UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2423

September Term, 2014

DUANE LAMAR WILLIAMS

v.

STATE OF MARYLAND

Meredith,
Leahy,
Sharer, J. Frederick,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: June 8, 2017

Appellant Duane Lamar Williams elected to be tried by the court, rather than a jury, on criminal charges stemming from the shooting death of Eric Walker and the assault of Keith Seymour. The Circuit Court for Prince George's County convicted Williams of three crimes for Walker's death: second-degree depraved-heart murder, use of a handgun in the commission of a crime of violence, and use of a handgun in the commission of a felony.[1] With respect to Seymour, Williams was convicted of second-degree assault and use of a handgun in the commission of a crime of violence. Williams was also convicted of wearing, carrying, or transporting a handgun and possession of a regulated firearm after being convicted of a disqualifying crime.

On the day of the events leading to Williams's conviction, Williams ingested a substantial quantity of PCP and was experiencing the effects of PCP-induced psychosis and paranoia. At trial, defense counsel requested an instruction on the defense of imperfect self-defense to mitigate Williams's murder charge to a manslaughter charge. The trial court, however, denied the defense counsel's request on the grounds that the defense was not applicable because Williams was the initial aggressor and there was no evidence of Williams's mental state at the time of the murder.

Williams raises three questions on appeal for our review:

[1] Williams was acquitted of first-degree assault of Seymour and the related charge use of a handgun in the commission of a felony. The trial court also acquitted Williams of first-degree assault and second-degree assault of Edelen, and the related firearm charges of use of a handgun in the commission of a crime of violence and use of a handgun in the commission of a felony. The trial court also acquitted Williams of first-degree assault and second-degree assault of Cox, and the related firearm charges of use of a handgun in the commission of a crime of violence and use of a handgun in the commission of a felony.

I. "Was the evidence sufficient to support Mr. Williams's conviction for second-degree assault of Mr. Seymour?"

II. "Under the facts of this case, did the trial court render inconsistent verdicts when it acquitted Mr. Williams of first-degree assault of Mr. Seymour but convicted him of second-degree assault of Mr. Seymour?"

III. "Did the trial court err when it refused to allow defense counsel to argue and present evidence relating to imperfect self-defense?"

We hold that there was sufficient evidence to support Williams's conviction for second-degree assault, that the verdict was not inconsistent, and that the trial court did not abuse its discretion in rejecting the imperfect self-defense argument. We affirm.

BACKGROUND[2]

The State's theory of prosecution was that on the evening of February 19, 2013, Williams, after ingesting a large amount of PCP, assaulted Seymour and fatally shot Walker. The State produced several eyewitnesses to the crimes, ballistics evidence, and video from several surveillance cameras. The defense sought to raise the defense of imperfect self-defense among others. The following was established through the evidence adduced at trial.

Princess Foster-El, Williams's former long-term girlfriend, testified that roughly seven months before the murder, Williams lost his job and she moved out of their home with their two children. Williams then began living with Tamara Hall, and together, he

[2] We review the facts "keeping in mind our role of reviewing not only the evidence in a light most favorable to the State, but also all reasonable inferences deducible from the evidence in a light most favorable to the State." *Smith v. State*, 415 Md. 174, 185–86 (2010).

and Hall would smoke between two and five "dippers"—cigarettes dipped in liquid PCP—every day. Hall testified for the defense that on the day of the murder, Williams smoked between seven and eight dippers, and was the most "high" and paranoid she had ever seen him.

Williams called Foster-El at 8:30 p.m. and told her he feared for his life and wanted her to pick him up. Foster-El drove Williams and Hall around for several hours. Foster-El testified that Williams acted "[v]ery afraid and very paranoid[,]" telling her that the pedestrians they drove past were trying to kill him. She explained that Williams thought Hall was trying to hurt him, so she dropped Hall off at Williams's apartment, and shortly thereafter, Williams jumped out of the car while it was moving at Branch Avenue and Colebrooke Drive near a gas station in Clinton, Maryland.

Meanwhile, around 10:30 p.m., Seymour and his best friend, Walker, stopped at the same gas station in Clinton to fill up Seymour's car with gas. Because the driver's side door of the car would not open, Walker, who had been sitting in the passenger seat, got out to pump the gas. Seymour testified that he was sitting in the driver's seat and left the engine running to stay warm. Then Seymour saw Walker run by the driver's side window while a man he did not know, but later was identified as Williams, walked briskly toward Walker. Walker ran around the car screaming at Williams: "[W]ait a minute man. I don't know you. I didn't do nothing to you." The two men chased each other around the car two times.

Not understanding why Walker was running away from Williams, Seymour started to climb over the center console to exit the passenger side door to help Walker. At this

point, Seymour testified that Williams walked by the front passenger door and he saw a handgun in Williams's hand. Seymour screamed at Williams: "[W]hat the f[__]k you doing?" Williams reacted by turning toward Seymour and walking to the passenger side of the car. Williams started to open the passenger side door and raise his gun as if to shoot Seymour. Seymour testified that Williams "never got a chance to point the gun" at him because he quickly crawled back into the driver's seat and "slam[med] [on] the gas." Seymour drove away from the gas station, tearing the gas hose off the gas dispenser as he did. A surveillance video from the area that captured these events was introduced into evidence.

Seymour drove to the middle of the street, heard a gunshot, and stopped his car. He backed up to the gas station and heard more gun shots. In the distance, he saw his friend lying on the street, and Williams standing over him with a gun. Seymour described the incident as like watching "a horror movie." He described Williams as acting like a "psychopath" -- he had no expression on his face, like he had "no feeling towards nobody."

An off-duty police officer was sitting at a traffic light on Branch Avenue when he saw a man, later identified as Walker, "frantic[ally]" run past his car while looking over his shoulder. About 30 seconds later, the officer saw a second man, later identified as Williams, walk in front of his car looking straight ahead, "like he was zoned in" on the man who was running away. The officer saw Williams tackle Walker, take a handgun from his waistband, and shoot Walker in the torso and head. The officer testified that he never saw Walker punch or kick Williams. The officer exited his car, advised Williams that he was a police officer, and ordered him to the ground. Williams, however, began running away,

ducking behind cars as he went. Other officers arrived, and eventually arrested Williams. They took him to Prince George's County Hospital for evaluation before taking him to the police station.

A bystander, Kimberly Miller, observed the events similarly as the off-duty police officer. She testified that she had stopped her car at the intersection of Branch Avenue and Colebrooke Drive because she saw two men, later identified as Williams and Walker, in the middle of the street about 20 feet in front of her car. Williams stood over Walker and shot him in the torso. Williams shot Walker a second time in the head at close range, after which he walked away.

Neither Hall nor Foster-El heard from Williams until the next morning when he called Hall from the detention center. Williams told Hall that he had killed someone but did not remember the incident.

In a 21-count indictment, a grand jury indicted Williams for murder, use of a handgun in the commission of a crime of violence, and use of a handgun in the commission of a felony as to Walker; and first-degree assault, second-degree assault, use of a handgun in the commission of a crime of violence, and use of a handgun in the commission of a felony as to Seymour.[3] Williams was also indicted of transporting a handgun, wearing and carrying a handgun, and possession of a regulated firearm after being convicted of a disqualifying crime.

[3] The grand jury also indicted Williams of similar counts relating to two other victims, Robert Edelen and Ryan Cox. The trial court acquitted Williams of all charges related to Edelen and Cox.

At trial the State demonstrated that Williams's fingerprints were recovered from the semi-automatic handgun found underneath him upon his arrest. Walker's autopsy determined that he suffered two gunshot wounds: one to the torso and one to the head, and a firearms expert testified that the bullet recovered from Walker's head had been fired from the handgun recovered.

After the State rested its case-in-chief, the defense moved for a judgment of acquittal on all four counts relating to Seymour. The trial court granted the motion on two of the counts—first-degree assault and use of a handgun in the commission of a felony. After the acquittal, second-degree assault and use of a handgun in the commission of a crime of violence with respect to Seymour remained.

The defense called Dr. Glen Skoler, who was admitted as an expert in clinical and forensic psychology. He opined that on the night of the shooting Williams suffered from substance-induced psychosis disorder and paranoid delusional disorder. Defense counsel sought to elicit testimony from Dr. Skoler about whether Williams subjectively believed, albeit unreasonably, that others were trying to harm him. The State objected and argued that there was no evidence that Williams was anything other than the aggressor, and therefore, his subjective belief was irrelevant because he was not entitled to claim imperfect self-defense. The trial court agreed and sustained the objection.

Prior to the State's closing argument, the defense asked the trial court to reconsider the applicability of the defense of imperfect self-defense, asserting that Williams was not required to establish that he was not the aggressor in order to generate the defense. The State countered that, aggressor status aside, there was no evidence of Williams's mental

state at the time of the murder. The trial court, again, sustained the State's objection and rejected Williams's defense of imperfect self-defense.

At the close of trial, the court convicted Williams as recited above, and then sentenced Williams to a total of 50 years of imprisonment followed by five years of supervised probation on December 11, 2014.[4] Williams timely noted his appeal on December 23, 2014.

DISCUSSION

I.

Second-Degree Assault: Sufficiency of the Evidence

Williams argues that the trial court erred in denying his motion for judgment of acquittal on the second-degree assault charge involving Seymour. Specifically, Williams argues that there was insufficient evidence that he took a "substantial step" toward injuring Seymour. He then argues that because we must reverse his assault conviction, we must likewise reverse his conviction for use of a handgun in the commission of a crime of violence (the second-degree assault). The State disagrees, as do we.

[4] Williams received the following sentences to be served consecutively: 30 years of imprisonment, all but 25 suspended, for murder; 20 years, all but 15 suspended, the first five years to be served without the possibility of parole, for use of a handgun in the commission of a crime of violence (murder); ten years, all but five years suspended, for second-degree assault; 20 years, all but 15 years suspended, for use of a handgun in the commission of a crime of violence (second-degree assault); and five years suspended for possession of a regulated firearm by a disqualified person. The trial court merged Williams's use of a handgun in the commission of a felony (murder) conviction with use of a handgun in the commission of a crime of violence. The trial court also merged Williams's conviction for wearing, carrying, and transporting a handgun with his conviction for the use of a handgun in the commission of a crime of violence (second-degree assault). All sentences were to be served consecutively.

When reviewing the sufficiency of the evidence, our task is to determine "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.'" *Stephens v. State*, 198 Md. App. 551, 558 (2011) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)) (emphasis in original) (additional citation omitted). "'[W]hen evaluating the sufficiency of the evidence in a non-jury trial, the judgment of the trial court will not be set aside on the evidence unless clearly erroneous[.]'" *State v. Manion*, 442 Md. 419, 431 (2015) (quoting *State v. Raines*, 326 Md. 582, 589, *cert. denied*, 506 U.S. 945 (1992)). *See also Khalifa v. State*, 382 Md. 400, 418 (2004) (citation omitted); Md. Rule 8-131(c). The appellate court does not weigh the evidence or judge the credibility of the witnesses because that is the role of the trial court. *Bryant v. State*, 142 Md. App. 604, 622 (2002) (citations omitted). We are mindful that "it is well-established in Maryland that the testimony of even if a single eyewitness, if believed, is sufficient to support a conviction." *Marlin v. State*, 192 Md. App. 134, 153 (2010) (citations omitted).

Although the General Assembly enacted the common law crimes of assault and battery in the 1996 assault statutory scheme, assault and battery retained their judicially determined meanings. Maryland Code (2002, 2012 Repl. Vol.), Criminal Law Article ("CL"), § 3-201(b) ("'assault' means the crimes of assault, battery, and assault and battery, which retain their judicially determined meanings"); *see Cruz v. State*, 407 Md. 202, 209 n.3 (2009) (citing *Lamb v. State*, 93 Md. App. 422, 428 (1992)); *Snyder v. State*, 210 Md. App. 370, 381 (2013). "The statutory offense of second-degree assault encompasses three modalities: (1) intent to frighten, (2) attempted battery, and (3) battery." *Snyder*, 210 Md.

App. at 382. The intent to frighten modality of second-degree assault is a specific intent crime. *Wieland v. State*, 101 Md. App. 1, 38 (1994); *see also Harris v. State*, 353 Md. 596, 605 (1999) (citing *Wieland*, 101 Md. App. at 38). The attempted battery and battery modalities of second-degree assault are general intent crimes. *Elias v. State*, 339 Md. 169, 183 (1995) (citations omitted) (explaining that "'intent is an element of the crime of battery, [but] the intent need only be for the touching itself; there is no requirement of intent to cause a specific injury'"); *Wieland*, 101 Md. App. at 38–40 ("[W]e assert that an assault of the attempted battery variety does not require any specific intent.").

At trial in the present case, the State conceded in its closing argument that the defense of voluntary intoxication applied, which meant, as the defense agreed, Williams lacked the capacity to form a specific intent mental state and could not be convicted of the intent to frighten modality of second-degree assault. Judge Davey, in apparent agreement, convicted Williams of the attempted battery modality of second-degree assault. Announcing the verdict from the bench, Judge Davey found:

> [W]e had the opportunity to observe the video, we have the opportunity to hear testimony from Mr. Seymour. It is clear from the video that initially, the defendant is focused on Mr. Walker but at some point in that video, it is clear that he changes his focus from Mr. Walker to Mr. Seymour, and although the video is not clear as to whether or not he ever grabbed the handle of the car, I think it is clear that the made a move towards Mr. Seymour that caused Mr. Seymour to accelerate out of the gas station as quickly as possible.
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> . . . I think the elements of the defendant actually trying to cause immediate offensive physical contact with Mr. Seymour that would bring about the offensive physical contact, and the defendant's actions were not consented to by Mr. Seymour, all three elements are met and we will find the defendant guilty of second degree assault on Mr. Seymour.

Although the battery modality is a general intent crime, the State was not able to prove the requisite elements. The battery modality of second-degree assault is comprised of the following elements: the defendant caused offensive physical contact with the victim; the contact was the result of an intentional act of the defendant; and the contact was not consented to. *Pryor*, 195 Md. App. at 335 (citation omitted). In this case, Williams did not batter Seymour.

To sustain a conviction for attempted battery, the State must prove three elements: (1) that the defendant "tried to cause physical harm;" (2) that the defendant "intended to bring about physical harm to the victim;" and (3) that "victim did not consent to the conduct." *Snyder*, 210 Md. App. at 385. The attempted battery variety of assault requires that the accused . . . take a substantial step towards that injury" and "an effort to commit a battery that goes beyond mere preparation[.]" *Id.* at 382–83 (other citations omitted) (citing *Harrod v. State*, 65 Md. App. 128, 135 (1985)).

Latching on to both Seymour's statement to the police—that Williams "never got a chance to point the gun at me"—and the trial court's finding—that "the video is not clear as to whether or not [Williams] ever grabbed the handle of the car," Williams argues that the State failed to prove he undertook a "substantial step" to cause harm to Seymour. The State counters that Williams's conviction for second-degree assault is supported by sufficient evidence by summarizing the evidence.

We conclude, after reviewing the record, that Williams's actions of turning toward the car as seen on the video, and grabbing the handle of the car door to open it and raising his hand that held the handgun as testified to by Seymour, were all actions that went beyond

mere preparation toward committing an attempted battery. *See Snyder*, 210 Md. App. at 386 (affirming appellants' attempted battery conviction, reasoning that a jury could have found that the appellant took a substantial step toward the commission of a battery by firing gunshots into the intended victims' home even though the appellant failed to cause any injury because the intended victims were not home at that time). Judge Davey observed, having viewed the gas station surveillance video, that Williams made a move toward Seymour and tried to open the car door in a manner that caused Seymour to "accelerate[] out of the gas station as quickly as possible." We determine that a reasonable fact-finder could infer that Williams (1) tried to cause physical harm: (2) intended to bring about physical harm to Seymour; and (3) that Seymour did not consent to the conduct. *See id.* at 385. Under the circumstances, we are persuaded that Williams's second-degree assault conviction was supported by sufficient evidence.

II.

Inconsistent Verdict

Williams argues that the trial court rendered an inconsistent verdict when it acquitted Williams of first-degree assault but convicted him of second-degree assault and use of a handgun in the commission of a crime of violence (second-degree assault), which taken together, he asserts, are the equivalent of first-degree assault. Williams contends that his "actions amounted to an assault only if he possessed a firearm[.]" Williams maintains that his second-degree assault of Seymour and related use of a handgun in the commission of a crime of violence convictions must be reversed because, through the grant of acquittal

of first-degree assault, the trial court recognized that "the State had not proven the aggravating elements necessary to elevate the assault to the level of first-degree."

The State counters that Williams waived this issue for appeal because Williams took an opposite position at trial—that Williams did not use the gun as part of the assault—and his argument resulted in his acquittal of the first-degree assault charge. The State contends, in the event we reach the merits of Williams's contention, that the trial court's verdict was consistent for two reasons. First, the State maintains that a conviction of a lesser included offense is not inconsistent with an acquittal of the greater offense. Second, the State contends that the trial court could have found Williams attempted to batter Seymour by means other than the gun, i.e., "'attempting to access [Seymour's] vehicle.'"

This Court, in *Travis v. State*, was presented with a similar issue of whether guilty verdicts on three charges were inconsistent with the acquittal of the fourth charge. 218 Md. App. 410, 415 (2014). After a bench trial, Travis was convicted of second-degree rape, second-degree sexual offense, and third-degree sexual offense, but acquitted of a fourth-degree sexual offense charge. *Id.* Travis asserted that the acquittal of fourth-degree sexual offense demonstrated that the State failed to prove the absence of consent element—an element required for his three convictions of second-degree rape, second-degree sexual offense, and third-degree sexual offense. *Id.* at 435. This Court explained at length that inconsistent verdicts from a judge are not permitted and constitute reversible error regardless of whether the defense raised the issue after sentencing. *Id.* at 461–62.

After reviewing the evidentiary proof for each of the four charges, this Court determined that the guilty verdicts of second-degree rape and second-degree sexual offense

and the acquittal verdict of fourth-degree sexual offense were "factually or logically incompatible" because the evidentiary proof required for second-degree rape (vaginal intercourse) and second-degree sexual offense (fellatio) was different than that required for fourth-degree sexual offense (sexual contact). *Id.* at 464–66. The evidence required for third-degree sexual offense and fourth-degree sexual offense was "necessarily the same." *Id.* at 466. To determine whether an inconsistency existed between the guilty verdicts of second-degree rape, second-degree sexual offense, third-degree sexual offense and the acquittal of fourth-degree sexual offense, this Court examined the absence of consent element of the crimes. *Id.* Although the appellant correctly identified that the State was unable to prove the absence of consent element for the fourth-degree sexual offense charge, that missing element was not indicative of an inconsistent verdict as to the three convictions. *Id.* at 467. As this Court indicated, there is a key distinction between the language of the statutory provisions of the charges resulting in the three convictions and fourth-degree sexual offense. *Id.* at 467–68. The statutory provisions for the charges resulting in the convictions permitted the State to prove the absence of consent element by demonstrating that the victim was unable to give consent or to give legally competent consent. *Id.* at 467. This modality of proving the absence of consent was not contained in the fourth-degree sexual offense statutory provision. *Id.* at 468. The State met the absence of consent element for the three convictions because the victim was asleep, but the State did not have the advantage of that modality of proving the absence of consent for the fourth-degree sexual offense charge. *Id.* Therefore, the Court held that there was no inconsistency between the convictions and acquittal. *Id.*

Here, Williams asks us to consider whether the convictions of second-degree assault and use of a handgun in the commission of a crime of violence (second-degree assault) and the acquittal of first-degree assault are inconsistent. First, as discussed in *Travis*, the State's waiver argument is without merit because inconsistent verdicts resulting from a bench trial are not permitted and constitute reversible error. *See id.* at 461–62. After reviewing the elements of first-degree assault and the attempted battery modality of second-degree assault, we conclude that the trial court's verdicts were consistent with the acquittal of first-degree assault. First-degree assault requires that the State prove the elements of one of the modalities of second-degree assault and that: (1) the defendant used a firearm to commit the assault; or (2) the defendant intended to cause serious physical injury in the commission of the assault. *See* Crim. Law § 3-202; *see also Snyder*, 210 Md. App. at 385–86. We need not dissect the trial court transcript to attempt to infer exactly which facts led to Williams's second-degree assault conviction because, similar to *Travis*, a distinction in the elements of the crimes is dispositive.

First-degree assault is specific-intent crime. *See Marlin v. State*, 192 Md. App. 134, 161 (2010) (explaining the mental state for first-degree assault is the specific intent to cause, or attempt to cause, serious physical injury). As addressed *infra*, the State conceded that the voluntary intoxication defense applied, which negates the specific intent mental state of first-degree assault.[5] The State, therefore, could not meet its burden with respect

[5] Williams also asserts there is "simply no way to reconcile the court's ruling on [the] motion for judgment of acquittal and its verdict" because Williams had not argued the voluntary intoxication defense at the time the trial court granted the acquittal of the first-degree assault charge. The timing of when the defense argued the voluntary

to first-degree assault and the court could not render a guilty verdict on charges requiring a specific intent mental state. As discussed in Part I, the attempted battery modality of second-degree assault is a general intent crime, *see Elias*, 339 Md. 169, 183 (1995) (citations omitted); *Wieland*, 101 Md. App. at 38–39, and as we held in Part I, Williams's second-degree assault conviction was supported by sufficient evidence. Therefore, we conclude that the guilty verdicts of second-degree assault and use of a handgun in the commission of a crime of violence (second-degree assault) and the acquittal verdict of first-degree assault are consistent.

III.

Imperfect Self-Defense

Williams argues on appeal that we must reverse his convictions because the trial court erred when, in finding that Williams was the initial aggressor, it refused to allow defense counsel to present argument and evidence to support imperfect self-defense. Williams recognizes that Maryland appellate courts have never permitted an initial aggressor to claim imperfect self-defense, but argues that we should because Williams asserts the Court of Appeals in *State v. Faulkner*, 301 Md. 482 (1984) did not decide whether imperfect self-defense is available to those who are the initial aggressor.

The State counters that Williams failed to generate the issue of imperfect self-defense. The State maintains that Williams presented no evidence that Walker was the

intoxication defense in relation to the trial court's ruling on the motion for judgment of acquittal does not affect the outcome of this appeal because we review Williams's contention in light of the entire trial record.

aggressor, let alone a mutual combatant. Nor did Williams establish that it was not possible for him to retreat to avoid danger. Additionally, the State contends there was no evidence demonstrating Williams's state of mind that he had an honest subjective belief that Walker posed an imminent threat.

Maryland recognizes two varieties of self-defense—perfect self-defense and imperfect self-defense. *State v. Smullen,* 380 Md. 233, 251 (2004); *State v. Faulkner*, 301 Md. 482 (1984) (adopting the defense of imperfect self-defense). The elements of 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;
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> (2) The accused must have in fact believed himself in this danger;
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> (3) The accused claiming the right of self-defense must not have been the aggressor or provoked the conflict; and
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> (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.

Dykes v. State, 319 Md. 206, 211 (1990) (citing *Faulkner*, 301 Md. at 485–86); *see also* MPJI-Cr 5:07 (self-defense). The difference between perfect and imperfect self-defense, other than their consequences, is that "in perfect self-defense, the defendant's belief that he was in immediate danger of death of serious bodily harm or that the force he used was necessary must be objectively reasonable. In all other respects, the elements of the two doctrines are the same." *Burch v. State*, 346 Md. 253, 283, *cert. denied*, 522 U.S. 1001 (1997); *see also Marquardt v. State*, 164 Md. App. 95, 139 n.22 (2005) (quoting *Smullen*, 380 Md. at 269) ("A common element to both forms of self-defense is that the accused

'must not have been the aggressor or provoked the conflict.'")). We have previously held that an aggressor cannot claim imperfect self-defense, s*ee Marquardt v. State*, 164 Md. App. 95, 139–40 n.22, *cert. denied*, 390 Md. 91 (2005); *Cunningham v. State*, 58 Md. App. 249, 255, *cert. denied*, 300 Md. 316 (1984). As this Court explained in *Cunningham*,

> [i]mperfect self-defense . . . stands in the shadow of perfect self-defense. If the appellant's belief, reasonable or unreasonable, in the necessity to kill to preserve his own life *is but one of the elements as to which he has the burden of producing a prima facie case in order to generate a genuine jury question, even a reasonable belief in the necessity to kill, would, standing alone, avail him naught*.

58 Md. App. at 254. Therefore, to generate the issue of imperfect self-defense the defendant bears the burden of producing evidence sufficient to raise a *prima facie* case as to whether (1) the victim was the initial aggressor; (2) the accused subjectively believed that he was in immediate danger of death or serious bodily harm; and (3) the accused used no more force than he believed necessary to defend himself in light of the threatened harm. *State v. Faulkner*, 301 Md. 482, 485–86 (1984); *see also State v. Martin*, 329 Md. 351, 359–60 (1993) (holding that the defendant did not generate the issue of imperfect self-defense when the defendant "remember[ed] nothing about the incident resulting in the death of the victim and produce[d] no evidence of his subjective belief at that time"). In establishing the last element, the accused should present some evidence that he retreated or attempted to avoid the danger, if he could have done so safely. *See Gainer v. State*, 40 Md. App. 382, 387 (1978).

Williams focuses his entire appellate argument on one element—a defendant may not be the initial aggressor—to the exclusion of the other requisite elements. Williams

attempts to refute the trial court's conclusion that an aggressor cannot claim imperfect self-defense, by arguing that, after two witnesses testified that Williams believed people were trying to kill him, the court erred in failing to permit him to present the doctor's testimony as to whether he "subjectively believed his life to be in danger that night." Even if we were persuaded by Williams's argument, it focuses on the second element in what is required to establish a case for an imperfect self-defense and ignores the first and third elements upon which the trial court's ruling was clearly based. Moreover, to the extent that Williams complains that the trial court erred by not permitting him to make the imperfect defense argument, a review of the transcript shows that Williams in fact presented his argument on this defense:

> [Defense Counsel:] Self-defense is not imperfect self-defense. Imperfect self-defense by definition – the question is whether he believes subjectively. And that's why it's not a perfect defense.
> [State:] That's what I'm exactly talking about. . . . Non-aggressor status precludes both perfect and imperfect. Oh, here's the Peterson case.
> [The Court:] Does it s[ay] in there in Peterson --
> [State:] It discusses all about it, how the victim is sitting in his Lazy Boy, basically, and she shoots him in the head. Let me go get the similar cases.
> [Defense Counsel:] State v. Faulkner is the similar case.
> [State:] No. The similar case is Cunningham.
> [Defense Counsel:] Faulkner is – everybody cites and talks about the '83 case. That's the one that explains how it works. And it's been accepted a long time in the State of Maryland.
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> * * *
>
> [The Court:] Okay. What do you want me to look at?
> [Defense Counsel:] I want you to look at the requirements for imperfect self-defense and see whether it requires . . . that the defendant offer evidence that he was not the aggressor in the case.
>
> * * *

[The Court:] [Instruction] 4:17.2(a).
[Defense Counsel:] Yes.
[State:] Your Honor, that was not my argument, that the defendant has to offer anything. I'm not trying to shift the burden here.
[Defense Counsel:] He does have the burden. There's no question about that, he does have the burden, but I don't think he has the burden to prove he's not the aggressor. That's what this seems to say.
[State:] No. There has to be evidence that he was not the aggressor. That's what I'm saying. There is no evidence here.
[Defense Counsel:] But if it's his burden, it's an affirmative defense. There's nothing wrong with that. It's his burden. It's not your burden to disprove it.
[The Court:] [Instruction] Show me what you want me to look at.
(Pause.)
[Defense Counsel:] It's right here (indicating).

* * *

[Defense Counsel:] Look, under no circumstances can you find somebody not guilty based on their perfect self-defense. So that's what this says. So this is just about perfect self-defense. That's what they're talking about.
[State:] All right. Let me finish reading it, sir.
[Defense Counsel:] Okay. And then you go on to say, if you do not find the act of complete self-defense, then you look at the other standard. And for that, you don't have to be proven to be the aggressor.
[State:] Okay.
[Defense Counsel:] That's it.
[State:] All right.

* * *

[Defense Counsel:] . . . Imperfect, he just has to believe it. And all it does is reduce murder to involuntary manslaughter. I do believe there's a discrepancy between that and these other opinions you show. There are other opinions that are in line with this, for sure, especially when you're talking about the testimony about psychiatrist/psychologist because they all involve the imperfect self-defense cases other than those ones you showed me.
[State:] I'm continuing to read the annotations, and in this annotation it says, "However, if the defendant fails to generate at least a prima facie case, imperfect self-defense, the defendant is not entitled to a voluntary manslaughter instruction.

And then it cites all these cases. One of the cases it cites to is Cunningham, finding no evidence that the defendant was the non-aggressor. That proves my point. He has to be a non-aggressor. That proves my point. He has to be a non-aggressor to generate either perfect or imperfect self-defense.

There's been no evidence that the victim did anything here. So he is not entitled to either perfect or imperfect self-defense. And Dr. Skoler's opinion as to what Mr. Williams was somehow thinking at the exact time this happened is irrelevant based on, number one, the rule says he can't opine to that, but also, that it is irrelevant based on the fact of the aggressor and non-aggressor status.

[Defense Counsel:] First, the rule doesn't say that. It says only when his mental health is an element of the offense, which it's not.

And second, based on counsel's analysis, if it doesn't say that, then why does – for perfect self-defense, why does it say you have to prove you're not the aggressor, but it doesn't say that when you go into imperfect self-defense, because some cases say that it doesn't. The instruction says what it says.

[State:] You're right, just some cases say it. Court of Appeals cases and Court of Special Appeals.

[Defense Counsel:] But not the jury instructions.

[State:] Who cares about the jury instructions? I'm looking at case law as recently as 2010 for the exact proposition. And even in the rule that [defense counsel] referred you to, the annotation proves my point. I don't know how much clearer it has to be.

[Defense Counsel:] Well, it would be clear if the jury instruction said what you say and the rule said what you say.

* * *

[The Court:] Okay. Based upon Cunningham and Peterson, we are going to sustain the objection.

[State:] Thank you, Your Honor.

[Defense Counsel:] So, Your Honor, just so it's clear, you're ruling that my client – I meant, there's no jury instruction.

[The Court:] Right. [The Defendant] [i]s not entitled to.

[Defense Counsel:] He can't raise the defense of imperfect self-defense; that's what you're saying?

[The Court:] I have no evidence that he was anything other than the aggressor.

[Defense Counsel:] Okay. That's a clear point of law that counsel has an appellate issue that he's not going to like down the road.

> [State:] Oh, I think I'm going to like it. So my objection, Your Honor, is that Dr. Skoler cannot opine as to what Mr. Williams was thinking.
> [Defense Counsel:] Okay. I got it. I got it.
> [The Court:] We sustained your objection.

We hold that Judge Davey correctly concluded that Williams failed to establish the factual predicates necessary to generate the defense of imperfect self-defense. First, there was no evidence that Williams was not the initial aggressor. Second, there was no evidence that Williams retreated or attempted to avoid the perceived danger posed by Walker. Accordingly, we hold that Judge Davey did not abuse his discretion when it rejected the defense of imperfect self-defense. *See Bruce v. State*, 351 Md. 387, 393 (1998) ("[T]he conduct of a criminal trial is committed to the sound discretion of the trial court, and the exercise of that discretion will not be disturbed on appeal absent a clear showing of abuse.").

JUDGMENTS AFFIRMED.
COSTS TO BE PAID BY APPELLANT.