

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
YISHMAEL LEE	:	
	:	
Appellant	:	No. 1085 WDA 2025

Appeal from the Judgment of Sentence Entered August 22, 2025
In the Court of Common Pleas of Mercer County Criminal Division at
No(s): CP-43-CR-0001222-2024

BEFORE: McLAUGHLIN, J., KING, J., and BENDER, P.J.E.

MEMORANDUM BY BENDER, P.J.E.:

FILED: September 15, 2026

Yishmael Lee ("Appellant") appeals from the judgement of sentence imposed following his convictions of two counts of Aggravated Assault, 18 Pa.C.S. §§ 2702(a)(1) and (a)(4). Appellant asserts that the Commonwealth failed to disprove that he acted in self-defense. We affirm.

Appellant was charged via information on October 25, 2024, with one count of murder in the first degree (18 Pa.C.S. § 2502(a)), along with two counts of aggravated assault, after the fatal shooting of Lay'Onte Hammonds ("the victim") outside of the Twincity Elks in Farrell, Pennsylvania. We recount the pertinent facts as presented during Appellant's jury trial.

The Commonwealth's first witness was Nicole Costea, who was in an on-and-off relationship with Louis Brewer at the time. N.T., 6/10/25, at 27. She arrived at the Twincity Elks with Brewer, but stayed in their car because she was too intoxicated to go inside. *Id.* at 28, 30. Brewer was involved in a fight

between Appellant and the victim while leaving the bar. **Id.** at 31. Costea was shown body-cam video from two officers that she spoke to after the fight, and she identified herself on the video, but she testified multiple times that she did not see the fight and did not see the shooting. **Id.** at 38. Despite this trial testimony, a police body camera captured Costea saying that Appellant was the shooter. **Id.** at 27-30. She further explained at trial:

But the thing is, though, I never seen [Appellant] shoot that boy at all. I did not see that at all. I didn't see – the only thing I seen that I recall is a fight broke out. That's it. I was really far away, I was intoxicated, this happened over a year – like, I don't recall. I don't even recall a lot of those statements I made. Obviously you can tell I was intoxicated.

Id. Costea admitted that she knew that Brewer was in the fight because she recognized his bright orange clothing. **Id.** at 41. Costea further indicated that, while talking to the officers, she was merely repeating what she had heard others say, not relating her personal observations of the fight. **Id.** at 44. Nonetheless, Costea admitted that she had said on the video that Appellant had a gun and it went off. **Id.** at 45.

Reyon Hammonds, brother of the victim, testified that he was with his brother at the Elks and described his brother being approached for a fight by an old adversary. **Id.** at 49, 60. Hammonds intervened and turned his brother around, away from that fight. **Id.** at 50. Reyon testified, however, that, as the brothers walked to their car, the victim became entangled in another, separate, fight with Brewer and Appellant. **Id.** at 51. Hammonds testified that he saw Brewer lying on top of his brother after Brewer “sucker punched”

him; Brewer, Appellant, and the victim had all fallen to the ground. **Id.** at 52-53. As Hammonds pushed Brewer, and his brother was getting up, his brother was shot in the head: "In the midst of getting him off[my brother,] that's when the gunshot went off[.]" **Id.** The whole incident lasted about 30 seconds. **Id.** at 54. Lay'Onte Hammonds died from the injuries.¹

Officer Collin Gillette testified to stopping Appellant's car for driving with a burnt out headlight about 90 minutes before the fight at the Elks. **Id.** at 92. Appellant told Officer Gillette during the traffic stop that he had a firearm on his right hip, and that he possessed a concealed carry permit for the weapon. **Id.** at 92-93. Appellant owned a Glock, .40 caliber, which, after checking on the validity of the carry permit, the officer returned to Appellant by placing it inside Appellant's trunk for officer safety. **Id.** at 93-94. Appellant told the officer that he was on his way to the Twincity Elks. **Id.** at 94. Officer Gillette wrote Appellant a warning for the headlight violation, as well as for the car's registration being out of date. **Id.** at 95. Later, Officer Gillette was called to respond to the Twincity Elks for a reported shooting. **Id.** at 105. After arriving at that location, he followed the victim in the ambulance to the hospital, where the victim was pronounced dead. **Id.** at 105-06.

¹ Dr. Eric Vey, a forensic pathologist who performed the autopsy on the victim, testified that the victim suffered an "immediately incapacitating gunshot wound from a catastrophic damage to the brain." N.T., 6/11/25, at 27. The victim suffered a "near contact wound" to the head, which means that the weapon was in "angled contact, [or] incomplete contact" with the victim's head, indicating that the gun was within half an inch of the victim's head when fired. **Id.** at 29.

Corporal Geoffrey Ballard, the officer in charge that night, also testified that he had been near the Elks doing routine surveillance when he heard a “pop.” **Id.** at 118-121. Turning, he saw people running through the parking area, and then someone in front of the Elks used a flashlight to signal the officer. **Id.** at 125. Corporal Ballard proceeded to the Elks, arriving less than a minute later. **Id.** at 126. He noticed the victim immediately. **Id.** As Corporal Ballard is also certified as an Emergency Medical Technician, he checked the victim for a pulse and discovered that the victim was deceased. **Id.** at 129-130. The scene was chaotic, with multiple people coming up to where the victim lay, screaming and crying. **Id.** The corporal saw no weapons in the area. **Id.** at 133.

Detective Sergeant Joey Brant, the affiant in this case, testified to speaking with Costea at the scene of the shooting, stating that she showed no signs of impairment. **Id.** at 108-09. During cross-examination, the detective testified that Costea had told him that Brewer punched the victim in the face to get him away from Appellant. **Id.** at 148. She further told the detective that the victim was fighting with Appellant and “had [Appellant] gripped up.” **Id.** at 148. Costea then stated that Appellant shot the victim. **Id.** Hammonds told the detective that his brother was attempting to stand up when he was shot. **Id.** at 150.

Detective Brant also testified about the attempts to arrest Appellant. At one point, the detective spoke to Appellant on the telephone as officers were attempting to find him at his house. Appellant told the detective that he was

not at his home but that he would shortly turn himself in and surrender the gun. **Id.** at 122-25. However, several days passed before Appellant turned himself in, and the weapon was never recovered. **Id.** at 128. This was the sum of the Commonwealth's evidence.

Appellant testified on his own behalf at trial. He told the jury about the many friends and acquaintances he had lost to gun violence. N.T., 6/12/25, at 15-16. He also testified to being shot at a friend's house on February 28, 2022. **Id.** at 18. In that case, a drunken acquaintance came and threatened the people in the home, saying he would kill someone. **Id.** at 19. Appellant told the drunk guy to leave; in response, the acquaintance shot Appellant four times. **Id.** Appellant returned fire, and testified that he believed that was what saved his life. **Id.** at 20. Appellant was able to get to his phone and call 911. **Id.**

After that shooting, Appellant recuperated in the hospital for ten days, and required multiple surgeries to repair injuries to his intestines, his leg, and his hip. **Id.** at 24-27. Appellant has a metal rod in one leg, and required physical therapy to help him walk. **Id.** at 28. Once leaving the hospital, Appellant felt depressed, traumatized, and sad; he also became hyperalert and paranoid, with racing thoughts and trouble sleeping. **Id.** at 28-30. About a year and a half after the shooting, Appellant began working at Lowe's, but he had to quit after a month because he could not stand on his feet all day. **Id.** at 33. Appellant had not worked since that time. **Id.** at 34.

Appellant purchased the gun he had at the time of this incident, a Glock .40 caliber, in 2023, the same time as he obtained his concealed carry permit. **Id.** at 35-37. Appellant stated on the application for his permit that he wanted the weapon for self-defense. **Id.**

On the night of this incident, Appellant left his home and drove to a bar, where he met Brewer. **Id.** at 43-45. Appellant had a couple of shots of tequila, then left the bar after it closed due to a fight. **Id.** Appellant and his friends then went to the nearby Elks. **Id.** at 46. Appellant described the traffic stop that occurred on the way, where the police officer gave him a warning, and put Appellant's gun into the trunk of his car. **Id.** at 47-49. After the officer left, Appellant retrieved his gun, put it on his hip, and proceeded to the Elks with his friends. **Id.** at 71-72.

Appellant saw Brewer in the crowded Elks bar when he arrived, and drank more tequila. **Id.** at 51-52. When the Elks closed, Appellant walked outside alone. **Id.** at 55. Appellant testified that as he scanned the parking lot, looking for his friends, he was grabbed in the neck area of his sweatshirt by the victim. **Id.** at 56. Appellant did not know this person, who called Appellant another name and said that he was "gonna die tonight." **Id.** at 56-57. Appellant was then "thrown to the ground[.]" **Id.** at 57. Appellant stated that he pulled the unknown man with him as he fell to the ground and the unknown man ended up on top of him. **Id.** The man started to get up, and was hovering over Appellant on the ground. **Id.** at 58. Appellant was asked if he attempted to rise:

[Appellant]: Yes. As I'm trying to get up, at the same time I reach for my gun, and I'm still like being pushed down.

Q. And your gun is in your right pocket or your right side, as it normally is?

A. Yes.

Q. When you reach for the gun, what do you do with it?

A. I pulled it out, and I shot one time.

Id. at 59. After shooting, Appellant "walked straight to my car and left." **Id.** at 61. Appellant admitted that he did not see the victim with a firearm, or any weapon. **Id.** He also testified as to his mental state at the time:

I was scared for my life. I didn't see a gun, but the way he was getting up, one hand was down, both hands was technically down, one was underneath. The other hand was down, and then I just believed my life was in danger. I've been in that situation before where I was shot, so

Id. Appellant further recounted that he had no ability to get away from the victim during the interaction, stating that he was "not physically able to just get up and run" and that the entire incident "happened way too fast." **Id.** at 62-63.

During cross-examination, Appellant was asked if he knew that he was pointing his gun at the victim's head when he pulled the trigger; Appellant answered: "It was so fast I just know I shot once." **Id.** at 75. Appellant also confirmed that he had not modified the trigger on his weapon, he needed to use force for it to fire. **Id.** at 76. Answering the court's questions, Appellant confirmed that he did not see the victim with a weapon, and the victim did not punch or strike Appellant. **Id.** at 89.

Deandre Levy, who had accompanied Appellant to the Elks that night, testified that Appellant was a designated driver for their group of friends. ***Id.*** at 92. Levy testified that he saw Appellant talking to some women in the parking lot when the Elks closed. ***Id.*** at 94. Levy then described the fight:

[The victim] was walking back and forth, like you can tell he was like on to something. The way he was walking, like he would walk toward [Appellant] and then walk away; then come back looking at him again, and walk away again. And then all of sudden out of nowhere he runs up to him and yokes him up by his collar, like this. And he said is you Tone. And [Appellant] was like, no, who is Tone. He was you the one that shot up my house. You about to die today. You shot my house up. [Appellant] is like you got the wrong dude. I'm not Tone. I'm not Tone. Out of nowhere – Louis Brewer came out of nowhere and punched [the victim].

Id. at 95. Once Brewer punched the victim, Levy ran further into the parking lot, but he saw Appellant and the victim “wrestling and tussling with each other” on the ground. ***Id.*** at 96. Then he heard the gunshot and froze in place briefly before walking home. ***Id.*** at 96-97.

The trial court instructed the jury on justification, or self defense. ***Id.*** at 151-55. The jury acquitted Appellant of murder and manslaughter, but convicted him of the two counts of aggravated assault noted above. Prior to the scheduled sentencing hearing, Appellant filed a motion for judgment of acquittal, along with a sentencing memorandum. On August 22, 2025, the trial court denied the motion and imposed an aggregate sentence of 5 to 12 years of incarceration, followed by 12 months of probation. Appellant filed a timely notice of appeal on August 29, 2025. Both Appellant and the trial court have complied with Pa.R.A.P. 1925.

Appellant phrases his issue on appeal as follows:

Whether the Commonwealth failed to prove [Appellant] was not acting in self-defense when they failed to provide evidence to contradict that he was not the initial aggressor, that he reasonably believed he was in danger of death or serious bodily injury, and that he did not violate a duty to retreat.

Appellant's Brief at 4. In essence, Appellant is challenging the sufficiency of the evidence presented for his assault convictions. We apply the following well-settled standard of review when analyzing these types of challenges:

The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying the above test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proof of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all the evidence actually received must be considered. Finally, the trier of fact, while passing upon the credibility of witnesses and the weight of the evidence presented, is free to believe all, part, or none of the evidence.

Commonwealth v. McAllister, __ A.3d __, 2026 WL 2222126 (Pa. Super. filed August 3, 2026), *quoting* ***Commonwealth v. Marberger***, 344 A.3d 403, 410-11 (Pa. Super. 2025) (cleaned up). Further, because the sufficiency of the evidence is a question of law, our standard of review is *de novo*, and our scope of review is plenary. ***Id.***

Appellant was convicted of aggravated assault, which is defined, in pertinent part, by statute:

(a) Offense defined.--A person is guilty of aggravated assault if he:

(1) attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life;

* * *

(4) attempts to cause or intentionally or knowingly causes bodily injury to another with a deadly weapon[.]

18 Pa.C.S. § 2702(a)(1), (4).

Herein, we conclude that the evidence was legally sufficient to sustain Appellant's convictions for aggravated assault. Viewed in the light most favorable to the Commonwealth as the verdict winner, the evidence adduced at trial clearly established that Appellant, armed with a handgun, left the Elks club and was grabbed by his sweatshirt by the victim who apparently had mistaken Appellant for someone else. Appellant's friend attempted to help Appellant, but the three men ended up falling to the ground. Then, as the victim attempted to rise, Appellant put his weapon within an inch of the victim's head, and fired. No one else in the altercation was armed, thus it was clear that Appellant was responsible for the shooting, as he conceded in his testimony. Appellant caused the most serious injury possible, death, to another with a deadly weapon. By intentionally discharging a firearm into the victim's head at near contact range, Appellant intentionally or knowingly

caused serious bodily injury for purposes of Section 2702(a)(1), and intentionally or knowingly caused bodily injury with a deadly weapon for purposes of Section 2702(a)(4). The evidence was clearly sufficient to support his convictions under both subsections of the aggravated assault statute. **See Commonwealth v. Matthew**, 909 A.2d 1254 (Pa. 2006) (finding evidence sufficient for aggravated assault where the defendant had pushed a loaded gun against the victim's throat, otherwise pointed the weapon at the victim, and threatened to kill the victim); **Commonwealth v. Ransom**, 328 A.3d 1127 (Pa. Super. 2024) (finding evidence sufficient for aggravated assault conviction where the defendant struggled with officers attempting to arrest him, retrieved a firearm from somewhere on his person, and fired at the officers, striking one).

Appellant argues that the Commonwealth failed to disprove beyond a reasonable doubt his justification claim to the aggravated assault convictions. Appellant stresses that the victim was the initial aggressor in this fight, and that, due to his physical limitations, Appellant was unable to safely retreat from the altercation. Appellant also maintains that, due to his history of being shot, as well as the victim threatening to kill him, he had an honest belief at the time that his life was in imminent danger. Thus, Appellant maintains that the Commonwealth had not disproven his claim of self defense.

This Court has explained the use of force in self-defense, as pertinent to the case at bar, as follows:

Self-defense is a complete defense to a homicide charge if 1) the defendant reasonably believed that he was in imminent danger of death or serious bodily injury and that it was necessary to use deadly [force] to prevent such harm; 2) the defendant did not provoke the threat that resulted in the slaying; and 3) the defendant did not violate a duty to retreat. 18 Pa.C.S. § 505(b)(2); **Commonwealth v. Sepulveda**, 55 A.3d 1108, 1124 (Pa. 2012); **Commonwealth v. Mouzon**, 53 A.3d 738, 740 (Pa. 2012); [**Commonwealth v. Knox**, 219 A.3d 186, 196 (Pa. Super. 2019)]. Where the defendant has introduced evidence of self-defense, the burden is on the Commonwealth to disprove the self-defense claim beyond a reasonable doubt by proving that at least one of those three elements is absent. **Sepulveda**, 55 A.3d at 1124; **Knox**, 219 A.3d at 196; [**Commonwealth v. Patterson**, 180 A.3d [1217, 1231 (Pa. Super. 2018)]].

Commonwealth v. Green, 273 A.3d 1080, 1084–85 (Pa. Super. 2022), quoting **Commonwealth v. Jones**, 271 A.3d 452, 458 (Pa. Super. 2021).

Before the issue of self-defense is properly submitted to a jury for consideration, a valid claim of self-defense must be presented as a matter of law, and this determination must be made by the trial judge.

Commonwealth v. Hansley, 24 A.3d 410, 420 (Pa. Super. 2011). In **Hansley**, this Court explained that a valid claim of self defense

may consist of evidence from whatever source. Such evidence may be adduced by the defendant as part of his case, or conceivably, may be found in the Commonwealth's own case in chief or be elicited through cross-examination. However, such evidence from whatever source must speak to three specific elements for a claim of self-defense to be placed in issue for a jury's consideration.

Thus, as provided by statute and as interpreted through our case law, to establish the defense of self-defense it must be shown that a) the slayer was free from fault in provoking or continuing the difficulty which resulted in the slaying; b) that the slayer must have reasonably believed that he was in imminent danger of death or great bodily harm, and that there was a necessity to use such

force in order to save himself therefrom; and c) the slayer did not violate any duty to retreat or to avoid the danger.

If there is any evidence from whatever source that will support these three elements[,], then the decision as to whether the claim is a valid one is left to the jury and the jury must be charged properly thereon by the trial court.

Id. at 420-21. Here, the trial court properly submitted Appellant's self-defense claim to the jury.

In his brief to this Court, Appellant maintains that the victim was the initial aggressor who threatened to kill him, possibly due to a case of mistaken identity. Appellant's Brief at 13. After the victim, Appellant, and Brewer all fell to the ground, the victim put his hand on Appellant, preventing him from getting up. **Id.** at 14. Appellant is disabled due to a prior shooting and does not have full use of his lower body. **Id.** at 14-15. Appellant stresses his testimony that the victim threatened him, which, when considered in conjunction with his prior experience, placed him in reasonable apprehension of serious bodily harm. **Id.** Finally, Appellant asserts that he had no ability to get up off the ground or avoid the encounter due to his physical limitations and the victim holding him to the ground before being shot. **Id.** at 16. Thus, Appellant asserts that the self-defense justification defense applied to the aggravated assault charges as well as the homicide offenses.

Appellant's argument on appeal was the same given to his jury. While not stated directly, Appellant's argument presumes that, because the jury acquitted him of the homicide offenses, the jury necessarily accepted his claim of self-defense and was therefore required to acquit him of aggravated assault

as well. That premise is incorrect. A jury's acquittal may not be interpreted as a specific factual finding concerning the evidence, and our review of the sufficiency of the evidence supporting a conviction is independent of the jury's determination on another count. ***Commonwealth v. Moore***, 103 A.3d 1240, 1246 (Pa. 2014) ("jury acquittals may not be interpreted as specific factual findings with regard to the evidence[.]"). Accordingly, we cannot conclude from Appellant's homicide acquittals that the jury found he acted in self-defense. We remind Appellant that "inconsistent verdicts, while often perplexing, are not considered mistakes and do not constitute a basis for reversal." ***Commonwealth v. Frisbie***, 889 A.2d 1271, 1273 (Pa. Super. 2005). "The rationale for allowing inconsistent verdicts is that it is the jury's sole prerogative to decide on which counts to convict in order to provide a defendant with sufficient punishment.'" ***Id.***, quoting ***Commonwealth v. Miller***, 657 A.2d 946, 948 (Pa. Super. 1995). As such, an appellate court will not disturb guilty verdicts on the basis of apparent internal inconsistencies, as long as there is sufficient evidence to support the verdict. ***Id.***

Here, we have concluded that Appellant's aggravated assault convictions were supported by sufficient evidence. Even accepting that the victim initiated the confrontation and threatened Appellant, the Commonwealth presented affirmative evidence from which the jury could conclude that Appellant did not reasonably believe that deadly force was immediately necessary. Appellant acknowledged that he never saw the victim possess a weapon and that the victim never punched or struck him. Moreover,

Hammonds testified that the victim was attempting to rise when Appellant fired, and the forensic evidence established that Appellant fired his handgun within approximately one-half inch of the victim's head. Thus, although Appellant's prior experience of being shot and the victim's threat supplied evidence that Appellant subjectively feared for his safety, the jury could conclude that his belief that *deadly* force was necessary under these circumstances was objectively unreasonable. Additionally, Appellant's decision to flee the scene, evade arrest, and fail to turn over the gun involved in the shooting are additional circumstantial pieces of evidence on which the jury could reject Appellant's self-serving testimony.² Thus, examining the evidence in favor of the Commonwealth, as we must do according to our standard of review, the Commonwealth disproved at least one element of self-defense beyond a reasonable doubt.

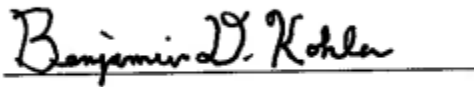
Viewing the evidence in the Commonwealth's favor, an unarmed victim who had not struck Appellant was getting up from the ground when Appellant fired a near-contact shot into his head; therefore, the jury could find beyond a reasonable doubt that Appellant's belief in the immediate necessity of deadly force was unreasonable. Because the Commonwealth need disprove only one

² **See Commonwealth v. Moore**, 937 A.2d 1062, 1067 (Pa. 2007) (explaining that post-incident conduct, including flight, can show consciousness of guilt); **Commonwealth v. Spatz**, 84 A.3d 294, 316 (Pa. 2014) (evidence of a defendant's consciousness of guilt may refute a claim of self-defense).

self-defense element, the aggravated-assault convictions are sufficiently supported. Thus, we affirm Appellant's judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

9/15/2026