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THE SUPREME COURT OF NEW HAMPSHIRE

Hillsborough-northern judicial district
Case No. 2024-0497
Citation: State v. Cherbonneau, 2026 N.H. 42

THE STATE OF NEW HAMPSHIRE

v.

DOMINIC CHERBONNEAU

Argued: April 21, 2026
Opinion Issued: November 4, 2026

John M. Formella, attorney general, and Anthony J. Galdieri, solicitor general (Elizabeth C. Woodcock, senior assistant attorney general, on the brief, and Samuel R.V. Garland, deputy solicitor general, orally), for the State.

Kirkland & Ellis LLP, of Chicago, Illinois (Helen E. Witt, on the brief and orally), and Christopher M. Johnson, executive director, public defender program, of Concord, on the brief, for the defendant.

COUNTWAY, J.

[¶1] The defendant, Dominic Cherbonneau, appeals his convictions following a jury trial in Superior Court (Anderson, J.) on one count of attempted first degree assault with a firearm, see RSA 631:1, I(b) (2016); RSA

629:1 (2016), and two counts of riot, see RSA 644:1, I(a), IV (2016). On appeal, the defendant argues that the trial court erred when it denied his motion for judgment notwithstanding the verdict (JNOV) on the basis that there was insufficient evidence to support his convictions, including insufficient evidence that the State disproved that his conduct was justified as self-defense. He also argues that the trial court erred when it sentenced him on both riot charges where the charges were based on the same conduct. We agree with the defendant that the evidence was insufficient because it failed to prove beyond a reasonable doubt that he did not act in self-defense and we therefore reverse. Accordingly, we need not address whether the trial court erred when it sentenced the defendant on both riot counts.

[¶2] The jury could have found the following facts, based in part on surveillance videos which were played for the jury throughout the trial and which captured some of the events described below. The defendant was with a group of people at a restaurant in Manchester one night in November 2022. Members of the defendant's group were drinking and playing pool. At some point, C.M., one of the alleged victims, entered the restaurant and proceeded to the bar area, across the room from where the defendant's group was playing pool. Several minutes later, a member of the defendant's group (Subject #1) left the pool table area and pushed through the crowd toward another part of the restaurant. The defendant and other members of his group followed Subject #1. According to one witness, a "skirmish" then unfolded between members of the defendant's group and C.M., which involved "pushing, shoving, [a] little commotion."

[¶3] Following the "skirmish," C.M. exited the restaurant through the rear emergency exit door. The defendant's group returned to the pool table. Subject #1 proceeded to exit the restaurant through the front door, followed shortly thereafter by the defendant and other members of their group. The other alleged victim, C.G., also exited through the front door shortly after the defendant's group.

[¶4] Approximately one minute later, Subject #1 and others in the defendant's group followed C.M. into a pharmacy parking lot across the street from the restaurant. C.G. was walking with the group following C.M. C.G. then approached C.M. and the two stood near each other. Subject #1, C.G., C.M. and others engaged in a verbal altercation. Around the same time, the defendant and his friend, who had been with the defendant's group inside the restaurant, arrived and stood near the entrance of the parking lot, away from the altercation. As the argument between Subject #1, C.G., C.M. and others continued, the group congregated near a silver Hyundai, and the defendant moved behind a nearby vehicle parked across from the Hyundai.

[¶5] Approximately thirty seconds after the defendant moved behind the nearby vehicle, he stepped out from behind the vehicle and moved closer to the

altercation, a few feet away from the Hyundai. There was then an exchange of gunfire between C.M. or C.G. at the rear of the Hyundai and others standing near the front of the Hyundai. The defendant did not fire a weapon during this exchange. In response to this gunfire, several people ran out of the parking lot.

[¶6] After the exchange of gunfire, the defendant retreated back behind the nearby vehicle. C.M. and C.G., who had been standing toward the rear of the Hyundai, moved to the driver's side of the Hyundai. Seconds later, as either C.M. or C.G. emerged from behind the Hyundai, the defendant rose from his position on the ground, moved forward and fired his handgun in the direction of C.M. and C.G. C.M. or C.G. dropped to the ground. A bullet from the defendant's gun struck the window of another restaurant across the street.

[¶7] The defendant ran out of the parking lot and back toward the restaurant. A witness testified that, after hearing gunshots, he observed the defendant put a gun "in his waistbelt" before getting into a vehicle and leaving the scene. Police arrived at the scene and found C.G. suffering from a gunshot wound to her arm. C.M. placed a pistol on the ground and informed a responding officer that it had been fired. Police discovered eight spent cartridge casings and two live rounds in the area of the nearby vehicle where the defendant was standing when he fired his handgun.

[¶8] The defendant was charged with eight counts of attempted first degree assault and two counts of riot. One riot count alleged that the defendant participated in a riot while armed with a firearm, and the other riot count alleged that as a result of the riotous conduct, C.G. suffered a bullet wound to her arm. Neither count alleged that the defendant fired the shot that injured C.G.'s arm.

[¶9] After the State rested its case at trial, the defendant moved to dismiss all charges on the ground that the State had failed to disprove that he acted in self-defense. The trial court denied the defendant's motion but concluded that there was sufficient evidence to warrant a self-defense instruction, and accordingly instructed the jury that the State had to prove beyond a reasonable doubt "that the [d]efendant's conduct was not justified based on this defense." The jury found the defendant guilty on one count of attempted first degree assault with a firearm and both counts of riot. The jury acquitted the defendant on the other seven counts of attempted first degree assault. The defendant filed a motion for JNOV, arguing in part that there was insufficient evidence for the jury to conclude that he did not act in self-defense. The trial court denied the motion. This appeal followed.

[¶10] The defendant first argues that the trial court erred in denying his motion for JNOV because the State failed to disprove that he acted in self-defense with respect to both the attempted first degree assault with a firearm charge and the riot charges. See RSA 627:1 (2016); State v. McMinn, 141 N.H.

636, 644-45, 647 (1997) (holding that defendant was entitled to self-defense instruction on riot charges). A motion for JNOV presents a question of law, which we review de novo. State v. Carnevale, 172 N.H. 700, 703 (2019). In reviewing a ruling for JNOV, we will uphold the jury's verdict unless no rational trier of fact could find guilt beyond a reasonable doubt, considering all the evidence and all reasonable inferences therefrom in the light most favorable to the State. Id.; see also State v. Pennock, 168 N.H. 294, 307 (2015). The trial court cannot weigh the evidence and if the evidence at trial is conflicting, or if several reasonable inferences may be drawn, the motion for JNOV should be denied. See Carnevale, 172 N.H. at 703-04. On appeal, the defendant bears the burden of demonstrating that the evidence was insufficient to disprove that he acted in self-defense. See Pennock, 168 N.H. at 307.

[¶11] Because self-defense is a pure defense under New Hampshire law, State v. Munroe, 173 N.H. 469, 474 (2020); see RSA 627:1, when evidence of self-defense is admitted, conduct negating the defense becomes an element of the charged offense that the State must prove beyond a reasonable doubt, see Munroe, 173 N.H. at 474; see RSA 626:7, I(a) (2016). RSA 627:4, II(a) provides that "[a] person is justified in using deadly force upon another person when he reasonably believes that such other person . . . [i]s about to use unlawful, deadly force against the actor or a third person." RSA 627:4, II(a) (2016). Even if a person is justified in using deadly force under RSA 627:4, II(a), however, that justification is nullified under certain circumstances. See RSA 627:4, II, III (2016). As relevant here, RSA 627:4, III(a) provides that a person is not justified in using deadly force to defend against deadly force by another "if he or she knows that he or she . . . can, with complete safety . . . [r]etreat from the encounter." RSA 627:4, III(a). The statute further provides, however, that a person "is not required to retreat if he or she is . . . anywhere he or she has a right to be, and was not the initial aggressor." Id. Thus, in this case, in order for the State to carry its burden at trial of disproving that the defendant acted in self-defense, it had to prove beyond a reasonable doubt either that the defendant's conduct was not justified under RSA 627:4, II(a), or that the defendant knew that he could, "with complete safety . . . [r]etreat from the encounter," and that he had a duty to do so, RSA 627:4, III(a).

[¶12] In denying the defendant's motion for JNOV, the trial court did not address whether the State's evidence disproved that the defendant had a reasonable belief that another person was about to use unlawful, deadly force against him or another person. We construe the court's order as assuming without deciding that the State failed to disprove that the defendant's conduct was justified under RSA 627:4, II(a). See State v. Surrell, 171 N.H. 82, 88 (2018) ("The interpretation of a trial court order presents a question of law for us to decide."). Instead, the court focused on the duty to retreat set forth in RSA 627:4, III(a), concluding that the jury could have found that the defendant had a duty to retreat because he "was not in a place that he had a right to be as there was evidence that he was in the . . . parking lot after the [pharmacy]

had closed." The court also reasoned that, alternatively, the jury could have found that the defendant had a duty to retreat because the "[d]efendant and his group were the initial aggressors, that [C.M.] fired his weapon in self-defense, and that [the] [d]efendant failed to withdraw from the encounter." The court further concluded that, in addition to finding that the defendant had a duty to retreat, the jury could have also found that the defendant "had the ability to retreat with complete safety from the encounter with [C.M.]." The defendant argues that these conclusions were erroneous.

[¶13] As an initial matter, the defendant also contends that the State's evidence on the self-defense element had to exclude all rational conclusions other than self-defense because that evidence was circumstantial. See State v. Vincelette, 172 N.H. 350, 354 (2019) (providing that "[w]hen the evidence as to an element of proof is solely circumstantial, it must exclude all reasonable conclusions except guilt"). We disagree. The State's evidence included a surveillance video from the pharmacy parking lot. We observe that the video recording is of limited quality and, based on the location and angle of the surveillance camera and the fact that the video captures events occurring at night and contains no audio, it does not clearly illustrate each of the events that transpired in the parking lot, including C.M.'s and C.G.'s actions in the moments before the defendant fired his weapon. But the video nonetheless generally depicts the defendant's conduct and surroundings, the actions and locations of other people, the duration of the incident, and other circumstances the jury could consider in assessing both the reasonableness of the defendant's belief that the use of deadly force was necessary, see RSA 627:4, II(a), and whether he had a duty to retreat and could do so with complete safety, see RSA 627:4, III(a). This video thus constituted direct evidence of whether the defendant acted in self-defense, and we therefore disagree with the defendant that our circumstantial evidence standard applies in this case. See State v. Blevins, 10 N.W.3d 29, 39-40 (Minn. 2024) (holding in self-defense case that surveillance videos of incident "provide[d] direct evidence of what they show, including [the defendant's] surroundings and the actions of the [other participants]," and noting that other courts have reached similar conclusions).

[¶14] Nonetheless, based on our review of the record, we agree with the defendant that the trial court erred in concluding that there was sufficient evidence that the defendant had a duty to retreat. First, no rational trier of fact, viewing all the evidence and reasonable inferences therefrom in the light most favorable to the State, could have found that the State had proven beyond a reasonable doubt that the defendant did not have a right to be in the parking lot. See RSA 627:4, III(a) (providing that defendant has duty to retreat unless defendant is "anywhere he or she has a right to be, and was not the initial aggressor"); RSA 626:7, I(a). There was no testimony that the pharmacy was closed or that the defendant and others were otherwise prohibited from being in the parking lot. We thus agree with the defendant that the jury "had no

evidentiary basis from which to conclude that [he] was not in a place where he was entitled to stand his ground to defend himself."

[¶15] The record also reveals that no rational trier of fact, viewing all the evidence and inferences drawn therefrom in the light most favorable to the State, could have found beyond a reasonable doubt that the defendant himself was the initial aggressor in the encounter with C.M. There is no evidence from which the jury could infer that the defendant instigated the "skirmish" with C.M. inside the restaurant. With respect to the events in the parking lot, there is also no evidence from which the jury could infer that the defendant led his group outside or that he re-initiated the confrontation with C.M. The defendant was not the first of his group to leave the restaurant — Subject #1 was. Although the defendant was with the group that followed C.M. from the restaurant, he remained near the threshold of the parking lot for approximately thirty seconds while Subject #1 and others approached C.M. The defendant then walked into the parking lot toward the group but stepped behind a nearby vehicle, which separated him from C.M., C.G., and the others.

[¶16] The jury could infer, as the State suggests, that the defendant's decision to stay removed from the rest of his group and take a position behind the nearby vehicle was strategic in order to provide "flanking" support during his group's confrontation with C.M. This inference does not, however, support a finding that the defendant himself was the initial aggressor. Based on the evidence, the only reasonable inference that can be drawn is that the defendant was not the first to confront C.M. or C.G. in the parking lot, and that he did not fire any of the initial shots between the individuals at the front and those at the back of the Hyundai. Even when all the evidence is viewed in the light most favorable to the State, the evidence was insufficient for the jury to find that the defendant started the encounter with C.M. Cf. State v. Newell, 141 N.H. 199, 205 (1996) (concluding that, under circumstances of this case, there was "no meaningful distinction" between terms "initial aggressor" and "the one who started the encounter" as used in self-defense jury instructions (quotation omitted) (emphasis added)).

[¶17] The trial court thus erred to the extent it relied on the conduct of the defendant's group in denying the defendant's motion for JNOV. The plain language of RSA 627:4, III(a) focuses on whether the defendant was the initial aggressor, not the defendant's associates or companions. See RSA 627:4, III(a). We find support for this interpretation in State v. Mayo, 167 N.H. 443 (2015). There, we stated that RSA 627:4, III(a)'s limitation on the defensive use of force "appl[ies] only to the person who actually takes the putatively defensive action," and held that the trial court erroneously instructed the jury that "if it found that the defendant or the third person . . . was in fact the initial aggressor or provoker, then the defendant's actions in defense of [the third person] were not justified." Mayo, 167 N.H. at 451-52. Here, the evidence clearly established that other members of the defendant's group — primarily Subject #1 —

initiated the confrontation with C.M. both inside the restaurant and in the parking lot. While the evidence supported a finding that members of the defendant's group were the initial aggressors, it does not support a finding that the defendant himself was the initial aggressor.

[¶18] In sum, the only conclusions a rational trier of fact could reach based on the evidence, even viewing the facts and inferences in the light most favorable to the State, are that the defendant had a right to be in the parking lot and that he was not the initial aggressor. Therefore, we conclude there was insufficient evidence that the defendant had a duty to retreat from the encounter, see RSA 627:4, III(a), and the trial court erred in denying his motion for JNOV on this basis.

[¶19] This does not, however, end our inquiry. Because we disagree with the trial court's ruling that the jury could have concluded that the defendant had a duty to retreat, we must next consider whether there existed an alternative basis for the jury to conclude that the State met its burden of disproving self-defense. Conduct is justified under RSA 627:4, II(a) if a defendant had a reasonable belief that the other person was about to use unlawful deadly force against him or another person, and that the amount of force he used was necessary under the circumstances. See RSA 627:4, II(a); State v. Rice, 169 N.H. 783, 786 (2017). Thus, to disprove the defendant's claim that he acted in self-defense, the State had to prove beyond a reasonable doubt that the defendant either did not reasonably believe that unlawful deadly force was about to be used against him or another person, or that the amount of force he used exceeded what he reasonably believed to be necessary under the circumstances. See RSA 627:4, II(a); Rice, 169 N.H. at 786. We therefore must consider whether a rational trier of fact, viewing all the evidence in the light most favorable to the State, could conclude that the evidence disproved any one of these elements to establish self-defense under RSA 627:4, II(a). It is the defendant's burden on appeal to demonstrate that the evidence as to all of these elements was insufficient. See Pennock, 168 N.H. at 307.

[¶20] As to the reasonableness of the defendant's belief concerning the imminence of the threat, the defendant argues that the evidence demonstrates that he "had a reasonable belief that whoever had fired a shot from [behind the Hyundai] seconds earlier was going to shoot again." Based on our review of the record, we agree with the defendant and conclude that no rational trier of fact, viewing the evidence and drawing all inferences therefrom in the light most favorable to the State, could find that the defendant lacked a reasonable belief that another person was about to use deadly force against him or a third person.

[¶21] The jury in this case, as in other self-defense cases, see State v. Furgal, 164 N.H. 430, 436 (2012), was properly instructed to "consider how the [d]efendant acted under the circumstances as they were presented to him at

the time and not necessarily as they appear on detach[ed] reflect[ion]." The evidence shows that the defendant observed or heard an exchange of gunfire occur near the Hyundai, which caused other members of his group to scatter. Although the gunfire had ceased, C.M. or C.G. was still armed and it was not clear that hostilities had ended. Approximately twelve seconds after the initial gunfire ended, the defendant observed C.M. or C.G. emerge from a place of concealment in a dark parking lot. Based on this evidence, we cannot conclude that the evidence supported a finding that the defendant lacked a reasonable belief that the use of deadly force by C.M. or C.G. against him or another person was imminent. See RSA 627:4, II(a).

[¶22] Next, we further conclude that the State failed to prove beyond a reasonable doubt that the defendant lacked a reasonable belief that C.M. or C.G. was about to use unlawful force against him or another person. See RSA 627:4, II(a); cf. Mayo, 167 N.H. at 453-54. On this issue, the trial court noted that the evidence supported a finding that C.M. acted in self-defense, which, if true, would mean that C.M.'s resort to deadly force was lawful under the circumstances. See RSA 627:4, II(a). The evidence did not establish, however, that the defendant was or should have been aware of who initiated the exchange of gunfire across the Hyundai, or that the defendant otherwise should have recognized that either C.M.'s or C.G.'s conduct amounted to lawful self-defense. See id. Consequently, even if we agree that the evidence objectively established that either C.M. or C.G. fired a weapon in lawful self-defense against other persons, we cannot conclude that a rational trier of fact could have found that the defendant either knew or should have known as much in the seconds following the gunfire between the other individuals. See Furgal, 164 N.H. at 436; cf. Mayo, 167 N.H. at 454.

[¶23] Lastly, based on the evidence, no rational trier of fact could have concluded that the amount of force used by the defendant exceeded what he reasonably believed was necessary under the circumstances. See Rice, 169 N.H. at 786. It is undisputed that the defendant did not fire the first shots. The jury thus could not rationally conclude that the defendant's subsequent use of his firearm was not "proportioned to the apparent danger" of the situation. State v. Etienne, 163 N.H. 57, 75 (2011) (quotation omitted).

[¶24] In conclusion, we agree with the defendant that the evidence failed to prove beyond a reasonable doubt that he either had a duty to retreat from the encounter or lacked a reasonable belief that his use of deadly force was justified under the circumstances.[1] See RSA 627:4, II(a), III(a). We therefore

[1] Although the dissent concludes that a rational trier of fact could have found, beyond a reasonable doubt, that the defendant could not have reasonably believed that the use of deadly force by C.M. or C.G. was imminent, we note that, based on the limited quality of the parking lot video and for the reasons already discussed, we disagree that a rational trier of fact could have reached this conclusion.

agree with the defendant that the trial court erred in denying his motion for JNOV, and we accordingly reverse his convictions. We therefore need not address whether the trial court erred when it sentenced the defendant on both riot charges.

Reversed.

GOULD, J., and TEMPLE, J., retired superior court justice, specially assigned under RSA 490:3, II, concurred; WILL, J., and FRIZZELL, J., superior court justice, specially assigned under RSA 490:3, II, dissented; MACDONALD, C.J., sat for oral argument but did not participate in the final vote.

WILL, J., with whom FRIZZELL, J., superior court justice, specially assigned under RSA 490:3, II, joins, dissenting.

[¶25] I respectfully dissent because I conclude that the majority does not faithfully adhere to our governing standards of review and, as a result, undertakes an analysis and makes conclusions that our decisional law ordinarily would, and should, leave to the jury.

[¶26] When faced with a motion for JNOV on evidentiary sufficiency, we require the trial court to uphold the jury's verdict unless no rational trier of fact could find guilt beyond a reasonable doubt, considering all the evidence and all reasonable inferences therefrom in the light most favorable to the State. See State v. Spinale, 156 N.H. 456, 463 (2007). We emphasize that the trial court "cannot weigh the evidence or inquire into the credibility of the witnesses." Id. (quotation omitted). We also emphasize that "if the evidence adduced at trial is conflicting, or if several reasonable inferences may be drawn, the motion should be denied." Id. (quotation omitted) (emphasis added). On appeal, we promise to confine ourselves to "objectively review[ing] the record to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Id. at 464 (quotation omitted). Those standards should lead us to affirm the trial court.

[¶27] To set the table, I agree with the majority that the surveillance video capturing the events in the pharmacy parking lot constitutes direct evidence of whether the defendant acted in self-defense, meaning that our rule about purely circumstantial evidence does not bear on the analysis. See State v. Vincelette, 172 N.H. 350, 354 (2019). And, just months ago, we considered and rejected an argument that we should carve out direct video evidence from other forms of evidence for de novo review on appeal. See State v. Wells, 177 N.H. 769, 772-74 (2026), 2026 N.H. 8, ¶¶4-7. We confirmed that video evidence "is no different than other evidence," and that we must review it "under the familiar standard that calls on us to view all of the evidence and all reasonable inferences in the light most favorable to the State and then

determine whether a rational jury could have found guilt beyond a reasonable doubt." Id. at 772, 2026 N.H. 8, ¶4 (emphasis added). We came to our conclusion in Wells on our acknowledgment that the jury views video evidence in the context of all of the other evidence, including live testimony from other witnesses describing what the video shows and what it does not show, and narrating the events the video captured. See id. at 773, 2026 N.H. 8, ¶6. As with other evidence, therefore, "[t]he jury, as the finder of fact, [is] in a better position than this court to view the video evidence in the context of the witnesses' testimony." Id.

[¶28] If we hew to those standards, all of which tilt to the finder of fact on factual findings and to the jury's verdict, a rational trier of fact plainly could have found, beyond a reasonable doubt, that RSA 627:4, II(a) does not provide a justification for the defendant's conduct. See Spinale, 156 N.H. at 463-64; RSA 627:4, II(a) (2016) (providing that "[a] person is justified in using deadly force upon another person when he reasonably believes that such other person . . . [i]s about to use unlawful, deadly force against the actor or a third person"). More specifically, a rational jury reviewing the evidence could have found, beyond a reasonable doubt, that the defendant could not have reasonably believed that either C.M. or C.G. was about to use unlawful deadly force against him or a third person. See State v. Rice, 169 N.H. 783, 786 (2017) ("A person is justified in using deadly force against another person when he reasonably believes that the other person is about to use unlawful deadly force against himself or a third person and he reasonably believes that the amount of force he uses is necessary under the circumstances."); State v. Perez, 177 N.H. 211, 218 (2025), 2025 N.H. 6, ¶19 ("A belief that is unreasonable, even though honest, will not support the defense."). As a result, the trial court did not err in denying the defendant's motion for JNOV on self-defense.[2]

[¶29] The video evidence rightly serves as the majority's focal point, since it comprises the primary evidence relevant to the defendant's self-defense claim. And I agree that a rational trier of fact could have interpreted the video evidence as the majority does and could have drawn the majority's conclusions from it. But the video footage is amenable to a different set of observations and conclusions more favorable to the State, and it is in that light that we require the evidence to be taken.

[¶30] To begin, a rational trier of fact could have found that the defendant could not have reasonably believed that C.M. or C.G. would use

[2] Given this conclusion, I need not address whether RSA 627:4, III nullifies the asserted RSA 627:4, II(a) justification for the defendant's conduct, as discussed by the majority. See RSA 627:4, III(a) (2016) (establishing that the use of deadly force is not justified if a person knows that he or she can "with complete safety . . . [r]etreat from the encounter, except that he or she is not required to retreat if he or she is . . . anywhere he or she has a right to be, and was not the initial aggressor").

unlawful force against the defendant or another person because the defendant's group initiated the altercation. With this launch point, I do not invoke the legal effect of the "initial aggressor" finding under one theory of defense but rather I observe that which group "started it" could factor into the jury's determination of the defendant's reasonable belief. A rational jury could have observed that following the "skirmish" inside the restaurant, C.M. exited the restaurant. From the video evidence of events outside of the restaurant, a rational jury could have observed that as C.M. retreated, the defendant's group followed C.M. to the pharmacy parking lot. A rational jury could have observed C.M.'s conduct — turning around to face the defendant's group and walking backward — and concluded that the defendant's group gave C.M. a reason to have concern for his personal safety.

[¶31] A rational jury could have found that the defendant's group initiated a verbal altercation with C.G. and C.M. A rational jury could have observed that a member of the defendant's group attempted to remove Subject #1 from the scene by physically guiding him back toward the restaurant, but that Subject #1 broke away and ran back over to the group congregated near the Hyundai. At that point, the exchange of gunfire between C.M. or C.G. and the defendant's group occurred. A rational jury could have observed that, as the defendant's group fled the parking lot in response, C.M. and C.G. did not fire any shots at the retreating individuals, and, in fact, did not fire any further shots at all.[3]

[¶32] Twelve seconds elapsed from the initial gunfire to the defendant's shot, a period of time that a rational jury could have found, under the circumstances, to represent a hiatus in the episode. During that period in the video footage, a rational jury could have observed that immediately following the initial exchange of gunfire, all of the members of the defendant's group fled the scene except for the defendant and one other individual, both stationed behind the car parked across from the Hyundai. A rational jury could have

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[3] I considered whether a rational jury could have concluded that C.M. and C.G. acted in self-defense and that the defendant, therefore, could not have reasonably believed that C.M. or C.G. would use unlawful force against him or another person. See RSA 627:4, II(a). We have previously held that:

> [i]f an actor knew or should have known that the third person was the initial aggressor or provoker, then the jury may determine that the actor's use of force against the victim in defense of the third person was not justified because, under those circumstances, the victim's use of force against the third person may not have been unlawful.

State v. Mayo, 167 N.H. 443, 454 (2015). We have not previously determined, however, whether a jury can determine that an actor's use of force against a victim in defense of himself was not justified where the actor knew or should have known that a third person was the initial aggressor. My dissenting view does not require me to elucidate that issue, and so I decline to do so.

observed that simultaneously, C.M. and C.G. ducked behind the Hyundai for protection and S.J. — a woman previously inside the restaurant with the defendant's group — started to walk in between the Hyundai and the vehicle across from it. A rational jury could have observed that one member of the defendant's group dropped something several feet away from the Hyundai and paused to pick it up before continuing to run off, and yet C.M. and C.G. did not fire at him. A rational jury could also have observed that a few seconds after the rest of the defendant's group scattered, the individual who initially remained with the defendant ran off in the same direction as the rest of the group, and, again, neither C.M. nor C.G. fired shots at the retreating individual. A rational jury could have observed that, as all of the members of his group scattered, the defendant stayed behind the hood of the car shielding him, with at least part of his upper body remaining exposed and in camera view, and neither C.M. nor C.G. fired any further shots.

[¶33] From this segment of the video, and the corresponding testimony, a rational jury could have found that when the defendant's group fled the parking lot, the altercation effectively ended. Cf. Perez, 177 N.H. at 218-19, 2025 N.H. 6, ¶¶23-25 (determining that a rational trier of fact could consider the "facts and inferences, taken together" and find that the victim's engagement in the interaction ended when he pushed the defendant, and, consequently, the defendant lacked a reasonable belief that the victim would likely escalate the encounter to cause serious bodily injury). And, given that every member of the defendant's group, the initial aggressors of this altercation, safely fled the scene without additional shots from C.M. or C.G., a rational jury could have concluded that the defendant could not have reasonably believed that C.M. or C.G. would imminently use deadly force against him or a third person.

[¶34] A rational jury could then have observed that, after the defendant's group fled but still within that twelve second period before the defendant fired a shot, S.J. continued walking between the Hyundai behind which C.M. and C.G. crouched and the vehicle that shielded the defendant, and that she noticed the defendant standing to her left. A rational jury could have observed S.J. pivoting to face the defendant, putting her hands out toward him as if to say "stop," and moving determinedly toward him. A rational jury could have inferred that as S.J. saw the defendant, she realized that he had a gun, moved toward him, and tried to prevent him from shooting.

[¶35] A rational jury could have observed that as S.J. approached the defendant, C.M. or C.G. began to rise from behind the Hyundai. A rational jury could have observed the defendant, moving away from S.J., as if to get a clear view, and firing a shot in C.M.'s and C.G.'s direction. A rational jury could then have observed the defendant running off while C.M. or C.G. fell or dove to the ground. A rational jury could have found that it could not determine from the evidence that C.M. or C.G. pointed a gun at the defendant or acted in a way to make him believe they would imminently use force against him or another

person. Rather, a rational jury could have concluded that, after the altercation had ceased, either C.M. or C.G. began to rise from the cover of the Hyundai under the impression that the parking lot was safe, that the defendant should have been aware of as much, and that the defendant shot at C.M. and C.G. despite S.J.'s efforts to prevent him from doing so. If a rational jury observed what the video captured in that light, it could have found, beyond a reasonable doubt, that the defendant could not have reasonably believed that C.M. or C.G. was about to use unlawful deadly force against him or a third person. See Spinale, 156 N.H. at 463-64.

[¶36] I do not offer this counter-interpretation of the evidence as my own nor do I offer it by way of arguing that a rational jury could not have found the version of the facts set forth by the majority; a jury certainly could have found the facts as the majority suggests. Rather, I believe that because a rational jury could have aligned with my alternative narrative of the evidence beyond a reasonable doubt, the very standards we have devised for trial courts faced with JNOV motions require that we affirm the trial court's denial of the JNOV regarding self-defense. See id.

[¶37] It bears brief reiteration that our jurisprudence talismanically recites a JNOV standard of review that favors the jury's verdict: the trial court "uphold[s] the jury's verdict unless no rational trier of fact could find guilt beyond a reasonable doubt." Id. at 463 (quotation omitted) (emphasis added). Logically consistent with our JNOV standard, we emphasize that if any conflict exists in the trial evidence, or if the evidence allows for more than one reasonable inference, we require trial courts to deny JNOV motions. See id. Equally germane to my conclusion, we have very recently emphasized that when reviewing a trial record on appeal, including any video evidence, we must consider all the evidence and all reasonable inferences that flow from it in the light most favorable to the State. See Wells, 177 N.H. at 772, 2026 N.H. 8, ¶4. As I demonstrate, the evidence can be viewed in a light more favorable to the State than the majority credits it. At a minimum, however, the counter-narrative reveals conflicts in the evidence and the reasonable inferences that flow from it that preclude a JNOV.

[¶38] I acknowledge that I have laid out a painstaking, moment-by-moment narrative of the evidence. But I believe it necessary, as it is the kind of close, painstaking analysis that we must assume the jury undertook in the deliberation room, and because it is how the trial court, and this court, must consider the evidence in an appeal of the denial of a motion for JNOV. Our JNOV standards require, in essence, that we scour the evidence for interpretations that support the verdict. See Spinale, 156 N.H. at 463-64. This is the essence of taking the evidence, and drawing all reasonable inferences, in the light most favorable to the State. I respectfully conclude that the majority, by a less rigorous analysis, inadvertently usurps the jury's role.

[¶39] For these reasons, I dissent. I would, therefore, reject the defendant's argument that the trial court erred in denying his motion for JNOV on self-defense.[4]

[4] I note that if this were the majority position, the court would necessarily need to address the defendant's additional arguments: that the evidence was insufficient to support the defendant's riot convictions and that the trial court erred by imposing convictions and sentences for both riot charges. For purposes of this dissent, however, there is no need to do so.