Circuit Court for Harford County
Case No. C-12-CR-20-000119

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 214

September Term, 2022

BENJAMIN THOMAS MURDY

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Friedman,

JJ.

Opinion by Nazarian, J.

Filed: May 16, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

** 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.

Benjamin Thomas Murdy was found guilty and criminally responsible in the Circuit Court for Harford County for the attempted first-degree murder of his neighbor and four police officers. On appeal, Mr. Murdy does not dispute that he fired over 200 rounds at these individuals, but he argues that there was insufficient evidence to reject his self-defense defense or to find that he intended to kill anyone. Mr. Murdy also challenges the trial court's determination that he was criminally responsible, a finding based on conflicting testimony from two forensic psychiatry experts, one of whom concluded that Mr. Murdy's conduct was the result of bipolar disorder, and one of whom concluded that Mr. Murdy's conduct was the result of cannabis and alcohol intoxication. We affirm.

I. BACKGROUND

Around 6:45 pm on January 21, 2020, the Harford County Sheriff's Department received a call that a dog had been shot at Mr. Murdy's residence. Four uniformed members of the Department responded to the call and arrived at around 7:30 pm. Because the initial call alleged the use of a firearm, the responding officers decided to approach the residence "from multiple angles" to encourage Mr. Murdy to "exit the residence safely."

Deputy Nathan Schnitzlein positioned himself in a tree line located across from Mr. Murdy's residence and next to the driveway of Mr. Murdy's neighbor, Robert Schell. As Deputy Schnitzlein got in position, Mr. Schell backed his truck down the driveway and began placing his trash cans near the road. Simultaneously, Deputy Schnitzlein overheard a telephone conversation that Mr. Murdy was having with his cousin, Jesse Bender, near a window on the second floor of the residence. Specifically, Deputy Schnitzlein testified that

he heard a male voice say, "I'm going to shoot the neighbor that is taking out his trash" as Mr. Murdy fired fifteen to twenty rounds in the direction of Mr. Schell and Deputy Schnitzlein. Two bullets ricocheted off the driveway and struck Mr. Schell as he tried to take cover near the front of his vehicle. Deputy Schnitzlein knew that "bullets were close" to him because he heard them "popping" past his head and felt dirt kick up into his face.

Before the shots started, Corporal Brian Wyzga was driving his patrol car down the street, followed on foot by Deputies Nicholas Lastner and Jason Flemmens. When the shooting began, Corporal Wyzga saw bullets hitting Mr. Schell's truck and the truck's "glass breaking." Corporal Wyzga then illuminated Mr. Murdy's residence with the headlights of his patrol car "to see where the shots were coming" from and started yelling to Mr. Schell and communicating with the other officers over his radio. Once Corporal Wyzga revealed his position, it seemed "like the shots were coming directly at [him]" because they were "coming . . . over top of [his] head." Deputies Lastner and Flemmens similarly "hear[d] bullets flying past [them]." Mr. Murdy continued shooting in fifteen- to twenty-round bursts with intermediate pauses, firing about 200 rounds in total before exiting his residence and surrendering around 8:45 pm.

Before Mr. Murdy surrendered, the officers received an update that Mr. Murdy's conduct could be an attempt to commit suicide. This update came from Mr. Murdy's live-in girlfriend, Jennifer Gardner, and his sister, Coren Dunphy. Both women became concerned that Mr. Murdy would "take his own life or [try] suicide by cop" after Mr. Murdy fought with Ms. Gardner around 6:00 pm that night and told her that he hoped she would

"enjoy cleaning [his] brains off the back porch." Mr. Murdy allegedly also spoke about "killing himself" while on the phone with Mr. Bender.

The State brought twenty-nine criminal charges against Mr. Murdy; on appeal, he challenges only five, the attempted first-degree murder of Mr. Schell and the four responding officers. Mr. Murdy waived his right to a jury trial and submitted to a bench trial. Mr. Murdy also filed a motion to be held not criminally responsible. On agreement by both parties, the proceedings were not bifurcated. The trial court found Mr. Murdy guilty of all five counts of first-degree attempted murder, then found him criminally responsible. Mr. Murdy timely appealed both these findings. Additional relevant factual background is included in our discussion below.

II. DISCUSSION

Mr. Murdy presents two questions on appeal:[1] *first*, whether the evidence was legally sufficient to support his convictions for attempted murder; and *second*, whether the

[1] In his brief, Mr. Murdy phrased the Questions Presented as follows:

> 1. Was the evidence legally sufficient to support the attempted murder convictions?
> 2. Did the trial court err in finding [Mr. Murdy] criminally responsible?

In its brief, the State phrased the Questions Presented as follows:

> 1. Was the evidence that [Mr.] Murdy fired hundreds of rounds in the direction of his neighbors and four police officers over a period of more than an hour, together with other evidence, sufficient to support his convictions of attempted murder?
> 2. Did the trial court clearly err in finding that [Mr.] Murdy was criminally responsible?

trial court erred in finding him criminally responsible. For the reasons that follow, we affirm.

A. The Evidence Was Legally Sufficient To Support Mr. Murdy's Attempted Murder Convictions.

The trial court, with the judge sitting as fact-finder, determined that "there [was] ample evidence" to support Mr. Murdy's five convictions for attempted first-degree murder. Mr. Murdy contests this verdict for two reasons. *First*, he claims the State failed to prove that he intended to kill Mr. Schell and the four responding officers because (1) out of 200 rounds fired, only Mr. Schell was struck by ricocheting bullets, and only indirectly, and (2) during the shooting, Mr. Murdy expressed a desire to commit "suicide by cop." *Second*, he argues that the State "failed to disprove" that he acted in imperfect self-defense when he shot at the responding officers.

The State responds that the possibility that Mr. Murdy intended to commit "suicide by cop" does not negate the legal sufficiency of the evidence of his intent to kill because the trial court could reasonably have determined that Mr. Murdy "harbored both intentions simultaneously." The State also claims that Mr. Murdy's imperfect self-defense argument fails because the fact-finder is not "required to accept a particular factual defense as a matter of law." We agree with the State.

When determining whether sufficient evidence exists to sustain a criminal conviction, this Court doesn't "'ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.'" *State v. Albrecht*, 336 Md. 475, 479 (1994) (*quoting Jackson v. Virginia*, 443 U.S. 307, 318–19 (1986)); *see also id.* at 478 ("[I]t is not

the function or duty of the appellate court to undertake a review of the record that would amount to . . . a retrial of the case."). Rather, we ask "'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.'" *Anderson v. State*, 227 Md. App. 329, 346 (2016) (*quoting Jackson*, 443 U.S. at 319). This approach affords the proper level of deference to the fact-finder's "'opportunity to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence[.]'" *Benton v. State*, 224 Md. App. 612, 629 (2015) (*quoting Pinkney v. State*, 151 Md. App. 311, 329 (2003)). Circumstantial evidence alone can support a valid conviction so long as that evidence "support[s] rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused." *Id.* at 630 (citations omitted).

1. Mr. Murdy's conduct satisfied every element of attempted first-degree murder.

"The crime of attempt consists of a specific intent to commit a particular offense coupled with some overt act in furtherance of the intent that goes beyond mere preparation." *State v. Earp*, 319 Md. 156, 162 (1990) (*citing Bruce v. State*, 317 Md. 642, 646 (1989)). To prove that a defendant is guilty of attempted first-degree murder, then, the State must present evidence from which the fact-finder can infer beyond a reasonable doubt that (1) the defendant possessed the specific intent to commit first-degree murder, and (2) the defendant committed an overt act in furtherance of that intent. *Anderson*, 227 Md. App. at 347. An individual commits first-degree murder when the killing is willful, deliberate, and premeditated. Md. Code (2002, 2021 Repl. Vol.), § 2-201(a)(1) of the

Criminal Law Article ("CR"). The Supreme Court of Maryland[2] defined each of these terms in *Tichnell v. State*:

> For a killing to be "wil[l]ful" there must be a specific purpose and intent to kill; to be "deliberate" there must be a full and conscious knowledge of the purpose to kill; and to be "premeditated" the design to kill must have preceded the killing by an appreciable length of time, that is, time enough to be deliberate.

287 Md. 695, 717 (1980).

Because intent is a subjective concept, the State may prove willfulness, deliberation, and premeditation through circumstantial evidence. *Earp*, 319 Md. at 167; *see also Davis v. State*, 204 Md. 44, 51 (1954) ("Since intent is subjective and, without the cooperation of the accused, cannot be directly and objectively proven, its presence . . . may be inferred from all the facts and circumstances of the occurrence."). For this reason, "when a defendant's actions so clearly involve actions that are likely to bring about death, they speak for themselves with regard to willfulness." *Anderson*, 227 Md. App. at 348 (*citing Pinkney*, 151 Md. App. at 333). Similarly, "'the firing of two or more shots separated by an interval of time'" may be evidence of both deliberation and premeditation. *Id.* (*quoting Tichnell*, 287 Md. at 701). These two elements of first-degree murder are often "treated as

[2] At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland . . . .").

a single endeavor," *Pinkney*, 151 Md. App. at 335, because any "killing that results from a choice made as the consequence of thought . . . is characterized as deliberate and premeditated." *State v. Raines*, 326 Md. 582, 590 (1992) (*citing Tichnell*, 287 Md. at 718).

At trial, the State presented statements Mr. Murdy made during the shooting[3] and a wealth of circumstantial evidence from which a rational fact-finder could infer that Mr. Murdy harbored a willful, deliberate, and premeditated intent to kill Mr. Schell and the responding officers. For example, Mr. Murdy stated that he was "going to kill [his] neighbor" during Mr. Murdy's phone conversation with Mr. Bender. A home security camera located on the back door of Mr. Murdy's residence recorded a similar statement, which Deputy Schnitzlein also overheard.[4] Shortly afterwards, Mr. Bender heard Mr. Murdy "blasting away" and Mr. Schell was hit by two "ricochet[ing]" bullets. After he was hit, Mr. Schell took cover in front of his truck and testified that he heard "15, 20 rounds go off, and then . . . quiet for a little bit, and then . . . more rounds going off."

Mr. Murdy also spoke about killing the responding officers during his conversation with Mr. Bender: he said, "The cops rolled up. . . . I just killed some cops." As he did with Mr. Schell, Mr. Murdy appeared to act on these statements. Deputy Schnitzlein testified

[3] Mr. Murdy did not testify at trial.

[4] At trial, Deputy Schnitzlein testified that he heard a male voice in Mr. Murdy's residence say, "[A]t this point, I'm going to shoot." The voice then uttered an expletive that Deputy Schnitzlein could not remember and said, "I'm going to shoot the neighbor that is taking out his trash." The State then played the home security camera video for Deputy Schnitzlein, who confirmed that a male voice can be heard saying, "I'm about to shoot the mother****** getting his mail across the street."

that he heard bullets "popping" past his head and saw them hitting the dirt in front of his feet. Corporal Wyzga testified that "shots started coming in [his] direction" as soon as he revealed his position by illuminating Mr. Murdy's residence with the headlights on his patrol car and communicating over the car's radio. When Corporal Wyzga took cover behind his vehicle, he "could tell that [bullets] were coming at [him] over top of [his] head." Deputies Lastner and Flemmens also "hear[d] bullets flying past [their] heads[,] . . . going over top of [them] and around [them]." Corporal Wyzga estimated that Mr. Murdy fired 200 rounds before eventually turning himself in.

The court readily could have inferred from Mr. Murdy's statements, the proximity of the bullets to Mr. Schell and the responding officers, and the sheer number of bullets fired in their direction that Mr. Murdy acted willfully because his actions were likely to bring about death.[5] The fact-finder also could have inferred from the frequent pauses

[5] The theory of concurrent intent further supports the conclusion that Mr. Murdy intended to kill Deputies Schnitzlein, Lastner, and Flemmens, even though none of them were hit. Under this theory, "'[w]here the means employed to commit the crime against a primary victim create a zone of harm around that victim, the factfinder can reasonably infer that the defendant intended that harm to all who are in the anticipated zone.'" *Harrison v. State*, 382 Md. 477, 492 (2004) (*quoting Ford v. State*, 330 Md. 682, 717 (1993)); *see also Harvey v. State*, 111 Md. App. 401, 434 (1996) (applying theory of concurrent intent). Here, the damage Mr. Murdy inflicted on the vehicles of Mr. Schell and Corporal Wyzga, including broken glass and bullet holes, supported the conclusion that Mr. Murdy created or sought to create a kill zone around these vehicles. *See Harrison*, 382 Md. at 495 ("[C]ourts have permitted an inference that the defendant created a kill zone when a defendant . . . fired multiple bullets at an intended target."). Deputy Schnitzlein's position within the tree line next to Mr. Schell's vehicle and the position of Deputies Lastner and Flemmens behind Corporal Wyzga's patrol car indicate further that each deputy was located within one of these zones when the shooting started.

between rounds that Mr. Murdy acted with deliberation and premeditation. And finally, the fact-finder reasonably could have determined that aiming a gun and shooting at Mr. Schell and the responding officers constituted an overt act in furtherance of Mr. Murdy's willful, deliberate, and premeditated intent to kill these individuals. *See Anderson*, 227 Md. App. at 348–39 (jury could conclude an individual satisfied the act requirement for attempted first-degree murder when he stood by the passenger door of a vehicle, pointed a gun at another individual sitting in the driver's seat, and fired "multiple shots" toward the individual). We agree with the State that the trial court could have concluded beyond a reasonable doubt that Mr. Murdy's conduct on January 21, 2020 satisfied every element of attempted first-degree murder.

Moreover, evidence suggesting that Mr. Murdy may also have been suicidal at the time of the shooting doesn't negate the legal sufficiency of this conclusion because "the availability of other permitted inferences does not in any way negate or compromise the . . . legal sufficiency of the permitted inference of the intent to kill." *Chisum v. State*, 227 Md. App. 118, 136 (2016). As we explained in *Chisum*, directing a deadly weapon toward a vital part of the human body may indicate an intent to kill or an "intent to disfigure a rival before the beauty pageant, . . . disable the opposing quarterback before the championship game, . . . [or] to hospitalize a delegate before a key legislative vote," and the fact-finder may draw one or none of these inferences without calling into question the legal sufficiency of the inference ultimately drawn. *Id.* In other words, the two intentions weren't mutually exclusive, and the fact-finder could well have found that he intended both

outcomes at the same time.

Indeed, Mr. Murdy presented evidence at trial from which the fact-finder could infer that he shot at Mr. Schell and the responding officers with the intent to commit "suicide by cop."[6] That evidence included testimony from Ms. Dunphy and Ms. Gardner that they thought Mr. Murdy "was going to take his own life or [try] suicide by cop" because he had told Ms. Gardner earlier that night that she would have to "clean[] [his] brains off the back porch," and testimony from Mr. Bender that Mr. Murdy spoke about "killing himself" during their phone conversation. Although that evidence permitted the inference that Mr. Murdy possessed the intent to commit "suicide by cop," the trial court drew the simultaneously supportable inference that Mr. Murdy possessed the intent to kill. We will not disturb this finding on appeal because the fact-finder "possesses the ability to 'choose among differing inferences that might possibly be made from a factual situation' and [an appellate court] must give deference to all reasonable inferences the fact-finder draws." *State v. Suddith*, 379 Md. 425, 430 (2004) (*quoting State v. Smith*, 374 Md. 527, 534

[6] Law enforcement uses this term to describe situations where "'an individual engages in behavior which poses an apparent risk of serious injury or death, with the intent to precipitate the use of deadly force by law enforcement personnel towards that individual.'" *Estate of Blair v. Austin*, 469 Md. 1, 56 n.7 (2020) (Getty, J., dissenting) (*quoting* Kris Mohandie & J. Reid Meloy, *Clinical and Forensic Indicators of "Suicide by Cop,"* 45 J. Forensic Sci. 384, 384 (2000)).

(2003)). Viewed as a whole, the evidence presented at trial was sufficient to support all five of Mr. Murdy's attempted murder convictions.

2. The fact-finder did not need to accept Mr. Murdy's imperfect self-defense argument.

At trial, Mr. Murdy presented expert testimony opining that he was "justified in defending himself" by shooting at the responding officers because he had an "actual but unfounded fear that the police were coming to his house to kill him." The trial court rejected this imperfect self-defense argument because it found that Mr. Murdy did not express concern for his personal safety during the shooting and that Mr. Murdy "acted as the initiator of the violent interaction with the police."

Mr. Murdy contends that this conclusion "was clearly erroneous" because he made statements to his father and sister "immediately prior to the shootings" and to Mr. Bender during the shooting that "revealed his actual fear . . . that the police were coming to kill him." Furthermore, according to Mr. Murdy, "[t]he evidence showed" that he only began firing at the police after they "approached and surrounded his home in marked vehicles an on foot, in uniform, and with weapons drawn."

Maryland recognizes both perfect and imperfect self-defense. *Porter v. State*, 455 Md. 220, 234 (2017). The former results in acquittal "'if credited by the trier of fact'" and requires a defendant to prove that (1) he had an objectively reasonable basis to believe he was in "imminent or immediate danger of death or serious bodily harm," (2) he "actually" believed he was in this type of danger, (3) he did not provoke the conflict, and (4) he used no more force against his attacker "than the exigency demanded." *Id.* at 234–35 (*quoting*

State v. Smullen, 380 Md. 233, 251 (2004)). When defending himself outside of his home, a defendant also "has a duty 'to retreat or avoid danger if such means were within his power and consistent with his safety.'" *Id.* at 235 (*quoting Burch v. State*, 346 Md. 253, 283 (1997)).

By contrast, imperfect self-defense "does not completely exonerate the defendant, but mitigates murder to voluntary manslaughter." *State v. Faulkner*, 301 Md. 482, 486 (1984). Imperfect self-defense differs from perfect self-defense in that the defendant need only prove that he believed subjectively that he was in imminent or immediate danger and that he applied reasonable force against his attacker; he need not prove that his belief in the danger or in the degree of force necessary to defend himself *actually* was reasonable. *Porter*, 455 Md. at 235. Additionally, "a defendant must have only 'subjectively believe[d] that retreat was not safe'—that belief need not be reasonable" either. *Id.* (*quoting Burch*, 346 Md. at 284). As with perfect self-defense, the defendant's claim of imperfect self-defense only mitigates a murder charge "'if credited by the trier of fact.'" *Id.* at 235–36 (*quoting Smullen*, 380 Md. at 251).

Here, Mr. Murdy's father, Ms. Dunphy, and Mr. Bender all testified that Mr. Murdy feared the police were going to kill him in the days and hours leading up to the shooting. But the trial court as fact-finder "was free to believe . . . [these] witnesses or not, and if [it] didn't, [Mr. Murdy's] imperfect self-defense claim necessarily would fail." *Prince v. State*, 255 Md. App. 640, 658–59 (2022). And because the evidence on this record was sufficient to support Mr. Murdy's attempted murder convictions, it also was sufficient to support the

trial court's decision to reject Mr. Murdy's imperfect self-defense argument.

B. The Trial Court Did Not Err In Finding Mr. Murdy Criminally Responsible.

After noting that each party's expert had presented some "compelling" testimony and other "concern[ing]" testimony, the trial court found that Mr. Murdy failed to meet his burden "to convince the [c]ourt" that he was not criminally responsible ("NCR") for his conduct during the shooting. Mr. Murdy argues that this conclusion "was against the weight of the evidence and an incorrect application of the law," and he offers two reasons. *First*, he claims the court credited Dr. Hanson's opinion that Mr. Murdy's conduct resulted from cannabis and alcohol intoxication erroneously over Dr. Blumberg's opinion that Mr. Murdy's conduct resulted from bipolar disorder. *Second*, he argues that the court "failed to properly consider whether" Mr. Murdy met the statutory requirements for an NCR defense "*at the time of* [*his*] *conduct*." The State responds that Mr. Murdy's arguments essentially constitute "claims that the trial court erred in being unpersuaded by his expert's testimony." Once again, we agree with the State.

We review determinations of criminal responsibility for clear error, "'giv[ing] due regard to the opportunity of the trial court to judge the credibility of the witnesses.'" *Buck v. State*, 181 Md. App. 585, 647 (2008) (*quoting Raines*, 326 Md. at 589); Md. Rule 8-131(c). The trial court's determination "'is not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion.'" *In re M.H.*, 252 Md. App. 29, 45 (2021) (*quoting Lemley v. Lemley*, 109 Md. App. 620, 628 (1996)).

An NCR plea is an affirmative defense, and Mr. Murdy carried the burden of

production and persuasion. *Treece v. State*, 313 Md. 665, 684–85 (1988). To prevail, he needed to demonstrate by a preponderance of the evidence that, "at the time of [his] conduct," he "lack[ed] substantial capacity to: (1) appreciate the criminality of that conduct; or (2) conform that conduct to the requirements of law." Md. Code (2001, 2018 Repl. Vol.), § 3-109(a) of the Criminal Procedure Article ("CP"). He must lack this capacity "because of a mental disorder," *id.*, which includes any "behavioral or emotional illness that results from a psychiatric or neurological disorder," CP § 3-101(g)(1), but "does not include an abnormality that is manifested only by repeated criminal or otherwise antisocial conduct." CP § 3-109(b).

The NCR phase of Mr. Murdy's trial amounted to a "battle" between two experts, each of whom reached drastically different conclusions about Mr. Murdy's mental health status at the time of the shooting. Mr. Murdy's expert, Dr. Neil Blumberg, attributed Mr. Murdy's conduct to bipolar disorder. According to Dr. Blumberg, Mr. Murdy's treatment with Zoloft, the wrong medication for bipolar disorder, and "a great deal of stress" from work and familial problems combined to create "a manic and psychotic condition at the time of the actual offense." Dr. Blumberg excluded cannabis and alcohol intoxication as "significant contributor[s]" to Mr. Murdy's conduct at the time of the shooting because, in his opinion, intoxication with these substances would not cause Mr. Murdy's alleged delusions of speaking to deceased relatives and believing that his neighbors and the family dog were "out to get him." Taking all this into account, Dr. Blumberg concluded "to a reasonable degree of medical certainty" that Mr. Murdy lacked substantial capacity to

appreciate the criminality of his conduct or to conform his conduct to the requirements of law at the time of the shooting.

By contrast, the State's expert, Dr. Annette Hanson, attributed Mr. Murdy's conduct at the time of the shooting to cannabis and alcohol intoxication.[7] Dr. Hanson opined that any effects from Zoloft would have dissipated in the two days that passed between the time Mr. Murdy claimed he stopped taking the drug and the shooting. According to Dr. Hanson, Mr. Murdy's mental health status was altered for just 19 hours without treatment, a timeline that was more "consistent with intoxication . . . than underlying mental illness." Dr. Hanson excluded bipolar disorder as a contributor to Mr. Murdy's conduct at the time of the shooting because she claimed that bipolar disorder is difficult to diagnose accurately when an individual is using drugs or alcohol actively. After considering all of this, Dr. Hanson concluded "to a reasonable degree of medical certainty" that Mr. Murdy did not have a mental disorder at the time of the shooting that would qualify him as NCR.

The trial court began its opinion by explaining its role in determining whether a defendant is criminally responsible:

> One point on which all parties can agree is that Mr. Murdy suffers from some form of mental illness. This, however, is not

[7] Dr. Hanson also diagnosed Mr. Murdy with narcissistic personality disorder, adjustment disorder, alcohol use disorder, cannabis use disorder, and tobacco use disorder at the time of the shooting. The first two are personality disorders that "[are] not . . . mental disorder[s] for the purposes of [NCR]." Because Mr. Murdy hasn't argued that these substance use disorders rendered him permanently insane, we do not address this possibility. *See Parker v. State*, 7 Md. App. 167, 179 (1969) (explaining the difference between the two types of insanity that can result from the voluntary consumption of intoxicating substances: temporary insanity, which "does not excuse responsibility for a criminal act," and permanent insanity, which does).

> the test which is to be applied in evaluating an NCR defense. One can suffer from severe mental illness but still be able to appreciate the criminality of his conduct and conform his conduct to the requirements of law. Therefore, this Court need not arrive at a conclusion as to which diagnosis is properly applicable to Mr. Murdy. The Court must instead evaluate the respective opinions and the underlying facts in support of those opinions . . . .

The court went on to contrast Dr. Blumberg's testimony about the potentially adverse effects of Zoloft on Mr. Murdy's mental health status with the evidence that "Mr. Murdy was able to function at a considerably high level for many days prior to the incident, including the day of." The court then reviewed each expert's opinion on the possibility that Mr. Murdy was intoxicated at the time of the shooting, noting that, apart from the behavior that caused Harford County Detention Center to place him on suicide observation, Mr. Murdy did not demonstrate any symptoms of bipolar disorder after his arrest. Finally, the court summarized the "numerous statements" that reflected Mr. Murdy's intent at the time of the shooting. These included texts from Mr. Murdy that he "was getting ready to face off" with the responding officers, that there would be a "show" when the officers arrived, that he "was going to jail that night," and that he "was about to shoot" Mr. Schell. Additionally, Mr. Murdy "confirmed in his Harford County Sheriff's Department statement that he intended to kill people."

When rendering its decision, the trial court found each expert "eminently qualified and . . . sincere in their conclusions," and that Mr. Murdy had failed to meet his burden of persuading the court by a preponderance of the evidence that he was not criminally responsible. For this reason, the court declined to find that "at the time of the [shooting],

due to a mental disorder or defect, . . . [Mr. Murdy] lacked substantial capacity to appreciate the criminality of his conduct and conform his conduct to the requirements of the law."

The record in this case reveals that the trial court understood and applied the standard for criminal responsibility correctly. Although the court considered certain evidence from before and after the shooting, the court's discussion of Mr. Murdy's text messages and statements that he made during the shooting demonstrate that the court focused on Mr. Murdy's mental health status at the time of the offense, as CP § 3-109 requires. *See Buck*, 181 Md. App. at 648. Ultimately, the court chose to credit the opinion of Dr. Hanson over that of Dr. Blumberg. On this record, and given our deferential standard of review, we cannot say that this choice was clearly erroneous. *See id.* at 648–49 (trial court's determination of criminal responsibility was not clearly erroneous because the court's "thorough recitation of the evidence . . . demonstrate[d] that the court considered all of that evidence and credited the testimony of [the State's expert] over that of [the defendant's expert]").

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. APPELLANT TO PAY COSTS.