UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

NATHANIEL MICHAEL LAWRENCE
v.
STATE OF MARYLAND

No. 73, September Term, 2016

JERMELL LAMONT FOSTER
v.
STATE OF MARYLAND

No. 102, September Term, 2016

POMPEY LAWRENCE
v.
STATE OF MARYLAND

No. 119, September Term, 2016

Woodward, C.J.
Beachley,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: May 18, 2017

On August 17, 2014, Jermell Foster shot and killed Ramel Baker in an alley of the Welcome Inn in Baltimore County, Maryland. The Baltimore County Police Department arrested four suspects believed to be involved: Umar Foust, Jermell Foster, and brothers Pompey and Nathaniel Lawrence. Foust entered into a voluntary plea agreement and pleaded guilty to first-degree murder. Pursuant to his plea agreement, Foust was to receive a maximum possible sentence of life with all but twenty years suspended in exchange for testifying against the appellants in this case: Jermell, Pompey, and Nathaniel.

Leading up to the killing, tensions had steadily arisen between the Lawrence brothers and Ramel for approximately a year. According to Ramel's cousin Brian, both the Lawrence brothers and Ramel were drug dealers, and in the year leading up to the killing, the Lawrence brothers would often attempt to intercept and steal Ramel's drug customers at the Welcome Inn.[1] These tensions seemed to dissipate until approximately a month prior to the killing, when Ramel sold a batch of "bad drugs" to Pompey.

On August 17, 2014, the day of the killing, Foust and Nathaniel were at the Welcome Inn smoking marijuana. At some point, according to Foust, Nathaniel left in order to use the bathroom. Shortly thereafter, at around 8:15 p.m., an unidentified female friendly with Foust told Foust that someone was "jumping" Nathaniel. Foust interpreted this to mean that Nathaniel was fighting more than one person, and went to look for him.

[1] Foust testified at trial that the Welcome Inn was a well-known location where drug dealers both lived and sold drugs.

When Foust arrived on the scene, he saw Ramel Baker and Eddie Morene, another drug dealer he recognized, on top of Nathaniel. Perceiving the unfair nature of the fight, and believing himself to be friendly with both sides, Foust broke up the fight. After separating Nathaniel, Eddie, and Ramel, Foust saw Nathaniel step to the side while speaking on his cellular phone. Shortly thereafter, Foust entered the passenger's seat of Nathaniel's vehicle, and with Nathaniel driving, the two men left the Welcome Inn. Nathaniel drove to an apartment a few miles away from the Welcome Inn.

Upon reaching this apartment, Foust stayed in the car while Nathaniel went inside. Nathaniel returned to the car a short time afterward with what Foust described as a black barber shop bag, "a bag you would carry clippers in[.]" Upon returning to the car, Nathaniel drove the two to a parking lot across the street from the Welcome Inn. When they arrived, Pompey and Jermell were "already there," having driven in Pompey's black Honda Civic. Nathaniel exited his car and walked toward an alley with Pompey and Jermell. Foust stayed back near Nathaniel's car, but could not hear what the three men were saying to each other. After a few minutes, Nathaniel asked Foust to hold the black bag and the four men walked across the street toward the Welcome Inn.

Foust walked ahead of the group and eventually realized that he had separated himself from them. While he was alone, Foust opened the black bag Nathaniel had given him and saw a gun. Foust then began to look for the group. When he found them, Foust told the three that he did not want the bag, and Jermell took the bag from him. Foust again wandered away from the group, heading toward the leasing office of the Welcome Inn.

Near the leasing office, Foust saw Ramel, who appeared to be intoxicated or dazed, staring at him. Ramel began reaching for his waist and charged forward at Foust. Fearing that Ramel was reaching for a gun, Foust ran toward the alley where he had separated from Nathaniel, Pompey, and Jermell. Foust ran approximately fifty feet past the group when he turned around and saw that Ramel had stopped chasing him. Ramel loudly shouted "Who is looking for Mel[2]?" as he chased after Foust.

Upon seeing Pompey, Ramel stopped chasing Foust, pulled out a knife and began to slash and stab at Pompey. Pompey successfully avoided Ramel's attack. Jermell then pulled out a gun. According to Foust, "Ramel tried to run. [Jermell] shot him. [Ramel] ran. When [Ramel] fell, it was kind of like a pause . . . and everything went quiet . . . and [Pompey] was like, man, finish him, and he continued shooting him." The four men then fled, getting into the same vehicles they had each arrived in. After the shooting, the four men rendezvoused at an apartment near Perring Parkway. After four or five minutes, Nathaniel and Foust left, and arrived at the backyard of a home on Belair Road. Pompey arrived a short time later, bringing with him neither Jermell nor the gun.

The Baltimore County Police Department arrested all four men in early September 2014. The State jointly tried Nathaniel, Pompey, and Jermell, with Foust as the State's star witness. The jury found all three defendants guilty of first-degree murder, conspiracy to commit first-degree murder, and use of a firearm in the commission of a felony. The trial

[2] The name "Mel" in this context refers to Ramel himself, rather than appellant Jermell Foster.

court subsequently sentenced all three defendants to life imprisonment, with all but fifty years suspended for first-degree murder, a concurrent sentence of life with all but fifty years suspended for conspiracy to commit first-degree murder, and twenty years concurrent for the use of a firearm in the commission of a felony. All three defendants timely appealed. Due to the consolidated nature of these appeals, we shall address each appeal in turn, and will provide additional facts as necessary.

JERMELL FOSTER[3]

On appeal, Jermell presents one question for our review: Whether the trial court abused its discretion in refusing to give the requested jury instruction of defense of others. We hold that the trial court correctly denied the requested jury instruction, and affirm Jermell's convictions.

"An appellate court reviews a trial court's decision not to grant a jury instruction under an abuse of discretion standard." *Hajireen v. State*, 203 Md. App. 537, 559 (2012) (citing *Gimble v. State*, 198 Md. App. 610, 627 (2011)). "An abuse of discretion occurs where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles." *Id*. (internal citations and quotations omitted).

[3] In his reply brief, Jermell correctly alerts us to the fact that the State misapprehends the facts. The State presents Jermell's argument, but refers to Jermell as Pompey. We note the error.

Maryland Rule 4-325(c) states, in pertinent part, that, "The court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding." Here, Jermell requested that the trial court provide a defense of others jury instruction. In deciding whether to grant the requested instruction, the trial court noted that Jermell denied being at the scene of the crime in his statements to police, and that Jermell did not testify at trial. Jermell's trial counsel argued that the jury would act as the finders of fact in this case, and could therefore conclude that Jermell acted in defense of others. The trial court responded,

> [T]hey [the jury] can't speculate. You can point to the jury and say they are the fact finders. I agree with that 100 percent. But it has got to be within the realm of the evidence presented. Not -- you know, it is as if saying well, the jury could decide the owner of the hotel shot the person when there is no evidence of that. It has to be within the realm of the evidence presented. So where is the subjective belief by [Jermell] or the evidence, rather, the evidence of the subjective belief by [Jermell] that he acted in defense of others?

Jermell's trial counsel argued that the jury could decide whether Jermell was afraid when he shot Ramel. The court responded, "I don't disagree with that. The case law is clear, the Defendant doesn't have to testify. But the Defendant does have to generate the evidence. And the evidence can be generated in a variety of fashions. But it still has to be subjective." Finding that Jermell had introduced no evidence to indicate his subjective mental state at the time of the shooting, the trial court denied granting the requested instruction.

We have previously explained that,

> Defense of others, like self-defense, is a justification or mitigation defense. If the appellant proved that he was acting in perfect defense of others, *i.e.*, that he held a subjectively genuine and objectively reasonable

> belief that he had to use force to defend another against immediate harm and imminent risk of death or serious harm *and* the level of force he used was objectively reasonable to accomplish that purpose, he would be entitled to an acquittal on the murder charge. On the other hand, if the appellant 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, the result would be to mitigate "what might otherwise be murder down to the manslaughter level." The former is the "perfect" or "complete" form of the defense; the latter is the "imperfect" or "partial" form.

Lee v. State, 193 Md. App. 45, 58-59 (2010) (internal citations and footnotes omitted), *cert. denied* 415 Md. 339 (2010). Thus, the principles of self-defense also apply to defense of others. To qualify for such an instruction,

> the defendant has the burden of initially producing some evidence on the issue of mitigation or self-defense . . . sufficient to give rise to a jury issue . . . . Once the issue has been generated by the evidence, however, the State must carry the ultimate burden of persuasion beyond a reasonable doubt on that issue.

Wilson v. State, 422 Md. 533, 541 (2011) (internal citations and quotation marks omitted). The Court of Appeals has described "some evidence" as follows:

> *Some evidence* is not strictured by the test of a specific standard. It calls for no more than what it says—"some," as that word is understood in common, everyday usage. It need not rise to the level of "beyond reasonable doubt" or "clear and convincing" or "preponderance." The source of the evidence is immaterial; it may emanate solely from the defendant. It is of no matter that the self-defense claim is overwhelmed by evidence to the contrary. If there is any evidence relied on by the defendant which, if believed, would support his claim that he acted in self-defense, the defendant has met his burden. Then the baton is passed to the State. It must shoulder the burden of proving beyond a reasonable doubt to the satisfaction of the jury that the defendant did not kill in self-defense.

Dykes v. State, 319 Md. 206, 216-217 (1990). Consequently, in order for a criminal defendant to receive a defense of others jury instruction—whether perfect or imperfect—

the defendant must introduce at trial "some evidence" showing, at a minimum, his subjectively genuine "belief that he had to use force to defend another against immediate and imminent risk of death or serious harm." *Lee*, 193 Md. App. at 58.

In *State v. Martin*, 329 Md. 351 (1993), *reconsideration denied* (Feb. 17, 1993), the Court of Appeals explained that a trial court need not provide a self-defense jury instruction where a criminal defendant introduced no evidence to indicate his subjective mental state. There, the respondent, Martin, and the victim, Wayne Gordy, were sitting with a group of others in a parking lot, arguing with each other. *Id*. at 354. Gordy told Martin to "go on and get out of there and don't come back unless I tell you you can" and that "this time would be different, it would be me [Gordy] kicking your [Martin's] ass all across this parking lot." *Id*. Gordy followed Martin briefly as Martin left the parking lot. *Id*. Later that day, Gordy, who had also left the parking lot area, returned with a friend and saw Martin sitting in his car. *Id*. Gordy approached Martin's vehicle and then Gordy's friend heard a gunshot. *Id*. at 355. He saw Gordy fall and Martin drive away. *Id*.

At his trial, Martin established that he had been drinking beer almost continuously throughout the day of the shooting. *Id*. Martin's brother testified that Martin would sometimes drink to the point where Martin "could not remember where he had been or what he had done." *Id*. Martin's brother testified that when officers arrested Martin, they were "more or less . . . holding him up because he couldn't hardly [sic] walk on his own." *Id*. Martin himself testified that he did not remember the shooting, and that he suffered

from memory loss for approximately a year prior to the shooting. *Id*. Martin requested an imperfect self-defense jury instruction, which the trial court denied. *Id*. at 356.

On appeal to the Court of Appeals, Martin argued that, although there was no evidence of his mental state at the time he shot Gordy, the trial court could have inferred his mental state based on the circumstances leading up to the altercation. *Id*. at 367. The Court noted how a criminal defendant could introduce evidence of his subjective mental state, stating, "The question of one's state of mind, or his intention, at a particular time is one of fact, and is subjective in nature. Therefore, it must be determined by a consideration of his acts, conduct and words." *Id*. at 363 (internal citations and quotations omitted). The Court rejected Martin's argument that inferences would suffice to generate that evidence, stating,

> "Some evidence" sufficient to generate an issue of self-defense means to [Martin] any evidence of circumstances permitting an inference to be drawn as to a defendant's state of mind at sometime prior to, not at, the relevant moment, and expert testimony as to what his or her state of mind might have been at that time. *He would have us hold, in other words, that generation of the issue does not require production of, or reliance on, evidence tending affirmatively to prove what the defendant felt or believed at the relevant time. In short, he would sanction speculation as a substitute for evidence; under his formulation, unless there was evidence tending affirmatively to negate the requisite subjective belief, the issue of self-defense would be generated. We do not share this view.*

Id. at 367 (emphasis added). The Court concluded, "We hold that where the defendant's subjective belief at a particular time must be shown to generate a defense, *only evidence bearing directly on that issue will suffice*." *Id*. at 368 (emphasis added). Without any evidence bearing directly on Martin's subjective mental state at the time of the shooting,

Martin failed to adduce "some evidence" and therefore was not entitled to a self-defense jury instruction.

Here, as in *Martin*, Jermell provided no evidence, circumstantial or direct, regarding his subjective mental state when he shot Ramel. Indeed, Jermell concedes in his brief that he did not produce any evidence at trial regarding his acts, words, or conduct tending to indicate his subjective mental state, stating:

> It is true that Umar Foust, the principal source of the testimony regarding defense of others, did not present any testimony that [Jermell] made any statements or facial expressions that indicated [Jermell's] state of mind. It is also true that [Jermell] did not testify at trial and instead invoked his right to silence. It is also true that, as the Trial Court noted from video evidence introduced by the State of [Jermell's] custodial interrogation after arrest, [Jermell] denied involvement in the murder of Ramel Baker or that he was even present at the Welcome Inn on the evening when Ramel Baker was murdered.

Because he cannot rely on any actual evidence of his subjective mental state, Jermell asks us to infer his state of mind from the circumstances at the time of the shooting. In his brief, Jermell argues that "there was still enough evidence adduced at trial to *infer* [his] state of mind when he shot Ramel Baker, especially since Ramel Baker employed unlawful force first." (Emphasis added). In other words, Jermell argues that, although he produced no evidence to indicate his subjective mental state, the finder of fact could infer his mental state based on the circumstances, and that these circumstances permit the inference that he killed Ramel in order to protect Pompey.

Like the Court of Appeals in *Martin*, we decline to substitute an inference for actual evidence. In *Martin*, the Court explained that Martin "would have [the Court of Appeals]

hold . . . that generation of the issue does not require production of, or reliance on, evidence tending *affirmatively* to prove what the defendant felt or believed at the relevant time." 329 Md. at 367. Here, Jermell asks us to accept inferences he draws from the evidence, rather than rely on the evidence itself. The test for whether a defendant may receive a jury instruction in this context, however, is whether the defendant produced "some evidence" sufficient to give rise to the jury issue—not whether that evidence can generate an inference that would warrant the instruction. *Wilson*, 422 Md. at 541. Because he produced no evidence tending affirmatively to prove his subjective mental state, the trial court correctly denied Jermell's requested instruction.

Not only must a defendant seeking a defense of others jury instruction introduce some evidence of his subjective mental state, but the defendant must introduce some evidence that "he held a subjectively genuine and objectively reasonable belief that he had to use force to defend another against immediate and imminent risk of death or serious harm." *Lee*, 193 Md. App. at 58. In other words, the defendant's subjective mental state must be the specific mental state that he sought to protect someone against immediate and imminent risk of death or serious harm.

In *Lee*, a jury convicted Lee of first-degree murder, use of a handgun in the commission of a crime of violence, and other related offenses. *Id*. at 49. There, Lee, while working as a security officer at a tavern, encountered Brian Comploier when the latter arrived at the tavern looking for a woman named Angel, the mother of Comploier's child. *Id*. at 51. Lee witnessed Comploier engage in an altercation wherein another security

officer for the tavern escorted Comploier outside. *Id*. Several patrons followed. *Id*. Once outside, Comploier eventually retrieved his "three and one-half inch blade folding knife" and began walking toward the security officer who had taken him outside. *Id*. at 52. At some point during the sequence of events, Comploier held the knife to Angel's throat. *Id*. at 52, 58. Comploier then retrieved a shovel, and paced back and forth. *Id*. at 52. Before the shooting however, Comploier had apparently dropped the shovel. *Id*. The evidence was disputed as to whether Comploier was brandishing the knife when Lee shot him. *Id*. at 52. Witnesses for the State testified that Lee ran toward Comploier before Lee shot Comploier six times. *Id*. Lee testified, however, that Comploier had started toward him before the shooting. *Id*. When asked why he did not retreat when he saw Comploier approaching with a knife, Lee stated, "[b]ecause it was people standing behind me. If I was to leave, maybe one of those people would get hurt." *Id*. at 56. At his murder trial, Lee requested a defense of others jury instruction, arguing that he had a duty to protect the patrons outside the tavern, including Angel. *Id*. at 56, 58. The trial court denied his request, and Lee appealed. *Id*. at 58.

On appeal, this Court noted that, even taking the facts in a light most favorable to Lee, "[t]here was no evidence that any patron, aside from [Angel], had been threatened by Comploier." *Id*. at 64. We held that,

> The facts adduced at trial did not include "some evidence" that the appellant actually believed when he shot Comploier that any other person-patron or coworker-was in immediate and imminent danger from Comploier, much less that he held an objectively reasonable belief of the same. [Lee's] testimony that, had he retreated, "*maybe* one of those people would get hurt," could not support a reasonable inference that he actually believed such harm

> was imminent or immediate. He did not testify that he thought a patron would be killed or otherwise seriously injured if he retreated. As defense of others was not generated as a defense at trial, [Lee] was not entitled to a jury instruction about it, as a matter of law.

Id. at 65 (citation and footnote omitted). Although Lee expressed concern that Comploier could have hurt someone—"*maybe* one of those people would get hurt"—this Court concluded that Lee's subjective belief did not rise to the level of "belief that [Lee] had to use force to defend another against *immediate harm and imminent risk of death or serious harm*." *Id*. at 58-59, 65 (emphasis added). Despite the fact that Lee produced some evidence of his mental state at the time of the shooting, Lee failed to produce "some evidence" that he subjectively believed that the patrons he felt compelled to protect would face immediate harm and imminent risk of death or serious harm. In other words, Lee failed to produce some evidence of the specific mental state warranting the requested instruction. Without some evidence of that subjective belief, Lee was not entitled to a defense of others jury instruction.

Lee aptly demonstrates that the threshold for generating the defense of others jury instruction requires not just some evidence of the defendant's subjective mental state, but some evidence that the defendant subjectively believed he was protecting another from immediate and imminent risk of death or serious harm. Here, Jermell failed to introduce some evidence of his subjective mental state. Consequently, he also failed to introduce some evidence demonstrating his subjective belief that he intended to protect Pompey from immediate and imminent risk of death or serious harm. For these reasons, we affirm the trial court's decision not to grant Jermell's requested defense of others jury instruction.

POMPEY LAWRENCE

Pompey Lawrence presents two issues on appeal, which we have slightly rephrased as follows: 1) Whether the trial court erred in failing to grant Pompey Lawrence's Motion for Judgment of Acquittal, and 2) Whether the trial court erred by refusing Pompey Lawrence's request to instruct the jury regarding voluntary manslaughter. We see no error and affirm.

The Motion for Judgment of Acquittal

Pompey first argues that the trial court incorrectly denied his motion for judgment of acquittal. Maryland Code (2001, 2008 Repl. Vol.), § 6-104(a)(1) of the Criminal Procedure Article ("CP") provides that, "At the close of the evidence for the State, a defendant may move for judgment of acquittal on one or more counts or on one or more degrees of a crime, on the ground that the evidence is insufficient in law to sustain a conviction as to the count or degree."

The standard of review for the sufficiency of the evidence is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Hobby v. State*, 436 Md. 526, 538 (2014) (citations and quotation marks omitted). "The test is not whether the evidence *should have or probably would have* persuaded the majority of the fact finders but only whether it *possibly could have* persuaded *any* rational fact finder." *Painter v. State*, 157 Md. App. 1, 11 (2004) (internal citations and quotations omitted). In applying this test, "[w]e defer to the fact finder's opportunity to assess the credibility of witnesses, weigh

the evidence, and resolve conflicts in the evidence." *Neal v. State*, 191 Md. App. 297, 314 (2010) (internal citations and quotations omitted).

Here, Pompey argues that Foust had numerous opportunities to tell police that Pompey said "finish him" with reference to killing Ramel Baker, but that Foust only told police about Pompey's statement when trying to reach a plea agreement. According to Pompey, inferentially, no rational trier of fact could have believed Foust's testimony regarding Pompey's involvement and therefore the evidence was insufficient to sustain Pompey's convictions for first-degree murder and conspiracy to commit first-degree murder.

We first point out that we do not know which facts the jury found in determining that Pompey committed first-degree murder and conspiracy to commit first-degree murder. "[I]t is not the role of the appellate court to re-weigh the evidence and to reevaluate the credibility of witnesses." *State v. Manion*, 442 Md. 419, 445 (2015) (citing *Dawson v. State*, 329 Md. 275, 281 (1993)), *reconsideration denied* (April 17, 2015). "Further, it is well established in Maryland that the testimony of even a single eyewitness, if believed, is sufficient evidence to support a conviction." *Marlin v. State*, 192 Md. App. 134, 153 (2010) (citing *Walters v. State*, 242 Md. 235, 237-38 (1966)). Foust testified that Pompey, Jermell, and Nathaniel all went to the Welcome Inn after Nathaniel had fought with Ramel and Eddie Morene. Foust testified that Nathaniel retrieved a gun to bring to the Welcome Inn. Foust testified that Pompey told Jermell to "finish [Ramel]" after Jermell fired his first volley of shots at Ramel. Even if the jury determined that Foust lied about Pompey

saying "finish him," there was sufficient evidence for the jury to conclude that, after Nathaniel retrieved the gun, the group met at the Welcome Inn with the intent to find and kill Ramel. We therefore conclude that the evidence was sufficient for a rational trier of fact to convict Pompey of first-degree murder and conspiracy to commit first-degree murder.

Voluntary Manslaughter Jury Instruction

Pompey next argues that the trial court abused its discretion when it denied his request for a voluntary manslaughter jury instruction. Pompey did not request the imperfect self-defense instruction requested by Jermell as discussed above. Instead, Pompey requested an instruction based on hot-blooded response to legally adequate provocation, often called the Rule of Provocation. A trial court must provide a provocation instruction when four requirements are met:

> (1) There must have been adequate provocation;
> (2) The killing must have been in the heat of passion;
> (3) It must have been a sudden heat of passion-that is, the killing must have followed the provocation before there had been a reasonable opportunity for the passion to cool;
> (4) There must have been a causal connection between the provocation, the passion, and the fatal act.

Wilson v. State, 195 Md. App. 647, 680–81 (2010), *rev'd on other grounds*, 422 Md. 533 (2011). "*Each of the four elements is a sine qua non for a defense of mitigation* based upon hot-blooded response to legally adequate provocation." *Id*. at 681 (quoting *Tripp v. State*, 36 Md. App. 459, 477 (1977)). With the Rule of Provocation as with the imperfect defenses, the burden of production is on the defendant to generate a *prima facie* case with

respect to each and every one of the four elements of the defense." *Id*. Thus, a trial court will grant a voluntary manslaughter instruction if the defendant demonstrates some evidence for each of the four elements.

In *Wilson*, the victim, Brian Adams, and his two friends encountered Wilson at a gas station. 195 Md. App. at 657. Adams and Wilson exchanged verbal barbs, including Adams threatening to shoot Wilson, and Adams's friends threatening to fight Wilson. *Id*. Stating that he did not want any conflict, Wilson left the gas station, and went to his grandmother's house. *Id*. at 666. While there, Wilson changed his clothes, called his cousin for "backup," and, after learning that his cousin was not available, grabbed a steak knife for "backup." Wilson then left his grandmother's house seeking to confront Adams and his friends. *Id*. at 667. Wilson came upon Adams and the two stared each other down. *Id*. at 672. Adams then pulled out a gun and, while smiling, pointed it at Wilson. *Id*. Somehow, Wilson grabbed the gun from Adams, and then pointed it at Adams. *Id*. Wilson would later testify that although less than a minute elapsed after he pointed the gun at Adams, he did wait before he pulled the trigger. Wilson testified that, at the moment he pulled the trigger, he "was scared, [he] was mad . . . [he] felt challenged . . . . [He] had a lot of emotion running through [his] head at that time. *Id*. "When asked why he shot Adams four times, [Wilson] explained that he 'was just caught in the moment.'" *Id*. at 673.

On appeal, this Court affirmed the trial court's decision not to provide a voluntary manslaughter jury instruction. In reviewing whether Wilson acted in the heat of passion, we noted,

> For the nonce, we are making the point that [Wilson] never really actually described a sense of hot-blooded rage, let alone attributed such a sense of overpowering rage to the actions of Adams at the crime scene. *No one else, moreover, testified as to such a sense of rage on his part. This element of the defense, the actual state of rage in the mind of the defendant, is a subjective requirement.*

Id. at 682-83 (emphasis added). We concluded, "In this regard alone, the issue of hot-blooded response to provocation was not generated." *Id*. at 683.

Here, Pompey introduced no evidence of his subjective mental state at trial. In *Wilson*, we made clear that, "It would not be enough that some legally adequate provocation had occurred. It would not be enough that, objectively speaking, the circumstances could have created hot-blooded rage in an average or reasonable person. It must affirmatively be established that the defendant himself was acting in hot blood." *Id*. (citing *Sims v. State*, 319 Md. 540, 553 (1990)).

Pompey did not introduce any evidence affirmatively establishing that he acted in hot blood. Foust, the only witness who testified as to what happened during the shooting, never commented on Pompey's mental state. Even if the facts would have pointed to Pompey being angry with Ramel for trying to stab him, as in *Wilson*, no one "really actually described a sense of hot-blooded rage, let alone attributed a sense of overpowering rage to the actions of" Pompey. *Id*. at 682.

Instead, the only mental state Foust testified to besides his own was Ramel's. During cross-examination, Jermell's trial counsel asked Foust, "In terms of this evening [of the shooting], in terms of asking a specific question – in terms of all of the people, who was the one that was really pissed off that night?" Foust replied, "Ramel." Pompey

produced no evidence indicating his subjective mental state when Jermell shot Ramel. Accordingly, the trial court did not abuse its discretion in denying the voluntary manslaughter jury instruction based on hot-blooded response to legally adequate provocation.

NATHANIEL LAWRENCE

Nathaniel argues that the evidence was insufficient to convict him of first-degree murder, conspiracy to commit first-degree murder, and possession of a handgun. As we stated above, the standard of review for the sufficiency of the evidence is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Hobby*, 436 Md. at 538 (internal citations and quotation marks omitted).

Here, Nathaniel correctly notes that the State did not produce evidence indicating that Nathaniel told Jermell to use the gun or to shoot Ramel. In fact, Foust never testified that Nathaniel discussed killing Ramel. Without this testimony, Nathaniel argues that the evidence was insufficient to sustain his convictions.

Although the evidence adduced at trial did not include specific statements from Nathaniel indicating an intent to kill Ramel, we hold that the evidence was sufficient for a rational trier of fact to find the essential elements of those crimes beyond a reasonable doubt. *Id*. The State introduced evidence that the Lawrence brothers had been feuding with Ramel by competing for drug customers for approximately a year. A month prior to the shooting, Ramel sold Pompey "bad drugs," which added to the tension. Then, the day

of the incident, Ramel and Eddie ganged up on Nathaniel in a physical altercation. Shortly after the fight, Nathaniel stepped away to use his phone. Nathaniel then left the Welcome Inn with Foust. With Nathaniel driving, the two arrived at an apartment that Foust did not recognize. Nathaniel went inside the apartment, and returned shortly thereafter with a black bag containing a gun. Nathaniel then drove himself and Foust back to the Welcome Inn where Nathaniel's brother Pompey, and their friend Jermell, met them. With Foust lagging behind and unable to hear, the three men spoke with each other. Foust gave the bag containing a gun to Jermell. Finally, Nathaniel was in the alley with Pompey and Jermell when Jermell used a gun to shoot and kill Ramel. There was sufficient evidence for the jury to conclude that, after Nathaniel retrieved the gun, the group met at the Welcome Inn with the intent to find and kill Ramel. Accordingly, there is sufficient evidence to sustain Nathaniel's convictions.

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