2026 PA Super 252

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
DANIELLE ELIZABETH PARKS A/K/A DANIELLE PEDMO	:	
Appellant	:	No. 1298 WDA 2025

Appeal from the Judgment of Sentence Entered May 2, 2025
In the Court of Common Pleas of Clearfield County Criminal Division at No(s): CP-17-CR-0000269-2024

BEFORE: BOWES, J., OLSON, J., and MURRAY, J.

OPINION BY MURRAY, J.: **FILED: November 6, 2026**

Danielle Elizabeth Parks a/k/a Danielle Pedmo (Appellant) appeals from the judgment of sentence imposed after a jury convicted her of one count each of first-degree murder, conspiracy to commit criminal homicide, recklessly endangering another person, and tampering with or fabricating physical evidence.[1] Appellant argues, *inter alia*, that the trial court erred in failing to instruct the jury regarding the justifiable use of force in defense of others. After careful review, we vacate Appellant's judgment of sentence and remand for a new trial.

This case involves the February 24, 2024, shooting death of Appellant's estranged husband, Kodey Parks (Decedent). Appellant and her paramour,

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[1] 18 Pa.C.S.A. §§ 2502(a), 903(a)(1), 2501(a), 2705, 4910(1).

Bryan Michaelis (Michaelis), were subsequently charged in connection with Decedent's death. Following separate jury trials, each was convicted of, *inter alia*, first-degree murder and conspiracy to commit homicide.[2] Pertinently, at her trial, Appellant testified that Michaelis shot Decedent in defense of himself and Appellant, after Decedent invaded Appellant's residence and attacked her. Conversely, the Commonwealth contended Appellant and Michaelis planned to kill Decedent, with Appellant aiding and abetting Michaelis's commission of the murder. The trial court confirmed Appellant "was convicted based on accomplice liability…." Trial Court Opinion, 9/9/25, at 3.

We summarize the evidence presented at Appellant's trial as follows. Appellant and Decedent married in 2012, and their relationship produced three children (the children), aged 12, 6, and 3 at the time of the murder. N.T. (Appellant's Testimony), 2/27/25, at 5.[3] Appellant testified that Decedent and Michaelis had been friends until spring 2023, when they "had a falling out," and thereafter Appellant "continued talking to [Michaelis] on and off." ***Id.*** at 16. Pennsylvania State Police (PSP) Trooper Michael D'Andrea (Trooper D'Andrea) testified that Appellant told police she began an affair with Michaelis

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[2] Michaelis's appeal from his judgment of sentence, docketed in this Court at 1393 WDA 2025, is also listed before this panel.

[3] Appellant's testimony on February 27, 2025, the final day of trial, is recorded in its own transcript, while the remainder of the proceedings from that day (including the charging conference, closing arguments, jury instructions, and verdict) are recorded in a separate transcript. ***See generally*** N.T. (Non-Testimonial Proceedings), 2/27/25.

in August 2023. N.T., 2/25/25, at 66; ***see also*** Commonwealth Exhibit 19 (Appellant's February 28, 2024, interview). At trial, Appellant testified her relationship with Michaelis did not become sexual until "[s]hortly after Thanksgiving, maybe [the] beginning of December" 2023, and prior to that time she and Michaelis were "just friends." N.T. (Appellant's Testimony), 2/27/25, at 16, 53. Appellant testified Decedent became aware of her affair with Michaelis "around Thanksgiving." ***Id.*** at 17.

PSP Trooper Keith Smolko (Trooper Smolko) testified that, on September 25, 2023, Decedent was charged with strangulation, simple assault, terroristic threats, and harassment,[4] in connection with "a domestic incident" between Decedent and Appellant the previous day. N.T., 2/24/25, at 135, 136. The incident, which Appellant audio-recorded on her phone, involved an argument wherein Appellant refused to give Decedent the keys to her vehicle. ***Id.*** at 136, 139. Appellant told Trooper Smolko that Decedent hit her in the face with an open hand and choked her. Commonwealth Exhibit 11 (Police Criminal Complaint, 9/25/23, Affidavit of Probable Cause at 1-2). Trooper Smolko testified that the audio recording confirmed the allegation that Decedent hit Appellant in the face, but did not, by itself, substantiate the alleged strangulation. N.T., 2/24/25, at 137, 139-40; ***see also*** Commonwealth's Exhibit 12 (audio recording). Trooper Smolko stated he filed

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[4] 18 Pa.C.S.A. §§ 2718(a)(1), 2701(a)(3), 2706(a)(1), 2709(a)(1).

the strangulation charge based on Appellant's report. N.T., 2/24/25, at 145-46.

Trooper Smolko testified that at his preliminary arraignment, Decedent "admitted to everything but strangulation." N.T., 2/24/25, at 140. Trooper Smolko explained that Decedent's charges were never resolved, as they remained pending at the time of his death. ***Id.*** Trooper Smolko indicated that, as a condition of his bail, Decedent was to have no contact with Appellant. ***Id.*** at 144.

Further, Appellant obtained a temporary Protection From Abuse (PFA) order against Decedent on October 3, 2023; and a final PFA order on October 16, 2023. ***Id.*** at 61-63; ***see also*** Commonwealth Exhibit 3 (PFA Petition and Temporary PFA Order, 10/3/23)[5]; Commonwealth Exhibit 4 (Final PFA Order, 10/16/23). Both the temporary and final PFA orders prohibited Decedent from having any contact with Appellant, and evicted and excluded him from the marital residence.

According to PSP Trooper Emerson Miller (Trooper Miller), on October 6, 2023, the Commonwealth charged Decedent with indirect criminal contempt (ICC) of the temporary PFA order, alleging he broke into the marital residence

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[5] In her PFA petition, Appellant alleged Decedent had "physically and mentally abused [her] for over 6 years." PFA Petition, 10/3/23, ¶ 10. Appellant alleged Decedent had "pushed … [her] into closets, porch rails, the fence, the tub"; "thrown things at [her], leaving bruises"; and "threaten[ed] to hurt/kill [her] multiple times." ***Id.***

on October 5, 2023, and wrote messages in marker on the kitchen floor and counter.[6] N.T., 2/24/25, at 151-54; ***see also*** Commonwealth Exhibit 13 (Police Criminal Complaint, 10/6/23, Affidavit of Probable Cause at 1).

The final PFA order provided that Decedent could exercise partial physical custody of the children every other weekend at the residence of his grandmother, Mary Kay Sperflage (Ms. Sperflage). Final PFA Order, 10/16/23, ¶ 5; ***see also id.*** (indicating the custody provisions of the order are temporary and may be superseded by an order entered in a subsequent custody proceeding). Ms. Sperflage testified that her residence is located across the street from Decedent's marital residence, and Decedent resided with her after he was excluded from the marital residence. N.T., 2/25/25, at 78, 81.

On November 24, 2023, the Commonwealth again charged Decedent with ICC, based on an alleged violation of the final PFA order, after two witnesses advised police that Decedent and Appellant had been together at a relative's home on November 23, 2023 (Thanksgiving Day). Commonwealth Exhibit 5 (Police Criminal Complaint, 11/24/23, Affidavit of Probable Cause at 1). Appellant testified Decedent "insisted on coming to Thanksgiving dinner with me and the kids, and I did allow him to come because I was afraid of not letting him come." N.T. (Appellant's Testimony), 2/27/25, at 10-11.

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[6] In a message to the children, Decedent blamed Appellant for "forc[ing] this on us," and promised to "make it up" someday. N.T., 2/24/25, at 154. In a message to Appellant, Decedent wrote, "when you g[o]t me locked up, I was totally ready to own up … and change, then the PFA. Go to hell." ***Id.***

During the last week of December 2023, Appellant and the children moved out of the marital residence and into the residence of Appellant's father, Randy Pedmo (Mr. Pedmo), at 318 Albert Lane in Morrisdale, Pennsylvania (the site of the February 24, 2024, shooting; sometimes hereinafter referred to as "Appellant's residence"). ***See*** N.T. (Appellant's Testimony), 2/27/25, at 14-15. On January 10, 2024, Appellant filed a complaint in divorce. ***See*** Defendant's Exhibit E (Complaint in Divorce, 1/10/24).

On February 7, 2024, around 11:30 p.m., PSP Trooper Chandra Baughman (Trooper Baughman) and her partner "were dispatched to a hit-and-run crash in the area of State Route 53," where a vehicle had struck "a telephone pole with wires down." N.T., 2/25/25, at 62-63. The vehicle's driver was Michaelis, who told police that, as he left his residence, another vehicle turned around and began following him. Commonwealth Exhibit 20 (Police Crash Report, 2/7/24, at 6). Michaelis reported that both he and the other vehicle "were speeding up and slowing down[,] messing with each other." ***Id.*** Michaelis stated the other vehicle then passed him and made contact with the driver's side of his vehicle, causing him to lose control and strike a telephone pole. ***Id.*** Michaelis told police he did not get a "good look" at the other driver, but he thought it was Decedent, "due to recent incidents between the two." ***Id.*** On February 13, 2024, police interviewed Decedent, who stated he had been at home with Ms. Sperflage at the time of the incident,

and "had no idea why Michaelis keeps thinking [Decedent is] following him." ***Id.*** at 7. Trooper Baughman testified police found no evidence of Decedent's involvement in the incident. N.T., 2/25/25, at 64.

On February 8, 2024, Michaelis was incarcerated in the Clearfield County Jail for non-payment of child support. ***Id.*** at 66. Trooper Miller testified regarding a recorded telephone call between Appellant and Michaelis on February 12, 2024, which was played for the jury. ***Id.*** at 69-73; ***see also*** Commonwealth Exhibit 21 (February 12, 2024, Jail Call). During the call, Appellant confirmed that she was pregnant. N.T., 2/25/25, at 69. At trial, Appellant indicated Michaelis was the father, and that Decedent knew she "was pregnant [by] another man." N.T. (Appellant's Testimony), 2/27/25, at 48, 50. Trooper Miller related one exchange from the call, wherein Michaelis "asked how it's been out there; and [Appellant] said, It's been pretty quiet, I think he's hiding." N.T., 2/25/25, at 69. Michaelis asked, "Who, [Decedent]? And [Appellant] said, Yeah. And [Michaelis] says, Um-hum, I bet he is. He better be because I'm coming back for him one day." ***Id.***; ***see also*** Commonwealth Exhibit 21.

On February 9, 2024, Appellant and Decedent (each represented by counsel) agreed to the entry of a custody order, which provided for shared legal and physical custody of the children, with the parties exercising physical custody on alternating weeks. ***See*** Commonwealth Exhibit 28 (Custody Order, 2/9/24, ¶¶ 1-3); ***see also id.*** ¶ 9 (providing that contact between the parties

that is necessary to carry out the custody order "shall not represent a violation" of the final PFA order). Emily Ramsey (Ms. Ramsey) testified that she agreed to serve as an intermediary between Decedent and Appellant on custody matters, as "[t]hey had both said they were having issues talking to each other." N.T., 2/26/25, at 50; ***see also id.*** at 49-50 (Ms. Ramsey describing herself as "a non-related aunt" to the children, and stating she had been "very close with the family for a number of years").

Ms. Sperflage testified that, during the three weeks preceding the February 24, 2024, shooting, Appellant spent substantial time living at Ms. Sperflage's residence, where Decedent was residing. N.T., 2/25/25, at 83-84. Ms. Sperflage testified Appellant did not appear to be in fear of Decedent, but rather described the couple by stating, "They were on their honeymoon." ***Id.*** at 83.

Appellant testified she spent "about four nights" with Decedent at Ms. Sperflage's residence, while Michaelis was in jail. N.T. (Appellant's Testimony), 2/27/24, at 51. Appellant indicated she and Decedent slept in the same bed but did not have sex, explaining, Decedent "didn't want to have sex with me because I was pregnant [by] another man." ***Id.*** at 50. Appellant testified she did not spend time with Decedent "willingly," but did so because she was afraid of him. ***Id.*** at 49, 55. Appellant knew Decedent was violating the PFA order by spending time with her, but she stated she "was trying to be civil with" Decedent and did not "want him in any more trouble." ***Id.*** at 50.

She later told police she was with Decedent until the morning of February 23, 2024. N.T., 2/25/25, at 53; Commonwealth Exhibit 19.

On February 23, 2024, Appellant posted approximately $2,500 in bail to secure Michaelis's release from jail. N.T., 2/25/25, at 66; N.T. (Appellant's Testimony), 2/27/25, at 20-21. Appellant testified she had just received an income tax refund of nearly ten thousand dollars, and Michaelis "had been asking for [her] to bail him out and [he] would be paying [her] back." ***Id.*** at 20.

About an hour after Michaelis's release from jail, Appellant and Michaelis arrived at Rural King in Clearfield. N.T., 2/25/25, at 97. As PSP Trooper Austin Woolcock (Trooper Woolcock) explained, store surveillance footage showed Appellant and Michaelis "shopping for a firearm" and "handl[ing] multiple firearms." ***Id.*** at 97-98; ***see also*** Commonwealth Exhibit 24 (Rural King surveillance video). Appellant purchased a Kel-Tec .22 handgun, and completed federal and Pennsylvania background check forms affirming that she was the actual buyer of the firearm and was not purchasing it on behalf of another individual. N.T., 2/25/25, at 90-93; ***see also*** Commonwealth Exhibit 23 (background check forms). The surveillance footage showed that, after the firearm purchase was completed, Michaelis exited the store with the bag containing the firearm, while Appellant went to the checkout counter to purchase other items. N.T., 2/25/25, at 101-02; Commonwealth Exhibit 24. Appellant testified she knew Michaelis was barred from possessing a firearm

due to a previous felony conviction. N.T. (Appellant's Testimony), 2/27/25, at 43.

Regarding the firearm purchase, Appellant testified she "had been looking at" a Kel-Tec 9mm handgun "for a few months[.]" ***Id.*** at 22. Appellant explained that she liked guns and target shooting; owned two other handguns; had a concealed carry permit; and typically carried a .380 handgun. ***Id.*** at 22, 24. Appellant testified that, on this occasion, Rural King did not have the Kel-Tec 9mm in stock, and she instead bought a Kel-Tec .22 handgun, "[b]ecause it was cheap and [she] liked the way it felt…." ***Id.*** at 23-24; ***see also id.*** at 60 (Appellant testifying she and Decedent often bought guns when they received their tax refund, stating, "That was our thing[,] buying guns at tax time").

Joshua Clark (Mr. Clark) testified that he was a friend of both Decedent and Appellant. N.T., 2/26/25, at 81. ***But see*** Commonwealth Exhibit 29 (Appellant describing Mr. Clark as a "scum bag" in a February 24, 2024, text message to Ms. Ramsey); Defendant's Exhibit C (Mr. Clark describing Appellant as "the club[-]footed troll," and she and Michaelis as "scummy fuckers," in February 2, 2024, Facebook messages to Decedent). Mr. Clark stated that, on February 23, 2024, he informed Decedent that he saw Appellant and Michaelis together at a gas station. N.T., 2/26/25, at 83. According to Mr. Clark, Decedent had indicated that he and Appellant were trying to work out their differences, and Mr. Clark did not want Decedent to

be surprised to learn Appellant and Michaelis were "back together." ***Id.*** Mr. Clark testified Decedent responded that "he figured that was going to happen," and agreed with Mr. Clark's advice to "just get away from that before [Decedent] ends up getting himself in trouble…." ***Id.*** at 84.

Mr. Clark further stated that, while the PFA order was in effect against Decedent, Mr. Clark tried to remain neutral and support the children. ***Id.*** at 82-84. He indicated that, at one point, he moved in with Appellant to help with the children and "be a mediator for the [children] between" Decedent and Appellant. ***Id.*** at 82. Mr. Clark testified that, during this period, Appellant once stated, "in a joking fashion," that she "could probably kill [Decedent] and get away with it due to the PFA." ***Id.*** at 85. In her trial testimony, Appellant denied ever making that statement. N.T. (Appellant's Testimony), 2/27/25, at 40.

Pursuant to the custody order, Decedent was to have physical custody of the children during the week of February 18-25, 2024. ***See*** Custody Order, 2/9/24, ¶ 2. According to Appellant, she and Decedent agreed that she would have the children at various times during that week, to enable Decedent to go to work. N.T. (Appellant's Testimony), 2/27/25, at 14. Appellant testified the oldest child spent the night of February 23-24 at a cousin's house, and Decedent picked that child up on February 24. ***Id.*** at 26-27. The two younger children stayed with Appellant during that night and, on February 24, Decedent sought their return to his custody. ***Id.*** at 26-28.

Decedent and Appellant each communicated with Ms. Ramsey, via text message, regarding the custody exchange. ***See*** N.T., 2/26/25, at 50-81 (Ms. Ramsey's testimony); Commonwealth Exhibits 29 (Ms. Ramsey's text messages with Appellant), 30 (Ms. Ramsey's text messages with Decedent). At 2:15 p.m., Decedent asked Ms. Ramsey to "see if I can have my kids please." Commonwealth Exhibit 30. Decedent confirmed that he and Appellant were "not talking again" because "she went and picked [Michaelis] up from jail yesterday." ***Id.*** At 3:32 p.m., Ms. Ramsey advised Decedent that Appellant had not answered her phone, but Ms. Ramsey would let Decedent know when she heard from Appellant. ***Id.***

At 5:00 p.m., Appellant texted Ms. Ramsey that she did not know what to do, as it was "technically [Decedent's] time with [the children] until noon tomorrow," but Appellant had "rented a room at that place near [T]reasure [L]ake in DuBois" and "wanted to take the kids and get out of here for a night." Commonwealth Exhibit 29. In an apparent reference to the alleged hit-and-run, Appellant stated Decedent "purposefully tried to kill [Michaelis] the other night and I'm sure he gets away with it." ***Id.*** Appellant stated she and Michaelis had seen Mr. Clark the previous night and that Mr. Clark must have told Decedent she and Michaelis were together. ***Id.*** Appellant stated, "I'm sure [Decedent] knows. He's going to try to get [Michaelis] again[,] guaranteed. I'm sure he's extremely pissed." ***Id.***

At 8:53 p.m., Appellant asked Ms. Ramsey to inquire whether Decedent still wanted the two younger children that night. ***Id.*** Decedent confirmed to Ms. Ramsey that he did, and asked whether Appellant could bring them to his residence. Commonwealth Exhibit 30. Appellant told Ms. Ramsey she did not want to go to Decedent's residence because "he will harass me." Commonwealth Exhibit 29. Appellant asked if Ms. Ramsey's fiancé would take the children[7] to Decedent, but Ms. Ramsey indicated her fiancé was sick and could not do so. ***Id.*** Decedent told Ms. Ramsey he would pick up the children at Appellant's residence. Commonwealth Exhibit 30.

At 10:01 p.m., Appellant advised Ms. Ramsey that she would be home in twenty minutes, and that she would send the children out the door to Decedent. Commonwealth Exhibit 29. Ms. Ramsey relayed this information to Decedent, who indicated he was on his way. Commonwealth Exhibit 30. At 10:27 p.m., Decedent advised Ms. Ramsey that he was at Appellant's residence, but Appellant was not there. ***Id.*** Appellant texted Ms. Ramsey that she was on her way and would be there in ten minutes. Commonwealth Exhibit 29. Ms. Ramsey relayed this information to Decedent, who responded, "This smells like a setup." Commonwealth Exhibit 30. Ms. Ramsey asked whether anyone was at the residence, and Decedent responded that

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[7] In connection with the ensuing events surrounding the shooting on the night of February 24, 2024, references to "the children" include only the two younger children, as the oldest child was not present.

Appellant's father and his friend were there. ***Id.*** At 10:42 p.m., Decedent advised Ms. Ramsey that he had the children, texting, "Got em. Thank you goodnight." ***Id.***

At 11:35 p.m., Appellant called 911 and reported that she had shot Decedent. N.T., 2/24/25, at 43; Commonwealth Exhibit 1 (911 call recording). Appellant stated she had a PFA against Decedent, and he had come to pick up the children pursuant to a custody agreement. ***Id.*** Appellant reported she had been upstairs in the residence, and Decedent had the children in his vehicle and looked like he was leaving. ***Id.*** According to Appellant, Decedent then ran inside the residence, charged up the stairs, and attacked her in the upstairs hallway. ***Id.*** Appellant indicated Decedent had been on top of her when she shot him. ***Id.*** She stated she used a .22 handgun she bought the previous day, and that Decedent briefly possessed the gun during their struggle. ***Id.*** Appellant reported she might have shot Decedent in the chest, but was unsure whether she actually hit him or whether he was conscious or breathing. ***Id.*** Appellant indicated the shooting happened about fifteen minutes earlier. ***Id.*** Appellant stated she was outside the residence and was afraid to go inside. ***Id.*** She further stated she had brought the children inside because they were cold, and her father was inside, although he had been drinking and passed out. ***Id.*** Appellant remained on the call for approximately twelve minutes, when PSP troopers arrived at the residence. ***Id.***

PSP Trooper Alex Verne (Trooper Verne) testified that he and Trooper Baughman responded to Appellant's residence, where they encountered Appellant in the front yard. N.T., 2/24/25, at 49, 51-52. Upon entering the residence, the troopers observed, in the downstairs living room, Appellant's two younger children, as well as Mr. Pedmo, who was asleep on the couch. ***Id.*** at 53. Trooper Verne testified that, in the upstairs hallway, he saw Decedent lying on his right side. ***Id.*** Trooper Verne indicated Decedent "had sustained multiple gunshot wounds to his torso area," and "it was quite evident that he had expired." ***Id.*** at 54. Trooper Verne testified that Decedent's body was already stiff and "rigor mortis was starting to set in." ***Id.*** at 55. The troopers then woke up Mr. Pedmo and ushered him and the children outside. ***Id.*** at 56-57.

Harry Kamerow, M.D. (Dr. Kamerow), performed an autopsy of Decedent. N.T., 2/25/25, at 9. Dr. Kamerow testified Decedent's cause of death was a "gunshot wound to the chest, and the manner of death [was] homicide." ***Id.*** at 21. Dr. Kamerow indicated Decedent suffered five gunshot wounds, each consistent with a .22-caliber bullet, and each with a bullet trajectory of left to right. ***Id.*** at 9-11, 17-18. Dr. Kamerow identified a gunshot wound to the left upper chest (which he described as the fatal wound, hitting Decedent's aorta); a graze wound to the left upper chest; a wound to the right pelvis; and two wounds to the right upper abdomen. ***Id.*** at 9-11. Dr. Kamerow further testified that gunshot residue analysis showed "the

distance from the gun barrel to [Decedent's] skin [was] approximately six to eight inches[,] but up to twelve inches[.]" ***Id.*** at 13.

Trooper D'Andrea testified that he and Trooper Raymond Green conducted a video- and audio-recorded interview of Appellant at the PSP Clearfield Station, on February 25, 2024, at 1:48 a.m. N.T., 2/24/25, at 156. Appellant was not under arrest and gave a voluntary statement. ***Id.*** at 156-57; ***see also*** Commonwealth Exhibit 14 (Appellant's February 25, 2024, interview).

In Appellant's account, Decedent was sitting in his vehicle in the driveway when she arrived with the two younger children. ***Id.*** He tried to talk to her when she exited her vehicle, but, in an effort to avoid him, she said she had to go to the bathroom and went inside the residence. ***Id.*** Appellant stated she saw Decedent get the children into his vehicle and begin to leave, but then he stopped and entered the residence. ***Id.*** Appellant indicated she was on the steps when Decedent entered, and he ran up the steps after her. ***Id.*** According to Appellant, Decedent jumped on her back in the upstairs hallway and pushed her down. ***Id.*** Appellant stated Decedent held her down and grabbed her hair, and yelled that he wanted another chance. ***Id.*** Appellant indicated she was on her hands and knees, with Decedent on top of her. ***Id.***

Appellant explained that she had previously broken her neck twice, and she feared Decedent would snap her neck. ***Id.*** Appellant stated she had just

bought a new handgun, which she had tucked in the waistband between the two pairs of pants she was wearing, and she pulled it out and shot Decedent. ***Id.*** Appellant believed she fired five or six times. ***Id.*** She also believed a ricochet might have hit her, indicating her upper left leg, but stated that she had no marks on her. ***Id.***; ***see also*** N.T., 2/24/25, at 75 (Trooper Baughman's testimony that she examined Appellant in the early hours of February 25, 2024, and did not see any indication that Appellant had been hit with a ricochet, or any other indication of a struggle). Appellant stated Decedent said, "You shot me," and Appellant then went outside to check on the children. Commonwealth Exhibit 14.

Appellant related that the children were cold and crying, so she brought them inside and turned on a movie, then went back outside and called 911. ***Id.*** She stated Mr. Pedmo had been sitting at the kitchen table and had yelled something when Decedent entered the residence, but Appellant explained that Mr. Pedmo was drunk and barely conscious. ***Id.***

Appellant recounted the tumultuous history of her marriage, and stated Decedent was upset about her filing for divorce, as he wanted to get back together. ***Id.*** Appellant indicated Decedent knew she was seeing someone else, and Decedent did not like her new paramour. ***Id.*** In response to the troopers' questions, Appellant identified Michaelis as her paramour, but maintained he had not been present and was not involved in that night's events. ***Id.*** Appellant claimed she had spent time with Michaelis earlier in

the day on February 24, but had dropped him off at his residence and spent the evening with her two younger children. ***Id.*** Appellant described the alleged hit-and-run, and stated she knew Decedent was going to come after her and Michaelis. ***Id.***

Mr. Pedmo testified that on February 24, 2024, he invited a friend, Daniel Etters (Mr. Etters), to his residence to grill chicken and drink beer. N.T., 2/26/25, at 109-10. Mr. Pedmo indicated they began drinking around noon and, after grilling and eating chicken, sat "in the kitchen and drank lots of beer." ***Id.*** at 109. He stated that, during the daytime, Decedent came to the residence looking for Appellant, who was not there, and Decedent left. ***Id.*** at 110. Mr. Pedmo testified he had no recollection of Decedent coming back to the residence later that evening (*i.e.*, at the time of the shooting), nor did he recall hearing any gunshots. ***Id.*** He stated, "I drank a lot of beer, and I don't remember much of that evening at all." ***Id.*** He did not recall when Mr. Etters left. ***Id.*** at 114. Mr. Pedmo testified the first thing he remembered was Appellant saying Decedent "attacked her and she shot him and the police were coming," and shortly thereafter, police arrived. ***Id.*** at 111.[8]

Mr. Etters testified that February 24, 2024, was his birthday, and he and Mr. Pedmo made plans "to be immature and get drunk together." ***Id.*** at 116.

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[8] Trooper Verne testified that Mr. Pedmo appeared "very slow and sluggish," with "a strong odor of alcoholic beverage coming from his person," and there were "numerous empty beer cans overflowing out of a trash can in the kitchen area." N.T., 2/24/25, at 57.

He recalled Decedent coming to the residence in the afternoon, looking for Appellant, and then leaving. ***Id.*** at 117. Mr. Etters testified that, though he was "[q]uite intoxicated," he recalled Appellant coming to the residence "very late at night." ***Id.*** at 118; ***see also id.*** at 122 (asked if he recalled how much alcohol he drank that evening, Mr. Etters responded, "Way too much"). He did not recall seeing Michaelis or the children. ***Id.*** at 119. Mr. Etters testified that Decedent, who appeared "very, very upset," entered the residence, "looking for" Appellant. ***Id.*** at 118. Decedent "kind of pushed through" Mr. Pedmo and "ran up the steps." ***Id.*** According to Mr. Etters, he "was taking off" at the time Decedent arrived and, as it seemed like Decedent and Appellant were in the midst of acrimony, Mr. Etters decided to leave. ***Id.*** at 119, 124. Mr. Etters stated he went outside, "passed out in [his] truck a little bit," then woke up and drove off. ***Id.*** at 120. He testified he did not hear any gunshots. ***Id.***

Lynda Lamb (Ms. Lamb) testified that she is a good friend of Appellant. N.T., 2/26/25, at 11. Ms. Lamb stated that Appellant, the two younger children, and Michaelis were at Ms. Lamb's residence during the day on February 24, 2024, and were still there when Ms. Lamb left to visit another friend. ***Id.*** at 10-11, 16-17, 23. Ms. Lamb testified she was aware that Appellant had a .22 handgun, and saw Michaelis with that handgun on February 24, 2024, but Ms. Lamb stated she did not know if Michaelis "handed it back to" Appellant. ***Id.*** at 23.

Ms. Lamb indicated she had three security cameras at her residence, only one of which was functional. ***Id.*** at 13-14. Ms. Lamb testified that records of the camera obtained from her cell phone showed that, at 3:42 p.m. on February 24, 2024, Appellant's vehicle was parked at Ms. Lamb's residence. ***Id.*** at 16-17. Ms. Lamb further testified that, at 4:15 p.m. on that date, she received a notification that her camera had been turned off. ***Id.*** Finally, Ms. Lamb testified that, on February 25, 2024, Michaelis sent her a message via Facebook Messenger, ***id.*** at 18, stating as follows:

> Yeah, fyi … ur outside cam is in cupboard above stove. We will say it was prudent and necessary at the time and best left at that. Sorry for any mess, but heard [Decedent's mother] is batshit nuts today so we owe ya a small cleaning. We're gonna get somewhere safe for a couple days.

Commonwealth Exhibit 26.

Dustin Kephart, Ms. Lamb's neighbor, testified that, on February 24, 2024, in the midafternoon, he saw a male firing a small-caliber handgun on a hill behind Ms. Lamb's house. N.T., 2/26/25, at 5-7. John McDowell, another neighbor of Ms. Lamb, testified that, around midnight on February 24-25, 2024, he heard three gunshots coming from the direction of Ms. Lamb's residence. ***Id.*** at 126-28.

Trooper Woolcock testified that he obtained surveillance footage from the Morris Township Municipal Building, which was located next to Ms. Lamb's residence. ***Id.*** at 134; ***see also*** Commonwealth Exhibit 35 (Morris Township Municipal Building surveillance footage). Trooper Woolcock testified the

footage showed a vehicle resembling Appellant's vehicle arrive at Ms. Lamb's residence on February 24, 2024, at about 9:00 p.m., and leave just before 10:30 p.m. N.T., 2/26/25, at 138-40.[9] The same vehicle returned to Ms. Lamb's residence just after 11:00 p.m., and left between 11:10 p.m. and 11:20 p.m. ***Id.*** at 140-41. Trooper Woolcock further testified that the footage showed a fire "become[] visible to the rear of [Ms.] Lamb's residence around 11:15 [p.m.]," with one individual visible, "walking around the exterior of the fire" at 12:15 a.m. ***Id.*** at 141-42. Finally, the vehicle resembling Appellant's vehicle could be seen parked at Ms. Lamb's residence around 6:15 a.m. on February 25, 2024. ***Id.*** at 143-44.

PSP Trooper Tyler Thompson (Trooper Thompson) testified that, on February 27, 2024, he found burned clothing in a firepit in Ms. Lamb's backyard. N.T., 2/26/25, at 31, 34-36. Trooper Thompson also found three spent .22 shell casings near a dog kennel in Ms. Lamb's enclosed backyard. ***Id.*** at 36-38. Farther from Ms. Lamb's house, on the crest of a hill, Trooper Thompson found seven spent .22 shell casings, as well as a black bucket with bullet holes in it. ***Id.*** at 38-41.

PSP Sergeant Richard Podbielski, testifying as a ballistics expert, concluded that Appellant's Kel-Tec .22 handgun fired all of the .22 shell

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[9] Trooper Woolcock testified it was about a ten-minute drive from Ms. Lamb's residence to Appellant's residence, where the shooting occurred. N.T., 2/26/25, at 145.

casings recovered from Ms. Lamb's residence, as well as spent .22 shell casings recovered from the murder scene. ***Id.*** at 94-100. Trooper Woolcock testified that, on February 29, 2024, he recovered a black box from Michaelis's bedroom at the residence he shared with his mother, which PSP identified as the box which had contained the Kel-Tec .22 handgun "that was purchased at Rural King," and included the handgun's serial number. ***Id.*** at 189.

PSP Corporal Terry Bush (Corporal Bush) testified that he determined PSP needed to re-interview Appellant, as PSP had gathered significant evidence conflicting with her account. N.T., 2/25/25, at 45-46. On February 28, 2024, Corporal Bush and Trooper David Patrick re-interviewed Appellant at the PSP Clearfield Station. ***Id.*** at 47. John Ryan, Esquire, who also represented Appellant in her divorce/custody proceedings, was present on her behalf. ***Id.*** at 47. Appellant waived her ***Miranda***[10] rights and gave a video- and audio-recorded interview. Commonwealth Exhibit 29 (Appellant's February 28, 2024, interview).

Appellant initially gave an account consistent with her first interview. ***Id.***; ***see also*** N.T., 2/25/25, at 48-49. However, after the officers advised her they had evidence contradicting parts of her story, Appellant claimed Michaelis had been waiting in her vehicle outside the residence during the shooting, but never went inside. Commonwealth Exhibit 29. Upon further

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[10] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

questioning, Appellant claimed Decedent entered the residence and attacked her, and Michaelis exited her vehicle and followed Decedent inside. ***Id.***

Appellant maintained she had been carrying the .22 handgun; she fired one shot at Decedent; Decedent knocked the gun out of her hand and gained possession of it; Decedent and Michaelis fought over the gun; more shots were fired while both Decedent and Michaelis had their hands on the gun, and Appellant was hit with a ricochet. ***Id.*** Appellant claimed she did not know if Michaelis shot Decedent, and posited that the shot she fired might have killed Decedent. ***Id.*** Appellant stated she then drove Michaelis to Ms. Lamb's residence to conceal his involvement. ***Id.*** Appellant claimed she previously lied to protect Michaelis, because he had only acted to protect her, and she believed he would be blamed for everything. ***Id.***

Eventually, Appellant stated she never fired the gun at Decedent, but maintained it was in her waistband when she entered the residence, and it fell out when Decedent attacked her. ***Id.*** She claimed Decedent and Michaelis fought over the gun, and Michaelis shot Decedent in the midst of the struggle. ***Id.*** Appellant further stated it was Michaelis's idea for Appellant to claim she shot Decedent, and for Appellant to fire the gun at Ms. Lamb's residence after the shooting, so she would have gunshot residue on her person. ***Id.***

On February 28, 2024, PSP arrested Appellant and Michaelis, and charged both in connection with Decedent's death. Appellant's case proceeded to a jury trial on February 24-27, 2025. Lance Marshall, Esquire

(trial counsel), represented Appellant. After the Commonwealth presented the evidence summarized above, Appellant testified as the sole defense witness.[11]

In her trial testimony, Appellant initially recounted the history of her relationship with Decedent, including the criminal charges and PFA proceedings filed against him in September/October 2023, as well as the divorce/custody proceedings. ***See*** N.T. (Appellant's Testimony), 2/27/25, at 5-15. Appellant then discussed her relationship with Michaelis, including the events of February 23, 2024, when she bailed Michaelis out of jail and purchased the .22 handgun at Rural King. ***See id.*** at 15-25. Appellant testified that, when Mr. Clark saw her and Michaelis together that day, she was afraid Mr. Clark would tell Decedent, "because of the fact that [Decedent] had been on a rampage after [Michaelis] for months and [she] didn't want [Decedent] going after [Michaelis] again." ***Id.*** at 61.

Regarding the custody exchange on February 24, 2024, Appellant emphasized that she had tried to get Ms. Ramsey's fiancé to take the children to Decedent because Appellant "didn't want to have to see" Decedent. ***Id.*** at 29-30. Appellant further emphasized it had been Decedent's idea for him to

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[11] Michaelis did not testify at Appellant's trial. However, the Commonwealth presented evidence that, while in jail following his arrest for Decedent's murder, Michaelis sent a coded letter to Appellant, which, when decoded, contained the statement, "I don't regret killing that faggot." N.T., 2/26/25, at 217-19.

pick up the children at Appellant's residence. ***Id.*** at 31. She testified she hoped she could avoid seeing Decedent during the exchange, but he was already at her residence when she arrived, waiting in his vehicle in the driveway. ***Id.*** at 32; ***see also id.*** (Appellant testifying she hoped to avoid Decedent seeing Michaelis in her vehicle because she "didn't want the two of them together"). Appellant testified she got the children out of her vehicle, and Decedent exited his vehicle and said "he wanted to talk, can't we talk, he wanted to work this out, why the F am I with [Michaelis]." ***Id.*** at 33. Appellant stated she hurriedly got the children into Decedent's vehicle; told him she did not want to talk to him; said she had to go to the bathroom and went inside the residence. ***Id.***; ***see also id.*** at 38 (Appellant testifying that she saw Mr. Etters's vehicle parked at the residence, but did not see Mr. Etters).

Appellant testified that Decedent returned to his vehicle and, from the residence's upstairs bathroom window, she saw him begin to head up the driveway. ***Id.*** at 33. After leaving the bathroom, however, Appellant saw, through the downstairs kitchen window, Decedent's vehicle had returned, "and was sitting there with the driver's door open and the interior lights [] on." ***Id.*** Appellant testified she was on the stairs when the kitchen door flew open and she heard Decedent "stomping through the kitchen," whereupon Appellant "turned and [] ran back up the stairs." ***Id.*** at 34.

Appellant testified she "made it into the [upstairs] hallway, and [Decedent] tackled me about halfway through the hallway and was on top of me." ***Id.*** Appellant further testified as follows:

> [Decedent] was yelling that I can't leave him. He had ahold of my hair, pulling my head back. I was flat down on the ground trying to crawl away, trying to get out from underneath him.
>
> At this point, I had had the new .22 in my pants. I did not have a holster for it yet, so it was just slid down in there. At some point it had flown out and was laying in the hallway.
>
> At this point in time, neither me or [Decedent] had reached for the gun. It was just there. I seen it there. I don't know if [Decedent] seen it, but he didn't go for it at this point.
>
> But as this was going on, [Michaelis] must have seen [Decedent] coming into my dad's house. And [Michaelis] came up the steps, and that's when I got out from under [Decedent], and him and [Michaelis] started fighting with each other, wrestling.[12] For the first few seconds of it, nobody had reached for the gun.
>
> ….
>
> Then they both reached for the gun, it went off, [the bullet] ricocheted off of the ground, it flew up, and it hit me. And then the two of them continued wrestling for the gun, and then I watched them fighting, and … I heard the shots go off.[13]
>
> ….

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[12] Appellant testified that Decedent was much larger than either her or Michaelis. N.T. (Appellant's Testimony), 2/27/25, at 35-36 (Appellant describing Decedent as 6'0", 220 pounds; herself as 5'2", 130 pounds; and Michaelis as 5'6", 160 pounds).

[13] Appellant testified that, while Decedent and Michaelis were fighting, she "had got up and turned around and was getting ready to go into [Mr. Pedmo's bedroom] and shut the door." N.T. (Appellant's Testimony), 2/27/25, at 71.

> That was when … [Michaelis] said get me out of here, and I took [Michaelis] out of there.

Id. at 34-35 (footnotes added). Appellant testified that, within a minute after the shooting, Michaelis said "get me out of here." ***Id.*** at 38. Appellant stated she brought the children inside, "got their blankets, … got them each a drink[,] and turned the TV on." ***Id.***

According to Appellant, within five to ten minutes after the shooting, she and Michaelis proceeded to Ms. Lamb's residence. ***Id.*** at 40. Appellant testified it was Michaelis's idea for her to tell the police that she shot Decedent, and for her to shoot the handgun in Ms. Lamb's backyard so she "would get gunshot residue on" herself. ***Id.***

Appellant testified she initially lied in her second police interview "[b]ecause [she] was scared." ***Id.*** at 43. However, she finally told police Michaelis had been the one who shot Decedent, testifying, "I just decided that I couldn't lie anymore. I felt bad for lying to the cops. I know they were trying to help me." ***Id.*** Appellant denied she and Michaelis planned to kill Decedent, stating she "never" wanted Decedent dead, but rather insisted she had loved Decedent and still loved him. ***Id.*** at 44.

At a charging conference, trial counsel requested that the trial court instruct the jury regarding the justifiable use of force in self-defense and in defense of others. ***See*** N.T. (Non-Testimonial Proceedings), 2/27/25, at 9-10. The Commonwealth objected, arguing as follows:

> The initial story by [Appellant] was that she was the one that shot and killed [Decedent]. However, as her stories changed, she has now stated that [] Michaelis was the one that shot and killed [Decedent], which means that she cannot raise [] self-defense because she isn't the one that shot and killed [Decedent]. So that is not how the instruction reads. The instruction reads for the person that actually did the killing, whether they killed for themself [*sic*] or for another. Another person cannot raise that defense.

Id. at 9-10. Trial counsel contended there was evidence that Michaelis "was defending [Appellant] from [Decedent]," which was sufficient to support a defense of others instruction. ***Id.*** at 10. The Commonwealth countered, "But that is [Michaelis's] defense to raise, not hers." ***Id.***

The trial court denied Appellant's request for jury instructions on either self-defense or defense of others, stating as follows:

> [F]irst of all, … self-defense would be a claim by [Appellant] that she acted in self-defense; and then also[,] … defense of others would be [Appellant] acted in such a manner in defense of another person; and she did none of those. So the [c]ourt is denying reading those [instructions].

Id. at 13. The trial court instructed the jury regarding, *inter alia*, conspiratorial liability and accomplice liability. ***See id.*** at 72-75.

On February 27, 2025, the jury convicted Appellant of all charges. On May 2, 2025, the trial court imposed an aggregate sentence of life imprisonment.[14]

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[14] Michaelis was tried before a jury on April 28-May 1, 2025. Both Appellant and Michaelis testified, and both maintained Michaelis shot Decedent in defense of himself and Appellant. ***See*** N.T. (CP-17-CR-269-2024), 4/29/25,
(Footnote Continued Next Page)

On May 9, 2025, Appellant filed a timely post-sentence motion challenging, *inter alia*, the trial court's failure to instruct the jury regarding the justifiable use of force in self-defense and defense of others. ***See*** Post-Sentence Motion, 5/9/25, ¶¶ 14-17. On May 13, 2025, the trial court granted trial counsel leave to withdraw from representation, and appointed Wayne Bradburn, Esquire, to represent Appellant. On June 27, 2025, the trial court heard oral argument on Appellant's post-sentence motion. The parties thereafter submitted briefs. On September 9, 2025, the trial court filed an opinion and order, denying the post-sentence motion. ***See*** Trial Court Opinion and Order, 9/9/25.

Appellant timely appealed. Appellant and the trial court have complied with Pa.R.A.P. 1925. Appellant presents the following questions for our review:

> 1. Whether the trial court was obligated to tender a defense of others instruction to the jury[,] … [where] the [Commonwealth] … first factually raised this … defense at trial, which was then echoed by the defense during its case-in-chief, instead of improperly making a credibility determination and thus deciding against giving this requested point for charge, which would have altered the burden of proof?
>
> 2. Whether the judicial estoppel doctrine should have been affirmatively invoked by the [trial] court … to prevent the

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at 36-161 (Appellant's testimony); N.T. (CP-17-CR-269-2024), 5/1/25, at 3-113 (Michaelis's testimony). The trial court instructed the jury regarding the justified use of force in self-defense and defense of others, and apprised the jury that the Commonwealth had the burden to disprove those defenses beyond a reasonable doubt. ***See id.*** at 194-201. After deliberating, the jury convicted Michaelis of all counts. ***Id.*** at 226.

> [Commonwealth] from arguing against Appellant[]'s … defense of defense of others in closing argument by essentially denying the legitimacy of Decedent's prior act of strangulation of Appellant[,] when the Clearfield County District Attorney's Office was actively prosecuting that charge [against Decedent] on the date of [] Decedent's justified killing?

Appellant's Brief at 6 (capitalization modified).

In her first issue, Appellant argues the trial court committed reversible error when it rejected her request for a jury instruction regarding the justifiable use of force in defense of others. ***Id.*** at 38-49. Appellant argues her trial testimony constituted evidence that, "immediately before the justified killing," Decedent had unlawfully entered Appellant's residence, tackled her, pulled her hair, and "almost snapped her neck…." ***Id.*** at 40. Appellant also points to evidence that Decedent was "enraged" over her relationship with Michaelis, and evidence of Decedent's prior violent and threatening conduct against Appellant, which resulted in a PFA order, PFA violations, and criminal charges, including strangulation. ***Id.*** at 38-40. Appellant maintains this evidence, if believed, would establish Appellant's right, at the time of the killing, to use deadly force in justifiable self-defense. ***Id.*** at 41.

Appellant argues her right to defend herself "transferred" to Michaelis, who, in Appellant's account, intervened to "pull[]" Decedent "off of" Appellant, and "ultimately shot [] Decedent to prevent him from further injuring" Appellant. ***Id.*** Appellant asserts this evidence would establish that Michaelis acted in justifiable defense of Appellant. ***Id.***; ***see also id.*** at 45 (arguing that because Decedent unlawfully entered Appellant's residence, neither Appellant

nor Michaelis had a duty to retreat, and their reasonable belief in the necessity of using deadly force is presumed (citing 18 Pa.C.S.A. §§ 505(b)(2)-(2.1), 506(b)). Appellant argues that, as the person who was being protected by Michaelis's justifiable use of force, she was entitled to avail herself of a justification defense. ***Id.*** at 42.

Appellant maintains that, because there was some evidence supporting each of the elements of a justification defense, the trial court erred as a matter of law in refusing to instruct the jury regarding that defense. ***Id.*** at 42-43, 47-48. Appellant argues she was entitled to invoke a justification defense even though Michaelis, not Appellant, was the actor who used force. ***Id.*** at 41-42. Appellant further suggests that, in refusing to instruct the jury regarding justification, the trial court impermissibly evaluated the credibility of Appellant's testimony, and thereby invaded a function reserved exclusively for the jury. ***Id.*** at 44; ***see also id.*** at 45 (arguing the trial court failed to apply 18 Pa.C.S.A. § 505(b)(2)-(2.1), regarding the absence of a duty to retreat from one's dwelling and the presumption of a reasonable belief that deadly force is necessary).

Appellant argues she is entitled to a new trial because the "faulty jury charge … permitted a finding of guilt without requiring the Commonwealth to establish the critical elements of the crimes charged beyond a reasonable doubt." ***Id.*** at 48 (quoting ***Commonwealth v. Hansley***, 24 A.3d 410, 420 (Pa. Super. 2011)). Appellant contends the absence of a justification

instruction altered the burden of proof at trial, as the Commonwealth has the burden to disprove justification beyond a reasonable doubt. ***Id.*** (citing ***Commonwealth v. Burns***, 765 A.2d 1144, 1149 (Pa. Super. 2000)). Appellant further asserts that she was charged as an accomplice, which requires her "participation in [a] crime," but "there [is] no crime" where a killing results from justifiable use of force. ***Id.*** at 48.

The Commonwealth counters that "Appellant has not met the requirements to show that a sufficient self-defense[/defense of others] argument was made to warrant the instruction." Commonwealth Brief at 11. The Commonwealth argues that

> self-defense/defense of others [applies] when the slayer or the person the slayer is protecting … did not provoke the difficulty; when the slayer believes he or the person he is protecting is in imminent danger; and when either the slayer, or the one the slayer is protecting, has not violated a duty to retreat.

Id. (citing ***Hansley***, 24 A.3d at 421). According to the Commonwealth,

> it was undisputed that Appellant was not the slayer who pulled the trigger and[,] therefore, a jury instruction that granted her [a] … defense for protecting herself or … others would have confused the jury. Appellant's role in the homicide would not have permitted the use of the instruction.

Id.

"In reviewing a jury charge, we determine whether the trial court committed a clear abuse of discretion or an error of law which controlled the outcome of the case." ***Commonwealth v. Jones***, 323 A.3d 13, 21 (Pa. Super. 2024) (citation omitted); ***see also Commonwealth v. Davis***, 326

A.3d 988, 994 (Pa. Super. 2024) ("Only where there is an abuse of discretion or an inaccurate statement of the law is there reversible error.").

> A trial court has broad discretion in formulating and delivering instructions to a jury. When reviewing the exercise of that discretion, an appellate court must evaluate the trial court's instruction as a whole to determine if it was fair or prejudicial. A trial court may use such language as it chooses, so long as the law is clearly, adequately, and accurately presented to the jury for its consideration. We will not rigidly inspect a jury charge, finding reversible error for every technical inaccuracy, but rather evaluate whether the charge sufficiently and accurately apprises a lay jury of the law it must consider in rendering its decision. Error cannot be predicated on isolated excerpts of the charge, but it is the general effect of the charge that controls.

Commonwealth v. Drummond, 285 A.3d 625, 634-35 (Pa. 2022) (footnotes and quotation marks omitted).

> Our Supreme Court has explained that first-degree murder
>
> is an intentional killing, *i.e.*, a "willful, deliberate and premeditated killing." 18 Pa.C.S.A. § 2502(a), (d). In order to prove first-degree murder, the Commonwealth must establish that: (1) a human being was killed; (2) the accused caused the death; and (3) the accused acted with malice[15] and the specific intent to kill. ***Commonwealth v. Smith***, 985 A.2d 886, 895 (Pa. 2009). The jury may infer the specific intent to kill based upon the defendant's use of a deadly weapon on a vital part of the victim's body. ***Id.***
>
> In addition, … in order to convict a defendant of conspiracy, the Commonwealth must prove: (1) the defendant intended to commit or aid in the commission of the criminal act; (2) that the defendant entered into an agreement with another to engage in the crime; and (3) the defendant or one or more of the other co-

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[15] Malice "comprehends not only a particular ill-will, but every case where there is wickedness of disposition, hardness of heart, cruelty, recklessness of consequences, and a mind regardless of social duty, although a particular person may not be intended to be injured." ***Commonwealth v. Peters***, 355 A.3d 1270, 1282 (Pa. 2026) (quoting ***Commonwealth v. Drum***, 58 Pa. 9, 15 (1868)).

> conspirators committed an overt act in furtherance of the agreed upon crime. ***Id.*** As it is often difficult to prove an explicit or formal agreement, the agreement generally is established via circumstantial evidence, such as by the relations, conduct, or circumstances of the parties, or the overt acts on the part of co-conspirators. ***Commonwealth v. Johnson***, 985 A.2d 915, 920 (Pa. 2009). In the case of a conspiracy to commit homicide, each member of the conspiracy may be convicted of first-degree murder, regardless of who inflicted the fatal wound. ***Id.***
>
> Finally, an individual may be held criminally liable for the acts of another, including first-degree murder, as an accomplice. In order to sustain a conviction based on accomplice liability, the Commonwealth must demonstrate that an individual acted with the intent of promoting or facilitating the commission of an offense and agrees, aids, or attempts to aid such other person in either planning or committing that offense. ***Commonwealth v. Spotz***, 716 A.2d 580, 585-86 (Pa. 1998). As with conspiracy, a shared criminal intent between the principal and his accomplice may be inferred from a defendant's words or conduct or from the attendant circumstances. ***Id.***

Commonwealth v. Le, 208 A.3d 960, 969 (Pa. 2019) (citations modified; footnote added).

Criminal liability for the conduct of another is codified in section 306 of the Crimes Code, which provides, in pertinent part, as follows:

> **(a) General rule.**--A person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for which he is legally accountable, or both.
>
> **(b) Conduct of another.**--A person is legally accountable for the conduct of another person when:
>
> (1) acting with the kind of culpability that is sufficient for the commission of the offense, he causes an innocent or irresponsible person to engage in such conduct;
>
> (2) he is made accountable for the conduct of such other person by this title or by the law defining the offense; or

> (3) he is an accomplice of such other person in the commission of the offense.
>
> **(c) Accomplice defined.**--A person is an accomplice of another person in the commission of an offense if:
>
> (1) with the intent of promoting or facilitating the commission of the offense, he:
>
> (i) solicits such other person to commit it; or
>
> (ii) aids or agrees or attempts to aid such other person in planning or committing it; or
>
> (2) his conduct is expressly declared by law to establish his complicity.
>
> **(d) Culpability of accomplice.**--When causing a particular result is an element of an offense, an accomplice in the conduct causing such result is an accomplice in the commission of that offense, if he acts with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the offense.
>
> ***
>
> **(g) Prosecution of accomplice only.**--An accomplice may be convicted on proof of the commission of the offense and of his complicity therein, though the person claimed to have committed the offense has not been prosecuted or convicted or has been convicted of a different offense or degree of offense or has an immunity to prosecution or conviction or has been acquitted.

18 Pa.C.S.A. § 306(a)-(d), (g).

A jury may convict a defendant as an accomplice

> so long as the facts adequately support the conclusion that he or she aided, agreed to aid, or attempted to aid the principal in planning or committing the offense, and acted with the intention to promote or facilitate the offense. ***See Commonwealth v. Romero***, 722 A.2d 1014, 1020 (Pa. 1999); ***Commonwealth v. Thompson***, 674 A.2d 217, 222-23 (Pa. 1996). The amount of aid "need not be substantial so long as it was offered to the principal to assist him in committing or attempting to commit the crime." ***Commonwealth v. Murphy***, 844 A.2d 1228, 1234 (Pa.

> 2004). However, simply knowing about the crime or being present at the scene is not enough. ***See id.***

Commonwealth v. Markman, 916 A.2d 586, 597-98 (Pa. 2007) (citations modified; footnote omitted). Where a defendant is charged with first-degree murder as an accomplice, "the Commonwealth must prove beyond a reasonable doubt that the defendant independently possessed the requisite specific intent to kill[;] … the same c[an]not be proven by evidence of the intent to kill possessed by the defendant's accomplice or co-conspirator." ***Commonwealth v. Housman***, 226 A.3d 1249, 1267 (Pa. 2020) (citing ***Commonwealth v. Huffman***, 638 A.2d 961 (Pa. 1994)); ***see also Commonwealth v. Coley***, 504 A.2d 1286, 1289 (Pa. Super. 1986) (in a first-degree murder prosecution, "whether or not [the defendant] was the actual shooter is irrelevant," if the defendant's "shared criminal intent to kill can be inferred from the circumstances of the killing itself." (citation omitted)).

The justifiable use of force in self-defense is set forth in section 505 of the Crimes Code, which provides, in pertinent part, as follows:

> **(a) Use of force justifiable for protection of the person.**--The use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion.
>
> **(b) Limitations on justifying necessity for use of force.**--
>
> ***
>
> (2) The use of deadly force is not justifiable under this section unless the actor believes that such force is necessary to protect himself against death, serious bodily injury, kidnapping or

> sexual intercourse compelled by force or threat; nor is it justifiable if:
>
> > (i) the actor, with the intent of causing death or serious bodily injury, provoked the use of force against himself in the same encounter; or
> >
> > (ii) the actor knows that he can avoid the necessity of using such force with complete safety by retreating, except the actor is not obliged to retreat from his dwelling or place of work, unless he was the initial aggressor or is assailed in his place of work by another person whose place of work the actor knows it to be.
>
> (2.1) Except as otherwise provided in paragraph (2.2), an actor is presumed to have a reasonable belief that deadly force is immediately necessary to protect himself against death, serious bodily injury, kidnapping or sexual intercourse compelled by force or threat if both of the following conditions exist:
>
> > (i) The person against whom the force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcefully entered and is present within, a dwelling, residence or occupied vehicle; or the person against whom the force is used is or is attempting to unlawfully and forcefully remove another against that other's will from the dwelling, residence or occupied vehicle.
> >
> > (ii) The actor knows or has reason to believe that the unlawful and forceful entry or act is occurring or has occurred.

18 Pa.C.S.A. § 505(a), (b)(2)-(2.1); ***see also Commonwealth v. Focht***, 334 A.3d 931, 937 (Pa. Super. 2025) ("The ideological foundation for the castle doctrine," *i.e.*, the absence of a duty to retreat from one's dwelling, "is the belief that a person's home is his castle and that one should not be required to retreat from his sanctum." (citation omitted)).

Section 506 provides for the justifiable use of force in defense of others:

> **(a) General rule.**--The use of force upon or toward the person of another is justifiable to protect a third person when:
>
> (1) the actor would be justified under section 505 (relating to use of force in self-protection) in using such force to protect himself against the injury he believes to be threatened to the person whom he seeks to protect;
>
> (2) under the circumstances as the actor believes them to be, the person whom he seeks to protect would be justified in using such protective force; and
>
> (3) the actor believes that his intervention is necessary for the protection of such other person.
>
> **(b) Exception.**--Notwithstanding subsection (a), the actor is not obliged to retreat to any greater extent than the person whom he seeks to protect.

18 Pa.C.S.A. § 506; ***see also Commonwealth v. Simmons***, 475 A.2d 1310, 1313 (Pa. 1984) (in order to successfully invoke a "defense of others" claim, "the same standards which are required for self-defense must be met"); ***Commonwealth v. La***, 640 A.2d 1336, 1346 (Pa. Super. 1994) ("Because the right to take a human life is dependent upon the surrounding circumstances, persons acting in defense of others are in the same situation[,] and upon the same plane, as those who act in defense of themselves").

This Court has explained the circumstances under which a trial court must instruct the jury regarding self-defense or defense of others:

> Before the issue of self-defense or defense of others may be submitted to a jury for consideration, a valid claim of self-defense or defense of others must be made out as a matter of law, and this determination must be made by the trial judge. Such claim 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 or defense of others it must be shown that: (a) the slayer or the other he seeks to protect 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 or the other he seeks to protect 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 or the other therefrom; and (c) the slayer or the other he seeks to protect 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.

Commonwealth v. Hornberger, 74 A.3d 279, 284-85 (Pa. Super. 2013) (citation and brackets omitted). If these three elements are met, either self-defense or defense of others "is a complete defense to a homicide charge[.]" ***Commonwealth v. Jones***, 271 A.3d 452, 458 (Pa. Super. 2021).

As we have recognized,

> [o]ur case law makes it crystal clear that **the charge of self-defense** [**or defense of others**] **must be given upon request where the jury would have a possible basis for finding it.** … [I]f there was evidence which would have supported the claim of self-defense [or defense of others], it was for the trier of fact to pass upon that evidence and improper for the trial judge to exclude such consideration by refusing the charge. **This is so even though the evidence of self-defense** [**or defense of others**] **may appear to the trial court as not credible, for it is the province of the trier of fact to pass upon the credibility of witnesses and the weight to be accorded the evidence produced.** The fact-finder is free to believe all, part, or none of the evidence.

Commonwealth v. Mayfield, 585 A.2d 1069, 1071 (Pa. Super. 1991) (*en banc*) (citations and quotation marks omitted; emphasis and bracketed language added).

"To secure a conviction for criminal homicide, it is the Commonwealth's burden to disprove justification beyond a reasonable doubt where the defendant validly asserts self-defense or defense of others." ***Hornberger***, 74 A.3d at 283; ***see also Commonwealth v. Sepulveda***, 55 A.3d 1108, 1143 (Pa. 2012) (recognizing that "in order to meet its burden of proof on the element of malice, the prosecution must exclude self-defense beyond a reasonable doubt"); ***Commonwealth v. Green***, 273 A.3d 1080, 1085 (Pa. Super. 2022) ("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 th[e] three elements is absent"); ***Commonwealth v. Smith***, 97 A.3d 782, 787 (Pa. Super. 2014) (recognizing a "defendant has no burden to prove [a] self-defense claim" (citation and quotation marks omitted)); ***Commonwealth v. Bullock***, 948 A.2d 818, 824 (Pa. Super. 2008) ("Although the Commonwealth is required to disprove a claim of self-defense [or defense of others] … beyond a reasonable doubt, a jury is not required to believe the testimony of the defendant who raises the claim").

Instantly, in its opinion, the trial court determined that jury instructions regarding self-defense and defense of others "were unwarranted," reasoning as follows:

> **While** [**Appellant**] **was convicted of homicide, she was not the individual who actually shot and killed** [**the v**]**ictim.** [**Appellant**] **was convicted based on accomplice liability, and while guilty, was not the individual who killed** [**Decedent**] **in self-defense or defense of another.** Moreover, [Appellant] testified that at the time [Decedent] was shot, she was away from [Decedent] and heading toward her father's bedroom and no longer in a physical struggle with [Decedent]. Therefore, she would have no reasonable belief that she was in imminent danger, thereby rendering any claim of self-defense or defense of another meritless.

Trial Court Opinion, 9/9/25, at 3-4 (emphasis added).

Initially, we observe that neither the trial court nor the parties identify any authorities speaking to the precise question at issue: whether a defendant charged as an accomplice to a killing may avail herself of a defense that the principal's use of force was justified. Our own research discloses no Pennsylvania law directly answering this question, and it therefore appears to be a matter of first impression.

Our review of the basic principles of accomplice liability confirms that an alleged accomplice may, indeed, claim that the principal acted in justifiable self-defense or defense of others. "Accomplice liability does not create a new or separate crime; it merely provides **a basis of liability for a crime committed by another person**." ***Commonwealth v. Gross***, 101 A.3d 28, 35 (Pa. 2014) (emphasis added). "Accomplice culpability is established

through a two-step analysis: first, that the accomplice acted in such a way that [s]he solicited or aided **another's criminal conduct** and, second, that any act was committed with the intent of promoting or facilitating the crime." ***Commonwealth v. Murphy***, 795 A.2d 1025, 1034 (Pa. Super. 2002) (citation omitted; emphasis added). "When there is evidence that one, who has not struck the fatal blow, has, nonetheless, **shared in the criminal intent and the criminal activity**, that person has aided and abetted in **the commission of the crime** and, thus, may be held responsible as an accomplice to another's acts and the consequences of those acts." ***La***, 640 A.2d at 1345 (quoting ***Commonwealth v. Vaughn***, 326 A.2d 393, 395 (Pa. 1974)) (emphasis added); ***see also*** 18 Pa.C.S.A. § 306(g) ("**An accomplice may be convicted on proof of the commission of the offense** and of his complicity therein…" (emphasis added)).

Justification, however, is a complete defense to criminal liability. 18 Pa.C.S.A. §§ 502, 505, 506; ***see also Jones***, 271 A.3d at 458. Where force is justifiably used in self-defense or defense of others, "then **no crime has been committed**." ***Commonwealth v. Weston***, 749 A.2d 458, 461 (Pa. 2000) (emphasis added); ***see also Commonwealth v. Hobson***, 398 A.2d 1364, 1368 (Pa. 1979) (recognizing that "self-defense clearly deals with intentional acts that are not criminal in nature" (citing 18 Pa.C.S.A. § 505)). If the principal's conduct is not criminal, it must follow that the alleged accomplice cannot be held criminally liable for it.

Instantly, the trial court's acknowledgment that Appellant "was convicted based on accomplice liability" is at odds with its determination that jury instructions regarding justification "were unwarranted" because Appellant "was not the individual who actually shot and killed [Decedent]." Trial Court Opinion, 9/9/25, at 3. Similarly, the Commonwealth's argument that Appellant cannot assert a justification defense simply because she herself was not the "slayer," Commonwealth Brief at 11 (citing ***Hansley***, 24 A.3d at 421), is inconsistent with its prosecution of Appellant on a theory of accomplice liability. We observe that the Commonwealth's brief neglects to mention accomplice liability and makes no attempt to square that concept with its position that Appellant cannot assert a defense that Michaelis's use of force was justified. ***See generally id.***

Our research discloses no support for such a position. The Pennsylvania caselaw setting forth the circumstances under which the "slayer's" use of force may be justified does not state that justification applies only where the defendant, herself, is the "slayer." ***See, e.g.***, ***Hansley***, 24 A.3d at 421; ***Hornberger***, 74 A.3d at 284-85. Similarly, the Crimes Code provisions codifying self-defense and defense of others explain when an "actor's" use of force is justified, without specifying that the "actor" must be the defendant herself. 18 Pa.C.S.A. §§ 505, 506. If an actor's use of force is justified, it follows that an alleged accomplice may be justified in soliciting or aiding that use of force.

Additionally, in rejecting challenges to the sufficiency of the evidence supporting homicide convictions, where an individual other than the defendant shot the victim, this Court has assessed whether the Commonwealth presented sufficient evidence to disprove beyond a reasonable doubt that the shooter acted in justified self-defense or defense of others. ***See Commonwealth v. Johnson***, 236 A.3d 1141 (Pa. Super. 2020) (*en banc*)[16]; ***Commonwealth v. Laurin***, 409 A.2d 1367 (Pa. Super. 1979).[17] Though these cases do not directly address the issue before us, they suggest that,

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[16] In ***Johnson***, the defendant challenged the sufficiency of the evidence supporting his second-degree murder conviction, where a co-defendant fatally shot a victim while fleeing the scene of a robbery. ***Johnson***, 236 A.3d at 1152. The defendant argued, *inter alia*, that the co-defendant's use of force was justified by self-defense. ***Id.*** at 1153. In rejecting the defendant's sufficiency challenge, this Court determined "the Commonwealth proved that [the co-defendant] did not act in self-defense." ***Id.*** at 1153; ***see also id.*** (approvingly quoting the trial court's determination that "[t]he jurors dismissed the claims that [the co-defendant] acted in self-defense," and the Commonwealth proved that "the defendants here provoked the use of force against them by robbing [one of the victims] at gunpoint").

[17] In ***Laurin***, the defendant was convicted of voluntary manslaughter and conspiracy, where a co-conspirator fatally shot a victim who was engaged in a physical altercation with the defendant. ***Laurin***, 409 A.2d at 1368. In challenging the sufficiency of the evidence supporting his convictions, the defendant argued, *inter alia*, that the co-conspirator's use of force was justified by self-defense or defense of others. ***Id.*** at 1369. We rejected this argument, determining the evidence was sufficient for the fact-finder "to find that there was no reasonable basis from which to conclude that deadly force was warranted at the instant the fatal shot was fired." ***Id.*** (citation and quotation marks omitted).

had the shooter's use of force been justified, the defendant's homicide conviction could not stand.

For the above reasons, we determine that where a defendant is charged as an accomplice, and evidence is presented that the principal acted in justifiable self-defense or defense of others, the trial court must instruct the jury regarding these defenses and make clear that the Commonwealth bears the burden of disproving them beyond a reasonable doubt.

Our research discloses that caselaw from other jurisdictions regarding this precise issue is limited. Nevertheless, we observe that the Supreme Court of Connecticut addressed a substantially identical question and reached the same conclusion. In ***State v. Montanez***, 894 A.2d 928 (Conn. 2006), the defendant was convicted of manslaughter and assault as an accessory,[18] after the defendant's friend (the principal) shot two men during a confrontation between two groups of individuals. ***Id.*** at 930-33. On appeal, the defendant argued the trial court erred in failing to instruct the jury regarding the principal's use of force in self-defense. ***Id.*** at 937.

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[18] Connecticut's accessorial liability is substantially similar to Pennsylvania's accomplice liability. ***Compare Montanez***, 894 A.2d at 941 (noting Connecticut's "accessory statute … provides that '[a] person, acting with the mental state required for commission of an offense, who … intentionally aids another person to engage in conduct which constitutes an offense shall be criminally liable for such conduct and may be prosecuted and punished as if he were the principal offender.'" (quoting Conn. Gen. Stat. § 53a-8(a)) ***with*** 18 Pa.C.S.A. § 306.

After reviewing the principles of justification and accessorial liability, the ***Montanez*** Court confirmed "that justified conduct is not criminal and that the commission of a crime is a condition precedent to the imposition of accessorial liability for that crime." ***Id.*** at 943. The Court therefore determined that "[i]f [the principal] shot the victims in self-defense, then his conduct was justified and no criminal acts occurred for which the defendant could be held liable as an accessory." ***Id.*** The Court concluded the trial court "improperly failed to give" a jury instruction "regarding [the principal's] use of self-defense," and awarded the defendant a new trial. ***Id.*** at 945.

The ***Montanez*** Court recognized that "[v]ery few modern authorities have encountered a comparable situation," but noted its research did not identify "a single jurisdiction that has declined to consider the principal's use of self-defense in such a situation." ***Id.*** at 944. The Court identified two decisions which "address[ed] comparable situations" and reached conclusions consistent with its own:

> In ***United States v. Lopez***, 662 F. Supp. 1083 (N.D. Cal. 1987), the defendant Ronald McIntosh escaped from federal custody and, one week later, flew a helicopter into the recreation yard of his former prison and absconded with another inmate, the defendant Samantha D. Lopez. ***Id.*** at 1084. Following their apprehension, Lopez was charged with escaping from federal custody, and McIntosh was charged with, *inter alia*, aiding and abetting her escape. ***Id.*** Both McIntosh and Lopez asserted a defense of "necessity/duress," which the court interpreted as a necessity

defense.[19] ***Id.*** at 1086. The government, however, filed a motion seeking to preclude McIntosh and Lopez from presenting evidence to the jury regarding their necessity defense. ***Id.*** at 1085.

In denying the government's motion, the court concluded that, "if the jury finds Lopez not guilty of escape by reason of her necessity defense, her criminal act will be justified," and McIntosh therefore could not be guilty of aiding and abetting her escape. ***Id.*** at 1087. The court accordingly concluded that McIntosh was entitled to an instruction that, "[i]f [the jury] find[s] … Lopez not guilty of escape because she acted under necessity/duress, then [the jury] must also find … McIntosh not guilty of aiding and abetting her alleged escape." ***Id.*** at 1085.

In ***State v. Winsett***, 205 A.2d 510 (Del. 1964), the defendant[,] Thomas H. Winsett[,] was charged with the murder of Robert A. Paris, a Delaware state trooper. ***Id.*** at 513-14, 523. The [co-]defendants[,] Wilbert A. Weekley and Edward J. Mayerhofer, who were helping Winsett steal televisions from a motel at the time of the killing, were charged with aiding and abetting Winsett's murder of Paris. ***Id.*** At the joint trial of the three co-defendants, Winsett maintained that he shot Paris in self-defense, claiming that he did not realize that Paris was a peace officer when he shot him. ***Id.*** at 516-17. The trial court accordingly instructed the jury on the subject of Winsett's self-defense. ***Id.*** at 516-18.

More significantly, however, the trial court in ***Winsett*** also instructed the jury regarding the effect that Winsett's claim of self-defense would have on the prosecutions of Weekley and Mayerhofer. ***Id.*** at 519-20. The court instructed the jury in relevant part: "If you find that self-defense is available to the defendant Winsett, and if for that reason you determine that he is not guilty … [of murder], then you must also find the defendants Weekley and Mayerhofer not guilty [of aiding and abetting the murder] …. In short, [Weekley and Mayerhofer] cannot be held criminally responsible for aiding and abetting a homicide which is found to have been committed in self-defense." ***Id.*** at 520.

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[19] The ***Montanez*** Court observed that "[n]ecessity, like self-defense, is a justification defense." ***Montanez***, 894 A.2d at 944 n.25 (citing 2 WAYNE R. LAFAVE, SUBSTANTIVE CRIMINAL LAW § 10.1 (2d ed. 2003)).

Montanez, 894 A.2d at 944-45 (some citations modified; original footnote omitted; footnote added); ***see also id.*** at 943 n.22 (stating that, though Connecticut had not adopted the Model Penal Code, the ***Montanez*** Court's decision was consistent with a provision of the Model Penal Code substantially identical to 18 Pa.C.S.A. § 306(d) (quoting Model Penal Code § 2.06(7) which provides that an accomplice may be convicted "though the person claimed to have committed the offense has not been prosecuted or convicted or has been convicted of a different offense or degree of offense….")).

The persuasive reasoning of ***Montanez***, ***Lopez***, and ***Winsett*** bolsters our conclusion in the instant case. ***See also Powers v. State***, 773 S.E.2d 751, 753 n.2 (Ga. 2015) (where an appellant charged with murder claimed his friend, rather than himself, shot the victim, "the prosecutor argued in closing that even if the jury believed [the a]ppellant's story that [his friend] was the shooter, it should find [the a]ppellant guilty as a party to the crimes[," ***see*** Ga. Code § 16-2-20 (imposing criminal liability where a person, *inter alia*, "[i]ntentionally aids or abets in the commission of [a] crime").] The Supreme Court of Georgia noted, "[u]nder that theory of liability, [the a]ppellant would not be guilty if [his friend] acted with justification—in lawful self-defense or defense of [the a]ppellant—when he shot [the victim], because [the friend] would not have committed a crime." (citing, *inter alia*, ***Montanez***, 894 A.2d at 937-45)).

Instantly, our review discloses there was evidence presented at Appellant's trial that "would have supported the claim of" defense of others, such that "it was for the trier of fact to pass upon that evidence and improper for the trial judge to exclude such consideration by refusing the charge." ***Mayfield***, 585 A.2d at 1071. We reiterate, "[i]f there is **any evidence** from whatever source that will support the[] three elements [of a self-defense or defense of others claim,] 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." ***Hornberger***, 74 A.3d at 285 (emphasis added).

Our review of the trial record confirms that a defense of others claim was "made out as a matter of law," and the trial court erred in determining otherwise. ***Id.*** at 285 (emphasis omitted). Appellant's trial testimony, coupled with the evidence of Decedent's previous violent and/or threatening conduct, **if credited by the jury**, could support each of the three elements of a defense of others claim, *i.e.*, that (1) Appellant and Michaelis were "free from fault in provoking or continuing the difficulty which resulted in the slaying"; (2) Michaelis "reasonably believed" that Appellant "was in imminent danger of death or great bodily harm, and that there was a necessity to use [deadly] force in order to save [Appellant] therefrom"; and (3) neither Appellant nor Michaelis violated "any duty to retreat or avoid the danger." ***Id.*** at 284-85 (emphasis omitted).

In Appellant's account of the shooting, Decedent charged into her residence and attacked her without provocation. N.T. (Appellant's Testimony), 2/27/25, at 33-35. Appellant indicated she feared Decedent would snap her neck, which she had previously broken. Commonwealth Exhibits 14 and 19. There was evidence that Decedent had assaulted and strangled Appellant in September 2023, ***see*** Commonwealth Exhibit 11; had repeatedly violated the PFA order barring him from contact with Appellant, ***see*** Commonwealth Exhibits 5 and 13; and had been "on a rampage" over Appellant's relationship with Michaelis. N.T. (Appellant's Testimony), 2/27/25, at 61; ***see also*** Commonwealth Exhibit 20 (hit-and-run crash report, wherein Michaelis alleged Decedent ran his vehicle off the road); Commonwealth Exhibit 29 (Appellant's text message to Ms. Ramsey, wherein she stated Decedent "purposefully tried to kill [Michaelis] the other night"). According to Appellant, when Michaelis intervened, Decedent fought Michaelis for possession of Appellant's gun, and Michaelis shot Decedent in the course of the struggle over the gun. N.T. (Appellant's Testimony), 2/27/25, at 34-35; ***see also*** Commonwealth Exhibit 19.

This evidence could support a finding that Michaelis reasonably believed Appellant was in imminent danger of death or serious bodily injury, and that deadly force was necessary to protect her, particularly in light of the prospect

of Decedent gaining possession of the gun.[20] Dr. Kamerow's testimony established that the gun was between six and twelve inches away from Decedent's body when the shots were fired. N.T., 2/25/25, at 13. In a struggle between Michaelis and the much-larger Decedent, therefore, the gun would have been within Decedent's reach even as the shots were fired.

Moreover, there was evidence that neither Appellant nor Michaelis violated a duty to retreat. Because Decedent's alleged attack occurred in Appellant's residence, she did not have a duty to retreat and, to the extent Michaelis acted in defense of Appellant, neither did he. ***See*** 18 Pa.C.S.A. § 505(b)(2)(ii) (providing that a person has no duty to retreat from her dwelling); ***id.*** § 506(b) (providing a person who acts in defense of another "is not obliged to retreat to any greater extent than the person whom he seeks to protect").

Furthermore, we agree with Appellant that there was evidence from which the jury could have applied 18 Pa.C.S.A. § 505(b)(2.1). Appellant's account, if believed by the jury, could support a finding that Decedent had "unlawfully and forcefully entered and [wa]s present within" Appellant's residence, ***id.*** § 505(b)(2.1)(i), and that Michaelis knew or had reason to

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[20] We observe that Appellant asked the trial court to instruct the jury on both self-defense and defense of others. In her Rule 1925(b) concise statement and on appeal, however, Appellant preserved a claim of error only with respect to the defense of others instruction. Nevertheless, to the extent that it may be relevant in a re-trial, our review confirms that there was some evidence to suggest Michaelis acted in self-defense, as well as in defense of Appellant.

believe "that the unlawful and forceful entry … ha[d] occurred," ***id.*** § 505(b)(2.1)(ii). Had the jury determined both of these conditions existed, Michaelis would be "presumed to have a reasonable belief that deadly force is immediately necessary to protect himself [or another] against death [or] serious bodily injury…." ***Id.*** § 505(b)(2.1).[21]

In its opinion, the trial court stated it did not instruct the jury regarding self-defense or defense others, in part, because Appellant "testified that at the time [Decedent] was shot, she was away from [Decedent] and heading toward her father's bedroom and no longer in a physical struggle with [Decedent]." Trial Court Opinion, 9/9/25, at 3. On this basis, the trial court determined Appellant "would have no reasonable belief that she was in imminent danger, thereby rendering any claim of self-defense or defense of another meritless." ***Id.*** at 3-4. Our review confirms this determination was erroneous.

First, the potential applicability of 18 Pa.C.S.A. § 505(b)(2.1) would result in a presumption regarding the reasonable belief that deadly force was immediately necessary. Second, paragraph (2.1) notwithstanding, Appellant's testimony did not suggest that she had reached a position of safety at the time of the shooting. Ample evidence, including photographs of the

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[21] We note that "[t]he presumption set forth in paragraph (2.1) [would] not apply if" the jury found that one of the exceptions to paragraph (2.1) existed. 18 Pa.C.S.A. § 505(b)(2.2). Those exceptions include, *inter alia*, a situation wherein "the actor is engaged in criminal activity or is using the dwelling [or] residence … to further a criminal activity[.]" ***Id.*** § 505(b)(2.2)(iii).

residence, established that the upstairs hallway was small, suggesting Appellant would not have been much more than several feet away from Decedent and Michaelis. ***See*** N.T. (Appellant's Testimony), 2/27/25, at 34-35, 71; N.T., 2/26/25, at 106 (Mr. Pedmo agreeing with prosecutor's characterization of the upstairs hallway as "[a] real small hall"); Commonwealth Exhibit 6 (photographs of the residence and crime scene); Commonwealth Exhibit 10 (3D rendering of the residence and crime scene). Indeed, Appellant maintained she was struck by a ricocheting bullet during their struggle. ***See*** N.T. (Appellant's Testimony), 2/27/25, at 35. Appellant's lack of a duty to retreat notwithstanding, Decedent would have been in a position to block her from descending the stairs and exiting the residence.

Moreover, and perhaps most importantly, Appellant's testimony, if credited by the jury, suggested an imminent danger that Decedent would obtain possession of the gun, with Appellant standing directly in his potential line of fire. In short, neither the law nor the evidence supports the trial court's determination that the requested jury instructions were unwarranted due to Appellant's testimony that she had escaped Decedent's physical grasp and had moved toward the bedroom at the time of the shooting. ***See Mayfield***, 585 A.2d at 1078 ("It remains the province of the jury as to whether appellant was free of provocation, as to whether he had a duty to retreat, as to whether his belief that he was in danger of serious bodily harm or death was reasonable,

and as to whether his use of deadly force was excessive under the circumstances.").

Based on the foregoing, we determine the evidence at trial provided the jury with "a possible basis for finding" a valid claim of defense of others, and the trial court therefore abused its discretion in refusing to give the requested jury instruction. ***Id.*** at 1071. We emphasize that the instruction "must be given upon request, … even though the evidence of self-defense [or defense of others] may appear to the trial court as not credible[.]" ***Id.*** We note that the Commonwealth presented substantial evidence to impair the credibility of Appellant's account. However, it was the jury's sole province "to pass upon the credibility of witnesses and the weight to be accorded the evidence produced." ***Id.***

Finally, we determine the trial court's abuse of discretion in failing to give the requested jury instruction requires the grant of a new trial.[22] Considering "the general effect" of the instant jury charge, we are constrained to conclude that the charge did not "sufficiently and accurately apprise[the jury] of the law it must consider in rendering its decision." ***Drummond***, 285 A.3d at 635. Though it was the jury's province to pass upon the credibility and weight of the evidence supporting Appellant's justification defense, the

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[22] We note the Commonwealth does not argue that any error in the instant jury charge should be considered harmless. ***See generally*** Commonwealth Brief.

charge failed to apprise the jury regarding *any* of the law it was required to consider in doing so. Perhaps most importantly, the charge did not apprise the jury that the Commonwealth had the "burden to disprove justification beyond a reasonable doubt[.]" ***Hornberger***, 74, A.3d at 283. A faulty jury charge requires the grant of a new trial where "the charge permitted a finding of guilt without requiring the Commonwealth to establish the critical elements of the crimes charged beyond a reasonable doubt." ***Id.*** (quoting ***Hansley***, 24 A.3d at 420).

In ***Commonwealth v. Wortham***, 369 A.2d 1287 (Pa. 1977), our Supreme Court determined that an erroneous jury instruction regarding an alibi defense "was particularly offensive … because the sole defense relied upon was that of alibi." ***Id.*** at 1290 (granting a new trial based upon the erroneous jury instruction). Instantly, because Appellant's entire defense rested on her claim that the shooting was justified, the lack of a justification instruction is "particularly offensive," and requires that we vacate Appellant's judgment of sentence and remand for a new trial. ***Id.***; ***see also Mayfield***, 585 A.2d at 1078 ("Because appellant did not receive the [self-defense] jury instruction to which he was entitled based on the evidence at trial, the judgment of sentence must be vacated and the case remanded for a new trial.").

In her second issue, Appellant argues the Commonwealth should have been barred, by the doctrine of judicial estoppel, from arguing in its closing

statement that, with respect to the criminal charges filed against him, Decedent "admitt[ed] to absolutely doing everything except the strangulation." Appellant's Brief at 50 (quoting N.T. (Non-Testimonial Proceedings), 2/27/25, at 42). Appellant maintains that, because the Commonwealth filed the strangulation charge against Decedent, it "violated the judicial estoppel doctrine when it contended," in its closing statement, "that no prior strangulation had ever occurred…" ***Id.*** at 51 (capitalization modified); ***see also id.*** (citing ***Trowbridge v. Scranton Artificial Limb Co.***, 747 A.2d 862, 864 (Pa. 2000) (recognizing "the doctrine of judicial estoppel" provides that, "[a]s a general rule, a party to an action is estopped from assuming a position inconsistent with his or her assertion in a previous action, if his or her contention was successfully maintained.")).

Our review confirms that Appellant's second issue is waived for appellate review, as Appellant lodged no objection to the Commonwealth's comment in its closing statement. ***See*** N.T. (Non-Testimonial Proceedings), 2/27/25, at 42-43. "The failure to raise a contemporaneous objection to a prosecutor's comment at trial waives any claim of error arising from the comment." ***Commonwealth v. Ali***, 10 A.3d 282, 293 (Pa. 2010). Moreover, we note the at-issue comment referenced Trooper Smolko's testimony that Decedent "admitted to everything but strangulation," and Appellant lodged no objection to that testimony. N.T., 2/24/25, at 140; ***see also Commonwealth v. Ramos***, 231 A.3d 955, 957 (Pa. Super. 2020) (recognizing that an appellant's

"failure to raise a contemporaneous objection to evidence at trial waives that claim on appeal").

Judgment of sentence vacated. Case remanded for a new trial. Jurisdiction relinquished.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 11/06/2026