Circuit Court for Baltimore City
Case No. 120345006

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 777

September Term, 2022

DAVID HOWARD COCHRAN

v.

STATE OF MARYLAND

Wells, C.J.,
Friedman,
Shaw,

JJ.

Opinion by Wells, C.J.

Filed: May 8, 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 case arises out of a confrontation during which appellant, David Howard Cochran, ultimately drew his firearm and pointed it toward a group of young people who had gathered on a street in his Baltimore neighborhood. After a bench trial in the Circuit Court for Baltimore City, the Honorable Cynthia Jones found Cochran acted in imperfect self-defense and convicted him of second-degree assault. The judge also convicted Cochran of using a firearm in a crime of violence. At sentencing, the court struck its guilty finding for second-degree assault and entered a probation before judgment. But the judge imposed the mandatory minimum of five years without the possibility of parole for the use of a firearm in a crime of violence. Cochran timely appealed and submits the following issue, rephrased for clarity[1], for our review: Was the circuit court's finding that Cochran acted in imperfect self-defense supported by substantial evidence?

For the reasons that follow, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND[2]

On September 25, 2020 at around 7 p.m., Cochran was returning home from a day of work at his dog-training business. When he first pulled onto the 1700 block of Hollins

[1] Cochran's question presented, verbatim, reads:

> Under Maryland law, a person may use force in self-defense to repel a reasonable belief of unprovoked immediate harm. Mr. Cochran had an inimical verbal exchange with an unfamiliar group of young people, who were creating a disturbance in his neighborhood. Minutes later, one of the antagonists aggressively approached Mr. Cochran and appeared to reach for a gun. Mr. Cochran drew his own firearm in response. Did the trial court err by finding Mr. Cochran's actions unreasonable?

[2] The following details are taken entirely from the trial transcript, and primarily, witness testimony. Because certain key details appear to have been in dispute, we have indicated in many places whose testimony provided the account of events that follows.

Street, where he has resided for fifteen years, Cochran testified that he noticed "several individuals that [he] had never seen before standing at the top of the block." He double parked his work van in front of his home so that he could unload it. He first took his puppy, who had been with him in the van, across the street to a grassy area at an elementary school. While he was there, he noticed "a crowd of people moving up and down the block, screaming and yelling." This "crowd" would later be identified as eight individuals, ranging from eleven to eighteen years old. One of the individuals, Asia, testified that the group was coming from the nearby Steuart Hill Park and was continuing the game of tag they had been playing as they headed home. Asia testified that the group was making a lot of noise.

Cochran saw two police officers parked in the parking lot at the school, so he walked over to inform them of "the disturbance." Officer Chase Evans of the Baltimore Police Department was one of the officers. He testified that Cochran "basically said that there were kids in the area that were being loud and were, I want to say, harassing, or something along those lines of messing with him." Officer Evans testified that he thought Cochran "described it as a group of children, individuals[.]"Cochran made no mention of any weapons or threats being made toward him. Officer Evans testified that at that time, he and the other officer had also received a 911 call stating that a group of children were harassing a man unloading a van, which they believed to be the same incident Cochran was reporting. The two officers then drove around the block, reaching the 1700 block of Hollins Street, and they did not see anyone.

In the meantime, Cochran returned to his double-parked van and noticed "there was

a large crowd of people swarming around, screaming and yelling." Cochran dropped the puppy off at his house and began unloading his van, making multiple trips between the van and his house over the course of 15 to 20 minutes. Cochran testified that he "kept [his] head on a swivel because it's a dangerous area." Cochran came out of his house one more time and went around to the driver's side of his van so that he could move it, but upon realizing he only had his house keys with him, he got out of the van. He also mentioned that he had left his cell phone in his house because it ran out of power.

By this time, 7:30 p.m., the streetlights had come on. According to Cochran, the area from the curb to his house, including the sidewalk, was "very dark and shadowy." Cochran testified that "the screaming and yelling was very, very loud. I could see people moving down the even numbered side of Hollins Street on the sidewalk." He testified that at that moment he "felt the crowd was surrounding me, swarming on me," to him, it seemed like the yelling was now directed at him. Cochran then yelled something like "Get the fuck out of here. Go home. Nobody wants to hear this."[3]

Three of the State's witnesses from the group of individuals—China, Asian[4], and Antonio—also recounted Cochran yelling this or something similar and stressed that

[3] The State's cross-examination of Cochran also included the following:

[PROSECUTOR]: Why did you tell the youth that "The whole neighborhood doesn't need to hear your Goddamn mouth?"

COCHRAN: It's the truth. They were causing a disturbance. And also, at that time when I yelled, I was feeling threatened. You can't exactly control what comes out sometimes.

[4] Note: There are two different sisters: Asia and Asian

Cochran initiated the confrontation; they had not been yelling at him prior. After Cochran yelled at them, however, some of the children started yelling back and cussing at him. Asia testified that one of them yelled, "Get your dumbass back in the van." Asian and China each testified that none of the kids got very close to Cochran, tried to hurt him or threaten him, nor did they have any weapons on them. Asian testified that the only thing anyone had in their pockets was a cell phone.

Cochran testified, however, that among the group's responses to his yelling, Antonio yelled "Get back in the van or I'm going to knock you out." Antonio testified that he did not say this, and that he did not have a knife, gun, or anything else on him that could hurt someone. Cochran testified that he could not see the individuals or tell that they were children, nor could he see what they might have had on them, since it was dark and they were moving quickly. Cochran testified that he felt threatened because he had nowhere to go; he didn't believe he had his vehicle keys so he could not leave in his van, and he did not want to go back in his house for fear that the group would follow him and put his wife in danger.

The group started to move away although still yelling, but then, according to Cochran, "another man . . . stepped out of the shadows with his hand in his pocket, in the course of the screaming and yelling. . . . He was on the sidewalk facing me. And he said, 'I can take him out from here, yo.'" Cochran was not sure if the individual—later identified to be Daquan, the only 18-year-old in the group—had a gun, but felt the person "was standing there posturing like he did, with his hand in his pocket."

Cochran testified that Daquan was in the middle of the street, and "came charging

towards" him.[5] Cochran said that he could not see Daquan's face from where he was standing because Daquan was in the shadows behind some cars, but he thought that Daquan "had something in his right hand. Again it was too dark to see. He had his hand up. And [Daquan] moved his left hand into his pocket, like he was reaching for something." Cochran put his left hand out and yelled "Stop, get back," and Daquan stopped and maintained their roughly 15 feet of distance. Daquan turned around and started to walk away with the rest of the group, but then abruptly stopped and turned back around toward Cochran while drawing his hand out of his pocket. Cochran testified that from his firearm training classes[6], his "immediate thought was 'gun,'" and so he drew a handgun from his waistband and pointed it at Daquan.

Antonio, who was also present, testified to a slightly different version of events. He testified that Cochran said "I got something" before going to his van, grabbing the gun, and then pointing it at Daquan.[7]

As soon as Cochran drew his firearm and pointed it at either Daquan, Antonio or

[5] Others described Daquan's movements differently. China described Daquan as "hopping." The court asked a witness, referring to Daquan, "Who is that *dancing* up to the van?" (Emphasis added).

[6] Cochran testified that he is a retired military veteran and holds a concealed-carry permit, for which he has taken all the required Maryland courses.

[7] Although not evidence, the State described a different sequence of events when responding to Cochran's motion for judgment of acquittal: the State claimed that the video evidence demonstrated that at the time Cochran drew his firearm, "no one was charging him," and Daquan was "already walking away" and only saw the drawn firearm upon turning back around.

the group[8], Daquan turned and ran, as did the remaining children. Cochran said he immediately re-holstered his firearm. Cochran got in his vehicle, realized he did have his van keys in his pocket, parked the van, and then went inside his home and called 911 to report what had happened.

Officer Evans responded to the scene. He later testified that he responded because of a 911 call from a mother stating that a man had pointed a gun at her children. Officer Evans testified that when he arrived on the scene, Cochran was sitting on his front step, with a "very calm demeanor." Cochran recounted the incident to Officer Evans, stating that the kids were loud and approached him in a threatening manner, and when they did not listen to his verbal commands for them to stop, he pulled his gun out of his waistband and pointed it at either the one individual he thought had something in his hand, or the group. Cochran's firearm was loaded and operable when Officer Evans disarmed him; there were rounds in the magazine and a live round in the chamber. No other weapons were found or later admitted at trial.

At the close of his bench trial, the defense argued that Cochran had drawn his firearm in self-defense. The State countered that Cochran did not act in self-defense because: 1) he was the initial aggressor, 2) he failed to retreat, 3) his belief that Daquan had a gun was mere speculation and unreasonable, and 4) drawing his firearm deployed more force than reasonably necessary. The court concluded that although Cochran

[8] The witnesses gave competing testimony as to whom Cochran pointed his firearm: Asian and China each testified that Cochran pointed his firearm at the crowd, Antonio testified that Cochran pointed his firearm at Antonio, and Cochran testified that he pointed his firearm only at Daquan.

subjectively believed his actions were necessary, they were not objectively reasonable. As a result, Cochran had only established imperfect self-defense. Accordingly, the court convicted Cochran of second-degree assault, and use of a firearm in the commission of a violent crime. At sentencing, the court struck its guilty finding for second-degree assault and entered a probation before judgment. For the use of a firearm in the commission of a violent crime, the court sentenced Cochran to the mandatory minimum of five years without probation. Cochran timely appealed.

STANDARD OF REVIEW

The applicability of self-defense to mitigate a crime is a finding of fact. *Dykes v. State*, 319 Md. 206, 222 (1990). "The trial court's factual determinations are subject to clear error review." *Peterson v. Evapco, Inc.*, 238 Md. App. 1, 52 (2018). "Thus, our scope of review is narrow and our function is not to substitute our judgment for that of the fact finder, even if we might have reached a different result. Instead, we must decide only whether there was sufficient evidence to support the trial court's findings." *Klupt v. Krongard*, 126 Md. App. 179, 193 (1999) (internal quotation and citation omitted).

"[A]ppellate review of the sufficiency of the evidence . . . is precisely the same in a jury trial and in a bench trial alike." *Chisum v. State*, 227 Md. App. 118, 129 (2016). The question before the appellate court 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." *Cain v. State*, 162 Md. App. 366, 378 (2005) (quoting *State v. Smith*, 374 Md. 527, 533 (2003)). In the case of an affirmative defense, such as self-defense, the defendant has the initial burden of demonstrating a prima

facie case. *Dykes v. State*, 319 Md. 206, 217 (1990). Once he has done that, "the baton is passed to the State. It must shoulder the burden of proving beyond a reasonable doubt to the satisfaction of the [fact finder] that the defendant did not [act] in self-defense." *Id.* So, the inquiry on review of Cochran's case is whether any rational trier of fact could have found any element of self-defense to be lacking beyond a reasonable doubt.

Importantly, "we give due regard to the fact finder's finding of facts, its resolution of conflicting evidence, and significantly, its opportunity to observe and assess the credibility of witnesses." *Id.* (quoting *Moye v. State*, 379 Md. 2, 12 (2002)) (internal quotations and citation omitted).

DISCUSSION

A. Parties' Contentions

Cochran says the court erred in finding that his belief that he needed to use self-defense and his belief that his actions were necessary to meet the danger were not objectively reasonable.[9] Cochran points to a list of factors to support that his perception of imminent harm was reasonable: that Daquan had been aggressive and verbally hostile, appeared to be charging at Cochran, appeared to have a gun based on his hand placement

[9] Cochran also includes arguments that he subjectively believed he was in imminent danger, he was not the aggressor in the conflict, and could not safely retreat. We do not address these arguments because the circuit court did not—at least, expressly—reach findings contrary to these. In fact, Cochran acknowledges that the trial court *did* find he subjectively believed he was in danger. As we will discuss, the court's finding of imperfect self-defense seems to rest solely on its finding that Cochran's belief that his actions were necessary for his safety were not objectively reasonable. Thus, we will focus on this finding alone.

in his pocket and his statement that he could "take out" Cochran, and his abrupt motion toward Cochran. Cochran also points to factors from his own situation that contributed to his fear: his cell phone had died, his keys were missing, it was dark out, and he did not know the group of individuals approaching him. To say his belief was unreasonable, he argues, is merely concluding he was not in real danger based on the benefit of hindsight, knowing none of the individuals ultimately drew a firearm.

The State counters that "the trial judge was not required to accept Cochran's testimony, and counsel's argument, that his belief was reasonable." The only question for appellate review is whether *any* rational factfinder could have found Cochran's belief to be unreasonable, and the answer is clearly yes, based on the fact that the individuals at which Cochran pointed his firearm were unarmed.

B. Analysis

Perfect self-defense can justify first-degree assault, and imperfect self-defense can mitigate first-degree assault to second-degree assault. *Christian v. State*, 405 Md. 306, 309–10 (2008). Perfect self-defense contains four elements:

> (1) The accused must have had reasonable grounds to believe himself in apparent imminent or immediate danger of death or serious bodily harm from his assailant or potential assailant;
>
> (2) The accused must have in fact believed himself in this danger;
>
> (3) The accused claiming the right of self-defense must not have been the aggressor or provoked the conflict; and
>
> (4) The force used must have not been unreasonable and excessive, that is, the force must not have been more force than the exigency demanded.

State v. Smullen, 380 Md. 233, 252 (2004). Although imperfect self-defense also requires satisfaction of the second and third elements above, it is distinctive in that it

> arises when the actual, subjective belief on the part of the accused that he/she is in apparent imminent danger of death or serious bodily harm from the assailant, requiring the use of deadly force, is not an objectively reasonable belief. What may be unreasonable is the perception of imminent danger or the belief that the force employed is necessary to meet the danger, or both.

Id. at 252.

In Cochran's case, the court stated the following as its verdict:

> So the Court finds that the Defense did establish a prime facie case for self-defense.
>
> Then it's the State's burden to show beyond a reasonable doubt that they met their burden in terms of the four factors that the State articulated, as well as his duty to retreat. The Court's going to direct counsel to . . . *Christian v. State*, 405 Md. 306. And in that instance, as well as Criminal Law Section 3-209, Defenses, "A person charged with a crime under Section 3-202, 3-203, 3-204, or 3-205 of this subtitle may assert any judicially recognized defense."
>
> In *Christian v. State*, 405 Md. 306, which is a 2008 case, the court talks about the perfect self-defense and imperfect self-defense.
>
> An imperfect self-defense . . . we look at the individual who's experienced it, and we compare that to an individual who's not experiencing that. And basically the evaluation goes something like this. **An imperfect self-defense is a Defendant's subjective and honest belief, but an unreasonable belief, that his actions were necessary for his safety, even though an objective reasonable person wouldn't do so.**
>
> So while [I] do not believe the Defendant is successful on pure self-defense, I do believe he is successful on an imperfect self-defense. So in *Christian v. State*, 405, an imperfect self-defense can mitigate first-degree assault to second-degree assault. So based on that analysis, the Court will find the Defendant guilty of second-degree assault.

(Emphasis added). Cochran asserts in his brief to this Court that the trial court erred in finding that he "did not satisfy the remaining two" elements of perfect self-defense—

presumably, the first and fourth elements, which require objective reasonableness. He also observes, however, that "the trial court did not expressly provide whether any part of its verdict was also based on a finding that Mr. Cochran applied an unreasonable amount of force to defend himself." Because it takes only one failed element to defeat perfect self-defense, *Belton v. State*, 253 Md. App. 403, 435 (2021), *reconsideration denied* (Mar. 4, 2022), *cert. granted*, 478 Md. 511 (2022), we will, for the sake of argument, assume the court's broad statement preceding its finding of imperfect self-defense—regarding "an unreasonable belief, that his actions were necessary for his safety"—to mean that the court found both Cochran's belief that he was in imminent danger as well as his belief that the force he used (unholstering his gun and pointing it at Daquan or the whole group) was necessary, to be unreasonable. If there is sufficient evidence to support that *either* belief was unreasonable, then we must affirm the trial court's finding of imperfect defense.

While Cochran points to much of his own testimony that would cast doubt on the circuit court's finding, our task is to view the evidence in the light most favorable to the State. In doing so, we note several pieces of evidence arising from the testimony. First, when Cochran initially pulled onto Hollins Street, he recounted seeing a group of people at the top of the street making noise and reported it to Officer Evans. Officer Evans testified that Cochran described the group as "children." From this, a rational factfinder could conclude that Cochran was aware that the individuals were children, and, that the noise they were making was not related to or a threat to him. We also note the testimony that Cochran engaged the children first by yelling at them, something like "shut the fuck up" or "the whole neighborhood doesn't need to hear your Goddamn mouth." A rational

factfinder could infer that a reasonable person in Cochran's position would have felt more annoyed than threatened. Or, a reasonable person feeling threatened as Cochran did would choose not to engage the children, or to instead yell something like "get away from me." Cochran also admitted on cross-examination that when he first felt unsafe, he could have gotten into his van and driven away since he did have his vehicle keys on him, although he said he hadn't realized it. A rational factfinder could have simply not believed that Cochran thought he did not have his van keys, or might have concluded that a reasonable person would have checked for their keys or still gotten in their vehicle when feeling threatened, rather than escalating the confrontation by yelling. In light of this evidence, we conclude a rational factfinder could have found Cochran's belief that he needed to point his loaded firearm at Daquan (or the group) in order to prevent imminent serious bodily harm or death, objectively unreasonable.

Finally, we note that the trial transcripts in this case contained a great deal of testimony about distances, where the attorneys would ask witnesses to point to their locations on a paused video screen. This appeared to be for the purpose of casting doubt on Cochran's claimed inability to perceive the individuals as children, as well as for implying that the children were not close enough to Cochran to present a threat. But the record does not precisely disclose the distances indicated by their pointing. This is yet one more reason we must largely defer to the trial judge's opportunity to observe the witnesses and their testimony firsthand.

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY IS AFFIRMED. APPELLANT TO PAY THE COSTS.