

Circuit Court for Somerset County
Case No. 19-K-13-010225

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 785

September Term, 2017

ALBERT DARNELL WRIGHT

v.

STATE OF MARYLAND

Woodward, C.J.,
Friedman,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 10, 2018

*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.

Following a jury trial in the Circuit Court for Somerset County, Albert Darnell Wright, appellant, was convicted of second-degree assault. Wright raises two issues on appeal: (1) whether the trial court erred in refusing to instruct the jury on self-defense, and (2) whether there was sufficient evidence to sustain his conviction. For the reasons that follow, we affirm.

At trial, the State presented evidence that Wright was an inmate at Eastern Correctional Institute. Correctional Officer Travis Dennis observed Wright doing laundry when he was not supposed to and directed Wright to return to his cell. Wright refused to comply with Officer Dennis's order and walked towards the "control center" in the middle of the prison. When he arrived at the control center, Wright asked to speak with Officer Dennis's Sergeant; but he was informed that the Sergeant was at lunch. Officer Dennis then ordered Wright to return to his cell or risk going to lockup. At that point, Wright "jumped off the step [in front of the control center and] with his right fist closed, hit [Officer Dennis] on [the] right side of [his] chin," causing him to fall to the ground. Thereafter, Wright put his hand around Officer Dennis's neck, held him down, and continued to hit him.

On cross-examination, Officer Dennis testified that, prior to Wright assaulting him, he had attempted to remove his pepper spray but was unable to do so. Officer Dennis also denied deploying his pepper spray at any point during the altercation. However, in his written report, he indicated that he "pulled my [pepper spray] out and sprayed 3 one to two second burst[s]" after Wright assaulted him.

Correctional Officer Donald Winslow, witnessed the altercation between Officer Dennis and Wright. Officer Winslow testified that Wright initially had his back to Officer Dennis when he was standing on the step leading to the control center. Wright then immediately turned around “one-hundred and eight degrees,” punched Officer Dennis, and pushed him to the ground. After Officer Dennis fell to the ground, Wright held Officer Dennis down and choked him. Officer Winslow ordered Wright to stop, but he refused. Eventually, another officer arrived to assist Officer Winslow and they both deployed their pepper spray. Thereafter, Wright got up and allowed himself to be handcuffed. Officer Winslow also testified that Officer Dennis had deployed his pepper spray, but he indicated that it was not until after Wright assaulted him.

On appeal, Wright first contends that, because there was evidence that Officer Dennis had reached for his pepper spray prior to the assault, the trial court erred in refusing to instruct the jury on self-defense. Whether there is sufficient evidence to generate an instruction for the jury is a question of law decided by the judge. *Roach v. State*, 358 Md. 418, 428 (2000). In evaluating whether competent evidence exists to generate a requested instruction, the appellate court will view the evidence in the light most favorable to the accused. *General v. State*, 367 Md. 475, 487 (2002). An instruction is generated when there is “some evidence” meeting each element of the instruction. *See Dykes v. State*, 319 Md. 206, 215 (1990). “Some evidence” means “no more than what it says—‘some,’ as that word is understood in common, everyday usage.” *Id.* at 216-17. The evidence need not rise to the level of “beyond a reasonable doubt” or “clear and convincing” or “preponderance,”

and the source of the evidence is immaterial. *Id.* at 217. To generate an instruction on perfect self-defense, there must be some evidence that:

- (1) the defendant actually believed that he or she was in immediate or imminent danger of bodily harm;
- (2) the defendant’s belief was reasonable
- (3) the defendant must not have been the aggressor or provoked the conflict; and
- (4) the defendant used no more force than was reasonably necessary to defend himself or herself in the light of the threatened or actual harm.

Jones v. State, 357 Md. 408, 422 (2000) (citations omitted).

We need not address whether there was evidence to support each of the elements of self-defense because, at a minimum, there was no evidence that Wright subjectively believed he was in danger of imminent bodily harm when he committed the assault. “The question of one’s state of mind, or his intention, at a particular time is one of fact, and is subjective in nature. Therefore, it must be determined by a consideration of his acts, conduct and words.” *State v. Martin*, 329 Md. 351, 363 (1993) (internal quotation marks omitted). “[W]here the defendant’s subjective belief at a particular time must be shown to generate a defense, *only evidence bearing directly on that issue will suffice.*” *Id.* at 368 (emphasis added).

Here, Wright did not testify as to his subjective mental state at the time of the assault. *See Wilson v. State*, 195 Md. 533, 542 (2011) (reasoning that a defendant’s own testimony as to his subjective state of mind suffices as “some evidence” sufficient to generate imperfect self-defense instruction). And, although a defendant’s testimony is not

necessarily required to establish self-defense, Wright does not identify any other evidence, such as his statements, actions, or facial expressions, that would show he subjectively feared for his safety immediately prior to the assault.

Wright essentially contends that, because there was evidence that Officer Dennis had reached for his pepper spray, the jury could have inferred that he was subjectively afraid. However, “intent and subjective belief of imminent peril are not identical” and circumstantial evidence of intent does not necessarily show subjective fear of harm. *Id.* at 363. Even if we assume that Officer Dennis reaching for his pepper spray might have permitted the jury to consider whether Wright might have had *objectively* reasonable grounds to believe himself in immediate danger of serious harm or death—that fact alone fails to demonstrate his *subjective* mental state through his acts, words, and conduct.¹ Without any other evidence bearing directly on Wright’s subjective mental state at the time of the incident, we hold that he failed to adduce “some evidence” of that element and therefore was not entitled to a self-defense jury instruction.

Wright also claims that there was insufficient evidence to sustain his conviction because the State failed to prove that the assault was not legally justified. However, as set forth above, there was no evidence that Wright acted in self-defense. And, even if we assume that there was some evidence demonstrating that the assault was legally justified for some other reason, the jury was free to reject that evidence. *See Correll v. State*, 215

¹ We note that there is no evidence in the record indicating that Wright was even aware that Officer Dennis had tried to remove his pepper spray. In fact, Officer Winslow testified that Wright had his back to Officer Dennis immediately prior to the assault.

Md. App. 483, 502 (2013) (noting that the fact-finder “can accept all, some, or none of the testimony of a particular witness”). Viewed in a light most favorable to the State, the evidence demonstrated that, after Officer Dennis ordered Wright to return to his cell, Wright punched Officer Dennis, pushed him to the ground, and choked him. That evidence, if believed, was legally sufficient to support a finding of each element of second-degree assault, beyond a reasonable doubt. Consequently, the State presented sufficient evidence to sustain Wright’s conviction.

**JUDGMENT OF THE CIRCUIT
COURT FOR SOMERSET COUNTY
AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**