help, asking Troese to "get him," Troese tried to kick Middleton but missed. Middleton retrieved his knife and threatened Troese, who retreated. Before Troese could intervene again, Pamela "ran up with a gun" and pointed it at him, saying, "Get away from my baby. You're not going to hurt my baby." While Pamela held Troese at gunpoint, Middleton repeatedly stabbed Lucas as he lay on the ground, striking him in his head area.

Jacques also testified about accompanying Lucas and Troese to Middleton's apartment that day. He stated that when Pamela drove up, she was "holding a gun" and demanded to know who they were there for. At that point, Troese walked away, leaving him and Lucas "standing there, just not saying anything." At that moment, Middleton "came downstairs, like, he was running down the stairs with a knife in his hand. And he

lunged at [Jacques] . . . [who] backed up[.]" Middleton then "started to run after Jourdan [Lucas] and started to chase him." As Jacques "was about to follow him," Pamela "pulled the gun in [his] face," causing him to change direction to follow Troese instead. By the time Jacques got to Lucas, his friend was "choking on his blood" and "gasp[ing] for air."

Tikeisha Warner, a resident of the apartment complex, testified that she witnessed the stabbing as she was leaving the leasing center of the apartment complex. From her vehicle, she observed two men arguing and running across the parking lot. At first, one was "skipping" backwards with his hands held up in the air. Then the other male pulled out a knife and struck at "the gentleman that was trying to get away," thrusting toward his "lower area." The victim said, "stop," but the attacker responded, "no, I'm not going to stop. I'm going to kill you motherfucker." At that point, the stabbing victim took off running, "trying to get away," and the attacker pursued him. Because she left her car and ran back into the leasing office, Ms. Warner did not see the rest of the altercation. But she later saw the attacker walking back through the parking lot with the knife in his hand. He was loudly announcing, "Yeah, mother fucker, yeah, mother fucker, I killed him, yeah, that's right, that's right, now who you wanna fuck with, I run this," and "Yeah, I did it. Who want it next?"

Tiana Hawkins witnessed the fatal portion of the altercation from the balcony of her third-floor apartment. Hearing shouting, she looked out her window and saw one black male teenager chasing another across the parking lot. The individual being chased "seemed to be a little more exhausted" and slowed to "kind of like a give up run" before collapsing on the ground. One of the two individuals called, "Come here I told you I want some

more." As the two fought directly below her balcony, the chaser was "straddling" the collapsed person on the ground. Ms. Hawkins initially thought they were fighting but realized that the pinned person "was being stabbed" with a knife and was "not moving so that can't be a fight" because "[t]here's no struggle back." During the altercation, another male and a woman brandishing a handgun arrived.

Surveillance footage from the apartment complex captured a portion of the altercation, showing Middleton running after Lucas and lunging at him. The chase continued until the two men went to the ground, where they are not visible on camera. During that interval, Pamela ran toward them. Later, Middleton walked back toward the Caldwells' apartment.

Malinda Smith, called by the defense, corroborated the evidence that Troese kicked at Middleton during the altercation. She was touring the apartment complex in her vehicle when she saw two black males rolling around on the ground, fighting. A white male matching Troese's build ran toward them and "started kicking" at the head of one or both combatants. When she saw a black woman with a handgun "running down the block," Ms. Smith left and notified the nearby school, which was put on lockdown.

Lucas died on the ground where he fell. He suffered six stab wounds, including one in his thigh consistent with evidence from surveillance footage and an eyewitness that Middleton's first blow occurred in the middle of the parking lot and was "lower" on Lucas's body. One sharp force injury on top of his head resulted in a fractured skull, and another rapidly fatal cut severed the subclavian artery in his neck.

At the conclusion of the trial, the court rejected Middleton's claims of self-defense and defense of others. The court lamented that "we would not be here under such tragic circumstances[] had so many not [] decided to take the law into their own hands," and then explained his ruling:

> There is asserted in this case a defense of others. The State has proven beyond a reasonable doubt that the defense of others does not apply in this case. Specifically, it has proven beyond a reasonable doubt that Mr. Middleton's actual belief that he was defending any of the members of the Caldwell family on May 7, 201[5], from immediate and imminent danger of bodily harm was not reasonable.
>
> * * *
>
> The State has also proved beyond a reasonable doubt that Mr. Middleton did not . . . reasonably believe that any of the three [Lucas, Troese, and Jacques] intended to commit a crime that would involve an imminent threat of death or serious bodily harm to Mr. Middleton or any member of the Caldwell family.
>
> The evidence establishes that Mr. Middleton had a subjective belief that he was in immediate and imminent danger of bodily harm on May 7th, in light of all the circumstances that began subsequent to the theft of Mr. Lucas's marijuana, up to the actions of Mr. Lucas, Jacques, and Troese on May the 7th, before the arrival of Pamela Caldwell.
>
> The State has proved beyond a reasonable doubt that Mr. Middleton's subjective belief, on that morning, that he was in immediate and imminent danger of bodily harm was not reasonable.
>
> Consequently, the court finds, as a matter of fact, that the State has proved beyond a reasonable doubt that at least one of the required factors of self-defense, be it perfect or imperfect, does not exist, and those defenses do not apply to these charges. The State . . . has proved . . . those factors do not exist. . . . The court finds that the State has proved that neither imperfect defense, or perfect defense applies in this case. . . .

The court found Middleton guilty of second-degree murder, first- and second-degree assault, and openly wearing and carrying a deadly weapon with the intended purpose of

causing injury to Lucas. The court found Middleton not guilty of first-degree murder because "the State ha[d] not proved beyond a reasonable doubt that the killing of Jourdan Lucas was willful, deliberate, and premeditated."

Middleton moved for a new trial and/or to revise the verdict. He argued, *inter alia*, that the trial court erred in finding him to be the aggressor. The court denied his motion without a hearing. On November 7, 2016, just prior to sentencing, Middleton moved to vacate the court's denial of his previous motion, and the court agreed to hear argument on the issue. Middleton maintained that he "was the one aggressed upon," given the evidence that "[t]hey came to his residence, and all throughout the seventy-two hours it was always them coming to him. He never went there, he never did anything aggressive." Middleton argued that the court misconstrued his imperfect self-defense claim, both by failing to factor into its findings the principle that a person may act in self-defense even after arming himself in anticipation of an attack and by failing to consider that a combination of defenses might apply given the evidence that Middleton initially left the apartment in order to come to the defense of others but then acted in self-defense. He asserted that the court should consider reasonableness from the perspective of an eighteen-year-old who felt responsible for putting the Caldwells in danger. The court affirmed its verdicts following arguments, reiterating that Middleton was the aggressor throughout the altercation on May 7.

The court then sentenced Middleton to 30 years in prison with all but 12 suspended for second-degree murder and three years for the weapon offense to run concurrently.[5] Middleton noted his timely appeal.

DISCUSSION

Middleton challenges the sufficiency of the evidence to sustain his convictions for second-degree murder and first-degree assault. First, he asserts that the evidence was legally insufficient to prove beyond a reasonable doubt that he did not act in self-defense or the defense of others. Alternatively, Middleton argues, that the trial court's rejection of his imperfect defense was inconsistent as a matter of fact and that there was insufficient proof that he did not act in imperfect self-defense or defense of others because the State failed to rebut his subjective belief that he, Pamela, and Ms. Hardin faced imminent, serious physical harm.

Maryland recognizes two forms of self-defense: perfect and imperfect. *Porter v. State*, 455 Md. 220, 234 (2017). "Perfect self-defense is a complete defense to murder, and thus, 'if credited by the trier of fact, results in an acquittal.'" *Id.* at 235 (quoting *State v. Smullen*, 380 Md. 233, 251 (2004)). Imperfect self-defense, by contrast, "does not constitute a justification for the killing," *Smullen*, 380 Md. at 252; it mitigates the degree of the offense, reducing it from murder to voluntary manslaughter. *See Porter*, 455 Md. at 236. When a defendant offers some evidence that he or she acted in self-defense—whether it be perfect or imperfect—the burden shifts to the State to prove beyond a reasonable doubt

[5] Middleton's assault convictions merged for sentencing purposes.

that the defendant did not do so. *Id.* at 236.

When we evaluate the sufficiency of evidence in a case tried to the court, we will not set aside the trial court's judgment unless it was clearly erroneous. *State v. Manion*, 442 Md. 419, 431 (2015); *see also* Md. Rule 8-131(c). We defer to the trial court's opportunity to view evidence and judge witness credibility and we view evidence in the light most favorable to the State. *Smith v. State*, 415 Md. 174, 185 (2010). We will reverse only if *no* "'rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* at 184 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

I.

Perfect Self-Defense & Defense of Others

Middleton argues that the evidence established that he had an objectively reasonable belief that he, Pamela, and Ms. Hardin were in imminent danger. He maintains that the actions of Lucas and his friends in the days leading up to May 7 instilled fear in him, Pamela, and Ms. Hardin, culminating in Lucas coming to their home to incite a fight. According to Middleton, he "did not display or use" the knife until after Lucas ordered Troese to "get" him, and Troese obliged, attempting to kick Middleton in the head. And, even if approaching Lucas with a knife made Middleton the initial aggressor, Middleton continues, he plainly retreated and intended to only box or wrestle and did not escalate to lethal force until "[t]he combined efforts of these two attackers presented an imminent threat of death or serious bodily injury."

The State responds by offering to clarify the issue for our review: the question is not "whether there were sufficient facts to find that Middleton acted in self-defense or defense of others" but "whether there was sufficient evidence to find that Middleton *did not* act defensively but instead acted criminally." "The record is replete with such evidence," the State insists. The State points us to testimony from Tiana Hawkins and Tikeisha Warner that Middleton was the initial aggressor—having stabbed Lucas before he tried to run away—and surveillance video that at least partially corroborated their accounts. Additionally, the State refers to Troese's testimony that Middleton was on top of Lucas and Lucas had blood on his chest when Troese arrived and attempted unsuccessfully to kick Middleton, and that then he backed up because Pamela held him at gunpoint. Finally, the State contends that Middleton's own testimony and statements to police provided sufficient evidence to defeat his affirmative defenses. Specifically, Middleton testified that Pamela and Ms. Hardin were not in danger when he ran outside, that he then "went after" Lucas who "start[ed] backing up" and then ran away. And he told police that he "want[ed] to come at" Lucas after days of harassment and vandalism by Lucas and his friends, leading Middleton to come out of the apartment "full blast" when he heard them yelling with Pamela outside the apartment that day. Given this evidence, the State contends that "a rational factfinder could have found, beyond a reasonable doubt, that one (or all) of the necessary elements of self-defense and defense of others, in either their perfect or imperfect forms, did not exist."

The Court of Appeals has iterated four elements to satisfy perfect-defense:

> (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.

Id. at 234-35 (quoting *Smullen*, 380 Md. at 252) (emphasis added). The defendant's belief that danger is imminent or immediate must be both actual and reasonable, and the defendant must use only "a reasonable amount of force against his attacker." *Id.* at 235. When a defendant uses deadly force in defense "outside of his home, he has a duty 'to retreat or avoid danger if such means were within his power and consistent with his safety.'" *Id.* (quoting *Burch v. State*, 346 Md. 253, 283 (1997)).

The perfect defense of others has a similar standard:

> (1) the defendant actually believed that the person defended was in immediate and imminent danger of death or serious bodily hard;
>
> (2) **the defendant's belief was reasonable**;
>
> (3) the defendant used no more force than was reasonably necessary to defend the person defended in light of the threatened or actual force; and
>
> (4) the defendant's purpose in using force was to aid the person defended.

Lee v. State, 193 Md. App. 45, 57 (2010) (emphasis added).

We hold that there was sufficient evidence to support the trial court's finding that the State proved that any subjective belief of imminent danger that Middleton held was unreasonable. As the State points out, Middleton's own statements provide sufficient

evidence for this point. According to Middleton, when he came out of the apartment, "the situation was getting calm," and Pamela and Ms. Cardin "wasn't in any danger." Further, he explained to police that with Pamela there, he knew "this dude [Lucas] [wa]s not going to jump in[.]" Although Middleton also testified that he thought Pamela and Ms. Cardin were "in the most danger in the world" when he ran out, it was for the fact finder—here, the trial court—to weigh conflicting testimony. *See Smith*, 415 Md. at 185.

When Lucas and his friends arrived on May 7, they stood by while he was getting dressed. Pamela and Ms. Hardin arrived in the meantime and Middleton knew Pamela had a BB gun in her possession and that Lucas "[wa]s not going to jump in right here with [Pamela] right here. I know she's not going to allow any of that to go down, so it's like, it's me and you know, what's up." Jacques' testimony supported this point, claiming that Pamela was "holding a gun" at the time she drove up and demanded to know who they were there to see. Middleton confirmed the lack of imminent danger in his testimony, stating that Pamela and Ms. Hardin "wasn't in any danger." Additionally, Middleton told police that he "want[ed] to come at" Lucas after days of Lucas harassing and threatening him and vandalizing the Caldwells' home and property.

Any mistake of impending danger should have been resolved when Lucas "start[ed] backing up" and then again, when he ran away before Middleton "went after" him. Testimony by two witnesses, Ms. Warner and Ms. Hawkins, further evince that any fear of imminent danger was unreasonable once Lucas began to run. Ms. Warner testified that she heard the victim say, "stop," and the attacker respond, "no, I'm not going to stop. I'm going to kill you motherfucker." At that point, the stabbing victim took off running, "trying

to get away," and the attacker pursued him. Similarly, Ms. Hawkins testified that the person being chased "seemed to be a little more exhausted" and slowed to "kind of like a give up run" before collapsing on the ground. At that point she heard one of the two persons call out, "Come here I told you I want some more[]" before she saw the chaser straddling the person collapsed on the ground. She testified that the collapsed person did not "struggle back[,]" further evincing that any danger that may have once existed was no longer imminent by the time Middleton struck the fatal blows.

Taken together, there was sufficient evidence to support the trial court's conclusion that it was objectively unreasonable for Middleton to believe that Lucas posed a threat of serious bodily harm at the time he left the locked apartment, or when, knife in hand, he chased down the unarmed Lucas, or when he got on top of Lucas and stabbed him. *See Smith*, 415 Md. at 184. And, as we explain below, there was also sufficient evidence to support the trial court's finding that Middleton was the first aggressor, so we would affirm the rejection of his perfect defense claims for that reason as well. *See Watkins v. State*, 79 Md. App. 136, 138 (1989) (reasoning that whether a defendant was the initial aggressor is an objective "common denominator consideration which applies to perfect self-defense and imperfect self-defense alike").

II.

Middleton suggests that the trial court's rejection of his imperfect defense claim was inconsistent with the court's finding that he believed that he and the Caldwell family were in immediate and imminent danger. To support this alternate argument, Middleton maintains that Lucas appeared at his home as the initial aggressor and insists that the law

did not require him to wait for Lucas to harm Pamela or Ms. Hardin before he left his apartment in their defense. Middleton asks us to view his actions in the broader context of "the days of threatening, violent behavior that Mr. Lucas exhibited by repeatedly visiting the Caldwell apartment, shouting threats, and vandalizing the apartment door and [Pamela's] car."

The State responds that the court's finding of Middleton's subjective belief of danger is distinct from the separate finding that he was the initial aggressor; self-defense requires *both* a subjective belief of danger *and* "that the accused was neither the aggressor nor provoked the conflict." The State contends that Middleton conflates the initial-aggressor element "with the independent element of the defendant's state of mind." The State avers that the trial court did not clearly err in finding that Middleton was the initial aggressor. According to the State, any analogy to battered-spouse syndrome cases fails because Middleton was simply the victim of threats and vandalism brought on by his theft of marijuana—which "is not a clinically recognized psychological condition." Regardless, the State concludes, a battered-spouse-styled defense is not available to a first aggressor.

A. Imperfect-Self Defense

To assert imperfect self-defense successfully, the defendant need not have an objectively reasonable belief that he was in apparent imminent or immediate danger. *Id.* Instead, the defendant may rely on an "'honest but unreasonable belief'" that he is in danger. *State v. Faulkner*, 301 Md. 482, 499 (1984). The defendant must also show an actual belief that the amount of force used was necessary—even if that belief was also unreasonable. *Porter*, 455 Md. at 236. And as is the case for perfect self-defense, a

defendant asserting imperfect self-defense "must not have been the aggressor or provoked the conflict." *Smullen*, 380 Md. at 269; *Marquardt v. State*, 164 Md. App. 95, 141 (2005) (citation omitted) ("[T]he privilege of self-defense is not necessarily forfeited by arming one's self in anticipation of an attack, but that right is qualified by the proviso that the right only extends to 'one who was not in any sense seeking an encounter.'" (citation and brackets omitted)).

In the seminal self-defense case of *Gunther v. State*, the Court of Appeals dealt with whether self-defense was available to someone who arms themselves in anticipation of an assault. 228 Md. 404, 408 (1962). Gunter killed his sister's husband after her husband, a habitual abuser, beat her "to such extent as required her to remain in bed for most of the next day." *Id.* at 406. Later the same night that his sister's husband beat her, Gunter dropped off his sister back home, the husband opened the passenger door to his car and "jumped in on" Gunter with his hand raised; Gunter drew a rifle from his backseat and shot the husband twice. *Id.* at 407. Evidence at trial showed that the husband had never threatened Gunter nor spoken to him the night of the killing, but that Gunter knew of the husband's violent propensity and history of beating Gunter's sister, and that Gunter knew the husband "always carried a gun." *Id.* A jury convicted Gunter despite the trial court's general self-defense instruction. *Id.* at 408.

Two of Gunter's arguments on appeal were that the trial court should have instructed the jury that (1) he had a right to arm himself in anticipation and had the privilege to go wherever he had a lawful right to be and (2) the jury could consider evidence of the husband's violent nature in determining the reasonableness of Gunter's apprehension and

whether Gunter was the aggressor . *Id.* at 408. On the first issue, the Court held that the trial judge "should have advised the jury that if it believed that the defendant was not seeking a fight with his brother-in-law, but on the contrary was apprehensive that he might be attacked by him, then the defendant, under such circumstances, would have a right to arm himself in anticipation of the assault." *Id.* at 409. The Court recited the rule that a person "who is not in any sense seeking an encounter, but has reason to fear an unlawful attack upon his life, does not forfeit his privilege of self-defense merely by arming himself in advance." *Id.* (citation and quotations omitted). Further, the Court acknowledged that Gunter did not forfeit this right to self-defense by going to his sister's house, somewhere he had a legal right to go. *Id.* Moving to the second issue, the Court held that the trial judge should have instructed the jury that it could consider evidence "tend[ing] to show that the defendant knew of the violent and dangerous character of the deceased." *Id.* at 410. It explained that, in determining who was the aggressor, the jury could consider "evidence that the turbulent characteristics of the deceased and certain specific acts of violence were known to the defendant as well as evidence of an overt act on the part of the deceased against the defendant[.]" *Id.* (citation omitted).

The Court's second holding clarifies two points relevant to the present appeal. First, in this case, the factfinder was permitted to consider evidence of Lucas's violent and threatening behavior during the 72-hour period preceding Middleton's attack as relevant to the factual determination of whether Middleton or Lucas was the aggressor. Second, the weight to afford that evidence was a question for the fact-finder. Considering the evidence

before it, the trial court here found that Middleton was the aggressor throughout his altercation with Lucas. We cannot say that this was clear error.

We acknowledge that Middleton may have perceived Lucas as dangerous—a point the trial court found—and that Middleton was free to leave the Caldwell's apartment (as opposed to remaining locked inside indefinitely). We also acknowledge that, during the preceding 72 hours, Middleton called the police several times to report Lucas and his friends outside the apartment. But the fact remains that, on the day of Lucas's murder, Middleton called Lucas and invited him to come to the Caldwell's apartment for a fight. Middleton testified that he did not see Lucas carrying a weapon. Yet, Middleton armed himself while inside and "blasted out of the house" with the knife. Although Jacques and Lucas "put their stance up" in preparation for a fist fight, Middleton ran at Lucas with the knife. Lucas's reaction was to backpedal before turning to run away. Middleton pursued him, engaged him, and eventually stabbed him to death. It was not clear error for the trial court to view these facts and determine that Middleton was the aggressor in that instance. Middleton did not forfeit his right to self-defense by arming himself preemptively—he did do so by seeking the encounter.[6] *See Marquardt*, 164 Md. App. at 141. The circuit court did not err in finding that imperfect self-defense was unavailable to Middleton.

[6] We also reject Middleton's argument that he counterattacked in self-defense after Lucas reached for the knife on the ground and/or summoned Troese to intervene. This Court has recognized that the original attacker may become a defender only if the original attack was "in a manner not calculated to kill or to do serious bodily harm, and the defender counterattacks, using excessive and unreasonable force in a manner reasonably calculated to cause death or great bodily harm[.]" *Tipton v. State*, 1 Md. App. 556, 562 (1967). To overcome his status as the first aggressor, Middleton would have to demonstrate that "[]he was a nondeadly aggressor and that []he, in good faith, effectively withdrew from any

B. Imperfect Defense of Others

Finally, Middleton asserts that the trial court rejected his imperfect defense of others, like his imperfect self-defense, because it found him to be the first aggressor. He suggests that his subjective belief that Pamela and Ms. Hardin were in danger entitled him to mitigation based on the defense of others. The State points out, however, that the trial court found that the defense of others did not apply because "Mr. Middleton's actual belief that he was defending any members of the Caldwell family on May 7, 2016, from immediate and imminent danger of bodily harm was not reasonable." Contrary to Middleton's contention, the State explains that Middleton's subjectively held belief of danger would have *allowed*—but did not require—the court to recognize imperfect defense of others. Because there was no evidence Lucas attacked or threatened Pamela or Ms. Hardin before Middleton attacked Lucas, and because Middleton acknowledged that "the situation was getting calm" when he ran outside and Pamela and Hardin "wasn't in any danger," the trial court did not clearly err in rejecting his imperfect defense of others.

Like self-defense, the defense of others has an "'imperfect' or 'partial' form." *Lee*, 193 Md. App. at 59 (citing Judge Charles E. Moylan, Jr., CRIMINAL HOMICIDE LAW 194 (2002)). Relying on Judge Moylan's treatise, we explained that imperfect defense of

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further encounter with the victim." *Newman v. State*, 156 Md. App. 20, 68 (2003), *rev'd on other grounds*, 384 Md. 285 (2004). The record contains evidence to refute both these points. First, the evidence that Middleton ran at Lucas wielding a knife although Lucas was unarmed is sufficient to show that Middleton's initial aggression was deadly. Second, there is no evidence that Middleton attempted to withdraw at any point during the encounter. To the contrary, eyewitnesses testified that Middleton's attack continued even though Lucas's was subdued, and Pamela held Troese at gunpoint.

others is like imperfect self-defense as a mitigation from murder to manslaughter. *Id.* A defense of others claim is considered imperfect if the defendant "held an actual belief that he had to use force to defend another, but his belief was not objectively reasonable and/or the level of force he used was not objectively reasonable[.]" *Id.* Regardless of the defendant's subjective belief, however, this Court has explained, "The defense of defense of others may not serve to justify *or mitigate* the use of deadly force when the person ostensibly being defended is not being attacked and is not even the target of a threatened attack." *Id.* at 65 (emphasis added).

Returning to the case at bar, the trial court's ruling acknowledged that Middleton believed that he was acting in the defense of Pamela and Ms. Cardin but found that belief unreasonable. Middleton contends that the court's finding he held this belief necessitated mitigation based on imperfect defense of others. We disagree.

As we have already explained, the trial court found that Middleton *was the aggressor* "beginning with Mr. Middleton's exit from the residence[] until he left the presence of Mr. Lucas[.]" At trial, Middleton testified that he never saw Lucas with a weapon and that he knew Pamela had her BB gun when she returned to the apartment to confront Lucas.[7] As the State points out, citing *Watkins*, 79 Md. App. at 138, "[a]ggressor status is 'a common denominator consideration which applies to perfect self-defense and

[7] Although Middleton claimed that when he left the apartment to go "running down those stairs," he felt that Pamela and her mother were "in the most danger in the world," he admitted that when he got downstairs, he observed that Pamela and her mother were "not in harm" or "in any danger." Middleton essentially confirmed that his subjective belief at the time was objectively unreasonable, stating, "I can look back on that now and say yes [they were not in any danger]."

imperfect self-defense alike' regardless of what the defendant reasonable or honestly believed."

Further, Middleton's argument ignores the requirement that "the defendant's purpose in using force was to aid the person defended." *Lee*, 193 Md. App. at 57. Middleton's own statements demonstrate that his purpose in using lethal force against Lucas was not to aid the persons he claimed to be defending. *Cf. Lambert v. State*, 70 Md. App. 83, 98 n.2 (1987) (noting that the defendant's "own testimony negated the possibility that he felt it necessary to use a deadly weapon"). Middleton claims that he did not use lethal force until after he was already grappling with Lucas on the ground, away from the apartment. By this point, Lucas posed no threat to either Pamela or Ms. Hardin. Middleton conceded as much at trial, testifying that once he chased Lucas away, Pamela and Ms. Hardin were not still in danger but that, "I'm [] still protecting myself . . . at that time [] I was worried about myself, yes." In fact, when Middleton reached for the knife and escalated the encounter to a deadly one, Pamela was holding Troese at bay with a BB gun. Middleton "may not . . . mitigate the use of deadly force when the person ostensibly being defended is not being attacked and is not even the target of a threatened attack." *Lee*, 193 Md. at 65. We conclude that there were sufficient facts to support the trial court's finding that Middleton did not act in the imperfect defense of others.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.