

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
DILON BARTIFAY	:	
	:	
Appellant	:	No. 1098 WDA 2022

Appeal from the Judgment of Sentence Entered May 13, 2022  
In the Court of Common Pleas of Allegheny County Criminal Division at  
No(s): CP-02-CR-0000214-2020

BEFORE: BOWES, J., KUNSELMAN, J., and COLINS, J.\*

MEMORANDUM BY KUNSELMAN, J.:

**FILED: January 19, 2024**

Dilon Bartifay appeals from the judgment of sentence imposed after a jury found him guilty of murder of the first degree.<sup>1</sup> He challenges the sufficiency of the evidence to sustain his conviction. Upon review, we affirm.

The trial court provided a lengthy and very detailed explanation of the facts as follows:

On November 16, 2019, at approximately 10:25 p.m., [Bartifay] shot and killed Gregory Blair on the 900 block of Center Avenue in Wilkinsburg, leaving the scene immediately thereafter. Officer Cunningham with the Wilkinsburg Police Department arrived at the scene within minutes and found Mr. Blair lying face down on the sidewalk, with a large amount of blood pooling around his head. Officer Cunningham noted that the amount of blood coming from Mr. Blair's head was so substantial that it "actually pooled onto the sidewalk, down a curb and actually started going down the storm drain. . . . By the time Officer Cunningham checked his

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\* Retired Senior Judge assigned to the Superior Court.

<sup>1</sup> 18 Pa.C.S.A. § 2502(a).

pulse, Mr. Blair had already stopped breathing. Medics arrived and transported Mr. Blair to UPMC Presbyterian Hospital, where he was pronounced dead at 11:09 p.m. after lifesaving measures for the gunshot wound to his neck proved unsuccessful.

Shortly after the medics left the scene, Officer Cunningham secured the crime scene and requested the assistance of the Allegheny County Police Department Homicide Unit. As he was awaiting their arrival, Officer Cunningham was notified by dispatch that the suspected shooter had been "identified as a white male, possibly biracial," "wearing a white jumpsuit outfit, possibly a mustache and a hat." In response to Officer Cunningham's request, several detectives from the Allegheny County Homicide Unit arrived to assist with the investigation and process the scene. Although detectives were unable to locate any shell casings at the scene, they identified two witnesses: Janet Gibson and Nancy Cureton.

During their investigation, Detectives retrieved video surveillance footage from the apartment building located at 908 Center Street, where Mr. Blair resided on the 3rd floor. The surveillance video captured Mr. Blair leav[ing] his apartment unit with his girlfriend, Christina Goudy, at 10:16 p.m. The video then revealed Ms. Goudy standing outside of the apartment building by herself at 10:18 pm. One minute later, "an unknown male wearing light-colored clothing appears from the direction of 901 Center Street and is seen walking toward 908 Center Street." The "unknown male" in "all white" was later identified as [Bartifay].

The video showed that, at approximately 10:20 p.m., Ms. Goudy entered a Lyft and left the area. [Bartifay] left the area in front of 908 Center Street at around the same time. At 10:23 p.m., Mr. Blair is captured leaving his apartment building and walking toward 901 Center Street - - the same direction that [Bartifay] had walked towards minutes earlier. Mr. Blair was shot and killed shortly thereafter.

Ms. Goudy's testimony at trial provided context to the images that were captured on the surveillance video. Ms. Goudy testified that, on the night of Mr. Blair's murder, the couple had planned for her to bring dinner to his apartment. Unfortunately, when she arrived at Wendy's, Ms. Goudy realized that she was not in possession of her debit card or her wallet. She left the restaurant and went to Mr. Blair's apartment and attempted to explain the situation. Instead, an argument ensued. At that point, Ms. Goudy decided

to leave, calling a Lyft for a ride home even though she had only been at Mr. Blair's apartment for about 10 minutes. Mr. Blair walked Ms. Goudy downstairs to the vestibule area of the building where they talked while she waited for her Lyft. When Ms. Goudy received the notification that her ride would arrive within a few minutes, she walked outside to the building's front porch to smoke a cigarette. Mr. Blair "remained in the doorway and spoke with" her for a few more "moments" before he closed the door and returned to his apartment.

After Ms. Goudy went outside, but before her Lyft arrived, a man that she described as "very, very light- skinned" and "wearing white" crossed the street, approached her on the porch, and attempted to strike up a conversation. This individual was later identified as [Bartifay]. Ms. Goudy was "terrified" by the encounter because she did not know this man, and she had never seen him before. Ms. Goudy was so frightened by [Bartifay's] presence that she placed her left hand over her heart and put her "right hand up" as she backed away from [him], saying "no. I'm cool, I'm cool." Ms. Goudy recalled that [Bartifay] only spoke "a couple" of words to her and that there were "several people" "screaming at him" from down the street, telling him to "leave that woman alone." [He] did not say anything else to her after she backed away from him.

Mr. Blair watched the encounter between [Bartifay] and Ms. Goudy from his apartment window. Mr. Blair began yelling at [him] to "stay away from" his girl. The two men began "yelling and screaming" back and forth at each other, with Mr. Blair yelling from his apartment window and [Bartifay] yelling "from the sidewalk." Ms. Goudy was simultaneously yelling at Mr. Blair to "calm down" and to "[g]o back in the house" because it was "not that serious." She urged Mr. Blair to "leave it alone" and "let it go." At that point, Ms. Goudy's Lyft arrived. She looked at Mr. Blair for what would be the last time and said, "[b]aby, don't worry about it." She no longer saw Mr. Blair in the window after she entered her Lyft. After Ms. Goudy left the area, video surveillance footage captured Mr. Blair leaving the apartment building complex and walking in the same direction that [Bartifay] had travelled.

Nancy Cureton was sitting in her living room watching television in her Ross Avenue apartment when she heard a "very loud" argument taking place outside, which prompted her to get up and look out of her window. Ms. Cureton lived on the fourth floor of the building with her best friend Janet Gibson. Ms. Gibson was on

her way home at the time and not yet in the apartment. When Ms. Cureton got to the window, she continued to hear "loud arguing", and "the last word" that she heard was someone saying, "F you." Although it was dark outside given the evening hour, Ms. Cureton nevertheless "could see very well" because the street was well lit. She was able to determine that the verbal altercation was taking place across the street, "in front of an apartment building with a red door."

Ms. Cureton could "very clearly" see three people standing in front of the red door. Ms. Cureton observed that "[t]wo [ of the people] were arguing" and the third person was "a young man" "in his 20s" who "came out [of] the door, lit his cigarette, and [was] standing there listening to the argument." At this point, Ms. Cureton did not recognize any of these individuals. Ms. Cureton testified that the two people who were engaged in the loud argument were positioned "[f]ace-to-face", directly in front of one another. One of the people who was involved in the verbal altercation had his back to Ms. Cureton, and she noted that that person was wearing a light-colored sweat suit. The third young man who was smoking the cigarette was standing off to the side of them, the trio forming somewhat of a triangle. Ms. Cureton testified that the third man with the cigarette was "[j]ust watching" and that he did not get verbally or physically involved in the altercation.

Ms. Cureton then heard "two gunshots" and saw "the flashes from" each shot coming from "between the two men that were arguing." She testified that the flashes that she saw made her jump. Ms. Cureton further clarified that the flashes came "in front of the man that was dressed in all white" and that the man with the cigarette who was standing off to the side "turned around immediately" and "walked right in the red door" because "[h]e had nothing to do with it." After the shooting, Ms. Cureton saw the man in white turn around toward her direction "and just casually walk[] away and walk[] up under the window where" she was standing.

At this point, Ms. Cureton ran to her bedroom window and then dining room window because she was worried about her roommate whom she knew was on her way home. As she looked out of her dining room window, Ms. Cureton was "able to see the person in the [white] sweat suit." After having a clearer view of his face, she recognized him as Dilon Bartifay. She did not know [him] personally, but she had previously interacted with him when he did "odd jobs" for her roommate. In addition to recognizing

[Bartifay's] face, Ms. Cureton also recognized the white sweatsuit that [he] was wearing because she previously had seen him wear that outfit.

Within just a few minutes of the shooting, Ms. Cureton called 911 to report what she had just witnessed. Ms. Cureton testified that, at the time that she called 911, she was afraid and in shock about the shooting. Even though she was "sure" about [Bartifay's] identity at the time of the 911 call, she did not disclose that information to 911 out of fear of being labeled a snitch in Wilkinsburg. She simply told 911 that a man wearing all white was walking down the street. However, later that evening, Ms. Cureton was interviewed by police at her home, and she went to the police station thereafter. After being presented with a photographic array, Ms. Cureton identified [Bartifay] as the person who was dressed in the white sweatsuit that evening.

Janet Gibson arrived home just a few minutes after Ms. Cureton ended the call with 911. They looked at each other and started "talking at the same time." Ms. Cureton had been worried about Ms. Gibson because she knew that Ms. Gibson was due to arrive home while the incident was unfolding. Ms. Cureton said to her roommate, "that's Dilon," "I saw him shoot him." Ms. Gibson confirmed that she saw [Bartifay] "out there (on the street) arguing with somebody". She further told Ms. Cureton that it did not "seem like it's going to end well", which is why she hurried to get inside of the building.

Immediately prior to the shooting, Ms. Gibson testified that she had been sitting in her brother's car outside of her building listening to music with him. The car that she was in was parked "closest to the sidewalk and to the entrance of the apartment building." She said goodbye to her brother, and, as she opened the car door to exit, she heard "really loud talking." She could not decipher the content of the conversation. However, based on the "tone of the voice" and the "volume," it "sounded aggressive." Ms. Gibson immediately shut the car door because "it sounded like it was trouble," and she "did not feel safe." She did not turn her head to see where the argument was coming from or who was involved in the altercation because she was concerned for her own safety.

Ms. Gibson asked her brother if he also heard the loud voices. After turning off the music in his car, he replied, "yeah, [L]et's go." They sat together for another minute and then "the voices

stopped." She capitalized on that silence and used that opportunity to get out of the car and run to her own car to retrieve the beer that she had purchased for Ms. Cureton. She stopped for the beer despite her fear because she was worried that it would freeze and explode if left in her vehicle overnight. Ms. Gibson's car was parked across the street from her building.

As Ms. Gibson opened her own car door, she looked up, recognized [Bartifay], and saw that he was standing in front of the red door of the apartment across the street. Ms. Gibson knew [him] because they were neighbors. [Bartifay] lived in Apartment 1 in her building, and they had a "loose neighborly, friendly" relationship. Ms. Gibson noticed that he was wearing a "white hoodie." She wondered why [he] did not speak to her or otherwise try to engage with her since they knew each other. At this point, however, she focused on getting out of the street and into her apartment.

Ms. Gibson was in her building and was walking up the steps to her unit when she heard two gunshots and froze. She estimated that less than 30 seconds had elapsed between the time that she had entered her building and the gunshots. She stood in the stairwell for approximately 30 seconds to a minute before continuing her climb to her apartment. Before reaching her unit, Ms. Gibson stopped at one of the landings and looked out the window that faced the street. She was able to see the building with the red door and took pictures. Ms. Gibson saw a bystander attempting to help the victim, who was lying on the sidewalk area. [Bartifay] was no longer on scene when she looked out the window. She remained at the stairwell window until she saw the police and paramedics arrive approximately five (5) minutes later.

When Ms. Gibson entered her apartment, she and Ms. Cureton began discussing what had just unfolded. Ms. Cureton recalled telling her roommate that she was in disbelief that [Bartifay] shot someone because it "didn't make any sense. It was just an argument." Ms. Gibson recalled being in shock and noted that Ms. Cureton was "freaking out" and "hysterical." Ms. Gibson was also interviewed by the police when they came to the women's home around midnight that evening. They were interviewed together in the living room and then were taken to the police station to make their official statements.

At the time of the shooting, [Bartifay] was living with James McGill. Mr. McGill had known [Bartifay] for nearly 12 years. The

two had had dinner together in their apartment earlier that evening. According to Mr. McGill, [Bartifay] left their apartment after dinner to purchase a gallon of water at GetGo. During the time that [Bartifay] was out, Mr. McGill "heard two gunshots very nearby." [Bartifay] returned home not long after the shooting. [He] "did have a gallon of water, but it was from Walgreens instead of GetGo." [Bartifay] explained to Mr. McGill that "GetGo was out of water" so he had to walk "a couple blocks further up the street to the Walgreens."

After [Bartifay] came home, he watched TV and then "washed the dishes from dinner and put the food away." According to Mr. McGill, [he] "seemed a little bit off" and was acting "more subdued." Mr. McGill asked [Bartifay] if he was okay and told him about the shooting, but [he] did not respond. [Bartifay] then went back out a second time about 30 minutes to an hour later. Mr. McGill testified that he had never seen [Bartifay] with a firearm.

The police arrived at [Bartifay's] apartment multiple times that evening to collect articles of clothing from [his] room after [he] consented to a search of the apartment. Detectives retrieved a "white sweatshirt and a black knit hat", as well as the white tennis shoes, pants, and belt that he wore on the night of the shooting. [Bartifay's] clothes were sent for lab testing to check for the presence of blood, with negative results.

At approximately 4:08 a.m. on the morning following the shooting, Detectives performed a gunshot residue test on [Bartifay]. Evaluation of the gunshot residue kit was performed at the Allegheny County Office of the Medical Examiner. Gunshot residue was detected on [Bartifay's] hands, as well as the right sleeve of his sweatshirt, indicating that "the right sleeve was near or in contact with an area close to the discharge of a firearm." The scientist testified that such results could also mean that the person was in the vicinity of a location where a gun was fired. The scientist also confirmed that the ability to recover gunshot residue is greatly hampered by a situation where someone washed their hands. Evidence at trial established that [Bartifay] is right-handed.

The third man present in the area of the red door, who was smoking a cigarette at the time of the shooting, was identified as Antonio Williams. At trial, Mr. Williams testified that, at the time of the shooting, he lived in the apartment building with the red door -- the location where the shooting occurred and where Mr.

Blair's body came to rest. He testified that, immediately prior to the shooting, he was standing outside talking to [Bartifay], whom he referred to as "Dill." Mr. Williams knew [Bartifay] "from the area," and he had "seen him prior that evening" at the store behind his house, where [he] worked. When Mr. Williams ran into [Bartifay] again that evening, he recalled that [he] came over to him, and the pair stood outside of Mr. Williams' building talking. At some point, the pair went to the corner store to purchase Black and Mild cigars and then returned to the area outside of Mr. Williams' building.

While they were outside talking, Mr. Williams recalled that "a lady came out from the house" that was located "across the street" from where the men were standing. Mr. Williams testified that [Bartifay] "went over" towards the woman and "said something to her," while Mr. Williams remained at his location in front of his building. Mr. Williams testified that [Bartifay] and woman were "talking for a couple seconds" and "then somebody start[ed] screaming from out the window." He observed [Bartifay] engage with the man who was screaming, but he noted that [he] was not screaming back at him. After [Bartifay] went "back and forth" with the man, who was later identified as Mr. Blair, [he] walked back over to where Mr. Williams was standing.

Mr. Williams testified that, while he and [Bartifay] were still standing in front of his building with the red door, Mr. Blair "kept screaming" out of his window at the both of them. Mr. Williams told Mr. Blair that he was "blowing it out of proportion," that it was "not a big deal," and that no one was "worried about" his girl. He also told Mr. Blair that Mr. Blair was drunk and that he should go back inside of his house. Mr. Williams then recalled Mr. Blair saying something to the effect that "he was about to come and get both of us." Mr. Blair then disappeared from the window and, after just a couple of minutes, he "came outside and ran towards" [Bartifay] and Mr. Blair.

Mr. Blair approached Mr. Williams first and got "in his face." Mr. Williams "backed up" and explained that he "didn't have anything to do with it" because he "didn't talk to his girl." At that point, Mr. Blair began "screaming at [Bartifay]," and Mr. Williams turned and "started going in the building." Mr. Williams did not see a weapon on either man, and he did not see anyone throw punches. He did see that [Bartifay] also "started backing up" when Mr. Blair was screaming at him. Mr. Williams testified that [Bartifay] was not yelling back at Mr. Blair. Mr. Williams then turned to go back into



his building. As he was entering his building, Mr. Williams “heard two gunshots.” He estimated that only a “couple seconds” had passed between the time that he turned to go inside of the building and the time that he heard the shots being fired. Mr. Williams confirmed that the only two people outside at the time that the shots were fired were [Bartifay] and Mr. Blair. After Mr. Williams was inside of his building, he “looked out the window” and “saw Dilon walking away and a body on the ground.”

Mr. Williams testified that he did not possess a weapon on his person that night, that he did not shoot Mr. Blair, and that he did not see the shooting itself. He testified that he was wearing “a black hoodie jacket” and Adidas joggers, but he could not recall the color of his pants. Mr. Williams did not call 911 after the shooting, and he was afraid to speak with the Detectives because he did not want to be labeled a “snitch.” Neither the murder weapon nor any shell casings were recovered by law enforcement.

Trial Court Opinion, 1/22/23, at 3-18 (citations and footnotes omitted).

Following trial, a jury found Bartifay guilty of murder of the first degree. The trial court sentenced Bartifay to life without the possibility of parole. Bartifay filed a post-sentence motion which the court denied.

Bartifay filed this timely appeal. Bartifay and the trial court complied with Pennsylvania Rule of Appellate Procedure 1925.

Bartifay raises the following two issues on appeal:

1. Whether the trial court erred in sustaining [Bartifay’s] conviction for murder in the first degree where the evidence at trial was insufficient to prove that [Bartifay] was the shooter in the incident in question?
2. In the alternative, whether the trial court erred in sustaining [Bartifay’s] conviction for murder in the first degree where the evidence at trial was qualitatively insufficient to disprove that [Bartifay] was acting reasonably and/or unreasonably in self-defense?

Bartifay’s Brief at 4.

Bartifay's claims challenge the sufficiency of the evidence to support his convictions. In reviewing a sufficiency of the evidence claim, this Court:

must determine whether the evidence admitted at trial, as well as all reasonable inferences drawn therefrom, when viewed in the light most favorable to the verdict winner, are sufficient to support all elements of the offense. Additionally, we may not reweigh the evidence or substitute our own judgment for that of the fact finder. The evidence may be entirely circumstantial as long as it links the accused to the crime beyond a reasonable doubt.

***Commonwealth v. Koch***, 39 A.3d 996, 1001 (Pa. Super. 2011) (citations omitted). However, "the inferences must flow from facts and circumstances proven in the record and must be of such volume and quality as to overcome the presumption of innocence and satisfy the jury of an accused's guilt beyond a reasonable doubt." ***Commonwealth v. Scott***, 597 A.2d 1220, 1221 (Pa. Super. 1991). "The trier of fact cannot base a conviction on conjecture and speculation and a verdict which is premised on suspicion will fail even under the limited scrutiny of appellate review." ***Id.*** "Because evidentiary sufficiency is a question of law, our standard of review is *de novo* and our scope of review is plenary." ***Commonwealth v. Diamond***, 83 A.3d 119, 126 (Pa. 2013).

To prove murder of the first degree, the Commonwealth must establish that: 1) a human being was unlawfully killed; 2) the accused caused the death; and 3) the accused acted with the specific intent to kill. 18 Pa.C.S.A. § 2502(a), (d).

Bartifay first claims that the Commonwealth presented insufficient evidence to prove beyond a reasonable doubt that he was the one who killed

Mr. Blair. Specifically, he argues that the eyewitness testimony was contradictory, and that Mr. Williams' testimony was self-serving. Additionally, he argues that there was no scientific evidence to show that he shot Mr. Blair, only that he was standing in close proximity to him. Bartifay maintains this is particularly significant given the angle of the fatal gunshot and the very small amount of gunshot residue on Bartifay's right sleeve. Bartifay's Brief at 25. We disagree.

Here, several eyewitnesses indicated that Bartifay was the one who Mr. Blair verbally attacked. Ms. Cureton witnessed the shooting from her apartment window. She heard gunshots and saw flashes in between Bartifay and Mr. Blair, to which she consistently and repeatedly testified. Ms. Cureton told her roommate right after the shooting that Bartifay was the shooter, and that Mr. Williams was just a bystander. She did not know Mr. Williams and thus had no reason to protect him or minimize his involvement. Mr. Williams denied shooting Mr. Blair.

The eyewitness testimony was corroborated by forensic evidence. Gunshot residue was found on Bartifay's hands and right sleeve; he is right-handed. And although it was only a small amount, Bartifay washed dishes and engaged in other activities which would scatter the gun residue, reasonably explaining the lack of a greater amount of gunshot residue on him. The expert explained that timing is critical when testing for gunshot residue; Bartifay was not tested until hours later. Furthermore, the trajectory of the

bullet was consistent with the testimony regarding the space between Bartifay and Mr. Blair.

Additionally, Bartifay's actions after the shooting showed consciousness of guilt from which the jury could infer he was the shooter. Bartifay left the scene immediately after the shooting and eventually returned home. Bartifay's roommate noticed that he was acting unusual and evaded questions about the shooting. Bartifay then left the apartment, giving him the opportunity to dispose of the murder weapon.

This combined evidence was sufficient to establish that Bartifay was the one who shot Mr. Blair.

In his second issue, Bartifay "alternatively" claims that the Commonwealth presented insufficient evidence to disprove that he shot Mr. Blair in self-defense. Instead, according to Bartifay, the evidence showed that Mr. Blair yelled at him and Mr. Williams, threatened to get them, and came running towards them. As such, Bartifay maintains that Mr. Blair was the aggressor. Bartifay further maintains that he did not engage with Mr. Blair and tried to retreat. Bartifay therefore claims that he had a reasonable or at least "an unreasonable" belief that he was acting in self-defense and that the use of deadly force was necessary. Bartifay's Brief at 26, 32.

Initially, we observe, as the trial court did, that Bartifay did not assert a theory of self-defense during trial.<sup>2</sup> There was no reference to self-defense in Bartifay's closing argument or request for a jury instruction pertaining to self-defense. Instead, Bartifay argued at trial that he was not the shooter. Indeed, a claim of self-defense would have contradicted Bartifay's theory that he was not the shooter. As such, the Commonwealth was not required to disprove any claim of self-defense.

Moreover, this Court has long held an appellant cannot advance a legal theory on appeal that is different from that raised at trial. ***Commonwealth v. Truong***, 36 A.3d 592, 598-99 (Pa. Super. 2012) (*en banc*) (challenge to sufficiency of the evidence waived where appellant argued at trial he killed in self-defense and/or heat of passion but claimed imperfect self-defense on appeal); ***see also Andrews v. Cross Atlantic Cap. Part., Inc.***, 158 A.3d 123, 130 (Pa. Super. 2017) (*en banc*) (holding that claim was waived where appellant advanced a different legal theory on appeal from that advanced at trial). Consequently, this issue is waived.

Nonetheless, even if Bartifay had raised a claim of self-defense and did not waive it, it would fail. Where a defendant claims he acted in self-defense, the burden rests on the Commonwealth to prove beyond a reasonable doubt that the defendant's act was not justifiable self-defense. ***Commonwealth v.***

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<sup>2</sup> Bartifay raised the issue of self-defense for the first time in his post-sentence motion.

**Smith**, 97 A.3d 782, 787 (Pa. Super. 2014). The Commonwealth sustains this burden if it establishes at least one of the following: 1) the accused did not reasonably believe that he was in danger of death or serious bodily injury; or 2) the accused provoked or continued the use of force; or 3) the accused had a duty to retreat, and the retreat was possible with complete safety. **Commonwealth v. Hammond**, 953 A.2d 544, 559 (Pa. Super. 2008); **see also** 18 Pa.C.S.A. § 505(b).

Here, as the trial court observed, there was no evidence that the victim presented any imminent danger of death or serious bodily injury to Bartifay or anyone else. There was nothing to indicate that Bartifay was in fear for his own safety at any point during the incident. Further, although Mr. Blair was the initial aggressor,

there was no evidence that [Mr. Blair] wielded a weapon, physically assaulted [Bartifay], or otherwise engaged in any physically menacing behavior that reasonably put [Bartifay] in imminent fear of his life or serious bodily injury. The testimony firmly established that the altercation was strictly a verbal one and that [Bartifay] was the one who unnecessarily escalated it into a deadly encounter.

Trial Court Opinion, 1/27/23, at 28. Bartifay used a deadly weapon against an unarmed victim which was grossly disproportionate to any perceived threat. **See Commonwealth v. Cutts**, 421 A.2d 1172, 1173 (Pa. Super. 1980); **Commonwealth v. Jones**, 332 A.2d 465, 465-66 (Pa. Super. 1974) (stating when “an actor is confronted by non-deadly force, . . . the actor’s

retaliation must not be excessive.”). Bartifay did not render any aid or seek assistance for Mr. Blair.

Furthermore, Bartifay violated his duty to retreat.

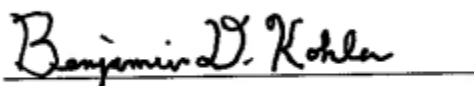
[Bartifay] was on a public street and was not boxed in, trapped or hindered from leaving by any means. He could have walked away and returned to his own apartment building across the street, or he could have followed his friend Mr. Williams into his building that just was feet away. He had several different avenues of retreat. Additionally, there was no evidence indicating that [Bartifay] could not have retreated or attempt[ed] to do so in complete safety, especially in light of the fact that both Ms. Cureton and Mr. Williams testified that Mr. Blair did not have a weapon, that he never threw a punch, and law enforcement did not retrieve any weapon on the scene.

***Id.*** Thus, there was sufficient evidence to disprove any claim of self-defense.

Based upon our review of the record and viewing the evidence in the light most favorable to the Commonwealth as the verdict winner, we conclude that the Commonwealth presented sufficient evidence to convict Bartifay of murder of the first degree.

Judgment of sentence affirmed.

Judgment Entered.

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

Benjamin D. Kohler, Esq.  
Prothonotary

DATE: 01/19/2024