

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
RYAN T. WALSH	:	
	:	
Appellant	:	No. 1651 MDA 2025

Appeal from the Judgment of Sentence Entered August 21, 2025
In the Court of Common Pleas of Luzerne County Criminal Division at
No(s): CP-40-CR-0003288-2024

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

MEMORANDUM BY OLSON, J.:

FILED: SEPTEMBER 14, 2026

Appellant, Ryan T. Walsh, appeals from the August 21, 2025 judgment of sentence entered in the Court of Common Pleas of Luzerne County after a jury convicted Appellant of weapons or implements of escape.¹ We affirm.

The record reveals that, on August 20, 2024, Appellant, who was an inmate at the state correctional facility in Dallas, Pennsylvania, was found to be in possession of a homemade weapon, namely an eight-inch toothbrush sharpened to a point and having a cloth handle.² On June 25, 2025, a jury

¹ 18 Pa.C.S.A. § 5122(a)(1).

² With respect to Section 5122 of the Crimes Code, a “weapon” is defined as “any implement readily capable of lethal use and shall include any firearm, ammunition, knife, dagger, razor, other cutting or stabbing implement[,] or club, including any item which has been modified or adopted so that it can be used as a firearm, ammunition, knife, dagger, razor, other cutting or stabbing implement, or club.” 18 Pa.C.S.A. § 5122(b)(2).

convicted Appellant of possessing a weapon or implement of escape. On August 21, 2025, the trial court sentenced Appellant to seven to 30 months' incarceration with the sentence set to run consecutively to the sentence Appellant was currently serving. On August 28, 2025, Appellant filed a post-sentence motion that, *inter alia*, asserted the trial court erred in failing to instruct the jury on the defense of necessity. The trial court denied Appellant's post-sentence motion on October 28, 2025. This appeal followed.³

Appellant raises the following issue for our review:

Whether the trial court committed reversible error by refusing to instruct the jury on the defense of necessity pursuant to 18 Pa.C.S.A. § 503 and [Pennsylvania Suggested Standard Criminal Jury Instruction Section] 8.314, despite evidence presented at trial sufficient to establish each element of the necessity defense, thereby depriving the jury of the opportunity to consider a complete defense and [Appellant] of a fair trial?

Appellant's Brief at 2.

Appellant challenges the trial court's denial of a jury instruction regarding the defense of necessity or justification.⁴ ***Id.*** at 10-36. It is well-settled that "[o]ur standard of review when considering the denial of jury

³ "In a criminal action, an appeal properly lies from the judgment of sentence made final by the denial of post-sentence motions." ***Commonwealth v. Percell***, 328 A.3d 1115, 1119 (Pa. Super. 2024).

Appellant and the trial court complied with Pennsylvania Rule of Appellate Procedure 1925.

⁴ "The defense of justification is often referred to as 'necessity'" ***Commonwealth v. Clark***, 429 A.2d 695, 696 (Pa. Super. 1981).

instructions is one of deference - an appellate court will reverse a [trial] court's decision only when it abus[es] its discretion or commit[s] an error of law." **Commonwealth v. Green**, 273 A.3d 1080, 1084 (Pa. Super. 2022) (original brackets omitted), *quoting Commonwealth v. Galvin*, 985 A.2d 783, 798-799 (Pa. Super. 2009), *appeal denied*, 289 A.3d 522 (Pa. 2022). A "trial court is not required to give every charge that is requested by the parties[,], and its refusal to give a requested charge does not require reversal unless the [defendant] was prejudiced by that refusal." **Green**, 273 A.3d at 1084 (original quotation marks and citation omitted).

"When considering a trial court's failure to give a requested jury instruction, the relevant inquiry for this Court is whether such charge was warranted by the evidence in the case." **Commonwealth v. Dula**, 262 A.3d 609, 635 (Pa. Super. 2021) (citation, original quotation marks, and brackets omitted), *appeal denied*, 273 A.3d 985 (Pa. 2022). "If we find that the [trial] court should have included the instruction, then we must determine whether its omission prejudiced the defendant. If we determine the decision not to give an instruction was an error of law which might have prejudiced the defendant, then we must determine the error was not harmless before granting a new trial." **Dula**, 262 A.2d at 635-636.

The evidence to support a requested jury instruction on a defense of justification or necessity "may be adduced from the defendant as part of his [or her] case, or conceivably, may be found in the Commonwealth's own case in chief or be elicited through cross-examination." **Commonwealth v.**

Clouser, 998 A.2d 656, 658 (Pa. Super. 2010) (citation omitted), *appeal denied*, 26 A.3d 1100 (Pa. 2011).

Section 503 of the Crimes Code defines justification as follows:

§ 503. Justification generally

(a) General rule. - Conduct which the actor believes to be necessary to avoid a harm or evil to himself [or herself] or to another is justifiable if:

(1) the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged;

(2) neither this title nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and

(3) a legislative purpose to exclude the justification claimed does not otherwise plainly appear.

(b) Choice of evils. - When the actor was reckless or negligent in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for his [or her] conduct, the justification afforded by this section is unavailable in a prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

18 Pa.C.S.A. § 503.

Pennsylvania Suggested Standard Criminal Jury Instruction Section 8.314 states as follows:

8.314 Necessity

1. Necessity can be a defense to a criminal charge. If a defendant committed the acts constituting the crime, but did so because it was necessary to do so, this may excuse his or her liability.

2. To establish the defense of necessity, the defendant must prove by a preponderance of the evidence:

First, that the defendant or another was faced with a clear and imminent harm, not one that was debatable or speculative;

Second, that the harm or evil [he] [she] sought to avoid was greater than the harm that the law is intended to prevent by the crime charged;

Third, that the defendant could reasonably expect that [his] [her] actions would be effective to avoid the greater harm; [and]

Fourth, that the defendant did not have any legal alternative that would have been effective in avoiding the harm; [and]

[Where the charged offense may be committed by reckless or negligent conduct:]

Fifth, that in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for [his] [her] conduct, the defendant was not reckless or criminally negligent.

3. As I told you, the defendant has the burden of establishing this defense by a preponderance of the evidence. That means that [he] [she] must prove that it is more likely than not that the elements of the necessity defense as I have defined it for you have been made out.

4. In summary, if you find beyond a reasonable doubt that the Commonwealth has proven each and every element of the crime beyond a reasonable doubt, but that the defendant has proven by a preponderance of the evidence each and every element of the defense of necessity, then your verdict must be not guilty. However, if you find that the Commonwealth has met its burden and that the defendant has not established the defense, then your verdict should be guilty.

Pa. SSJI (Crim.), § 8.314.

It is well-established that,

to be entitled to an instruction on justification as a defense to a crime charged, the actor must first offer evidence that will show:

(1) that the actor was faced with a clear and imminent harm, not one which is debatable or speculative;

(2) that the actor could reasonably expect that the actor's actions would be effective in avoiding this greater harm;

(3) that there is no legal alternative which will be effective in abating the harm; and

(4) that the Legislature has not acted to preclude the defense by a clear and deliberate choice regarding the values at issue.

As with any offer of proof, it is essential that the offer meet a minimum standard as to each element of the defense so that if a jury finds it to be true, it would support the affirmative defense - here that of necessity. This threshold requirement is fashioned to conserve the resources required in conducting jury trials by limiting evidence in a trial to that directed at the elements of the crime or at affirmative defenses raised by the defendant. Where the proffered evidence supporting one element of the defense is insufficient to sustain the defense, even if believed, the trial court has the right to deny use of the defense and not burden the jury with testimony supporting other elements of the defense.

Commonwealth v. Capitolo, 498 A.2d 806, 809 (Pa. 1985); ***see also Commonwealth v. Billings***, 793 A.2d 914, 916 (Pa. Super. 2002), *appeal denied*, 805 A.2d 519 (Pa. 2002).

"Because justification is an affirmative defense, the defendant has the burden of asserting an appropriate offer of proof in order to be entitled to a jury instruction on justification." ***Clouser***, 998 A.2d at 659.

Offers of proof are received by the [trial] court - not by the jury. The [trial] court weighs the offer of proof and determines its legal efficacy. Not the jury. No citations of authority are needed for those knowledgeable in the law to understand the proposition that the [trial] court decides questions of law and the jury decides questions of fact. It is initially the trial court's duty to examine the offer to ensure that it meets minimum standards as to each element of the defense of justification[. If] one element is lacking the trial court is justified in not permitting the jury to hear evidence on that or other elements of the defense.

Capitolo, 498 A.2d at 810. “Review of that ruling is then limited to determining whether the trial court abused its discretion or committed [an] error of law.” **Id.**

Appellant asserts that, through his trial testimony, he established each of the elements necessary to support a jury instruction on justification. Appellant’s Brief at 10-11. Appellant claims that he faced a specific, targeted threat based on the fact that he “had been physically assaulted twice within twenty-four hours by an identified attacker who had personally told him that further violence was coming, that a gang was behind it, and that the gang intended serious harm” as evidenced by the “follow-up attack that materialized exactly as predicted.” **Id.** at 19-20, 30. Appellant argues that it was reasonably expected that his procurement of a weapon would prevent an attack on his person because “in prison, information travels quickly[, and] if inmates knew that [he] had a weapon, they would be less likely to attack him.” **Id.** at 31. The trial court erred, according to Appellant, in concluding that he had a legal alternative available to him – specifically, reporting the threat to prison authorities.” **Id.** at 32. Appellant claims that reporting the threat was not a “realistic option” because, within prison culture, reporting or “snitching” to authorities makes the “situation significantly worse” because it “transforms a targeted inmate from someone threatened by one individual or group into someone threatened by the entire inmate population.” **Id.** Appellant further asserts that the “protective measures the [correctional] institution would take in response to a complaint – specifically, placement in

restrictive housing – constitute[s] a form of punishment equivalent to solitary confinement[.]” **Id.** at 32-33. Finally, Appellant contends that the Legislature did not include “any language expressly precluding the necessity defense in the context of inmate weapon possession” when it enacted Section 5122, or Section 503, of the Crimes Code. **Id.** at 34.

At trial, Appellant testified that on August 19, 2024, he was attacked by an inmate, who informed him that the inmate had been paid by a “gang” to attack Appellant and “that it is possible that there could be another attack on [Appellant,]” but the inmate did not know who would carry out the attack. N.T., 6/25/25, at 103-104. Appellant explained that this information caused him to obtain a weapon to “prevent or deter an attack[.]” **Id.** at 104. Appellant stated that, on the following day, August 20, 2024, he was attacked by the same inmate, who struck him on the right side of his face with a closed fist. **Id.** at 105-106. The weapon was later discovered on Appellant’s person when he was taken to the medical unit. **Id.** at 107. Appellant testified that he obtained the weapon on the morning of August 20, 2024, prior to the occurrence of the second attack. **Id.** at 128 (stating, “[w]hen I [was] locked in [my cell on the night of August 19, 2024,] I decided that in order to protect myself, that when [the cell] doors opened in the morning time, that it’s probably in my best interest to have something to protect myself”). Appellant believed that having the weapon prevented him from “getting stabbed or getting hit with a lock or getting [his] face cut open with a razor.” **Id.** at 124. Appellant further explained that he did not report the threat of a future attack

to prison officials because, if he did so, he “would be putting [himself or his family] in greater danger [of] retaliation” by the gang that paid the inmate to attack him. ***Id.*** at 114. Appellant stated that if he informed prison authorities or requested some type of protective custody, he would be “confined” and “punished” by being placed in a restrictive housing unit. ***Id.*** at 115. He also explained that once other inmates learn that you “snitched,” your life became “seriously worse” because “instead of being in danger from one or two people, you’re in danger from the whole prison or the next prison you go to and the next prison after that.” ***Id.***

At trial, Appellant requested a jury instruction on justification. After listening to the arguments presented by defense counsel and the Commonwealth, the trial court stated,

I understand the arguments of the parties[. H]owever, I’m inclined not to give the instruction on the necessity defense based on the evidence and testimony that was elicited during the trial. I don’t think it fits and would be warranted. I think much of the testimony did not deal with clear and imminent harm and was more debatable and speculative.

Also, the harm or evil [Appellant] sought to avoid [] was not greater than the harm the law intended to prevent by the crime charged. Also, [Appellant] clearly had legal alternatives that would’ve been effective in avoiding the harm[.]

N.T., 6/25/25, at 134-135. The trial court further explained, in its Rule 1925(a) opinion, that

[Appellant] raised the specter of prison violence as his justification for possessing a weapon but his concerns about being killed in jail were anecdotal and speculative. [The trial court does] not doubt that [Appellant] had some indication that he was soon to be in a

fight. This indeed came to fruition on August 20, 2024, when he was punched by another inmate, but this evidence does not justify his possessing the weapon. It better serves to demonstrate that [Appellant] had time to pursue legal alternatives to prevent the harm he anticipated. [Appellant] testified that he was aware of the threats against him the evening before an unarmed attack on him resulted in prison officials discovering and removing the sharpened toothbrush from his clothing. Accordingly, because a legal alternative to arming himself with a potentially deadly weapon was available to [Appellant,] he is not entitled to a necessity defense jury instruction.

Trial Court Opinion, 2/6/26, at 5-6.

Upon review, we discern no abuse of discretion or error of law in the trial court's denial of Appellant's request to instruct the jury on the defense of justification or necessity. Through his testimony, Appellant failed to satisfy his burden of establishing, by a preponderance of the evidence, the elements that entitled him to a jury instruction on justification. As the trial court concluded, and the record supports, Appellant did not face clear and imminent harm. Rather, Appellant was informed that a "possible" future attack "could" occur but Appellant did not possess knowledge of when the attack would occur or who would attack him. As such, the future attack, as the trial court reasoned, was merely speculative. The fact that the attack ultimately occurred did not negate the speculative nature of the harm at the time Appellant obtained and possessed the weapon.

The trial court further found, and the record supports, that Appellant learned of the potential for harm on the day prior to the attack. Appellant acknowledged that he could have reported the incident to prison officials or

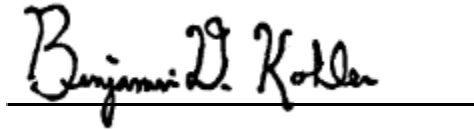
requested “some type of protective custody.”⁵ N.T., 6/25/25, at 114-115. Instead of pursuing legal alternatives within the prison system to ensure his safety, however, Appellant obtained a weapon and concealed it on his person in the event of a future attack. Section 5122, which is meant to aid in the orderly administration of correctional facilities, was enacted to deter, and make unlawful, this type of inmate self-help. As such, Appellant failed to establish that the legal alternatives, *i.e.*, reporting to prison officials or requesting protective custody, were not available to avoid the potential for future harm to his person.

Finally, we concur with the trial court, and the record supports, that the harm Appellant sought to avoid by possessing the weapon, namely injury to himself, was not greater than the conduct sought to be prevented by Section 5122. As this Court previously explained, “[i]ntroducing weapons into the prison population places the inmates and prison staff at risk.” ***Commonwealth v. Valcarel***, 94 A.3d 397, 399 (Pa. Super. 2014). Section 5122, which makes it unlawful for an inmate to possess a weapon while incarcerated, is intended to prevent harm to all inmates, including Appellant, as well as the prison employees. ***Id.***

⁵ Section 93.9 of the Pennsylvania Code requires the Department of Corrections to “maintain an inmate grievance system which will permit any inmate to seek review of problems which the inmate experiences during the course of confinement.” 37 Pa. Code § 93.9(a).

Judgment 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: 9/14/2026