

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
KEITH TYRONE MOORE	:	
	:	
Appellant	:	No. 1621 MDA 2025

Appeal from the Judgment of Sentence Entered October 21, 2025
In the Court of Common Pleas of Dauphin County Criminal Division at
No(s): CP-22-CR-0001218-2021

BEFORE: KUNSELMAN, J., KING, J., and STEVENS, P.J.E.*

MEMORANDUM BY STEVENS, P.J.E.: **FILED: OCTOBER 7, 2026**

Appellant Keith Tyrone Moore appeals from the judgment of sentence entered by the Court of Common Pleas of Dauphin County after a jury convicted Appellant of first-degree murder, second-degree murder, robbery, and carrying a firearm without a license. Appellant claims the trial court erred in concluding there was sufficient evidence to support his murder convictions when the prosecution failed to disprove Appellant's claim of self-defense. Appellant also contends the trial court erred in failing to merge his second-degree murder and robbery convictions for the purpose of sentencing. For the reasons set forth below, we affirm Appellant's convictions, but vacate his judgment of sentence in its entirety, and remand for resentencing.

* Former Justice specially assigned to the Superior Court.

Appellant was charged with the aforementioned offenses in connection with the November 15, 2020 fatal shooting of Michael Cox ("the victim"). On August 11-13, 2025, the trial court conducted a jury trial at which the following factual background was developed.

On November 15, 2020, at 10:23 a.m., police were dispatched to 301 South 13th Street in Harrisburg for a reported shooting. Notes of Testimony (N.T.), 8/11/25 – 8/12/25, at 52. Officers arrived in minutes and discovered the unresponsive victim lying on the ground in a parking lot. ***Id.*** at 52-54. The victim, who appeared to have been shot in the chest, was transported by EMS to a local hospital where he was declared deceased. ***Id.*** at 55, 67.

Investigators recovered nine discharged 9mm cartridge casings and multiple bullet jackets at the crime scene, all of which were consistent with being fired from a single firearm. N.T. at 147, 164-67; Cmwlth. Exh. 30. No shell casings from any other firearm were recovered. N.T. at 164-67.

Eyewitness Benjamin Countz, who resided at 333 South 13th Street, testified that he was walking outside at the time of the shooting, heard the first gunshot, and turned to observe the victim fall forward. ***Id.*** at 113-17, 126. When Countz turned in response to the shot, he saw Appellant holding a firearm with gun smoke rising from the barrel, while the victim's back was toward Appellant. ***Id.*** at 114-17, 131. Countz observed the victim fall to the ground and rotate, after which Appellant advanced toward the victim and continued firing at close range while the victim lay on the ground. ***Id.*** at 116-17. After the shooting, Countz saw Appellant lean over the victim, rummage

through his pockets, and flee through a hole in a nearby fence. ***Id.*** at 103-104, 117, 121. Countz claimed that during the incident, Appellant was the sole shooter and that the victim never returned fire. ***Id.*** at 119. Countz called 911 after witnessing the shooting. ***Id.*** at 123.

Dr. Wayne Ross, a forensic pathologist from the Dauphin County Coroner's Office, testified that he conducted the victim's autopsy on November 17, 2020. ***Id.*** at 173-74, 180. Dr. Ross confirmed that the victim sustained five gunshot wounds: one to the back of his left leg, two to the left chest area, one to the left knee, and one to the right hip. ***Id.*** at 181-88. The first shot to the back of the victim's leg, which would have caused him to fall and rotate, resulted in fractures to the tibia and fibula. ***Id.*** at 183. Dr. Ross determined that the victim's cause of death was his gunshot wounds and the manner of death to be a homicide. ***Id.*** at 199-200.

Thereafter, investigators recovered surveillance video that captured the shooting and events that happened before the shooting. At 9:35 a.m., the victim walked from 301 South 13th Street toward Nemo's Convenience Store. ***Id.*** at 283-84. The victim remained inside the store for about forty-five minutes, left the store at 10:16 a.m., and walked towards 301 South 13th Street carrying a black bag containing an iced tea and a breakfast sandwich. ***Id.*** at 157-58, 272, 284-85.

At 10:18:28 a.m., surveillance video depicted Appellant and Azmere Greene ("Greene") walking southbound on 13th Street toward the front of the apartment building at 301 South 13th Street, with Appellant's mask pulled up

above his face. ***Id.*** at 286-87. Appellant was observed making a motion described by law enforcement as “air racking,” a gesture associated with the practice colloquially known as “walking someone down,” meaning approaching a person on the street and shooting them. ***Id.*** at 105-108. As Appellant neared the victim, he pulled his mask down to cover his face. ***Id.*** at 287. Video from Appellant’s flight path after the shooting shows Appellant and Greene with their masks up and speaking to each other; when the men reached Derry Street (a high police patrol area), they pulled their masks over their faces. ***Id.***

After viewing the surveillance video, Officer Bernard Rendler identified these two men as Appellant and Greene. ***Id.*** at 102-104, 298. After Appellant was taken in for questioning, Appellant admitted that he had shot the victim but maintained he acted in self-defense as the victim had previously robbed him and Greene at gunpoint. ***Id.*** at 302-304. Appellant contended that after he had followed the victim to the parking lot, the victim had turned and fired at him first, prompting Appellant to return fire in self-defense. ***Id.*** at 303-305. Appellant told police the victim was armed with a .380 caliber handgun, and that Appellant disarmed the victim after the shooting and disposed of the weapon in a trash can at 322 South 14th Street. ***Id.*** at 214-15, 220, 305.

However, investigators testified that no .380 caliber casings or projectiles were recovered from the crime scene. ***Id.*** at 164-67, 220, 307. Moreover, surveillance footage of the 322 South 14th Street area captured Appellant and Greene running past the trash cans without stopping, and the trash can lids remained closed throughout the video. ***Id.*** at 216-17, 291-92.

After the shooting and before his apprehension, Appellant attempted to sell a handgun through Facebook. ***Id.*** at 311-12. Officers executed a search warrant of the residence where Appellant was staying and discovered a .380 caliber firearm. ***Id.*** at 240.

The Commonwealth charged Appellant with criminal homicide, robbery, and firearms not to be carried without a license. On May 7, 2021, Appellant filed a decertification petition to seek to transfer the case to the juvenile court as he was seventeen years old at the time of the charged offenses. On March 24, 2022, the trial court held a hearing on the decertification petition and entered an order denying the petition on May 20, 2022.

Following a trial conducted on August 11-13, 2025, the jury convicted Appellant of the aforementioned offenses. On October 21, 2025, the trial court sentenced Appellant as follows: Count 1 (first-degree murder) — thirty-five (35) years to life imprisonment; Count 2 (second-degree murder) — thirty-five (35) years to life imprisonment, concurrent with Count 1;¹ Count 3 (robbery) — ten (10) to twenty (20) years' imprisonment, consecutive to Count 1; and Count 4 (carrying a firearm without a license) — five (5) to ten (10) years' imprisonment, consecutive to Counts 1 and 3. As such, Appellant received an aggregate sentence of fifty (50) years to life imprisonment. Appellant did not file a post-sentence motion.

¹ At the time of Appellant's sentencing, a second-degree murder conviction carried a mandatory sentence of life imprisonment without the possibility of parole. 18 Pa.C.S.A. § 1102. As Appellant was seventeen at the time of the crimes, this provision was not applicable. ***See*** 18 Pa.C.S.A. § 1102.1.

On November 20, 2025, Appellant filed a timely notice of appeal to this Court. Appellant complied with the trial court's direction to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Appellant raises the following issues for our review, as presented in his brief:

- A. Did the Commonwealth fail to prove, beyond a reasonable doubt, that the slaying did not occur in self-defense?
- B. Did the sentencing court err in failing to merge the convictions for robbery and second-degree murder when the robbery count constituted the predicate felony?

Appellant's Brief, at 5 (issues reordered for ease of review).

First, Appellant argues that the trial court erred in finding there was sufficient evidence to support his murder convictions as the Commonwealth failed to disprove Appellant's claim of self-defense. We disagree.

In reviewing a challenge to the sufficiency of the evidence, our standard of review requires this Court to evaluate

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

Commonwealth v. Person, 325 A.3d 823, 830 (Pa. Super. 2024) (quoting ***Commonwealth. Brockman***, 167 A.3d 29, 38 (Pa. Super. 2017)).

Where a defendant raises a claim of self-defense, the Commonwealth bears the burden of disproving that claim beyond a reasonable doubt. ***Commonwealth v. Houser***, 610 Pa. 264, 275, 18 A.3d 1128, 1135 (2011) (citing ***Commonwealth v. Rivera***, 603 Pa. 340, 983 A.2d 1211, 1221 (2009)). However, we emphasize, that "[a]lthough the Commonwealth is required to disprove a claim of self-defense ... a jury is not required to believe the testimony of the defendant who raises the claim." ***Houser***, 610 Pa. at 275, 18 A.3d at 1135 (quoting ***Commonwealth v. Carbone***, 524 Pa. 551, 574 A.2d 584, 589 (1990)).

Under Pennsylvania law, self-defense constitutes a complete defense to a criminal charge if: (1) the defendant reasonably believed he was in imminent danger of death or serious bodily injury and that it was necessary to use deadly force to prevent such harm; (2) the defendant did not provoke the use of force against himself; and (3) the defendant did not violate a duty to retreat. 18 Pa.C.S.A. § 505(b)(2); ***Commonwealth v. Sepulveda***, 618 Pa. 262, 289, 55 A.3d 1108, 1124 (2012); ***Commonwealth v. Mouzon***, 617 Pa. 527, 531, 53 A.3d 738, 740 (2012).

Importantly, mere disbelief of a defendant's version of events is insufficient to negate a self-defense claim; there must be some affirmative evidence in the record which contradicts the claim. ***Commonwealth v.***

Torres, 564 Pa. 219, 224-25, 66 A.2d 342, 345 (2001); **Commonwealth v. Ward**, 188 A.3d 1301, 1304 (Pa. Super. 2018).

Appellant invokes **Torres** for the proposition that because no witnesses observed the initial confrontation between Appellant and the victim, the Commonwealth could not disprove his account that the victim threatened him first in robbing him at gunpoint earlier in the day and then fired the first shot when the men met in the parking lot. In **Torres**, the Supreme Court reversed Torres's conviction because the Commonwealth offered no evidence to contradict Torres's testimony that the victim struck him first, proposed no motive for the Torres's use of force if not self-defense, and presented physical evidence consistent with both parties' versions of events. **Torres**, 564 Pa. at 224-25, 66 A.2d at 345.

Appellant also cites **Commonwealth v. Zenyuh**, 453 A.2d 338 (Pa. Super. 1982), to urge that a prior threatening encounter furnished a reasonable basis for his belief that deadly force was necessary. Finally, Appellant relies on **Commonwealth v. Arce**, 416 A.2d 1098 (Pa. Super. 1979), for the proposition that it is objectively reasonable to respond to a threat of deadly force with deadly force.

None of these cases supports Appellant's self-defense claim on this record. This case is fundamentally distinguishable from **Torres**. Unlike in **Torres**, where the physical evidence was "consistent with both the prosecution's and the defense's version of events" and the Commonwealth proposed no motive for the defendant's use of force, the record here contains

extensive, corroborating evidence from multiple sources (eyewitness testimony, surveillance video, forensic analysis, and Appellant's own statements) that powerfully contradicts Appellant's self-defense narrative.

First, and most fundamentally, the Commonwealth proved beyond a reasonable doubt that Appellant did not reasonably believe that he was in immediate danger of death or serious injury such that deadly force was necessary to avoid that harm. Eyewitness Countz, who turned in response to the first shot fired, observed the victim's back facing Appellant at the moment Appellant fired the initial round. N.T. at 115-17. The victim was carrying food when he was first shot; there was no evidence whatsoever that he was reaching for a weapon. **Id.** at 39, 285. The surveillance video shows the victim attempting to flee, not advance on or fire at Appellant, after being shot in the back of the leg. **Id.** at 90-91, 112-13. Countz confirmed the victim never returned fire. **Id.** at 119.

Second, the forensic evidence directly contradicts Appellant's self-defense claim. Appellant told police that the victim fired at him first with a .380 caliber handgun, but no .380 caliber casings or projectiles were found at the scene; investigators only recovered the nine 9mm casings and multiple projectiles attributable to Appellant's weapon. **Id.** at 164-67, 220. Appellant's claim that he disposed of the victim's firearm in a trash can at 322 South 14th Street was refuted by surveillance footage showing Appellant and Greene running past those trash cans without stopping. **Id.** at 216-17.

Third, Appellant's own pre-shooting conduct belies any claim of reactive self-defense. Surveillance video captured Appellant and Greene approaching the victim's location and following him into a parking lot together, with Appellant masking up and performing the "air racking" gesture associated with deliberately targeting and shooting a person. ***Id.*** at 105-108, 287, 304. Appellant's mask concealed his face when he initiated the shooting and during his flight away from the crime scene while passing through a high-police-patrol area. ***Id.*** at 287. These pre-attack preparations are consistent with a premeditated assault, not a defensive response to an unexpected threat.

We further emphasize that the evidence established Appellant as the aggressor throughout the entire encounter. Rather than retreating through any of the available escape routes, including the hole in the fence he ultimately used to flee the scene after killing the victim, Appellant pursued the victim, stood over his fallen body, and continued to fire. N.T. at 103-104. The duty-to-retreat analysis only reinforces the conclusion that self-defense was unavailable to Appellant. ***See*** 18 Pa.C.S.A. § 505(b)(2)(ii) (deadly force may not be used if the actor can avoid the necessity of using such force with complete safety by retreating).

Appellant's reliance on ***Zenyuh*** is also unavailing. In ***Zenyuh***, this Court found that the Commonwealth had not met its burden to disprove the appellant's claim that she acted in self-defense in stabbing her husband. This Court found that the appellant's fear that she was in danger of death or serious bodily injury at the time of stabbing was reasonable given that her six-year

relationship with her husband was marked by repeated domestic violence, there was evidence the appellant's husband had beaten her immediately before the stabbing, and the appellant's husband was still in a rage when she stabbed him. **Zenyuh**, 453 A.2d at 340. In contrast, in this case, Appellant offered an uncorroborated statement to police that the victim had robbed him earlier the same morning, a claim no witness supported and which the jury was free to disbelieve. N.T. at 304. Nor does **Arce** aid Appellant; the court in **Arce** affirmed the trial court's determination that the defendant did not act in reasonable self-defense, emphasizing that the reasonableness determination is for the finder of fact. **Arce**, 416 A.2d at 1099. Here, the jury discharged that function.

Based on the foregoing reasons, we conclude that the jury was fully justified in rejecting Appellant's self-defense claim, and the evidence, viewed in the light most favorable to the Commonwealth as verdict winner, was more than sufficient to sustain both murder convictions.

Appellant also contends that the trial court erred in imposing a separate sentence on the robbery conviction because robbery was the predicate felony for Appellant's second-degree murder conviction. We agree that Appellant received an illegal sentence as these two convictions should have been merged for sentencing purposes.

Merger of sentences is governed by 42 Pa.C.S.A. § 9765, which provides that "[n]o crimes shall merge for sentencing purposes unless the crimes arise from a single criminal act and all of the statutory elements of one offense are

included in the statutory elements of the other offense.” 42 Pa.C.S.A. § 9765. Second-degree murder is defined as a criminal homicide committed while the defendant “was engaged as a principal or an accomplice in the perpetration of a felony.” 18 Pa.C.S. § 2502(b). This Court has held that a sentencing court lacks authority to impose separate sentences for both second-degree (felony) murder and the predicate felony underlying that conviction. ***Commonwealth v. Dortch***, 343 A.3d 298, 308 (Pa. Super. 2025) (requiring merger of predicate robbery and burglary convictions with felony murder).

The trial court itself acknowledged this error, stating in its 1925(a) opinion that “the robbery charge in this case served as the predicate felony for the second-degree murder conviction. Thus, it must merge into the second-degree murder conviction for the purposes of sentencing.” T.C.O. at 4. The Commonwealth likewise concedes the point and does not defend the separate robbery sentence. Commonwealth’s Brief, at 7.

The remaining question is the appropriate remedy. Appellant asks this Court to vacate the robbery sentence alone. The Commonwealth argues, however, that because Appellant’s robbery sentence was part of a comprehensive, multi-count sentencing scheme, the entire sentence must be vacated and the matter remanded for resentencing. We agree with the Commonwealth.

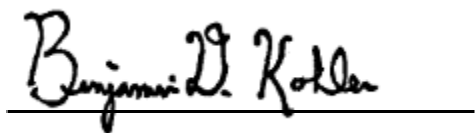
Here, Appellant received an aggregate sentence of fifty (50) years to life imprisonment, with the robbery sentence contributing ten (10) years to the minimum term. Simply vacating the robbery sentence would reduce

Appellant's aggregate minimum from fifty years to forty years, resulting in a materially different sentencing scheme from the one the trial court imposed. We therefore conclude that the appropriate remedy is to vacate Appellant's entire judgment of sentence and remand for resentencing on all remaining counts to give the trial court the opportunity to impose a restructured, comprehensive sentence. See ***Commonwealth v. Goldhammer***, 512 Pa. 587, 593, 517 A.2d 1280, 1283 (1986) (stating that where an appellate court upsets the trial court's overall sentencing scheme by vacating a conviction in a multiple-count appeal, the appellate court must remand for re-sentencing because sentencing lies within the sole discretion of the trial court).

For the foregoing reasons, we affirm Appellant's convictions. We vacate Appellant's judgment of sentence in its entirety and remand for resentencing consistent with this memorandum.

Convictions affirmed. Judgment of sentence vacated. Case remanded for resentencing. Jurisdiction relinquished.

Judgment Entered.

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

Benjamin D. Kohler, Esq.
Prothonotary

Date: 10/07/2026