Circuit Court for Anne Arundel County
Case No. C-02-CR-18-000107

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2321

September Term, 2018

SHIYEED SHAW

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: September 5, 2019

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

A jury in the Circuit Court for Anne Arundel County convicted Shiyeed Shaw, appellant, of first-degree assault, second-degree assault, and reckless endangerment. On appeal, Mr. Shaw challenges the sufficiency of the evidence to support the conviction for first-degree assault. We shall affirm.

BACKGROUND

On December 6, 2017, Randy Bradford went to drop off birthday gifts for his 13-year-old daughter at the home where his daughter lived with her mother, Lakeva Johnson. Mr. Bradford had been to the home previously on more than ten occasions. Mr. Bradford's girlfriend, Shantrice Bennett, who had driven Mr. Bradford to Ms. Johnson's house, waited in the car with the gifts while Mr. Bradford knocked on the door to see if anyone was home. Ms. Johnson's boyfriend, Mr. Shaw, answered the door. According to Mr. Bradford, he sat in the kitchen and talked with Mr. Shaw for "a minute or two[,]" then went to the car to retrieve the gifts. When Mr. Bradford returned to the house he realized that he needed to urinate, and he told Mr. Shaw that he was "gonna go use the bathroom real quick." Mr. Shaw said that the first-floor bathroom was occupied, so Mr. Bradford went upstairs to the bathroom that was located next to his daughter's bedroom.

As Mr. Bradford was "prepar[ing] [] to use the toilet[,]" Mr. Shaw "busted through the door" and "started fighting[,]" hitting Mr. Bradford in the chest. Mr. Bradford fought back and, in doing so, fell into the bathtub. Mr. Shaw then "started stabbing" Mr. Bradford. As soon as Mr. Bradford realized that he had been stabbed, he got up and ran out of the house. He told Ms. Bennett to call the police and then collapsed next to the car. He was able to get himself into the car and told Ms. Bennett to drive him to the hospital because

he had been stabbed. Mr. Bradford received treatment at the hospital for two stab wounds, one in the upper back and one in the left chest, as well as for a collapsed lung.

Mr. Shaw testified in the defense portion of the case. On the date in question, he was alone in the house, where he had been living for the preceding two or three months, and was "startled" when Mr. Bradford, whom he had never met, approached the house and peeked into the window. Mr. Shaw motioned for Mr. Bradford to come to the door, then opened the door and spoke to Mr. Bradford, who identified himself and explained that he had a gift to drop off for his daughter. Mr. Shaw told Mr. Bradford that no one was at home and offered to take the gift and make sure that Mr. Bradford's daughter received it. Mr. Bradford "declined" to give Mr. Shaw the gift and said he would leave it there himself. He then "pushed past" Mr. Shaw, into the house, and stood in the kitchen. Mr. Shaw asked Mr. Bradford to leave, but Mr. Bradford refused, stating that "he routinely comes over, and that he wanted to leave the present and that he had to take a pee pee."

Mr. Shaw didn't want Mr. Bradford in the house and told him to leave. Mr. Bradford refused to leave and said he wanted to use the downstairs bathroom. Mr. Shaw lied and told Mr. Bradford that the bathroom was not working. Mr. Bradford then started toward the stairs, pushed past Mr. Shaw, ran up the stairs and into the second-floor bathroom and closed the door. Mr. Shaw opened the bathroom door and again told Mr. Bradford to leave. Mr. Bradford punched Mr. Shaw in the face and the two men started to "tussle." Mr. Shaw "gained leverage" and "slammed" Mr. Bradford into the tub. Mr. Bradford stood up and "started reaching under his shirt[,]" and told Mr. Shaw he would shoot him if he didn't get off of him. Mr. Shaw thought that Mr. Bradford had a gun, "so [he] forced and really put

his hands on" Mr. Bradford.[1] Eventually, when Mr. Shaw "felt like [he] accomplished what [he] needed to to secure the safety of [his] home[,]" he grabbed Mr. Bradford by the shirt and "escorted" him out of the house. Mr. Shaw stated that Mr. Bradford did not appear to be injured. Mr. Shaw denied that he had a weapon or that he stabbed Mr. Bradford. He did not know how Mr. Bradford got the stab wounds.

On cross-examination, Mr. Shaw was questioned about a text message that he sent to the detective who was investigating the case in which Mr. Shaw said that, after he saw Mr. Bradford reach under his shirt, "everything just went black." Mr. Shaw explained that, by "went black[,]" he meant that he got angry and did whatever he needed to do to "secure his safety [ ] fighting-wise[.]"

Mr. Shaw moved for judgment of acquittal on the charge of first-degree assault on grounds that the State did not prove that the assault was not legally justified. The court denied the motion.

DISCUSSION

"The test of appellate review of evidentiary sufficiency 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.'" *Donati v. State*, 215 Md. App. 686, 718 (2014) (citation and some internal quotation marks omitted). "[T]he test is 'not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact

[1] Mr. Shaw stated that he did not see a gun in Mr. Bradford's possession.

finder.'" *Anderson v. State*, 227 Md. App. 329, 346 (2016) (quoting *Painter v. State*, 157 Md. App. 1, 11 (2004)) (emphasis in *Painter*). In reviewing the sufficiency of the evidence, "[w]e 'must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [we] would have chosen a different reasonable inference.'" *Donati*, 215 Md. App. at 718 (citation omitted).

To convict Mr. Shaw of first-degree assault, the State was required to prove that he intentionally caused or attempted to cause serious physical injury to Mr. Bradford. Md. Code (2002, 2012 Repl. Vol.), Criminal Law Article, § 3-202(a)(1). On that charge, the jury was instructed on the defense of imperfect self-defense. Specifically, the court instructed the jury that "[i]f [Mr. Shaw] actually believed that he was in immediate or imminent danger of death or serious bodily harm, even though a reasonable person would not have so believed," "the verdict should be guilty of a second degree assault rather than a first degree assault." *See Christian v. State*, 405 Md. 306, 346-47 (2008) ("first degree assault is subject to the mitigation defense[] of imperfect self-defense[.]")

Where, as in this case, the issue of self-defense has been fairly generated by the evidence, "the burden is upon the State of negating such self-defense beyond a reasonable doubt as a necessary element of its proof of guilt." *In re: Lavar D.*, 189 Md. App. 526, 578 (2009) (quoting *Jacobs v. State*, 32 Md. App. 509, 514 (1976)). Mr. Shaw asserts that his conviction for first-degree assault must be reversed because "[t]he evidence was insufficient for a reasonable juror to conclude that the State disproved imperfect self-defense beyond a reasonable doubt." Pointing to his trial testimony, he contends that there

was "ample evidence" that he "*actually believed* he was in imminent or immediate danger from Mr. Bradford."

As the State correctly notes, however, the jury was not obligated to believe Mr. Shaw's testimony. *See Nicholson v. State*, 239 Md. App. 228, 243 (2018) ("In its assessment of the credibility of witnesses, [a fact-finder is] entitled to accept – or reject – *all, part, or none* of the testimony of any witness, whether that testimony was or was not contradicted or corroborated by any other evidence.") *cert. denied*, 462 Md. 576 (2019). *See also Hennessy v. State*, 37 Md. 559, 561-62 (rejecting defendant's argument that he was entitled to judgment of acquittal because the State did not affirmatively negate his self-defense testimony, reasoning that the "factfinder may simply choose not to believe the facts as described" by the defendant), *cert. denied*, 281 Md. 738 (1977).

We agree with the State that the jury could have credited Mr. Bradford's version of events over that of Mr. Shaw and, in so doing, the jury could have reasonably concluded that Mr. Shaw was the aggressor and did not act in self-defense.[2] Accordingly, the court did not err in denying Mr. Shaw's motion for judgment of acquittal on the charge of first-degree assault.

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

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[2] *See State v. Smullen*, 380 Md. 233, 269 (2004) ("elements common to both perfect and imperfect self-defense . . . are that the defendant must have, in fact, believed himself in apparent imminent and immediate danger or death or serious bodily harm from his assailant and that the accused must not have been the aggressor or provoked the conflict.")