IN THE SUPERIOR COURT OF PENNSYLVANIA
EASTERN DISTRICT

No. 54 EDA 2021

COMMONWEALTH OF PENNSYLVANIA,
Appellee,

v.

WILLIAM DOBBS,
Appellant.

APPEAL FROM THE JUDGMENT OF SENTENCE ENTERED AUGUST 27, 2018, IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, TRIAL DIVISION, CRIMINAL SECTION, AT CP-51-CR-0001995-2017

BRIEF FOR APPELLANT

By: Matthew Sullivan, Esq.
PA Identification No. 313293
1327 Spruce Street, 7D
Philadelphia, PA 19107
(215) 796-0263
matthew.sullivan.esq@gmail.com

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

United States Supreme Court Cases

Pennsylvania Supreme Court Cases

Pennsylvania Superior Court Cases

Statutes, Rules, and Other Secondary Sources

I. STATEMENT OF JURISDICTION

This Honorable Court has jurisdiction pursuant to 42 Pa.C.S. § 742 (exclusive appellate jurisdiction in the Superior Court of Pennsylvania from final orders of the Court of Common Pleas) and PA.R.A.P. 341(a) (appeals as of right from final orders of a lower court).

II. ORDER IN QUESTION

The August 27, 2018 order of the Court of Common Pleas, First Judicial District of Pennsylvania, Trial Division, Criminal Section at Docket Number CP-51-CR-0001995-2017, is the subject of this appeal. Appendix A. The Honorable Charles A. Ehrlich sentenced Mr. Dobbs as follows:

> AND NOW, this 27th day of August, 2018, the defendant having been convicted in the above-captioned case is hereby sentenced by this Court as follows:
>
> * * *
>
> **Count 1** 18 § 2702 §§A - Aggravated Assault (F1)
>
> To be confined for a minimum period of 6 Year(s) and a maximum period of 20 Year(s) at _____.
>
> The following conditions are imposed:
>
> Credit for time served: Credit to be calculated by the Phila. Prison System
>
> Other: Mental health treatment
>
> **Count 2** 18 § 907 §§A - Poss Instrument Of Crime W/Int (M1)
>
> To be confined for a minimum period of 1 Year(s) and a maximum period of 2 Year(s) at _____.

> **Count 3** 18 § 2701 §§A - Simple Assault Merged with Ct. 1 (M2)
>
> **Count 4** 18 & 2705 - Recklessly Endangering Another Person Merged with Ct. 1 (M2)

Id.

The trial court ordered the sentences on Counts One and Two to run concurrently. *Id.* In case number CP-51-CR-0001997-2017, a companion case, the court imposed a penalty for aggravated assault of one to three years of incarceration and ordered the sentence to run consecutively to the punishment for aggravated assault on case number CP-51-CR-0001995-2017. (Notes of Testimony ("N.T."), 8/27/18, at 22.) Thus, the court imposed an aggregate sentence of seven to twenty years of incarceration. *Id.*

III. STATEMENT OF THE SCOPE AND STANDARD OF REVIEW

The evidence was insufficient to convict Mr. Dobbs because the Commonwealth failed to disprove his justification defense, i.e., defense of others. The standard this Court applies in reviewing the sufficiency of the evidence is

> whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying [the above] test, [this Court] may not weigh the evidence and substitute our judgment for the fact-finder. In addition, [the Court notes] 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. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. 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. Barnswell Jones, 874 A.2d 108, 120-21 (Pa. Super. Ct. 2005) (citation omitted).

IV. QUESTION PRESENTED FOR REVIEW

Was the evidence sufficient to support the verdicts for aggravated assault and PIC?

(Answered in the affirmative by the trial court.)

V. STATEMENT OF THE CASE

A. Procedural History

In case numbers CP-51-CR-0001995-2017 and CP-51-CR-0001997-2017, the Commonwealth charged William Dobbs with aggravated assault, possession of an

instrument of a crime ("PIC"), simple assault, and reckless endangerment.[1] The charges stemmed from an incident that occurred on February 17, 2017. The complainant in case number -1995 was Mikal Batson. The complainant in case number -1997 was Deandre Norris.

On March 23, 2018, the trial court conducted an oral colloquy to ensure that Mr. Dobbs's decision to waive his right to a jury trial was knowing, intelligent, and voluntary. During the colloquy, Mr. Dobbs informed the court that he was taking medication to treat schizophrenia. (N.T., 3/23/18, at 8-9.) However, he testified that the medicine did not interfere with his understanding of the proceedings. *Id.* at 9. The court then ruled that Mr. Dobbs entered a knowing and intentional waiver. *Id.*

After the bench trial, the court found Mr. Dobbs guilty. *Id.* at 98. On August 27, 2018, the court sentenced him to an aggregate term of seven to twenty years of incarceration. (N.T., 8/27/18, at 22.)

On April 3, 2020, Mr. Dobbs filed a petition pursuant to the Post Conviction Relief Act ("PCRA"). *See* 42 Pa.C.S. §§ 9541 et seq. On August 25, 2020, appointed PCRA counsel filed an amended petition to reinstate Mr. Dobbs's appellate rights. On December 14, 2020, the court granted the petition.

[1] 18 Pa.C.S. § 2702, 18 Pa.C.S. § 907, 18 Pa.C.S. § 2701, and 18 Pa.C.S, § 2705, respectively.

One day later, Mr. Dobbs timely filed a notice of appeal from the judgment of sentence. On March 31, 2021, he filed a statement of errors, Appendix B, and the trial court filed its Opinion on August 26, 2021, Appendix C.

B. Factual History

Mr. Batson testified that on February 17, 2017, he went to 2823 Castor Avenue in Philadelphia to help his friend Jerrett move. (N.T., 3/23/18, at 11-12.) When Mr. Batson arrived at the address, Mr. Norris pulled up in his car. *Id.* at 13. The three men then began to pack electronics inside the house.

Mr. Batson stated that Mr. Dobbs, who lived at 2823 Castor Avenue, interrupted them and said, "So you are not going to say hello to me in my own house[?]" *Id.* at 14. Mr. Batson testified that after the men greeted him, Mr. Dobbs showed them a pocketknife, saying, "Yeah, I'll do it. I'll do something," and "that he wasn't scared of us and all this extra nonsense that we not there for." *Id.* at 16. Mr. Batson and Mr. Dobbs engaged in a verbal dispute, but the situation soon settled. *See id.* at 17-18. The men loaded the electronics into Mr. Norris's vehicle, drove to another location, and dropped off the items. *See id.* at 19.

When Mr. Batson returned to 2823 Castor Avenue, Mr. Dobbs's nephew Shane Ivory Robinson approached him. *Id.* at 19-20. Mr. Batson explained what occurred earlier in the house, and Mr. Dobbs's nephew said, "I don't give an F what happened," and threw a punch. *Id.* at 20.

Mr. Batson dodged the punch and took Mr. Dobbs's nephew to the ground. *Id.* at 20-21. When Mr. Batson stood up, he saw that Mr. Norris and Mr. Dobbs were "in a scuffle." *Id.* at 21. Mr. Batson testified that he went over to Mr. Norris to engage Mr. Dobbs, but before he could do so, he again fought with Mr. Dobbs's nephew. *Id.*

Mr. Batson placed the man in "a headlock, like a chokehold . . . ." *Id.* at 22. Mr. Norris and Mr. Dobbs were tussling when Mr. Norris saw Mr. Batson choking Mr. Dobbs's nephew. *Id.* at 24. Mr. Norris then went over to Mr. Batson and implored, "[L]et go, let go. . . . No, no. don't do that, stop." *Id.* at 23-24.

Mr. Batson testified,

> I got up. When I got up at that moment, I see [Mr. Dobbs], and he's like, hey -- now, what I assumed was a punch, he punched me, you know, in my side here. Then what I'd seen was a punch again on my head, but it turns out he was stabbing me. I didn't know until blood started coming out.

Id. at 22. The prosecutor asked, "[When] you saw [Mr. Dobbs] approaching you, did he have anything in his hand?" *Id.* at 23. Mr. Batson replied, "Oh, yeah, yeah, yeah. He had the knife in his hand, but I didn't know that he hit me with the knife at all." *Id.* at 23-24. The prosecutor again asked, "Did you at that point see anything in his hand?" *Id.* a 24. But this time, Mr. Batson testified, "No. I didn't know that the knife had hit me until my head was open." *Id.*

Jerrett then called the police, who arrived with an ambulance. *Id.* at 26. Mr. Batson was transported to a hospital and treated for injuries that included a punctured lung and a laceration to the head. *See id.* at 27.

Mr. Norris testified that on February 17, 2017, he went to 2823 Castor Avenue to help his friend move. *Id.* at 45. When he walked into the living room, Mr. Dobbs "started screaming" and said, "[Y]ou guys just don't walk into somebody house and not speak." *Id.* at 46. But the situation soon settled, and Mr. Norris, Mr. Batson, and Jerrett continued to pack. *See id.*

After they drove to a different location and dropped off a load of items, the men returned to 2823 Castor Street. *See id.* at 47. When they parked and exited Mr. Norris's car, Mr. Dobbs's nephew approached and began to fight with Mr. Batson. *Id.* at 47-49. Mr. Norris testified, "I seen [Mr. Dobbs] basically going to attack [Mr. Batson], 'cause I didn't want him to jump him, so I went to go help [and I] . . . swung at [Mr. Dobbs]." *Id.* at 49.

Mr. Norris, who is over six feet tall and weighs more than two hundred and fifty pounds, stated,

> [Mr. Batson] was on the ground and he had Mr. Dobbs's nephew on top of him. He had him like in a headlock, basically. I walked up to [Mr. Batson] to get him to stop him from actually going further with the situation because I wanted everything to be over. So, when that happens, Mr. Dobbs comes up and he goes down and he actually scrapes it across [Mr. Batson] when [Mr. Batson] is letting go, scrapes it across [Mr. Batson's] head and pokes him. Then

> charges at me. And after Mr. Dobbs starts charging at me, I was pushing him off me and he actually was chasing me around the car at least twice. When Mr. Dobbs went to go like run after me, I basically grabbed his hand. So, I was like fighting against him to get the knife out of his hand.

Id. at 50-54 (cleaned up). The prosecutor then reviewed two photographs with Mr. Norris, who explained that the pictures showed the parts of his fingers where Mr. Dobbs "tried to stab" him. *Id.*

Next, the parties entered two stipulations. First, the parties agreed that if Police Officer Leno testified, he would have stated that he arrived at 2823 Castor Avenue on February 17, 2017, at approximately 7:20 p.m., and recovered a black pocketknife with a silver blade. *Id.* at 62. Second, the parties stipulated that if Detective Haggy testified, he would have stated that he gave *Miranda*[2] warnings to Mr. Dobbs and interviewed him. *Id.*

Mr. Dobbs testified at the trial. He stated that he was at home on 2823 Castor Street playing video games with his son on the date of the incident. *See id.* at 67. At approximately 5 p.m., Mr. Batson, Mr. Norris, and Jerrett "barged" into the house. *Id.* Mr. Dobbs asked the men what they were doing as they began to unplug electronics, but no one responded. *See id.* at 68-69.

Mr. Dobbs felt intimidated because the men did not acknowledge him or respond to his question. *Id.* at 69. Therefore, he pulled out a pocketknife inside a

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

coat on a nearby chair and asked the men to leave the house. *See id.* at 69-70. They refused to leave. *Id.* at 70. Mr. Dobbs testified that he was "getting upset and throwing up" because the men would not go, and he was "getting nervous." *Id.* at 72.

After the three men packed more things, they left the house. *Id.* at 71. Approximately forty-five minutes later, they returned to 2823 Castor Street. *See id.* Mr. Dobbs walked outside and saw them as well as his nephew, who Mr. Dobbs had called. *Id.* at 73. Mr. Dobbs testified that he told his nephew that Mr. Batson and Mr. Norris "came over to the house threatening me, telling me what they was going to do to me . . . ." *Id.* at 74. Mr. Dobbs asked his nephew to go home because they were too old to fight. *See id.*

Mr. Batson stated that he did not care about the men's ages and began to fight with Mr. Dobbs's nephew. *Id.* at 74-75. Mr. Dobbs wanted to break up the fight when he saw Mr. Batson on top of his nephew. *Id.* at 75. But Mr. Norris hit Mr. Dobbs. *Id.* They began to fight, and Mr. Dobbs said, "Look, man, [Mr. Batson is] over there choking my nephew. I'll let you go so I can go over there and break this fight up." *Id.*

Mr. Dobbs went to break up the fight as Mr. Batson continued to choke his nephew. *Id.* Before he could intervene, Mr. Norris grabbed Mr. Dobbs, and the two men again fought. *Id.* at 76. Mr. Dobbs testified,

> And then [Mr. Batson] comes and he grabs me. Once he grabbed me, I reach in my pocket to get my knife out. So he grabs me and he dumps me on my head, so I stabbed him right here. And then once I stabbed him right there, he's still hitting me. So once he kept hitting me, I hit him again across the head, and then he stopped fighting.

Id.

VI. SUMMARY OF THE ARGUMENT

The evidence was insufficient to convict Mr. Dobbs because he acted in defense of his nephew. And the Commonwealth did not prove beyond a reasonable doubt that the act was not justifiable.

The Commonwealth did not meet its burden of proof because Mr. Dobbs reasonably believed his nephew was in danger of death or serious bodily injury. Secondly, the complainant used excessive force in retaliation. Lastly, Mr. Dobb's nephew did not have a duty to retreat. Accordingly, Mr. Dobbs had a right to defend his nephew, who did not forfeit his right to self-defense.

Therefore, even taking the evidence in a light most favorable to the Commonwealth as verdict-winner, this Court should rule that the Commonwealth failed to disprove Mr. Dobbs acted justifiably in defense of others. As a result, the Court should vacate Mr. Dobbs's conviction for aggravated assault

Moreover, the facts do not support an inference that Mr. Dobbs possessed an instrument with the "intent to employ it criminally" because he used a pocketknife

in defense of his nephew. 18 Pa.C.S. § 907(a). Thus, the Court should vacate Mr. Dobbs's conviction for PIC because the Commonwealth failed to establish one element of the offense.

VII. ARGUMENT

The evidence was insufficient to convict Mr. Dobbs because he acted in justifiable defense of his nephew. In reviewing a claim based upon the sufficiency of the evidence, this Court views all the evidence in the light most favorable to the verdict winner, giving that party the benefit of all reasonable inferences. *Commonwealth v. Widmer*, 744 A.2d 745, 751 (Pa. 2000).

Pennsylvania law permits the use of force against another person in limited circumstances, such as the defense of others. *See* 18 Pa.C.S. § 506. The statute provides:

> (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.

Id.

The defense of another person relies on the justification of self-defense. It is available only where "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." 18 Pa.C.S. § 505. Our Supreme Court has explained the parties' evidentiary burdens as follows:

> While there is no burden on a defendant to prove [a self-defense or defense of others] claim, before that defense is properly at issue at trial, there must be some evidence, from whatever source to justify a finding of [self-defense or defense of others]. If there is any evidence that will support the claim, then the issue is properly before the fact finder.

Commonwealth v. Torres, 766 A.2d 342, 345 (Pa. 2001). (internal citations omitted).

If the defendant raises a claim of defense of others, the burden is on the Commonwealth to prove beyond a reasonable doubt that the defendant's act was not justifiable. *Commonwealth v. McClendon*, 874 A.2d 1223, 1229-30 (Pa. Super. Ct. 2005). The Commonwealth sustains its burden by establishing

> at least one of the following: 1) the accused did not reasonably believe that he [or another] 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. Ct. 2008) (citation omitted). The Commonwealth must prove only one of those three elements beyond a reasonable doubt to shield its case from a defense of others challenge to the sufficiency of the evidence. *Commonwealth v. Burns*, 765 A.2d 1144, 1149 (Pa. Super. Ct. 2000).

When the defendant's testimony is the only evidence of defense of others, the Commonwealth must still disprove the asserted justification and cannot simply rely on the trier of fact's disbelief of the defendant's testimony. *Commonwealth v. Reynolds*, 835 A.2d 720, 731 (Pa. Super. Ct. 2003). However, if other witnesses provide accounts of the material facts, it is up to the fact-finder to "reject or accept all, part or none of the testimony of any witness." *Commonwealth v. Gonzales*, 609 A.2d 1368, 1370 (Pa. Super. 1992).

A. The evidence was insufficient to convict Mr. Dobbs of aggravated assault.

The Commonwealth failed to disprove that Mr. Dobbs acted in defense of his nephew. Therefore, this Court should vacate Mr. Dobbs's aggravated assault conviction.

Under the Pennsylvania Crimes Code, a person may be convicted of aggravated assault, graded as a felony of the first degree, if they attempt "to cause serious bodily injury to another, or cause[ ] such injury intentionally, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life." 18 Pa.C.S. § 2702(a)(1).

In this case, Mr. Dobbs testified that, as he wrestled with Mr. Norris, he said, "Look, man, [Mr. Batson is] over there choking my nephew. I'll let you go so I can go over there and break this fight up." (N.T., 3/23/18, at 75.) He then intervened on his nephew's behalf. *See id.* at 53.

Through this testimony, Mr. Dobbs raised the claim of defense of others. *See Torres*, 766 A.2d at 345 ("If there is any evidence that will support the claim [of defense of others], then the issue is properly before the fact finder."). Accordingly, the burden was on the Commonwealth to prove beyond a reasonable doubt that Mr. Dobbs's act was not justifiable. But the Commonwealth did not meet its burden.

1. Mr. Dobbs reasonably believed his nephew was in danger of death or serious bodily injury.

Mr. Dobbs acted justifiably in defense of others because he reasonably believed that his nephew was in imminent danger of death or great bodily harm and that it was necessary to respond to save his nephew.

> The requirement of reasonable belief encompasses two aspects, one subjective and one objective. First, the defendant must have acted out of an honest, bona fide belief that he [or another] was in imminent danger, which involves consideration of the defendant's subjective state of mind. Second, the defendant's belief that he needed to defend himself [or another] with deadly force, if it existed, must be reasonable in light of the facts as they appeared to the defendant, a consideration that involves an objective analysis.

Commonwealth v. Mouzon, 53 A.3d 738, 752 (Pa. 2012).

There are several relevant factors, including any actual physical contact, the size and strength disparities between the parties, threatening or menacing actions on the part of the complainant, and general circumstances surrounding the incident, to consider when determining the reasonableness of a defendant's belief that the use of

deadly force was necessary to protect against death or serious bodily injury. *Commonwealth v. Smith*, 97 A.3d 782, 788 (Pa. Super. Ct. 2014). "No single factor is dispositive." *Id.*

Mr. Dobbs's testimony proved that he subjectively believed his nephew "was in imminent danger." *Mouzon*, 53 A.3d at 752. As he fought with Mr. Norris, Mr. Dobbs said, "Look, man, [Mr. Batson is] over there choking my nephew. I'll let you go so I can go over there and break this fight up." (N.T., 3/23/18, at 75.) Thus, Mr. Dobbs thought it was essential to intervene as Mr. Batson choked his nephew.

Moreover, Mr. Dobbs's belief that he needed to act was objectively reasonable. Mr. Batson testified that he placed Mr. Dobbs's nephew in "a headlock, like a chokehold . . . ." (N.T., 3/23/18, at 22.) Mr. Norris, Mr. Batson's cohort, saw this and tried to intercede, imploring, "[L]et go, let go. . . . No, no. don't do that, stop." *See id.* at 23-24. And Mr. Dobbs acted only after Mr. Batson's associate urged him to stop suffocating Mr. Dobbs's nephew. *Id.* at 75.

The above evidence proved beyond a reasonable doubt that Mr. Dobbs reasonably believed his nephew was in imminent danger of death or great bodily harm, and it was necessary to act to save him.

2. Mr. Dobbs was justified to act in defense of others because his nephew was permitted to respond to Mr. Batson's escalation in force.

Mr. Dobbs acted justifiably in defense of others because Mr. Batson unlawfully escalated the force during his fight with Mr. Dobbs's nephew, thereby permitting Mr. Dobbs's response. The defense of another person relies substantially on the justification of self-defense, which is available only "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." 18 Pa.C.S. § 505.

Mr. Batson escalated the interaction with Mr. Dobbs's nephew when he used more force than was reasonably necessary to protect himself. Mr. Batson testified he dodged Mr. Dobbs's nephew's punch. (N.T., 3/23/18, at 21.) Then, Mr. Batson wrestled Mr. Dobbs's nephew to the ground and placed him in a chokehold. *See id.* at 22.

Thus, Mr. Batson used excessive force when he retaliated. Mr. Dobbs's nephew provoked Mr. Batson with the threat of bodily injury, i.e., a punch. However, when he responded by choking Mr. Dobbs's nephew, Mr. Batson used a force that threatened death or serious bodily injury. As a result, Mr. Dobbs was justified to act in defense of others because his nephew was permitted to respond to Mr. Batson's escalation in force. *See Commonwealth v. Jackson*, 355 A.2d 572, 575 (Pa. 1976)

("A person interfering in a difficulty in behalf of another simply steps into the latter's shoes; he may lawfully do in another's defense what such other might lawfully do in his own defense but no more; he stands on the same plane, is entitled to the same rights, and is subject to the same conditions, limitations, and responsibilities as the person defended."). Therefore, Mr. Batson, not Mr. Dobbs's nephew, was the provocateur. And Mr. Dobbs was justified to act in his nephew's defense.

3. Mr. Dobbs's nephew did not have a duty to retreat.

Mr. Dobbs's nephew did not have a duty to retreat because this case did not involve deadly force. *See Commonwealth v. Banks*, 268 A.2d 230, 231 (Pa. Super. 1970) (In cases that do not include deadly force, there is no legal duty to retreat.).

Based on all the above, and taking the evidence in a light most favorable to the Commonwealth as verdict-winner, this Court should rule that the Commonwealth failed to disprove Mr. Dobbs acted in defense of others. Accordingly, the Court should vacate Mr. Dobbs's conviction for aggravated assault.

B. The evidence was insufficient to convict Mr. Dobbs of PIC.

The Commonwealth failed to disprove that Mr. Dobbs acted in defense of others. Therefore, Mr. Dobbs did not possess the requisite intent for the PIC charge.

To sustain a conviction for PIC, the Commonwealth had to prove that Mr. Dobbs (1) possessed an instrument of crime, (2) with intent to employ it criminally.

See 18 Pa.C.S. § 907(a). Under the statute, an "instrument of crime" is defined as "[a]nything specially made or specially adapted for criminal use." 18 Pa.C.S. § 907(d). While a fact-finder can infer intent from the surrounding circumstances, intent cannot be inferred from "mere possession of the weapon." *In re A.C.*, 763 A.2d 889, 891 (Pa. Super. Ct. 2000). But the fact-finder cannot reasonably infer criminal intent if a defendant used a weapon solely for the defense of others. *See id.*

Here, the facts do not support an inference that Mr. Dobbs possessed an instrument with the "intent to employ it criminally" because he utilized a pocketknife in justifiable defense of his nephew. 18 Pa.C.S. § 907(a). Thus, this Court should vacate Mr. Dobbs's conviction for PIC because the Commonwealth failed to establish an element of the crime.

VIII. CONCLUSION

For the preceding reasons, Mr. Dobbs respectfully requests this Honorable Court vacate his convictions for aggravated assault and PIC.

Respectfully Submitted,

/s/Matt Sullivan
Matthew Sullivan, Esq.
Counsel for Appellant

Date: December 10, 2021

IX. CERTIFICATION OF WORD COUNT

Pursuant to PA.R.A.P. 2135, I certify that the accompanying brief, which I prepared using Times New Roman 14-point font, contains 4,564 words, excluding the parts of the document exempted by the Rule.

/s/ Matt Sullivan
Matthew Sullivan, Esq.
1327 Spruce Street, 7D
Philadelphia, PA 19107
(215) 796-0263

X. VERIFICATION

I, Matthew Sullivan, Esq., verify that the facts set forth in the foregoing are true and correct to the best of my knowledge, information, and belief. I understand that the statements therein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: December 10, 2021

By: ***/s/ Matt Sullivan***
Matthew Sullivan, Esq.

XI. CERTIFICATE OF SERVICE

I, Matthew Sullivan, Esq., certify that on this day, I served a true and correct copy of the foregoing upon the following via electronic filing:

Pennsylvania Superior Court

530 Walnut Street, Suite 315
Philadelphia, PA 19106

Office of the District Attorney
Philadelphia County
Three South Penn Square
Philadelphia, Pennsylvania 19107-3499

The Honorable Charles A. Ehrlich
Stout Justice Center, Room 1419
Philadelphia, PA 19107

Date: December 10, 2021

By: ***/s/ Matt Sullivan***
Matthew Sullivan, Esq.
Counsel for Appellant

APPENDIX A

Commonwealth of Pennsylvania
v.
William Dobbs

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

DOCKET NO:	**CP-51-CR-0001995-2017**
DATE OF ARREST:	**02/18/2017**
OTN:	**U 067957-1**
SID:	**174-31-50-1**
DOB:	**04/07/1967**
PID:	**0667061**

CP-51-CR-0001995-2017 Comm. v. Dobbs, William
Order - Sentence/Penalty Imposed

8154975871

ORDER

AND NOW, this 27th day of August, 2018, the defendant having been convicted in the above-captioned case is hereby sentenced by this Court as follows:

ADA: Dandy, Atty: Sagot, Steno: Bursner, Clerk: McCoach, Judge: Ehrlich

Count 1 - 18 § 2702 §§ A - Aggravated Assault (F1)
To be confined for a minimum period of 6 Year(s) and a maximum period of 20 Year(s) at _____.
The following conditions are imposed:
Credit for time served: Credit to be calculated by the Phila. Prison System
Other: Mental health treatment

Count 2 - 18 § 907 §§ A - Poss Instrument Of Crime W/Int (M1)
To be confined for a minimum period of 1 Year(s) and a maximum period of 2 Year(s) at _____.

Count 3 - 18 § 2701 §§ A - Simple Assault - Merged with Ct. 1 - (M2)

Count 4 - 18 § 2705 - Recklessly Endangering Another Person - Merged with Ct. 1 - (M2)

LINKED SENTENCES:
Link 1
CP-51-CR-0001995-2017 - Seq. No. 1 (18§ 2702 §§ A) - Confinement is Concurrent with
CP-51-CR-0001995-2017 - Seq. No. 2 (18§ 907 §§ A) - Confinement

The defendant shall pay the following:

	Fines	Costs	Restitution	Crime Victim's Compensation Fund - Victim / Witness Services Fund	Total Due
Amount:	$0.00	$702.50	$0.00	$60.00	$762.50
Balance Due:	$0.00	$690.00	$0.00	$60.00	$750.00

OFFICE OF JUDICIAL RECORDS * FIRST JUDICIAL DISTRICT OF PA * COMMONWEALTH OF PENNSYLVANIA

BY THE COURT:

Judge Charles A. Ehrlich

DC-300B (PART I) Rev. 12/05 COURT COMMITMENT STATE OR COUNTY CORRECTIONAL INSTITUTION Commonwealth of Pennsylvania v. William Dobbs	Type or Print Legibly COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF CORRECTIONS BOX 8837 CAMP HILL, PA17001-0598 Attn: Central Office Records ☒ DC-300B (PART II) Attached

COMMITMENT NAME: Dobbs, William				COURT OF INITIAL JURISDICTION ☐	COMMON PLEAS ☒
SEX	DATE OF BIRTH	SID	OTN	COMMITTING COUNTY: Philadelphia	
☐ F ☒ M	04/07/1967	174-31-50-1	U 067957-1	COURT NUMBER AND TERM: 0001995-2017 Ct. 1	
MANDATORY SENTENCE		**BOOT CAMP RECOMMENDED**		COUNTY REFERENCE #:	
☐ Yes ☒ No		☐ Yes ☒ No		SEX OFFENDER CLASS:	

The above defendant after	☐ Pleading Guilty	☐ Nolo Contendere	☐ Alford Plea	☒ Being Found Guilty	☐ GBMI

was on **08/27/2018**, sentenced by **Charles A. Ehrlich** to **Confinement** for a term of A minimum period of 6 Year(s) and a maximum period of 20 Year(s), or Other for the offense of Aggravated Assault (Section 18 § 2702 §§ A of the Crimes and Offenses Code). It is further ordered that the said defendant be delivered by the proper authority to and treated as the law directs at the _____ facility located at _____.

Fine:	Cost:	Restitution:	Crime Victim's Compensation Fund - Victim/Witness Services Fund:
Amount $0.00 Balance $0.00	Amount $702.50 Balance $690.00	Amount $0.00 Balance $0.00	Amount $60.00 Balance $60.00

CREDIT FOR TIME SERVED (EXPLANATION OF CREDIT COMPUTATION ON PAGE TWO) 0 Days	EFFECTIVE DATE OF SENTENCE

THIS SENTENCE IS CONCURRENT WITH: <-- See Supplemental Page -->

THIS SENTENCE IS CONSECUTIVE TO:

PROSECUTING ATTORNEY:	DEFENSE ATTORNEY:
Philadelphia County District Attorney's Office	Allan Jeffrey Sagot

DISPOSITION ON NON-INCARCERATION OFFENSE(S): (THIS BLOCK NOT TO BE USED FOR INCARCERATION OFFENSE)
Ct. 3 - Simple Assault - Merged with Ct. 1- Guilty
Ct. 4 - Recklessly Endangering Another Person - Merged with Ct. 1- Guilty

(SEAL)

In witness, whereof I have hereunto set my hand and seal of said court, this 27 day of Aug, 20 18

AUTHORIZED SIGNATURE

The sentence for Dobbs, William was computed as follows:

Date of Sentence	County or Magisterial District	Court Number and Term	Type Sentence	Minimum			Maximum			Judge or Magisterial District Judge	OTN (Include Alpha Suffix)
				Yrs.	Mos.	Days	Yrs.	Mos.	Days		
08/27/2018	Philadelphia	0001995-2017	Ct 1 Conf.	6	0	0	20	0	0	Charles A. Ehrlich	U 067957-1
08/27/2018	Philadelphia	0001995-2017	Ct 2 Conf.	1	0	0	2	0	0	Charles A. Ehrlich	U 067957-1
			Total Sentence								

Credit for Time Served

Locked Up (Location)	Dates		No. of Days
	From	To	
		Total	

All Detainers Must Be Attached To This Form | Total Number Of Detainers Attached

Dated	Indict - Warrant Nos.	Remarks

Recommendations of the Court

Ct. 1 Confinement Conditions: Credit for time served: Credit to be calculated by the Phila. Prison System
Other: Mental health treatment

The Following Additional Reports are Attached

- [X] Continuation Sheet (DC-300B, Part II)
- [ ] Arrest Report
- [ ] FBI
- [ ] Pre / Postsentence Investigation
- [ ] Behavior Clinic
- [ ] PSP
- [ ] Sentencing Sheet
- [ ] Sentencing Guidelines
- [ ] Statement of Costs
- [ ] Sentence Order
- [ ] Criminal Complaint

The Following Additional Reports will be Forthcoming

- [ ] Arrest Report
- [ ] Presentence or Postsentence Investigation

DC-300B (PART II) Rev. 12/05 COURT COMMITMENT CONTINUATION SHEET STATE OR COUNTY CORRECTIONAL INSTITUTION Commonwealth of Pennsylvania v. William Dobbs	Type or Print Legibly COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF CORRECTIONS BOX 8837 CAMP HILL, PA 17001-0598 Attn: Central Office Records

COMMITTING COUNTY: Philadelphia	COURT NUMBER AND TERM: 0001995-2017 Ct. 2	OTN: U 067957-1

The above defendant after	☐ Pleading Guilty	☐ Nolo Contendere	☐ Alford Plea	☒ Being Found Guilty	☐ GBMI

was on **08/27/2018**, sentenced by **Charles A. Ehrlich** to **Confinement** for a term of A minimum period of 1 Year(s) and a maximum period of 2 Year(s), or 1 year - 2 years for the offense of Poss Instrument Of Crime W/Int (Section 18 § 907 §§ A of the Crimes and Offenses Code).

Fine:	Cost:	Restitution:	Crime Victim's Compensation Fund - Victim/Witness Services Fund:
Amount $0.00 Balance $0.00	Amount $0.00 Balance $0.00	Amount $0.00 Balance $0.00	Amount $0.00 Balance $0.00

CREDIT FOR TIME SERVED: 0 Days	EFFECTIVE DATE OF SENTENCE:
THIS SENTENCE IS CONCURRENT WITH: <-- See Supplemental Page -->	
THIS SENTENCE IS CONSECUTIVE TO:	

DC-300B (PART II) Rev. 12/05 COURT COMMITMENT CONTINUATION SHEET STATE OR COUNTY CORRECTIONAL INSTITUTION Commonwealth of Pennsylvania v. William Dobbs	Type or Print Legibly COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF CORRECTIONS BOX 8837 CAMP HILL, PA 17001-0598 Attn: Central Office Records

LINKED SENTENCES:

Link 1

CP-51-CR-0001995-2017 - Seq. No. 1 (18§ 2702 §§ A) - Confinement is Concurrent with

CP-51-CR-0001995-2017 - Seq. No. 2 (18§ 907 §§ A) - Confinement

DC-300B (PART II) Rev. 12/05 COURT COMMITMENT CONTINUATION SHEET STATE OR COUNTY CORRECTIONAL INSTITUTION Commonwealth of Pennsylvania v. William Dobbs	Type or Print Legibly COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF CORRECTIONS BOX 8837 CAMP HILL, PA 17001-0598 Attn: Central Office Records

Case Assessment Summary

Offense No	Statute Description	Fines	Costs	Restitution	CVC
1	Aggravated Assault	$0.00	$690.00	$0.00	$60.00
	Non-offense related	$0.00	$12.50	$0.00	$0.00
	Total Ordered:	**$0.00**	**$702.50**	**$0.00**	**$60.00**
	Amount Paid:	**$0.00**	**-$12.50**	**$0.00**	**$0.00**
	Total Due:	**$0.00**	**$690.00**	**$0.00**	**$60.00**

APPENDIX B

MATTHEW F. SULLIVAN, ESQ.
Identification No. 313293
1327 Spruce Street, 7D
Phila., PA 19107
(215) 796-0263
matthew.sullivan.esq@gmail.com

COMMONWEALTH OF PENNSYLVANIA	:	Philadelphia County
	:	Court of Common Pleas
	:	Criminal Trial Division
v.	:	
	:	
	:	
WILLIAM DOBBS	:	CP-51-CR-0001995-2017

STATEMENT OF MATTERS COMPLAINED OF ON APPEAL PURSUANT TO Pa.R.A.P. 1925(b)

TO THE HONORABLE CHARLES A. EHRLICH, JUDGE OF THE SAID COURT:

By and through below-signed counsel, William Dobbs raises the following issue on appeal pursuant to Pa.R.A.P. 1925(b). In the below allegation of error, this Honorable Court erred, unfairly prejudiced, and violated rights of due process guaranteed by both the United States Constitution and the Pennsylvania Constitution:

1. The evidence was insufficient to convict Mr. Dobbs of aggravated assault graded as a felony of the first degree, 18 Pa.C.S. § 2702, and possessing an instrument of crime, 18 Pa.C.S. § 907, because the Commonwealth did not prove beyond a reasonable doubt that the defense of self-defense did not apply.
2. The evidence presented by Mr. Dobbs established the defense of self-defense because he showed that: a) he was free from fault in provoking or continuing the difficulty which resulted; b) he reasonably believed that he was in imminent danger of death or great bodily harm and that there was a necessity to use such

force to save himself; and c) he did not violate any duty to retreat or to avoid the danger. *See Commonwealth v. Hornberger*, 74 A.3d 279, 284-85 (Pa. Super. Ct. 2013).

Respectfully Submitted,

/s/ Matt Sullivan
Matthew Sullivan, Esq.
Attorney for Mr. Dobbs

Date: March 31, 2021

CERTIFICATE OF SERVICE

I, Matthew Sullivan, Esq., hereby certify that I am this day serving a true and correct copy of the foregoing upon the parties indicated below via electronic filing.

Honorable Charles A. Ehrlich
Stout Justice Center, Room 1419
Philadelphia, PA 19107

District Attorney of Philadelphia
3 Penn Square Plaza
Philadelphia, PA 19102

/s/ Matt Sullivan
Matthew Sullivan, Esq.

Dated: March 31, 2021

APPENDIX C

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CRIMINAL SECTION

Commonwealth of Pennsylvania	:	CP-51-CR-0001995-2017
	:	CP-51-CR-0001997-2017
	:	
v.	:	SUPERIOR COURT Nos.
	:	54 EDA 2021
William Dobbs	:	55 EDA 2021

OPINION

Ehrlich, J.

William Dobbs, hereinafter referred to as "appellant," following a one (1) day waiver trial, was found guilty by this Court on March 23, 2018 of Aggravated Assault (F1), Aggravated Assault (F2), two (2) counts of Possession of an Instrument of Crime (M1), two (2) counts of Simple Assault (M2), and two (2) counts of Recklessly Endangering Another Person (M2).[1] These charges stemmed from appellant's assaulting the complainants, Makil Batson and DeAndre Norris, with a pocketknife, causing serious bodily injury.[2] Appellant was sentenced on August 27, 2018, to a term of seven (7) to twenty-three (23) years' incarceration. Appellant did not seek appellate review from his judgment of sentence.

Thereafter, on April 3, 2020, appellant filed a petition, seeking relief pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541 *et seq*. On August 25, 2020, appellant's appointed counsel filed an Amended PCRA petition seeking the reinstatement of appellant's

[1] 18 Pa.C.S.A. §2702 §§A, 18 Pa.C.S.A. §2702 §§A, 18 Pa.C.S.A. §907 §§A, 18 Pa.C.S.A. §2701 §§A, and 18 Pa.C.S.A. §2705, respectively.
[2] Appellant's cases were consolidated for trial. Complainant, Makil Batson, Philadelphia Criminal Docket No. CP-51-CR-0001995-2017 and complainant, DeAndre Norris, Philadelphia Criminal Docket No. CP-51-CR-0001997-2017.

appellate rights due to trial counsel's ineffectiveness in failing to file an appeal from his judgment of sentence to our Superior Court. The Commonwealth did not oppose the reinstatement of appellant's post-sentencing rights and therefore, this Court, by Order dated December 14, 2020, reinstated appellant's post-sentencing and appellate rights. On December 15, 2020, appellant filed timely appeals from both convictions and the resulting judgment of sentence.[3]

On appeal, appellant avers three (3) points of error, which are set forth below verbatim:

1. **"The evidence was insufficient to convict Mr. Dobbs of aggravated assault graded as a felony of the first degree, 18 Pa.C.S. § 2702, and possessing an instrument of crime, 18 Pa.C.S. § 907, because the Commonwealth did not prove beyond a reasonable doubt that the defense of self-defense did not apply.** *[Complainant, Mikel Batson-54 EDA 2021]*

2. **"The evidence was insufficient to convict Mr. Dobbs of aggravated assault graded as a felony of the second degree, 18 Pa.C.S. § 2702, and possessing an instrument of crime, 18 Pa.C.S. § 907, because the Commonwealth did not prove beyond a reasonable doubt that the defense of self-defense did not apply.** *[Complainant, DeAndre Norris-55 EDA 2021]*

3. **The evidence presented by Mr. Dobbs established the defense of self-defense because he showed that: a) he was free from fault in provoking or continuing the difficulty which resulted; b) he reasonably believed that he was in imminent danger of death or great bodily harm and that there was a necessity to use such force to save himself; and c) he did not violate any duty to retreat or to avoid the danger."** *[Both Complainants]*

See Appellant's 1925(b) Statements of Errors

As will be discussed below, these claims are without merit. Accordingly, no relief is due.

---

[3] Although appellant properly filed separate appeals from his judgment of sentence on both matters for which he was tried and convicted, (Complainant, Makil Batson at 54 EDA 2021 and Complainant, DeAndre Norris at 55 EDA 2021), his Statement of Errors filed in both matters were identical but for the grading of his convictions for aggravated assault (Complainant, Mikel Batson-F1 and complainant, DeAndre Norris-F2)

Trial Evidence

The Commonwealth presented two (2) witnesses as part of their case-in-chief, complainants, Makil Batson and DeAndre Norris. Appellant testified in his own defense.

MAKIL BATSON

Complainant, Makil Batson, testified as follows. He was twenty (20) years old at the time of trial. On February 17, 2018, he and complainant, DeAndre Norris, went with their friend Jerrett to Jerrett's house, located at 2823 Castor Avenue in Philadelphia, to help him move his personal belongings to another location in the Fishtown area of the city. Jerrett lived there with his mother and the appellant. Mr. Baston stated that he had met appellant once before without incident. N.T., 10/25/2019, pp. 11-15.

Shortly after they arrived and began gathering Jarrett's possessions, appellant said to him, DeAndre and Jerrett, in a stern voice, "So you're not going to say hello to me in my own house?" After they then greeted the appellant, appellant pulled what appeared to be a closed pocketknife from his side and after opening it to expose the blade said to them, "Yeah, I'll do it, I'll do something. Go come at me and see what happens." They began to argue with the appellant, but soon Jerrett's mother asked them to step outside, while she remained inside talking with appellant. Jerrett's mother "calmed" appellant down, and they all went back inside the house and began removing Jerrett's computer supplies and game system from the house to their car. They left the bed frame in the front yard to be picked up on their second trip back to the house. Mr. Batson and Mr. Norris, then drove and dropped off Jerrett's items at the Fishtown location. *Id.* p. 15-19.

When the complainants returned to the house approximately twenty (20) minutes later, appellant and two (2) other men, one of whom was appellant's cousin, Shane Ivory Robinson, approach them outside the house. Mr. Robinson's wife was also there. When Mr. Baston began to explain what had happened previously with appellant, Mr. Robinson stated "I don't give an F what happened," and then threw a punch directed toward Mr. Batson's face but missed. The two of them then began scuffling on the ground and when they got up, Mr. Batson saw that the appellant was now "in a scuffle" with DeAndre Norris. *Id.* p. 19-21.

Mr. Batson and Mr. Robinson continued to scuffle on the ground and eventually complainant Batson, while still on the ground, managed to place Mr. Robinson in a headlock or a chokehold to defend himself. DeAndre Norris saw this and told Mr. Batson to let go and he immediately released Mr. Robinson from the headlock or chokehold after a total of about "four (4) seconds." Appellant then ran at Mr. Batson while he was still on his knees and attempting to get off the ground and stabbed him with his knife in the side of the head and then began stabbing him in the right side of his body. Mr. Batson testified that even though he saw the knife in appellant's hand when he was coming towards him, he thought what he felt were only punches until he saw blood coming from his side of his body. Appellant eventually stopped stabbing Mr. Batson and Jerrett then gave him a towel to hold on his head and they went inside of Jerrett's car and waited for the police to arrive. *Id.* p. 21-26.

Mr. Batson further testified that he was taken to the Aria Jefferson Hospital by ambulance and remained there for seven (7) days where he was treated for his punctured lung and was given nineteen (19) stitches for his head wound. At the time of trial, he had two (2) scars from being stabbed, one on the side of his head above the ear and the other on his right side. He testified that he has difficulty breathing in cold weather and that his head is numb at the

site of the scar. The Commonwealth introduced photographs displaying Mr. Batson's injuries. *Id.* p. 26-29.

On cross-examination, Mr. Batson testified that he had no prior knowledge or awareness of appellant's mental health issues. He further stated that they had only removed from the house items that were Jerrett's and testified that he had been to the house on previous occasions prior to Mr. Dobbs living there and "knew what was Jarrett's and what wasn't." He acknowledged that while he was scuffling with Mr. Robinson, he did punch appellant one time to help get him off complainant, DeAndre Norris. He testified that he did not have a knife or any weapon that day. *Id.* p. 29-42.

DEANDRE NORRIS

The testimony of the other complainant, DeAndre Norris, mirrored much of complainant, Makil Batson's testimony. He testified as follows. Mr. Norris drove his car and met Makil, Jerrett and Jerrett's mother at 2823 Castor Avenue to help Jerrett move his things. When they walked into the living room, "[appellant] just started screaming" and said, "you guys don't just walk into someone's house and not speak." Mr. Norris testified that the appellant was "very angry for some reason" and "he just started screaming, like he was irritated." Appellant then pulled out a knife. Mr. Norris testified that he spoke with appellant and tried not to argue with him, but appellant and Mr. Batson were in each other's face and yelling at each other. Things calmed down and he, Jerrett and Mr. Batson left in the car to drop off the first round of items at another location. *Id.* p. 45-47.

Upon their return to the outside of 2823 Castor Avenue, a person he believed was appellant's nephew "Shane" approached the complainants and asked who "was threatening my

uncle?" After, they responded that no one had threatened appellant, Shane yelled at them to "shut the hell up" and then "swung at Mikel and Mikel grabs him, and that's when the altercation breaks out and we start fighting." Mr. Norris testified that he didn't want appellant jumping into the fight between Shane and Mikel, so he then swung at appellant and they began to fight. *Id.* p. 47-49.

During the scuffle, he moved toward Makil to remove him from the fight with Shane. While he was doing this, appellant then "comes up and he goes down and he actually scrapes it [the knife] across Makil when Makil is letting go, scrapes it across Makil's head and pokes him. Then charges at me." Mr. Norris testified that appellant began chasing him [DeAndre] around a car holding the knife and eventually retreated inside the house. In his attempt to remove the knife from appellant, Mr. Norris cut his finger and received "water stitches" for it at the hospital where he was taken immediately after the altercation. The Commonwealth introduced into evidence photographs of Mr. Norris's injuries while at the hospital, as well as documentation of his hospital visit. *Id.* p. 49-53.

On cross-examination, Mr. Norris testified that he had met appellant previously without incident. He was not aware that appellant had any mental problems. He stated that appellant took out the knife on their first trip there. He further testified that when they came back to the house the second time, he didn't think appellant was still angry because "It don't make no sense for you to be angry at us for something we didn't do to you. All we did was come and do our job and leave. So, it was nothing to be angry about." *Id.* p. 53-57.

On re-direct, he was asked if appellant had calmed down after he pulled out the knife when they first arrived at the house. DeAndre testified that they "came to an agreement. He started -- like I said, he went upstairs and that was it. He left. There was nothing after that." He

added that appellant appeared angry when they returned to the house the second time but didn't immediately reveal his knife. The next time appellant revealed the knife was when he used it against Mr. Batson during the fight. *Id.* p. 57-59.

The Commonwealth and appellant then stipulated that following the altercation, a black pocketknife with a silver blade was recovered from the table of the house where appellant resided and where the altercation first took place. *Id.* p. 62. The Commonwealth then played a video recording of a statement taken of the appellant by Philadelphia Police Detective Haggy following his arrest and after being given his Miranda warnings. *Id.* p. 62-64.

The Commonwealth then rested.

WILLIAM DOBBS

Appellant, William Dobbs, testified as follows. Appellant was present in the house at approximately 5:00 pm with his ten (10) year old son when the complainants arrived, with his "step-son" Jerrett. He recognized the complainants as Jerrett's friends. He had argued with Jerrett's mother the night before about Jerrett moving out. He was unaware that they would be moving him out that day and felt "kind of upset because they just barged in my house." He testified that when the complainants began unplugging items, he asked them to leave. When the complainants "continued to do what they were doing," appellant then went and "grabbed the knife" from the pocket of his coat that was on the chair "cause I felt intimidated inside my own home." He admitted that after taking out the knife, he told the complainants "Now, if I were to do something to you all, it would be a shame."

Jerrett's mother, Karen, then intervened and talked to appellant and calmed him down. Appellant testified that he then "sat on the couch and I let them continue to get the stuff out of

the house." Complainants then loaded the items into the car and left to drop them off at another location. *Id.* p. 67-72.

Prior to complainants returning to the house, appellant called his nephew "Shane" Robinson and told him that he was "having a little confrontation with these guys" and that he "needed some help down here..." Appellant testified that he called Shane back and told him not to come. When the complainants returned, appellant went outside where he knew Shane was already standing. Appellant testified that he then told Shane that the complainants were the guys that were threatening him, but that he didn't need him anymore. *Id.* p. 73-74.

Appellant further testified that complainant Batson then said that he didn't care who Shane was and then Shane and Mikel Batson "began fighting each other.' He stated that complainant, DeAndre Norris, then either hit or pushed appellant causing him to fall under a car. Appellant was able to get up and pin Mr. Norris against the car. Appellant testified that he then saw Mr. Batson choking Shane and he broke free of Mr. Norris and tried to get Mr. Batson to let go of Shane. Appellant stated that while doing this, Mr. Batson grabbed appellant and picked him up and "dumps me on my head, so I stab him." However, appellant testified that he had reached into his pocket to "get my knife out" when Mr. Batson first grabbed him. Appellant testified that after he stabbed Mr. Batson, Mr. Batson continued hitting him until appellant stabbed him across the head. After appellant stabbed Mr. Batson, Mr. Norris said to the appellant, "Did you just stab him [Mr. Batson]?" *Id.* p. 74-76.

On cross-examination, appellant testified that Jerrett had lived in that house his entire life, whereas appellant had only lived at that house for one and one-half (1½) years. Appellant acknowledged that although the complainants and Jerrett were removing Jerrett's possessions only, appellant "had a problem" with them doing that and he told them to leave.

When Mr. Batson responded that they were not going to leave because they were there to help Jerrett move his things, appellant testified that he took his knife from his coat pocket, opened it to display the blade, and told the complainants, "Okay, I'm going to make you all leave my house." Appellant further stated that after the complainants left the house, he no longer felt threatened, but rather than putting the pocketknife back into his coat again, he kept it on his person in his pants pocket. *Id.* p. 76-81.

Appellant further testified that he was the only person to have a knife or any weapon that day. Appellant stated that when he brandished his knife, Mr. Batson said, "we got people with guns and knives." However, appellant acknowledged that neither complainant displayed or utilized a gun or a knife during his altercations with them. Further, appellant agreed that he did not tell detectives that Mr. Batson threatened him with a gun or knife. Finally, appellant testified that he weighed approximately two hundred and twenty (220) pounds at the time of the altercation. *Id.* p. 81-88.

Appellant then rested and, following the arguments of counsel, this Court found appellant guilty of the above stated offenses.

Discussion

On appeal, appellant contends that the Commonwealth failed to prove beyond a reasonable doubt that the defense of self-defense did not apply. Appellant argues that because of this, the evidence was therefore insufficient to convict Mr. Dobbs of aggravated assault graded as felonies of the first and second degree, against complainant's Mikel Batson and DeAndre Norris, respectively. Similarly, appellant argues that because the Commonwealth failed to prove beyond a reasonable doubt that the defense of self-defense did not apply, the evidence was therefore

insufficient to convict Mr. Dobbs of possessing an instrument of crime. In further support thereof, appellant argues that at trial, he "established the defense of self-defense."[4]

The Pennsylvania Crimes Code governs self-defense in relevant part as follows:

18 Pa. C.S.A.§ 505. Use of Force in Self-Protection

(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....

* * *

(2.3) An actor who is not engaged in a criminal activity, who is not in illegal possession of a firearm and who is attacked in any place where the actor would have a duty to retreat under paragraph (2)(ii) has no duty to retreat and has the right to stand his ground and use force, including deadly force, if:

(i) the actor has a right to be in the place where he was attacked;

(ii) the actor believes it is immediately necessary to do so to protect himself against death, serious bodily injury, kidnapping or sexual intercourse by force or threat; and

(iii) the person against whom the force is used displays or otherwise uses:

(A) a firearm or replica of a firearm as defined in 42 Pa.C.S.A. § 9712 (relating to sentences for offenses committed with firearms); or

(B) any other weapon readily or apparently capable of lethal use.

---

[4] See Appellant's Statements of Errors

Our Supreme Court in *Harris,* provided further guidance on this issue, opining that the justified use of deadly force requires:

a) the actor was free from fault in provoking or continuing the difficulty which resulted in the use of deadly force;
b) the actor must have reasonably believed that he was in imminent danger of death or serious bodily injury, and that there was a necessity to use such force in order to save himself or others therefrom; and,
c) the actor did not violate any duty to retreat or to avoid the danger.

Commonwealth v. Smith, 2014 Pa.Super 165, 97 A.3d 782, 787 (2014), citing Commonwealth v. Harris, 542 Pa. 134, 137, 665 A.2d 1172, 1174 (1995).

Further, a defendant has no "burden to prove" his self-defense claim. *Commonwealth v. Torres,* 564 Pa. 219, 224, 766 A.2d 342, 345 (2001). (While there is no burden on a defendant to prove the [self-defense] claim, before that defense is properly at issue at trial, there must be some evidence, from whatever source to justify a finding of self-defense. If there is any evidence that will support the claim, then the issue is properly before the fact finder.) *Id.* (internal citations omitted). *See also Commonwealth v. Bullock,* 948 A.2d 818, 824 (Pa.Super.2008) (stating same standard).

If the defendant properly raises self-defense under Section 505 of the Pennsylvania Crimes Code, the burden is on the Commonwealth to prove beyond a reasonable doubt that the defendant's act was not justifiable self-defense. *Commonwealth v. McClendon,* 874 A.2d 1223, 1229–30 (Pa.Super.2005). The Commonwealth sustains this burden if it establishes at least one of the following: 1) the defendant 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), *appeal denied,* 600 Pa. 743, 964 A.2d 894 (2009) (quoting *McClendon,* supra at 1230). The Commonwealth must establish only one of

these three)3)elements beyond a reasonable doubt to insulate its case from a self-defense challenge to the evidence. *Commonwealth v. Burns,* 765 A.2d 1144, 1149 (Pa.Super.2000), *appeal denied,* 566 Pa. 657, 782 A.2d 542 (2001).

The Commonwealth can negate a self-defense claim if it proves the defendant did not reasonably believe he was in imminent danger of death or great bodily injury and it was necessary to use deadly force to save himself from that danger. *Commonwealth v. Sepulveda,* 618 Pa. 262, 288–89, 55 A.3d 1108, 1124 (2012). This requirement of reasonable belief encompasses two (2) aspects, one subjective and one objective. First, the defendant must have acted out of an honest, bona fide belief that he was in imminent danger, which involves consideration of the defendant's subjective state of mind. Second, the defendant's belief that he needed to defend himself with deadly force, if it existed, must be reasonable considering the facts as they appeared to the defendant, a consideration that involves an objective analysis. *Commonwealth v. Mouzon,* 617 Pa. 527, 551, 53 A.3d 738, 752 (2012). Thus, the defendant must be free from fault in provoking or escalating the altercation that led to the offense, before the defendant can be excused from using deadly force. *Id.* Likewise, the Commonwealth can negate a self-defense claim by proving the defendant "used more force than reasonably necessary to protect against death or serious bodily injury." *Commonwealth v. Truong,* 36 A.3d 592, 599 (Pa.Super.2012) (*en banc*).

As in the case *sub judice*, when the defendant's own testimony is the only evidence of self-defense, the Commonwealth must still disprove the asserted justification and cannot simply rely on the factfinder's disbelief of the defendant's testimony. However, "Although the Commonwealth is required to disprove a claim of self-defense arising from any source beyond a reasonable doubt, a [factfinder] is not required to believe the testimony of the defendant who

raises the claim." *Commonwealth v. Bullock*, 948 A.2d 818, 824 (Pa.Super.2008) Further, if there are other witnesses, who provide accounts of the material facts, it is up to the factfinder to "reject or accept all, part or none of the testimony of any witness." *Commonwealth v. Gonzales*, 415 Pa.Super. 564, 609 A.2d 1368, 1370 (1992). Moreover, the complainant[s] can serve as a witness to the incident to refute a self-defense claim. *Reynolds, supra.*

As our Pennsylvania courts have instructed, many factors must be assessed in order to determine whether or not self-defense existed, including whether complainant was armed, whether there was any actual physical contact, size and strength disparities between the parties, prior dealings between the parties, threatening or menacing actions on the part of complainant, and general circumstances surrounding the incident, are all relevant when determining the reasonableness of a defendant's belief that the use of deadly force was necessary to protect against death or serious bodily injuries. *See Commonwealth v. Soto*, 441 Pa.Super. 241, 657 A.2d 40 (1995) (concurring opinion by Olszewski, J.) No single factor is dispositive. *Id.* Furthermore, a physically larger person who grabs a smaller person does not automatically invite the smaller person to use deadly force in response. *Commonwealth v. Hill*, 427 Pa.Super. 440, 629 A.2d 949 (1993).

Here, this trial court, acting as the finder of fact, is presumed to know the law, ignore prejudicial statements, and disregard inadmissible evidence. Further, Pennsylvania law is well settled that credibility determinations are within the exclusive province of the factfinder, "who is free to believe all, part, or none of the evidence..." *Commonwealth v. Gonzalez*, 2015 PA Super 13, 109 A.3d 711, 723 (citing *Commonwealth v. Forbes*, 2005 PA Super 37, 867 A.2d 1268, 1273-74 (Pa.Super.2005). The evidence at trial need not preclude every possibility of innocence, and the factfinder is free to resolve any doubts regarding a defendant's guilt 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.

In the instant case, this Court, heard all the evidence and concluded that appellant could not have reasonably believed that he was in imminent danger of serious bodily injury, in order to justify the use of deadly force, namely attacking and stabbing the complainants with a pocketknife, where there was no threat of deadly force or serious bodily injury being used against him. Therefore, the Commonwealth satisfied its burden by establishing that the appellant did not reasonably believe that he was in danger of death or serious bodily injury. Further, this Court found the testimony of the complainants to be more credible than that of appellant. This trial court, sitting as the trier of fact, determined that the evidence proved beyond a reasonable doubt that appellant twice initiated a confrontation between, at first himself and the complainants, and then himself with his nephew, Shane Robinson, against the complainants. Further, this Court found that appellant then unjustifiably and unreasonably escalated the physical altercation when he attacked both complainants with a pocketknife.

Appellant's contention that the Commonwealth failed to meet its burden of disproving appellant's claim of self-defense has no merit. Specifically, appellant's claim that the Commonwealth failed to prove that appellant did not reasonably believe he was in imminent danger of death or serious bodily harm has no support in the record. Here, appellant testified that he, weighing 220 pounds, was scooped up by a teenaged Mr. Batson and dropped on his head. He further testified that Mr. Batson began to punch him repeatedly, and that was when appellant pulled the pocketknife from his pants pocket and stabbed complainant to stop him. This testimony was contradicted by the testimony of the complainants, who testified that appellant

attacked complainant Batson with the pocketknife while Batson was attempting to get up from the ground.

Here, appellant relies solely upon his testimony that he was "scooped up" by Mr. Batson and "dropped on his head," and only then removed the pocketknife from his pants pocket and stabbed the complainant in order to stop Mr. Batson from striking him with his hands. However, the evidence and appellant's own testimony, that he removed the knife from his pocket as soon as Batson had only 'grabbed" him, contradict his claim and overwhelmingly support the Court's conclusion that the Commonwealth had met its burden of disproving that self-defense existed.

As a threshold matter, this Court determined that the appellant was the aggressor in both his first interaction with the complainants when they initially entered the house with Jerrett whom they were helping to move, and then when the complainants returned shortly thereafter to finish moving Jarrett's property from the house. This Court found that when the complainants entered the house accompanied by their friend Jerrett who lived there, appellant quickly became aggressive and removed a pocketknife from his coat pocket and threatened them if they did not leave, testifying that he told them, "Now, if I were to do something to you all, it would be a shame." Appellant testified that despite Jerrett's mother intervening and calming him down, when complainant's left on their first trip to bring items to Jerrett's new residence, he then contacted his nephew, Shane Robison, testifying that he told his nephew that he was "having a little confrontation with these guys" and that he "needed some help down here..."

Once the complainant's returned to the house for the second time, appellant and Shane Robinson immediately approached the complainants. Mr. Robinson then yelled and cursed at them and attempted to punch complainant Batson. Appellant acknowledged that while he and the other complainant, Mr. Norris, were engaged in a simultaneous physical scuffle, appellant broke

other complainant, Mr. Norris, were engaged in a simultaneous physical scuffle, appellant broke free and then charged toward complainant, Batson. Appellant's own testimony was that when complainant Batson "grabbed" appellant, appellant took out his pocketknife which was now in his pants pocket and stabbed complainant Batson repeatedly in his side and head. Although appellant testified that Mr. Batson lifted him and dropped him on his head, his own testimony was that he weighed 220 pounds, disproving the possibility that he was lifted into the air and dropped on his head.

Further, complainant Norris testified that after the appellant stabbed complainant Batson repeatedly, appellant then began chasing Mr. Norris around a car in an attempt to stab him with the knife before finally retreating inside the house. Mr. Norris testified that while being chased by appellant, he cut his finger while trying to remove the knife from the appellant.

This Court found that appellant failed to properly raise the justified use of deadly force which requires that he (a) be free from fault in provoking or continuing the difficulty which resulted in the use of deadly force; (b) have reasonably believed that he was in imminent danger of death or serious bodily injury, and that there was a necessity to use such force in order to save himself or others therefrom; and (c) did not violate any duty to retreat or to avoid the danger. See *Commonwealth v. Smith, supra*. Here, appellant provoked both altercations, failed to prove that he reasonably believed that either complainant posed a threat of imminent danger, death or serious injury to him or that he could not have simply let them move Jarrett's property and retreat.

This Court found appellant's testimony that complainant Batson stated that he knew people who had a gun or knife to be not credible. Moreover, appellant admitted at trial that he did not see either complainant possess a knife or gun at any point during both altercations. This

Court thus found that the testimony and evidence presented would not justify a reasonable belief that appellant's life was in immediate danger or that he was at risk for serious bodily injury. The use of a knife to threaten and then stab the complainants resulting in a punctured lung and a weeklong hospitalization was unnecessary and clearly unprovoked and without justification. For these reasons, this Court rejected appellant's claim of self-defense.

Appellant's challenge to the sufficiency of the evidence likewise has no merit. In reviewing the sufficiency of the evidence, this Court had to consider all the evidence admitted at trial. For the reasons set forth above, this Court properly found that there was sufficient evidence to conclude that the Commonwealth met their burden of proving every element of the crimes for which appellant was convicted beyond a reasonable doubt. Further, this Court, sitting as factfinder, found the Commonwealth witnesses to be credible and persuasive. Their testimony provided the evidentiary proof necessary to support the Commonwealth's burden and this Court's finding of guilt on all of the above stated charges.

Conclusion

In summary, this Court has carefully reviewed the entire record and finds no harmful, prejudicial or reversible error and nothing to justify the granting of appellant's request for relief. For the reasons set forth above, the judgment of this Trial Court should be affirmed.

9/26/21
Date

By the Court:
C. A. Ehrlich
HONORABLE CHARLES A. EHRLICH